CREATING A NON-VIOLENT JUVENILE JUSTICE SYSTEM

Report 2013

Prepared by
The International NGO Council
on Violence Against Children

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The International NGO Council on Violence against Children —
The International NGO Council on Violence against Children (formerly the NGO Advisory Council for follow-up to the UN Secretary-General's Study on Violence against Children) was established in 2006 to work with NGOs and other partners, including member states, to ensure that the recommendations from the UN Study on Violence against Children are effectively implemented. The International NGO Council includes representatives from nine international NGOs, including major human rights and humanitarian agencies, as well as nine representatives selected from their regions.

The International NGO Council works closely with the Special Representative to the Secretary-General on Violence against Children, and encourages and maintains NGO involvement at the national, regional, and international levels in follow-up advocacy with governments, UN agencies and others for full implementation of the Study recommendations. A full list of membership may be found in the Acknowledgements, and further information on the International NGO Council may be found at: http://www.crin.org/violence/NGOs

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FOREWORD:
Marta Santos Pais

Special Representative of the Secretary-General
on Violence against Children

During the past decades, the international community has developed sound normative standards to protect the rights of children involved with the justice system. The Convention on the Rights of the Child and other legal instruments call for a specialized child-sensitive juvenile justice system that places the respect for the dignity and the best interest of the child at the center of legislation, policy and practice, while promoting children's sense of worth and long lasting reintegration in society.

The governance gap between these important international standards and implementation efforts on the ground is, however, wide. Countless children across regions continue to see their rights neglected by laws and institutions and endure harsh and retributive punishments that stigmatize and marginalize them further. Children who are homeless and poor, who have fled home as a result of violence or neglect; as well as, those that suffer from mental health illness and substance abuse find themselves at special risk.

Appropriate crime prevention efforts, support to parents and legal guardians to ensure a safe family environment, and education and work opportunities for children who are old enough to have access to an employment, are often lacking. The criminal justice system ends up being used as a substitute to weak or non-existent child protection systems. And imprisonment and recidivism become a pattern for children who are left with very few opportunities to re-shape their future.

In order to reverse this serious situation and reduce the risk of violence against children, their involvement with the criminal justice system must be prevented. The development of a strong and cohesive child protection system should be a first priority and the current standards on the rights of the child in the juvenile justice system should be effectively implemented so that criminalization and punishment of children can be avoided, diversion and restorative justice solutions can be given a genuine chance of succeeding, and the development of children's fullest potential be effectively promoted.

This important publication by the International NGO Council on Violence against Children illustrates the magnitude of children's exposure to violence in the justice system, it identifies areas where critical efforts are needed to secure children's rights and protection from violence, and it presents a vision of a non-violent juvenile justice.

I welcome the continuing efforts of the International NGO Council to promote the prevention and elimination of violence against children and I am confident that this publication will be a substantive resource to accelerate progress in national implementation efforts to build a world where violence against children has no place.

Marta Santos Pais
Special Representative of the Secretary-General on Violence against Children

FOREWORD:
Paulo Sérgio Pinheiro

The Independent Expert who led the UN Secretary General's Study on Violence against Children

This report from the International NGO Council on Violence against Children creates an enriching vision of a non-violent juvenile justice system. The vision is no more than the fulfillment of states' obligations under international law to create a distinct and separate justice system which takes account of the special status of the child, focuses exclusively on rehabilitation and reintegration and protects the child from all forms of violence.

Yet this vision is so far from being realized and indeed some states in all regions are willfully moving backwards – lowering not raising ages of criminal responsibility, locking up more children at younger ages in horrendous conditions. There are still executions of children; many are sentenced to life imprisonment and 40 states retain whipping or caning as a sentence of their courts for children.

I am saddened that we are so far from realising the detailed recommendations of the World Report on Violence against Children, and that the UN system seems so far from enforcing the relevant standards and convincing states that it is not only in the best interests of children but the best interests of their societies to move quickly to develop non-violent juvenile justice systems.

There is no room for compromise here. My dear colleague Thomas Hammarberg, as Commissioner for Human Rights in the Council of Europe, and myself as Rapporteur on the Rights of the Child for the Inter-American Commission on Human Rights, have both written of the need for a new debate to separate the concept of "responsibility", which of course grows with the evolving capacity of the child, from criminalization - and to stop criminalizing children. Also - as the World Report recommends, echoed in this report, states must stop detaining children unless they clearly pose a serious danger to others – and then only for the shortest necessary time. Let us hope that this report feeds renewed and uncompromising advocacy to build the non-violent systems which children are entitled to.

Paulo Sérgio Pinheiro
The Independent Expert who led the UN Secretary General's Study on Violence against Children

Part I—

CREATING A NON-VIOLENT JUVENILE JUSTICE SYSTEM: An Introduction

When the first juvenile courts opened their doors over one hundred years ago, it was with the idea that children in conflict with the law should be treated with special care and protection. Criminal justice systems were no place for young offenders, who were to be spared lengthy, troubled and often violent journeys through punitive legal proceedings. Retribution was firmly eschewed in favour of rehabilitation, and the goal for every child became complete and productive reintegration into society.

These same ideas hold true today, and have been incorporated into international law on children's rights. Children in conflict with the law are now legally entitled to special consideration, and countries around the world are obligated to ensure that all children grow, develop, thrive and reach their full potential. As an integral part of this, justice systems must be designed and administered to respect children's rights.

While children's rights are unquestionably interdependent and require broad, comprehensive support, of critical importance to children in conflict with the law is the right to be protected from violence. As enshrined in the United Nations Convention on the Rights of the Child, which enjoys near universal ratification, governments must "take all appropriate legislative, administrative, social and educational measures to protect [children] from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation."

There is a deepening consensus on the negative, long-term and in some instances permanent consequences of children's exposure to violence, whether physical, psychological or emotional. Yet from the moment of their apprehension through to their eventual release, children in conflict with the law risk traumatic and systematic exposure to violence. It seems, increasingly, that juvenile justice systems are perpetrating the very same violence against children that inspired their creation.

In recognition of this growing epidemic, the United Nations Secretary-General in 2006 published a World Report on Violence Against Children to examine the nature, extent and global magnitude of the violence experienced by children across all settings, including juvenile justice. The International NGO Council on Violence Against Children is now responsible for ensuring that this work remains relevant, that its findings are disseminated, and that its recommendations are followed. These recommendations include, among other things, that states:

- Prohibit all forms of violence against children in all settings;
- Prioritise preventing violence against children by addressing its underlying causes;
- Promote non-violent values and awareness-raising;
- Enhance the capacity of all those who work with and for children;
- Provide recovery and social reintegration services for child victims of violence;
- Create safe, confidential and accessible mechanisms to report violence against children; and
- Hold perpetrators of violence accountable through appropriate proceedings and sanctions.[1]

It is clear that not enough progress has been made toward the elimination of violence against children in conflict with the law, and the Council believes that the non-violent juvenile justice imperative must now be revisited. This report represents part of these efforts, and aspires not only to clarify the many ways in which governments fail to protect children in conflict with the law, but also to present a non-violent vision of juvenile justice. It is hoped that this vision becomes both inspiration and reality, and that juvenile justice systems are made consistent with the rights of the child.

1 For a full list and description of the UN Study's recommendations, see Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), pp. 18-24, available at http://www.unicef.org/violencestudy/reports.html.

Part II —

BUILDING BLOCKS OF A NON-VIOLENT JUVENILE JUSTICE SYSTEM

Countries have a legal obligation to create and invest in non-violent juvenile justice systems. While these systems will inevitably reflect national contexts and ideas around the rule of law, there are certain identifiable elements that should be present across all jurisdictions. As set out below, these represent the building blocks of non-violent juvenile justice. Fundamentally, the rights and unique rehabilitative potential of children in conflict with the law demand special consideration, and justice systems must offer every child suspected or accused of an offence the full protections to which they are entitled.

Juvenile justice should be neither punitive nor retributive, but rather emphasise prevention as a first priority. If children have already come into conflict with the law, however, rights-based measures should be taken to divert them away from the formal justice system into community-centred social education and reintegration programmes wherever possible and appropriate. Where children are nonetheless formally processed and sentenced, every effort must be made to find a suitable non-custodial measure and thereby ensure that children are deprived of their liberty only as a last resort and for the shortest appropriate period of time. Restorative justice approaches merit particular attention as they seek to address the root causes of offending behaviour rather than simply examine the events surrounding an offence in isolation.

Children must also have recourse when violence is perpetrated against them, and rights-based, child-sensitive complaints mechanisms should be accessible at all stages of the juvenile justice system. At the same time, the situation of children in conflict with the law must be actively monitored to guarantee full support and protection. In addition, relevant data should be collected to determine the extent and nature of violence against children in the juvenile justice system, and research should be undertaken to develop and improve individual responses and interventions. Last, countries must build public support for non-violent juvenile justice and foster greater respect for the rights of children in conflict with the law.

Every effort must be made to find a suitable non-custodial measure and thereby ensure that children are deprived of their liberty only as a last resort and for the shortest appropriate period of time

A Distinct Juvenile Justice

Juvenile justice requires a separate approach from the criminal justice system. Indeed, the language of juvenile justice is itself distinct – a "child in conflict with the law" should bear no more likeness to a "criminal" than a justice system designed for children should resemble an adult criminal court.[2] As such, national laws and policies must not rely on existing models and systems that have been designed for adults,[3] but rather be crafted to address the unique position of children in conflict with the law.

Most importantly, unlike the retributive ambitions of criminal justice, the cornerstone of juvenile justice is the rehabilitative ideal. In light of children's reduced culpability and inherent potential for change, juvenile justice aims to guide and encourage the positive growth and development of children in conflict with the law. While children retain the same due process rights as adults, priority in the juvenile justice system is given to the investigation of a child's personal, family and social situation rather than the production of evidence for prosecution. This becomes even more important when serious offences are alleged, and extensive multidisciplinary inquiries should be undertaken to determine why a serious offence took place and understand the reasons behind and larger context of the child's actions.[4]

Juvenile justice also recognises children in conflict with the law as a vulnerable group[5] entitled to special protection, and seeks to ensure that children's rights are respected in all interactions with the justice system. This includes, among many other measures, taking steps to guarantee that children are never subjected to violence in any form as a result of their involvement with the juvenile justice system.

Relevant International Standards:
CRC (19); GC10 (4, 10, 13, 90-95); BR (1-2, 5, 24); RG (5, 52); JDL (1); GA (11, 14, 41); SG (A.1, B.2); HRC (8, 11)

5 A study in the **United Kingdom** found, among other things, that roughly half of children in the juvenile justice system are also known to social services...

2 The Juvenile Justice Act of **India** adopts separate terminology for children in conflict with the law to distinguish the juvenile and criminal justice systems. See Ruzbeh N. Bharucha, My God is a Juvenile Delinquent (2008), p. 12, available at http://www.ruzbehbharucha.net/books/mygod.pdf.

3 A desk review of the laws and policies underlying eight juvenile justice systems revealed that seven of these offer little more than limited adaptations to the adult criminal justice model. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries: Overview report (2012), p. 12, available at http://www.penalreform.org/resource/review-law-policy-prevent-remedy-violence-children-police/.

4 For a hypothetical case study on how a child accused of a serious offence might be handled, see Child Rights International Network, Stop Making Children Criminals (2012), available at http://www.crin.org/docs/Stop_Making_Children_Criminals.pdf.

5 The vulnerability of children in conflict with the law has been explored extensively in academic research; for a full review of existing literature, see Katherine Covell, Characteristics of Youth Who Commit Serious Offences. http://www.crin.org/violence/search/closeup.asp?infoID=31838.
A study in the **United Kingdom** found, among other things, that roughly half of children in the juvenile justice system are also known to social services. By the same token, the lives of children in contact with the juvenile justice system in the **United States** are likely to involve emotional difficulties, histories of abuse and neglect, chaotic family environments, parental drug and alcohol abuse, divorce, relocation, financial hardship, and early entry into the foster care system. See Barry Goldson & Ursula Kilkelly, International Human Rights Standards and Child Imprisonment: Potentialities and Limitations, International Journal of Children's Rights (2013), p. 10; Barry Goldson, Damage, Harm and Death in Child Prisons in England and Wales: Questions of Abuse and Accountability, The Howard Journal, Vol. 45:5 (2006), p. 455; Ilyse Grinberg et al., Adolescents at Risk for Violence: An Initial Validation of the Life Challenges Questionnaire and Risk Assessment Index, Adolescence, Vol. 40: 159 (2005), p. 584.

Reach

The reach of the juvenile justice system should extend only to children who are accused of committing an offence. There should be a clear distinction between children in conflict with the law and children in contact with the law for other reasons, whether as child victims or witnesses; migrants, refugees or displaced children; children with mental health or substance abuse issues; or children in need of care and protection.[6] Children not accused of committing an offence must never be processed through the juvenile justice system as offenders,[7] and should instead be addressed through the appropriate legal, administrative or social welfare channel.

Relevant International Standards:
BR (3); GA (17, 36, 46, 52); HRC (15)

Minimum Age and Jurisdiction

Children must never be held criminally responsible for their actions. While in some instances children may rightly be held accountable for offences they have committed, criminalising children subverts the rehabilitative goals of juvenile justice and must be avoided at all costs.[8] As established in widely accepted international standards, all human beings below the age of 18 years are entitled to special rights and protections as children. As such, minimum ages of criminal responsibility should never be set below this level lest they risk redefining children in conflict with the law as adult, criminal offenders.

Equally, the jurisdiction of the juvenile justice system should extend to all children in conflict with the law. As above, eighteen is internationally recognised as the age at which children attain full majority and should also represent the upper boundary of the juvenile justice system. This means that every child under age 18 at the time of an alleged offence should be handled exclusively within the juvenile justice system, and loopholes allowing for older children or children accused of committing serious or violent offences to be prosecuted in the adult criminal justice system must be closed.[9]

Relevant International Standards:
CRC (1, 40); GC10 (30-39); BR (3-4); GA (13-14); HRC (12)

7 Juvenile justice legislation in Bangladesh problematically conflates children in conflict with the law and those in need of care and protection, which regularly results in the arrest and prosecution of the latter…

6 These groups of children are known to be overrepresented in the juvenile justice system. See Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (2012), p. 8, available at http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/web_juvenile_justice_final.pdf.

7 Juvenile justice legislation in **Bangladesh** problematically conflates children in conflict with the law and those in need of care and protection, which regularly results in the arrest and prosecution of the latter. UNICEF, Bangladesh, Justice for Children Factsheet (2010), available at http://crin.org/resources/infodetail.asp?id=27785.

8 See Child Rights International Network, Stop Making Children Criminals (2012), available at http://www.crin.org/docs/Stop_Making_Children_Criminals.pdf.

9 In the **United States**, older children and children accused of committing serious offences are regularly tried in adult courts. See U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting (2011), available at https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.

Staffing

Professionals and staff involved in the juvenile justice system are often poorly trained or qualified. Appropriate education should be systematically available and required for all personnel, and screening processes must be put in place to ensure that juvenile justice staff do not have a history of violence against children. Children's rights and child protection should form an essential part of official curricula, and any person who has direct contact with children should be trained in non-violent engagement, especially in interactions with vulnerable and disadvantaged children, and the promotion and protection of children's right to be free from violence.[10] In particular, staff working with children in detention should have a firm understanding of child psychology, child welfare, international human rights standards and positive, non-violent behaviour management techniques.

In addition, human resources are inadequate across the board,[11] with widespread personnel shortages and the low status often accorded to employees within the juvenile justice system perpetuating a cycle of staff burnout and high turn-over. To break this pattern, staff must be adequately remunerated and hired in suitable numbers to fill clear and specific positions. Efforts should be made to improve the social standing of those involved in the administration of juvenile justice, and decent working conditions and climates of respect and positive recognition should enable the recruitment and retention of high-quality staff.

Relevant International Standards:
GC10 (13, 40, 92, 97); BR (1, 12, 22); RG (9, 58); JDL (81-87); GA (24, 28); SG (B.1-B.2, B.4); HRC (6); LA (31, 45)

11 Children in Sierra Leone spend many months in pretrial detention simply waiting for a judge to become available to hear their cases...

10 In **Ethiopia**, children's rights organisations partnered with police authorities to provide law enforcement officers with guidance on the rights of children in conflict with the law and the potential impacts of police interaction with street children. Sarah Thomas de Benitez, Research Paper on the Promotion and Protection of the Rights of Children Working and/or Living on the Streets, (2012), p.38, available at http://www.streetchildrenresources.org/wp- content/uploads/2013/02/GlobalResearchPaperbySarahThomasdeBenitez.pdf.

11 Children in **Sierra Leone** spend many months in pretrial detention simply waiting for a judge to become available to hear their cases. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 21.

Prevention

While justice systems are inherently reactive, the rehabilitative underpinnings of juvenile justice also incorporate a focus on prevention. Respecting children's rights is perhaps the best way to prevent children from coming into conflict with the law, and just as resources must be harnessed to address an offence after it has occurred, so too must they be devoted to ameliorate the factors that gave rise to these actions in the first instance.[12] These obligations cannot be overlooked on grounds of expense or effort, as effective prevention and early intervention services have been shown to produce significant cost and time savings over formal juvenile justice responses.[13] With this in mind, juvenile justice should form part of a larger system designed to ensure that children have every opportunity to grow, develop and thrive, and a comprehensive approach to prevention should seek to better the situation of children within society, community and family.

Along these lines, broad-based policies should seek to address issues related to poverty, inequality and discrimination on a societal level. Resources should be shifted from policing, prosecuting and incarcerating children in conflict with the law to providing social, economic and psychological support for children and families in difficult circumstances. In terms of formal mechanisms, a strong, cohesive and interdisciplinary child protection regime can work to eradicate many root causes of involvement in the juvenile justice system.[14] On an individual level, parenting education, mentoring and therapeutic interventions can improve families' communication and problem-solving capabilities, while academic enrichment, social development and practical skills building programmes can enhance children's growth and development from an early age.[15]

Relevant International Standards:
CRC (2, 4, 6, 19-20, 26-27, 39); GC10 (11, 16-21); BR (1); RG (1-6, 9-66); GA (36, 41); SG (A.7, B.4); HRC (9)

15 **A behavioural development technique employed in Norway to reduce bullying has shown promise in preventing later violence and aggression...**

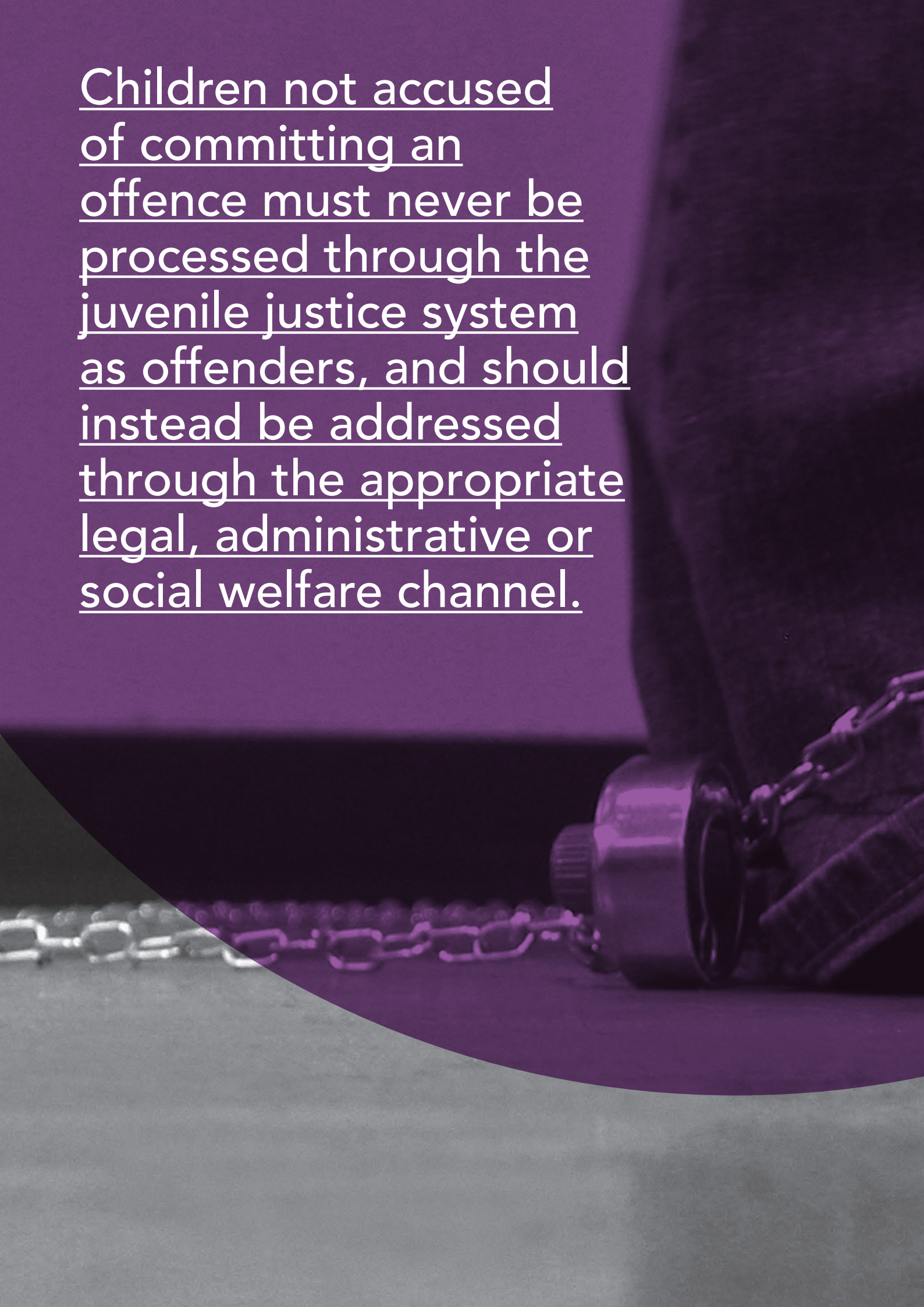
12 For an illustrative list of youth violence prevention strategies, see World Health Organisation, World report on violence and health, pp. 41-42, available at http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap2.pdf

13 An analysis of the Child Justice Bill in **South Africa** found that juvenile justice reforms emphasising prevention, diversion and non-custodial measures would ultimately result in significantly reduced government spending. See UNICEF, Toolkit on Diversion and Alternatives to Detention (2010), available at http://www.unicef.org/tdad/index_55653.html.

14 See Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (2012), p. 17.

15 Evidence suggests that many such programmes can effectively reduce youth violence. For example, a behavioural development technique employed in **Norway** to reduce bullying has shown promise in preventing later violence and aggression. World Health Organisation, World report on violence and health, p. 39.

Children not accused of committing an offence must never be processed through the juvenile justice system as offenders, and should instead be addressed through the appropriate legal, administrative or social welfare channel.



Diversion

Despite the noble aims of juvenile justice, contact with any justice system is in practice likely to have a harmful impact on children.[16] The punitive realities of many formal justice systems, potentially harsh consequences of involvement in legal proceedings, and societal stigmatisation of children who have come to the attention of the juvenile justice system cannot be ignored.[17] In light of these failings, children in conflict with the law are often better served by constructive responses outside judicial proceedings that more effectively promote rehabilitation and social reintegration. These courses of action are made available through a process known as diversion, whereby children are channelled away from the formal justice system before a sentence is pronounced.

Diversion should be available at every stage of the juvenile justice process from apprehension to final disposition hearing, and should be specifically authorised, regulated and reviewed to ensure full and equal access for all children. In most instances, children should be diverted from formal justice processes at the earliest possible opportunity.[18] Importantly, diversion should not be limited to minor or first-time offences, but considered as an available option wherever it would serve the best interests of the child.[19]

Possible diversionary measures include cautions or warnings; apologies to persons negatively affected by the actions in question;[20] compensation, including non-monetary payment, for any damage caused; behavioural contracts; curfews; peer education or youth mentoring; mediation;[21] referral to structured educational, vocational, community service or life skills programmes;[22] and counselling, therapy, or substance abuse treatment.[23] Deprivation of liberty is never suitable as a diversionary measure, and participation in any programmes that incorporate a residential element must be and remain strictly voluntary. In addition, diversion is never appropriate for children who do not admit to committing an offence, and children who proclaim their innocence must be presumed as such until a court has determined otherwise.

Decisions as to which diversionary measures are appropriate should be based on individual assessments of a child's age, situation, and level of maturity with an appreciation of the services available in the child's community. [24] Diversion should in all circumstances be at the consent of the child involved, and legal safeguards must be put in place to ensure that diversionary measures respect children's right to privacy and are fair and suitable responses to the offence committed. Children must be fully informed about the nature, content and duration of any diversionary measure proposed, have access to legal assistance and the advice and support of a parent or guardian in deciding whether to accept this measure, and understand the potential consequences of failing to comply with an agreed solution.

Children should also have the possibility to seek review of an accepted diversionary measure at any point, and measures should wherever necessary be adjusted to suit any changes in circumstance. If and when a course of action is successfully completed, this must then provide definite, final closure to the case. In this vein, any records kept in relation to the diversion process must be strictly confidential and in no way treated as a criminal dossier.

It must, however, also be noted that diversionary measures are not always in children's best interests. Diversion can sometimes fail to contribute positively to a child's growth or development, and a constructive, rights-based formal judicial intervention may provide better access to the support and guidance needed to address the issues that underlie offending behaviour. As above, each child's individual situation and needs must be properly assessed before a diversionary measure is offered, and children must be assisted in making an informed choice about whether to accept an alternative to prosecution.

Relevant International Standards:
CRC (25, 40); GC10 (3, 23, 24-27, 44-45, 68-69); BR (5, 11, 58); GA (15, 35, 42); SG (A.8, B.2); HRC (9-10); LA (45, 47)

[24] In Georgia, children in conflict with the law may be diverted into the social welfare system…

16 UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

17 Id.

18 In the **Netherlands**, 80 percent of children registered by the police are diverted before an initial court appearance. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 12, available at http://www.penalreform.org/wp-content/uploads/2013/05/Bishkek-Conference-Report-FINAL-withphotos-1.pdf.

19 In **South Africa**, intensive therapeutic programmes are available for children in conflict with the law who have had multiple contacts with the justice system and are considered to be at high risk of reoffending. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

20 Family and Community Group Conferences in **Thailand** aim to restore harmony between children in conflict with the law, victims and the community. Id.

21 In **Kazakhstan**, mediation is authorised for children accused of minor and moderate offences; it can take place before or at any stage of a legal proceeding, and the reaching of a settlement agreement closes consideration of the case. UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, Assessment of Juvenile Justice Reform Achievements in Kazakhstan (2009), p. 13, available at http://unicef.kz/files/00000135.pdf?sid=uptqp7proqr77iar5l74s1jbj2.

22 In the **Philippines**, the Community-Based Prevention & Diversion Programme offers children in conflict with the law an opportunity to share their life difficulties and experiences and look for ways to become responsible members of the community. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

23 For a full list of possible diversionary measures, see id.

24 **In Georgia**, children in conflict with the law may be diverted into the social welfare system, but few agencies are available to provide the services envisioned. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 35, available at http://www.primena.org/portal/Pages/download.php?page=8&lang=1&pg_id=2.

Non-custodial Measures

Despite the long-accepted international mandate that children in conflict with the law only be detained as a matter of last resort and for the minimum necessary period of time, it is estimated that more than one million children are deprived of their liberty. [25] Children are taken into residential custody upon arrest, kept in detention while judicial proceedings progress, and sentenced to serve out sentences behind bars. They are held in police lock-ups, jails, centres for reform or re-education, treatment facilities and secure institutions, often in poor conditions and in the company of adult criminal offenders.[26]

While any contact with the justice system can risk exposing children to violence, this is significantly greater for children in detention.[27] Just as diversionary measures channel children in conflict with the law away from the formal justice system, non-custodial measures keep children from being deprived of their liberty and more effectively help children access the care and protection they need. While diversion is largely preferable as it obviates the need for children to go through full legal proceedings and avoids the stigma of a recorded disposition, providing non-custodial measures for children who have already progressed through the juvenile justice system must be a matter of priority.

Non-custodial measures should be rights-based and directed toward children's full rehabilitation and reintegration. The principle of detention as a last resort and for the shortest possible period of time must be enshrined in national law[28], and children should only be deprived of their liberty where they have been assessed as posing a serious risk to public safety. Effective and ongoing screening must be put in place to make sure that children who meet this criterion are only detained for as long as is absolutely necessary, and police, judges and other professionals should be given guidance and tools to identify the least restrictive environment appropriate for each child. Pretrial measures must in particular represent the minimum level of interference with children's liberty, given that these children have not yet been found to have committed an offence.

Appropriate non-custodial measures should be selected based on both the nature and gravity of the offence and the age, maturity, situation and background of the child. Before trial, measures can enable children to be released into the care of parents, guardians or other responsible adults with requirements that they report regularly to a police station, comply with a curfew, or agree not to have contact with the victim. If a child is later found to have committed an offence, community-based measures can further facilitate effective supervision, rehabilitation and reintegration.[29] Much as with diversion, specific non-custodial measures might include probation, community service, behavioural contracts, counselling, intensive home supervision, attendance at a daytime reporting centre, and participation in an educational or competency development programme.[30] For children without parental support, open care facilities can provide a safe residential environment from which to access any necessary services.

29 The Juvenile Justice Alternatives Project in Tajikistan is a non-residential, structured, multidisciplinary programme designed to prevent reoffending...

25 Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 191.

26 Id.

27 See, e.g., Harry Holman and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

28 Legal recognition of the principle that detention is a last resort for children in conflict with the law has dramatically reduced the numbers of children deprived of their liberty in **Kazakhstan**, **Kyrgyzstan**, **Azerbaijan**, **Ukraine** and **Georgia**. UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 4, available at http://www.unicef.org/ceecis/EU_UNICEF_Juvenile_Justice_in_the_CEECIS_Region.pdf.

29 The Juvenile Justice Alternatives Project in **Tajikistan** is a non-residential, structured, multidisciplinary programme designed to prevent reoffending that offers children services individually tailored to their social, family and educational needs. Similarly, the National Institute for Crime Prevention and the Reintegration of Offenders in **South Africa** operates the "Chance to Change" non-custodial sentencing project, which offers children in conflict with the law a wide range of non-custodial measures including substance abuse treatment, anger management training, community service, life skills education, individual and family counselling, and victim-offender mediation. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

30 For a full list of potential non-custodial measures, see UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

Sentencing decisions should be made in a child's best interests, and families should be involved in the selection of non-custodial measures to the extent that their participation serves these interests. Individual assessment of each case is paramount, and allows for measures to be tailored to both the circumstances of the child and the programmes and services available in the community. Non-custodial measures must also be proportionate, meaning that they do not exceed the duration or level of intervention warranted by the nature and gravity of the offence committed. In the rare circumstances where it is determined that a custodial placement is appropriate, this should be regularly reviewed to revisit suitability for less restrictive measures.

It must be emphasised that non-custodial sentences serve the interests of both children and society. They offer children opportunities to pursue their education, develop valuable skills, and build connections with the communities in which they live, all at a social and financial cost far lower than that of incarceration.[31] Not only is it a legal obligation for countries to provide non-custodial measures, but minimising deprivation of liberty also represents sound, evidence-based policy. Research has shown that non-custodial measures can reduce offending by up to 70 percent,[32] whereas time spent in detention only increases the likelihood that a child will come back into conflict with the law.[33]

Relevant International Standards:
CRC (37, 40); GC10 (3, 11, 23, 28, 44-45, 70-71, 73-74, 79-81); BR (5, 13, 16-19); JDL (1-2, 17); GA (15, 18, 41-42); SG (A.8, B.2); HRC (9-10); LA (47)

33 Studies from the United States and Cambodia reveal higher recidivism rates for children deprived of their liberty as compared with children offered non-custodial measures...

31 Harry Holman and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), p. 10. For a comparison of the costs of diversionary measures and non-custodial measures with sentences involving deprivation of liberty, see UNICEF, Toolkit on Diversion and Alternatives to Detention: What are the costs involved for diversion & alternatives compared to detention? (2009), available at http://www.unicef.org/tdad/whatarecostsinvolved.

32 See UNICEF, Toolkit on Diversion and Alternatives to Detention 2009: Compilation of evidence in relation to recidivism, available at http://www.unicef.org/tdad/evidencereducedrecidivism.

33 For example, studies from the **United States** and **Cambodia** reveal higher recidivism rates for children deprived of their liberty as compared with children offered non-custodial measures, and 60 to 80 percent of children sentenced to imprisonment in the United States are convicted of a later offence within 2 to 5 years' time. In France, recidivism figures rise to 90 percent for children incarcerated a second time. Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 200; Angeliki-Marianthi Gyftopoulou, Child Imprisonment and Children's Rights: A Question of Consistency, Unpublished Masters Thesis (2012); Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 27, citing La récidive des mineurs" (2009), available at http://pays-de-la-loire.emancipation.fr/spip.php?article21.

Restorative Justice

Restorative justice aims to address the root causes of offending behaviour by helping children in conflict with the law to understand the consequences of their actions. The restorative model asks children to take responsibility for repairing the harm they have caused, thereby encouraging them to show their capacity for change and positive action. Through guided interactions between these children and those who have been negatively affected by their behaviour, communities come together in an effort to restore harmony and find mutually beneficial solutions that promote children's full reintegration into society. [34]

Appropriate restorative justice responses can be placed along a continuum from simple to complex, depending on the level of involvement warranted.[35] Apologies, directed reflections and open conversations are more informal, while community gatherings and facilitated conferences offer a more structured approach. Specific interventions might include victim-offender mediation[36], family group conferences[37], and sentencing or open village healing circles.[38]

Restorative justice measures build on the strengths of traditional justice systems to provide effective, flexible and locally appropriate responses.[39] Even where national resources are scarce, communities can build programmes that support the rights, growth, development, rehabilitation and reintegration of children in conflict with the law.[40] Restorative approaches are particularly well-suited to diversion, as they offer a means to address the offence outside the formal justice system. [41] By the same token, restorative elements may also be incorporated into dispositions to provide more suitable non-custodial measures.

National laws, policies and practices should facilitate restorative justice responses wherever possible and appropriate given the individual circumstances of each case. Nonetheless, it is important to recognise that restorative justice processes are by their very nature not strictly child-focused as they directly involve victims, families, schools, peers and other members of the community. While this wider approach promises to more readily facilitate children's reintegration, it must not come at the cost of children's rights. Measures must be taken to ensure that children retain the right to consult with a lawyer; have access to the assistance of a parent, guardian or interested adult; and are fully informed of their rights, the nature of the restorative justice process, and the potential consequences of accepting a restorative intervention.[42]

Relevant International Standards:
GC10 (3, 27, 44-45); SG (A.8, B.2); HRC (9)

39 Legislation in South Sudan and East Timor has been drafted to build on the strengths of traditional restorative practices...

34 UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

35 See International Institute for Restorative Practices, What is Restorative Justice Practices?, available at http://www.iirp.edu/what-is-restorative-practices.php. For more information on restorative justice initiatives, see United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes, (2006), available at http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf.

36 Child Welfare Committees and Child Panels in **Sierra Leone** work to facilitate reconciliation between children accused of committing offences and any persons affected by the actions in question. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), pp. 62-3, available at http://www.crin.org/violence/search/closeup.asp?infoID=29168.

37 Family group conferences are common responses to children in conflict with the law in **New Zealand**, and provide opportunities for child offenders and their families to meet with victims, police and youth advocates under the guidance of a youth justice coordinator. Children are given the opportunity to take responsibility for their actions, victims are asked to describe the personal impacts of the offence, and plans are agreed to rectify the harm caused and resolve the situation. A similarly structured system of Youth Offender Panels exists in the **United Kingdom**. See UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

38 Sentencing circles in **Canada** bring children in conflict with the law, community members, elders, peers, family members, victims, and victims' families together to shift the aim of dispositions for children in conflict with the law from punishment to the restoration of social relationships and responsibility. Likewise, Village Child Justice Committees in **Namibia** facilitate restorative justice processes including family group conferencing, victim-offender mediation and open village healing circles. Marie Wernham, Consortium for Street Children, An Outside Chance: Street Children and Juvenile Justice – An International Perspective (2004), p.137; African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 63.

39 Child Rights Community Committees build on traditional systems of justice in **Somaliland** to provide communities a more structured way to resolve matters concerning children in conflict with the law without resorting to the formal justice system. Similarly, juvenile justice legislation in **South Sudan** and **East Timor** has been drafted to build on the strengths of traditional restorative practices. Save the Children, Juvenile Justice Law in Somaliland, Unpublished Submission to the International NGO Council on Violence Against Children (2013); Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (2012), p. 8.

40 In **Malawi**, Community Crime Prevention Committees help to divert children from the formal court system, offer family counselling, and support the reintegration of children in conflict with the law. Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 216.

41 In **Papua New Guinea**, a rights-based juvenile justice system developed from cultural traditions of restorative justice encourages diversion from formal court proceedings into community-based mediation. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

42 See Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002), Principles 1-4.

Complaints Mechanisms

The absence of meaningful complaints mechanisms leaves children involved in the juvenile justice system with little recourse when violence is perpetrated against them. Children all too often have no avenues to draw attention to police or institutional violence other than through the police or institutions themselves, and it is no surprise that only a tiny fraction of the acts of violence against children is reported, let alone investigated.[43] For this reason, it is essential that governments provide safe and effective means to report incidents of violence against children in conflict with the law and, as part of this, establish active monitoring mechanisms to ensure that children's right to protection is respected throughout the juvenile justice system.

Children must be able to report violence in ways that are adapted to their rights, needs and level of understanding, and well-publicised complaints mechanisms should be accessible at all stages of involvement with the juvenile justice system. Among other measures, young, disadvantaged or otherwise vulnerable children should be given special assistance in making reports, and children in detention should have confidential access to avenues of complaint both within and outside the institutions in which they are held.[44] Where physical violence is alleged, children should be examined by health professionals to ensure immediate medical attention and document the nature and extent of injury. Juvenile justice staff should also have a general duty to report incidents of violence or ill treatment, and internal systems should be put in place for raising any suspected violence against children.

Whatever their source, all reports of violence against children must be thoroughly, independently and impartially investigated.[45] When a complaint is substantiated, those responsible for perpetrating acts of violence should be held accountable for their actions under a range of sanctions from suspension and termination to criminal prosecution. Equally, child victims should be given adequate compensation for the physical, psychological and emotional injuries they have suffered. National Human Rights Institutions, Children's Ombudspersons and similarly situated independent bodies are often well-suited to oversee investigative and remedial processes, and should be given the necessary authority, resources and independence to do so.

While complaints mechanisms provide an essential avenue for children in conflict with the law to assert their rights, it is not enough to simply respond to concerns around violence as and when they arise. This is particularly true for children deprived of their liberty, who face threats of reprisal in reporting acts of violence and often have great difficulty proving violence has occurred.[46] With this in mind, preventive monitoring provides a way to support and protect children in detention from violence in the first instance. Continuous, regular and at times unannounced[47] monitoring should be conducted by external agencies or independent advocacy organisations with full access to facilities and the ability to interview children and staff in private. It should not only seek to identify areas of concern, but also aim to establish and improve systematic violence protection measures.[48]

Relevant International Standards:
CRC (12, 19, 39); GC10 (89); RG (57);
JDL (7, 24-25, 57, 72-78); GA (21-23, 25, 48);
SG (B.2, B.4); HRC (17); LA (41)

47 In Austria, sentencing judges meet with children in detention once a month, visit institutions unannounced, and write follow-up reports…

43 Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 10; Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 10.

44 In the **Netherlands**, complaints made by children in detention are considered by committees, officials are assigned to both speak with these children in confidence and mediate discussions with staff members implicated, and further channels are available for independent review by higher authorities. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 13.

45 A separate, independent body has been established in **Armenia** to investigate serious crimes, including acts of torture, by public officials. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 10.

46 See Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries: Overview report (2012), p. 37.

47 In **Austria**, sentencing judges meet with children in detention once a month, visit institutions unannounced, and write follow-up reports. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 9.

48 For more information on preventive monitoring, see Association for the Prevention of Torture, Monitoring Places of Detention: A Practical Guide for NGOs, available at http://www.osce.org/odihr/29845.

Data Collection and Research

Policy-makers must understand how the juvenile justice system functions in practice, and advocates must be empowered to hold government authorities responsible where performance does not match stated intention. Yet data are rarely collected, what exists is often not centralised, and figures are published only sporadically.[49] Given this striking paucity of relevant information, it is essential that governments begin to systematically and transparently collect and publicise data on juvenile justice indicators.

Juvenile justice data should include a wide range of statistics from arrest rates and percentages of children diverted from the formal justice system to the number of children in detention and the proportion of children offered reintegration assistance following release.[50] Where it does not already exist, a full set of disaggregated baseline data should also be collected on the prevalence of violence against children in conflict with the law during arrest, interrogation, trial, sentencing, detention, and any other stages of the juvenile justice process.

Building this fuller picture of the juvenile justice system not only provides for more informed policy decisions and increased public accountability, but also supports ongoing research projects to develop ever more effective, non-violent juvenile justice interventions. These projects should be encouraged and promoted, with valuable findings used to produce increasingly positive outcomes for children in conflict with the law.

Relevant International Standards:
CRC (44); GC10 (73, 98-99); BR (30); RG (5, 9, 48, 61-66); GA (31); SG (B.2); HRC (16)

Public Support

Fear and insecurity reinforce negative stereotypes of children in conflict with the law, focusing public perceptions of juvenile justice on youth violence rather than underlying problems of social and economic exclusion.[51] Poorly resourced diversionary and non-custodial measures, meanwhile, fuel ideas that children act with impunity and cannot be adequately rehabilitated in the community. Resulting pushes to "get tough on crime" not only endanger the development of sound juvenile justice policies, but also encourage both official and unofficial violent responses to children in conflict with the law.[52]

As the history and current state of juvenile justice now show, the rehabilitative model requires the confidence and informed support of the public to succeed. Accordingly, a much greater public awareness of children's rights, juvenile justice and the harmful effects of violence against children should be fostered.[53] Juvenile justice systems must also become more worthy of public support, and governments must fully accept their international obligations to adopt, promote and implement a rights-based, non-violent approach to juvenile justice.

Relevant International Standards:
CRC (42); GC10 (96); RG (41-43, 49); JDL (8); GA (11, 27); SG (B.4)

51 **In Uruguay, youth violence was the second most prominent topic in the media in relation to children and adolescents in 2008…**

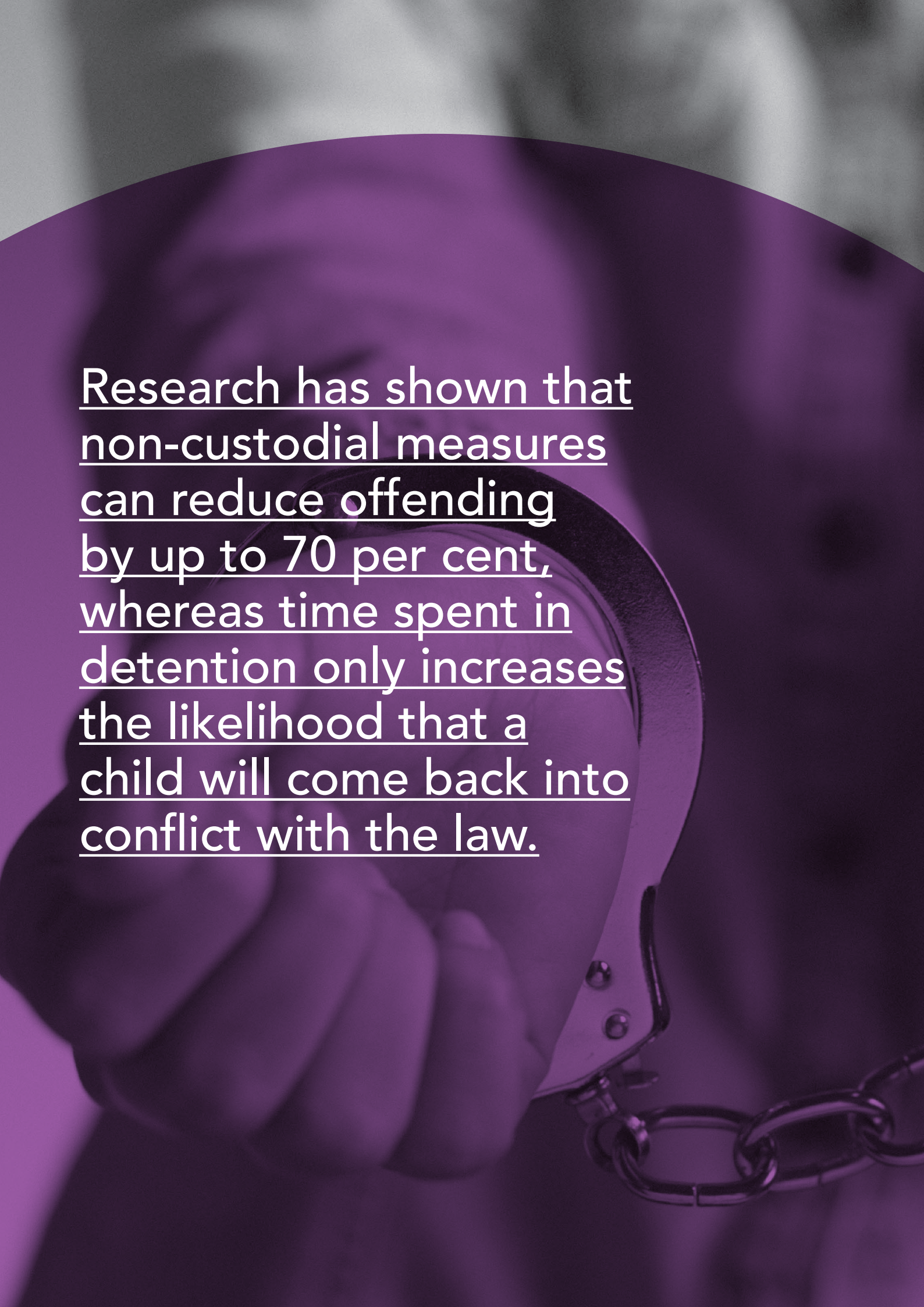
49 See, e.g., UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 9.

50 For a list of suggested juvenile justice indicators, see United Nations Office on Drugs and Crimes and UNICEF, Manual for the Measurement of Juvenile Justice Indicators, available at http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf.

51 In **Uruguay**, youth violence was the second most prominent topic in the media in relation to children and adolescents in 2008. Fundación Justicia y Derecho and UNICEF, Justicia penal juvenil: Realidad, perspectivas y cambios en el marco de la aplicación del Código de la Niñez y la Adolescencia en Maldonado, Montevideo, Paysandú y Salto, p. 35, available at http://www.unicef.org/uruguay/spanish/Justicia_penal_juvenil2010_FINAL.pdf.

52 NGO Advisory Panel for the United Nations Secretary-General's Study on Violence Against Children, Violence Against Children in Conflict with the Law: A Thematic Consultation (2005), p. 4, available at http://www.essex.ac.uk/armedcon/story_id/000280.pdf; Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (2012), p. 7.

53 To publicise a new juvenile justice bill in **Somaliland**, advocacy and awareness programmes targeted community leaders, law enforcement officials, local and regional government figures, religious leaders and media professionals. Save the Children, Juvenile Justice Law in Somaliland, Unpublished Submission to the International NGO Council on Violence Against Children (2013).



Research has shown that non-custodial measures can reduce offending by up to 70 per cent, whereas time spent in detention only increases the likelihood that a child will come back into conflict with the law.

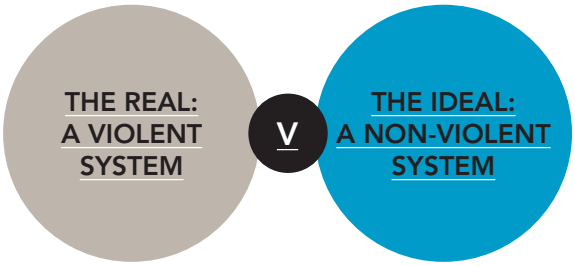
Part III —

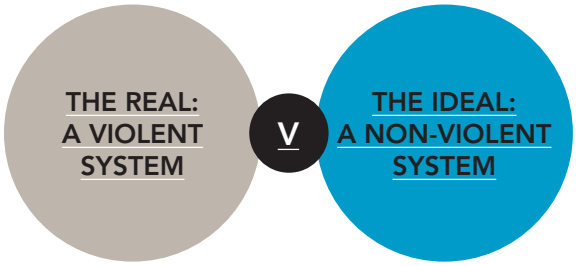
A COMPARATIVE JOURNEY THROUGH VIOLENT AND NON-VIOLENT JUVENILE JUSTICE SYSTEMS

Despite near universal acceptance of international children's rights obligations and standards, violence against children remains prevalent at all stages of involvement with the juvenile justice system. From the moment of first contact through arrest, questioning, prosecution, sentencing, disposition and eventual reintegration, children face violence and other violations of their rights at each step along the way. While the nature and form of these violations vary across and within each system, it is abundantly clear that most countries are failing to protect children from all forms of violence.

To illustrate the violent realities of juvenile justice, this report follows children's turbulent journey through a system theoretically designed to heal. This journey is based in juvenile justice laws, policies, practices, reports, studies and anecdotes from around the world. At the same time, the International NGO Council wishes to present a clear vision of a hypothetical journey through a non-violent juvenile justice system. This is based in international children's rights obligations, accepted juvenile justice guidelines and standards, and established best practices.

By placing real and ideal side-by-side, this report not only highlights the ways in which flawed juvenile justice systems perpetuate violence against children, but also shows how these systems can be reformed to ensure that each and every child who comes in conflict with the law is fully protected from all forms of violence.





FIRST CONTACT

Lack of knowledge, understanding
Police officers form the front line of juvenile justice, yet lack practical knowledge about children's rights.[54] Many police officers have not been trained to interact with children in their official capacity, and address children in conflict with the law in the same way they would adult offenders.[55] Children do not receive special treatment or attention in law enforcement, and divisions dedicated to juvenile justice issues are understaffed, underresourced or absent entirely.[56]

Specialised police units, social services
All law enforcement agencies have specialised juvenile justice units and general training programmes on children's rights to ensure that reports, incidents and cases concerning children are addressed with respect and care.[57] Social and child protection services are linked with the police[58] and, wherever appropriate, form part of the initial response to children who appear to be in conflict with the law.[59]

Relevant International Standards:
CRC (19); GC10 (13, 40, 92, 94, 97); BR (12, 22); RG (9, 58); GA (24, 28); SG (B.1-B.2); HRC (6,10)

Status offences, survival behaviours
Status offences criminalise acts committed by children that would not run contrary to the law were they above the age of majority. Commonly, these offences include curfew violations, school truancy, running away, anti-social or "uncontrollable" behaviour, associating with gangs or suspected criminals[60], or even simple disobedience.[61]
To make matters worse, survival behaviours like begging, scavenging, loitering, vagrancy and prostitution are also outlawed, disproportionately impacting disadvantaged children and those living or working on the street.[62]

The criminalisation of status offences and survival behaviours reinforces ideas that equate poverty and youth with criminality.[63] The broad authority and wide discretion granted to police in enforcing these laws[64] further open the door to discrimination, aggression and violence directed toward children.[65]

Non-discrimination, social welfare support
Status offences are recognised as a form of harmful age discrimination and eliminated, meaning that children are not approached, questioned or arrested for actions that would not violate the law if undertaken by adults. Survival behaviours are similarly not considered cause for prosecution; rather, children found by police to be in need of care or protection are offered services and assistance through the social welfare system.

Relevant International Standards:
CRC (2, 19-20); GC10 (6, 8-9, 94); BR (3); RG (56); SG (A.2); HRC (14)

Targeting vulnerable children
Disadvantaged, vulnerable and disempowered children are perceived by the police as delinquent, and hence more likely to become involved in the juvenile justice system.[66] Police violence against vulnerable children is targeted and systematic, with frequent reports of extortion, threats, beatings, rape and even murder.[67] These actions form part of larger campaigns to "cleanse" the streets[68], and law enforcement performance targets based on the number of arrests made or crimes solved all but guarantee the over-policing of disadvantaged areas.[69] As a result, patterns of discrimination and violence become further entrenched and increasingly erode relationships between the police and the communities in which they operate.[70]

Sensitivity to vulnerable children
Every child is treated with dignity and in a manner appropriate for his or her age and maturity. Situations of vulnerability and disadvantage are identified to ensure greater protection and provide additional support rather than to harass, interrogate or apprehend. Arrest, detention and conviction rates are in no way considered indicators of success, and police have built non-violent relationships of trust and confidence with children and communities.

Relevant International Standards:
CRC (2, 19, 40); GC10 (6, 18, 97); SG (A.5, A.7); HRC (8, 19)

APPREHENSION

Brutal, poorly documented arrests

Children are apprehended in violent circumstances, sometimes even during late night or early morning raids on their family homes[71], and systematically searched with little regard for their privacy or human dignity.[72] Police officers forget or refuse to register the details of arrest, leaving children without formal recognition of their status as suspects.[73] Children may not know or understand the charges against them, and are often not informed of their legal rights, the nature of the judicial process, or the potential consequences of a conviction or guilty plea.[74] Moreover, where children do not have official identification with record of their birthdate[75], police rely on inaccurate or arbitrary means to verify their age[76] or presume that they are above the age of majority to avoid providing the special protections to which they should be entitled.[77]

Respectful transition into custody

Children are taken into custody with the utmost care and consideration, and there is clear, rights-based guidance for the conducting of searches and, where warranted, the collection of samples. Among other measures, searches are always conducted by police officers of the same gender, and intimate searches are only undertaken when exceptionally justified and with appropriate safeguards in place.

All children are informed of the reasons for their arrest in language they can understand and a manner appropriate for their age and level of maturity.[78] As soon as possible following apprehension, written records are also made regarding the date, time and place of arrest; the name of the arresting officer; the name, age and details of the child arrested; the reason for arrest; and any location at which the child is or was held in custody or detention. These records are considered confidential and made open for inspection only as necessary to lawyers, social workers, independent monitoring bodies, and other relevant persons or agencies acting in support of children's rights.

In addition, if there are doubts as to whether young people are above the age of majority, they are treated as children until their age can be properly determined in a reliable, accurate manner that is respectful of their rights.[79]

Relevant International Standards:
CRC (16, 19, 37, 40); GC10 (39, 44, 46-48, 62-63, 72); BR (8, 21); JDL (21); GA (12); HRC (19)

Harsh interrogations

Children are subjected to harsh, threatening and lengthy interrogations, and are not made aware of their rights as they relate to police questioning.[80]
Even where sufficient legal protections for interviewing children thought to be in conflict with the law exist, these are openly flaunted by investigating officers or circumvented by redefining interrogations as informal "conversations."[81] The failure to accord children their full rights as suspects leaves them particularly vulnerable to torture[82], abuse and other forms of violence.[83] Some fare little better upon being formally charged, and violent tactics are regularly employed to elicit incriminating information.[84] In many circumstances, children are tricked or forced into signing confessions simply to end the pain of interrogation.[85]

Child-sensitive interviews

Special, child-sensitive rooms are designated for questioning children thought to be in conflict with the law, and police interviews are of a duration and nature appropriate for children.[86] Children are accorded their full rights as suspects, and are never asked to make statements or sign documents outside the presence of a lawyer and a parent, guardian or other interested adult. Where necessary, interrogations are independently monitored or audio-visually recorded to ensure that young or particularly vulnerable children are protected from violence during police questioning. Any evidence obtained through torture, duress, ill-treatment or other forms of violence is not admissible in court.

Relevant International Standards:
CRC (19, 37, 40); GC10 (56-58); BR (10); GA (11); SG (A.3-A.4, B.2); HRC (19); LA (36, 47)

APPREHENSION

Discouraged family involvement

Parents and guardians are frequently not notified of their child's arrest, given sufficient time to join their child at the police station or informed of their child's first appearance in court.[87] In some instances, parents are contacted only to extract a bribe in exchange for the release of their children;[88] in other circumstances, they may wish to join their children at the police station, but are fearful that they, too, will be arrested.[89] As a result, children are often left at the mercy of law enforcement authorities without the support, protection and understanding of a trusted adult.[90]

Full parental support

When children are taken into custody, their parents or guardians are promptly notified and asked to join them at the police station and any subsequent court appearances so long as this does not run plainly contrary to the child's best interests.[91] Where the identity of a child's parents or legal guardian is not known, he or she is provided with an independent, reliable source of adult support in all official interactions with law enforcement authorities.

Relevant International Standards:
CRC (9, 40); GC10 (53-54, 58); BR (7, 10, 15), JDL (22); LA (47)

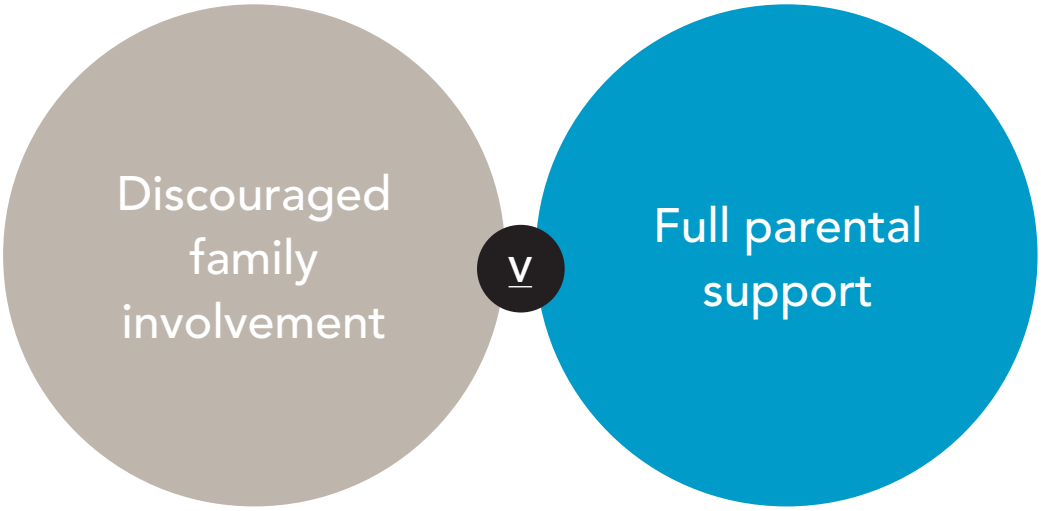
Absent, ineffective counsel

The vast majority of children cannot afford their own lawyer, yet legal aid is simply not available for many if not most children in conflict with the law.[92] Children either do not have the right to counsel or cannot obtain representation in practice given the shortage of available defence lawyers.[93] Even when legal assistance is in fact provided, it is often not offered until after children have been questioned by law enforcement.[94] Alternatively, police may intentionally secure the appointment of lawyers who will knowingly fail to act in accordance with a child's wishes or best interests during interrogation.[95]

Immediate, competent legal assistance

Children are given access a lawyer from the moment they are taken into custody.[96] They may elect to be represented by a lawyer of their choice or by competent defence counsel at the expense of the government. Lawyers are trained and knowledgeable in representing children in conflict with the law, and wherever possible remain assigned to cases through to completion.[97]

Relevant International Standards:
CRC (37, 40); GC10 (49-50, 52, 58, 82); BR (7, 15); JDL (18); GA (16); SG (A.6, B.1-B.2); HRC (4); LA (18, 26, 28-29, 31, 40, 44-47)



PRE-TRIAL DETENTION

Unchecked, indefinite police custody

Vast numbers of children are held in detention without having ever been tried.[98] Even where laws demand that children taken into custody be brought before a court within a matter of hours, children languish in police jails for days, weeks and months at a time.[99] There are often no firm upper limits set on the amount of time children can spend in pretrial detention, and judges may be able to extend this period indefinitely.[100] Even where these limits exist, they are frequently impossible to enforce without documented dates and times of arrest.[101] Judicially sanctioned release also does not guarantee an end to pretrial detention, as bail amounts are often set too high for children or their families to post.[102]

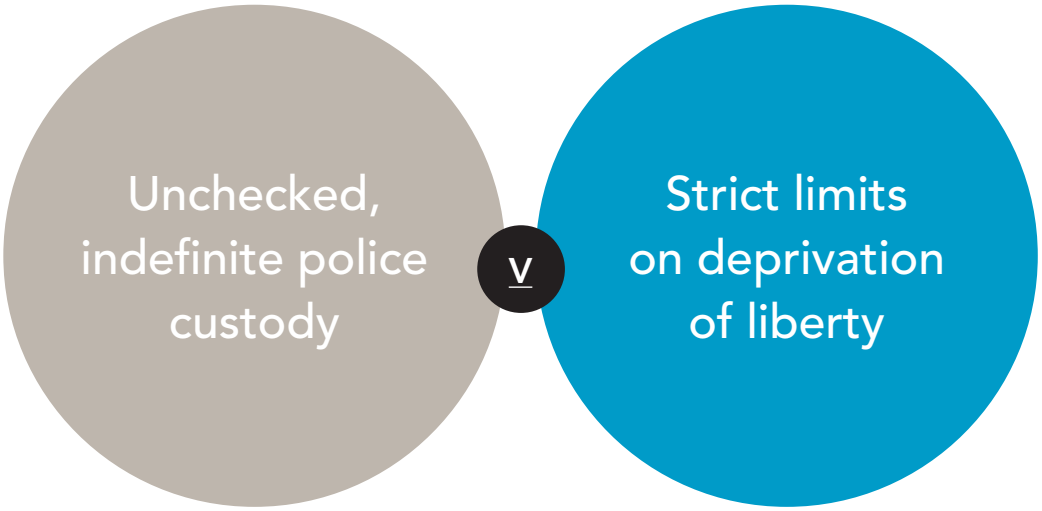
Despite their unsuitability for children, police cells are by and large the venues of choice for pretrial detention.[103] The conditions in pretrial detention rooms are grim[104], and children in pretrial detention do not benefit from the same educational programmes available in long-term residential facilities.[105] Children are also especially vulnerable to violence and abuse while in pretrial detention, and run greater risks of deliberate ill-treatment at police establishments than more formalised institutions.[106]

Strict limits on deprivation of liberty

Pretrial detention is a matter of absolute last resort,[107] and children held in police custody are brought before a judicial authority as soon as possible and at the very latest within 24 hours of arrest.[108] Continued pretrial detention is only authorised if there is a serious risk of children causing significant harm to others, and then only for the shortest possible period of time.[109] Where this is the case, children are placed in age-appropriate residential centres that ensure full respect for their rights and provide suitable care, protection and recovery services.

Children are never held in pretrial detention for longer than six months,[110] and are reviewed by a judicial authority at minimum every two weeks to consider new information or changes in circumstance that would enable their release. As in any legal proceeding, children are represented by a competent lawyer and accompanied by a parent, guardian or trusted adult. At each hearing, the reasons and evidence supporting continued deprivation of liberty must be presented to any child ordered back into custody. When release becomes appropriate, this is not made conditional on providing monetary security, and children are wherever possible returned to the care of a parent, guardian or other responsible adult with necessary support for reintegration in place.

Relevant International Standards:
CRC (37, 40); GC10 (11, 28, 42, 51, 79-84); BR (7, 10, 13, 19-20); JDL (17-18); GA (18, 35); SG (A.8, B.2); HRC (9)



Many children in conflict with the law simply do not understand the nature of legal proceedings or the roles that judges, prosecutors and even their own lawyers play.

TRIAL

Sparse, non-existent juvenile courts

Separate courtrooms and facilities for children in conflict with the law are few and far between. Juvenile court proceedings are held in the same facilities as adult criminal trials,[111] and many children are simply tried in adult courts without any of the special protections to which they are entitled.[112] These trials are often conducted in open courtrooms, leaving children to be scrutinised by members of their communities, media outlets and the public at large.[113]

Even where juvenile courts exist, children in some locations are forced to travel long distances to reach them.[114] This not only makes children vulnerable to police violence during transport, but effectively prevents parents or guardians without time and resources to spare from accompanying their children to court proceedings.

Adapted facilities, proceedings

All children in conflict with the law are brought before local juvenile courts in facilities adapted for their needs. Courtrooms are designed to be non-intimidating, and special child-sensitive waiting rooms are available. Sessions are held behind closed doors, and children accused of being in conflict with the law are never publicly identified unless at their express, informed request.[115]

Proceedings are informal and conducted in a language and manner appropriate for children's age and level of understanding. Among other measures, judges, lawyers and court staff are not attired in robes or uniforms; sessions are scheduled with shorter hearings and regular breaks; and disruptions and distractions are kept to a minimum.[116]

Relevant International Standards:
CRC (40); GC10 (46, 64-67, 92-93); BR (8, 14); GA (14); SG (A.4, A.6, B.2); LA (46-47)

Enforced, unaccompanied silence

Many children in conflict with the law simply do not understand the nature of legal proceedings or the roles that judges, prosecutors and even their own lawyers play. As above, they are not entitled to have counsel guide them through hearings, and most receive poor quality legal advice at best.[117] Even when children are assigned a lawyer for trial, this can be at extremely short notice and subject to frequent replacement as proceedings progress.[118] Without representation, some courts do not permit children to testify, speak or communicate at all.[119] Where children do take the stand, they can also be required to answer tricky, aggressive or confusing questions that make it difficult for them to provide accurate information.[120]

Full participation

All children are informed beforehand about the way that juvenile justice hearings work. They are able to participate fully in proceedings brought against them, and are treated with respect and sensitivity for their age, special needs, maturity and level of understanding. Children have the assistance of counsel and are able to contribute to their own defence. They have a right, but not an obligation, to provide evidence before the court. Where children elect to testify, they are asked straightforward questions in appropriate, child-sensitive language and protected from hostile cross-examination.

Relevant International Standards:
CRC (12, 40); GC10 (12, 43-46, 56, 59); BR (7, 14-15); SG (A.3, A.6, B.2); LA (45, 47)

Delayed, permanent justice

Juvenile courts are overwhelmed with massive caseloads and extensive backlogs,[121] and cases are further stalled by bureaucratic procedural requirements and frequent adjournments.[122] The resulting delays in processing, investigation and scheduling mean that some children wait years before their cases are resolved.[123] When decisions are eventually reached, they are rarely presented in language that children can understand, and children may have no additional legal or practical recourse to seek review before a higher court. Moreover, final dispositions are neither private nor expunged upon a child attaining the age of majority, meaning that children effectively have a permanent criminal record.[124]

Prompt, confidential resolution

Recognising that time may pass more slowly for children[125], cases involving children, especially children held in pretrial detention, are prioritised and resolved promptly and without delay.[126] Judicial decisions and determinations are sufficiently documented and explained in a language that children can understand, and there is an immediate right of appeal to a higher authority. All records related to legal proceedings involving children in conflict with the law are kept confidential, and findings of responsibility for juvenile offences are expunged when children attain the age of majority.

Relevant International Standards:
CRC (16, 40); GC10 (27, 51-52, 60, 64, 66-67, 82-84); BR (7-8, 20-21); JDL (17, 19); GA (23); SG (A.6); LA (41, 46)

DISPOSITION

Violent, inhuman sentencing

Children found to be in conflict with the law are subjected to physically and psychologically violent sentences. Children can be lawfully executed in at least seven countries,[127] and caning, whipping, flogging, stoning, amputation and other forms of corporal punishment are acceptable judicial dispositions in many more.[128] Large numbers of children are sentenced to life imprisonment, some without the possibility of release, or else given prison sentences so lengthy or of a perpetually indeterminate nature that they are effectively expected to die in incarceration.[129]
Even less restrictive environments can prove violent and inhuman, with some children coerced into attending military-style programmes that promote atmospheres of intimidation and aggression.[130]

Rights-based dispositions

Children in conflict with the law are never subjected to capital punishment, corporal punishment or life imprisonment, and all forms of violent and inhuman sentencing are prohibited by law. Dispositions both respect children's rights and serve their best interests, and are developed with the input of relevant child welfare experts and professionals.

Relevant International Standards:
CRC (3, 19, 37, 40); GC10 (10, 13, 71, 74-77); BR (16-19); RG (54); SG (A.4); HRC (13, 19); LA (45)

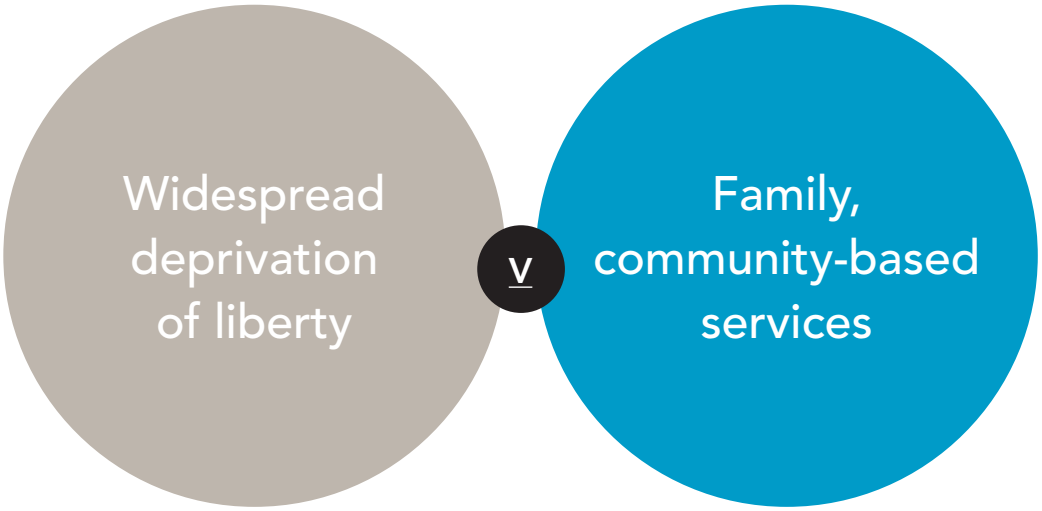
Widespread deprivation of liberty

It was estimated in 1999 that there were one million children in detention,[131] and that figure is only likely to have grown. Incarceration is the default option in many systems,[132] even for first-time offenders and children charged with minor, non-violent offences.[133] Children's social, familial, educational and economic circumstances are rarely considered in sentencing, and little effort is made to determine the least restrictive response.[134] Suitable non-custodial measures are strikingly absent, and many children are not offered services to which they should be entitled[135]

Family, community-based services

Sentences involving deprivation of liberty are considered a measure of last resort, only imposed on children who are assessed as posing a serious risk to public safety, and then only for the shortest necessary time.[136] Wherever possible, sentences of detention are suspended and children are permitted to receive necessary rehabilitative services in the community. Family and community-based measures are prioritised and widely available; residential placements are offered only where found to be in the child's best interests.

Relevant International Standards:
CRC (3, 37, 40); GC10 (11, 23, 28, 70-71, 73-74, 79-80, 94); BR (17-19, 23, 28); RG (17-19; 32-35); JDL (1-2); GA (18, 42); SG (A.8, B.2); HRC (9); LA (47)



DETENTION

Adult, peer abuse

Although most countries have legal requirements that children in conflict with the law be detained in separate facilities from adults, this is rarely the case in practice,[137] especially for the comparatively smaller number of girls involved in the juvenile justice system.[138] Incarcerated alongside adults, these children face higher risks of sexual abuse[139] and other forms of violence. Similar concerns exist even where children are held in separate facilities, as younger and more vulnerable children can be subject to bullying, abuse and other forms of victimisation by their older peers.[140] Where conditions are poor and food and water scarce, peer violence becomes an increasingly endemic survival strategy;[141] in the worst cases, this violence is systematically perpetrated by gangs of juvenile detainees.[142]

Separate, age-appropriate placement

The separation of children in conflict with the law from adults is mandated and enforced at all points of deprivation of liberty, including in police custody, pretrial detention and during transportation between facilities. Children are placed in age and gender-appropriate facilities tailored and staffed according to their rights and needs. Where necessary, children of differing ages and levels of vulnerability are separated to ensure their protection.

Relevant International Standards:
CRC (2, 3, 37); GC10 (40, 85-86); BR (26-27); JDL (27-29); SG (A.4)

Overcrowding, squalor, neglect

Prisons around the world are increasingly overcrowded,[143] and some juvenile detention centres now exceed their stated capacity five times over.[144] Conditions in these centres are deplorable. Dirty, windowless cells offer little fresh air and play host to disease-carrying rodents and insects.[145] Personal hygiene facilities are sparse and inadequate; showers, soap, shampoo, toothpaste, toilet paper and clean clothes are routinely unavailable. Even safe drinking water and adequate sustenance are not reliably provided.[146]

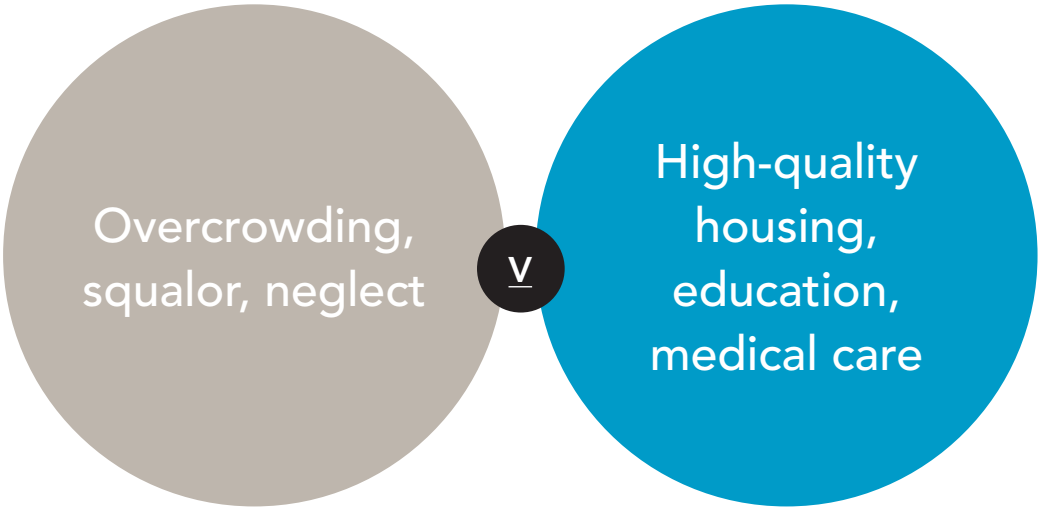
The provision of medical care is inadequate or non-existent,[147] and despite the prevalence of psychological concerns,[148] these go unrecognised, unreported, undiagnosed and untreated.[149] Mental health issues become exacerbated in detention,[150] and ultimately lead to suicidal thoughts,[151] self-harm[152] and even death.[153] Children deprived of their liberty are also not given a chance to pursue their education in a meaningful way,[154] and have limited opportunities for recreation.[155]

High-quality housing, education, medical care

Detention facilities for children in conflict with the law are suitably large, well-lit, ventilated, properly furnished, appropriately decorated and equipped with spaces for learning, exercise and group activities. All children deprived of their liberty are screened by a doctor for physical and mental health-related issues; further check-ups are regularly scheduled, and ready access to medical care is provided at all times. There are dedicated psychiatric and psychological services, and therapeutic mental health care is widely available.

Children in detention also have a right to and receive a quality, comprehensive education aimed at the development of their full potential,[156] and wherever possible attend community schools.[157] Wider programmes include vocational training, preventive health instruction, physical education and supervised recreation.

Relevant International Standards:
CRC (24, 28, 31, 37); GC10 (40, 89); BR (13, 24, 26); RG (20-28, 45); JDL (12-14, 18, 27-28, 30-55); SG (B.4)



DETENTION

Violent discipline

Corporal punishment and other forms of violence are widely and lawfully used as a form of control.[158] Children in detention are beaten, punched, hit with objects,[159] tied down, verbally abused and humiliated.[160] They are physically and painfully restrained,[161] deprived of food and water,[162] and kept in total isolation for lengthy periods.[163] Visits from family members are restricted or prohibited,[164] and children are transferred to secure institutions long distances from their homes.[165]

The culture of violence in juvenile detention centres permeates all levels of staff, leaving children in detention vulnerable to extreme forms of abuse including rape[166] and torture.[167] Under the control of largely male guards, girls are at particular risk of sexual violence and harassment.[168] Security staff also fail to protect children from violence inflicted by other detainees, and may even sanction or encourage abuse.[169]

Positive, non-violent responses

Written disciplinary rules uphold the rights and dignity of children in detention, and staff are held accountable for violations of established procedures. Physical chastisement, solitary confinement and other degrading or humiliating forms of discipline are prohibited. The use of force is permitted only where children pose an imminent threat of injury to themselves or others, and any restrictive measures taken are executed in line with formal safeguards.

Child protection policies also establish the duty of all personnel to ensure that children are protected from violence in detention, and special attention is given to girls and other vulnerable populations.[170] Positive, non-violent communication with and among young people is encouraged to build a climate of respect and trust. Children are placed in facilities as close to possible to their homes, and are permitted regular weekly visits with family members in comfortable, private settings. Where desired, children are also allowed to contact and seek the support of outside organisations involved in the development and rehabilitation of juvenile offenders.

Relevant International Standards:
CRC (2, 9, 19, 37); GC10 (87, 89); BR (26-27); RG (53-54); JDL (26, 28, 56, 58-71, 87); GA (18, 20, 25, 35); SG (A.4-A.5, B.1-B.2); HRC (19)

REINTEGRATION

Unsupported release

Detention has profoundly negative impacts on children's mental and physical wellbeing.[171] The long-term effects of institutionalisation include developmental delays, disability and irreversible psychological damage.[172] Many children who have been in detention have difficulty returning to school,[173] and incarceration has serious, immediate and permanent negative effects on prospects for education and employment.[174]

More often than not, there are no services available to children once they leave the juvenile justice system.[175] Children are returned to families who do not have the resources to facilitate their reintegration[176], and the experience of detention can make reestablishing parental relationships difficult.[177] Within the wider community, discrimination and stigmatisation pose significant obstacles to children's full reintegration.[178] With little to no support, diminishing educational and economic opportunities, and increasingly strained familial and social relations, many children find themselves back in contact with the juvenile justice system within a short period after their release from detention.[179]

Seamless transition

Formal transition plans are developed for all children leaving detention with the participation of psychologists, social workers, children and their families. Reintegration services are discussed, agreed and put in place well before children are released, allowing for a seamless return to education, family, community and society. Children who have been in conflict with the law are assured legal protection from discrimination, and their histories of involvement with the juvenile justice system are viewed only as reasons to make additional support available in the interests of preventing future offending behaviour.

Relevant International Standards:
CRC (2, 12, 39, 40); GC10 (7, 12, 23, 29); BR (24-25, 29); RG (20-39); JDL (38, 40, 45, 49, 51, 79-80); GA (35, 42); SG (B.2, B.4); HRC (11)

The long-term effects of institutionalisation include developmental delays, disability and irreversible psychological damage.

Part IV —

CONCLUSION + RECOMMENDATIONS

Despite long-standing international recognition of children's right to be protected from all forms of violence, children in conflict with the law continue to face acts of aggression and abuse at every stage of their involvement with the justice system. Children in all corners of the globe are needlessly arrested, brutally interrogated, unfairly convicted, and summarily imprisoned for weeks, months, years or even lifetimes. Although there has been ample time, guidance and encouragement to address this growing crisis, distinct juvenile justice systems remain underdeveloped, underutilised, underresourced and underappreciated. All too often, promises of positive, healing interventions into children's lives have collapsed into inevitable violations of their rights.

Juvenile justice may have fallen well short of its lofty ideals, but this is not cause to abandon the rehabilitative ideal for a return to the one-size-fits-all criminal justice model. This report demonstrates the broad support and clear imperative for a non-violent juvenile justice, and presents an attainable global vision for the respectful and restorative treatment of children in conflict with the law. It must be seen not as a stinging indictment of juvenile justice systems, but as a call to action for international organisations, national governments and children's rights advocates alike.
With this in mind, the International NGO Council recommends the following:

Children in all corners of the globe are needlessly arrested, brutally interrogated, unfairly convicted, and summarily imprisoned for weeks, months, years or even lifetimes

To International/Regional bodies:

To International and Regional Intergovernmental Organisations

- Work in partnership to build a global consensus around the non-violent juvenile justice imperative, ensuring that juvenile justice and violence against children remain at the top of the international human rights agenda.
- Develop new guidelines, standards, model laws and best practices on non-violent juvenile justice, and provide technical and institutional support to national governments in the implementation of all relevant human rights instruments.

To the Committee on the Rights of the Child:

- Continue to monitor States' progress in respecting, protecting and fulfilling children's rights in juvenile justice, bringing violations to attention and issuing recommendations tailored to improve the situation of children in conflict with the law in national legal systems.
- Encourage the collection and publication of comprehensive juvenile justice information to facilitate a more informed debate and dialogue.

To the Human Rights Council

- In its full-day meeting on children's rights and access to justice in March 2014 and follow-up activities thereafter, address children's right to be protected from all forms of violence in the juvenile justice system and children's right to a remedy where they have been subjected to violence and other rights violations.

To the Special Representative to the Secretary-General on Violence Against Children

- Following on the findings and recommendations of the UN Study on Violence Against Children and the World Report on Violence Against Children, provide worldwide leadership in eliminating violence against children in conflict with the law as exemplified in the Special Representative's 2012 report on Prevention of and responses to violence against children within the juvenile justice system.

To National Governments:

On International Standards:

- Review and revise national juvenile justice legislation, regulations and policies in line with relevant international standards and the ideal model presented in this report to provide a clear mandate and sound legal framework for a non-violent approach to children in conflict with the law.

On Building a Non-Violent Juvenile Justice System:

- A Distinct Juvenile Justice: Operate a separate justice system for children accused of being in conflict with the law that is firmly grounded in the rehabilitative ideal and fully recognises children's unique rights and vulnerability.
- Reach and Jurisdiction: Ensure that all and only children accused of being conflict with the law are processed through the juvenile justice system, meaning that no child is tried in adult criminal court and that any child in contact with the law not suspected of committing an offence is handled through a suitable alternate channel.
- Minimum Age: Prevent the criminalisation of children by raising the minimum age of criminal responsibility to match the internationally accepted age at which children attain majority.
- Staffing: Screen and hire qualified professionals, treat all juvenile justice personnel with suitable respect and appreciation, and offer staff continued training and education on children's rights, non-violent interaction, and other pertinent topics.
- Prevention: Adopt a preventive focus as a front-line strategy, respecting children's rights from birth and providing the familial, educational, social and financial support necessary to help every child grow, develop and reach his or her full potential.
- Diversion and Non-Custodial Measures: Promote diversion and non-custodial measures, recognising both that children in conflict with the law are better rehabilitated in the community and that children may only be lawfully detained as a matter of last resort and for the shortest possible period of time.

- Restorative Justice: Building on traditional notions of justice, adopt community-based, restorative solutions that help children to take responsibility for their actions outside the formal justice system.
- Data Collection: Systematically collect data on juvenile justice indicators to determine the extent of violence against children in conflict with the law and aid in the analysis and evaluation of relevant laws, policies and practices.
- Research: Encourage and fund research studies in the area of juvenile justice with a view to improving the effectiveness of non-violent interventions.
- Public Support: Raise awareness of children's rights and the non-violent juvenile justice imperative, enhancing public support and respect for children in conflict with the law.

On Independent Oversight:

- Establish National Human Rights Institutions and Children's Ombudspersons with the independence, authority and resources to investigate widespread violations of children's rights, receive complaints from individual children, and provide effective remedies to children whose rights have been breached as a result of their interaction with the juvenile justice system.
- Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure to enable child victims of violence and other rights violations to seek international redress.
- Foster a vibrant and diverse civil society with the power, resources and ability to challenge official violations of children's rights, ensuring that advocates enjoy the full protection of the law in all aspects of their work.

To Children's Rights Advocates

On Effective Monitoring

- Support government efforts to realise children's rights in the juvenile justice system, providing creative ideas and novel solutions that promise to better serve the aims of the rehabilitative ideal.
- Monitor the situation of children in the juvenile justice system, compiling anecdotal evidence and numerical data to paint a clear picture of the ways in which children's rights are respected or violated.
- Empower and assist children in conflict with the law whose rights have been breached to challenge these violations through judicial channels and established complaints mechanisms.

On Increased Awareness:

- Disseminate accessible, child-sensitive information on children's rights in the juvenile justice system from first contact to eventual reintegration.
- Engage with the media to ensure ethical reporting and draw public attention to juvenile justice law and policy debates, violations of children's rights in the juvenile justice system, and other pressing issues related to children in conflict with the law.

References for Part III
54 — 81

54 See Defence for Children International, Ending Violence against Children in Justice Systems: Strategies for Civil Society Engagement in the Follow-up to the UN Study (2009), p. 26, available at http://www.defenceforchildren.org/files/gabriella/Violence%20Report_EN.pdf.

55 Sensitivity training is noticeably lacking in **Belize** for large numbers of police officers who encounter children in conflict with the law during the course of their work. Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007).

56 Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 11.

57 The Child Rights Act in **Sierra Leone** established a Family Support Unit within the national police to manage cases involving alleged child offenders. The Family Support Unit aspires "to create a violence-free society by eradicating or minimising the incidence of...child offending." African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 68.

58 In **Jordan**, social workers are positioned alongside law enforcement officers in special juvenile police units. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 11. In **Uganda**, Child Protection Units operate in many police stations to ensure that children's rights are respected throughout their contact with the justice system. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), pp. 124/125.

59 In parts of **India**, Special Juvenile Police Units have employed social workers to provide training, expertise and ongoing support to police officers in making decisions that are in the best interests of children in conflict with the law.

Railway Children, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

60 In **Uruguay**, children can be detained merely because their appearance suggests involvement in criminal behaviour. Fundación Justicia y Derecho and UNICEF, Justicia penal juvenil: Realidad, perspectivas y cambios en el marco de la aplicación del Código de la Niñez y la Adolescencia en Maldonado, Montevideo, Paysandú y Salto, p. 22.

61 See Child Rights International Network, Global Report on Status Offences (2009), available at http://www.crin.org/docs/Status_Offenses_doc_2_final.pdf.

62 The Juvenile Offenders Act of **Belize** specifically criminalises begging, being found wandering or destitute, being under the care of a criminal or drunk parent, being the daughter of a father convicted of an offence through gross indecency, frequenting the company of a thief, or lodging in a house used by prostitutes. In **Nigeria**, children can be arrested and detained for being "beyond parental control." Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007); Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 194.

63 UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

64 Begging, prostitution, vagrancy and loitering are reported to be frequent causes of arrest in **Tanzania**. Consortium for Street Children, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

65 In **Colombia**, two 14 year-olds were drenched in oil and burned at a police station in Bogotá for breaking a curfew. Defence for Children International, Violencia Institucional Vinculada al Functionamiento de los Sistemas de Justicia Penal Juvenil, p. 6.

66 In **Egypt** and **Rwanda**, street children in particular are labeled by police as destructive pests. Consortium for Street Children, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

67 Id.

68 Campaigns to "cleanse" neighbourhoods of street children have been widely reported in **Cambodia**. Id.

69 In **Bangladesh**, police officers are judged on the number of arrests made; in **Russia**, promotions are based on the number of crimes solved. In **Belize**, some police stations give awards to the officers who have made the most arrests. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), pp. 18, 91; Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007),

70 Widespread distrust of law enforcement has been reported among people living in disadvantaged areas of **Bolivia** and **Peru**. See Defence for Children International, Apuntes Sobre Seguridad Ciudadana y Jusiticia Penal Juvenil: Tendencias en America del Sur (undated).

71 Night-time raids are widely reported in the **Occupied Palestinian Territories**. Defence for Children Palestine, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

72 Routine strip searches as performed in the **United States** are especially degrading for girls during times of menstruation and traumatic for children who have been victims of sexual abuse. See Jude McCulloch and Amanda George, Naked power: Strip searching in women's prison, in Phil Scraton and Jude McCulloch, The Violence of Incarceration (2009).

73 Reports indicate that police officers in **Russia** often fail to register children's date and time of arrest despite legal requirements. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 96.

74 One study found that over 90 percent of children found to be in conflict with the law in **Belize** had confessed to committing crimes without an adequate understanding of their rights, the court system, or the effect of a criminal record. Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007).

75 In **Tanzania**, for instance, age determination is a particular challenge given that only 20 percent of births are registered and only 6 percent of children under the age of 5 have a birth certificate. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 107.

76 Age determination methods undertaken by the police in **Uganda** have been revealed as problematic and inaccurate. Id. at 121.

77 Police in **Bangladesh** overestimate the age of children in custody to avoid following the additional regulations required when dealing with a child detainee. Id. at 18.

78 In **Malawi**, for example, police officers must inform children of the reasons behind and rights in relation to their arrest in a manner appropriate to the child's age and understanding. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 33.

79 Under rules governing the arrest and detention of children in **Ecuador**, any doubts regarding age are resolved in favour of the child. De la Detención de Adolescentes, Submission to the International NGO Council on Violence Against Children (2013).

80 Children arrested in the **Occupied Palestinian Territories** report that they are rarely informed of their rights, including the right against self-incrimination. Defence for Children Palestine, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

81 UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 6.

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82 — 98

82 There are wide reports of children being burned, cut, whipped and intentionally humiliated in **Papua New Guinea** to extract confessions and additional information. Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 197.

83 Interviews with children who have been informally questioned by the police reveal, among other things, practices of subjecting child suspects to deprivation of water, sleep and access to toilets, verbal abuse, physical violence, rape and electric shocks. Even more worryingly, there are reports of extra-judicial executions of children in police custody at the hands of law enforcement authorities in **Honduras**. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 10; Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 297.

84 In **Afghanistan**, one survey found that 45 percent of children interviewed had been physically abused by the police and prosecuting authorities. In **Bangladesh**, children in police custody are commonly handcuffed or tied in ropes despite this running contrary to police regulations. Systematic violence against children in police custody has also been catalogued in **Belgium**, **Bolivia**, **Ghana**, **Kazakhstan** and **Nepal**, among many other jurisdictions.

Terre des hommes, An Assessment of Juvenile Justice in Afghanistan (2010), p. 36, available at http://www.crin.org/docs/Tdh_Juvenile_justice_web.pdf; Bangladesh Police Assessment Study for Children (2009), available at: http://www.police.gov.bd/index5.php?category=230; Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), pp. 15-16; Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 61.

85 In **Belize**, there are indications that police misrepresent the potential consequences of arrest and conviction to frighten children into making confessions, while in **Afghanistan** many children reported that they were unaware they had signed confessions until their first appearance in court. Similarly, children in **India** have reported being forced to sign blank pieces of paper on which confessions were later written, and children in the **Occupied Palestinian Territories** cite being presented with confessions written in Hebrew, a language few understand. See Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007); Terre des hommes, An Assessment of Juvenile Justice in Afghanistan (2010), p. 37; Ruzbeh N. Bharucha, My God is a Juvenile Delinquent (2008), p. 289; Defence for Children Palestine, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

86 In **Kazakhstan**, a child's parent or guardian must be notified within 12 hours of arrest. A lawyer must be assigned from the moment of apprehension and present during all interrogations. Children cannot be questioned at nighttime, for more than two hours at a time, or for more than four hours total over the course of a day. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 66.

87 Police in **Kenya** rarely contact the parents or guardians of children taken into custody either to inform them of the child's arrest or scheduled appearance in court. CRADLE, The Undugu Society of Kenya and the Consortium for Street Children, Street Children and Juvenile Justice in Kenya (2004), p. 24, available at http://www.streetchildren.org.uk/_uploads/Publications/1.Street_Children_and_Juvenile_Justice_in_Kenya.pdf.

88 A police assessment study in **Bangladesh** revealed that parents are often informed of their child's arrest with the sole intention of demanding a bribe. Bangladesh Police Assessment Study for Children (2009), available at http://www.police.gov.bd/index5.php?category=230.

89 In **Uganda**, parents or guardians often reported being too scared to accompany their children to the police station. See Foundation for Human Rights Initiative, Juvenile Justice in Uganda: Report for the Period January to July 2009, available at http://www.beta.afronet.biz/~fhri/Juvenile%20Justice%20Report%202009.pdf.

90 Children in **Tanzania** are generally not accompanied by a parent or other adult when questioned by the police with regard to an alleged offence. United Republic of Tanzania, Ministry of Constitutional and Legal Affairs, Child Justice: Five Year Strategy for Child Justice Reform (2012), p. 47, available at http://www.penalreform.org/wp-content/uploads/2013/07/Tanzania-National-Child-Justice-Reform-Strategy-2013-17.pdf.

91 In **Germany**, a child's parents or guardians are required to attend his or her first court appearance. Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 13.

92 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems para. 5; Open Society Justice Initiative, Pretrial Detention (2008), p. 28, available at http://www.opensocietyfoundations.org/sites/default/files/Justice_Initiati.pdf.

93 Children in **Austria** may be questioned and asked to sign statements outside the presence of a lawyer, parent or appropriate adult. Ursula Kilkelly, Children's rights and the European Committee for the Prevention of Torture, p. 16, available at http://www.coe.int/t/dg3/children/publications/CPTReport_en.pdf.

94 In **Tanzania**, one study found that only 22 percent of children had legal representation while in police detention. See Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 111.

95 In **Russia**, there are reports that police obtain defence counsel who agree to the interrogation of a child client and subsequently make no effort to defend the child's rights during questioning. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 96.

96 Children in the **Netherlands** have the right to consult a lawyer upon arrest and to have a lawyer present throughout questioning; where this right is violated, evidence gathered during questioning is not admissible in court.

Violence Against Children in Juvenile Justice Systems: International Conference Report (2012), p. 13.

97 The Legal Aid Scheme in **Kenya** not only provides vulnerable children with free legal assistance, but also facilitates cooperation between lawyers, psychologists, social workers and non-governmental organisations, provides professionals with training on children's rights and child development, and raises awareness of children's rights and child protection issues in the community. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

98 By some estimates, the majority of children deprived of their liberty have not been tried. For example, the proportion of children in detention awaiting trial is roughly 57 percent in **France**, 75 percent in the **Philippines**, 80 percent in **Haiti** and 82 percent in **Pakistan**. Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (2012), p. 7.; Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 191; Defence for Children International, Stop the violence!: The overuse

of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 11.

99 Despite laws designed to prevent extended pretrial detention, children in **Jamaica**, **Burundi** and **Nigeria** have been deprived of their liberty in police custody for years at a time. Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 191.

100 In **Belgium**, children may be held in closed detention centres for two initial periods of three months, and this may then be renewed on a monthly basis as deemed necessary. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 13.

101 Because times of arrest are often not documented in **Uruguay**, children are unlawfully detained beyond prescribed limits with regularity. Fundación Justicia y Derecho and UNICEF, Justicia penal juvenil: Realidad, perspectivas y cambios en el marco de la aplicación del Código de la Niñez y la Adolescencia en Maldonado, Montevideo, Paysandú y Salto, p. 25.

102 The practice of setting bail amounts too high for children or families to afford is well documented in **South Asia** and Malawi, and a full third of all persons in detention in **South Africa** granted bail are unable to post the amount required for release.

Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 191; Open Society Justice Initiative, "Pretrial Detention" (2008), p. 29.

103 Laws in **Zambia** require police to detain children as far as possible in places of safety, but children are instead routinely held in police cells. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), pp. 70-71.

104 In **Albania**, it has been reported that children in pretrial detention are held in damp rooms with cracked walls, uncovered beds and no toilets. Lights are kept on at all times, making sleep an extremely difficult prospect. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 14.

105 In **Estonia**, children in pretrial detention are not given the option to pursue education, sports, recreation or any other activities suitable for their age. Two thirds of children in detention awaiting trial in **Switzerland** have no educational opportunities. In **Tanzania**, a large number of children in pretrial detention are held in adult prisons not adapted for their rights or needs. Ursula Kilkelly, Children's rights and the European Committee for the Prevention of Torture, p. 19.; Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 22, citing Conditions de détention inappropriées pour les mineurs (2007), available at http://www.humanrights.ch; Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 114.

106 Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 15.

107 Pretrial detention is used sparingly for children in conflict with the law in **Georgia**. Children can only be held in custody before trial where the alleged offence is punishable by more than three years' imprisonment and detention is the least restrictive measure to guarantee attendance at trial, prevent further criminal activity or ensure that ongoing investigation is not obstructed. In addition, prosecutors' requests for pretrial detention must always be confirmed by a court. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 35.

108 In **Somaliland**, children deprived of their liberty have the right to a prompt appearance in court and must be brought before a judge at the latest within 48 hours of their arrest. The Child Act of **South Sudan** states that detention of children in police custody shall be used as a matter of last resort and for a period not exceeding 24 hours. In **Tunisia**, children aged under 15 years cannot lawfully be held in pretrial detention at all. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), pp. 51, 53, 92.

109 The Child Justice Act of **South Africa** establishes a presumption that children should not be held in pretrial detention, a preference for the least restrictive measure, and detailed criteria under which detention may be considered a viable option. See African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), pp. 54, 55.

110 In **Kenya**, children in pretrial detention must be released on bail after six months' time. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 92.

111 Children in the **Occupied Palestinian Territories** are tried in facilities that also function as adult military courts, and are brought into court wearing leg chains and standard issue prison uniforms. Defence for Children Palestine, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

112 There are widespread reports of children in **Bangladesh** being tried in adult courts in violation of the country's juvenile justice legislation. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 25.

113 See, e.g., UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 6.

114 In rural regions of **Bangladesh**, police must bring children from remote villages to regional headquarters for juvenile court proceedings. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 25.

115 In **Botswana**, for instance, children's courts are generally closed to the public and information relating to the identity of children appearing before the court may not be published or otherwise disclosed. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 37.

116 In **Malawi**, there are requirements that proceedings in child justice courts are informal, technical language is avoided, court personnel and legal representatives do not wear robes or professional uniforms, and courts take regular breaks.

African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 95.

117 In **Belize**, there is no requirement that children be granted legal assistance, and children regularly appear before courts without representation. Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007),

118 Reports in **Bangladesh** indicate that legal aid lawyers are assigned at the last minute and substituted throughout trials. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 25.

119 In **Afghanistan**, 40 percent of children in some regions reported that they were not permitted to testify, and were sometimes told explicitly that they should not speak or even make eye contact with the judge. Terre des hommes, An Assessment of Juvenile Justice in Afghanistan (2010), p. 38.

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120 Children accused of being in conflict with the law are regularly subjected to harsh, aggressive cross-examination by prosecutors in the **United States**. See Frank E. Vandervort, A Search for the Truth or Trial by Ordeal: When Prosecutors Cross-Examine Adolescents How Should Courts Respond?, Widener Law Review, Vol 16:355 (2011), available at http://widenerlawreview.org/files/2011/03/Vandervort.pdf.

121 Defence for Children International, Ending Violence against Children in Justice Systems: Strategies for Civil Society Engagement in the Follow-up to the UN Study (2009), p. 10.

122 In **India**, delays in filing simple paperwork can hold up cases by a matter of months, and repeated adjournments mean that parents may become so disillusioned with the process that they stop attending. Ruzbeh N. Bharucha, My God is a Juvenile Delinquent (2008), p. 327.

123 Slow running investigations, lack of transportation to courtroom facilities, and adjournments when juvenile court judges are unavailable mean that cases involving children in conflict with the law in **Tanzania** can take years to reach resolution.

Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 109.

124 Laws were recently changed in **Uruguay** to retain records of certain juvenile offences beyond the age of majority. Fundación Justicia y Derecho, Delincuencia juvenile en la ciudad de Montevideo: Observatorio del Sistema Judicial (2013), p. 14, available at http://observatoriojudicial.org.uy/wp-content/uploads/2013/04/Delincuencia-juvenil-Mvd-completo-FINALweb.pdf.

125 See African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), p. 89.

126 Proceedings involving children in conflict with the law must be resolved as quickly as possible in **South Africa,** and must be prioritised and handled without delay in **South Sudan**. In **Kenya**, matters before children's courts must be finalised within three months of the child's plea or dismissed entirely. African Child Policy Forum and Defence for Children International, Achieving Child Friendly Justice in Africa (2012), pp. 91-92.

127 See Child Rights International Network, End Inhuman Sentencing of Children Now!, available at http://crin.org/violence/campaigns/sentencing/. In **Iran** alone, more than 40 children were executed between 2000 and 2009. See Death Penalty Information Center, Execution of Juveniles in the U.S. and other Countries, available at http://www.deathpenaltyinfo.org/execution-juveniles-us-and-other-countries.

128 According to the Global Initiative to End All Corporal Punishment of Children, 43 States have failed to prohibit corporal punishment as a judicial sentence for children. See Global Initiative to End All Corporal Punishment of Children, Global progress towards prohibiting all corporal punishment (2011), available at http://www.endcorporalpunishment.org/pages/frame.html.

129 See, e.g., Child Rights International Network, Life imprisonment of children in the Commonwealth (2012), available at http://www.crin.org/violence/search/closeup.asp?infoID=29148.

130 Juvenile boot camps are commonplace in the **United States**. See Jamie Muscar, Advocating the End of Juvenile Boot Camps: Why the Military Model Does Not Belong in the Juvenile Justice System, UC Davis Journal of Juvenile Law & Policy, Vol. 12:1 (2008), available at http://jjlp.law.ucdavis.edu/archives/vol-12-no-1/Muscar.pdf.

131 Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 191.

132 Judges in **Indonesia** have been found to consider incarceration before all other options. Id.

133 The vast majority of children detained around the world are first-time offenders, as is the case for up to 94 percent of children held in custody in the **Philippines**. Id. at 175, 211.

134 Although social workers in **Jordan** are tasked with preparing extensive background reports, lack of training and insufficient human resources mean these reports are cursory at best and rarely of use to judges during sentencing. Save the Children Sweden, Country Profile of Jordan (2011), available at http://www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf.

135 In **Nicaragua**, judges have complained about a serious lack of available non-custodial measures in practice, which often leaves them no choice but to release children without sanctions. UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

136 Justice system reforms in **Moldova** have restricted the use of pretrial and post-sentence detention, making children eligible for early release and thereby reducing the number of children in detention by 68 percent between 2007 and 2010.

UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), pp. 1-2.

137 In **Switzerland**, only 9 of 33 detention centres have separate facilities for children. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 14.

138 New juvenile detention facilities in **France** have refused to accept girls, leaving them to be accommodated in prisons for adult women. This practice is also common across Central and Eastern Europe, where it has been considered impractical to establish separate facilities for girls given the small number on whom custodial sentences are imposed. Id at 18; UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 8.

139 One report finds that children detained with adults are five times more likely to be sexually assaulted than children detained in separate juvenile facilities. 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. 40, available at http://www.kidsbehindbars.org/english/docs/RapportKBBtotaal.pdf.

140 Studies from **Serbia**, **Montenegro** and **Jamaica** reveal victimisation of young detainees by older children. Bullying on the basis of sexual orientation and race have been found to be especially prevalent in the United States. Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p.176; Anne Nurse, Locked up, Locked out: Young men in the juvenile justice system (2010), pp. 95-101.

141 Increased peer violence in the face of poor conditions and inadequate food and water has been noted in **Argentina**. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 16.

142 Gang activity in juvenile detention centres is widely reported in **France** and **Brazil**. Id. at 16; Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 176.

143 Overcrowding has been cited as a particular concern in **Argentina**, **Costa Rica** and **Paraguay**. See Defence for Children International, Apuntes Sobre Seguridad Ciudadana y Jusiticia Penal Juvenil: Tendencias en America del Sur (undated).

144 Geert Cappelaere, Children Deprived of Liberty: Rights and Realities (2005), pp. 237-41, available at http://www.unicef.org/tdad/geertchildrendeprivedliberty.pdf.

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145 In the **United States**, persons who have been in detention are significantly more likely to suffer from infectious diseases. Michael Massoglia, Incarceration as Exposure: The Prison, Infections Disease, and Other Stress-Related Illness, Journal of Health and Social behavior, Vol. 49: 1 (2008), p. 56.

146 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).

147 Although nearly all children in some juvenile detention centres in **India** visibly suffer from diseases of the skin, visits from government doctors remain rare. See Ruzbeh N. Bharucha, My God is a Juvenile Delinquent (2008), p. 286.

148 See Katherine Covell, Characteristics of Youth Who Commit Serious Offences.

149 Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), pp. 194-95.

150 Research from the **United States** demonstrates how unhealthy environments created in juvenile detention centres entrench and escalate mental health issues. Harry Holman and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), p.8.

151 In the **United States**, suicide rates for children in detention are four times the national average. Similarly, in **Belgium**, the prevalence of suicidal thoughts is three to times the national average. John Chapman and Julian Ford, Relationships Between Suicide Risk, Traumatic Experiences, and Substance Use Among Juvenile Detainees, Archives of Suicide Research, Vol. 12 (2008), p. 51; Eefje Suk et al., Adolescent suicidal ideation: a comparison of incarcerated and school-based samples, European Child and Adolescent Psychiatry, Vol. 18 (2008), p. 377.

152 A study of children in detention in **Japan** found that 16 percent had cut their wrists or forearms and 28 percent had burned themselves. Toshihiko Matsumoto et al., Self-burning versus self-cutting: Patterns and implications of self-mutilation; a preliminary study of differences between self-cutting and self burning in a Japanese juvenile detention center, Psychiatry and Clinical Neurosciences, Vol. 59 (2005), p. 66.

153 In **France**, there were 966 suicide attempts and 122 suicides reported among children in detention in 2005. In **Canada**, one third of suicides are committed by young persons involved in the juvenile justice or child welfare systems.

Sharon Detrick et al., Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands (2008), p. 79, available at http://www.defenceforchildren.nl/images/20/934.pdf; John Chapman and Julian Ford, Relationships Between Suicide Risk, Traumatic Experiences, and Substance Use Among Juvenile Detainees, Archives of Suicide Research, Vol. 12 (2008), p. 51.

154 The failure to provide children in detention with an appropriate level of education has been documented in **Albania**, **Belgium**, **Colombia**, **Ecuador**, **Lebanon**, **Niger**, **Nigeria**, the **Occupied Palestinian Territories**, **Sierra Leone** and **Uganda**, among many other countries. Defence for Children International, Education in Chains: Gaps in Education Provision to Children in Detention (2009), pp. 24-25.

155 Lack of physical activity and intellectual stimulation is especially harmful for children; nonetheless, children in detention in **Uruguay** are reported to spend 22 hours a day in their cells. Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 32; Defence for Children International, Apuntes Sobre Seguridad Ciudadana y Jusiticia Penal Juvenil: Tendencias en America del Sur (undated).

156 The Code of Childhood and Adolescence in **Colombia** stipulates that children in detention have the right to an integrated education adapted to their needs and abilities. Defence for Children International, Education in Chains: Gaps in Education Provision to Children in Detention (2009), p. 21, available at http://www.defenceforchildren.org/files/gabriella/Education-in-Detention-EN.pdf.

157 Children in pretrial detention in **Jordan** are permitted and encouraged to attend off-site academic and vocational training courses.

Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 56.

158 According to the Global Initiative to end all corporal punishment of children, corporal punishment is lawful in 78 countries as a disciplinary measure for children in detention. See Global Initiative to End All Corporal Punishment of Children, Global progress towards prohibiting all corporal punishment (2011), available at http://www.endcorporalpunishment.org/pages/frame.html.

159 In **Ecuador**, a child was observed being hit on the head with a stone. Defence for Children International, Apuntes Sobre Seguridad Ciudadana y Jusiticia Penal Juvenil: Tendencias en America del Sur (undated).

160 Research and media reports from **Pakistan** suggest that up to 70 percent of children in contact with the juvenile justice system have been abused. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 73.

161 The violent restraining of children is commonly reported in the **United Kingdom**. Howard League for Penal Reform, Twisted: the use of force on children in custody (2011), available at http://www.howardleague.org/fileadmin/howard_league/user/pdf/Publications/Restraint.pdf.

162 See Defence for Children International, Ending Violence against Children in Justice Systems: Strategies for Civil Society Engagement in the Follow-up to the UN Study (2009), p. 11.

163 In **Romania**, children spend the first three weeks of their detention in isolation. In **Denmark**, children aged 15 and above can be held in solitary confinement for periods as long as 8 weeks. Ursula Kilkelly, Children's rights and the European Committee for the Prevention of Torture, p. 18; Save the Children, Report by Save the Children Denmark Concerning the Second Periodic Report on the United Nations Convention on the Rights of the Child submitted by the Danish Government (2000), para. 61, available at http://www.savethechildren.dk/Admin/Public/DWSDownload.aspx?File=%2FFiles%2FFiler%2FMaterialer%2FResultater%2FChildren's+rights+submitted+by+the+dansih+government+FN_Statusrapport_2000.doc.

164 Children in detention in **Bangladesh** are not permitted any correspondence or in person meetings with parents if found to be engaged in bad behaviour. Visits are severely restricted in **Latvia**, and some juvenile detention centres in P**oland** do not allow children to have contact with the outside world at all. Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 27; Ursula Kilkelly, Children's rights and the European Committee for the Prevention of Torture, p. 23.

165 Children in the **Occupied Palestinian Territories** are regularly moved over long distances and held in detention centres far from their place of arrest. Defence for Children Palestine, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

166 In the **United States**, 10 percent of children in detention report having experienced one or more incidents of sexual victimisation by a member of staff. Special Report on Sexual Victimisation in Juvenile Facilities Reported by Youth, 2008-09, U.S. Department of Justice, Office of Justice Program, Bureau of Justice Statistics (2010), available at http://www.bjs.gov/content/pub/pdf/svjfry09.pdf.

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167 Paulo Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children (2006), p. 175.

168 See, e.g., Candace Kruttschnitt, 'The politics of confinement: women's imprisonment in California and the UK', in Alison Liebling and Shadd Maruna, S. (eds), The Effects of Imprisonment (2011); Linda Moore, and Phil Scraton, 'The imprisonment of women and girls in the North of Ireland: A continuum of violence', in Phil Scraton and Jude McCulloch, The Violence of Incarceration (2009).

169 United Nations General Assembly, Report of the independent expert for the United Nations study on violence against children, A/61/299, para. 59, available at http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf.

170 In **Pakistan**, only special police stations manned by female officers are permitted to detain women and girls overnight.

Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries (2012), p. 89.

171 Defence for Children International, Stop the violence!: The overuse of pre-trial detention, or the need to reform juvenile justice systems: Review of Evidence (2010), p. 24, citing Harry Holman and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), p.2.

172 United Nations General Assembly, Report of the independent expert for the United Nations study on violence against children, A/61/299, para. 54.

173 Many schools in **Belize** automatically suspend or expel students upon their first contact with the juvenile justice system. In the **Occupied Palestinian Territories**, children in detention for more than 70 days are forced to repeat entire school years and may be unable to continue their education immediately upon release.

Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007); Defence for Children International, Education in Chains: Gaps in Education Provision to Children in Detention (2009), p. 24.

174 In the **United States**, 59 percent of children who have been in detention are no longer enrolled in school five months after their release and face worsening economic opportunities. Harry Holman and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), pp. 9-10.

175 In **Belize**, follow-up services are not provided to children leaving detention. Diana Marian Shaw, The Juvenile Justice System in Belize: A Vulnerability Assessment (2007).

176 In **Albania**, children returned to live in rural areas often cannot afford transportation to attend vocational courses in urban areas. Save the Children, Unpublished Submission to the International NGO Council on Violence Against Children (2013).

177 In the **Occupied Palestinian Territories**, the lingering social, behavioural and emotional effects of imprisonment on child detainees have been found to negatively affect communication within families. East Jerusalem YMCA Rehabilitation Program and Save the Children, The Impact of Child Detention: Occupied Palestinian Territory (2012), p. 52, available at http://mena.savethechildren.se/PageFiles/3731/Impact%20Report%20March%2012%20EN.pdf.

178 UNICEF, Juvenile Justice in the CEE/CIS Region: Progress, Challenges, Obstacles and Opportunities (2013), p. 7.

179 UNICEF, Toolkit on Diversion and Alternatives to Detention (2010).

Appendix— International Juvenile Justice Standards

A large variety of international conventions, standards, guidelines, resolutions and plans of action govern and guide the way that legal systems interact with children in conflict with the law. Taken together, this collection of instruments provides a comprehensive picture of a non-violent juvenile justice system and forms the backbone of the vision set out in this report. The most prominent of these instruments are listed and described in further detail below, and are referenced by the shorthand abbreviations indicated in bold.

• UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985) **[BR]**
The Beijing Rules call on States to establish legal protections that further the well-being of children in conflict with the law. The Rules cover children's interaction with the legal system from first contact with law enforcement through to adjudication and disposition, directing States to establish separate juvenile justice systems with laws, regulations and policies that both protect children's rights and meet their individual needs. Specifically, States are encouraged to provide for flexibility and discretion in conducting juvenile justice proceedings while at the same time guaranteeing children basic procedural safeguards.

• Convention on the Rights of the Child (1989) **[CRC]**
The Convention on the Rights of the Child enshrines a comprehensive vision of children's civil, political, economic, social and cultural rights. Of particular relevance to children in conflict with the law, the CRC recognises children's absolute right to be protected from all forms of violence, prohibits torture and other cruel, inhuman or degrading treatment, and firmly limits deprivation of liberty to a measure of last resort and for the shortest appropriate period of time. The Convention also sets out States' obligations with respect to juvenile justice, reaffirming the central importance of rehabilitation and underscoring children's right to fair treatment and special consideration before, during and after legal proceedings.

• UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990) **[RG]**
The Riyadh Guidelines take a child-centred approach to encourage young persons' full participation in society, urging States to adopt laws and processes that address the conditions underlying juvenile delinquency. Among other measures, States are asked to enact laws that promote and protect the rights and well-being of children and to support mechanisms and advocacy services that ensure the status, rights and interests of children in conflict with the law are upheld. Following the principles of fairness and equity, the Guidelines further dictate that official intervention into a child's life must always be pursued in the interests of that child.

• UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules or JDLs) (1990) **[JDL]**
The Havana Rules give standards of reference to professionals involved in the management of the juvenile justice system from arrest through to release. They seek to uphold the safety and well-being of children in conflict with the law, emphasising in particular that deprivation of liberty should only occur in exceptional cases and for the minimum necessary time. The conditions and circumstances of detention should ensure respect for children's rights, and each child must be individually assessed and cared for in line with their needs, status and special requirements. The Rules further address children's rights to education, recreation, religion, health care, and to contact with the wider community, and would require States to provide effective remedies where these or any other rights are breached.

• UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) (1997) **[GA]**
The Guidelines for Action are aimed not only at States, but also UN entities, NGOs, professional groups, the media and children. They address children who become involved in the criminal justice system in any capacity, whether as offenders, victims or witnesses, and encourage the full implementation of children's rights in the administration of justice. On a national level, governments are urged to develop separate, child-oriented juvenile justice systems that take account of the specific needs of individual children. Most importantly, these systems should both guarantee respect for and prevent the violation of children's rights.

• Committee on the Rights of the Child General Comment No.10 on Children's rights in juvenile justice (2007) **[GC10]**
In its tenth General Comment, the UN Committee on the Rights of the Child – the body tasked with monitoring the implementation of the Convention on the Rights of the Child – provides extensive guidance on children's rights in the context of juvenile justice. The General Comment encourages the development of juvenile justice policies that ensure respect for children's rights, and maintains a particular focus on the prevention of delinquency and alternatives to formal judicial proceedings. It further clarifies the need for States to operate a specialised justice system for children in conflict with the law,

and notes the ongoing importance of awareness-raising, training, data collection, evaluation and research in the effective administration of juvenile justice.

• Guidance Note of the Secretary-General: UN Approach to Justice for Children (2008) **[SG]**
The Secretary General's Guidance Note seeks to ensure the full application of international norms and standards for all children who come into contact with national justice systems. The Note argues that States should embrace a stronger rule of law for children by empowering justice institutions and adopting strategies that specifically guarantee respect for children's rights. Guiding principles to be followed include the best interests of the child, the right to fair and equal treatment, the right to be heard, and the right to be protected from violence. States are urged to integrate these and other child-sensitive justice notions into relevant constitutional and legislative reform efforts, and to promote overall integrity and accountability in justice and law enforcement.

• UN Human Rights Council Resolution on Human Rights in the Administration of Justice, in particular Juvenile Justice (2011) **[HRC]**
In this Resolution, the Human Rights Council calls on States to take effective legislative, judicial, social, educative and other measures in implementing UN standards on human rights in the justice system. Rehabilitation, reintegration and monitoring are stressed, and the Resolution recognises that children in conflict with the law must be treated in a manner consistent with their rights, dignity and needs. States are advised to allocate resources for legal aid in a way that promotes these rights, and in particular urged to take all necessary steps, including legal reform, to prevent and respond to violence against children within the justice system.

• UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) **[LA]**
The Principles and Guidelines recognise an entitlement to legal aid for persons who become involved with the criminal justice system. The particular vulnerability of children in contact with the law is underscored, and the Principles and Guidelines make clear that legal aid should be provided to children as a matter of priority and in a manner consistent the best interests of the child. To meet this standard, States must create legal aid programmes for children that are accessible, age-appropriate, multidisciplinary, effective, and tailored to the needs of individual children.

While the international standards above apply at least in part specifically to juvenile justice, it must also be noted that a much larger body of human rights instruments exists in relation to the overall administration of justice. By and large, the provisions of these instruments also extend to children in conflict with the law, and their relevance must not be overlooked. Particular attention is drawn to the following:

- UN Standard Minimum Rules for the Treatment of Prisoners (1955)
- International Covenant on Civil and Political Rights (1966)
- Code of Conduct for Law Enforcement Officials (1979)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- Guidelines on the Role of Prosecutors (1990)
- Basic Principles for the Treatment of Prisoners (1990)
- UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990)
- Basic Principles on the Use of Restorative Practices in Criminal Matters (2002)
- UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005)
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (2010)
- Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (2011)

Beyond international standards, there are also regional guiding documents that address children's rights and matters of concern to juvenile justice. While these are too numerous to list in full, they include:

- African Charter on Human and Peoples' Rights (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- American Convention on Human Rights (1969)
- American Declaration on the Rights and Duties of Man (1948)
- Council of Europe Guidelines on Child-friendly Justice (2010)
- Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence (2009)
- Council of Europe Recommendation 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (2003)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- European Rules for Juvenile Offenders Subject to Sanctions or Measures (2008)
- Guidelines on Action for Children in the Justice System in Africa (2012)
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (1999)

CREATING A NON-VIOLENT JUVENILE JUSTICE SYSTEM

Report 2013

Vision —

The International NGO Council on Violence against Children envisions a world where all children are born in a safe and nurturing environment and grow up free from violence.

Mission —

To ensure that the recommendations of the UN Study on Violence against Children are effectively implemented worldwide.

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