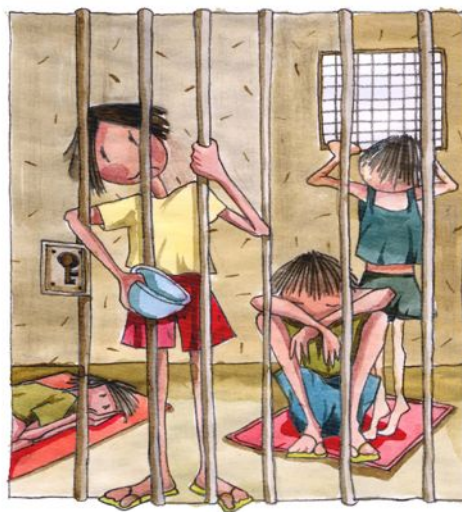




DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI
DEFENSE DES ENFANTS INTERNATIONALE DEI
DEFENCE FOR CHILDREN INTERNATIONAL DCI

Stop the violence!

The overuse of pre-trial detention,
or the need to reform
juvenile justice systems



Review of Evidence



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Review of Evidence

Anna Volz

Geneva, July 2010

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Defence for Children International

ABOUT DEFENCE FOR CHILDREN INTERNATIONAL



Defence for Children International (DCI) is an independent non-governmental organization that promotes and protects children's rights on a global, regional, national and local level.

DCI is represented in over 40 countries worldwide through its national sections and associated members across Africa, the Middle East, Asia, the Pacific, Latin America and Europe, which focus on issues relevant to their national contexts. These issues range from ending child labour to child trafficking and violence against children. Since 1996, DCI has operated in the field of juvenile justice at both global and national levels, using research, advocacy and lobbying tools, as well as direct interventions to assist children in conflict with the law. DCI has accumulated wide-ranging experience and solid expertise around issues of juvenile justice at national, regional and international levels. At present, juvenile justice is the overarching issue of the DCI movement, with over 75% of DCI's national sections conducting activities in this area.

Located in Geneva, DCI's International Secretariat is the focal point of the movement at the international level, implementing programmes that promote child rights globally and support the activities and growth of its members.

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FOREWORD

by Jean Zermatten¹

The Committee on the Rights of the Child, an organ that monitors the application and progress made in the field of children's rights in the different State parties to the United Nations Convention on the Rights of the Child (henceforth termed as the Convention) frequently lays emphasis, in the final comments addressed to States previously visited, on the issue of pre-trial detention. Indeed, this form of deprivation of liberty is certainly one of many situations that gives rise to the most frequent violations of children's rights committed on children who are arrested, in police custody, or even detained pending trial. Furthermore, these violations are in most cases carried out by the state agents themselves, or are the result of police intervention or even the judicial system. Thus, the State violates the rights of its children.

Pre-trial detention ranks as one form of deprivation of liberty, and as such is subjected to the following restrictions stipulated in Article 37 b of the Convention:

- It should be applied for the most serious offences;
- The detention should be as short as possible;
- It should constitute the ultima ratio, i.e., such a ruling should only be delivered when there is no other solution at hand.

Pre-trial detention differs from other forms of deprivation of liberty in that the former is often decided upon by non-magistrates—in most cases, police officers who may not have received adequate training. Other decision makers in this case are the judges who mete out punishment who may not be specialists in the field, or even prosecutors who usually deal with adults.

In this field, as in many others, the international community desperately lacks clear, aggregated, complete and objective data that would facilitate

better understanding of reality and allow the drawing of comparisons and the developing of strategies for restriction to reduce the usage of pre-trial detention. This is due to the fact that cases of arrest, police custody or detention in police headquarters are not always recorded. Another reason is that judicial systems are not always in possession of registers in which cases of custody are recorded in detail. Consequently, it is difficult to determine the scope of this phenomenon even though Special Rapporteurs' visits to various countries and reports by NGOs give evidence of very frequent and serious violations of rights of children who are in violation of the law in this difficult phase of the legal process. Drawing up strategies, policies and programs is therefore a delicate matter in the absence of reliable statistics.

It is generally acknowledged that the decision to place a person (in this case, a child) under any form of pre-trial detention is quite risky given that it is often taken in an emergency situation whereby the youth suspected of being in conflict with the law is not very cooperative, and whereby old tendencies in matters of imprisonment take over. It is quite tempting to imprison a youth caught red-handed who persists in denying the facts. Furthermore, children are not always guaranteed legal assistance. In some countries, it does not even exist as a procedural guarantee. On the other hand, in countries where it is actually stipulated by law, it is not available in practice due to a lack of defense lawyers. The possibility of legal assistance right from the start continues to be rare within national legal mechanisms.

Consequently, in the initial legal procedure in which a child suspected of having committed one or several offences or in which a child enters into contact with the law (as a victim or witness), very often the child may be deprived of his or her freedom even when conditions for pre-trial detention have not been met. The rule of law in terms of deprivation of liberty is frequently not respected.

This situation gives cause for concern, since we are convinced that the quality of legal proceedings

during the initial stages is a determining factor in

¹ Former chairman of the Tribunal for Minors of Valais, Director of the International Institute of Children's Rights in Sion, Switzerland (www.childsrights.org) and Vice-President of the UN Committee on the Rights of the Child.

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the attitude consequently adopted by the child in the course of the legal proceedings. Furthermore, the damage caused by deprivation of liberty is often long-term in nature, not to say irreversible.

One should not forget the conditions under which deprivation of liberty is very often carried out: cramped quarters that are stuffy and lack ventilation, overheated or extremely cold, lacking in hygiene and sometimes beds, and very often allowing contact with other detainees who are mostly adults. These conditions are not at all conducive for young boys, not to mention girls, who, given the small number of young female offenders, often suffer discrimination in the form of absence of specially adapted facilities. Promiscuity not only gives rise to crime, as is often said, but ranks among the worst forms of various violations of the rights of detained children.

Moreover, young people are often held for very long periods of custody without the possibility of seeing a magistrate, without being informed of the charges against them, without any opportunity of appealing against the ruling or having it reviewed, with no monitoring mechanisms, visits, or possibility of appeal... Sadly, these cases are quite common.

Moreover, we believe that one should distinguish between cases whereby an arrest leads to placement under police custody which, when prolonged, turns into a form of illegal imprisonment; and cases whereby remand in custody in the strict sense of the word has been ordered by the relevant authority. In the first case, loss of control and escalation into violence is even more frequent and widespread given that this period is not legal. On the other hand, remand in custody (whenever it is termed as such) is subjected to more or less strict procedural rules.

For these and many other reasons, one could list as replacement options the preservation of family ties, care programs, meeting the detainee's educational or occupational requirements during the period of deprivation of liberty, fulfillment of the child's right to privacy, exercise, hobbies and access to information. It is for all these reasons that the Committee on the Rights of the Child is concerned about pre-trial detention.

In General Comment No. 10², paragraph 80, the Committee clearly outlined the following:

"The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review."

One must therefore pay tribute to the work undertaken by Defence for Children International. They took up this thematic orientation independently, seeking to provide an objective view into what transpires in real life, to propose a set of rules or standards to reduce the number of children who find themselves in these situations, and to improve the conditions of pre-trial detention whenever it is pronounced as a last resort.

It is our wish that this document be widely distributed as well as explained, understood, accepted, adopted and especially implemented all over the world!

Jean Zermatten
Sion, 8th July, 2010

2 General Comment No 10 (2007): Children's rights in juvenile justice CRC/C/GC/10

CHAPTER I: INTRODUCTION

Background and Rationale

This report is dedicated to the issue of pre-trial detention of juveniles, whose routine- (or over-) use is considered by child rights and juvenile justice experts, including members of the Committee on the Rights of the Child³, as one of the most pressing issues in juvenile justice today.

It is in pre-trial detention facilities, including police lock-ups and prisons, that child rights are violated the most and international standards regarding detention and treatment of children in conflict with the law are respected the least. This leaves room for all kind of abuses and violence (of a physical, psychological and sexual nature) by staff and other inmates.

Strangely enough, pre-trial detention of juveniles is rarely the subject of a report or a document. Information on pre-trial detention is usually “spread out” in publications, reports and other documents dedicated to other juvenile justice issues, making it difficult to build evidence regarding conditions and realities in the pre-trial stage only.

Given the seriousness of the problem and the urge to do something about it, Defence for Children International (DCI) decided to prepare this publication. It is a Review of Evidence to be used as a reference for future (evidence-based) awareness raising, lobbying and advocacy work around these issues by DCI and partners, at the national, regional and international levels.

Methodology:

DCI’s International Secretariat gathered together information on pre-trial detention of juveniles that was made available by DCI national sections worldwide, and also combed literature and reports by partner organisations and other sources. In addition, consultations with child rights and juvenile justice experts were organized to collect more information and evidence. All this information was analyzed, compared and put together to develop a structured report.

Objectives:

The aim of this report is to develop a comprehensive understanding of the issue of pre-trial detention of juveniles: How is pre-trial detention used and what

happens during it? Why, instead of being used as a last resort, as international norms and standards stipulate, is it used routinely? What are the consequences of detention on children? Are there any ways to approach solutions? What can DCI recommend?

Definitions:

In this report, the term “pre-trial detention” is used in a broad sense to define the detention of different categories of young prisoners who have been arrested but have not yet been sentenced. Pre-trial detention therefore includes:

- the initial deprivation of liberty by the police after arrest
- the period of detention of a suspected offender ordered by a judicial authority and prior to conviction.

In this report, the term “pre-trial detention” will be used as a synonym with other terms that are used around the world such as remand detention, remand in custody, etc..

Structure of the Report:

The report opens with a background chapter presenting evidence on the reality and situation of pre-trial detention. The goal is to show the extent of the problem. The following areas of concern will be examined: availability of figures and data, conditions of confinement and acts of violence and abuse. Information will be illustrated through examples from the field or literature.

The chapter that follows contains a presentation of relevant international rules, standards and provisions on the use of pre-trial detention and on conditions of confinement for juveniles.

“Reality and rules,” and especially the huge gap between them, will be the subject of Chapter 4. A number of elements that can contribute to understanding the reasons behind this gap will be put forward.

With the aim of better realizing the importance of implementing the rules, the consequences of the over-use of pre-trial detention on children will be presented in Chapter 5, together with the impacts on the wider community and on recidivism.

The next chapter will be dedicated to the solutions to these problems. Good practices and recommendations will be presented.

Chapter 7 will conclude this review of evidence.

³ Defence for Children International, “Panel Report: Protecting the Rights of Children in Juvenile Justice Systems”, 5 June 2008

CHAPTER II: USE AND ABUSE OF PRE-TRIAL DETENTION OF JUVENILES

Around the world today, the real problems with detention (including at the pre-trial stage) are not with the norms but with practices. Despite the existence of many safeguards and regulations in international and national legislation, available literature indicates that the majority of children in detention (estimated at at least 1 million⁴) is still awaiting trial. For example, in France in 2008, 57.1 percent of juveniles in detention are in pre-trial detention⁵. In Haiti, the percentage is as high as 80 percent⁶. In Douala, Cameroon, 76 percent of minors in detention are awaiting trial⁷.

Specific data and information on pre-trial detention is hard to find, and the specific living conditions of juveniles in pre-trial detention have rarely been analyzed separately from the conditions of detention in general. DCI national sections reported the same problems. We therefore took the decision to adopt a more **qualitative approach** to describe the situation, and to illustrate this with available figures and examples from selected countries.

The difficulty in finding isolated information on the conditions and realities of pre-trial detention comes from the fact that reports, documents and other sources usually talk about “detention” without specifying whether said detention took place before or after trial. In this section it therefore won’t be possible to limit ourselves to the reality of pre-trial detention only. This being said, one should always bear in mind that conditions are often much worse in pre-trial detention than in detention after judgement, as the UN Special Rapporteur on Torture indicates in

one of his latest reports: *“Too many of the children were held in severely overcrowded cells, under deplorable sanitary and hygienic conditions. This was particularly true during the pre-trial detention period, despite the intention that pre-trial detention should be exceptional for children”*⁸.

In this section we will present available information regarding pre-trial detention in a structured way, issue by issue (Facts and figures; Conditions of confinement; Violence and abuses; Other concerns), in order to provide a comprehensive overview of the current situation. Information comes from reports and documents of DCI, experts and other organizations, as well as from information provided by DCI national sections.

Extract from literature – France –

“How do minors in prison spend their days? To answer this question, it is essential to try to understand what their everyday life really looks like, far away from the legislation that in one way or another governs prison life, and far away from the speeches of the administration. Prison life has no rules. Indeed, most young inmates feel that prison is a “lawless area”. Inmates impose the law of the strongest and extort every newcomer, taking their shoes, then their cigarettes and other belongings. In many respects prison life looks like life in some poor neighbourhoods. Gangs re-form and leaders impose themselves through violence. After having tried to defend themselves and sometimes after having been beaten very badly, those who are not from the “neighbourhood” and don’t know anyone are quickly forced back into line. This might sound odd since, after all, the number of juveniles in a prison is not so high, usually a few dozen at the maximum. Furthermore, prison is a confined and very structured space, and it wouldn’t seem that it would be so difficult to monitor it. In reality, there are moments (such as daily walks) and places (such as toilets and showers) where guards are often absent and where issues are settled.

4 Defence for Children International, “No Kids Behind Bars, A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards”, 2003, p. 3.

5 Rapport du sénat à l’occasion de l’examen de la loi de finances 2009: <http://extranet.senat.fr/rap/a08-104-5/a08-104-58.html>

6 Article « Haïti : des mineurs oubliés derrière les barreaux », par Edgard Célestin, Claude Gilles, février 2003:

<http://www.syfia.info/index.php5?view=articles&action=voir&idArticle=2981>.

7 Article « Prisons camerounaises : l’enfer des mineurs », novembre 2006: <http://www.syfia.info/printArticles.php5?idArticle=4565>.

8 Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 2009, paragraph 69; UN Reference: A/64/215.

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Many juveniles try to escape from this by remaining locked in their cells at the expense of increased isolation, which has further psychological implications”

(Article « Les quartiers pour Mineurs », February 2008, <http://pays-de-la-loire.emancipation.fr/>)

i) Facts and figures:

Lack of ventilated and comparable data

Comparing data on the use of pre-trial detention of juveniles in the world is not an easy task. Statistics on the numbers of juveniles in pre-trial detention can be obtained by asking each government to provide such information. However, these are rarely ventilated, and, even when data are available, they are not easy to compare. As a study on pre-trial/remand detention in Europe indicates⁹, not even Europe has a common notion of “pre-trial” or “remand” detention. In fact, countries include in their statistics different categories of non-sentenced prisoners (ex. untried prisoners / prisoners who have been convicted but not yet sentenced / prisoners who have been convicted and sentenced, but who are not engaged in an appeals procedure or are still within the time limit to do so / etc.), making it difficult to compare statistics.

Extract from literature:

“The information needed to detect and diagnose problems with pre-trial detention, and the data needed to simulate solutions or drive indicators of progress and deterioration, simply do not exist. Because government agencies collect information to perpetuate routines, not change them, and because the character of problems with pre-trial detention varies so greatly around the world, the wheels of measurement in justice reform must be reinvented each time.”

(Open Society Justice Initiative, “Pretrial Detention”, 2008, p. 6.)

Routine use of pre-trial detention / pre-trial detention not used as a measure of last resort

All available sources agree on the fact that pre-trial detention of juveniles is used routinely and not as a last resort as recommended by international standards. Pre-trial detention should be used even more rarely than detention after trial (which should already be used exceptionally) because the child hasn’t been convicted of any offence yet.

In its concluding recommendations, the Committee on the Rights of the Child (CRC) often recommends the use of pre-trial detention only as a measure of last resort and for the shortest period of time possible. About one third of the countries reviewed by the CRC between 2008 and mid 2009¹⁰ were advised to use pre-trial detention as a measure of last resort.

The routine use (not to say the over-use) of pre-trial detention was also one of the main findings of DCI’s 2007 Juvenile Justice Annual Report¹¹. The over-use of pre-trial detention was in fact a common concern of all of the 15 DCI national sections that took part in the study.

Length of pre-trial detention / arrest and police custody, and pre-trial detention not used for the shortest possible period of time

One of the most concerning practices involves the imprisonment of children for indefinite periods of time. International juvenile justice standards do not specify a maximum length of pre-trial detention; they just indicate that it should be “as short as possible”, leaving the door open to all kinds of interpretations by authorities. In its General Comment No 10¹² (paragraph 83), the CRC indicates that no child should be detained by the police for more than 24 hours without a judicial order and that, regarding pre-trial detention, the court should make a “final decision on the charges not later than six months after they have been presented”. However, reality shows that these deadlines are not always respected.

9 Christine Morgenstern, « Pre-trial/remand detention in Europe: facts and figures and the need for common minimum standards », in ERA Forum (2009) 9, pp. 527-542.

10 Namely: Argentina, France, Kazakhstan, Latvia, Lithuania, Mozambique and Uruguay

11 Defence for Children International, “From Legislation to Action. Trends in Juvenile Justice Legislation across 16 Countries”, 2007.

12 CRC/C/GC/10

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o *Police custody:*

The excessive duration of police custody is often a problem. Its duration varies from 24 to 48 hours to three or four days depending on the country¹³. Children are often detained on police premises for several days or even weeks.

Case example: Kenya

“The period of detention, although supposedly 24 hours or less, can actually extend to weeks and even months. Miscellaneous factors contribute to this, such as the fact that if a child is arrested on a Friday, he/she will be held in detention until the following Monday before being taken to court. Similarly, the Constitution of Kenya decrees that if the offence with which the child is charged is punishable by death, the detainee may then be held for up to 14 days before being taken to court. Commonly, the majority of children are held in police cells for the 48 hours between arrest and the first appearance in court. Rarely do police contact parents or guardians during the first 48 hours after the arrest to inform them about the first court appearance. Unnecessary delays occur because the court then postpones the matter for a few days, sending the children back to the police cells, so that they can “point out” their parents.”

(CSC/CRADLE, The Undugu Society of Kenya: «Street Children and JJ in Kenya», 2004, p. 24.)

o *Pre-trial detention:*

The legislation of many countries contains operative provisions that often allow the detention of juveniles for lengthy periods beyond the six months recommended by the Committee. In some countries, the law does not specify a maximum length. For instance, within Belgium’s Law on the Protection of Youth, the length of pre-trial detention has no time limitations, even though there is a limit of time for any other temporary measure taken by a judge before the trial. Children may be placed in a closed detention centre for a period of three months, which can be renewed for another three months and then again on a monthly basis if deemed necessary.

The Committee on the Rights of the Child regularly expresses its concerns in its concluding observations regarding the length of pre-trial detention. Concerns about lengthy pre-trial detention periods were raised in the concluding observation of half of the countries reviewed by the CRC between 2008 and mid 2009¹⁴.

ii) **Conditions of confinement:**

According to many sources, the conditions of confinement for pre-trial detainees are typically worse than for sentenced inmates.

Extract from literature: Nigeria

During a visit to the Criminal Investigation Department in Lagos, Nigeria, the Special Rapporteur on torture came across an 11-year-old boy who had already been there for two weeks. In his report to the UN GA, he describes this visit as one of the most haunting examples of bad conditions in detention: “The boy was held in an unofficial cell in the worst imaginable conditions, together with approximately 100 other adult detainees, almost all of whom had visible traces of abuse. The cell, which was far too small for the number of persons it held, was covered only by a makeshift roof, which did not provide protection from the sun, making the temperature and humidity unbearable. A hole in one corner of the cell served as a toilet. Food of insufficient quality was provided in insufficient quantities; its distribution was left to the detainees, resulting in an even smaller portion for those who were too vulnerable to fight for it. When the Special Rapporteur interviewed the boy, the boy was too weak to stand.”
(Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, op. cit., par. 77)

13 André Dunant, « Preventive detention », Journal of the International Association of Juvenile and Family Court and Magistrates, N.1 Vol.5, 1996, p.15.

14 The countries include: Burundi, Georgia, DRC, Kazakhstan, Latvia, Lithuania, Malaysia, Montenegro, Uruguay, Timor-Leste, Argentina, France, Azerbaijan, and Bangladesh.

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Non-segregation of juveniles and adults

Too often, juveniles awaiting trial find themselves detained with adult inmates. This is particularly worrying because accommodating juveniles and unrelated adults together inevitably carries the possibility of domination and exploitation¹⁵.

Together with lengthy pre-trial detention periods, confinement with adults is the most common concern raised by the CRC in its concluding observations to State parties. More than one-third of the countries reviewed by the CRC between 2008 and mid 2009¹⁶ were recommended to keep children separate from adults in pre-trial detention. The problem of non-segregation of juveniles and adults is not limited to countries in the “South”: according to DCI-Switzerland, the non-segregation of children and adults in pre-trial detention is the main problem in the Swiss juvenile penal system, as detention centres are simply not adapted to this requirement. According to research by the Swiss federal office of justice carried out in 2005, only 9 detention centres out of 33 have separated wings for children.

Extract from literature:

“While in most States that the Special Rapporteur has visited there existed a general awareness of the need for separating detainees and for respective norms, the implementation of those principles was at best piecemeal. The lack of separation was particularly disturbing with regard to police custody and pre-trial detention, stages in which children found themselves in an environment characterized by tension, fear, abuse and violence. Once in prison, the separation was in some cases enforced only during the night, leaving children exposed to adults throughout the day. In some cases, children were not separated from adults outside of the cell during recreation time, e.g., in Paraguay and the Republic of Moldova. In a few instances, children were left to be guarded by older detainees, who not only lacked the

specific training but might abuse their position.”

(Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 2009, paragraph 76)

Overcrowding

Prison overcrowding is the first and most direct consequence of the excessive use of pre-trial detention as well as one of the most pressing problems facing most prisons around the world¹⁷.

Extract from literature: Pakistan

“Most of the jails in Pakistan are those built to suit the population and crime rate as they existed over 50 years ago. The boom in urbanization and the increasingly slow police investigative and court judicial processes have led to a significant rise in the number of people detained in prison.”

(The Consortium for street children (CSC)/Amal « Street children and Juvenile justice in Pakistan », 2004)

Appalling material conditions

Material conditions in pre-trial detention are often very bad, and sometimes much worse than the already appalling conditions in post-trial prisons.

o *In police custody:* In some countries pre-trial detainees are held at police stations for long periods of time under atrocious conditions. The conditions in such police lock-ups are filthy, often dim, and seldom offer opportunities for exercise or recreation¹⁸.

o *In pre-trial detention:* Pre-trial detention rooms are often reported to be in very bad conditions. For instance, in Albania, the national DCI section reports that in most pre-trial detention rooms, the walls are cracked, the beds un-covered, and the rooms damp. Lights are kept on at all times, making it difficult for children to sleep. Toilets are shared,

15 CPT, “9th General Report on the CPT’s activities covering the period 1 January to 31 December 1998”, par. 25.

16 DRC, Liberia, Montenegro, Suriname, Timor-Leste, Djibouti, Malawi, Qatar, The Philippines, Sierra Leone, and Venezuela.

17 Penal Reform International, “Reducing Pre-trial detention, an index on “good practices” developed in Africa and elsewhere”, 2005.

18 Open Society Justice Initiative, “Pretrial Detention”, op.cit., p. 18.

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and can only be used in line with a particular schedule.

According to DCI-Albania, the situation is markedly better in prisons where toilets are located in the rooms and can be used by children at any time¹⁹.

Use of drugs and medicine

Drugs are easy to obtain in most prisons. The prison management is sometimes aware of this²⁰. Drugs even seem to be a “factor of social peace” in prisons.

Young people sprawled on beds with hazy minds and slow movements are “easier” to watch. But it gets worse: detainees often take strong medicines to fight against boredom and depression. Medicines are therefore also the objects of trade and exchange of services.

In a prison in Lille (northern France), 52 percent of the young inmates were reported to be drug addicts. According to the prison’s manager, there are more drug addicts leaving prisons than entering it.

iii) Violence and abuses

The problems and issues presented above and related to the bad conditions of confinement are all factors that increase the level of violence and abuse in detention. As the situation in pre-trial detention is typically worse than in after-trial detention, we can imagine that the level of violence in pre-trial detention is also higher.

Extract from literature:

“A significant part of the abuse of child detainees is inflicted by other detainees, mainly by adults but also by other children. The forms of abuse can be verbal and psychological, but also physical, including rape. (...) Without any protection from the State, child detainees find themselves at the bottom of the internal pecking order, prone to exploitation by others.”

19 Defence for Children International, “From legislation to action”, op.cit., p. 40.

20 Information in this section is taken from the article by Laurent Mucchielli, « France, Les quartiers pour Mineurs », op. cit.

(Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, op.cit., paragraph 74)

Torture and ill-treatment

Juveniles in pre-trial detention are often victims of torture and other ill-treatment by police or prison staff. However, it seems that it is during the period immediately following deprivation of liberty that the risk of torture and ill-treatment is at its greatest. Police custody is particularly concerned, as the European Committee Against Torture indicates: “As is the case for adults, it appears that juveniles run a higher risk of being deliberately ill-treated in police establishments than in other places of detention. Indeed, on more than one occasion, CPT delegations have gathered credible evidence that juveniles have featured amongst the persons tortured or otherwise ill-treated by police officers”.²¹

DCI sections reported examples of harsh interrogation methods including physical and psychological torture²². In Sambreville, Belgium, a juvenile offender aged 17 was allegedly taken into police custody for questioning. During the interrogation process, he was reportedly forced to stand on his knees for 2 hours amidst beating from police officers, who also covered his head with his shirt. DCI-Ghana and DCI-Bolivia reported that beatings and intimidation of children whilst in police custody are commonplace. In Albania, nearly all the youths interviewed by DCI staff as part of their study indicated that they had been subjected to violence or inhumane treatment during their apprehension by the police.

Extract from literature: Nepal

“According to a large number of consistent and reliable reports, including first-person testimony from children, the most common methods of torture police use on children include: kicking; fist blows to the body; inserting metal nails

21 “9th General Report on the CPT’s activities”, op. cit., paragraph 23.

22 Defence for Children International, “From legislation to action”, op.cit., pp. 43-36.

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under children's toenails; and hitting the soles of feet, thighs, upper arms, backs of hands, and the back with bamboo sticks and plastic pipes. Most children abused by the police are suspected of committing petty crimes, or are children living or working on the streets. Sometimes, the torture is inflicted to extract confessions from the children, while at other times it appears to be carried out purely for the entertainment of the official."

(Human Rights Watch, "Nepal: End Torture of Children in Police Custody : Nepali Children's Day Marred by Ongoing Reports of Abuse", <http://www.hrw.org/en/news/2008/11/18/nepal-end-torture-children-police-custody>)

Peer violence

As highlighted in the UN study on violence against children, children can also be at the risk of violence from other detained children. Lack of privacy, frustration, overcrowding and failure to segregate detainees according to their age and the gravity of their offence are all factors that can exacerbate violence.

According to DCI-Argentina²³, in many cases peer violence is a survival strategy for child detainees, particularly when conditions are poor and there is scarcity in food and water.

DCI-France reported that juvenile detainees often form gangs within detention centres, which results in bullying, extortion and other form of abuse against other child detainees²⁴.

Sexual abuse

Although detailed figures and information are generally unavailable, it is widely known that children in detention face all forms of ill treatment and abuse at the hands of adult detainees, peers, police and prison staff. The little available data do show that sexual abuse happens very frequently, and everywhere. For example, a recent U.S. study showed that 12 percent of all detained juveniles reported having experienced one or more incidents of sexual victimization²⁵.

23 Defence for Children International, "From legislation to action", op.cit., p. 45

24 Idem

25 Special Report on Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09, U.S. Department of Justice, Office of Justice Program, Bureau of Justice

Extract from literature: Haiti

"Last October, J.J. Natch, a 17-year-old inmate, gave birth to her first baby. This occurred at the Fort National prison, where women and even children accused of serious crimes are incarcerated. The girl, who had been detained for three years without ever being brought before a court, was raped by a health officer of the prison. It appears that the rapist, who was never arrested, had said explicitly that he intended to have sex with the prisoner. This was not the first time that minors incarcerated at Fort National - an old barracks converted into a prison after the dismantling of the Haitian army in 1994 - were victims of sexual violence by staff or other inmates. Overcrowded cells and bad conditions of detention expose those children to ongoing sexual abuse, which was the norm until juveniles were recently separated from adults."

(«Haïti : des mineurs oubliés derrière les barreaux», op.cit.)

o Sexual abuse by adult detainees:

According to the Special Rapporteur on Torture Manfred Novak, one of the conditions that places children at greater vulnerability for abuse is their detention in the same facilities as adults, or even in the same cells²⁶. DCI's No Kids Behind Bars report indicates that children housed with adults are five times more likely to be sexually assaulted than children housed in juveniles facilities. This is enhanced by the position of the adult cells which are in front of those of the juveniles, and by the mixed showers and other leisure places. It seems that sexual abuse takes place in particular during times when there is little police supervision of cells.²⁷

Statistics, January 2010, NCJ 228416.

26 "Sexual Violence in Institutions, including in detention facilities", Statement by Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, delivered during the 13th session of the Human Rights Council, Annual full-day meeting on the rights of the child, 10 March 2010, Geneva.

27 Defence for Children International, "No Kids Behind Bars", op.cit., p. 40.

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Testimonial: Albania

“Two other guys A.SH and G.M. were raped in my presence. I remember that we had these two new guys in the cell. We were nine people in the cell. One night they got both boys, took their clothes off and had sex with them. Although both of them were crying no one came to their help. The older guys asked me whether I wanted to have sex with them, but I never did. All the other guys (6 adults) in the cell had sex with them. This story continued for some two or three months. The police officers knew about this, but they did nothing. Only when a new Head of Police Station came here, the police changed the cells for A.SH and G.M.”

(Defence for Children International, “From legislation to action”, op.cit., p. 44.)

Extract from the literature: Cameroon

“Several take the opportunity to satiate their sexual appetites on these children by subjecting them to sodomy”, said an official of an association close to the prison of Douala. “I heard about the case of a minor who had been discarded and forgotten in prison for many years and who couldn’t stand any longer to be violated on a daily basis,” states Alice Kom, Lawyer.”

(Prisons camerounaises : l’enfer des mineurs (2006), op.cit.)

o Sexual abuse by other child detainees:

Even if better protected than when they are detained with adults, children can be at risk of sexual abuse from other child detainees. According to DCI’s report “From legislation to action”, the sexual lives of children in conflict with the law remain a taboo both for juveniles but also for the professionals working with them. DCI-Albania indicates that only a few prisons speak about or organize classes on sexual education. This leads to fear and curiosity among children and can lead to sexual abuse of children by elder child detainees.

o Sexual abuse by prison staff:

Allegations of sexual abuse within the prisons by the police or other staff are also worryingly common, with both boys and girls at risk. Arrested and detained children are in a weak position and can be easily abused with total impunity. Most probably, those practices are likely to be more widespread than the isolated cases that are reported to a wider audience.

Testimonial: Kenya

“The girls go into the police cell and have to do sexual intercourse with the police to get released, but she is not released. The policeman is even 42 and the girl is 16. It’s really bad.”

(Testimonial by a girl who participated in a workshop, reported in: «Street Children and JJ in Kenya», op.cit., p.24.)

iv) Other concerns:

No access to legal assistance

Many children are denied the right to legal assistance after their arrest.

This is systematically the case for Palestinian children detained under the Israeli military court system in the Occupied Palestinian Territory, who are denied access to a lawyer and visits from their families. These children will generally not be permitted to see a lawyer until after they have provided a confession to the interrogator²⁸.

No access to education (interruption of education: school or vocational training)

According to a recent DCI report on education in prison²⁹, children in pre-trial detention can face immense barriers to accessing their right to education because States fail to provide education in these settings due to the supposedly short-term nature of children’s stay.

28 DCI-Palestine, “Palestinian Child Prisoners Report 2009”, June 2009, p. 6.

29 Defence for Children International, « Education in Chains : Gaps in Education Provision to Children in Detention », 2009, p. 27.

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In the same report, DCI-Sierra Leone comments that the provision of education when children are in pre-trial detention is normally far more difficult than in post-trial detention, because of uncertainty regarding the length of time children will spend in detention (which makes it difficult to prepare teaching plans) and because children can be worried about their upcoming trial, or may feel unmotivated. In Nigeria, the lack of 'thorough' education provided in remand homes gave cause for concern, as these homes are used as 'transit centres' for children awaiting trial.

On the specific situation of girls

Despite the fact that the number of girls in the juvenile justice system has increased dramatically during recent years³⁰, girls continue to be discriminated against in pre-trial detention. For instance, DCI-Switzerland points out that there are no pre-trial closed facilities for girls in the Western part of Switzerland.

Girls, because of their relatively smaller numbers in the system, are sometimes accommodated in the same prison sections as adult women. This is the case in France: According to information provided by DCI-France, some newly established juvenile detention facilities refuse to accept girls, as they consider that it is too risky to mix them with boys. Girls are therefore detained with adult women in prisons for adults. According to a French government report³¹, not all "girls units" are in service in the new "EPM" (newly established detention centres for juveniles), because of the low number of incarcerated girls in some regions, or because there aren't any places left because of the high number of boys. Girls' vulnerability to violence in such a situation is manifest. In the UK, there are at any one time around a hundred 16- and 17-year-old girls sharing prison custody with adult women.³²

Girls also face discrimination in leisure and vocational training activities. The CPT has often encountered female juveniles being offered activities which have been stereotyped as "appropriate" for them (such as sewing or handicrafts), whilst male juveniles are offered training of a far more vocational nature.

Other areas of concern that we have identified include limited access to visitors and poor nutrition in some facilities.



Remand Home in Uganda

30 World Health Organization, WHO Conference on Women's health in Prison, Correcting gender inequities in prison health - Consultative document for discussion at the WHO International Conference on Prison Health - Kyiv, Ukraine 13 November 2008, Paris 13-15, p.11.

31 Rapport du sénat à l'occasion de l'examen de la loi de finances 2009 (France), op.cit

32 Quaker's Submission to the UN Study on Violence against children – Violence against girls in detention (29 March 2005).

CHAPTER III: INTERNATIONAL STANDARDS ON THE USE OF PRE-TRIAL DETENTION

After having provided an overview of the current challenges regarding the use of pre-trial detention around the world, we will now look into the rules and the standards that indicate when and how pre-trial detention should be used.

There is no specific international instrument on pre-trial detention. The Convention on the Rights of the Child and other international norms and standards include one or more specific articles or sections on the use of preventative detention, but, in general, it is understood that juveniles in pre-trial detention are entitled to all the rights and guarantees related to detention in general.

All international norms and standards are clear about the fact that detention, including pre-trial detention should be a measure of last resort, and that it should be used for the shortest time possible. Socio-educational alternatives to detention should always be prioritised. If juveniles have to be incarcerated, this should always be done under circumstances and conditions that guarantee the respect of the human rights of children, including their right to education, health care and dignity. Also, children should always be kept separately from adults.

International texts contain some specific provisions related to the treatment of juveniles who are awaiting trial. Detailed information is provided in Article 13 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), in section III of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty³³, in section II of the United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”) – see boxes below.

Provisions in these instruments insist on the importance of using of pre-trial detention as a last resort and for the shortest possible time, choosing alternative non-custodial measures whenever possible. The Tokyo Rules (Art. 5) even recommend that each legal system should develop a set of established criteria to decide upon the appropriateness of discharge or determination of proceedings for “minor” offences. Moreover, pre-trial detainees should always be

granted the presumption of innocence³⁴ and access to legal counsel and free legal aid. Finally, juveniles awaiting trial should have the same rights as other detainees (right to education/work, access to health care services, leisure).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) (1985)

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

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

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

34 That is, the right of any defendant to be presumed innocent of the allegations against him until found guilty by a competent court.

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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.

if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”)

II. Pre-trial stage

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender

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According to the rules, pre-trial detention should only be used as a last resort, and be as short as possible. It should be used only exceptionally for the needs of investigation to prevent collision or the danger of flight. However, as we have seen previously, this is rarely the case and pre-trial detention is used routinely around the world. In this section we will try to understand why by providing a number of possible complementary explanations.

Lack of financial resources

Lack of financial resources is often the main reason provided by States to explain the over-use of and poor conditions in pre-trial detention. This is certainly an important reason, as it means that agencies and facilities cannot be sufficiently equipped nor trained to carry out their tasks. To give an example among others, it was reported that in Kenya the police's lack of means to systematically ensure the transport of the remandees from prison to the courts delays the release of children, who must then await the next hearing of their case, which usually occurs a month or more later³⁵.

However, money is not the only reason. Lack of political will, repressive policies and mentalities, as well as the insufficient information and training of professionals on existing rules must also be considered when trying to understand the problem.

Presented below are a number of possible explanations (of a different nature) that together can contribute to understanding why pre-trial detention is used routinely around the world, and not as a last resort like international standards and national legislations indicate. These reasons are obviously interlinked and reinforce each other; however, it can be interesting to isolate single elements in order to see the problem from different angles.

Lack of knowledge (among juvenile justice professionals at all levels and especially police officers) about diversion and other alternative mechanisms

The lack of knowledge about children's specific needs and international juvenile justice standards is one of the main causes behind the excessive use of pre-trial detention and the abuses that occur there.

Decreasing the number of children in pre-trial detention does not mean that children who are accused of an offence should not be confronted with the acts they were alleged to have committed. Diversion and alternative mechanisms to detention should be considered systematically for children who are accused of minor crimes and pre-trial detention should only be used for those few children who present a risk. It criminal justice professionals are not aware of this, it is difficult to imagine that they will respect them.

Overworked magistrates or juvenile justice system

In many countries, and not only in the South, adolescents are kept for several months in pre-trial detention for uncontested crimes or offences, simply because the magistrates are overworked³⁶.

For example, DCI-Sierra Leone indicates that children often languish in pre-trial detention for months waiting for their case to be heard due to a lack of resources, including judges to hear the case³⁷. Once again, poorer children seem to be discriminated against: If a child's family can afford a good lawyer, the detained child will have the chance to have his or her case brought to court more quickly.³⁸

Extract from literature: Kenya

"Children are often detained in remand homes for far longer than they actually should be, due to the time it currently takes for Children's Officers to complete their investigation reports. This is partly because the officer in charge must interview the child and, where possible, their family members, who may take time to locate. Excessive workloads also heavily contribute to the delay, with the result that some young inmates effectively 'grow up' on remand over a number of years."

(« *Street Children and JJ in Kenya* », *op.cit.*, p. 26)

35 « *Street Children and JJ in Kenya* », *op.cit.*, p. 26.

36 « Preventive Detention (Pre-trial Detention) », *op.cit.*

37 Defence for Children International, "From legislation to action", *op.cit.*, p. 34.

38 « Haïti : des mineurs oubliés derrière les barreaux », *op.cit.*

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Use of pre-trial detention as a sanction or repressive measure

Despite the ratification of the CRC by almost every country, today still, pre-trial detention is seen as a disciplinary sanction or a repressive measure before the judgment. For example, in China a juvenile can be kept in detention for several months if the police think that he or she is an “offender”, before being officially arrested in the context of a detention called “protective custody for investigation”³⁹.

More and more countries use a repressive approach to fight against juvenile delinquency. Sending offenders to prison before their judgement is part of this policy. “Many magistrates make abusive and illegal use of preventive detention in considering it a punishment before judgement”⁴⁰. This is in total violation of the fundamental principle of presumption of innocence. Many children are released without any charges and with no compensation after their trial because they are found innocent, after having undergone long periods of pre-trial detention.

The “politicization” of crime policy and the “citizen security” approach in some countries⁴¹ also brings to more repressive policies, which explain the routine use of pre-trial detention⁴².

Extract from literature:

“At times, pre-trial detention is used as a sanction or repressive measure: it serves as a means of coercing a confession or as a control of homeless persons. In practice this leads to a blurring of the boundaries between pre-trial detention and the sentence of imprisonment. In other words, the abuse of pre-trial detention which can also be observed in European countries, whereby a period of pre-trial detention is regarded as a short term of imprisonment served in anticipation

has developed into a strategy which is used systematically by the criminal justice system.”

(Open Society Justice Initiative, “Pretrial Detention”, 2008, p. 26)

Many of the abuses occur because of impunity and a lack of tools with which the child can defend his/her rights. Cases are left untried for lengthy periods, just because children do not have access to a lawyer who can defend their case and speed up the trial.

Lack of structures/institutions for alternative measures

The lack of structures for pre-trial measures other than deprivation of liberty is another element of understanding of the routine use of pre-trial detention. For example, in Switzerland only a third of the 1,000 juveniles awaiting trial are in a specialized institution where they are supervised by social workers and they are able to pursue their education. The rest are detained in prisons, often with adults, and do not benefit from any adequate activity, rooms or leisure⁴³.

Poverty / Discrimination against the poor

Pre-trial detention regimes can be particularly discriminatory against the poor. Poor children do not have access to private legal assistance and advice, and many countries lack a comprehensive legal aid system for defendants who are too poor to afford their own lawyers⁴⁴.

Another problem is monetary bail as a condition to be freed of detention. In Malawi, for example, a key reason for overcrowding of the prison system was that prisoners cannot pay bail or provide any surety; in South Africa about a third of all prisoners awaiting trial who are granted bail are unable to afford the amount set⁴⁵.

39 « Street Children and JJ in Kenya », op.cit, p. 26.

40 André Dunant, op. cit., p. 15.

41 Especially in Latin America.

42 Harry Holman and Jason Ziedenberg, « The Dangers of Detention : The Impact of Incarcerating Youth in Detention and Other Secure Facilities », Justice Policy Institute, 2006), p.12.

43 « Conditions de détention inappropriées pour les mineurs », www.humanrights.ch, updated on 16.11.2007.

44 Open Society Justice Initiative, “Pretrial Detention”, op.cit., p. 28.

45 Idem, p. 29.

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Criminal justice system used as an ill-suited substitute for a lacking or dysfunctional welfare system

In many countries the juvenile justice system functions as an ill-suited substitute for a lacking or dysfunctional welfare system, resulting in the detention of children who have not committed a crime but who actually require welfare assistance, such as street children⁴⁶. For example, in Kenya 80 to 85 percent of children in police custody or correctional facilities were children in need of care and protection who had actually committed no criminal offence⁴⁷.

Arbitrary arrest of children

Police also use pre-trial detention to “clean” the streets of “bad elements” (often street children) who can provide a negative image of society⁴⁸. This often (but not only) happens just before international events such as the World Cup, the Olympic Games, the visit of the president of another country, etc., as Governments want to show clean streets.

Extract from literature: Rwanda

“Many children working or living on the streets are simply assumed to be anti-social elements, and are taken into detention by police without proof of misdeed. In Rwanda, as in many other countries, street children are rounded up and placed in ‘re-education centres’ where they are deprived of their liberty, whether or not they have committed an offence. In many settings, they are sent by courts to detention in remand institutions or adult prisons, where they may be kept indefinitely.”

(World Report on Violence against Children, op.cit. p. 195)



46 Interim Report of the Special Rapporteur on Torture Manfred Novak, op.cit., para 66.

47 World Report on Violence against Children, 2006, p. 195.

48 Francesca Boniotti, « La Convention des droits de l'enfant et la détention préventive. Un échec ? », Programme pluri facultaire en Action Humanitaire, Genève, décembre 1999 (unpublished), p. 25.

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“Life cannot be learned in prison; you can only learn to hate yourself and others.”

To fully understand why pre-trial detention should be avoided as much as possible, it is important to learn more about the negative impacts that detention can have on young people.

According to experts⁴⁹, detention has profoundly negative impacts, not only on young people’s mental and physical wellbeing, their education and their employment, but also on the wider community. If all children in detention are concerned by these problems, children in custody are even more affected, because for most of them it is the first time that they are deprived of their liberty, and they don’t know for how long they will have to stay there.

The first part of this chapter will analyze the physical, social and psychological impacts of detention on children. The rest of the chapter deals with a very important question, namely: “Is all this worth it?” Does detention lead to a decrease of recidivism, or, on the contrary, does it increase the risks of re-offending? What about the costs of detention? Is economically wise to privilege detention over sanctions that don’t involve deprivation of liberty?

i) Physical, social and psychological consequences of detention on children

“Physical” consequences (diseases)

Prison overcrowding, poor nutrition, limited access to health care, violence, risky sexual practices, high rates of intravenous drug abuse, sharing razor blades, and tattooing make prisons a perfect habitat for the spread of infectious diseases such as tuberculosis (TB) or HIV. HIV rates in prison are significantly above the national average in many countries. For instance, in prisons in Douala, Cameroon, 12 percent of detainees were HIV-positive in 2006⁵⁰.

Skin diseases such as scabies, ringworm or herpes and fever are also common in unhealthy prisons.

“Social” consequences (education and work)

A teenage detainee is someone who has had to interrupt his or her life “outside”: Education, work, and relationships are generally put on hold until his or her release, and once free, he or she will probably be stigmatized as an “ex-detainee” and suffer discrimination of all kinds.

Once released, some youth have a hard time returning to school⁵¹. According to DCI-Palestine⁵², many ex-prisoners are unable to continue their education following their release from prison. This is especially true for those detainees who have spent more than 70 days in prison, due to the Palestinian Directorate of Education’s decision that requires students to repeat the entire year if he/she has been absent for more than 70 days.

This is particularly worrisome as young people who leave detention and who do not reenter school face collateral risks: School dropouts face higher unemployment, poorer health (and a shorter life), and earn substantially less than youth who do successfully return and complete school.

The failure of detained youth to return to school also affects public safety. The United States Department of Education reports that dropouts are 3.5 times more likely than high school graduates to be arrested⁵³.

Psychological consequences

The biggest impact of detention on young people is psychological: Imprisonment is known to have negative effects on prisoners’ mental well-being. For juvenile pre-trial detainees, who may be experiencing their first separation from parents or caregivers and who are often detained in filthy cells, these feelings of anxiety and hopelessness—common among prisoners—are exacerbated.

49 « The Dangers of Detention », op.cit., p. 2.

50 « Prisons camerounaises : l’enfer des mineurs », op.cit.

51 “The Dangers of Detention”, op.cit., p.9.

52 DCI-Palestine « Conditions of Detention & Psychosocial Effects on Children ».

53 « The Dangers of Detention », op.cit., p.9.

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Research in the United States has shown that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began the incarceration⁵⁴.

Moreover, detention seems to make mentally ill youth worse. According to a U.S. report, “the kind of environment generated in (US) detention centres, and the conditions of that confinement, conspire to create an unhealthy environment. Far from receiving effective treatment, young people with behavioural health problems simply get worse in detention, not better”⁵⁵.

The European Committee against Torture has also raised concerns about the placement of juveniles in conditions resembling solitary confinement, a measure that can compromise their physical and/or mental integrity⁵⁶.

Suicide attempts and self-harm are unfortunately also common among young detainees. Suicide is often the single most common cause of death in correctional settings. A survey of 36 member states of the Council of Europe revealed that 2,851 prisoners died in penal institutions in 2003, of whom 1,520 (53 percent) were suicides⁵⁷. U.S. research has found that incarcerated youth experience two to four times the suicide rate of youth in the community⁵⁸. Figures on suicide attempts in France confirm the U.S. findings: In 2007, there were 72 suicide attempts among the 780 juvenile detainees. That makes suicide 40 times more likely to be committed by juveniles in prison (10%) than outside (0.25%)⁵⁹.

Extract from literature:

“According to the World Health Organization, prisoners not only have higher suicide rates compared to their counterparts in the community, but

suicide rates among pre-trial detainees are considerably higher than among sentenced prisoners. For example, in 2002 more than a third (38%) of prison suicides in England and Wales were committed by pre-trial detainees, even though they constituted only 19% of the total prison population. Pre-trial detainees are particularly at risk of committing suicide during the initial period of their confinement (as they may experience multiple situational stressors associated with their confinement and their pending trials). These stressors, collectively termed “confinement shock”, include, for example, the experience of being torn out of their familiar social environments, of being isolated, and of losing control over their lives. Moreover, they experience increased insecurities about the unfamiliar jail environment and anxiety about their trials. Bullying, which has been shown to be more common among pre-trial detainees, is a further contributor to suicides and self-injury among detainees.”

(Open Society Justice Initiative, “Pretrial Detention”, 2008, p.19)

In addition to this, once released, many ex-prisoners suffer from nervous disorders⁶⁰, complicating even more their reintegration into society. These disabilities are characterized by an inability to communicate with their families, peers and the community at large. These are compounded by the inability of others (i.e., friends, families and peers) to relate to the ex-prisoner’s problems and worries. Among the effects of arrest and imprisonment is Post-Traumatic Stress Disorder (PTSD). Symptoms of PTSD can be summarized as follows: difficulty concentrating and remembering as well as conceptual difficulties; learning difficulties in the educational setting; withdrawal, the inability to communicate with others or to have natural social relationships; sleeping disorders (nightmares or irregular sleep patterns); feeling of hostility and vindictiveness, often related to the violence inflicted upon children who are either imprisoned or injured. These feelings are sometimes translated into violence against fellow siblings, future spouses or within other relationships; health

54 « The Dangers of Detention », op.cit., , p.8.

55 idem

56 “9th Geaneral Report on the CPT’s activities”, op.cit., para 35.

57 Presented in Open Society Institute, “Pretrial Detention”, op.cit., p. 19.

58 “The Dangers of Detention”, op.cit., p.8.

59 “Combien de mineurs laisserons-nous mourir en prison?”, Communiqué du Groupe Départemental 44 de l’Emancipation, 16 octobre 2008, <http://www.ldh-toulon.net/spip.php?article2913>.

60 “Conditions of Detention & Psychosocial Effects on Children », op. cit.

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problems related to the periods of arrest, interrogation, and the lack of proper medical care.

ii) Is detention worth it? Considering costs and recidivism

The cost of detention

Detention is expensive, much more expensive than alternative measures to detention. For example, in New York City in 2001, one day in detention (\$385) cost 15 times what it did to send a young person to an alternative measure (\$25)⁶¹. Moreover, juvenile detention centres are extremely expensive to build. In France in 2007, new special detention centres for juveniles cost the State 90 million Euros⁶².

Impact on recidivism

Extract from literature:

“Adolescents who commit crimes have experienced profound difficulties and situations of violence and risk-taking. Incarceration, which is a further breakdown, increases the risk of acting out violence against others or against themselves. Those who speak of education through prison forget that it still reinforces exclusion and promotes recidivism. It is possible that young people experiencing social exclusion construct their identities as offenders and take refuge in a status of “jailbird.” Fernand Deligny said: “Being a rogue is better than being nothing.”

(Article « Faire passer les prisons pour des écoles », June 2008 : <http://www.fsu.fr/spip.php?article1179>)

It seems that the excessive and arbitrary use of pre-trial detention may bring about conditions that increase the number of potential offenders in a society. U.S. studies have shown that detention, instead of reducing crime, aggravates the recidivism of youth who are detained⁶³. Even worse, the experience of incarceration is the most significant factor in increasing the odds of recidivism.

61 “The Dangers of Detention”, op.cit., p.10.

62 Article “Prisons pour mineurs: le risqué de l’escalade”, February 2008: <http://pays-de-la-loire.emancipation.fr/spip.php?article17>

63 « The Dangers of Detention” op.cit., p. 4.

Why is that? Research, again from the United States⁶⁴, has shown that congregating youth together for treatment in a group setting causes them to have a higher recidivism rate and poorer outcomes than youth who are not grouped together for treatment. The researchers called this process “peer deviancy training”, and reported statistically significant higher levels of substance abuse, school difficulties, delinquency, violence, and adjustment difficulties in adulthood for those youth treated in a peer group setting. Nowhere are deviant youth brought together in greater numbers and density than in detention centres and other confined congregate “care” institutions.

Congregating delinquent youth negatively affects their behaviour and increases their chance of re-offending.

Extract from literature:

“There is significant evidence to show that the prison environment fosters criminal behaviour. That is, an unintended by-product of prisons is that they serve as schools or breeding grounds for crime. Prison psychologically harms inmates, making their adjustment to society upon release more difficult, with one likely consequence being a return to crime. As is the case with sentenced prisoners, pre-trial detainees invariably face similar crimogenic influences, especially if detained for extended periods under crowded and poor conditions. The risk is greater where sentenced and unsentenced prisoners are not separated, or where pre-trial detainees charged with minor offences are incarcerated together with detainees suspected of having committed serious crimes—not uncommon scenarios in many overcrowded prison systems around the world.”

(Open Society Institute, “Pretrial Detention”, op.cit., p.32.)

Detention can also slow or interrupt the natural process of “aging out of delinquency”⁶⁵: According to a U.S. study, as many as a third of young people will engage in delinquent behaviour

64 Idem p.5.

65 « The Dangers of Detention », op.cit., p. 6-7.

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before they grow up but will naturally “age out” of the delinquent behaviour in their younger years. While this rate of delinquency among young males may seem high, the rate at which they end their criminal behaviour (called the “desistance rate”) is equally high. Most youth will desist from delinquency on their own. Whether a youth is detained or not for minor delinquency has lasting ramifications for that youth’s future behaviours and opportunities. Thus, incarcerating juveniles may actually interrupt or delay the normal pattern of “aging out” since detention disrupts their natural engagement with families, school and work.

French figures show that a minor incarcerated for the second time will, in 90 percent of cases, recommit an offence in the five years after his or her release⁶⁶.

...No, it is not worth it!

The information provided above shows that detention is definitely not the best solution to crime. Moreover, according to studies, persons in pre-trial detention are more likely to be found guilty of the offence charged compared to defendants with similar backgrounds and charges who have been released awaiting trial⁶⁷.

Last but not least, the routine use of pre-trial detention also has a negative impact on the rule of law, as pre-trial detention is against one of the cornerstones of a rights-based criminal justice system: the presumption of innocence, that is, the right of any defendant to be presumed innocent of the allegations against him until found guilty by a competent court⁶⁸.

66 Article “La récidive des mineurs”, February 2008: <http://pays-de-la-loire.emancipation.fr/spip.php?article21>.

67 The experience of pre-trial detention and undermine – through loss of empowerment, accommodation – defendants’ capacities to present themselves in a light favourable to receiving a noncustodial sentence. Defendants held in prison often have a heightened incentive to plead guilty, even though they may have a valid defence, simply to gain their freedom – particularly if they can receive a sentence of time served or receive credit for their jail time against a relatively short prison sentence. Source: Open Society Institute, “Pretrial Detention”, op.cit, p. 27.

68 idem, p. 25.

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Finding solutions to reduce use of pre-trial detention is not an easy task. “For there to be any impact on penal and justice reform, the criminal justice sector must be viewed and approached as a whole, involving all agencies, since congestion in prison results from a whole chain of decisions made by a range of different actors. Moreover, change and reform take time: They require a process that often involves entrenched attitudes and inherited practices that are difficult to change. Effective change requires support from external partners but solutions must be developed and owned locally.”⁶⁹

In other words, reducing the use of detention before or after trial involves a change of mentalities, of legislation and of practices. All the actors involved in the justice system must be informed and trained, and they need to collaborate. There is also important awareness-raising work to be carried out with regard to public opinion and with the media in order to address “pro-repressive” mentalities.

During our research, we came across good practices, or valuable recommendations that can contribute to reducing the gap between rules and reality. We will present ten of them in this chapter. We are of course aware that there are many more solutions around the world, but we hope that these (first) ten will make it clear that pre-trial detention is not unavoidable.

The first eight recommendations relate to the need to avoid as much as possible the use of pre-trial detention and to prioritize alternative measures to deprivation of liberty. The last two are recommendations on how to reduce the negative impacts of pre-trial detention when this is unavoidable.

Avoiding pre-trial detention

• Fewer juveniles in the criminal justice system: Improve prevention

Any juvenile offender is a child in pain. The causes of this suffering should be addressed first, rather than its effects. An effective prevention policy involves assistance and support and should deal with cases within the civil and not criminal justice system, prioritizing an educational over a punitive or repressive approach. The need to include prevention of juvenile delinquency in juvenile justice policies is put forward

in the Committee on the Rights of the Child’s (CRC) General Comment No. 10 on children’s rights in Juvenile Justice⁷⁰. According to the CRC, prevention is even one of the core elements of a comprehensive policy for juvenile justice⁷¹.

Extract from literature:

“The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.”

(CRC General Comment No. 10, op.cit, para 18)

• Do not build new prisons; do not privatize prisons

“Modern prisons” have always led to an increase in incarceration. Prisons are expensive, and the State “cannot afford” to run very expensive half-empty institutions. Detention is therefore privileged when

⁷⁰ CRC/C/GC/10 (2007), para 16-21.

⁷¹ The other core elements are: interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pre-trial detention and post-trial incarceration.

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there are prisons to fill up. The situation is even worse when prisons are run by private profit-oriented companies. Needless to say that these will do everything to ensure that their establishments are full.

However, as we saw in the previous chapter, prisons are much more expensive than alternative measures, and this should be made clear to citizens and authorities. For example, in France, one “Etablissement Pénitentiaire pour Mineurs” (detention centre for juveniles) for 60 youngsters costs as much as six educational homes of ten places, plus eight professional integration services for 250 minors and ten non-custodial services for 1,500 juveniles⁷². This leads to the next recommendation.

- **Invest in / prioritize measures alternative to the deprivation of liberty**

Alternative sanctions to deprivation of liberty, allowing a “fresh start” to children at risk, have proven to be cheaper than solutions involving deprivation of liberty and reduce the chances of recidivism. It is important to insist that alternative measures should always respect the rights of the child.

Some successful practices of alternative measures to pre-trial detention can be found in the recent publication “Reducing child imprisonment in England and Wales: lessons from abroad”⁷³. These include examples from a U.S. detention diversion advocacy programme, after-school, evening reporting and support centres (see box below); and non-secure residential alternatives for homeless juveniles.

Extract from literature: After-school, evening reporting and support centres – USA

“After-school and early-evening reporting centres have been set up in a number of U.S. states as alternatives to pre-trial detention to help reduce the number of children being remanded to custody and to save money. They are operated by non-profit organizations which have a track record of working with young offenders. The centres are open between 3pm and 9pm, providing

72 “Faire passer les prisons pour des écoles”, op.cit.

73 Enver Solomon and Rob Allen, “Reducing child imprisonment in England and Wales – lessons from abroad” 2009.

supervision to children who would normally be on remand in custody. The goal is to ensure that the children return to court or their scheduled hearings with no new violations.”

(Enver Solomon and Rob Allen, “Reducing child imprisonment in England and Wales – lessons from abroad” 2009)

Extract from literature: Namibia

“One of the diversion options in use in Namibia is “pre-trial community service” whereby the young person “pays back” the community for the harm she or he has done. The young person works for a number of hours in a non-profit organization. The conditions are that the young person is 14 or over, admits to the offence and has no history of mental disorder. The young person and parents sign a contract with the placement agency and social worker. A time sheet is kept which is returned to the court as proof that the young person has completed the order so that the case can be withdrawn”.

(Pre-trial Community Service Orders, in, « Reducing Pre-trial Detention », op.cit.)

- **Reduce or remove monetary bail for children**

As we saw in the previous chapters, many children cannot leave prison because their families don't have any money to pay for their bail. Reducing the bail to an affordable amount, or even suppressing it for poorer families, would lead to fewer children in prison awaiting trial.

- **Introduce specialized units to deal with juveniles within the criminal justice system**

Having specific professionals deal with cases of juveniles in conflict with the law is crucial if we want to ensure that international juvenile justice standards are known, and more importantly, implemented.

o Specialized youth judges or magistrates:

Many countries, when setting up a juvenile justice system, introduce youth judges or youth courts to deal with minors in conflict with the law. For countries that have neither a Public Prosecutor's

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Department nor juvenile courts, an immediate measure without any costs involved could be to, without increasing the number of prosecutors or judges, have all proceedings regarding minors referred to the same magistrate(s), rather than dividing them among all prosecutors and judges. These magistrates will thus specialise little by little and will profit more from training sessions in professional proficiency courses⁷⁴.

o Specialist child prosecutors:

Some European countries (Spain, the Netherlands, Germany) have specialist youth prosecutors who only deal with juvenile cases. They operate in accordance with specific guidelines for juvenile cases with an emphasis on early diversion where possible⁷⁵.

o Specialist youth police:

As well as having specialist youth prosecutors, some jurisdictions have police officers who specialise in juvenile justice. They act in a similar way to prosecutors, taking extrajudicial decisions and acting as a gatekeeper to the youth justice system. One of the best examples of specialised youth police is the police youth aid programme in New Zealand. The programme employs police officers who have chosen to specialise in dealing with young people and their families⁷⁶.

• **Include the pre-trial stage in reforms of the justice process or legislate on pre-trial detention**

The use of pre-trial detention is not always properly addressed in juvenile justice reforms, leading to a legislative “blur” that doesn’t decrease the use of detention. For example, in Canada the new juvenile justice legislation (the “Youth and Children Justice Act”, 2003-04) led to a decline of child imprisonment while pre-trial detention continued to rise. When asked why, the Department of Justice said that the remand provisions had not had the impact intended because, unlike the sentencing provisions, there had not been a comprehensive reform of the pre-trial stage of the justice system. They said that a

74 « Preventive Detention (Pre-trial Detention) », op.cit.

75 Example provided in « Reducing child imprisonment in England and Wales », op.cit.

76 idem.

legislative reform that would be most likely to reduce the use of pre-trial detention would need to involve a comprehensive, stand-alone, pre-trial detention code for children that includes clearly defined and specific, restrictive ground for detention, similar to the restrictions on custodial sentences in the YCJA⁷⁷.

• **Introduce more legal restrictions**

Some good practices involving specific legislation on the use of pre-trial detention come from a number of European countries that have tight legal restrictions on the use of pre-trial detention for children. They include restrictions based on a variety of different criteria:

- *Offence seriousness:* In some countries, less serious offences are excluded. In Finland, pre-trial detention can only be imposed when the offence is punishable with a minimum sentence of two years’ imprisonment. If the minimum sentence is one year, pre-trial detention is only possible when a child has already jumped bail, is not a resident in the country, refuses to divulge his/her name or address, or gives false information. In the Netherlands, there is also a restriction based on the gravity of the offence. Pre-trial detention is only permitted for crimes punishable with more than six years of imprisonment. In Germany, it is restricted to specified serious crimes because it is considered that only in those cases there is a greater risk of the defendant committing further crimes.

- *Age:* In France, pre-trial detention is excluded for children under 16 if they are only prosecuted for low-level offences.

- *Evidence:* In a number of countries (Austria, Belgium, Finland and Germany) there must be strong evidence of well-founded suspicion that the child has committed the offence and will be convicted if he/she is to be remanded into custody. New youth justice legislation in Canada also sets similar restrictions⁷⁸.

However, it is important that changes in legislation are accompanied by changes in the mentalities of justice professionals, to avoid prosecutors

77 Idem.

78 Idem.

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deliberately exaggerating the seriousness of the offence so that pre-trial detention can be applied as a measure.

When pre-trial detention is unavoidable: reducing the negative impacts of detention

- **Reduce the maximum duration of pre-trial detention**

To avoid abuses, the maximum duration of pre-trial detention should be clearly indicated in the legislation.

Extract from literature:

“Pre-trial detention should not last more than one or two months at the maximum. Then, to obtain a possible prolongation of this period, again for a limited duration, the magistrate should consult a supervisory judicial authority, and should be obliged by law to expose circumstances or precise and concrete facts related to the danger of collusion or flight, and the gravity of the offence in order to respect the principle of proportionality. Once it is made compulsory, circumstantial motivation, with precise facts, represents an effective brake on any prolongation of detention. In many situations the magistrate will avoid having to ask a control organization for it. If the time limit is not respected, liberation should be automatic and compulsory”.

(« Preventive detention », *op.cit.*)

- **Make detention as short as possible by providing legal assistance to children**

In order to prevent and address violence against children in conflict with the law, it is necessary to ‘arm’ them with tools so that they can safeguard their rights. One of these tools is to ensure that each child receives proper and free legal assistance. Ensuring that children in the pre-trial stage have access to a lawyer or to a paralegal who can defend their rights and ensure that they do not end up “forgotten in prison” is a very important means of reducing prison overcrowding and other abuses of pre-trial detention.

DCI has a long experience in providing legal assistance to children in conflict with the law. Over the years, “Socio Legal Defence Centres” were created by DCI sections in Albania, Argentina, Belgium, Bolivia, Colombia, Ghana, Israel, Macedonia, Sri Lanka, Togo and Uganda. Legal assistance has also been provided by DCI-Benin and DCI-Palestine.⁷⁹

- **Ensuring the implementation of international juvenile justice norms and standards regarding the conditions of detention**

Ensure independent monitoring of places of pre-trial detention

Many States are failing in their obligations to prevent ill treatment in pre- and post-trial detention due to a lack of effective monitoring in the justice system. In order to improve these conditions little by little, it would be highly desirable for States to authorise independent monitoring organisations to have access to closed institutions and other prisons.

In Europe, the European Committee for the Prevention of Torture (CPT)⁸⁰ plays precisely this role. In 1998 already, this body dedicated a whole section of its annual report to the issue of juvenile detention⁸¹, and came up with a number of recommendations to limit the negative effects of detention, including pre-trial detention. These have to do with ensuring legal guarantees to children deprived of their liberty, to improving the conditions of detention, and to ensuring adequate staffing in closed institutions. We will indicate some of their recommendations on these three areas here, as we think that they respond to many of the issues raised in this report.

79 One of the lessons learned is that children who are in need of legal assistance often manifest other needs as well, such as family therapy and social services. Therefore, DCI sections offer interdisciplinary services to these children and their families, in the ‘Social Legal Defence Centres’.

DCI International Secretariat, Consolidated final report of activities. Project of the Socio-Legal Defence Centres, Geneva 2005: DCI International Secretariat, Report by Ghana.

80 www.cpt.coe.int

81 “9th General Report on the CPT’s activities”, *op.cit.*

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Ensure legal guarantees

- o It is essential that all persons deprived of their liberty (including juveniles) enjoy, from the moment when they are first obliged to remain with the police, the right to notify a relative or another third party of the fact of their detention, the right of access to a lawyer and the right of access to a doctor. (para 23)
- o All forms of physical chastisement must be both formally prohibited and avoided in practice. Inmates who misbehave should be dealt with only in accordance with prescribed disciplinary procedures. (para 24) All disciplinary procedures applied to juveniles should be accompanied by formal safeguards and be properly recorded. (para 34)
- o The Committee's experience also suggests that when ill treatment of juveniles does occur, it is more often the result of a failure adequately to protect the persons concerned from abuse than of a deliberate intention to inflict suffering. An important element in any strategy to prevent such abuse is observance of the principle that juveniles in detention should as a rule be accommodated separately from adults. (para 25)
- o Juveniles should have the right to be heard on the subject of the offence that they are alleged to have committed, and to appeal before a higher authority against any sanctions imposed; full details of all such sanctions should be recorded in a register kept in each establishment where juveniles are deprived of their liberty. (para 34)
- o Effective complaints and inspection procedures are basic safeguards against ill treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishments' administrative system, and be entitled to confidential access to an appropriate authority. (para 36)
- o Moreover, basic procedural rights 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 a guardian, the right to confront and cross-examine

witnesses and the right to appeal to a higher authority should be guaranteed, like in all stage of proceedings.⁸²

Improve the conditions of detention

- o A well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items (para 29), including their personal clothes.
- o Although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme. It is particularly important that girls and young women deprived of their liberty should enjoy access to such activities on an equal footing with their male counterparts. (para 31)

Use litigation?

"In Europe, we visited a centre for preventive detention for boys aged 13 to 18, finally separated from adults. However the young detainees were maintained in cells, for months and even more than a year, without any activity: no school, workshops or sports. The legal reason invoked is that the code does not permit any activity before judgement, because the detainees are presumed innocent. In this case, one recourse would be sufficient to obtain application of article 40, para 1 and 4 of the CRC, as this country has ratified it."

(André Dunant, « Preventive Detention », *op.cit.*)

82 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (« The Beijing Rules »), article 7.1. (this recommendation is not part of the CPT report).

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o All juveniles deprived of their liberty should be properly interviewed and physically examined by a medical doctor as soon as possible after their admission to the centre; except for exceptional circumstances, the interview/examination should be carried out on the day of admission. However, a newly arrived juvenile's first point of contact with the health care service could be a fully qualified nurse who reports to a doctor. (para 39) If properly performed, such medical screening on admission should enable the establishment's health care service to identify young persons with potential health problems (e.g., drug addiction, suicidal tendencies). The identification of such problems at a sufficiently early stage will facilitate the taking of effective preventive action within the framework of the establishment's medico-psycho-social programme of care.

o It is also widely recognised that juveniles deprived of their liberty have a tendency to engage in risk-taking behaviour, especially with respect to drugs (including alcohol) and sex. As a consequence, the provision of health education relevant to young persons is an important element of a preventive health care programme. Such a programme should, in particular, include the provision of information about the risks of drug abuse and about transmittable diseases. (para 40)

Ensure adequate staff

o The custody and care of juveniles deprived of their liberty is a particularly challenging task. The staff called upon to carry out that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with and safeguarding the welfare of this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff, including those with purely custodial duties, should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties. Moreover, the management of such centres should be entrusted to persons with advanced leadership skills, who have the capacity to respond in an effective manner to the complex and competing demands placed upon them, both by juveniles and by staff. (para 33)

CHAPTER VII: CONCLUSION

Pre-trial detention is a problem that concerns, in varying degrees, virtually every country of the world. This report has shown that the over-use of pre-trial detention is only the “tip of the iceberg” of an inefficient or non-functioning juvenile justice system.

The way out from this problem is simple: States should start seriously implementing juvenile justice international standards and norms. We have seen how big the gap between rules and reality is. Only a comprehensive reform of the juvenile justice system can stop the over-use of and abuses in detention.

Until then, pre-trial detention will unfortunately continue to be the most common measure taken by magistrates, and children will continue to be treated contrary to their best interests.

This report is yet another piece of proof that children do not belong behind bars. Detention has severe consequences on children. Most of them will be marked forever. Even worse: detention does not seem to solve the problem of juvenile delinquency; on the contrary, it increases the chances of recidivism. Defence for Children International urges States to take immediate action to address this problem and ensure that children in conflict with the law receive treatment that respects their fundamental rights and respects their needs.

We will conclude this report with an open question: “Is it really profitable for society to send children to prisons, from which they will emerge more desperate, more isolated and therefore more violent than ever?”



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