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# REPORTS OF THE SEMINAR

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## GROUP 1

### A FEW MEASURES TO REDUCE AND PREVENT RECIDIVISM

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## I. INTRODUCTION

Childhood in general and for those in conflict with the law requires special attention on the part of the society due to the vulnerability of children. This aspect has been perceived by the international community, which, under the leadership of the United Nations, has devoted to it a number of international documents, including the Convention on the Rights of the Child (CRC), the Beijing Rules, the Riyadh Guidelines, and the Havana Rules etc.

The juvenile justice systems of Bhutan, Brazil, Cook Islands, Cote d'Ivoire, Maldives, Nepal, Pakistan, Panama, Papua New Guinea and even Japan need improvement. At least 20 years after ratifying the CRC, the majority of these signatory countries still face rights violations and increased juvenile delinquency.

The implementation of the above-mentioned conventions in the various signatory countries has revealed several flaws to be reconciled in order to meet the imperative need to maintain the child as an indispensable link for humanity, despite being in conflict with the law.

The 165<sup>th</sup> International Senior Seminar on Crime Prevention and Criminal Justice provided a framework for reflection on the status of the effective implementation of international conventions and guidelines relating to juvenile justice in different countries, with a view to making recommendations for improving practices on the ground.

Recidivism among juveniles has become a pressing international issue. Recidivism literally means "a falling back" and usually implies "into old bad habits", yet it is defined differently in each country. A common definition involves reoffending within a limited timeframe; typically this interval ranges from a few months to more than a year. A few factors contributing towards recidivism include personal characteristics, social economic conditions/status, education and skill levels, family issues, an inefficient juvenile justice system, etc.

The subject chosen by the group discusses the measures aimed to prevent and reduce recidivism. The final part of the report offers recommendations and suggestions based on the above-mentioned theme.

## II. PROMPT INTERVENTION AND IMPLEMENTATION

Celerity has been highlighted as an extremely important element in youth interventions for the well-rounded development of the juvenile and for deterrence. As explained by Butts, Cusick and Adams, citing Grisso, “adolescents have less ability to take long-term consequences into consideration and a greater propensity for short-sighted decision-making.”<sup>1</sup> So, interventions with juveniles have to be prompt in order to effectively shape future behaviour; if not, the linkage between the offending act and the interventions established is less likely to occur and the system will be less effective in reducing recidivism.<sup>2</sup> If the response takes too long, the young offender will not take full advantage of the educational aspects of the measures/interventions determined and perhaps will even feel encouraged to reoffend.

In the commentary to rule 20.1 of the “Beijing Rules” it is stated that the speedy conduct of juvenile cases is a “paramount concern”: “[o]therwise, whatever good may be achieved by the procedure and the disposition is at risk; [a]s time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.” No wonder, “promptly addressing the causes and consequences of their behaviour, and providing services or support where necessary to prevent recidivism and encouraging positive reintegration into the community, has been found to cut repeat offenses in half and incarceration rates by two-thirds as compared to a control group.”<sup>3</sup> The “earlier the investment in an individual, [...] the more cost effective the investment.”<sup>4</sup>

Celerity has been a characteristic of the Japanese and many North American states’ juvenile justice procedures, and these countries have been showing a decrease in youth delinquency. In the USA, expeditious judicial and non-judicial dispositions are possible in many jurisdictions through the multi-agency collaborative approach of Juvenile Assessment Centers, with simultaneous accomplishment of required legal and social service interventions<sup>5</sup> on the same day and/or days following the arrest. By the civil citation programme—a diversionary mechanism in the state of Florida for certain first time misdemeanour offences—the youth will not be arrested, but will promptly be assigned to a court counsellor with an issued date for an interview.<sup>6</sup> If community service is to be performed, the juvenile shall report to the “monitor within 7 working days after the date of issuance of the citation”, to begin the implementation of 50 hours of community service at a rate of not less than 5 hours per week (Chapter 985 Section 12 – 2016 Florida Statutes, at 4); and in the case of possession of drug paraphernalia or 20 grams or less of marijuana, the youth must appear at the Juvenile Diversion Program office the day following the offence for an interview, drug screening and risk assessment, as well as for treatment recommendation and monitoring.<sup>7</sup>

In Japan, when the juvenile is not kept in preventive detention, Family Court investigating officers, during the investigation process (which usually takes at most 3 months), can apply educative measures such as community service activities, camp with parents, drug/sex education classes, traffic rules’ lessons and employment assistance—which are done before the Family Court investigation report. If the case is not dismissed by the Family Court or referred back to the prosecutor for prosecution, the dispositions (“protective measures”: probation, juvenile training school and referral to a children’s self-reliance support facility) begin expeditiously—usually on the same day. For example, according to the Profile of the Tokyo Probation Office, “after the family court’s decision, which places the juvenile on probation, the juvenile and

<sup>1</sup> Butts, Jeffrey; Cusick, Gretchen, and Adams, Benjamin. *Delays in Youth Justice*. Google books. Doc nr : 228493, October 2009, p. 10.

<sup>2</sup> See Butts, Jeffrey; Cusick, Gretchen, and Adams, Benjamin. *Delays in Youth Justice*. Google books. Doc nr : 228493, October 2009, p. 10.

<sup>3</sup> Heather Hojnacki, “*Graham v. Florida*: How the Supreme Court’s Rationale Encourages Reform of the Juvenile Justice System” (2012) 12 *Pepp. Disp. Resol. L.J.* 135 at 155

<sup>4</sup> United Nations, Fact Sheet on Juvenile Justice, online: UN <<http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>>.

<sup>5</sup> Dembo, Richard, “Juvenile Assessment Center” (lecture, ‘UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 25, 2017), slide 4.

<sup>6</sup> Juvenile Diversion Programs, Tampa, FL, USA, Administrative Office of the Court. *Juvenile Arrest Avoidance Program* (UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 26, 2017).

<sup>7</sup> Dembo, Richard, “Civil Citation Program – 13<sup>th</sup> Judicial Court” (lecture, ‘UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 27, 2017), slide 23.

his/her guardians are directed to visit the probation office as soon as possible; [i]n many cases, they visit this office on the day of the disposition.”<sup>8</sup>

In the other states participating in this seminar, when preventive detention is used, the procedures concerning such cases by the investigative bodies and the courts were found to be fast, in accordance with rule 17 of the “Havana Rules”. On the other hand, many states have not emphasized ensuring a time limit for judicial procedures when the juvenile is not preventively detained or for starting the implementation of the interventions delivered through the juvenile system.

For example, although Papua New Guinea, Nepal, Pakistan and Bhutan have specific legislation that establishes the maximum timeframe to complete the juvenile justice procedures until the final ruling (14 days in the case of PNG and approximately 4 months in the three other countries), Panama, Maldives, Japan, Cook Island and Brazil do not provide such time limits. In Cote d’Ivoire, legislation determines that the whole juvenile justice procedure, depending on the severity of the offence committed, can take up to 18 months — quite a long period.

In Brazil, although the justice system usually establishes dispositions rapidly (especially in the case of preventive detention, up to 45 days), often there is a big delay in summoning the juvenile to start the implementation of non-custodial measures determined either through diversion or by the court’s final ruling, differently from most of the participating state’s systems (e.g., Japan, Panama, Papua New Guinea, Maldives, Cook Islands and Cote d’Ivoire). Thus, this absence of prompt implementation leads the juvenile to feel that nothing happens when breaking the law, and creates the impression of impunity. In many of the Brazilian states, damage repair, community service or assisted freedom (similar to probation) can take months or even over one year to begin; ultimately, in many cases these dispositions are hindered by time-barring. The usual answer for this delay has been the lack of available spots in the programmes/services related to the implementation of these measures by the local state agencies, usually due to scarce resources or political will (or both). In addition, the disarticulation and physical distance between the bodies responsible for establishing the measures/interventions (Prosecution/Court), and the ones responsible for implementing them (administrative bodies of the local state authority) are also challenges that contribute to this time gap. Ultimately, rehabilitation is affected in a very negative way.

### III. COMPREHENSIVE ASSESSMENT OF THE JUVENILE’S NEEDS

Many children involved in criminal acts present issues related to neglect, physical or sexual abuse, alcohol or other drug use, mental health problems and family, social, psychological and educational functioning, among others.<sup>9</sup> Thus, in the words of Dembo and Brown, “[c]omprehensive information needs to be collected on these youths’ service needs so that appropriate interventions can be developed.”<sup>10</sup>

In reality, the assessment of children’s needs to ensure their wide range of rights/protections to which they are entitled—accessible even to those who already have criminal histories—is an important factor for sound development and, hence, to prevent juvenile delinquency and recidivism.<sup>11</sup> As highlighted in “crime prevention literature, children and youth are less likely to become involved in serious crime when risk factors are reduced—abuse, neglect, poverty, maltreatment—and when protective factors are enhanced such as supports for children in families, schools, and communities.”<sup>12</sup> So, juveniles need to be served in a holistic manner, “not one problem at time terms.”<sup>13</sup>

No wonder, this holistic and comprehensive approach to dealing with youth is cited in many international

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<sup>8</sup> Tokyo Probation Office. *Profile of the Tokyo probation office*, 18<sup>th</sup> January 2017. p. 03. (UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, site visit at Tokyo Probation Office, January 2017).

<sup>9</sup> See Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. *Journal of Child & Adolescent Substance Abuse*, vol 3(2), 28.

<sup>10</sup> *Ibid.*, p. 27.

<sup>11</sup> See R. Brian Howe, “Children’s Rights as Crime Prevention” (2008) 16 *Int’l J. Child. Rts.* 457 at 457.

<sup>12</sup> *Ibid.*

<sup>13</sup> Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. *Journal of Child & Adolescent Substance Abuse*, vol 3(2), 28.

documents, including the CRC<sup>14</sup> and the UN standards and norms on juvenile justice.<sup>15</sup> The UN Office on Drugs and Crime has highlighted that “[a]n effective juvenile justice system requires that the varying needs of children be assessed, that children in conflict with the law are referred to appropriate services, and that they are offered care and assistance with reintegration into the community” (“Manual for the measurement of juvenile justice indicators”, 2006, at 1).<sup>16</sup>

So, although many countries are still focusing on punitive strategies to tackle youth delinquency with harsh penalties, a few other jurisdictions have been making substantial efforts by taking a holistic approach to juvenile offenders and in developing a comprehensive continuum of services, showing good results. For instance, many North American states and Japan have invested in a quality individual assessment of the wide spectrum of aspects of the juvenile’s life to subsidize the decision-making of the measures/interventions to be determined.

The Japanese system, by the adoption of the principle of individual treatment (article 1 of the Juvenile Act), focuses, first, on clarifying the aspects that led the juvenile to commit an offence and then on implementing specific treatment—which means “to remove or mitigate factors fomenting delinquency and enhance factors deterring delinquency”.<sup>17</sup> Family Court investigating officers, in the majority of youth cases, have the duties to “proceed [with] an investigation by utilizing knowledge and methodologies in connection with behaviour science (including medical science, psychology, pedagogy, sociology and the study of social welfare), clarify the mechanism of juvenile delinquency to foresee the juvenile’s recommitment probability of delinquency, and propose to the judge his/her opinion about the juvenile’s treatment”.<sup>18</sup> For those juveniles who are put in preventive detention (up to usually 4 weeks and exceptionally 8 weeks) until the final decision by the Family Court, the Japanese Juvenile Classification Homes, through multidisciplinary teams, are not only responsible for consultation and advice, but also for the process of classification (assessment) to assist the Family Court judge on reaching an educated decision. Classification “is the indication of the appropriate guidance to contribute to the amelioration of a situation for a juvenile upon identifying the problematic character or environmental circumstances influencing such delinquency, based on knowledge and skills, such as in medicine, psychology, pedagogy and sociology.”<sup>19</sup> In order to perform its functions, classification interviews (regarding family, school, friends, work, remorse, delinquency etc.), psychological testing, behavioural observation, gathering of external information and medical diagnosis are done with each juvenile on a regular basis, with an overall “classification report”.<sup>20</sup> Whenever the Family Court places the juvenile on probation or in a Juvenile Training School, new assessments will be performed by specialized officers (based on the ones done before by the Family Court investigating officer and/or by the Classification Home), to subsidize the decision concerning the best interventions/methods to be used.

In the USA, since 1994 there has been a growth in the number of Juvenile Assessment Centers (JACs), “24-hour centralized adolescent receiving, processing and intervention facility[ies]”<sup>21</sup>, which have improved the local juvenile justice systems by “co-locating relevant agency operations to permit simultaneous accomplishment of required legal and social service interventions.”<sup>22</sup> JACs “represent an important

<sup>14</sup> CRC, Article 40.4.

<sup>15</sup> Beijing Rules: Articles 2.3 (a) and 24.1; Riyadh Guidelines: Articles 5 (a and d) and 60; JDL Rules: Art 80. See also the Guidelines for Action: Article 8.

<sup>16</sup> United Nations Office on Drugs and Crime, “Manual for the measurement of juvenile justice indicators” (2006) at 1, online: UNODC, <[http://www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf)>

<sup>17</sup> Kawamoto Seigan, “Juvenile Justice Procedure in Japan” (lecture, ‘UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 30, 2017), slide 9;

<sup>18</sup> Ibid.

<sup>19</sup> Ministry of Justice of Japan, Correction Bureau. *Juvenile Classification Homes* (UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, site visit to the Kyoto Juvenile Classification Home, February 03, 2017), <<http://moj.go.jp>>.

<sup>20</sup> Masayo Yshimura, “Welcome to Kyoto Juvenile Classification Home” (lecture, ‘UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, site visit to the Kyoto Juvenile Classification Home, February 03, 2017), slides 4 and 5.

<sup>21</sup> Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. *Journal of Child & Adolescent Substance Abuse*, vol 3(2), 25.

<sup>22</sup> Dembo, Richard, “Juvenile Assessment Center” (lecture, ‘UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 25, 2017), slide 4.

opportunity to identify the problems of troubled youth and promptly involve them in helping services and intervention programs”.<sup>23</sup> One key element of the JAC is the immediate and comprehensive preliminary assessment of the juvenile’s circumstances, through detention risk and psychological assessment instruments, alongside the “Positive Achievement Change Tool” screening instrument and voluntary urine sample; if necessary, an in-depth assessment is followed.<sup>24</sup> Information is collected on the following areas: substance use history, psychiatric history, mental status, physical health history and current medications, legal history, educational/vocational history and risk and protective factors.<sup>25</sup> As stated by Dembo and Brown, this “information, incorporated in a comprehensive information system, can provide a basis from which to develop precise, prescriptive, dispositional recommendations to the juvenile court; and guide case management efforts throughout the various program placements of the youths”.<sup>26</sup> The data is then used by competent authorities for making decisions about the adequate judicial and non-judicial interventions (for instance, by the State Attorney’s Office and Diversion Program, in the case of diversion-eligible youth, or by the Department of Juvenile Justice, in the case of detention-eligible offenders, and to the department of health, in the case of treatment or follow-up). Lastly, individual assessment is also a big focus in other relevant programmes that emerged in the state of Florida, such as the Juvenile Diversion Program and the Civil Citation Program, by which youths receive assessment and appropriate, targeted interventions.<sup>27</sup>

On the other hand, many countries have not focused on quality individual assessment of youths entering in the juvenile justice system as an important pre-requisite for adequate decision-making on the measures/interventions to be imposed. In a few of the participating countries of this seminar, assessment is not even done because the law does not provide for it; in others, although provided for or encouraged by law in all or in the majority of cases, it is not always implemented in a comprehensive and appropriate way.

For instance, in Pakistan and Bhutan, there is no place to accommodate the assessment of the youth’s needs in the juvenile justice system, as no law provides for it. In Cote d’Ivoire, Maldives and Cook Islands, a quality assessment is only done in some cases, depending on the severity of the act.

In Nepal, Panama and Papua New Guinea, the comprehensive assessment of the youth’s needs is mandatory in all cases. More specifically, in PNG the Written Pre-Sentence reports (WPSR) are filed before the magistrate of the juvenile court, or the judge of the national court hands down the sentence (disposition). Juvenile Justice Officers (JJO) from the Department of Justice and Attorney General prepare the WPSR. In some provinces, where there is no JJO, it is an accepted practice that Probation and Parole Officers (who are also employed by the Dept. of Justice and Attorney General) can prepare the report and submit it to the court. The JJO can complete the report no later than 14 days after the Court’s request, according to the Juvenile Justice Act 2014.

In Brazil, although the legal framework recognizes the importance of assessment in the decision-making process, in practice this assessment can be poor and narrow in a great deal of cases, considering that in most jurisdictions social inquiry reports are only done when preventive detention is established during judicial proceedings.<sup>28</sup> In cases of diversion and of dispositions for youths not kept in preventive detention, the assessment of the juvenile’s needs is usually done by prosecutors during the informal hearing and/or by judges during judicial interrogation, with no prior specialized assistance, considering that the majority of the jurisdictions have no or insufficient multidisciplinary personnel support (even though the law provides for its existence).<sup>29</sup> By informal or judicial hearings, prosecutors and judges briefly collect impressions about the juvenile’s personality, social and family circumstances, reasons for his/her actions etc.<sup>30</sup>, which may allow an overview of his/her needs and, possibly, the choice of appropriate interventions. However, due to the

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<sup>23</sup> Ibid, slide 6.

<sup>24</sup> Ibid, slides 13 and 14.

<sup>25</sup> Ibid, slide 16.

<sup>26</sup> Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. *Journal of Child & Adolescent Substance Abuse*, vol 3(2), 28.

<sup>27</sup> Juvenile Service Department Miami, FL, USA, Miami-Dade County. *Civil Citation Program* (UNAFEI 165<sup>th</sup> International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms’, January 26, 2017).

<sup>28</sup> Despite rules 16.1 and 7.1 of the ‘Beijing Rules’ and the ‘Tokyo Rules’, respectively

<sup>29</sup> Article 150, Child and Adolescent Statute, Brazil;

<sup>30</sup> Article 112, parag. 1, Child and Adolescent Statute, Brazil.

limitations of time and even technical skills, in many other cases, they are not able to comprehensively and adequately assess the various aspects of the offender's life. In addition, they will rarely be familiar with all community, private sector and state programmes/services available for referral. Hence, the interventions delivered may not always be the most suitable.

#### **IV. THE KEY ROLES AND RESPONSIBILITIES OF PARENTS AND GUARDIANS**

The Beijing Rules (UN Standard Minimum Rules for the Administration of Juvenile Justice) have given the right to the juvenile to be represented by a legal adviser or to apply for legal aid where there is provision for such aid in the country; and parents or the guardians shall be entitled to participate in the proceeding. However, they may be denied participation if such exclusion is necessary in the interests of the juvenile. The law also guarantees and gives special provision for this right by permitting juveniles in conflict with the law to be accompanied by their parents/guardians during their trial, unless it is considered not to be in the best interests of the child, during all stages of the proceedings.

The parents' involvement in the judicial proceeding plays a very crucial role in all aspects of the juvenile's well-being. Involvement in the proceedings helps the parents to understand the misconduct of the child and, on the other hand, helps identify the underlying problem of the particular juvenile. Proper cause can be identified by the adequate involvement of the parents and an appropriate solution can be identified for the protection and treatment of the juvenile, thereby preventing recidivism. In addition, the parents' involvement strengthens the correctional activities and monitors the released juvenile's activities, thereby avoiding recidivism. Parents and/or guardians are encouraged to cooperate and collaborate with all the elements of the community, including Non-Governmental Organizations, to prevent reoffending and to bring unity to the family. This level of involvement is very crucial.

On the contrary, the unprecedented socioeconomic developments in various countries have brought about major improvement in the living standards and prosperity of the people. However, certain sections of the society have been left behind and are not able to cope with the changes. Consequently, vulnerable groups of children that are living in difficult circumstances come into conflict with the law. Many children remain vulnerable in the absence of proper caregivers and essential support from their parents, despite the government's efforts to provide free health and education to the children. Thus, the various social and economic background and lack of cooperation from the parents pose big challenges to completely reform the children.

In the event of failure of the parents to supervise the juvenile, the state/government shall issue a warning to the parents for noncompliance to keep the parents vigilant. Inappropriate behaviour by parents and/or guardians before children that may affect the child negatively should be avoided. For example, they should avoid over indulging in alcohol in front of the juvenile and also explain the bad consequences of consuming intoxicating liquor. The parents/guardians should make appropriate arrangements for the proper education of the juvenile and also ensure that the juveniles abstain from associating with negative influences.

#### **V. DIVERSIONARY MECHANISMS**

Juvenile diversion is an intervention strategy that redirects youths away from formal processing in the juvenile justice system, while still holding them accountable for their actions. Diversion programmes may vary from low-intensity warn-and-release programmes to more-intensive treatment or therapeutic programming, all in lieu of formal court processing.

Diversion programmes are also designed to be less costly than formal court proceedings because they reduce the burden on the court system, reduce the caseload of juvenile officers, and free up limited resources and services for high-risk juvenile offenders. The goal of diversion programmes is to reduce recidivism or the occurrence of problem behaviours without having to formally process youth in the justice system.

Diversion programmes generally provide avenues to eliminate first time youth offenders who commit minor offences and avoid processing the juvenile through the formal court system. This enables the juvenile the liberty of having no criminal record.

In certain countries, various diversion mechanisms have been implemented; however, there are also countries that do not have any diversion programmes legislated or implemented. Certain countries face the challenge of having no diversion system before sentencing; however, the sentence can be suspended by the judge, releasing the juvenile to the custody of his or her parents/guardians or to a reform home (rehabilitation centre) with or without conditions. Other countries implement the procedure of diversion mechanisms where the police, Prosecutor General and/or court, have authority to impose diversion. Conditions can also be imposed upon juveniles who have been diverted. Some countries face the obstacle of having no diversion scheme due to the lack of legislation.

As stated above, the challenges faced in terms of diversion mechanisms are that certain countries have not enacted such programmes and there is a need for diversion to be enacted (specific laws outlining diversion programmes). Cultural values and traditions are also hindering the process of diversion programmes. It was revealed that some countries that have diversion used on a daily basis have ineffective diversion programmes or implement their interventions only under traditional methods; thus, there is a need for more diversion programmes to give more options for the juvenile and to eliminate the “gaps of content” in addressing his/her needs.

In addition to the challenges faced, lack of competent/technical skills of human resources and institutions hinder effective diversion programmes for juveniles. Other factors were that there is no feedback on the output from the diversion programme facilities, i.e., no analysis, statistics, lack of evaluation and monitoring of the diversion programmes, to analyse the effectiveness of the programme.

The group’s discussions have revealed that the benefits of including and legislating diversion programmes outweigh the disadvantages. Therefore, it is recommended that to have an effective juvenile justice system, there is a need to implement and enact diversion mechanisms or programmes. Providing legislation for diversion, especially for petty and minor cases, will be an avenue to avoid the formal justice procedure and ensure that first-time offenders are given the opportunity to avoid criminal conviction.

There is a need to establish and use a variety of methods. The Japanese diversion system provides varieties of options to choose from such as educational trainings, counselling etc. and could be used as a model. The need for public awareness of the importance of diversion programmes is also paramount, as this enables the cooperation between the juvenile justice system and the public. Finally, to have an effective diversion programme, training and specialized knowledge for personnel conducting the programme must be of importance.

As outlined by Mr. Robert D. Hoge and Ms. Holly A. Wilson, they stated the following in their article on *The Effect of Youth Diversion Programs on Rates of Recidivism*:

*Pre- and post-charge diversion programs have been used as a formal intervention strategy for youth offenders since the 1970s. This meta-analysis was conducted to shed some light on whether diversion reduces recidivism at a greater rate than traditional justice system processing and to explore aspects of diversion programs associated with greater reductions in recidivism. Forty-five diversion evaluation studies reporting on 73 programs were included in the meta-analysis. The results indicated that diversion is more effective in reducing recidivism than conventional judicial interventions. Moderator analysis revealed that both study- and program-level variables influenced program effectiveness. Of particular note was the relationship between program-level variables (e.g., referral level) and the risk level targeted by programs (e.g., low or medium/high). Further research is required implementing strong research designs and exploring the role of risk level on youth diversion effectiveness.*

## VI. RESTORATIVE JUSTICE

Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social, networks, justice agencies and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. Any efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as these injured parties, while also providing help and support that the victim and offender require.

Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offenders. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities. Through them, the victim, the offender and the community regain some control over the process. Furthermore, the process itself can often transform the relationships between the community and the justice system as a whole.

On the question of restorative justice, reference can be made to UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, Handbook on Restorative Justice Programmes- Criminal Justice Handbook Series, UNITED NATIONS New York 2006. "*The Vienna Declaration on Crime and Justice; Meeting the Challenges of the Twenty-first Century (2000)* encouraged the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interest of victims, offenders, communities and all parties. In August 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States that are implementing restorative justice programmes to draw on a set of *Basic Principles on the use of Restorative Justice Programmes in Criminal Matters*. In 2005, the declaration of the Eleventh United Nations Congress on the Prevention of Crime and Treatment of Offenders (2005) urged Member States to recognise the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution".

Some countries have restorative justice policies and legislation to guide them in the administration and practice of juvenile justice, while some apply protective measures and retributive justice in juvenile justice administration.

In Papua New Guinea, restorative justice is the overall National Law & Justice Sector Policy for the country. Each justice sector agency has developed its own juvenile justice administration policies, protocols and guidelines based on the general principles established in the Restorative Justice Policy. Restorative justice is applied at the community level and also applied by all law and justice sector agencies in the formal criminal justice process and procedure. Restorative justice has worked alongside retributive justice as an approach to reduce crime and restore peace. The PNG National Juvenile Justice Policy accommodates approaches for restorative justice. The new revised Juvenile Justice Act 2014 stipulates for juvenile diversion to be applied, taking into account restorative justice principles.

Along the same lines, in Panama the principles of restorative justice and also prevention measures are applied. Police and NGOs facilitate the process and procedures. Prosecution is the last resort. The positive effect is that it reduces recidivism.

Maldives and Cook Islands also apply restorative justice. Juvenile diversion and community mediation is facilitated by the police. In the outer islands, recognized community leaders also perform community-based mediation of minor offences involving the community/villages. Restorative justice principles are not applied in the formal criminal justice setting.

In Japan and Brazil, although the legal framework provides openings for restorative practices in juvenile justice, restorative justice has not played an important role. For instance, in Brazil, recent legislation expressly mentions restorative justice as a principle for youth interventions and for the justice system; however, its use in juvenile justice is still limited or, in most jurisdictions, nonexistent. For example, the measure of damage repair is applied less frequently, even though most acts are property offences. Since 2005, despite the ongoing initiatives that have emerged in the country (usually inspired from Canadian circles), restorative justice is still in an embryonic stage.

In Pakistan and Bhutan, restorative justice is applied in the court system if the victim and offender agree to resolve/mediate the crime through payment of compensation to the victim/complainant.

In Nepal and Cote d'Ivoire, the restorative justice principle has not been introduced in the criminal justice setting or in the local communities as a measure to restore peace and harmony. As there is no law, legal practitioners cannot apply restorative justice in the criminal justice system as well as in the



community/social settings.

## **VII. MULTI-AGENCY COOPERATION WITH THE COMMUNITY AND THE PRIVATE SECTOR**

The protection of children in conflict with the law requires, among other measures, multi-sectoral cooperation between the community and the private sector. As is evident from the spirit of the United Nations standards and norms, the care of juvenile offenders should, principally, borrow or embrace non-coercive means as solutions to the problems posed by such minors.

Consequently, recourse to community support or private sector support appears, in many respects, to be salutary and praiseworthy for the re-socialization of the juvenile in conflict with the law by circumventing all the gravity and rigor of the classical system and orthodox theory proposed by state judicial formalism.

It is therefore at this stage of the care of the juvenile delinquent that both (i) non-governmental organizations and (ii) private sector structures come into play as essential bodies.

### **A. The Role of Non-Governmental Organizations**

In point (2) of the United Nations Guidelines for the Prevention of Juvenile Delinquency, known as the "Riyadh Guidelines", adopted and proclaimed by the General Assembly in its resolution 45/112 of 14 December 1990, it is stated that: "The prevention of juvenile delinquency is paying off, the whole society must ensure the harmonious development of adolescents, respecting their personality and promoting the development of young people from the earliest childhood".

This text is an interpellation with a view to the junction of all the actions both governmental and non-governmental in respect of a better and efficient care of minors in conflict with the law. Since the states cannot, by themselves, eliminate all the problems generated by the issue of juvenile delinquency, the non-governmental organizations find the basis of their indispensable involvement in resolving the issue of juvenile offenders.

It is therefore very often that they intervene, especially as regards the part of the social reintegration of the juvenile offenders, in many of the states parties or not to the various United Nations conventions on the issue of children in conflict with the law. Thus, as their name suggests, there are many non-governmental organizations that act in support of the states in the social, psychological and medical care as well as those of children in conflict with the law for the purposes of their re-socialization and with a view to avoiding recidivism.

In developing countries, such as Côte d'Ivoire to name but a few, non-governmental organizations such as "CARE OF CHILDREN" are very active. Their actions are perceptible both upstream and downstream of the classic judicial proceedings relating to juvenile delinquency.

Upstream, this NGO intervenes as psychological and moral support of the minor at the preliminary investigation by giving him confidence, looking for, in many cases, his biological family when it is unavailable or unknown. At this stage, the NGO also intervenes with the victims, depending on the nature of the offence and the content of the harm, so that negotiated remedial channels can be used to prevent the juvenile delinquent from the rigor of classical legal prosecution.

If his action does not prosper upstream and in spite of it, the juvenile offender was brought before the judicial authorities, then that NGO will intervene, this time downstream, in order to give moral support to the juvenile, to find him a lawyer, to obtain subsidies if he is placed in preventive detention and fully associate himself with the programme of re-socialization of the latter in case of possible conviction.

In Japan, halfway houses are available. Halfway houses provide accommodation for juveniles and others who are not immediately able to become self-reliant, for reasons such as the absence of a person to be relied upon, such as parents, etc. In addition to paying meals, private entities, such as rehabilitation corporations, provide employment support, daily guidance, etc. There are 103 halfway houses throughout the country. While expenses are covered by government expenses for many facilities, some facilities may be engaged in

for-profit activities such as managing parking lots and cleaning businesses.

The challenge is that the government expenses are paid according to the number of inhabitants in care, so it is difficult to generate stable income, and local residents often express opposition to the facility as being a nuisance especially when rebuilding or relocating.

The field of care for minors in conflict with the law is so vast and important that it requires the coordination of several actors in support of the state actions, like NGOs but also volunteers such as Japanese volunteer probation officers (VPOs).

However, it should be noted that the involvement of NGOs in the sphere of juvenile justice in conflict with the law is appreciated differently. Thus, while the role of the NGOs is genuinely regulated, and their actions are accepted without exception in countries such as Côte d'Ivoire and Japan, it is different for other countries such as Pakistan and Bhutan.

Such a finding or contradiction between the practices of the various countries, which are all signatories to the international conventions on the protection of minors in conflict with the law, need recommendations to harmonize practices in the best interests of children in conflict with the law.

## **B. The Role of Volunteer Probation Officers**

The intervention of volunteers in the search for solutions with a view to the re-socialization of juvenile offenders and their avoidance of recidivism draws, among other bases, its sources in the combined reading of articles 25-1 of the United Nations Standards Minimum Rules concerning the administration of juvenile justice known as the Beijing Rules, 6 and 10 of the United Nations Guidelines for the prevention of juvenile delinquency, known as the Riyadh Guidelines.

Article 25-1 of the Beijing Rules states: "Volunteers, voluntary organizations, local institutions and other community services shall be required to contribute effectively to the reintegration of the minor into a community framework and, as far as possible, within the unit family".

Articles 6 and 10 of the Riyadh Guidelines stipulate, respectively, that "community programmes and services for the prevention of juvenile delinquency should be set up, especially in cases where no conventional service has yet been established, and to have recourse as a last resort to classical social control services".

"Emphasis should also be placed on prevention policies that facilitate the successful socialization and integration of all children and young people, especially through the family, the community, peer groups, education, vocational training and the world of work and through the use of voluntary organizations (...)".

The common spirit of all these texts is that volunteering is important for the care of the minor offenders from the perspective of their social reintegration. They express the clear will of the international community to see more voluntary service as an adjunct to the reworking of a palliative solution to the problems arising from juvenile delinquency.

This appeal has been heard by states such as Japan which have instituted voluntary work as an additional solution to the fight against juvenile delinquency and, above all, as a non-binding way of re-socializing juveniles in conflict with the law. Furthermore, about 50,000 volunteer probation officers have been commissioned by the Minister of Justice nationwide. According to Article 32 of the Offenders Rehabilitation Protection Act: "Volunteer probation officers shall supplement the work not covered sufficiently by probation officers, being instructed and supervised by the director of the probation office, based on the provisions specified in the Volunteer Probation Officers Act, and shall engage in affairs under the jurisdiction of the probation office".

Volunteer probation officers are often community leaders, and they also typically have strong connections to local social resources. For example, for VPOs who are retired school teachers, coordinating social circumstances for a juvenile to return to school will be made more convenient as the school teacher will be of great assistance to the juvenile due to his/her teaching background.

In Article 30 of the same Act, as a request for cooperation etc., the director of a probation office may request public agencies, schools, hospitals, organizations relating to public health and welfare and other persons to provide necessary assistance, and cooperation for the purpose of performing the affairs under its jurisdiction. There are cases in which probation officers, together with volunteer probation officers, are promoting cooperation with related organizations etc.

As the average age of VPOs continues to increase, new shortcomings are raised. On the other hand, as a Committee for Examining Candidates of Volunteer Probation Officers, organizations of neighbouring areas, such as local public entities and social welfare councils, elementary and junior high school PTAs, and women's associations, we also promoted a system to recommend nominees, and the decline in the number of VPOs has been stopped.

In Japan, regarding the recruitment of VPOs, the committee for examining VPO candidates is required to maintain a database that includes VPOs' retirement age, employment and so on.

Both halfway houses and VPOs are required to promote the idea of the healthy development of juveniles in the community, so as to gain greater understanding of the public.

### **VIII. RECOMMENDATIONS AND CONCLUSION**

As discussed in this paper, in order to address the measures to prevent and/or reduce recidivism, there is a need for a holistic approach on the part of all the stakeholders of the juvenile justice system as well as the active participation of parents and/or guardians. Taking this into account, it is also important to implement the comprehensive assessment of each juvenile's needs, prompt intervention and implementation, various diversion mechanisms and restorative justice. Thus, the following are proposed:

1. Cooperation, interaction and coordination<sup>31</sup> between the bodies/agencies involved in determining the measures/interventions, and those responsible for implementing them should be improved;
2. Physical co-location of relevant agency operations (like police, prosecution, public defence, the judiciary and social assistance bodies) should be implemented, in order to permit simultaneous accomplishment of legal and social service interventions;
3. Specific legislation/rules/guidelines should be enacted to determine the maximum time limit to investigate, judicial procedure and to summon the juvenile to start the implementation of the measures/interventions established by the justice system. One way to guarantee its strict enforcement is to establish a monitoring agency/body and the submission of periodic reports about the accomplishments made.
4. Specific legislation/rules/guidelines should be enacted to establish, in all cases, a comprehensive and quality assessment of the juvenile's needs to support the decision-making of the interventions/measures to be applied;
5. Reliable assessment tools (which do not uniquely depend on the individual capability of who performs the assessment) should be developed and used;
6. Professional qualification and expert training should be provided to the personnel in charge of the assessment;
7. The social inquiry reports' format should be more comprehensive;
8. Parents and/or guardians should be liable for the upbringing of the juvenile and held accountable for any misconduct;

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<sup>31</sup> Riyadh Guidelines, Article 60

9. Diversion mechanisms should be implemented and enacted as per the needs of each country;
10. To implement an effective diversion programme, there should be constant training and specialized knowledge for personnel conducting the programme;
11. There should be a mechanism for monitoring and data analysis, which should be strengthened based on the country's needs;
12. The use of restorative justice practices in the juvenile criminal justice system to compliment current practices of prevention measures and retributive justice should be legislated;
13. Capacity-building and technical skills should be provided to enhance the implementation of restorative justice;
14. The government should emphasize the importance of the juvenile's healthy development in the community through public relations or information sharing activities, so as to create supportive public opinion;
15. Governments should recognise and strengthen the work of community leaders and NGOs;
16. There should be a flexible system for incorporation between the juvenile justice system and the NGO's and all stakeholders (i.e. multi-agency cooperation, the community, the private sector etc.)
17. Standard operating procedures should be developed for a multi-sectoral approach, which will help to define the different agencies roles and responsibilities.
18. The role of NGOs in the juvenile justice system should be broadened to avoid limiting their responsibilities.

This paper has covered only a portion of the measures in reducing and preventing recidivism among juveniles. All countries require diverse avenues in addressing recidivism as we all experience various obstacles, impediments and the like; yet we are united in the aspiration of securing and endeavouring a faultless juvenile justice system as we strive to protect and guide the most vulnerable, our children. We all desire a healthy future, and this future we pursue will be cultivated by our children who are our future generation; therefore, they must be nurtured and guided accordingly through the right channel. Thus, the path set out for the child today will determine the child's destination tomorrow.