

Guidance Note 14

Children in prison

Summary

- The Convention on the Rights of the Child defines a child as a person under the age of 18 years.
- Children in trouble with the law are held in prisons and juvenile institutions throughout the world in deplorable conditions.
- The international human rights instruments require that children should be dealt with in a separate system from adults, detained separately from adults, imprisoned as a last resort and for as short a time as possible, and in all penal measures the best interests of the child should be the priority.
- Institutions holding children should be primarily educational in aim.
- Law reform is needed to bring national laws into conformity with international human rights law and establish separate juvenile justice systems.
- Work to improve the treatment of children in trouble with the law can include projects that divert children from the police station once they have been arrested, establish alternative placements for convicted children, improve the places where children are held in custody and ensure children are defended in court proceedings.

“ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

— *Article Ten, United Nations International Covenant on Civil and Political Rights*

Guidance Notes on Prison Reform

This guidance note is number fourteen in a series designed to give practical help to those developing and delivering prison reform projects. All the guidance notes:

- are set within the international human rights framework
- apply in a variety of cultural and political environments
- propose solutions that are likely to be sustainable in a variety of socio-economic situations and do not involve a significant increase in resources
- take account of the realities of prison management

The production of these guidance documents on how to undertake prison reform projects is supported by the UK Foreign and Commonwealth Office.

Children and criminal justice

Children in trouble with the law are ill-treated and abused all over the world. In many countries they can be detained by the police for minor crimes or when they have committed no crime, but are found in need of care and protection because they are, for example, living on the street. They can then be held in a police station in a cell with adults, tried in court without a legal defence and sent to a prison, reformatory, re-education centre or children's home where the conditions are often inhuman, degrading and dangerous.

Often they are held in police stations, prisons and other institutions when they are below the age at which it is legal to so hold them. Sometimes their age is in dispute because they have no documentation.

“*Street children are highly likely to come into contact with the criminal justice system in the first place due to discrimination and the circumstances in which they are forced to survive, regardless of whether or not they have actually committed a crime. Due to outdated legislation they are arrested and face harsh sentences for petty (often 'survival') theft, substance abuse, begging and 'vagrancy'.*

Marie Wenham, *An outside chance: street children and juvenile justice – an international perspective* 2004¹

In some countries children are held in adult prisons, either with adults or in a separate wing to which adults have access. In such situations the children are at great risk of sexual abuse by prison staff and by older prisoners. In some countries it has been the custom to put one older prisoner in a dormitory of teenage boys on the basis that such an arrangement ensures control and can also provide support and guidance. Allowing some prisoners to control others is not acceptable and the dangers of abuse in such a situation are great.

“*An adult prisoner approaches a prison officer, gives him some money and asks him to get him a boy. You know some prisoners are rich compared to the guards. The guard then smuggles a juvenile into the adult blocks when they are out of the juvenile wing. Once they are there they can be hidden for months and the man who paid for them rents them out to other prisoners' for a short time*

Dorothy Jolofani and Joseph DeGabriele, *HIV/AIDS in Malawi Prisons* 1999²

In rich countries too children can be dealt with in the criminal justice system in ways that contravene many aspects of the international human right instruments. They can be held in children's institutions which are highly punitive rather than rehabilitative and receive no treatment for serious mental health problems.

“*Less than a year after Maryland officials opened a \$60 million holding facility for juvenile offenders, an independent inspection found conditions that pose "threats to the life, health and safety" of the 106 children housed there, according to a report released yesterday... Conditions at the Baltimore City Juvenile Justice Center are strikingly similar to those found by federal inspectors at two of the state's older facilities ... The U.S. Department of Justice warned Maryland in April that those institutions had failed to meet even minimum constitutional standards and violated the civil rights of those housed there.*

Matthew Mosk, *Juveniles in Maryland Jail Imperiled* 2004³

In all countries children from the poorest parts of society are more likely to end up subject to criminal justice measures. Children's prisons, reformatories, re-education centres and children's homes house some of the most disadvantaged children in society and the systems give them few if any protections from violence and ill-treatment.

“ Panchito López juvenile detention centre in Asunción, Paraguay, has been destroyed by fire... The fire was said to have broken out during a protest by inmates following an incident in which a guard shot a detainee. It was not the first time that youths at the centre had started fires to draw attention to their horrendous treatment. At the time of the latest fire, on 25 July 2001, more than 240 juveniles were crammed into the facility, which was built to accommodate 80 inmates. Some 90 per cent of them had not even been convicted of a crime but were in pre-trial detention. Many had spent months or even years awaiting trial in filthy and severely overcrowded cells with few toilets or washing facilities. In some cells the inmates had to sleep three to a bed and temperatures could hover at around 40°C (100°F) for weeks on end. A journalist who visited the facility noted that each child got about the same amount of personal space “as that covered by a newspaper”... The 240 children detained in Panchito López at the time of the fire have been sent to a number of adult prisons...

Amnesty International, *Notorious detention centre burns down*, 2001⁴

Many adult prisoners are graduates from reformatories and children's prisons. A stay in a children's institution is often the prelude to a life spent in and out of prison.

Children should not be in prison

Few juvenile justice systems live up to the requirements of international law. The UN Convention on the Rights of the Child defines a child as anyone under the age of 18 (unless national legislation deems otherwise). All those under the age of 18, therefore, are protected by the Convention, and that protection includes all those who have been accused or found guilty of a crime or imprisoned. The international instruments all stress that children should not be deprived of their liberty unless there is absolutely no other option and when they are put into custody it should be for the shortest possible time.

In addition to the Convention on the Rights of the Child, other United Nations guidelines set out the detail of how juveniles should be treated when they come under criminal justice measures and make it clear that all forms of detention should be used as a last resort.

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

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13

Yet UNICEF estimates that over one million children are deprived of their liberty worldwide.⁵

Children should be treated as children

The international instruments also make it clear that in all measures taken to deal with children under the penal law their status as children and therefore as particularly vulnerable should be the main consideration. The juvenile justice system should treat children with special regard to their age and vulnerability at every stage of the process. The welfare of the child should be a priority consideration when decisions are being made.

Institutions for children should be educational and reformative rather than punitive. Yet in some countries juveniles are held in pre-trial conditions which are the same as those for adults, are prevented by prosecutorial decisions from having visits from their families and may spend many months awaiting trial.

“ *Pre-trial experiences of children in Sudan.*

Current practice includes:

- *harsh treatment on arrest and in detention by police and poor treatment during investigation, including beatings and torture to secure a confession*
- *they are not always told when they are arrested that they have a right to legal representation and it is very difficult to find legal representation for those who are poor*
- *delays (3-4 days) in informing parents and juveniles are not allowed to receive visits in police custody. Sometimes a long period awaiting trial and in that time the child is kept with adults and denied access to education, healthcare, suitable food. Very small, narrow, dark cells and inhuman conditions*

ICPS Mission report 2004

Institutions for children should emphasise education, care and social and welfare support.

Age of criminal responsibility

The age of criminal responsibility is the age at which the child can be held responsible for an action and if found guilty can be punished for it under the criminal law. The age of criminal responsibility varies greatly from one country to another.

Minimum age at which children are subject to penal law in some countries with 10 million or more children under 18 years old.⁶

Bangladesh 7	Indonesia 8	Korea, Rep. 12	Japan 14
India 7	UK (Scotland) 8	Morocco 12	Russian Federation 14
Nigeria 7	Iran ***9	Algeria 13	Viet Nam 14
Pakistan 7	Philippines 9	France 13	Egypt 15
South Africa 7	UK (England) 10	China 14	Argentina 16
Thailand 7	Ukraine 10	Germany 14	Brazil ****18
United States **7	Turkey 11	Italy 14	

**Age determined by state, minimum age is 7 in most states under common law.

***Age 9 for girls, 15 for boys.

****Official age of criminal responsibility, from age 12 children's actions are subject to juvenile legal proceedings.

Sources: CRC Country Reports (1992-1996); Juvenile Justice and Juvenile Delinquency in Central and Eastern Europe, 1995; United Nations, Implementation of UN Mandates on Juvenile Justice in ESCAP, 1994; Geert Cappelaere, Children's Rights Centre, University of Gent, Belgium.

Raising the age of criminal responsibility is regarded as a reform which takes children out of the control of the penal law and puts more children who are facing problems under more appropriate social or welfare measures.

“ 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)⁷

However, countries with high ages of criminal responsibility, for example, 14 to 18, do not necessarily treat children in trouble with the law or respect the human rights requirements much better than those countries with low ages such as eight or ten. Such countries may deal with children who break the law through welfare measures rather than through the justice system yet still send them for time without limit to homes for children needing care and protection. These too can be places of ill-treatment and violence.

Separate juvenile justice systems

Juveniles should be dealt with in a system that is separate from that for adults.

A separate system is required because children are:

- unlikely to understand the processes of a court of law and the meaning of the imposition of a punishment
- entitled to special protection because they are vulnerable
- deemed to carry less personal responsibility for their actions
- required to be treated with rehabilitative measures rather than punishment

“ ... the European Court of Human Rights ... ruled that the United Kingdom violated Article 6 of the European Convention on Human Rights (the right to a fair trial) because Thompson and Venables (both aged 11) had been tried in an adult court with adult procedure and formalities that prevented their full understanding and participation in the trial.

Emilia Mugnai, *Serves you right! Playing populist politics with children who kill* 2001⁸

Special measures for juveniles should be in force at the point of arrest and in the police station. It is desirable that children should be interviewed in the presence of a parent or other adult concerned for their welfare. If the child is being brought to court there should be a special juvenile, youth or children’s court with specially trained judges and the child is entitled to legal representation.

Prisons and institutions for juveniles

Institutions holding children should be as unprison-like as possible. All the international instruments make it clear that such institutions should be primarily educational and aim to prepare the children for a future life free of crime. They should take into account the age of those being dealt with and the danger of perpetuating a criminal identity and going on to become adult criminals. Links with the outside world should be emphasised and encouraged. Education certificates gained should not indicate that they were awarded by a penal institution.

“ What is immediately striking about the Ankara child prison is that there is no imposing main gate, no high walls topped with razor-wire, no bunches of keys hanging from the waist of every member of staff. If a child really wants to escape there is very little to stop him. More than half of the children leave the prison campus every day anyway, either to go to local schools, or to go to jobs in local businesses, so if they wanted to do a runner, they need simply not to come back at the end of the day. ..The boys who are serving time in the Reformatory are mostly there for quite serious crimes, with more than half of them convicted of murder or serious sex offences, and serving sentences of more than five years.

Brian Woods and Kate Blewett, *Kids behind bars* 2001⁹

To prevent abuse, inspectors, children’s advocates, child protection groups and human rights monitors should have access to children’s institutions without jeopardising the children’s right to confidentiality.

Diverting children from the juvenile justice system

Many systems are set up to divert as many children as possible from the penal system to a more appropriate welfare setting. One point of diversion is the arrest stage when children are brought into the police station. At that stage social workers or volunteers from children’s welfare organisations can work with the police to find family members or a group equipped to deal with the child’s problems. In a number of countries such diversion projects have been established with the full co-operation of the police and using various methods of operation.

“ In 1990 Namibia ratified and signed the Convention on the Rights of the Child... During 1994 a Juvenile Justice Forum (JJF) was set up to address the situation of juveniles who come in conflict with the law. Government line ministries, NGO’s and individuals formed part of the JJF. The pilot programme of the JJF was implementation of pre-trial diversion programmes to ensure the least possible use of incarceration. The major aim of this pilot programme is the separation of detained juveniles from adult detainees in police cells... the second aim is to speed up the process of removing juveniles from pre-trial detention to the custody of a parent or guardian.

Nicolien Jacobs-du Preez, *The application of the United Nations Standard Minimum Rules on Juvenile Justice in an African context* 2001¹⁰

Securing the release of children from children’s institutions whether they are held pre-trial or post-conviction is also important. At this stage legal or paralegal expertise may be needed to persuade the court that the child should be released from pre-trial detention or should not be given a custodial sentence.

“ ... as a result of the legal assistance provided by the Child Protection Unit of the Cambodia Bar Association, some juveniles have been released from custody or acquitted, and important services are being made available to them, including education.

UNICEF, *Justice for Children: Detention as a last resort* 2004¹¹

Alternatives to institutions for children

Diverting children from the criminal justice system altogether is the most appropriate outcome in most cases. Moving them into the education, health or welfare system is most likely to ensure that they get the care they need and the problems they have are

dealt with. However in some criminal justice systems penalties will be imposed on quite young children and on those whose offences are seen as serious, and it is therefore necessary to provide some alternatives to institutions.

Alternatives used for children include:

- various forms of supervision, by social workers, probation officers or people of standing in the local community
- a requirement to carry out work for the benefit of the local community, apologise to the victim of the offence, make some recompense to the victim

In some jurisdictions methods of dealing with children in trouble with the law have been developed that try and avoid the disadvantages of taking children through a criminal procedure.

“ Scotland has an unique way of dealing with children who commit offences. They are not treated as criminals to be punished, but as young people with problems who can be helped to overcome these. Their whole family is involved. They all have to go to a meeting with a group of three people, known as a Panel. These are specially trained lay men and women who volunteer to carry out this work.

BBC Crime Site, *Crime Fighters: Justice, the Children's Hearing* 2003¹²

Improving children's prisons and institutions

Whilst it should be a priority to minimise the number of children in any form of detention it is also important to try and improve those institutions where children are held. Ways of improving children's detention conditions include:

- measures to separate children from adults and ensure their safety, by building new prison wings, transforming existing wings into more child-friendly environments and ensuring that adults have no access, or finding non-prison accommodation
- training staff to deal with children and giving them the capacity to meet the special needs of adolescents and help them to prepare for their lives outside the institution
- providing staff able to deliver educational and life-skills programmes and to build links with the outside world
- establishing systems to enable children to keep in touch with their families and helping the families to prepare for the child's return home

“ Welfare (activities organised by the Tehran Juvenile Correction & Rehabilitation Center):
– organizing recreational trips to forests, seaside, mountains, historical sites and ex war zones around the country
– holding athletic contests between admittees and adolescents outside the Center to promote healthy competition and positive attitude within the society
– providing access to other facilities such as swimming pools, gymnasiums, movies, gardens, stores, mass media...

UNICEF, *Tehran Juvenile Correction & Rehabilitation Center (JCRC): an Overview* (undated)

Reforming the law on juveniles

The establishment of a separate juvenile justice system in accordance with international law and the international requirements is a substantial undertaking for countries that currently have no such law and treat juveniles as adults. However the creation of a new legal framework is essential if juveniles are to have the protection accorded to them

in law. The work of reforming the juvenile justice system is a long-term project and support will be needed from the police, the judges and the community.

“ Save the Children (UK) is undertaking, with FCO support, a major three-year project aimed at developing the juvenile justice system in the Lao People's Democratic Republic. As a first step, Save the Children (UK) has trained trainers and produced training manuals, guidelines for judges, police and district chiefs...

Foreign and Commonwealth Office, *Human Rights Annual Report 2002*¹³

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- 13 *Human Rights Annual Report 2002*, United Kingdom Foreign and Commonwealth Office, London, 2002, p.181