



OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON

**VIOLENCE AGAINST CHILDREN**

# Prevention of and responses to violence against children within the juvenile justice system



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The present publication is based on the Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (A/HRC/21/25) presented to the 21th Session of the Human Rights Council, in Geneva.

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2004 In a town named Abomey in Benin: in a jail. A young prisoner is behind bars.

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## 1. Introduction

In its resolution 18/12 of 24 September 2011 on human rights in the administration of justice, in particular juvenile justice, the Human Rights Council invited the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children to collaborate in the organization of an expert consultation on prevention of and responses to violence against children within the juvenile justice system and to submit a report thereon.

The Expert Consultation took place in Vienna on 23-24 January 2012. It was hosted by the United Nations Office on Drugs and Crime (UNODC) and co-organized with the Office of the High Commissioner for Human Rights (OHCHR) and the

Special Representative of the Secretary-General on Violence against Children, in cooperation with the Government of Austria. Participants included representatives from international and regional human rights bodies, governmental and State institutions, academia and civil society.

The Expert Consultation focused on the risks and systemic factors contributing to violence against children within the juvenile justice system, and strategies and practical recommendations to prevent and respond to violence against children within the juvenile justice system.

This report is informed by the results of the consultation and a research paper conducted by an independent consultant, Ann Skelton, of the University of Pretoria, South Africa.



## 2. Background

The report builds upon the 2006 United Nations Study on Violence against Children which remains a foundational document for the prevention and elimination of all forms of violence against children in all settings, including within juvenile justice systems. The Study recognized that children in the custody of the police or in criminal justice institutions are at a high risk of violence, including as a result of the public perception of them as being antisocial or criminals and the prevalence of physical and psychological punitive approaches. The Study urged States to prohibit, prevent and respond to all forms of violence against children, in all settings, including in the justice system.

The responses proposed by the Study included legislative action and policies to prevent institutionalization—in particular the proper application of the principle of “last resort” and the prioritization of alternative measures to deprivation of

liberty. Such alternatives begin with primary prevention measures such as support for disadvantaged and at-risk families and early childhood initiatives.

States were urged to reduce detention and use it only for child offenders who are assessed as posing a real danger to others, as a last resort and for the shortest appropriate period of time. States were further urged to undertake legal reforms to abolish violent forms of sentencing and to decriminalize status offences. The Study also proposed alternatives to detention such as community-based diversion programmes. Further responses were proposed to ensure protection from violence within institutions, with emphasis on staff selection; training and remuneration; conforming to international standards; registration, monitoring and investigation; and complaint mechanisms.





### 3. Current situation

It is estimated that at least 1 million children are deprived of their liberty worldwide<sup>1</sup> a figure that is probably underestimated. Research shows that the majority of detained children is awaiting trial, that a large proportion of these children are held for minor offences and are first-time offenders. Violence at home, poverty, structural violence and risky survival activities propel children into the juvenile justice system, and detention in the criminal justice system is often used as a substitute for referral to child care and protection institutions. There is a worrying trend for children to be placed in institutions, rather than minimizing the risk of violence against children by ensuring effective prevention. Incidents of violence occur while in custody of police and security forces, in both pretrial and post-sentence detention, as well as a form of sentencing. Violence can be perpetrated by staff, adult detainees and other children, or be the result of self-harm.

#### 3.1. Perceptions of children in the juvenile justice system

The United Nations Study observed that although the majority of offences committed by children are non-violent, pressure on politicians to “get tough on crime” has driven increasingly harsh responses to children in conflict with the law. There is a popular perception that a large proportion of crimes are committed by children, although in fact children are not dominant in crimes statistics.<sup>2</sup> The United Nations High Commissioner for Human Rights has expressed concern at the growing public perception that juvenile delinquency is increasing. Such a perception, not grounded upon evidence but based on media reports of a few se-

rious cases, influences the political discourse and too often leads to the adoption of legislation on the treatment of young offenders that weakens children’s rights.

It is a further concern that increasing numbers of children have been drawn into the criminal justice system through “anti-social behaviour measures”, which has led to more children being deprived of liberty—at younger ages.

It is apparent that many policy and lawmakers have subscribed to a disproportionately punitive approach. Personnel working with children in the juvenile justice system are not immune to these societal attitudes. The lack of public concern about brutality towards children in detention facilities may reflect societies rejection of children who do not conform to conventional social behaviour. Such stigmatization may also be expressed in the abusive attitudes and behaviour of poorly trained staff.

A positive development is that, alongside an apparent rise in punitiveness, there has also been a trend towards increased use of restorative justice mechanisms, especially in the juvenile justice sphere. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters<sup>3</sup> as well as the United Nations Handbook on Restorative Justice Programmes<sup>4</sup> have provided an international framework for work in this field. In different regions, there are significant developments in the process of law reform and restorative justice programmes for child offenders. In many cases, restorative justice practices have a long tradition in communities. The current work in some States is focused on evaluating, codifying and regulating restorative practices to ensure full compliance with the Convention on the Rights of

<sup>1</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, (A/HRC/13/39/Add.5), p. 63, para. 236.

<sup>2</sup> T. Hammarberg, “A juvenile justice approach built on human rights principles”, Youth Justice December 2008, vol. 8, No. 3, pp. 103-196.

<sup>3</sup> Economic and Social Council resolution 2002/12.

<sup>4</sup> UNODC Handbook on restorative justice programmes, available from: [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)

the Child. In South Sudan and East Timor, for example, legislation has been drafted to incorporate traditional restorative practices and give effect to the Convention.<sup>5</sup>

In Norway, where the minimum age of criminal responsibility is 15 years, a legislative amendment on the Juvenile System was enacted in December 2011.<sup>6</sup> It applies to children between 15 and 18 years who have committed serious or repeated offences. In the new system, the sanction will be imposed locally, where the convicted young person lives. Imprisonment sentences will be replaced by social control and close follow-up, including full involvement of the offender, the offender's "private network", the various elements of the justice system and other public bodies, all of which will contribute to an individualized follow-up process. Victims may also be involved at their own request. The objective is to give the convicted child an enhanced understanding of the consequences of his/her act for everyone affected, while guaranteeing him/her the necessary aid and support. The key factor is to strengthen the young person's resources to deal with his or her own criminal act. The legislative changes also introduced extensive community service orders for offenders between 15 and 18 years as an alternative to unsuspended prison sentences.

### 3.2. The urgent need to reduce the number of children in detention

The international normative framework, including the United Nations Guidelines for the Prevention of Juvenile Delinquency,<sup>7</sup> promotes a comprehensive approach to prevention to avoid the criminalization and penalization of children. However many States still lack crime prevention strategies or plans. There is an increasing body of knowledge about effective crime prevention strategies<sup>8</sup> and

the demonstrated cost-saving benefits of prevention<sup>9</sup> but in contrast with this principle, many countries invest in building detention facilities for children, rather than prioritizing investment in prevention measures.

In a number of countries, there is concern that too many children are brought into the criminal justice system through "status offences", leading to the placement of children in detention rather than providing them with the needed care and protection. As noted by the Special Representative of the Secretary-General on Violence against Children there is a worrying trend to criminalize children living and/or working in the streets. Children living and/or working in the streets are perceived as a social threat, stigmatized by the media and blamed for an alleged increase in juvenile delinquency. Truancy, vagrancy or begging by children are still often punished by the criminal justice system rather than prevented and addressed through child protection measures. Deprivation of liberty tends to become a preferred solution, rather than a measure of last resort, and is often accompanied by extortion, ill treatment and sexual abuse.

There are additional groups of children, often over-represented in the criminal justice system, who should not be there, and for whom appropriate care and protection services should be provided. These include children with mental health problems, children with substance abuse problems, children in need of care and protection and unaccompanied children. By removing such children from the criminal justice system the potential to reduce violence against them is clearly increased.

Many States still have low minimum ages of criminal responsibility (MACR). The Committee on the Rights of the Child has encouraged States parties to increase their lower MACR to the age of 12 years

<sup>5</sup> Cyndi Banks, *Protecting the Rights of the Child: Regulating restorative Justice and Indigenous Practices in Southern Sudan and East Timor*, *International Journal of Children's Rights*, vol. 19 (2), (2011).

<sup>6</sup> White Paper Prop. 135 L (2010–2011).

<sup>7</sup> General Assembly resolution 45/112.

<sup>8</sup> European Crime Prevention Network, *A Review of Good Practices in Preventing Juvenile Crime in the European Un-*

*ion* (2006); I. Palmary and C. Moat, *Preventing Criminality Among Young People* (Centre for the Study of Violence and Reconciliation, 2001).

<sup>9</sup> Welsh et al. *Costs and Benefits of Preventing Crime*, (Westview Press, Boulder, 2000); Jones et al, *The Economic Return on PCCD's Investment in Research-based Programs: A Cost-benefit analysis of delinquency prevention in Pennsylvania* (Pennsylvania State University 2008).

as the absolute minimum age and to continue to increase it to a higher age level. This is the absolute minimum that must be progressively increased. States setting a higher MACR must also have a clear policy on non-custodial measures for the vast majority of children who are below that age, to avoid them being transferred from one form of custody to another. Age thresholds for detention are also a good mechanism for keeping children out of detention, particularly prison, and this can be set higher than the MACR.<sup>10</sup>

A key principle of a rights-based juvenile justice system is non-discrimination. Children from ethnic and minority groups are overrepresented in the criminal justice system. Similar situations occur with migrant children and asylum seekers who are placed in detention on the basis of their migratory status. The reasons for this may include

discrimination by law enforcement officials, but also social exclusion experienced more generally by those groups in the countries where they live. Social exclusion tends to result in patterns of poverty, domestic violence, gang activity, substance abuse, barriers to education, and poor prospects for meaningful employment.

An important and highly effective way of reducing the number of children in the criminal justice system is through diversion mechanisms, such as restorative justice programmes and alternative non-custodial measures. Although these children may still be at risk during the police station phase, pretrial diversion avoids pretrial detention. Alternative sentencing that prevents children from being deprived of their liberty is invaluable in the reduction of violence against children.

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<sup>10</sup> T. Liefwaard, *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards* (Intersentia, 2008).



## 4. Identification of risks of violence within the juvenile justice system

### 4.1. Law enforcement activities

Although contact with the juvenile justice system usually begins with arrest or apprehension, children can be victims of violence through law enforcement activities that never result in arrests or charges. Concern is expressed that anti-social behaviour reduction methods such as dispersal powers may lead to the use of violence, especially as a certain amount of force is permissible by law.

### 4.2. Apprehension and arrest

Police and other security forces are often responsible for violence against children, and arrests are one of the situations in which this occurs. The Five years on follow-up report found that children are at high risk of violence from their first point of contact with the law.<sup>11</sup> This appears to occur in developed and developing countries. The use of tasers during the arrest of children is a situation of particular concern.

As prescribed by international standards on juvenile justice, it is important to notify parents or caregivers following the arrest of a child, and secure their attendance at the police station. However, failure to notify the parents, or to do so in a timely manner, happens in both developing and developed countries.

### 4.3. Police interrogation

As stated in the Convention on the Rights of the Child, every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. It is observed in the UNODC Criminal Justice Assessment Toolkit 3 that: “Good practice and respect for human rights, as well as the professionalism of the interviewer, should prevent suspect interviews from becoming violent, but there may be places in which severe

interrogation techniques are tolerated, or even encouraged, and may involve the use of torture”.<sup>12</sup>

Many juvenile justice laws fail to include a clause that a child shall not be questioned by a police officer or a prosecutor without a parent, guardian or responsible adult being present. The presence of a parent, guardian or responsible adult is important in that it provides a high level of protection against ill-treatment of child suspects by police.<sup>13</sup>

Similarly, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide specifically that States should establish child-friendly legal aid systems that enable children to contact their parents or guardians at once and to prohibit any interview in the absence of a parent or guardian, and lawyer or other legal aid provider.

A recent study of juvenile justice systems in Eastern Europe and Central Asia recognizes that some countries have legislated to provide for the presence of lawyers during interrogation.<sup>14</sup> At the same time, in some other regions legal representatives rarely assist any suspect at the police detention stage of the criminal justice process.<sup>15</sup>

### 4.4. Searches and the taking of samples

International instruments pertaining to juvenile justice do not provide specific protection in relation to searches or the taking of samples. Similarly, many laws at the domestic level fail to incorpo-

<sup>11</sup> NGO Advisory Council, Five years on: A global update on violence against children (2011).

<sup>12</sup> P. 17, available from: [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/3\\_Crime\\_Investigation.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Crime_Investigation.pdf)

<sup>13</sup> Rule 15, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, deals with “legal counsel, parents and guardians” but this comes under part 3 of the rules pertaining to “Adjudication and Disposition”.

<sup>14</sup> UNICEF, The development of juvenile justice systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine (2009).

<sup>15</sup> UNODC, Access to legal aid in criminal justice systems in Africa: Survey Report (2011).

rate protective rules in this area. Some countries do have laws relating to the taking of intimate and non-intimate samples, but not all differentiate between child suspects and adult suspects.

#### 4.5. The right to appear before a court or tribunal to challenge detention

Building upon children's right to challenge the legality of deprivation of liberty before a court and to have a prompt decision on such action, the Committee on the Rights of the Child in its general comment No. 10 (2007) on children's rights in juvenile justice provides that no child should be detained for more than 24 hours without a judicial order. However, even countries where there is a shorter specified time period do not always manage to abide by the law. A study conducted in Tanzania by the Commission for Human Rights and Good Governance supported by Penal Reform International indicated that 70 per cent of children sent to police stations are detained for more than 24 hours before being sent to the courts.<sup>16</sup>

Detaining a child in a police cell for even a few hours presents a risk of violence. Where there is no law requiring him or her to be brought before a court or other body within a limited period of time, or if such law is flouted, children are at grave risk as the courts are unaware of the child's detention. Children who do not have parents or families who will raise concerns can get "lost" in the system under these circumstances.<sup>17</sup>

#### 4.6. Risks at court and during trial

Appearance before a court or tribunal is considered a protective factor and presiding officers and prosecutors can do much to prevent delay and ongoing detention of children. Too often, however, they are neglectful or indifferent to the plight of children, and thereby contribute indirectly to the harm children suffer. In some instances, they directly contribute to psychological and verbal violence against children in the manner that they interrogate or cross-examine them in court. The court process it-

self may be experienced as psychologically violent by children, and this will be greatly alleviated if the child is assisted by a parent/guardian/responsible adult, and by a legal representative or assistant.

Court admission of evidence obtained through torture or threats is a common occurrence in many justice systems, and this contributes to the rising problem of impunity.

#### 4.7. Risks associated with pretrial detention

The majority of children deprived of their liberty are in pretrial detention, and it is disturbing that many of these children are subsequently found not guilty.<sup>18</sup>

There is a lack of oversight and monitoring in pretrial detention, particularly in police cells. Lack of contact with the outside world is less frequent than for sentenced children, which means that children who are ill-treated have fewer possibilities to report incidents. There are also risks of violence related to court appearance, with children often transported to court and held in court holding cells together with adults.

#### 4.8. Risks in administrative detention

Some countries have administrative processes to deal with children who are alleged as having infringed the penal law—usually these are seen as preventive of crime, or ways of "re-socializing" or "re-educating" young people at risk. The major risk of detention measures in such systems is that decisions to detain are often made by officials or committees, with no due process, no opportunity for the child to defend him or herself, no legal representative and sometimes no parental support. The decision, once taken, is difficult to challenge. In many such systems, the decision to detain is not subject to review by a court or other independent judicial body.

<sup>16</sup> Commission for Human Rights and Good Governance, Inspection Report for Children in Detention Facilities in Tanzania (June 2011).

<sup>17</sup> Human Rights Watch, *Children of the Dust: Abuse of Hanoi Street Children in Detention* (2009).

<sup>18</sup> UNICEF, *The Development of Juvenile Justice Systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine* (2009). A/HRC/21/25. The Five years on report (see note 11 above) cites situations where children were detained in their cells for more than 20 hours a day and drugs were used to control behaviour, see NGO Advisory Council citing the World Organisation Against Torture (OMCT) and the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), *Report on the visits in the juvenile justice centres in Uruguay* (2011).

## 4.9. Risk of violence in detention facilities

Whether in pretrial detention, administrative detention or detention as a sentence, there is a significant risk of violence that arises simply from being deprived of one's liberty. The more overcrowded the facility, and the lower the staff-to-child ratio, the greater the risk becomes. The possible sources of violence in institutional settings are numerous. Violence occurs at the hands of staff working in the institutions, adult detainees where children are not separated, other child detainees, and also in the form of self-harm.

### 4.9.1. Legally sanctioned violence committed by staff working in institutions

Children in detention are frequently subjected to violence as a punishment for minor offences. Although 116 countries have abolished corporal punishment in penal institutions as a disciplinary measure (a positive increase of 10 countries since the United Nations Study was finalized), it remains lawful in at least 78 countries.<sup>19</sup> Violent practices are found in both developed and developing countries. Apart from the use of caning and whipping, children may be punished by being confined to cells for lengthy periods, being subjected to solitary confinement, having food rationed, or being subjected to chemical and physical restraints.<sup>20</sup>

Legally sanctioned violence by staff members is a problem in developed as well as developing countries. The use of physical restraints is particularly concerning. Although many countries have laws which permit the use of restraints, their use is generally limited to precisely defined circumstances.<sup>21</sup>

<sup>19</sup> Global Initiative to End All Corporal Punishment of Children. See: <http://www.endcorporalpunishment.org>

<sup>20</sup> The Five years on report (see note 11 above) cites situations where children were detained in their cells for more than 20 hours a day and drugs were used to control behaviour, see NGO Advisory Council citing the World Organisation Against Torture (OMCT) and the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), Report on the visits in the juvenile justice centres in Uruguay (2011).

<sup>21</sup> United Nations Rules for the Protection of Children Deprived of their Liberty, Rule 64.

### 4.9.2. Violence by staff working in institutions

The dividing line between illegal and legally sanctioned punishment is a fine one, as many legal measures such as restraints are used incorrectly and in inappropriate circumstances. However, there are some reported incidents that are clearly illegal.

In many countries personnel do not have a duty to record incidents or punishments, and no monitoring mechanisms exist. The Five years on report (Apprehension and arrest section above) found that in some countries child detainees were subject to degrading and painful punishments, including being stripped naked and made to stand in water for days at a time, with limited food and no access to toilets.<sup>22</sup>

Sexual abuse by staff members is also a significant risk. A survey of American youth in juvenile detention facilities found that an estimated 12 per cent of youth in 195 juvenile facilities reported experiencing one or more incidents of sexual abuse by another youth or facility staff during the 12-month period covered by the study.<sup>23</sup>

### 4.9.3. Violence by adult detainees

Building upon article 37 (c) of the Convention on the Rights of the Child, general comment No. 10 of the Committee on the Rights of the Child reiterated the well-established rule that children must be detained separately from adults, adding that there is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being and their future ability to remain free of crime and to reintegrate.

In some States children are detained with adults in adult prisons, and many children are subjected to forced or coerced sexual activity with adult male inmates, as well as to physical violence. The Five years on report (Apprehension and arrest section

<sup>22</sup> K. Todrys, J. Amon, G. Malembeka and M. Clayton, "Imprisoned and imperilled: Access to HIV and TB prevention and treatment, and denial of human rights in Zambian prisons", *Journal of the International Aids Society* 2011 14:8.

<sup>23</sup> US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report: Sexual Victimization in Juvenile Facilities Reported by Youth 2008-2009, January 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf>



above) records situations where children as young as 13 were detained in adult prisons, and dozens of children described forced or coerced sexual activity with adult male prisoners.<sup>24</sup> This was also reported by children interviewed in a number of African countries for the film 10, presented at the Global Conference on Child Justice in Africa, hosted in Kampala by the African Child Policy Forum and Defence for Children International in November 2011.

#### 4.9.4. Violence by other children or young people

Children in detention facilities are also vulnerable to violence from their peers. Overcrowding, lack of supervision and a failure to separate more vulnerable children from others all contribute to this phenomenon. Children involved in youth gangs might also be motivated to violence, or violence may stem from incidents of racism.

#### 4.9.5. Self-harm

Children in detention are prone to self-harm. This ranges from cutting themselves to strangling or hanging themselves. This occurs as a result of violence, neglect, poor detention conditions, prolonged periods of deprivation of liberty, isolation and mental health problems that may or may not have existed prior to detention.<sup>25</sup>

#### 4.9.6. Girls and the risks of violence

Girls are a minority in the juvenile justice system, but, in line with international standards and norms,<sup>26</sup> they require special protection because of their particular vulnerability. Due to their low numbers in the system, many countries do not make special

arrangements or create special facilities for girls; and thus they are often held together with adult women. Alternatively, they are at high risk of being held in isolation or far away from home, due to the need to keep them separate from males.

In 2008, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reported that custodial violence against women, including girls, “very often includes rape and other forms of sexual violence such as threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature.” The Special Rapporteur recalled that it is widely recognized that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.<sup>27</sup>

Other reports have documented abuses against girls in a number of countries, recognizing that girls are vulnerable to violence, particularly rape and sexual abuse by police as well as staff in detention facilities.<sup>28</sup>

In this regard it is important to take into account the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, which address the specific vulnerabilities and needs of women and girls throughout the process. They are aimed at providing de jure and de facto equality between women and men (girls and boys) and at ensuring that any inequalities or forms of discrimination that women and girls face in achieving access to justice, particularly in respect of acts of violence, are redressed.

The Model Strategies and Practical Measures urge States to periodically review, evaluate and revise their laws, codes and procedures, especially their criminal laws, to ensure their value and effectiveness in eliminating violence against women and girls and remove provisions that allow for or condone violence against women and girls.<sup>29</sup>

<sup>24</sup> NGO Advisory Council Five years on: A global update on violence against children (2011), citing Human Rights Watch, *Paying the price: Violations of the rights of children in detention in Burundi* (2007).

<sup>25</sup> D. Medicott, (2009) “Preventing Torture and Casual Cruelty in Prisons through Independent Monitoring” in *The Violence of Incarceration*, P. Scraton and J. McCulloch (eds.), (Routledge, 2008), p. 252.

<sup>26</sup> Rule 26.4, United Nations Standard Minimum Rules for the Administration of Juvenile Justice; Rules 36-39, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

<sup>27</sup> A/HRC/7/3.

<sup>28</sup> <http://hrw.org/english/docs/2007/02/20/g;obal15345.htm>.

<sup>29</sup> General Assembly resolution 52/86.

## 5. Systemic factors that contribute to violence against children

### 5.1. Low priority and lack of a strong child protection system

Despite the growing attention being paid to juvenile justice internationally, the issue does not appear to figure as a priority concern on national policy agendas. Few governments have set about deinstitutionalizing as many children as possible in keeping with their human rights obligations.<sup>30</sup> This has been attributed to the low level of importance accorded by many societies to children involved with the criminal justice system.

### 5.2. Inadequate staffing

Unqualified and poorly trained and remunerated staff are widely recognized as a key factor linked to violence within institutions.<sup>31</sup> Low pay and low status of personnel who work directly with children was identified as one of the reasons for this. Overworked and overwhelmed staff may resort to violent measures to maintain discipline, especially when there is a lack of supervision. Many of the personnel working with children in institutions lack knowledge of child and youth care practice, and there is little reward or prospect for advancement for those who do a good job. The selection and appointment of staff members is also haphazard, with few countries undertaking rigorous background checks of potential employees.

### 5.3. Lack of monitoring, oversight and complaints mechanisms

There is a lack of monitoring and oversight in detention facilities, which are often unregulated and closed to outside scrutiny. As a result, violence may continue unchecked for many years. If cases are reported, they are often investigated superficially and by bodies lacking independence, and

prosecutions or other sanctions are rare. Those in a position to take action may be complicit. This results in a sense of impunity, and allows violence against children to continue.

As highlighted by the joint report conducted by the Special Representative of the Secretary-General on violence against children and the Special Rapporteur on the sale of children, child prostitution and child pornography,<sup>32</sup> and indicated by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, *inter alia*, children in closed facilities of any kind “should have the opportunity of making requests or complaints to the director”,<sup>33</sup> the right to make complaints to administrative and judicial authorities, and to be informed of the response without delay. The Rules call for the establishment of an independent office, such as an ombudsman, to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of settlements.

Some countries have established specialized administrative procedures for children in specific contexts. In Slovenia, for example, there is a procedure for investigating complaints regarding treatment of children by the police.<sup>34</sup>

There are few countries with a duly constituted authority independent from the institution that undertakes inspections on a regular basis, with unannounced inspections on its own initiative. The United Nations Convention against Torture and its Optional Protocol are important in promoting safety for children in detention; however these treaties are not yet in force in a large number of countries.

<sup>30</sup> United Nations Secretary-General, *World Report on Violence against Children* (2006).

<sup>31</sup> *Ibid.*, p. 32.

<sup>32</sup> A/HRC/16/56

<sup>33</sup> General Assembly resolution 45/113.

<sup>34</sup> CRC/C/70/Add.19, para. 23.

#### 5.4. Mixing different levels of vulnerability

Many countries fail to provide a sufficient array of facilities to accommodate and adequately protect children with differing needs. Moreover, there is a growing problem of inadequate assessment of risk and vulnerability within each facility.

#### 5.5. Violence as a sentence

Violence as a sentence is included under the heading “risks” of violence, but in reality it is more than a risk, as this is violence legitimized by national legislation and is a harsh reality for the children who must endure it.

##### 5.5.1. Inhuman sentencing including corporal punishment

Corporal punishment as a sentence for convicted children has been prohibited in 155 States (an increase of 22 countries since the United Nations Study). However, at least 42 States still permit corporal punishment as a court-ordered sentence against children.<sup>35</sup> The Committee on the Rights of the Child has, in two general comments,<sup>36</sup> stressed that corporal punishment as a sentence amounts to cruel and degrading treatment, which is impermissible under article 37 of the Convention on the Rights of the Child. Some countries still subject children who have reached puberty to punishments of extreme violence, including flogging, stoning and amputation.<sup>37</sup>

##### 5.5.2. Death penalty

The Convention on the Rights of the Child prohibits capital punishment for crimes committed by

persons below 18 years of age. However, the death penalty for children is still a lawful sentence in seven States. According to Amnesty International reports monitoring the number of children executed, between 2006 and 2011, 37 offenders were executed for crimes committed before reaching the age of 18. The number of juvenile executions has increased over the past decade, with 21 juvenile offenders having been executed during the previous five-year period.<sup>38</sup>

##### 5.5.3. Life imprisonment without parole

Article 37 of the Convention on the Rights of the Child bans life sentences without the possibility of release. This is an area where there have been positive developments. In American jurisprudence on cases *Graham v. Florida*<sup>39</sup> and *Sullivan v. Florida*<sup>40</sup>, a sentence of life without parole for non-homicide crimes committed by a person below 18 years is a constitutional violation; furthermore, some American states have abolished the sentence of life imprisonment without parole for children regardless of the offence committed.

##### 5.5.4. Indeterminate sentences

Some countries retain indeterminate sentences, whereby a child may be sentenced “at his/her majesty’s/the president’s pleasure”. This leaves uncertainty for the child and makes it difficult to promote an effective rehabilitation process and set reintegration goals. Sentences for child offenders should be determinate and periodically reviewed in order to allow for early release.

##### 5.5.5. Mandatory minimum sentences

Some countries set mandatory sentences for offenders, including children (especially those tried as adults or before adult courts). These establish extended sentences as the mandatory punishment for certain crime categories. This prevents courts

<sup>35</sup> Global initiative to end all corporal punishment of children. See <http://www.endcorporalpunishment.org>

<sup>36</sup> General comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 10 (2007) on children’s rights in juvenile justice.

<sup>37</sup> The Committee on the Rights of the Child has expressed its concern about such sentencing to States including Brunei Darrussalam, Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen, and has recommended that these countries change their laws to make these sentences unlawful.

<sup>38</sup> Amnesty International, “Executions of Juveniles since 1990”, available from: <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990>

<sup>39</sup> *Graham v. Florida*, 130 S. Ct. 2011, 2018, 2030 (2011), handed down in May 2011.

<sup>40</sup> *Sullivan v. Florida*, 130 S. Ct. 2059 (2010)

from considering the individual circumstances of the child, proportionality and rehabilitative goals, and is contrary to the principle recognized by the Convention on the Rights of the Child of deprivation of liberty as a measure of last resort and for the shortest appropriate period of time.<sup>41</sup>

Children must always have the right to appeal their sentences, and must be assisted by the State in the provision of legal assistance where it is required.

## 5.6. Other systemic issues

Other systemic problems or challenges include the fact that juvenile justice is an intersectoral process involving many role players from different government departments and State institutions, and there is often a lack of co-operation between these.

Furthermore, there is a lack of data collection and analysis in relation to the situation of children in the juvenile justice system, and there is a lack of accountability for violence against children or for failure to protect them from violence, including with regard to compensation.

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<sup>41</sup> In South Africa, such sentences were found to be unconstitutional for offenders below 18 years at the time of the offence. See *Centre for Child Law v. Minister of Justice and Constitutional Development*, 2009 (2) SACR 477(CC).



## 6. Recommended strategies to prevent and respond to violence against children in the juvenile justice system

### 6.1. Preventing children from becoming involved with the juvenile justice system

The fewer children there are in the criminal justice system, the lower the risk of their exposure to violence in that system. It is important for States embarking on measures to prevent and respond to violence in the juvenile justice system to ensure that an appropriate environment exists for the primary prevention of children coming into the criminal justice process.

There is an urgent need to strengthen national child protection systems that can effectively ensure that children's rights are safeguarded instead of perpetuating the criminalization of children. States should act to prevent the criminalization and penalization of children and reduce the number of children deprived of liberty, including through: (a) decriminalizing "status offences", such as begging or loitering; preventing the detention of unaccompanied migrant children and asylum seekers; (b) ensuring that children with mental health problems are appropriately cared for and not dealt with by the criminal justice system if possible; and (c) avoiding the criminal justice system for treating children with substance abuse problems. There is also a need to ensure birth registration, age and gender assessment procedures to secure children's rights and safeguards to prevent and protect children from violence within the juvenile justice system.

Similarly, States must raise the age of criminal responsibility to a minimum of at least 12 years, continue to increase it, and ensure non-custodial options for children below that age.

### 6.2. Protecting children from all forms of violence within the juvenile justice system and integrating this dimension into the national agenda

States are urged to revise their laws, policies and procedures to ensure compliance with international standards and ensure that the process of juvenile justice reform is framed by a child- and gender-sensitive approach, promoting a juvenile justice system that is fair, effective, efficient, and established as a core dimension of the national child protection system.

In this light, States are urged, through their national legal frameworks, to ensure that the Constitution, or its equivalent, contains key child rights principles and safeguards including the consideration of children's deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time, the separation of children from adults, and of girls from boys; the effective protection of children from torture or cruel, inhuman or degrading treatment or any other form of violence, including as a form of punishment, treatment or sentencing.

Legislation should contain specific measures to prohibit all forms of violence and effectively protect children. Justice, governance, security and human rights institutions should publicly expose and effectively respond to violence against children in the juvenile justice system in a manner that enhances public accountability. Civil society has a key role to play in this regard and conditions should be created for them to contribute to strengthening the rule of law and holding public officials accountable for acts of violence against children.

### **6.3. Ensuring the use of diversion and alternative non-custodial measures as priorities within the juvenile justice system**

States are urged to develop and use effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, such as restorative justice, mediation, and community-based programmes, including treatment programmes for children with substance abuse problems.

States should guarantee that all officials in the juvenile justice system, including law enforcement officials, prosecutors and judges, as well as community-based justice providers, including religious and traditional leaders, are trained on children's rights and supported in the implementation of these rights and standards related to juvenile justice.

It is urgent to ensure effective coordination between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors in order to promote the use of diversion and alternative non-custodial measures. Pretrial diversion and alternative, community-based sentences in conformity with children's rights should be introduced where they do not exist, and where they do, their scope and application expanded.

### **6.4. Ensuring that the deprivation of liberty is a measure of last resort**

Every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of this deprivation of liberty within 24 hours. Pretrial detention should be reviewed regularly, preferably every two weeks. States should introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

States should ensure that, upon the apprehension of a child, his or her parents or guardian are immediately notified, and, where immediate notification is not possible, the parents or guardian must be notified within the shortest possible time thereaf-

ter. Moreover, States need to guarantee that children deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance.

All the guarantees of due process of law should be observed at all stages of a judicial process, including multidisciplinary support by social workers, probation officers or other suitable persons who can liaise with family and community and identify community-based alternatives to detention.

In addition, States must prohibit all forms of inhuman sentencing against children, including the death penalty, life imprisonment without the possibility of parole, and the use of corporal punishment, such as stoning, flogging, whipping or caning.

### **6.5. Ensuring that, when deprivation of liberty is absolutely necessary, conditions of detention and the treatment of children respect the dignity and special needs of the child, and minimize the risk of violence**

With the objective of promoting effective rehabilitation and reintegration of children into society, States should ensure through legislation, policy and procedures that children deprived of liberty have access to quality services such as health care, medical treatment, education, vocational training, and recreational activities. States should also ensure that children have the right to maintain contact with their family through correspondence and visits from the moment they are arrested. Detention facilities authorities should institute measures to meet the protection needs of special categories of children, including girls. To achieve such purpose, States should develop policies related to minimum standards for the treatment of children in detention based on the international legal framework concerning juvenile justice.

States should ensure that when deprived of their liberty, children are separated from adults, and girls separated from boys.

States should provide for a lawful disciplinary system, in compliance with the principles of positive discipline and restorative justice approaches, which prohibits the use of torture or other cruel,

inhuman or degrading treatment or punishment, including the use of isolation or solitary confinement, and the use of restraints or force, except in specified exceptional circumstances.

States should establish clear procedures for responding to self-harm and clear rules for supervision and other necessary measures where a child is considered a suicide risk. There should be individualized treatment plans for each child, taking into consideration their effective and long-lasting rehabilitation and reintegration.

### **6.6. Establishing safe and effective child-sensitive complaints and counselling mechanisms**

States are urged to review relevant legislation and policies to establish safe, effective, child-sensitive counselling, reporting and complaints mechanisms to address incidents of violence. These mechanisms should integrate a gender, cultural and disability dimension and be provided in child-friendly language. Most importantly, these mechanisms need to provide opportunities for appeal from decisions made about complaints, and sanctions for grievous breaches of the law or policy, including criminal, civil and employment law sanctions; as well as measures to protect children from possible reprisals arising from the submission of complaints. Ombudspersons or human rights or children's rights commissions play a critical role in the consideration of violence-related complaints.

### **6.7. Establishing child and gender-sensitive institutions and procedures**

States are urged to review law, policy and procedures relating to law enforcement activities, police investigation and trial procedures in order to ensure a legal framework that effectively prevents and addresses violence. Law enforcement officials in particular have a vital role to play in preventing child delinquency and children coming into contact with the criminal justice system.

Contact between law enforcement agencies and children must be managed in such a way as to respect the legal status of the child, promote

his or her well-being and avoid causing physical and mental harm to him or her. To achieve such purpose, States should establish specialization within the police and provide for specialized training for all officials involved in the administration of juvenile justice.

Police interviews with children must be conducted in the presence of a parent or guardian, or responsible adult, and with a legal representative. Furthermore there should be procedural rules for the searching of children with respect to their privacy and dignity. In particular, special attention must be given to the vulnerability of girls in this context.

States should establish child-friendly courts and procedures which should include the prohibition of referral to adult courts, use of hostile cross-examination techniques, and the publication of any information that may identify the child.

### **6.8. Safeguarding the right of all children within the juvenile justice system to have access to legal assistance throughout the process**

States are urged to review law, policy and practical measures to ensure children's right to legal representation and access to State-funded legal aid in accordance with pre-determined rules. Legal aid providers representing children should be specially trained and their performance regularly appraised to ensure their suitability to work with children. Likewise, legal aid representatives working with children should work in close cooperation with other professionals such as social workers and diversion service providers.

### **6.9. Establishing independent oversight, inspection and monitoring mechanisms**

States should review their laws, policies and procedures to ensure that institutions in which children are deprived of their liberty are regularly inspected by a team of persons appointed by government or other authorized bodies, such as national human rights institutions, ombudspersons or inspecting judges. Visits must be carried out in accordance with the principle of confidentiality



to protect children from harassment or reprisals, and also include an option for unannounced visits.

Particular attention should be paid to the use of violence, force and restraints, disciplinary measures and other forms of restriction. All forms of violence, especially serious injury or death, should be reported and investigated promptly by an independent monitoring body. National monitoring mechanisms shall cooperate with international agencies that are legally entitled to visit institutions in which children are deprived of liberty.

### **6.10. Providing for qualified and trained personnel**

In order to establish an effective juvenile justice system, States should develop a sound system of selection, recruitment and development of personnel, ensure the appointment and retention of competent and well-trained professionals, and provide adequate remuneration. It is also crucial to carry out background checks on all personnel working in direct contact with children in the juvenile justice system.

States should ensure that police, prosecutors, judges and magistrates, prison and probation officers, social workers and other relevant professionals involved in the juvenile justice system receive adequate training and continued education on national laws, policies and programmes, as well as on international standards necessary to respond to the specific needs of children within the juvenile justice system. States should encourage professional associations to develop enforceable standards of conduct that promote justice and prevent violence against children in the juvenile justice system.

### **6.11. Promoting data collection, analysis and dissemination, and developing research and reporting schemes to assess, prevent and respond to incidents of violence against children within the juvenile justice system**

States should develop data gathering, analysis and reporting schemes to monitor youth crime prevention and measure the performance of the juvenile justice system. To this aim, juvenile justice

indicators should be developed and applied regularly to measure the performance of the juvenile justice system. A system for establishing juvenile justice statistics, comprised of disaggregated data, should be developed and implemented in order to assess, prevent and respond to incidents of violence against children.

Data collection should include children's views and experiences, as well as information on incidents of violence against children in the juvenile justice system. It should also include information on regular independent inspection of places of detention, access to complaints mechanisms by children in detention, specialized standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty, and the existence of standards and norms concerning disciplinary measures and procedures with respect to children deprived of their liberty.

### **6.12. Enhancing effective co-ordination mechanisms and cooperation between different services in charge of law enforcement, justice and social welfare**

States are urged to review law, policy and practical measures to ensure effective coordination and cooperation between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors. To this aim, it is important to clearly delineate the responsibilities of different actors and institutions, to develop mechanisms for formal cooperation between stakeholders, and properly allocate resources.

### **6.13. Establishing and strengthening accountability mechanisms**

States are urged to revise their laws, policies and procedures to promote accountability for incidents of violence against children within the juvenile justice system. States should undertake public investigations into all serious reports of violence against children at any stage of the juvenile justice system, carried out by persons of integrity and adequately funded and completed without undue delay.

States must ensure accountability of public officials who are found to be responsible for violence against children, through termination of employment, workplace disciplinary measures and criminal justice investigations where appropriate.

States should provide for redress and compensation for child victims and witnesses of violence within the juvenile justice system. This may include developing mechanisms to allow for claims of damage against the State, ensuring that victim

compensation schemes are adequately funded, and strengthening effective support services for child victims of violence within the juvenile justice system.

States should create mechanisms to involve the media in the process aimed at ensuring that the community at large supports Government efforts to prevent and respond to violence against children within the juvenile justice system.



## Annex I The International Legal Framework

### International Treaties and Conventions

Convention on the Rights of the Children

- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol on the Involvement of Children in Armed Conflict

Convention on the Elimination of Discrimination Against Women (CEDAW)

- Optional Protocol to CEDAW
- Reservations to CEDAW Specify

International Covenant on Civil and Political Rights (ICCPR)

- Optional Protocol to the CCPR
- Second Optional Protocol to the CCPR, aiming at abolition of death penalty

International Convention on the Elimination of all Forms of Racial Discrimination

International Covenant on Economic, Social and Cultural Rights (ICESR)

Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

- Optional Protocol to the Torture Convention

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Convention on the Rights of Persons with Disabilities (ICRPD)

- Optional Protocol to the Convention on the Rights of Persons with Disabilities

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

UN Convention Against Transnational Organized Crime

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- Protocol Against the Smuggling of Migrants by Land, Sea and Air

Slavery Convention

- Protocol amending the Slavery Convention

Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others

International Convention for the Protection of All Persons from Enforced Disappearance

Convention Against Discrimination in Education

Hague Convention on Intercountry Adoption

Convention relating to the Status of Refugees

- Protocol relating to the Status of Refugees

Convention relating to the Status of Stateless Persons

Convention on the Prevention and Punishment of the Crime of Genocide

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

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Geneva Convention relative to the Treatment of Prisoners of War

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Geneva Convention relative to the Protection of Civilian Persons in Time of War

- Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts (Protocol I)
  - Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
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ILO Conventions

- Worst Forms of Child Labour Convention (C182)
  - Forced Labour Convention (C29)
  - Migration for Employment Convention (C97)
  - Migrant Workers (Supplementary Provisions) Convention (C143)
  - Abolition of Forced Labour Convention (C105)
  - Minimum Age Convention (C138)
  - Protection of Wages Convention (C95)
  - Indigenous and Tribal Peoples Convention (C169)
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### **International Standards and Norms**

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UN Study on Violence against Children

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UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

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UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

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UN Rules for the Protection of Juveniles Deprived of their Liberty

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

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UN Economic and Social Council resolution 2002-12: Basic Principles on the use of Restorative Justice Programmes in Criminal Matters

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UN Committee on the Rights of the Child, General Comment No. 10 on Child Rights in Juvenile Justice

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UN Guidelines for Action on Children in the Criminal Justice System

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UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

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UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

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UN Common Approach to Justice for Children

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Code of Conduct for Law Enforcement Officials

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Basic Principles on the Role of Lawyers

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Guidelines on the Role of Prosecutors

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Basic Principles and Guidelines on the Right to a Remedy and Reparation

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## Annex II United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)

(adopted by General Assembly resolution 40/33 of 29 November 1985)

### Part I. General principles

#### 1. Fundamental perspectives

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

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

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

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

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

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

### Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the

necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

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

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

#### 2. Scope of the Rules and definitions used

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

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

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

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

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

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

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

(b) To meet the need of society; To implement the following rules thoroughly and fairly.

### Commentary

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

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

Rule 2.2 defines “juvenile” and “offence” as the components of the notion of the “juvenile offender”, who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above.

Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal

implementation of these Standard Minimum Rules, both legally and practically.

### 3. Extension of the Rules

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

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

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

### Commentary

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

(a) The so-called “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

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

#### 4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for

juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

##### Commentary

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

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

#### 5. Aims of juvenile justice

5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

##### Commentary

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

The second objective is “the principle of proportionality”. This principle is well-known as an in-

strument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

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

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

#### 6. Scope of discretion

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

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

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



## Commentary

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

## 7. Rights of juveniles

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

## Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in

juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## 8. Protection of privacy

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

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

## Commentary

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

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may

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

## 9. Saving clause

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

## Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards—such as the Universal Declaration of Human Rights, the International

Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

## Part II. Investigation and prosecution

### 10. Initial contact

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

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

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

### Commentary

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

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

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To “avoid harm” admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be “harmful” to juveniles; the term “avoid

harm” should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile’s attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

### 11. Diversion

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

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

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

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

### Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response.

This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

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

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

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

## 12. Specialization within the police

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

### Commentary

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

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

## 13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

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

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

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychologi-

cal, medical and physical—that they may require in view of their age, sex and personality.

### Commentary

The danger to juveniles of “criminal contamination” while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the

Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

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

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

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

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of

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

## Part III. Adjudication and disposition

### 14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

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

### Commentary

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

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

### 15. Legal counsel, parents and guardians

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

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be re-

quired by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

### Commentary

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

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

## 16. Social inquiry reports

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

### Commentary

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

The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

## 17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

### Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation. The conflict between these approaches is more pronounced in juvenile cases than in adult

cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven. It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress, which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## 18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

### Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumer-

ate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is “the natural and fundamental group unit of society”. Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

### 19. Least possible use of institutionalization

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

#### Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment.

Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences.

Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity (“last resort”) and in time

(“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to “open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

### 20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

#### Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

### 21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

#### Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) “Other duly authorized persons” would generally include, among others, researchers.

## 22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders.

Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfill their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Con-

gress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

## Part IV. Non-institutional treatment

### 23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

### Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

### 24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.



## Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

### 25. Mobilization of volunteers and other community services

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

## Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders.

Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

## Part V. Institutional treatment

### 26. Objectives of institutional treatment

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

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

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

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

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

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

## Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts. As pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular

problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2.

Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

### 27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

#### Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are pro-

visions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

### 28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

#### Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the “appropriate” rather than to the “competent” authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence.

Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfillment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to “good behaviour” of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

### 29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

#### Commentary

The importance of care following a period of institutionalization should not be underestimated.

This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

## Part VI. Research, planning, policy formulation and evaluation

### 30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

#### Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system.

The mutual feedback between research and policy is especially important in juvenile justice.

With rapid and often drastic changes in the lifestyles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context,

research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

## Annex III. United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”)

(adopted by General Assembly resolution 45/112 of 14 December 1990)

### I. Fundamental principles

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at

social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

### II. Scope of the guidelines

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights

of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

### III. General prevention

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

- (a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- (c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;
- (f) Community involvement through a wide range of services and programmes;
- (g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- (h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- (i) Specialized personnel at all levels.

### IV. Socialization processes

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

#### A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with “foster drift”.

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous,

migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

## B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to “drop-outs”.

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

### C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

### D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid

demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

## **V. Social policy**

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations:

(a) where the child or young person has suffered harm that has been inflicted by the parents or guardians;

(b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians;

(c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians;

(d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-resi-

dential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

## **VI. Legislation and juvenile justice administration**

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.



56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

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

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

## **VII. Research, policy development and co-ordination**

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and

development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

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

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

## Annex IV. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

(adopted by General Assembly resolution 45/113 of 14 December 1990)

### I. Fundamental perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the lan-

guage spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

### II. Scope and application of the rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permit-

ted to deprive a child of his or her liberty should be determined by law;

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

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

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

### III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with

remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

### IV. The management of juvenile facilities

#### A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons

and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

### **B. Admission, registration, movement and transfer**

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with

the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

### **C. Classification and placement**

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and

type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

#### **D. Physical environment and accommodation**

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to

ensure the safety of the juveniles. Detention facilities should not be located in areas where there is known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared

and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

### **E. Education, vocational training and work**

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

### **F. Recreation**

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

### G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

### H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the

handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be tested in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

### I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile

concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

#### J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for

privacy, contact and unrestricted communication with the family and the defense counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

#### K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

#### L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of insti-



tutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should

decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

### M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judi-

cial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

#### **N. Return to the community**

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

#### **V. Personnel**

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make

use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfillment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and

should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or

is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.



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