ANNUAL REPORT FOR 2016

AND

RESOURCE MATERIAL SERIES NO. 102

JUVENILE JUSTICE AND THE UNITED NATIONS STANDARDS AND NORMS

UNAFEI

Fuchu, Tokyo, Japan **September 2017**

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 102. This volume contains the Annual Report for 2016 and the work produced in the 165th International Senior Seminar, conducted from 12 January to 10 February 2017. The main theme of the 165th Seminar was *Juvenile Justice and the United Nations Standards and Norms*.

The United Nations standards and norms for juvenile justice—which include the Beijing Rules, the Riyadh Guidelines and the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty" —establish minimum standards for the treatment of juveniles in conflict with the law. These standards include, among others, ensuring due process in juvenile justice systems, promoting diversion from the formal juvenile justice process and encouraging the use of alternatives to institutionalization. Many if not all of these principles have become binding international law on more than 190 countries that have ratified "the Convention on the Rights of the Child". Although most countries have implemented specific measures for the treatment of juveniles, many countries continue to face challenges including long-term detention, lack of social inquiry, and lack of use of diversion, and there is room for further improvement in terms of alternative measures to incarceration, treatment programmes, and cooperation with related organizations and individuals.

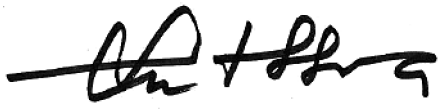
UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Seminar to explore various issues that relate to juvenile justice. This issue of the *Resource Material Series*, in regard to the 165th International Senior Seminar, contains papers contributed by visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Seminar. I regret that not all the papers submitted by the participants of the Seminar could be published.

This volume of the *Resource Material Series* is noteworthy in that it contains a new section entitled "Supplemental Material". This section is dedicated to important material which may, or may not, be directly connected to the theme of the training programmes covered in the publication. In either case, material published in this section will be related to UNAFEI's activities and will broaden the perspectives shared, in furtherance of UNAFEI's ongoing mission to widely disseminate practical and professional information impacting the field of crime prevention and criminal justice.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

September 2017



Keisuke SENTA
Director of UNAFEI

PART ONE

ANNUAL REPORT FOR 2016

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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2016 – 31 December 2016)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1962 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in the Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of the criminal justice field discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice from the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). Approximately one hundred government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA is an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in the criminal justice field.

By the end of 2016, UNAFEI had conducted a total of 164 international training courses and seminars. Over 5,000 criminal justice personnel representing 136 different countries and administrative regions have participated in these seminars. UNAFEI also conducts a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and hold important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 162nd International Senior Seminar

1. Introduction

The 162nd International Senior Seminar was held from 13 January to 12 February 2016. The main theme was "Multi-agency Cooperation in Community-Based Treatment of Offenders". Fifteen overseas participants and six Japanese participants attended the Seminar.

2. Methodology

Firstly, the Seminar participants respectively introduced the roles and functions of criminal justice agencies in their countries in regard to the main theme. After receiving lectures from UNAFEI Professors and visiting experts, the participants were then divided into three group workshops as follows:

Group 1: Effective Multi-agency Cooperation in Terms of Implementation of Non-custodial Measures at Each Stage of the Criminal Justice Process

Group 2: Effective Models for Multi-agency Cooperation in Community-Based Treatment of Offenders

Group 3: Information Sharing in Multi-agency Cooperation

Each Group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experiences, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the Reports of the Seminar. The full texts of these Reports were published in UNAFEI Resource Material Series No. 99.

3. Outcome Summary

(i) Effective Multi-agency Cooperation in Terms of Implementation of Non-custodial Measures at Each Stage of the Criminal Justice Process

Group 1 stressed that multi-agency cooperation is necessary to reduce recidivism, facilitate reintegration, promote non-custodial measures, and establish a safer community. Additionally, the group concluded that multi-agency cooperation is necessary at all stages of the criminal justice process, including the pre-trial, trial, and post-trial stages.

During the discussion, multi-agency cooperation was considered from several perspectives: (a) the types of offenders who should be targeted, (b) the ideal structure of multi-agency cooperation, (c) information sharing and analysis, (d) problems of legislation, and (e) evaluation.

Regarding the types of offenders that should be targeted, the group emphasized focusing on low-risk and first-time offenders, as well as offenders with special needs, such as the chronically ill, the disabled, the elderly and juveniles. The group also felt that multi-agency cooperation would be facilitated by expanding sentencing options available to judges other than incarceration.

The ideal structure for multi-agency cooperation should take a holistic approach to offender rehabilitation by involving all relevant government agencies, the private sector and the general public (i.e., community involvement). Examples of key organizations include NGOs, hospitals, welfare facilities and community resources. Private entities should be encouraged to participate in offender rehabilitation through the availability of government subsidies to, for example, businesses that employ ex-offenders.

Multi-agency cooperation cannot succeed without effective information sharing and analysis. Relevant agencies need information about the offenders in order to match their treatment needs with available services. However, information sharing raises the issue of confidentiality, as well as the willingness of the offender to cooperate. To the extent possible, the group concluded that information sharing should be based on the offender's consent.

Regarding problems of legislation, the group explained that gaps exist between various forms of criminal justice legislation, such as penal laws, criminal procedure codes, probation acts, and prison acts. These gaps limit the ability of relevant agencies to collaborate with each other, and the gaps must be bridged by special legislation, MOUs or other agreements between agencies.

Once these gaps are bridged and collaborative procedures are established, these procedures must be evaluated by each agency involved and by independent bodies to assess effectiveness. Indicators of success include lowered recidivism rates, reduction in prison overcrowding, expanded sentencing options that encourage diversion and non-custodial measures, and positive feedback from the private sector and the

community.

(ii) Effective Models for Multi-agency Cooperation in Community-Based Treatment of Offenders

Group 2 was tasked with developing ideal models for multi-agency cooperation and considered such models from the perspective of types of offenders to be targeted, the ideal structure for cooperation, and necessary legislation. The group members agreed that although there is no single programme that can be considered the most effective, an effective model should be designed to reduce recidivism, using evidence-based practices.

Criminal justice systems should be prepared to provide assistance to both low-risk and serious offenders. Typically, multi-agency cooperation is believed to benefit offenders who do not pose a risk to society. Offenders should be assessed individually, based on each offender's specific crimes and rehabilitation needs, by applying the analytical framework of the Risk-Needs-Responsivity Model. However, there is an emerging trend in which reformed serious offenders, drug offenders and sexual offenders are being given second chances to re-enter the community, and the group agreed that the individualization of sentences and treatment is the preferred model.

The group reported that multi-agency cooperation exists where there is complementary and overlapping provision of services to the offender by both government and NGOs. Agencies that provide services to offenders include cooperative employers, labour organizations, hospitals, special schools, self-help groups, e.g., "AA", community settlement support centres, community justice centres and local government. The group identified numerous challenges to multi-agency cooperation and proposed solutions in its group workshop report.

After reviewing the participating countries' legislation to facilitate multi-agency cooperation, the group proposed that the following topics should be addressed in ideal legislation: (1) monitoring and controls instituted by the government on how resources are spent on offenders, (2) information sharing between agencies, (3) financial auditing and reports, and (4) each ministry directly related to the services being provided by an NGO should take direct control.

The importance of programme evaluation was discussed by the group, which acknowledged that the reduction of the recidivism rate is one important measure of effectiveness. However, satisfying the offenders' criminogenic needs, such as employment, housing and medical care is fundamentally important for the rehabilitation process. Accordingly, other measures of effectiveness include the number of offenders who receive support upon re-entry and the number of offenders who start and continue to work successfully.

The group concluded that successful models for multi-agency cooperation will include: (1) the development of mutual understanding between agencies and individuals, (2) active information sharing, employing the "through care" model, (3) the enactment of legislation that encourages community-based treatment, and (4) securing sufficient budgetary resources, political will, and the support of the public.

(iii) Information Sharing in Multi-agency Cooperation

Group 3 reported on issues surrounding information sharing in the context of multi-agency cooperation in community-based treatment of offenders by considering the types of offenders and offences that should be targeted, information sharing and analysis, and problems in legislation.

Collaborative multi-agency partnerships are necessary to ensure successful implementation of offender treatment programmes. Although practices and opinions differ from country to country, the group concluded that the treatment needs of *all* offenders should be addressed through multi-agency cooperation and that recidivists should be prioritized due to their great need for support. Information sharing between relevant agencies plays a crucial role in achieving the desired treatment goals.

Recognizing the need to protect personal information and that laws vary among the participating countries, the group agreed that it is necessary to share the following categories of information among relevant agencies: (1) the offender's biographical data, (2) the nature of the offence, (3) the offender's history of previous offences, (4) the offender's general health and mental conditions, (5) behaviour and conduct while in a correctional facility, (6) behaviour and conduct while in a residential community, (7) education and skills

training/level, (8) employment history, (9) the offender's compliance with previous court orders and sentences, and (10) the circumstances and environment of the victim, and any compensation or civil commitment condition to which the offender is subjected by the court.

Due to the sensitivity of such information, the group identified numerous problems associated with multi-agency information sharing. However, the group also recommended solutions, such as establishing standard operating procedures to ensure that personal information is properly protected, obtaining the offender's consent when necessary, establishing secure IT systems, and conducting periodic review of information-sharing practices.

The group stressed the importance of formal written procedures for requesting information between agencies. However, proper information sharing can be ensured by establishing shared databases that can be accessed by agencies that need the information. While the offender's personal information should be shared among relevant agencies, information shared with private agencies should be limited to that which is necessary to complete the offender's treatment, and private agencies must use discretion when handling personal or sensitive information.

On the topic of legislation, the group agreed that distinct legislation is necessary to establish a legal basis for multi-agency cooperation and information sharing. However, legislation cannot address all issues that will be encountered, making the execution of multi-agency MOUs, regular meetings between agencies, and the establishment of better professional rapport between agencies important factors for successful multi-agency cooperation.

B. The 163rd International Training Course

1. Introduction

The 163rd International Training Course was held from 11 May to 22 June 2016. The main theme was "Children as Victims and Witnesses". Twenty-three overseas participants and seven Japanese participants attended the Course.

2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations, lectures by visiting experts and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Special Measures in Dealing with Child Victims and Witnesses in the Criminal Justice Process

Group 2: Ideal Measures to Protect Children as Witnesses in the Investigation and Trial Phases

Group 3: Improving Skills and Practices in Interviewing Child Victims and Witnesses during Inquiry and Testimony

The three groups each elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the reports of the Course. The full texts of the reports were published in full in Resource Material Series No. 100.

3. Outcome Summary

(i) Special Measures in Dealing with Child Victims and Witnesses in the Criminal Justice Process

Group 1 reviewed the status of special measures for the protection of child victims and witnesses in each of the participating countries and proposed detailed recommendations for such special measures that should be considered for adoption. The recommendations are intended to ensure that the criminal justice system is sensitized to child victims and witnesses.

The group identified weaknesses in investigation and adjudication of cases involving violence against

children (VAC) that are common among many countries. VAC is under-reported and under-detected. Many counties lack training and special procedures for investigating VAC cases, as well as special provisions to protect child victims and witnesses. Likewise, the adjudicatory process lacks training and special provisions that elicit credible testimony from children, such as child-friendly hearing rooms, video-link testimony, etc.

To improve detection and reporting, the group recommended a number of measures. Increasing public awareness is important for effective reporting, and countries are encouraged to identify target groups, focus on issues of VAC that are relevant to the country and use social media and other marketing strategies to reach the public. Also, countries should identify the risk factors and indicators of VAC using an evidence-based approach. Reporting should be confidential and easily accessible by establishing a 24/7 toll-free helpline, and mandatory reporting of VAC should be legally required.

During investigation and trial, special measures should be implemented to protect child victims and witnesses from re-victimization and to ensure the credibility of their statements. Skilled and trained investigators are needed to conduct child-sensitive forensic interviews. At trial, children should be permitted to testify from special rooms by video link so that the child cannot see the accused, and questions directed to the child should be asked by a qualified expert.

Throughout the criminal justice process, special protective measures should be used to safeguard the best interests of the child. To do so, the group also pointed out that the rights of the suspect/defendant must not be taken for granted. Only when necessary and as a last resort, the child should be placed in temporary protective custody with a relative, foster family, shelter for victims of abuse, etc. All relevant criminal justice and social welfare agencies should be involved in this process, and guidelines should be developed to monitor the status of the child. Additionally, the child's identity should be protected by the issuance of a non-disclosure order by the court, and court proceedings related to children should be conducted as closed hearings.

(ii) Ideal Measures to Protect Children as Witnesses in the Investigation and Trial Phases

Group 2 considered measures to protect child witnesses during the investigation and trial phases. The group agreed to focus on child witnesses because such laws, measures and practices are particularly lacking in many jurisdictions, whereas legislation on violence against children is more prevalent. Throughout the workshop, the group drew on a number of international resources, particularly the Convention on the Rights of the Child and the United Nation's Model Law on Justice in Matters involving Child Victims and Witnesses of Crime and Related Commentary, as well as the best practices of the participating countries.

The purpose of the investigation phase is to obtain the best evidence possible to secure a conviction and to secure justice for the child. This can only be accomplished if child witnesses receive the necessary support. For child witnesses, the prevention of re-victimization, e.g., reliving a traumatic experience that was endured or observed by the child in multiple interviews, takes high priority. The group found that victim support agencies and specially trained support persons are necessary to provide care, comfort and counselling to child witnesses throughout the criminal justice process. Likewise, specially trained investigators are needed to conduct child-sensitive forensic interviews to elicit a complete and credible account of the offence and to protect the child's psychological well-being. Other measures to be employed during the investigation stage include the use of child-friendly interview rooms, the use of technical communication aids, e.g., dolls, to help the child explain what happened, and the limitation of the number and duration of interviews, based on the age and mental state of the child.

Child witnesses also require support during the trial phase. It is important to protect a child's privacy by prohibiting the disclosure of his or her identity through the criminal justice process. Further, the child's physical safety and mental state should be protected by avoiding direct contact with the offender, which can be achieved though measures such as witness shielding and the admission of video-recorded testimony into evidence. Additionally, child-friendly waiting areas are important to ease the child's state of mind so that he or she can testify comfortably.

The group offered the following recommendations for the protection of child witnesses: (1) enacting special laws that provide for measures such as limiting the number of interviews, requiring that questioning of children be conducted according to the child's age and mental capacity, requiring in camera sessions,

removal of the accused from the courtroom during the child's testimony, etc., (2) establishing special agencies to support child witnesses during and after the judicial process, (3) initiating training for personnel dealing with child witnesses, (4) providing experts to assist in interviewing child witnesses and (5) providing separate child-friendly investigation and waiting rooms.

(iii) Improving Skills and Practices in Interviewing Child Victims and Witnesses during Inquiry and Testimony

Group 3 focused on improving skills and practices for interviewing child victims and witnesses. The group noted that for many years, child victims and witnesses were treated in the same manner as adults. As many adults find the criminal justice processes to be intimidating and difficult to comprehend, this is particularly true for children. In response, many countries have adopted special procedures to ease the burdens on children who take part in the criminal justice system, but further measures are needed to address their unique needs as witnesses.

The group reviewed the current status of interviewing child victims and witnesses, finding that current practices often jeopardize the collection of credible evidence. Children are routinely interviewed multiple times, which causes re-victimization of the child and can result in inconsistent statements due to the fact that children face the obstacles of language, mental development and maturity. Moreover, children are particularly susceptible to the power of suggestion. Often due to a lack of training, many investigators lack sufficient interviewing skills, and many cases are dismissed when the investigator fails to elicit credible evidence from the child. Additionally, many countries lack child-friendly interviewing rooms, which are necessary to provide children with an environment in which the child feels comfortable explaining how he or she was victimized. In situations where the child is forced to confront the perpetrator before the interview or giving testimony, the child is likely to be overcome by fear, and the child may refuse give the statement. Meanwhile, delays in the criminal justice procedure can cause memories to fade, making it impossible to collect credible evidence. Lacking in many jurisdictions, support services for child victims and witnesses are crucial to adequate fact-finding because these services provide children with the sense of security they need to tell their stories and the counselling they need to heal.

To overcome these challenges, the group identified 12 recommendations to improve interviewing of child victims and witnesses: (1) the drafting of standard operating procedure manuals, (2) reducing the time gap between the first interview and the giving of testimony, (3) establishing multi-disciplinary investigation teams, (4) use of separate interview rooms for children, (5) providing interviewers with relevant training, (6) introduction of child-friendly practices, (7) asking questions designed to measure the child's memory, (8) asking open-ended questions during interviews, (9) audio or video recording of interviews, (10) use of video link technology during trial testimony, (11) enhancing legal aid for children, and (12) conducting regular debriefing for officers to reduce burnout. Finally, because children are less likely than adults to report abuse by filing a formal complaint, law enforcement agencies require legislative support to investigate abuse based on suspicion.

C. The 164th International Training Course

1. Introduction

The 164th International Training Course was held from 14 August to 23 September 2016. The main theme was "Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders". Twenty-four overseas participants (including two observers) and seven Japanese participants attended.

2. Methodology

The participants of the 164th Course endeavoured to explore the topic primarily through a comparative analysis of the current situation and the problems encountered. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations, lectures by visiting experts and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into three groups.

Each Group elected a chairperson, co-chairperson(s), rapporteur and co-rapporteur(s) to organize the

discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Both groups examined the course theme. The Groups presented their reports in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports were published in full in UNAFEI Resource Material Series No. 101.

3. Outcome Summary

(i) Dealing with Children: Diversion, Court Action, Cooperation

Group 1 focused on the role of diversion in the rehabilitation of juveniles in conflict with the law within the context of the participating countries' juvenile justice systems and the international standards set forth in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

Due to factors such as environment, lack of experience and stage of mental development, juveniles in conflict with the law are particularly responsive to rehabilitative and social reintegration approaches. Measures that divert these juveniles from the traditional criminal justice system are more effective than a traditional retributive approach. Thus, diversion redirects juveniles to the community support services they need to get their lives back on track.

The Beijing Rules establish standards for the administration of juvenile justice, and one of the fundamental concepts is the establishment of a competent judicial authority, such as family or juvenile courts, that specializes in handling cases involving juveniles. Other key principles of a fair and effective juvenile justice system include: involvement of parents, guardians and legal counsel; the use of social inquiry reports; a variety of disposition measures so as to avoid institutionalization to the greatest extent possible; avoidance of unnecessary delay in the disposition of cases; ensuring the confidentiality of case records involving juveniles; and the need for professionalism and training for juvenile justice practitioners.

The group stressed the importance of inter-organizational cooperation with related governmental agencies and other criminal justice practitioners, such as the police, prosecutors, the courts, probation, and juvenile correctional facilities. Such cooperation is necessary for the smooth functioning of the juvenile justice system, and all countries reported some level of interaction between these agencies. Furthermore, all group members agreed that public-private partnerships can support rehabilitation through the establishment of private halfway houses, finding employment for juveniles and teaching them vocational skills, organizing volunteers to support rehabilitation, and so on.

The treatment, rehabilitation and social reintegration of juveniles into society requires a holistic approach on the part of all stakeholders of the criminal justice system, as well as the active participation of the community and the private sector. To ensure that these goals are met, the group recommended, among others, (1) the use of enlightening and educational diversion programmes tailored to juveniles, (2) promoting volunteerism to encourage citizens to work with juveniles, (3) information sharing by and between governmental agencies and the private sector to enhance services provided to juveniles, and (4) the collection of data on recidivism to assess current diversion methods.

(ii) The Ideal Juvenile Justice Model, Key Innovations and Practices

The group members considered the ideal model for juvenile justice by focusing on four main themes: (1) procedures for appropriate treatment; (2) risk/needs assessment and treatment programmes; (3) reintegration; and (4) inter-agency cooperation and governmental support.

Appropriate treatment of juveniles in conflict with the law requires specialized juvenile justice personnel, such as police, prosecutors, family/juvenile courts, rehabilitation centres, and professional and volunteer probation officers. The group identified the challenges of the lack of appropriate legislation, budget and skilled human resources. Additionally, more efforts should be taken to consider the rights of victims throughout the juvenile justice process.

Risk/needs assessment was identified as a key component of an ideal juvenile justice system. Low risk juveniles can be treated in the community while high risk juveniles can be treated in an institution to ensure the best outcomes. While some countries have advanced standardized assessment tools to guide the treatment of juveniles in conflict with the law, some countries have no tools at all. The group suggested that

countries without advanced tools perform a S. W. O. T. analysis to assess the strengths, weaknesses, opportunities, and threats with respect to juveniles in need to treatment. Once an assessment is conducted, treatment programmes such as life skills training with a focus on criminogenic needs, emotional development training and vocational training can be implemented as appropriate. Other novel approaches discussed by the group include initiatives to improve juveniles' self-reliance and decision-making abilities and the practice of including various members from the juveniles' communities, such as village elders, police officers and social welfare officials, in the process of diversion and treatment.

The group members agreed that the purpose of criminal sanctions should be the successful reintegration of the offender upon release, noting that juveniles in conflict with the law face numerous challenges during the process of reintegration into society. These challenges include the lack of resources, employment and social support, psychological problems, and difficulty dealing with the transition period, including dealing with social stigma. Noting that an ideal system would allow the individual to return to society with a "reinvented" identity, practices such as pre-release and re-entry programmes and family support measures were suggested as measures to facilitate reintegration.

Inter-agency cooperation and governmental support are also important to facilitate reintegration. Key practices identified by the group include the sharing of information between agencies through shared databases, the establishment of funds aimed at assisting ex-offenders upon their release, the implementation of risk management models, and human-resources exchanges between relevant agencies. Private sector support was also encouraged through the establishment of partnerships with businesses, non-profit organizations and faith-based organizations.

(iii) Social Reintegration

Group 3 addressed the challenges of social reintegration of juveniles in conflict with the law. The group members agreed that detention is not always the appropriate way to deal with juvenile offenders, and, thus, they proposed solutions in reference to the following points: diversion and alternative sentencing; crime prevention; and inter-agency cooperation with the community and the private sector.

Diversion, as described in the Beijing Rules, is a process through which the police, prosecutors and other agencies are empowered to dispose of cases involving juveniles without proceeding to a formal hearing. Diversion measures include cautioning, reparations, restorative justice measures, etc. Alternative sentencing is applied to juveniles who have been formally processed through the juvenile justice system, and these measures avoid typical custodial sentences. Alternative sentencing measures include probation, community service, conditional or unconditional discharge, training and rehabilitation treatment.

The group identified challenges facing social reintegration of juveniles, particularly stigmatization, lack of employment opportunities, lack of professionals with specialized skills and knowledge, the lack of availability of community resources, etc. To address these challenges, Group 3 proposed the promotion of diversion and alternative measures through professional training and use of the media, relying on volunteers to supplement the work of trained professionals, and adopting legislation that formalizes the use of diversion and alternative sentencing.

Some countries reported that they lack specific laws and strategies relating to crime prevention at the national level. It was also recognized that where such laws exist, it is often the case that crime prevention programmes lack sufficient resources and are not coordinated or sustained by various agencies involved. The group stressed the importance public awareness and education to promote crime prevention and social reintegration. These measures should be directed both at juveniles in conflict with the law and the general public through various methods including community supervision, annual crime prevention campaigns, and use of the electronic and print media.

Finally, the group agreed that inter-agency cooperation with non-governmental agencies, as well as governmental agencies, is important to foster the social reintegration of juveniles. Nevertheless, many countries lack policy guidelines and legislation, lack of awareness, and lack of sufficient resources. Countries should develop strategies, legislation and procedures for inter-agency cooperation, increase resources and incentives for such cooperation, and involve the community in seeking solutions.

III. SPECIAL TRAINING COURSES AND TECHNICAL ASSISTANCE

A. The Third UNAFEI Criminal Justice Training Programme for French-Speaking African Countries

The third criminal justice training programme for French-speaking African countries was hosted by UNAFEI in Abidjan, Cote d'Ivoire from 15-26 February. 31 practitioners from 8 French-speaking African countries discussed capacity-building for investigation, prosecution and adjudication, and measures against terrorism and organized crime.

B. The Seminar on Developing Standards on Community-based Treatment in ASEAN

From 2 to 4 March 2016 in Bangkok, Thailand, the Department of Probation of the Ministry of Justice of Thailand (DOP), the Thailand Institute of Justice (TIJ), and UNAFEI hosted the Seminar on Developing Standards on Community-based Treatment in ASEAN: Focusing on Treatment for Drug Use / Dependence Offenders. 26 senior officials from 10 ASEAN member States and Japan shared information on needs and challenges in community-based treatment.

C. The Comparative Study on Criminal Justice Systems of Japan and Nepal

The Comparative Study on Criminal Justice Systems of Japan and Nepal was held from 7 to 18 March, and 10 officials from Nepal studied effective measures of criminal procedure, including investigation, prosecution and trial.

D. Training Seminar for Prison Officials in Myanmar

The UNODC and Asia and Far East Institute training seminar for prison officials in Myanmar was held during two sessions from 6 June-15 July and 15 November-2 December. 231 participants studied prison management in line with international standards and norms.

E. The Joint Study on the Legal Systems of Japan and Viet Nam 2016 RTI - SPP Exchange Programme (Japan Session)

During the third training course on legal technical assistance for Viet Nam (4-15 July) and the joint study on the legal systems of Japan and Viet Nam (11-15 July), 12 officials from Viet Nam discussed problems related to the enforcement of the amended code of criminal procedure in Viet Nam

F. The Tenth Regional Seminar on Good Governance for Southeast Asian Countries

From 26 to 28 July 2016, UNAFEI held the Tenth Regional Seminar on Good Governance in Yogyakarta, Indonesia. The main theme of the Seminar was "Contemporary Measures for Effective International Cooperation". 21 practitioners from 10 ASEAN member States discussed contemporary measures for effective international cooperation in the field of anti-corruption.

G. The Study Tour for Prison Officers in Myanmar

During the training course for prison officials from Myanmar in Japan (7-13 September), five prison officials from Myanmar studied prison management and training for prison officials in Japan.

H. The 19th UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, took place from 12 October to 17 November 2016. The main theme of the Programme is "Effective Anti-Corruption Enforcement (Investigation and Prosecution) in the Area of Procurement". 30 practitioners from 26 countries discussed effective anti-corruption enforcement (investigation and prosecution) in the area of public procurement.

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2016, the 98th, 99th and 100th editions of the Resource Material Series were published. Additionally, issues 149 to 151 (from the 162nd Senior Seminar to the 164th International Training Course, respectively) of the UNAFEI Newsletter were published, which include a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's website at http://www.unafei.or.jp/english.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 29 January 2016, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the participants of the 162nd International Senior Seminar. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues through comparative international study by inviting distinguished speakers from abroad. In 2016, Professor Robert Canton of De Montfort University in Leicester, United Kingdom, and Ms. Diane Williams, President Emeritus of Safer Foundation in Chicago, Illinois, United States, were invited as speakers. They presented papers entitled "The Future of Community Penalties" and "Improving Efficiency and Outcomes Through Collaborations: an NGO Perspective", respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Deputy Director MORINAGA Taro visited Beijing, China from 27 to 28 January 2016 to serve as a lecturer at a workshop on the structure and function of courts and prosecution offices held by JICA in collaboration with the Office of State Law, the Legislative Affairs Commission, and the Standing Committee at the National People's Congress (NPC) of China.

Deputy Director MORINAGA Taro and Professor YOSHIMURA Koji visited Bangkok, Thailand and Yangon, Myanmar to research the criminal justice systems in Myanmar and to discuss the "Myanmar Country Programme" with related organizations.

Professor YUKAWA Tsuyoshi visited Hanoi, Viet Nam and Yogyakarta and Jakarta, Indonesia to discuss the "Tenth Regional Seminar on Good Governance for Southeast Asian Countries" with related organizations.

Professor YOSHIMURA Koji visited Seoul, Korea from 13 to 19 March 2016 to attend the 5th Asian Conference of Correctional Facilities Architects and Planners (ACCFA).

Professor YUKAWA Tsuyoshi visited Bangkok, Thailand from 11 to 13 May 2016 to attend the Expert Meeting on the Nexus between Organized Crime and Terrorism as a threat to Security and Development hosted by the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the Thailand Institute of Justice (TIJ).

Director SENTA Keisuke and Deputy Director MORINAGA Taro visited Vienna, Austria from 23 to 27 May 2016 to attend the 25th Session of the Commission on Crime Prevention and Criminal Justice.

Deputy Director MORINAGA Taro and Professor YAMAMOTO Mana visited Helsinki, Finland from 12 to 18 June to attend the experts' meeting of the International Penal and Penitentiary Foundation (IPPF).

Professor MINOURA Satoshi and AKASHI Fumiko visited Beijing, China from 17 to 19 June to attend the Asia Criminology Society 8th Annual Conference.

Professor YAMAMOTO Mana visited Manila, Philippines from 27 to 30 July to attend the workshop on developing effective intake, risk assessment, and monitoring tools and strategies for incarcerated terrorist offenders held by the Global Counter Terrorism Forum (GCTF).

Professor MINOURA Satoshi visited Bangkok, Thailand from 15 to 19 August to attend the seminar on treatment of offenders in the ASEAN region.

Professor YOSHIMURA Koji visited Yangon, Myanmar and Bangkok, Thailand from 28 August to 3 September to discuss plans for the UNODC-UNAFEI Seminar for Myanmar Prison Officials in FY2017.

Professor YUKAWA Tsuyoshi visited Abidjan, Cote d'lvoire from 17 to 24 September 2016 to discuss plans for the fourth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries.

Professor WATANABE Hiroyuki and Professor AKASHI Fumiko visited Toronto, Canada from 1 to 9 October 2016 to attend the International Community Corrections Association (ICCA) 24th Annual International Research Conference.

Deputy Director MORINAGA Taro visited Phnom Penh, Cambodia from 4 to 8 October 2016 to attend UNODC workshops as a visiting expert.

Professor YOSHIMURA Koji visited Tianjin, China from 15 to 22 October 2016 to attend the 36th Asian and Pacific Conference of Correctional Administrators (APPCA) Conference.

Professor YAMAMOTO Mana and Professor MINOURA Satoshi visited Bucharest, Romania from 21 to 30 October 2016 to attend the International Corrections and Prison Association (ICPA) 18th Annual Conference.

Professor YOSHIMURA Koji visited Nay Pyi Taw, Yangon and Insein, Myanmar from 7 November to 3 December 2016 to conduct the UNODC-UNAFEI Seminar for Myanmar Prison Officials.

Director SENTA Keisuke, Deputy Director MORINAGA Taro and Professor YAMAMOTO Mana visited Bangkok, Thailand to attend the PNI Meeting (9 to 11 November 2016) held by the Thailand Institute of Justice (TIJ). Director SENTA then visited Hanoi and Ho Chi Minh, Viet Nam from 13 to 18 November to attend the Joint Study on the Legal Systems of Japan and Viet Nam. Deputy Director MORINAGA visited Yangon, Myanmar from 10 to 16 November 2016 to join the UNODC-UNAFEI Seminar for Myanmar Prison Officials with Professor YOSHIMURA.

Professor YAMAMOTO Mana visited Batam, Indonesia from 30 November to 3 December 2016 to attend the Global Counterterrorism Forum (GCTF)'s Detention and Reintegration Working Group.

Deputy Director MORINAGA Taro, Professor WATANABE Hiroyuki and Professor AKASHI Fumiko visited Phnom Penh, Cambodia and Vientiane, Lao PDR from 7 to 14 December 2016 to conduct a survey on the status of community-based treatment of offenders. Professor WATANABE and Professor AKASHI then visited Bangkok, Thailand from 14 to 17 December 2016 to discuss plans for the Third-Country Group Training Programme for Development of Effective Community-based Treatment of Offenders in Cambodia, Lao PDR, Myanmar and Viet Nam.

Professor YUKAWA Tsuyoshi and Professor HIRANO Nozomu visited Kathmandu, Nepal from 13 to 22 December 2016 to discuss plans for the Comparative Study on the Criminal Justice Systems of Japan and Nepal.

Professor MINOURA Satoshi visited New Delhi, India from 14 to 20 December to attend the 18th World Congress of Criminology.

D. Assisting ACPF Activities

UNAFEI cooperates and collaborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty and Staff Changes

Mr. YAMASHITA Terutoshi, formerly Director of UNAFEI, was transferred to the Supreme Public Prosecutors Office on 11 April 2016.

Mr. SENTA Keisuke, formerly the Chief Prosecutor of the Saga District Public Prosecutors Office, was appointed as Director of UNAFEI on 11 April 2016. He was Deputy Director of UNAFEI from 2005 to 2007.

Mr. MORIYA Kazuhiko, formerly a professor of UNAFEI, was transferred to the Kurume Branch of the Fukuoka District Public Prosecutors Office on 1 April 2016.

Mr. YAMADA Masahiro, formerly manager of the Itami Branch of the Kobe District Public Prosecutors Office, was appointed as a professor of UNAFEI on 1 April 2016.

Mr. HIROSE Yusuke, formerly a professor of UNAFEI, was transferred to the Tachikawa Branch of the Tokyo District Court on 1 April 2016.

Mr. HIRANO Nozomu, formerly a judge in the Nagoya District Court, was appointed as a professor of UNAFEI on 1 April 2016.

Mr. NAGAI Toru, formerly a professor of UNAFEI, was transferred to Chiba Prison.

Ms. YAMAMOTO Mana, formerly a psychologist in the classification division at Fuchu Prison, was appointed as a professor of UNAFEI on 1 April 2016. She is an alumna of the 151st International Training Course.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

WORK PROGRAMME FOR 2017

I. TRAINING

A. Training Courses & Seminars (Multinational)

1. The 165th International Senior Seminar

The 165th International Senior Seminar was held from 12 January to 10 February 2017. The main theme of the Seminar was "Juvenile Justice and the United Nations Standards and Norms". Twenty-six overseas participants and five Japanese participants attended.

2. The 166th International Training Course

The 166th International Training Course was held from 10 May to 15 June 2017. The main theme of the Course was "Criminal Justice Procedures and Practices to Disrupt Criminal Organizations". Twenty-two overseas participants and eight Japanese participants attended.

3. The 167th International Training Course

The 167th International Training Course was held from 23 August to 22 September 2017. The main theme of the Course is "Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists". Government officials from across Southeast Asia and other parts of the world, including Japan, and visiting experts and lecturers will attend.

4. The 20th UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, will take place from 1 November to 7 December 2017. The main theme of the Programme is "Effective Measures to Investigate the Proceeds of Corruption Crimes". Twenty-five overseas participants and several Japanese participants will attend.

6. The Eleventh Regional Seminar on Good Governance for Southeast Asian Countries

From 17 to 19 October 2017, UNAFEI will hold the Eleventh Regional Seminar on Good Governance in Hanoi, Viet Nam. The main theme of the Seminar is "Best Practices in Anti-Corruption: A decade of Institutional and Practical Development in Southeast Asia". Among other participants, 20 anti-corruption practitioners from the 10 ASEAN countries are expected to attend as official delegates.

B. Training Course (Country Specific)

1. The Comparative Study on Criminal Justice Systems of Japan and Nepal

The Comparative Study on Criminal Justice Systems of Japan and Nepal (February): Ten Nepalese participants attended to study and compare effective measures to expedite criminal procedure (including investigation, prosecution and trial).

2. UNODC Regional Workshop on Terrorism

The UNODC and UNAFEI co-hosted a regional workshop on "Preventing and countering radicalization and violent extremism leading to terrorism though the rule of law based criminal justice approach, and engaging private sector and civil society actors in the national framework". The workshop was held in Tokyo, Japan at UNAFEI and was attended by 50 participants from Middle Eastern and North African countries.

3. Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries

From 14 to 26 February 2017, the Thai Department of Probation, the Thailand International Cooperation Agency, the Japan International Cooperation Agency, and UNAFEI co-hosted the Third Country Training

Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam). The seminar was held in Bangkok, Thailand, and twenty participants from the CLMV countries and five Thai participants attended the programme.

4. The Fourth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries

During February 2017, UNAFEI co-hosted the Fourth Criminal Justice Training Programme for French-Speaking African Countries in Abidjan, Cote d'Ivoire. The themes of the Programme were enhancing the capacity of investigation, prosecution, advocacy, and adjudication and the criminal justice response to organized crime and terrorism.

5. Follow-up Seminar of the Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries

From July 24 to 28 2017, UNAFEI hosted the Follow-up Seminar for the Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

6. Training Seminar for Prison Officials in Myanmar in Nay Pyi Taw

In fall 2017, the Training Seminar for Prison Officials in Myanmar will take place in Nay Pyi Taw, Myanmar.

7. The Joint Study on the Legal Systems of Japan and Vietnam 2017 RTI - SPP Exchange Programme (Viet Nam Session)

In fall 2017, UNAFEI will host The Joint Study on the Legal Systems of Japan and Viet Nam 2017 RTI - SPP Exchange Programme in Viet Nam. The Programme will explore the recent amendments to the Vietnamese Code of Criminal Procedure.

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course - 165th International Senior Seminar, U.N.Human Rights Courses and 1 Special Course)

	Professional Background / Country/Area	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	**Total**
1	Afghanistan	11	9	6	5		1							32
2	Bangladesh	24	15		20	5	1	4			6		2	77
3	Bhutan				20									20
4	Brunei	4				2								6
5	Cambodia	1	3	1	7	1								13
6	China	13	5	5	10							8		41
7	Georgia				1									1
8	Hong Kong	20			12	30	3	9		1	3	1		79
9	India	15	10		55	7	1	1			2	6	4	101
10	Indonesia	23	22	33	33	14		3			6		2	136
11	Iran	5	12	8	8	6						2	1	42
12	Iraq	6	3	3	8	5	5					2		32
13	Jordan	1	1	3	7	1								13
14	Korea	13	3	53	6	34	4					3		116
15	Kyrgyzstan	1			1									2
16	Laos	11	8	7	10									36
17	Malaysia	21	2	7	48	37	8	3		1	6	3	1	137
18	Maldives	4	3	5	4	2		2						20
19	Mongolia	3		1	3							2		9
20	Myanmar	11	1	1	8	3								24
21	Nepal	37	18	18	34								3	110
22	Oman			1	4									5
23	Pakistan	21	12	3	45	8	1	2				2	2	96
24	Palestine	2		1	1			1			1			6
25	Philippines	21	9	29	41	10	3	16	3	1	7	5	7	152
26	Saudi Arabia	5			7	3						1	1	17
27	Singapore	11	18	5	12	10	3	10			3	1	1	74
28	Sri Lanka	22	20	18	22	20	1	11		1	3		1	119
29	Taiwan	12	4	2	2	1								21
30	Tajikistan	1	1											2
31	Thailand	28	48	44	18	21	9	18	1		8	6	1	202
32	Turkey	2	1	1	2							1	1	8
33	United Arab Emirates	1												1
34	Uzbekistan		2										1	3
35	Viet nam	15	5	5	8	1					4	5		43
36	Yemen	2			2									4
	A S I A	367	235	260	464	221	40	80	4	4	49	48	28	1, 800
1	Algeria		4	2										6
2	Botswana	2		1	5	2					1			11
3	Cameroon	4		1										5
4	Cote dIvoire		9	2	2									13
5	Democratic Republic of the Congo	2	1	2	2									7
6	Egypt	1	3	1	3							3	1	12
7	Ethiopia	3			2									5
8	Gambia				2									2
9	Ghana	1		1	5	1								8
10	Guinea	2		1	4									7
11	Kenya	13	6	2	14	10	2	18				2		67
12	Lesotho				1			2						3
13	Liberia											1		1
14	Madagascar				1									1
15	Malawi			1										1
16	Mali			1										1
17	Mauritius		1											1
18	Morocco		1	1	4							1	1	8
19	Mozambique	1			1	1								3
20	Namibia	2		1	1	1								5
21	Niger			1										1
22	Nigeria	1			6	7							1	15
23	South Africa				4	3					1	1		9
24	Seychelles				4			1						5
25	Sudan	2		1	13	1		1				2		20
26	Swaziland				2									2
27	Tanzania	4	3	7	9	2								25
28	Tunisia		1		1									2
29	Uganda			1	5								1	7
30	Zambia		1		6									7
31	Zimbabwe	1		3	8									12
	A F R I C A	39	30	30	105	28	2	22	0	0	2	10	4	272
1	Australia			1				1			1			3
2	Cook Islands	1						3						4
3	Fiji	7	1	9	22	17					1			57
4	Kiribati	1												1
5	Marshall Island	1			4									5
6	Micronesia				1			1						2
7	Nauru				1	1								2
8	New Zealand	1			1									2
9	Palau				2	1								3
10	Papua New Guinea	15	1	4	23	10		9			1		4	67
11	Samoa	4			2			2					1	9
12	Solomon Islands	3		2	2	1								8
13	Tonga	2	1		7	4		4				1		19
14	Vanuatu			1	4	2		1						8
	THE PACIFIC	35	3	17	69	36	0	21	0	0	3	1	5	190
1	Antigua and Barbuda				1			1						2
2	Argentina	2	2	0	2								1	7
3	Barbados				2			1						3
4	Belize	1			2									3
5	Bolivia		1										1	2
6	Brazil	3	1	16	30	4				1	1			56
7	Chile	1		1	4	2								8
8	Colombia	3	1	2	6					1			1	14
9	Costa Rica	3	5	5								1	2	16
10	Dominican Republic				1									1
11	Ecuador			1	4		1							6
12	El Salvador	2	1		5	1						1	1	11
13	Grenada				1									1
14	Guatemala	2			1	1							1	5
15	Guyana				3	1								4
16	Haiti				1									1
17	Honduras			2	8								1	11
18	Jamaica	3			1	5	1							10
19	Mexico	2			2								1	5

20	Nicaragua		1											1
21	Panama	1		6	5								2	14
22	Paraguay	1		1	9		1							12
23	Peru	4	10	4	5	1						1	2	27
24	Saint Christopher and Nevis			1	1									2
25	Saint Lucia	1			1	1								3
26	Saint Vincent				2									2
27	Trinidad and Tobago	1				1								2
28	U.S.A.								1					1
29	Uruguay				3									3
30	Venezuela	1		1	12							1		15
	NORTH & SOUTH AMERICA	31	22	40	112	17	3	2	1	2	1	4	13	248
1	Albania	1			2									3
2	Azerbaijan	1												1
3	Bulgaria				1									1
4	Estonia			1										1
5	Former Yugoslav Republic of Macedonia	2												2
6	Hungary	1												1
7	Lithuania				1									1
8	Moldova				1									1
9	Poland				1									1
10	Ukraine	1	1	4										6
	E U R O P E	6	1	5	6	0	0	0	0	0	0	0	0	18
	United Nations Office on Drugs and Crime												1	1
1	**J A P A N**	119	201	321	108	104	99	225	71	38	2	48	85	1, 421
122	**T O T A L**	597	492	673	864	406	144	350	76	44	57	111	136	3, 950

MAIN STAFF OF UNAFEI

Directorate

Mr. SENTA Keisuke	Director
Mr. MORINAGA Taro	Deputy Director

Faculty

Mr. YUKAWA Tsuyoshi	Professor, Chief of Training Division
Ms. WATANABE Ayuko	Professor
Mr. YOSHIMURA Koji	Professor
Mr. MINOURA Satoshi	Professor
Ms. AKASHI Fumiko	Professor
Mr. YAMADA Masahiro	Professor
Mr. HIRANO Nozumu	Professor
Mr. WATANABE Hiroyuki	Professor, Chief of Information and Public Relations
Ms. YAMAMOTO Mana	Professor, Chief of Research Division
Mr. TSUJI Takanori	Professor
Mr. Thomas L. SCHMID	Linguistic Adviser

Secretariat

Mr. JIMBO Katsuhiko	Chief of Secretariat
Mr. SHOJIMA Naoki	Chief of General and Financial Affairs Section
Mr. ITO Jin	Chief of Training and Hostel Management Affairs Section

AS OF 31 DECEMBER 2016

2016 VISITING EXPERTS

THE 162ND INTERNATIONAL SENIOR SEMINAR

Prof. Robert Canton	Professor in Community and Criminal Justice De Montfort University United Kingdom
Ms. Beverly Diane Williams	President Emeritus of Safer Foundation U.S.A

THIRD UNAFEI CRIMINAL JUSTICE TRAINING PROGRAMME FOR FRENCH-SPEAKING AFRICAN COUNTRIES

Ms. Marie Compère	Vice-Président Chargé de l'Instruction Tribunal de Grande Instance de Créteil France
Mr. David De Pas	Vice-Président Chargé de l'Instruction Pôle Anti-Terroriste Tribunal de Grande Instance de Paris France
Ms. Christiana Fomenky	Crime Prevention and Criminal Justice Officer United Nations Office on Drugs and Crime (UNODC- ROSEN) Dakar, Senegal

THE 163RD INTERNATIONAL TRAINING COURSE

Dr. Sita SUMRIT	Chief of Women and Children Empowerment Programme Thailand Institute of Justice (TIJ) Thailand
Ms. Tracy LIU	Child Protection Advisor NCA CEOP Command / Child Protection Team United Kingdom

THE 164TH INTERNATIONAL TRAINING COURSE

Dr. Kerry BAKER	Senior Lecturer London South Bank University United Kingdom
Mr. Clement OKECH	Assistant Director Probation Service Kenya

Mr. David PRESCOTT	Director of Professional Development and Quality Improvement Becket Family of Services United States of America

THE 19TH UNAFEI UNCAC TRAINING PROGRAMME

Mr. Dimitri Vlassis	Chief of the Corruption and Economic Crime Branch United Nations Office on Drugs and Crime Vienna, Austria
Mr. Tony Kwok	Former Deputy Commissioner and Head of Operations Independent Commission Against Corruption Hong Kong

2016 UNAFEI PARTICIPANTS

THE 162ND INTERNATIONAL SENIOR SEMINAR

Overseas Participants

Ms. Hosne Ara AKTER	Special Officer (District Judge) Office of the Registrar General Supreme Court of Bangladesh Bangladesh
Mr. Tashi PHUNTSHO	Trainer Royal Bhutan Police Training Institute Royal Bhutan Police Bhutan
Mr. Thiago Ferreira OLIVEIRA	Federal Prosecutor Federal Prosecutor's Office of Maranhão Federal Public Prosecution Services Brazil
Mr. Nilton Joaquim OLIVEIRA JUNIOR	Internal Affairs Inspector/Police Chief Internal Affairs/General's Office Civil Police of the Federal District Brazil
Mr. Seraphin Ramazani NYEMBO	Research Head Office Head Quarter Office of Schools and Trainings Congolese National Police Democratic Republic of the Congo
Ms. Grace Achieng OJUNGA	Principal Probation Officer Probation and Aftercare Service/Institutions Ministry of Interior and Coordination of National Government Kenya
Mr. Joseph Kala MUASYA	Chief Probation Officer, Field Service Division Probation and Aftercare Service Ministry of Interior and Coordination of National Government Kenya
Mr. George Odhiambo DIANGA	Deputy Officer in Charge Kamiti Main Prison Kenya Prisons Service Kenya
Mr. Min Kyaw Thu	Head of Branch (Law Enforcement) Division against Transnational Crime Myanmar Police Force Myanmar

Mr. Allah Dad ROSHAN	District and Sessions Judge/Special Judge District Judiciary High Court of Balochistan Pakistan
Mr. Zachary SITBAN	Executive Director Crime Prevention and Restorative Justice Department of Justice and Attorney General Papua New Guinea
Mr. Jeffrey Mala MESA	Principal Legal Officer-Indictment Crimes Public Solicitors Office Papua New Guinea
Mr. Thachvud PUTTISOMBAT	Judge The Central Labour Court The Court of Justice Thailand
Ms. Sumalee MADAM	Senior Probation Officer Lampang Probation Office Department of Probation, Ministry of Justice Thailand
Mr. Benjamin C. CUTAY, Jr. (Course Counsellor)	Assistant Regional Director Parole and Probation Administration Region XI Department of Justice Philippines

Japanese Participants

Mr. JIMI Takeshi	Deputy Director Trial Department Osaka District Public Prosecutors Office
Mr. MIZUKAMI Taihei	Deputy Director Haruna Juvenile Training School for Girls
Mr. NAKAMURA Hideo	Director Planning and Coordination Division Tokyo Probation Office
Mr. NISHIMOTO Masao	Director General Affairs Division Tohoku Regional Parole Board
Ms. SHIMADA Tamaki	Judge Tokyo District Court
Mr. WAKIMOTO Yuichiro	Principal Supervisor Foreign Affairs Division Osaka Prison

THIRD CRIMINAL JUSTICE TRAINING PROGRAMME FOR FRENCH-SPEAKING AFRICAN COUNTRIES

Overseas Participants

M. BADO Idrissa Nibilma	Juge d'Instruction Tribunal de Grande Instance de Ouagadougou Burkina Faso
Mme. KANZIE Antoinette	Substitut Général Parquet Général, Cour d'Appel de Ouagadougou Burkina Faso
M. TAPSOBA Maxime	Enseignant Permanent Ecole Nationale de Police, Direction Générale de la Police Nationale Burkina Faso
M. ZONO Oumarou Neant	Juge du Siège, Président de Chambre Correctionnelle Tribunal de Grande Instance de Ouagadougou Burkina Faso
M. BLE Roger	Juge du Siège Tribunal de Yopougon Cote d'Ivoire
M. GBOSSOUNA Mianhoro Thomas	Formateur Direction de la Police des Stupéfiants et des Drogues Cote d'Ivoire
Mme. GUIRO Kourouma Sabore	Sous-Directeur des Affaires Pénales et des Grâces Direction des Affaires Civiles et Pénales Ministère de la Justice, des Droits de l'Homme et des Libertés Publiques Cote d'Ivoire
Mme. KAMAGATE Nina Claude Amoatta	Juge d'Instruction Tribunal du Plateau Cote d'Ivoire
M. DIASSANA Karaba Michel	Juge d'Instruction Pôle Judiciaire specialisé, Tribunal de Grande Instance de la Commune VI de Bamako Mali
M. DIAWARA Mahamadou Bandjougou	Avocat Général pres la Cour d'Appel de Mopti Mali

M. DOLO Assama	Procureur de la République Tribunal de Grande Instance de Kayes Mali
M. FOFANA Brahima	Commissaire Divisionnaire Direction de la Police Judiciaire, Police Nationale du Mali Mali
M. BABANA Mohamedahmed Khayna	Procureur de la République Tribunal de la Wilaya Nouakchott Nord Mali
M. ELEYATT Nehah	Chef Service de la Police Judiciaire et des Mineurs Direction de la Police Judiciaire e de la Sécurité Publique, Direction Generae e la Surete Nationale Mauritanie
M. OULD NAHY Mohamed Bouya	Directeur des Etudes, de la Législation et de la Coopération Ministère de la Justice Mauritanie
M. SAID El-Moustapha	Procureur de la République du Gogol Parquet Général Mauritanie
M. AKINE Ali	Doyen des Juges d'Instruction Tribunal de Grande Instance hors Classe de Niamey Niger
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PART TWO

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UNAFEI

VISITING EXPERTS' PAPERS

UN STANDARDS AND NORMS ON JUVENILE JUSTICE: FROM SOFT LAW TO HARD LAW

*Matti Joutsen**

I. THE NEED FOR UN STANDARDS AND NORMS ON JUVENILE JUSTICE

When a society or a government defines what conduct should be criminal and how society should respond, this decision is intimately linked to national (or local) values and traditions. Until relatively recently, societies have seen little reason to look beyond their borders for models or guidance in the development of criminal law or the criminal justice system.

During the second half of the 1800s, this insular attitude began to change. Discussions on criminal justice policy became international. Practitioners and policymakers from different countries started to exchange their experiences in criminal justice. The first two themes to be taken up were intertwined: corrections and juvenile justice.[1] The First International Congress on Crime Prevention and the Repression of Crime, including Penal and Reformatory Treatment (London, 1872) brought together practitioners from many countries interested in learning from one another about how to deal with offenders. Among the topics considered at that first international congress were juvenile reformatories, and more broadly how society should deal with delinquent children.[2]

Ten years later, juvenile justice was addressed in its own right on the international level. In 1882, the first International Congress on Child Welfare was held in Paris, followed by the International Congress for the Welfare and Protection of Children in 1896, in Florence. The Third International Congress for the Welfare and Protection of Children (London, 1902) considered the problem of neglected children, and the probability that such children would turn to delinquency if due care was not taken.

When the League of Nations was established a few years later, juvenile justice became one of its main areas of activity. Criminal justice thus became not only an international issue, but also an intergovernmental one. In 1919 the League of Nations established the Child Welfare Committee in order to examine the rights of children. It took up topics such as street children, slavery, child labour, child trafficking and the prostitution of minors.

The United Nations continued the work of the League of Nations.[3] The first draft programme outlining what crime prevention and criminal justice issues the United Nations should address included as its very first point "the problem of juvenile delinquency in all its phases, including the study of advanced legislation on the subject",[4] and juvenile justice has very often been on the agenda for example of the quinquennial United Nations Congresses on Crime Prevention and Criminal Justice. The debates concerned such issues as whether the focus should be on children who commit crimes, or on children who are deemed to be "at-risk" of delinquency; the proper scope of treatment and punishment; the criteria for evaluating the success or failure of treatment; and what should be the age limits for criminal responsibility.

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[1] See, for example, Redo, p. 108.

[2] Questions 45 through 50 on the programme dealt with such questions as what to do about "children hovering on the verge of criminality" and "what is the best organization of reformatory institutions for juveniles, that which rests on the congregate or the family principle". See <https://books.google.co.th/books?id=nYsIAAAAQAAJ&printsec=frontcover&dq=First+International+Congress+on+Crime+Prevention+and+the+Repression+of+Crime&hl=th&sa=X&ved=0ahUKEwi12ayRyLHRAhXBs48KHW6RDhMQ6AEIKjAB#v=onepage&q=First%20International%20Congress%20on%20Crime%20Prevention%20and%20the%20Repression%20of%20Crime&f=false>, p. 22.

[3] Clark 1994 provides a good presentation of the evolution of the United Nations crime prevention and criminal justice programme.

[4] International Review of Criminal Policy, vol. 1, p. 12.

This international sharing of experiences was designed to identify "what works" in crime prevention and criminal justice, in other words "good practice".[5] Parallel with the work of the United Nations on crime prevention and criminal justice, increasing attention was being given to human rights. This resulted in the formulation of international instruments setting out certain minimum legal safeguards. Respect for human rights has also been recognized as promoting effective crime prevention and control, nationally and internationally.[6] In particular the 1948 Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights have direct implications for the operation of the criminal justice system, and also for the juvenile justice system.

Good practice and human rights: these two factors have mixed in different ways, at different times and in respect of different issues, such as the prevention of delinquency, child protection, legal representation in juvenile court, care in an institutional environment, and greater use of mediation and restorative justice.

One key way in which good practice and human rights have been brought together is in the form of international standards and norms, a concept that has found a welcoming home in the United Nations crime prevention and criminal justice programme.

A "standard and norm" is a document that contains normative elements. It defines how members of the target audience – individuals, members of a certain profession, public officials and so on – should conduct themselves, and may even define the minimum level of the quality of justice. An "international standard and norm" on justice, accordingly, is a document that is intended to apply to target audiences in different states, often at different stages of development and with different legal and administrative systems.

A standard and norm can be set out in an international agreement, national law or other binding instruments. In the United Nations and the criminal justice context, however, the term refers specifically to a number of instruments adopted by the General Assembly and the Economic and Social Council (and in a few exceptional cases, by other bodies) that are designed as benchmarks for the development of the criminal justice system. As noted on the UNODC website,[7] "These standards and norms provide flexible guidance for reform that accounts for differences in legal traditions, systems and structures whilst providing a collective vision of how criminal justice systems should be structured."

The four UN standards and norms that are generally mentioned when speaking about juvenile justice are:

- the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules; GA 40/33);
- the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines; GA 45/112);
- the 1990 United Nations Rules for the Protection of Juveniles Deprived of Liberty (the Havana Rules; GA 45/113); and
- the 1997 Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines; ECOSOC 1997/30).[8]

Standards and norms are commonly referred to as "soft law" instruments, in the sense that they provide guidance but are not legally binding. In any discussion of the UN standards and norms on juvenile justice, however, reference should also be made to a "hard law" instrument, the United Nations Convention on the Rights of the Child (CRC).[9] This has been ratified by all but one member state of the United Nations, and is thus as nearly universally binding an instrument as there can be in international law.

There is no formal mechanism for reviewing how the individual member states implement UN standards

[5] Different formulations have been used in this respect, such as "what works", "good practice", "best practice" and "promising practice". Each has been criticized on somewhat different grounds, but usually with the argument that what works in one context may not work in another, and the argument that formulations such as "good practice" and "best practice" imply a value judgement ("You are doing this the wrong way. My way is better.").

[6] E/CN.15/1997/14, para 41. It may be noted that the United Nations Charter includes an obligation to promote universal respect and observance for human rights.

[7] <https://www.unodc.org/unodc/en/commissions/CCPCJ/ccpcj-standards-and-norms.html>.

and norms. Article 43 of the CRC, however, provides for an implementation review mechanism: the Committee on the Rights of the Child. State parties have to report every five years to the Committee (art. 44 of the CRC).[10] In the course of its work, the Committee has developed guidelines – "General Comments" – on the implementation of the Convention. One General Comment, in particular, should be mentioned, General Comment no. 10, on children's rights in juvenile justice.[11]

Within the United Nations crime prevention and criminal justice programme, the issue of implementation review has proven to be quite sensitive. In the case of two hard law treaties, the United Nations Convention against Transnational Organized Crime and the United Nations Convention on Corruption, the way in which the respective Conferences of the States Parties can review how individual states parties implement their treaty obligations has caused extensive debate.[12] It is thus interesting to see that in the specific area of juvenile justice, an implementation review mechanism appears to function relatively smoothly, with an international group of experts assessing implementation in over 190 states, in five year cycles, and issuing public recommendations to individual states parties.

It is the arc from academic discussions of "promising practice" to binding international hard law on juvenile justice that forms the framework for the present paper.

II. THE DRAFTING AND ADOPTION OF THE UN STANDARDS AND NORMS ON JUVENILE JUSTICE

The production of a United Nations standard and norm on crime prevention and criminal justice generally goes through the following stages:

- an initiative comes from individual experts or organizations;
- a draft is prepared;
- the draft is discussed at one or more international meetings;
- the draft is discussed at the United Nations Commission on Crime Prevention and Criminal Justice (or earlier, the United Nations Committee on Crime Prevention and Control),
- the draft is discussed at a quinquennial UN Congress on Crime Prevention and Criminal Justice and its preparatory bodies, and
- the draft is submitted to the Economic and Social Council and/or the General Assembly for adoption.

This can be illustrated by the evolution of the four main standards and norms on juvenile justice.[13]

The Beijing Rules. The idea for drafting the Beijing Rules arose during the Sixth United Nations Congress discussions on "Juvenile Delinquency: Before and After the Onset of Delinquency".[14] The report of the Congress called for the development of "model rules on juvenile justice administration". The UN Secretariat

[8] Although they are not specifically focused on juvenile justice, some of the more general UN standards and norms apply also in the context of the juvenile justice system: the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Furthermore, a number of applicable human rights instruments, although not particularly tailored to juvenile justice, form part of the international and/or regional legal framework: the International Covenant on Civil and Political Rights, the Convention against Torture, the European Convention on Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights (the Banjul Charter), the African Charter on the Rights and Welfare of the Child, and the African Youth Charter. Reference can also be made to the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182) of 1999.

[9] General Assembly resolution 44/25 of 20 November 1989.

[10] To take the example of Japan, which ratified the CRC on 22 May 1994, three reports have been submitted, in, respectively, 1998, 2004 and 2008. The fourth periodic report was to have been submitted to the Committee by 21 May 2016 but at the time of this writing (January 2017) the report has not appeared on the Committee's website, <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=JPN&Lang=EN>.

[11] Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice, 25 April 2007 (CRC/C/GC/10).

[12] See, for example, Joutsen and Graycar 2012.

requested that Professor Horst Schüler-Springorum prepare a draft for such model rules, which he then presented to the United Nations *ad hoc* Meeting of Experts on Youth, Crime and Justice held on 2 – 8 November 1983 in Newark, New Jersey. Following extensive rounds of consultations, including within the framework of a five-week international seminar held at UNAFEI in 1983, the draft "Standard Minimum Rules on the Administration of Juvenile Justice" were discussed at the Interregional Preparatory Meeting held at Beijing,[15] and then at the Seventh UN Congress in Milan. On the recommendation of the Seventh UN Congress, the Beijing Rules were adopted by the General Assembly.[16]

The Beijing Rules provide member states with guidelines on the elaboration of the juvenile justice system. It sets out a number of fundamental principles:

- the guiding principle of juvenile justice should be to further the well-being of the juvenile and his or her family (the importance of fair and human treatment) (e.g. rules 1, 5.1, 10.3, 13.5, 14.2, 17.1, 26.2),
- non-discrimination in the application of the Beijing Rules (rules 2.1 and 26.4),
- ensuring that the age of criminal responsibility is not fixed at too low an age level (rule 4).
- the proportionality principle (rules 5.1 and 17.1),
- the use of discretion (rule 6),
- the protection of basic procedural safeguards (rules 7.1 and 15.1),
- the protection of privacy and confidentiality (rules 8 and 21),
- the possibility of release should be considered as soon as possible (rule 10.2),
- the use of diversion (rule 11),
- taking the minor's opinion into consideration (rule 11.3),
- detention should be used only as a last resort, and for the shortest possible period (rule 13.1),
- deprivation of liberty should be used only for extremely serious cases (rule 17.1),
- no capital or corporal punishment should be used (rules 17.2 and 17.3),
- the use of a large variety of disposition measures (rule 18.1),
- institutionalisation should be used only as a last resort (rule 19),
- avoidance of unnecessary delay (rule 20),
- the need for professionalism and training (rule 22), and
- the objective of measures should be rehabilitation (rules 24 and 26.1).

The Riyadh Guidelines. Although some of the experts involved in the drafting of the Beijing Rules argued that prevention is an essential part of juvenile justice, others regarded this as too broad an issue, and wanted to focus on the structure and operation of the juvenile justice system.[17] As a result, the Beijing Rules do not include provisions on prevention. Nonetheless, the drafters recognized the importance of the issue. On the same day as the General Assembly adopted resolution 40/33 approving the Beijing Rules, the General Assembly adopted resolution 40/35, which drew attention to the need for standards and norms on the prevention of juvenile delinquency. "Specific measures therefore had to be provided for the large number of the young who were not in conflict with the law but who were abandoned, neglected, abused and, in general, were endangered or at social risk".[18]

The first draft for what became the Riyadh Guidelines was prepared by Professor Allison Morris. The draft was circulated among experts in juvenile justice, and then discussed at an International Meeting of Experts on the development of United Nations Draft Standards for the Prevention of Juvenile Delinquency, held at the Arab Security Studies and Training Centre[19] in Riyadh on 28 February – 1 March 1988. From

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[13] Reference can also be made to the Guidelines on Justice for Child Victims and Witnesses of Crime (ECOSOC 2005), and the model law on juvenile justice published by the UNODC (Justice in Matters Involving Children in Conflict with the Law. Model Law on Juvenile Justice and Related Commentary, UNODC 2013). The development of the CRC took somewhat longer than was the case with the four standards and norms on juvenile justice referred to here, but went through somewhat similar stages. Essentially, the process began with the 1959 Declaration on the Rights of the Child, and ended with the adoption of the Convention by the General Assembly in 1989. The Convention entered into force on 2 September 1990. More generally on United Nations standards and norms on crime prevention and criminal justice, see Clark 1994, and Joutsen 1999 and 2016.
[14] A/CONF.87/14/Rev.1.
[15] A/CONF.121/IPM/1, paras 55 and 56.
[16] General Assembly resolution 40/33 of 29 November 1985.
[17] Schüler-Springorum, p. 4.
[18] A/CONF.144/IPM.3, para 4.

there, the draft went to the regional preparatory meetings and the respective interregional preparatory meeting for the Ninth Congress, and then on to the General Assembly for adoption.[20]

The Riyadh Guidelines seek to cover the role of different sectors in the prevention of juvenile delinquency. The key points and sectors are the following:

- furthering the well-being of the juvenile and his or her family (fair and human treatment) (e.g. guidelines 4 and 46),
- the need for comprehensive prevention plans (guideline 9),
- the importance of the family and support to the family (guidelines 11 – 19),
- the importance of education (guidelines 20 – 31),
- the importance of community measures (guidelines 32 – 39),
- the role of mass media (guidelines 40 – 44),
- institutionalization of young persons should be a measure of last resort and for the minimum necessary period (guideline 46), and
- development of the appropriate legislation and juvenile justice administration (guidelines 52 – 59).

The Havana Rules. The International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners, and the Beijing Rules, are designed in part to considerably reduce the incarceration of children and youth. However, already when these instruments were adopted, it was clear that incarceration of children and youth would remain a widespread practice. The Havana Rules, instead of calling for better and more prisons for juveniles, were designed to encourage the use of alternatives to imprisonment, and to ensure that juveniles in custody have their basic rights protected.[21] These Guidelines were developed by an Open-Ended Working Group of Non-Governmental Organizations established by Defence for Children International in cooperation with the UNODC. The text was circulated for comment, following which the draft was developed by the Max-Planck Institute for Foreign and International Criminal Law.[22] As with the Riyadh Guidelines, the draft went to the regional preparatory meetings and the respective interregional preparatory meeting for the Ninth Congress for discussion, and then on to the General Assembly for adoption.[23]

The Havana Rules define juveniles as persons under the age of 18 years, and defines deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (Rule 11). The Havana Rules are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for children's rights. They set out a number of fundamental principles that closely track those of the Standard Minimum Rules for the Treatment of Prisoners (for example in respect of pre-trial detention, admission to juvenile facilities, classification, the physical environment and accommodation, education, vocational training and work, recreation, religion, medical care, limitations on physical restraint and the use of force, disciplinary procedures, inspections and complaints, personnel), but take into consideration the special situation of juveniles:

- deprivation of liberty should be a disposition of last resort and for the minimum period (rules 1, 2 and 17),
- non-discrimination in the application of the Havana Rules (rule 4),
- furthering the well-being of the juvenile (rehabilitation) (e.g. rules 12 and 32),
- guarantee of basic procedural safeguards (e.g. rules 18(a) and 70),
- protection of confidentiality (rule 19),
- separation of juveniles from adults (rule 29),
- encouragement of the establishment of small open facilities (rule 30),
- juveniles deprived of their liberty should be prepared for release (rules 38, 79 and 80),
- contacts with families and the wider community must be maintained (e.g. rule 59),

[19] Now known as the Naif Arab University for Security Sciences.
[20] General Assembly resolution 45/112 of 14 December 1990. See A/CONF.144/16, para 26.
[21] A/CONF.144/IPM.3, para 10.
[22] A/CONF.144/IPM.3, paras 3 and 65–67.
[23] General Assembly resolution 45/113 of 14 December 1990. See A/CONF.144/16, para 26.

- no corporal punishment or solitary confinement (rules 67 and 87),
- the need for professionalism and training (rules 81, 85 and 86), and
- the professionalism and training of personnel (rules 81, 85 and 86).

The Vienna Guidelines. The entry into force of the Convention on the Rights of the Child in 1990 imposed obligations on states parties. It also provided a basis for cooperation among not only the states parties, but also different UN agencies (such as the UNODC, the Centre for Human Rights, the United Nations Children's Fund and the Committee on the Rights of the Child), as well as a broad range of nongovernmental organizations, professional groups, the media, academic institutions and other stakeholders. In order to provide guidelines for this cooperation, ECOSOC resolution 1996/13 called for a plan of action. This was drafted at an expert group meeting held in Vienna on 23 - 25 February 1997. The draft was submitted to the Commission on Crime Prevention and Criminal Justice two months later, and during the autumn of that same year, the Vienna Guidelines were adopted by ECOSOC.[24]

The Vienna Guidelines are intended to assist member states in implementing the CRC, and in using and applying the standards and norms in juvenile justice (para 5). They are divided into

- measures of general application (paras 10 – 11),
- specific targets (paras 12 – 25),
- measures to be taken at the international level (para 26 – 29),
- mechanisms for the implementation of technical advice and assistance projects (paras 30 – 40),
- further considerations in the implementation of country projects (paras 41 – 42), and
- child victims and witnesses (43 – 53).

III. ARE THE STANDARDS AND NORMS LEGALLY BINDING?

Are the United Nations standards and norms on juvenile justice legally binding? Do the member states of the United Nations have to incorporate their provisions into their laws and practices, and are individual practitioners in the criminal justice system – police officers, juvenile court judges, social workers, the staff of institutions and others – required to follow them?[25]

The dominant view is that the UN standards and norms are part of "soft law" and are thus not legally binding. They only embody an earnest request to their addressees (member states, members of a criminal justice profession, other stakeholders) to apply the contents, and not a legal obligation to undertake a certain course of action.[26] One practical implication of this is that if a public official (or an entire state) acts contrary to a UN standard and norm (but not contrary to "hard law"), then the child or juvenile subjected to such action has no legal recourse on this basis alone. He or she does not have legal standing to complain to a superior, or to turn to a court in order to have the decision overturned.

This does not mean that standards and norms, as "soft law", are meaningless, and have no practical effect. The significance of soft law, including standards and norms, does not lie in any assumed legally binding effect. The significance lies elsewhere, on both the national and the international level.

On the national level, UN standards and norms may have an instrumental value in guiding national development.[27] They may be used as clinching arguments by decision-makers in individual jurisdictions when these decision-makers seek to justify certain courses of action that they would have preferred even if the standard or norm did not exist. When selecting from among various alternative approaches to achieving a certain end, the decision-makers may thus defend their choice by referring to specific provisions in, for

[24] ECOSOC resolution 1997/30 of 21 July 1997.
[25] A fuller discussion of whether or not standards and norms are legally binding is provided in Joutsen 2016.
[26] Castaneda 1969, pp. 7–8 and 193–195. It may be noted that some authorities in international law deny the entire existence of "soft law". See in particular Klabbers 1996. Essentially, he argues that either something is law, or it is not; there is no intervening category of "soft law", nor is there a need for such a concept.
[27] The most noted example of a United Nations standard and norm guiding national development is the Standard Minimum Rules for the Treatment of Prisoners. It has clearly guided national practice in corrections and, in several cases, helped bring about legal reform.

example, the Beijing Rules, the Riyadh Guidelines, or the Havana Rules.

Similarly, UN standards and norms can also be used by citizens, non-governmental organizations and other stakeholders in trying to influence their government to change laws and policy in a certain direction.

It is difficult to analyse the actual impact of UN standards and norms on the domestic level, due to a number of factors: the absence of an obligation to report, the heterogeneity of the criminal justice systems of different States, the possibility of different interpretations of the same text, and the difficulty in determining if a specific change in national law, policy or practice was due to the influence of a United Nations standard and norm, or to other factors.

Nonetheless, many reports from States to the United Nations cite examples of the impact, and the literature shows several further examples of impact. In many States, the UN standards and norms are becoming part of the national discourse on crime prevention and criminal justice.

On the international level, in turn, "soft law" may be seen as an intermediate stage in the formulation of ideas and concepts that may in time emerge as "hard law", in the form of international agreements.

When ideas are embodied in standards and norms, the recognition and declaration of certain principles and even detailed rules may be intended to have a direct influence on the practice of states. If this happens, they contribute to the creation of customary international law, which is widely recognized as binding on states.[28] Standards and norms, even if they are not in themselves binding, may thus become a source of international law, in particular if they are drafted in the form of an obligation (e.g. "States *shall*" do something, as opposed to the wording "States *may consider*" doing something, or "States *are invited*" to do something).

IV. FROM SOFT LAW TO HARD LAW: THE IMPACT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The development of customary international law is often a long process, requiring decades. There is also a fast-track possibility: soft law elements may find their way into hard-law international treaties. A clear example in juvenile justice is provided by certain provisions of soft law UN standards and norms on juvenile justice which have found their way in the space of just a few years into the hard law Convention on the Rights of the Child, and into the practice of the Committee on the Rights of the Child.

The provisions of the Convention on the Rights of the Child (CRC) that are relevant to juvenile justice can be divided roughly into three categories.[29] Some provisions lay out the basic rights and principles to be followed in practice: non-discrimination (article 2), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right to be heard (article 12).

A second category of provisions deal directly with the juvenile justice context: article 37, which deals in general with deprivation of liberty, and article 40, on the treatment of a child in conflict with the law.

The third category of provisions applies to all children, and these provisions are considered particularly relevant if a child has been placed in an institution and is thus in a heightened state of vulnerability: the right of children in conflict with the law to maintain their relationship with their families (article 9), the right to express their views and to be heard (articles 12 and 13), the right to exercise their religion (article 14), the right to be protected from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (article 19), and the right to live in a healthy environment and receive appropriate treatment in case of illness (article 24).

As mentioned already above, in addition to reviewing implementation of the CRC in individual states parties and providing them with extensive recommendations,[30] the Committee provides guidelines – "General Comments" – for implementation in specific areas. The General Comments are recommendations, and are not

[28] Castaneda 1969, pp. 19 and 168–169.
[29] This distinction is made in General Comment no. 10, para. 4.
[30] In the case of Japan, the most recent publicly available recommendations are given in CRC/C/JPN/CP/3 (2010).

binding. However, they have proven influential. General Comment no. 7 of the Committee deals with the implementation of the rights under the CRC during early childhood, and General Comment no. 12 deals with the right of the child to be heard. Special reference, however, should be made to General Comment No. 10 (2007), which deals with the rights of children in respect of juvenile justice.

Two examples can be provided of the integration of soft law UN standards and norms into the hard law Convention on the Rights of the Child, and into the practice of the Committee on the Rights of the Child.[31] The first deals with setting the age of criminal responsibility, and the second with the right of the child or juvenile to be heard.

There is considerable disparity around the world in respect of the age of criminal responsibility. Many countries have set an absolute minimum age of criminal responsibility, often 14 or 16 years, below which no one may be tried or punished for criminal conduct. Other countries use two age limits, with a higher age limit at which all persons will be presumed to have full criminal responsibility, and a lower age limit above which a person can be treated either as a juvenile or an adult, depending on the circumstances and the seriousness of the conduct. Finally, there are countries where quite young children, for example aged six or seven, can be held to be criminally liable.[32]

Beijing rule 4 calls upon states to ensure that the age of criminal responsibility is not fixed "at too low an age level". The Convention on the Rights of the Child has integrated this into art. 40(3), which requires that states parties establish "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law". Neither of these provisions can be seen to provide clear guidance as to what, exactly, that age of criminal responsibility should be.

However, in its General Comment 10, the Committee on the Rights of the Child does seek to provide guidance on the legislative technique to be used in establishing age limits for criminal responsibility. It even specifies what it considers to be the internationally accepted minimum age of criminal responsibility:[33]

> "Rule 4 of the Beijing Rules recommends that the beginning of MACR [*minimum age of criminal responsibility*] shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level."[34]

The right to be heard, in turn, is particularly important given the diversity of procedures and structures for dealing with children in conflict with the law: child welfare boards, administrative hearings, juvenile courts and so on.

Beijing rule 14.2 guarantees juveniles the right to be heard: "The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."

Article 12 of the CRC has transformed this right to be heard into hard law:

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[31] Many more examples could be cited. Examples include the definition of "competent, independent and impartial authority", the interpretation of the child's right to legal assistance, the right of the parents to be present during legal proceedings, the child's right to be protected against self-incrimination, the child's right to privacy, the definition of the phrase "shortest possible period of detention", the need to prioritize diversion and non-custodial sanctions, the right of appeal, and the prohibition of cruel, inhuman or degrading treatment.

[32] General Comment 10 (2007), para. 30.

[33] General Comment 10 (2007), para. 32.

[34] General Comment 10 (2007) goes on to call upon countries that do set the minimum age of criminal responsibility at 12 years to raise this age even higher.

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

In its conclusions on the reports of states parties, the Committee on the Rights of the Child has often returned to the child's right to be heard, and recommended that laws be changed, policy be developed, more resources be given, and in general closer attention be given to this right in practice, and not just in law. In its General Comment 10, furthermore, the Committee has clarified its position on the child's right to be heard in any proceedings regarding him or her:[35]

> "The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law ... It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result."

This clarification of the Committee's position shows how the Committee combines logical reasoning ("alleging that a child is criminally responsible implies that he or she is competent to act, and therefore he or she should have a right to be heard"; "treating a child as a passive object does not recognize his or her rights or contribute to an effective response") and research results ("research shows that in most cases a positive result will be achieved if the child is actively engaged in the process").

V. CLOSING COMMENTS

One hundred years ago, at the time the League of Nations was founded, the concern was with "children hovering at the verge of criminality". The basic approach was quite paternalistic: the child was indeed regarded as a "passive object" who should be guided on the way to his or her full role as a well-adjusted citizen. It was also assumed that each state was free to develop its own juvenile justice system, although there was a growing interest in seeing how other states were dealing with child and juvenile offenders.

The United Nations standards and norms on juvenile justice mark a change in approach. They are a distillation of "what works" in different legal and administrative systems, and at different stages of development. They have been formulated as a benchmark by which the stakeholders involved in juvenile justice systems around the world – including the juveniles themselves – can assess how well these systems are responding to juveniles who are alleged to have committed crimes, or who otherwise are seen as being "on the verge of delinquency".

The UN standards and norms have also contributed to hard law, most noticeably in the form of the Convention on the Rights of the Child, and the work of the Committee on the Rights of the Child. The Committee, in particular, has taken an active but carefully considered role in building on the UN standards and norms as well as the text of the Convention in order to provide guidance to states parties on how to guarantee of procedural and substantive rights, the importance of limiting the scope of definition of delinquency, how to increase the use of diversion and lessen the use of imprisonment or other severe and punitive sanctions for juveniles, and in general how to promote the well-being of juveniles and their families.

Individual states continue to hold their sovereign right to develop their own juvenile justice system. But

[35] General Comment 10 (2007), para. 45.

we have learned considerably from one another's successes (and failures) over the course of 150 years. One result is that international experience is guiding individual states in finding the right and the most effective response – through the exchange of experience, through soft law, and ultimately through hard law.

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The United Nations Standard Minimum Rules on Juvenile Justice (The Beijing Rules)

UNAFEI 165th International Senior Seminar

Fuchu, 26 January 2016

Dr. Eduardo Vetere
Executive Secretary of the VIIIth, IXth and XIth UN Crime Prevention and Criminal Justice Congresses
Former Director of the Treaty Division, UNODC,Vienna

000001

DEFINITIONS

Juvenile justice system

- Laws, policies, guidelines, customary norms, systems, professionals, institutions, sanctions and treatment modalities specifically applicable to children in conflict with the law

Children in conflict with the law

- Individuals below the age of 18 years who are alleged as, accused of, or recognised as, having infringed the penal law

000002

JUVENILE JUSTICE LEGAL INSTRUMENTS

- Universal Declaration of Human Rights (UDHR) (1948)
- Convention on the Rights of the Child (CRC) (1989)
- International Covenant on Civil and Political Rights (ICCPR) (1966), esp. arts. 23 and 24
- International Covenant on Economic Social and Cultural Rights (ICESCR), (1966), art. 10

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990)

000003

Juvenile justice legal instruments

- Guidelines for Action on Children in the Criminal Justice System (1997)
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)
- United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice (2014)

000004

Convention on the Rights of the Child

CRC key principles

- Non-discrimination (Article 2)
- Best interests of the child (Article 3)
- Child's right to life, survival and development (Article 6)
- Respect for the views of the child (Article 12)
- CRC Relevant Substantive Articles……..
- Article 38 (a) (b) (c) (d)
- Article 40, Paragraphs 1, 2, 3 and 4

000005

Core elements of a comprehensive juvenile justice system

- Prevention of delinquency
- Diversion
- Minimum age of criminal responsibility
- Fair treatment and fair trial
- Deprivation of liberty as last resort and improvement of the treatment of children in detention, as well as of the conditions under which they are held

General Comment No. 10, Committee on the Rights of the Child (2008), A/63/41

000006

THE ORIGINS

The Protection of Children Rights and the Prevention of Juvenile Delinquency have been issues of major concern of the international community:

- 1924: Declaration on the Rights of the Child (Declaration of Geneva)
- 1959: Declaration of the Rights of the Child (General Assembly Resolution 1386 (XIV) of 20 November 1959)
- 1979: International Year of Child: 1979, also to celebrate the twentieth anniversary of the Declaration
- 1985: International Youth Year – Participation, Development and Peace

000007

THE ORIGINS

SPECIAL ROLE OF THE QUINQUIENNAL UN CONGRESSES ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

- **FIRST CONGRESS, Geneva, 1955: substantive topic on "Prevention of Juvenile Delinquency" (Report prepared by the Secretariat (ST/SOA/Ser.M/7-8) in NO. 7-8 of the International Review of Criminal Policy)**

Juvenile delinquency defined as "situation of minors in whose interest society should promote measures designed to ensure, as far as possible, that they are enabled to live a law-abiding, well-adjusted and useful life. It includes not only those juveniles who have committed an act regarded as a criminal offence by the law of their country, but also those whose social situation or whose character places them in danger of committing such an act, or who are in need of care and protection. Preventive work should cover all three categories". Specific recommendations were also made related to: a) The community; b) The family and the school; c) Social services including health; d) Work; e) Other agencies; and f) Research (A.CONF. 6/1, Annex E, pages 78-82)

000008

Role of the UN Congresses

THE ORIGINS

- **SECOND CONGRESS, London, 1960: substantive topic on "New forms of juvenile delinquency: their origins, prevention and treatment (Working Paper A/CONF.17/7)**

The Congress recommendations stress that "juvenile delinquency should be restricted to violation of the criminal law and, even for protection, specific offences that would penalize small irregularities or maladjusted behavior, but for which would not be prosecuted, should not be created". (A/CONF. 17/20, Annex, page 61)

A "Comparative Survey on Juvenile Delinquency" was also considered by the Congress.

000009

Role of the UN Congresses

THE MANDATE

- **SIXTH CONGRESS, Caracas, 1980: Substantive topic on "Juvenile justice: before and after the onset of delinquency", Working Paper (A/CONF. 87/5)**

***Resolution 4**: Development of minimum standards of juvenile justice, with request to the Committee on Crime Prevention and Control to develop standard minimum rules for the administration of juvenile justice, drawing on four main principles, for submission to the Seventh Congress (A/CONF. 87/14/Rev.1)*

000010

Role of the UN Congresses

THE CRAFTING PROCESS

With the overview of the Committee on Crime Prevention and Control, several expert groups meetings took place, including:

(a) A Study Group in connection with the UNAFEI 58th International Training Course (May-July 1981)
(b) International Meeting of Experts at the Rutgers University (November 1983)
(c) The Sixth Joint Bellagio Colloquium (April 1984)
(d) The "Beijing Meeting" (14-18 May 1984)

000011

Role of the UN Congresses

APPROVAL AND ADOPTION OF THE BEIJING RULES

▪ **SEVENTH CONGRESS, Milan, 1985: Substantive topic on "YOUTH, CRIME AND JUSTICE", Working paper (A/CONF.121/7)**

• Report of the Interregional Preparatory Meeting (A/CONF.121/IPM.1)
• Draft UN Standard Minimum Rules (A/CONF.121/14)
• "Research in juvenile delinquency", Workshop paper (A/CONF.121/11)
• Discussion and approval of the Rules: **draft resolution 2**, in Report of the Congress (A/CONF.121/22/Rev.1)
• Approval also of **draft resolution 3** on "Standards for the prevention of juvenile delinquency" and **resolution 21** on "Development of standard minimum rules for the protection of juveniles deprived of their liberty"
• **Adoption of the Rules by the UN General Assembly** (Res. 40/33, annex of 29 November 1985)

000012

SIGNIFICANCE AND IMPACT OF THE BEIJING RULES

30 Articles, with respective commentaries, covering the entire spectrum of juvenile justice

- **Part one**: General principles (Arts. 1-9)
- **Part two**: Investigation and prosecution (Arts. 10-13)
- **Part three**: Adjudication and disposition (Arts. 14-22)
- **Part four**: Non-institutional treatment (Arts. 23-25)
- **Part five**: Institutional treatment (Arts. 26-29)
- **Part six**: Research, planning, policy formulation and evaluation (Art. 30)

000013

IMPLEMENTATION AND FOLLOW UP ACTION

- A number of specific reports by the Secretary General, based mainly on replies from Member States, on the implementation of the Beijing Rules
- Continuing role of successive UN Congresses in making relevant recommendations
- Development of additional new Standards by the Commission on Crime Prevention and Criminal Justice
- Involvement and action by other UN bodies from the General Assembly and ECOSOC to the Committee on the Right of the Child and the Human Rights Commission/Council

000014

Role of the UN Congresses

FOLLOW UP ACTION

- **EIGHTH CONGRESS, Havana, 1990: Substantive topic on "Prevention of juvenile delinquency, juvenile justice and the protection of the young: policy approaches and directions", Working Paper (A/CONF. 144/16); as well as SG report on the "Implementation of the Beijing Rules" (A/CONF.144/4), recalling a previous report submitted earlier to the Committee (E/AC.57/1988/11)**

Report of the Interregional Preparatory Meeting (A/CONF.144/IPM.3)

Report of the Committee on Crime Prevention and Control at its eleventh session (E/1990/31), Chap. I, sect. C, decision11/117, annex and decision 11/118, annex, containing the text of these two draft instruments of the Congress

000015

Role of the UN Congresses

FOLLOW UP ACTION

- **EIGHTH CONGRESS, Havana, 1990:**

Discussion and approval of the "*Riyadh Guidelines*" and the "*Rules for the Protection of Juveniles Deprived of their Liberty*": draft resolutions 6 and 7, in Report of the Congress (A/CONF.144/28/Rev.1)

- Adoption of the *Guidelines* and the *Rules* by the General Assembly (General Assembly Resolutions 45/112 and 45/113 of 14 December 1990)

000016

Role of the UN Congresses

FOLLOW UP ACTION

- **NINTH CONGRESS, Cairo, 1995:**

Resolution 1 on "*Recommendations on the four substantive topics*" chapt. IV, op. paras. 15 and 16, and **Resolution 7** on "*Children as victims and perpetrators of crime and the United Nations criminal justice programme: from standard setting to implementation and action*", in Report of the Congress (A/CONF.169/16/Rev.1)

000017

Role of the Crime Commission

FOLLOW UP ACTION

- ECOSOC Resolution 1996/13 of 23 July1996 on "*Administration of juvenile justice*", as recommended by the Crime Commission

- ECOSOC Resolution 1997/30, Annex, of 21 July 1997 on "*Administration of juvenile justice*", approving the *GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM*, as submitted by the Crime Commission at its sixth session, drawing on the recommendations of an expert group meeting held at Vienna from 23 to 25 February 1997 (E/1997/30).

See also Docs. E/CN.15/1996/10; E/CN.15/1997/13 and Add.1; and E/CN.15/1998/8 and Add.1.

000018

IMPORTANCE OF THE GUIDELINES

- Main emphasis on technical assistance and interagency coordination to help countries in need to effectively implement both the CRC and the Juvenile Justice Standards and Norms
- Establishment of a coordination panel on technical advice and assistance on juvenile justice
- 53 GUIDELINES subdivided in three main chapters on:
  - I. Aims and objectives;
  - II. Plans for the implementation of the CRC and the application of standards and norms;
  - III. Plans concerned with child victims and witnesses

000019

Role of the UN Congresses and the Crime Commission

FOLLOW UP ACTION

- **TENTH CONGRESS**, Vienna, 1990: "*Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*", op. para. 24 (A/CONF.187/15) General Assembly Resolution 55/59, annex, of 4 December 2000

"*Plans of action for the implementation of the Vienna Declaration*", Chapt. XII, "Action on juvenile justice", op. paras. 37-39, G.A. Resolution 55/261 of 31 January 2002, as recommended by the Crime Commission at its Tenth reconvened session (E/2001/30-Rev.1)

000020

Role of the UN Congresses and the Crime Commission

FOLLOW UP ACTION

- **ELEVENTH CONGRESS**, Bangkok, 2005:

Substantive topic on "*Making standards work: fifty years of standard setting in crime prevention and criminal Justice*" (A/CONF.203/8) and workshop on "*Strategies and best practices for crime prevention, in particular in relation to urban areas and youth at risk*" (A/CONF.203/11). See also, Report of the Congress (A/CONF.203/18)

"*Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*", G. A. Resolution 60/177 of 16 December 2005, annex, op. para. 33

000021

Role of the Crime Commission

FOLLOW UP ACTION

ECOSOC res. 2005/20, Annex, of 25 July 2005: "*Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*":

- I. Objectives,
- II. Special Considerations,
- III. Principles,
- IV. Definitions,
- V. The right to be treated with dignity and compassion,
- VI. The right to be protected from discrimination,
- VII. The right to be informed,
- VIII. The right to be heard and to express views and concerns,
- IX. The right to effective assistance,
- X. The right to privacy,
- XI. The right to be protected from hardship during the justice process,
- XII. The right to safety,
- XIII. The right to reparation,
- XIV. The right to special preventive measures,
- XV. Implementation.

See also the Crime Commission report (E/CN.15/2005/30), as well as the report of the intergovernmental expert group meeting held in Vienna on 15 and 16 March 2005 (E/CN.15/2005/14/Add.1) and the SG report on implementation (E/CN.15/2008/11).

000022

Role of the Crime Commission

FOLLOW UP ACTION

- ECOSOC Resolution 2007/23 of 26 July 2007 on "*Child justice reform*"

- ECOSOC Resolution 2009/26 of 30 July 2009 on "*Supporting national and international efforts for child justice reform, in particular through improved coordination in technical assistance*".

See also the SG reports submitted to the Crime Commission for the implementation of the above mentioned resolutions (E/CN.15/2009/12 and E/CN.15/2011/13

000023

Role of the UN Congresses

FOLLOW UP ACTION

- TWELFTH CONGRESS, Salvador, 2010: Substantive topic on "*Children, youth and crime*", Working Paper (A/CONF.213/4). See also the report of the Congress (A/CONF.222/17)

"*Salvador Declaration on Comprehensive strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*" (G.A. res. 65/230, annex, of 21 December 2010, op. paras. 26, 27 and 28)

000024

Role of the Crime Commission

FOLLOW UP ACTION

- "*United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*" (G. A. res. 69/194, Annex, of 18 December 2014, mandated by G. A. res. 68/189 of 18 December 2013, as recommended by the Crime Commission)

See also the report of the expert group meeting held in Bangkok from 18 to 21 February 2014 (E/CN.15/2014/14/Rev.1), as well as the Crime Commission's report (E/CN.15/2014/30)

000025

UTMOST RELEVANCE OF THE MODEL STRATEGIES AND PRACTICAL MEASURES

- Latest and most comprehensive instrument covering not only the general prevention of all forms of violence against children, but also the enhancement of the criminal justice system to adequately respond to violence and protect child victims, as well as to take appropriate action in cases of violence against children within the justice system
- 47 detailed provisions contained in three main Parts and XVII Chapters

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Role of the UN Congresses

FOLLOW UP ACTION

- **THIRTHEENTH CONGRESS, Doha, 2015**: Workshop on the "*Role of the UN standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders*" (A/CONF.222/10). See also the report of the Congress (A/CONF. 222/17)

- "*Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider UN Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Level*" (G.A. res. 70/174, Annex, of 17 December 2015, op. paras. 5(e) and 7)

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Role of the Crime Commission

FOLLOW UP ACTION

- "*Mainstreaming holistic approaches in youth crime prevention*" (ECOSOC res. 2016/18 of 26 July 2016). See also the report of the Crime Commission (E/CN.15/1916/30)

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EXAMPLES OF RECENT GENERAL ASSEMBLY RESOLUTIONS

- Biennial resolutions on Human Rights in the Administration of Justice
- Annual resolutions on the Rights of the Child
- Annual resolutions on Strengthening the Crime Prevention and Criminal Justice Programme, in particular its Technical Cooperation Capacity

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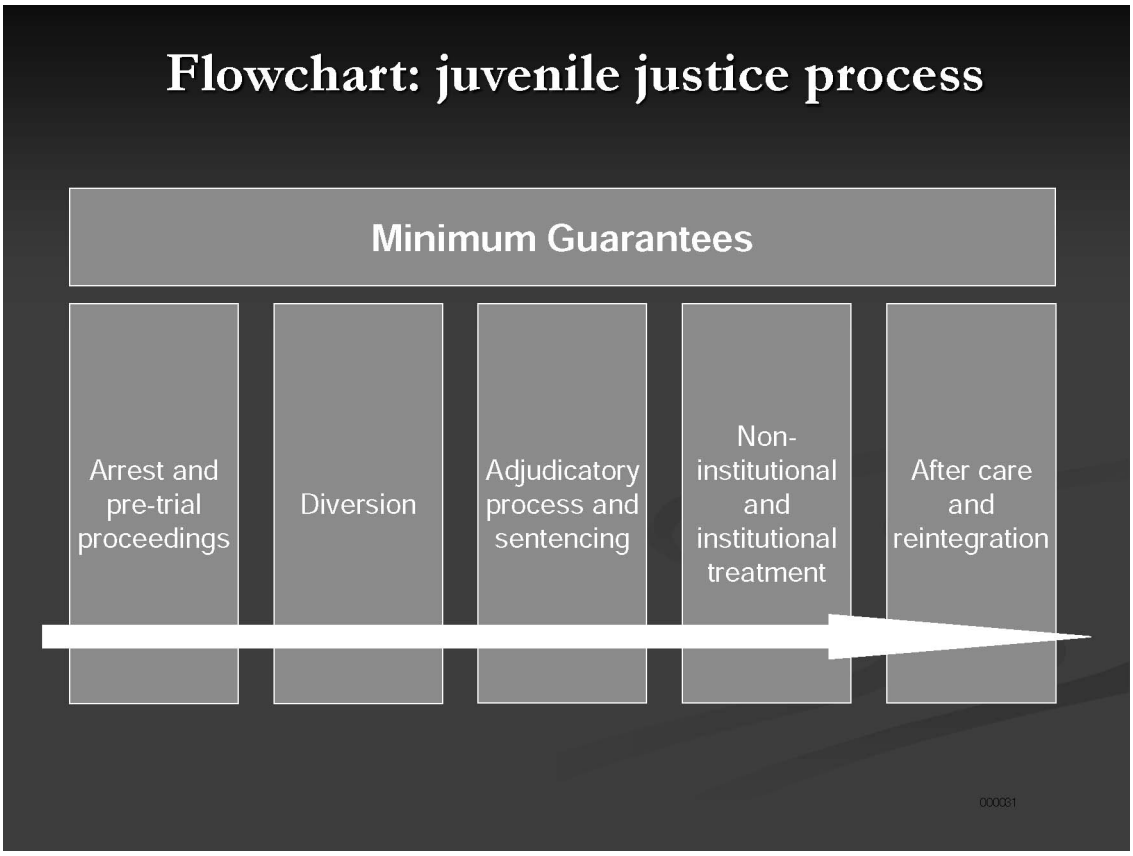
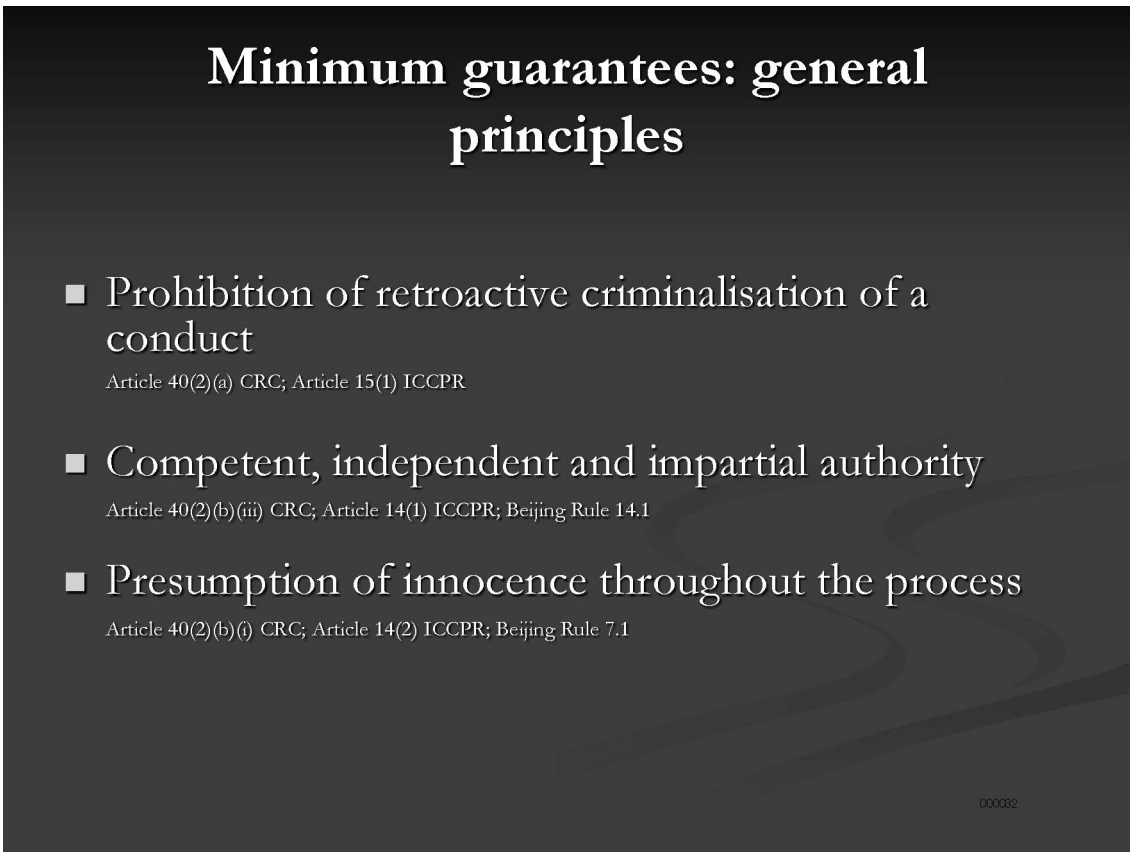
Tools and publications

Justice for Children

- Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime Arabic, Chinese, English, French, Russian, Spanish, Croatian
- Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime English
- United Nations Guidelines on Justice in Matters involving child victims and witnesses of crime Online Training English, French
- Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary English, Spanish, French,
- Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes English, French, Spanish, Russian
- Child-friendly version of the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime Arabic, Chinese, English, French, Russian, Spanish
- Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary English, Tajik, Russian, French
- Guidance Note of the Secretary-General: UN Approach to Justice for Children English
- Child Friendly Legal Aid in Africa English, French
- UNODC/UNICEF Manual for the Measurement of juvenile justice indicators English, French , Spanish, Russian
- Capacity Building in the Area of Child Justice (the Child Justice Project) South Africa, 2003, English
- Strengthening Legislative and Institutional Capacity for Juvenile Justice and Support to the Juvenile Justice System in Lebanon, 2005 English, Arabic
- Protecting the Rights of Children in Conflict with the Law, 2005 English, Arabic, French, Spanish
- Introductory Booklet on the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of crime prevention and criminal justice English
- Checklist to the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of crime prevention and criminal justice English
- Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Prosecutors and Judges English NEW!
- Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Law Enforcement Officials English NEW!

000030


Flowchart: juvenile justice process
Minimum Guarantees
Arrest and pre-trial proceedings
Diversion
Adjudicatory process and sentencing
Non-institutional and institutional treatment
After care and reintegration
000031


Minimum guarantees: general principles
Prohibition of retroactive criminalisation of a conduct
Article 40(2)(a) CRC; Article 15(1) ICCPR
Competent, independent and impartial authority
Article 40(2)(b)(iii) CRC; Article 14(1) ICCPR; Beijing Rule 14.1
Presumption of innocence throughout the process
Article 40(2)(b)(i) CRC; Article 14(2) ICCPR; Beijing Rule 7.1
000032

Minimum guarantees

- Child's right to effective participation
  Articles 12 and 40(2)(b)(ii) CRC; Beijing Rule 14.2
- Right to have the matter determined without delay
  Article 40(2)(b)(iii) CRC; Beijing Rule 20.1
- Right to legal assistance
  Articles. 37(d) and 40(2)(b)(ii and iii) CRC; Article 14(3)(d) ICCPR; Beijing Rule 7.1

000033

Minimum guarantees

- The presence of parents or guardians during legal proceedings
  Article 40(2)(b)(iii) CRC; Beijing Rule 15.2
- Right not to be compelled to give testimony or to confess or acknowledge guilt
  Article 40(2)(b)(iv) CRC; Article 14(3)(g) ICCPR
- Free assistance of an interpreter if the child cannot understand or speak the language used
  Article 40(2)(b)(vi) CRC; Article 14 (3)(f) ICCPR

000034

Minimum guarantees

- Right to privacy during all stages of the proceedings
  Article 40(2)(b)(vii) CRC; Beijing Rule 8
- Child's right to appeal against a verdict or sentence
  Article 40(2)(b)(v) CRC; Article 14(5) ICCPR

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Arrest and pre-trial proceedings

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Arrest and pre-trial

Contacts between law enforcement agencies and children in conflict with the law

- Respect the legal status of the child
  Beijing Rule 10.3
- Promote her or his well-being
  Beijing Rule 10.3
- Avoid harm to her or him
  Beijing Rule 10.3
- Specialized training for all law enforcement officers
  Beijing Rule 12.1 and Riyadh Guideline 58

000037

Arrest and pre-trial

Deprivation of liberty as measure of last resort and for the shortest appropriate period of time

Art. 37 (b) CRC, Beijing Rule 13.1

- Regular review of detention, preferably every two weeks
  General Comment No. 10, Committee on the Rights of the Child
- "Pre-charge police detention should not last longer than 24 hours"
  General Comment No. 10, Committee on the Rights of the Child
- "Period of pre-trial detention should not exceed 30 days"
  General Comment No. 10, Committee on the Rights of the Child

000038

Arrest and pre-trial

Measures to be taken upon arrest of a child

- The child should be brought promptly before a judge or other authorized officer to exercise judicial power
  Article 40(2)(b)(iii) CRC, Article 9(3) ICCPR and Beijing Rule 10.2
- Immediate notification of parents or guardian
  Beijing Rule 10.1

000039

Arrest and pre-trial

Alternative measures to pre-trial detention

Examples:

- Close supervision
- Intensive care
- Placement with a family or in an educational setting or home
  Beijing Rule 13.2 and Tokyo Rule 6.2

000040

Arrest and pre-trial

During pre-trial detention period

- Right to legal assistance
  Articles. 37(d) and 40(2)(b)(ii and iii) CRC; Article 14(3)(d) ICCPR; Beijing Rule 7.1
- Separation from convicted children and adult prisoners
  Article 37(c) CRC, Article 10(2)(b) and (3) ICCPR, and Beijing Rule 13.4
- Boys and girls should also be detained separately
  Beijing Rule 26.4, Rule 8(a) SMRTP, Bangkok Rules 36-39.
- Provision of care, protection and assistance
  Beijing Rule 13.5

000041

Diversion

- When can diversion be applied?
  - At any point of decision-making
    Beijing Rule 11.2
  - Not limited to petty cases
- Who can apply diversion?
  - Police, prosecutors, courts, tribunals
  - It can be exercised by one, several, or all authorities.
    Beijing Rule 11.2
- Are there any requirements?
  - The child needs to give consent to the diversionary measures!
    Beijing Rule 11.3

000042

Diversion

Pre-trial diversion: Legal safeguards

- Compelling evidence that the child committed the offence
- Admission of an offence must not be used against the child
- Child consent is provided freely, voluntarily and in writing
- Legal assistance

000043

Diversion

Diversion measures

Article 40 (3) CRC, Beijing Rule 11, Vienna Guidelines 15 and 42, Tokyo Rule 2,5

Examples:

- Restorative justice
- Family-based/welfare diversion
- Activity programmes

000044

Diversion

Key requirement for effective diversion programmes

Foster **close cooperation** between **child justice sectors**, as well as between the different services in charge of law enforcement and the **social welfare and education sectors**

Vienna Guideline 42

000045

Adjudicatory process and sentencing

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Adjudicatory process and sentencing

Procedures for dealing with a child charged with a criminal offence

- According to **due process of law**
  Beijing Rule 10.3
- A **fair and just trial** include:
  - Presumption of innocence
  - Presentation and examination of witnesses
  - Access to legal assistance
  - Right to remain silent
  - Right to have the last word in a hearing
  - Right to appeal
- Tried by a **competent, independent and impartial authority,** tribunal or judicial body
  Article 40(2)(b)(iii) CRC, Article 14(1) ICCPR and Beijing Rule 14.1

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Adjudicatory process and sentencing

Sentencing

Article 40(1) CRC and Beijing Rule 5.1 and 17.1(a)

Available measures to ensure that:

- Children are dealt with in a manner **appropriate to their well-being**
- Responses are **proportionate** to both the objective gravity of criminal offence and individual circumstances
- Responses **promote reintegration** and the child assuming a constructive role in society

000048

Adjudicatory process and sentencing

Social inquiry report

Beijing Rule 16.1; Tokyo Rule 7.1

When?

- Before a sentence is passed on a child
- In all cases, except in those involving minor offences

Purpose:

- Assist the Court in determining the most effective sentence to enable reintegration of the child into the community

000049

Adjudicatory process and sentencing

Non Custodial Sentences

Article 40 (3)(b) and Beijing Rules 17 and 18.1

Examples:

- Guidance and supervision
- Restorative justice measures
- Community service orders
- Probation
- Financial penalties
- Educational and vocational measures
- Suspended sentences

000050

Adjudicatory process and sentencing

Custodial Sentences

Article 37 (b) CRC; Beijing Rules 17.1 (b) (c) and 19; Havana Rules 1 and 2

- In conformity with the law
- As a measure of last resort
- For the shortest appropriate period of time

000051

Adjudicatory process and sentencing

Strict Prohibitions

No Torture or other cruel, inhuman or degrading treatment or punishment

Art. 37 (a) CRC, Beijing Rule 17.3,Article 7 ICCPR, Articles 3 and 5 UDHR

- No use of death penalty
  Article 37(a) CRC, Art. 6 (5) ICCPR, Beijing Rule 17.2
- No life imprisonment without the possibility of release
  Article 37(a) CRC,
- No corporal punishment
  General Comment No. 10, Committee on the Rights of the Child

000052

Confidentiality of records of child offenders

Beijing Rules 21.1

- Access limited to persons directly involved with the disposition of the case or other duly authorised persons
- Records shall not be used in adult proceeding in cases involving the same offender

000053

Non- institutional and institutional treatment and rehabilitation

000054

Treatment and rehabilitation

Purpose of deprivation of liberty of children in conflict with the law

- Rehabilitation and reintegration of the child rather than punishment or the protection of society

Beijing Rule 26.1

000055

Treatment and rehabilitation

Child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person

Art. 37 (c) CRC, Havana Rule 12

000056

Treatment and rehabilitation

- Separation of children from adult prisoners
  Article 37(c) CRC, Article 10(2)(b) ICCPR, and Beijing Rule 13.4; 26.3; Rule 8 (d) SMRTP, Havana Rule 29
- Girls should be held separate from male young offenders
  Beijing Rule 26.4, Rule 8(a) SMRTP, Bangkok Rules 36-39.

000057

Treatment and rehabilitation

Facilities and services must meet requirements of health and human dignity

Havana Rules 31-37; Rules 9-20 and 43 SMRTP

Facilities and services shall include:

- Sleeping accommodation consisting of small dormitories or individual rooms that can be unobtrusively supervised
- Sufficient, clean bedding, which is appropriate for the climate
- Storage facilities for personal items
- Adequate sanitary facilities
- Personal clothing suitable for the climate and to ensure good health
- Access to drinking water
- Sufficient food of adequate nutritional value

000058

Treatment and rehabilitation

Communication with the outside world

- Essential to the preparation of children for their return to society".
  Havana Rule 59
- Key role of the family for the well-being of the child
  Beijing Rule 26.5, Rule 37 SMRTP, Section J Havana Rules
- Right to maintain contact with family through correspondence and visits
  Art. 37 (c) CRC
- Decentralised institutions
  Havana Rule 30

000059

Treatment and rehabilitation

Access to health care services

Article 24 (1) CRC, Beijing Rule 26.2, Rules 22-26 SMRTP, Havana Rules 49-55

- Medical and psychological assistance
  Beijing Rule 26, Rules 82-83 SMRTP and Havana Rules 51-54
- Preventive and remedial medical care, including dental and ophthalmological care
  Havana Rule 49

000060

Treatment and rehabilitation

Education and vocational training

Art. 28 CRC in connection with Art. 2 CRC

- Vital for enhancing a child's life chances, facilitating the child's reintegration and reducing the rate of recidivism
- Standards for education of children deprived of liberty
  Havana Rule 18(b) Havana Rules, Section E, Rule 66(1) SMRTP, Beijing Rules 26.1, 26.2, 26.6
- Right to receive vocational training in occupations likely to prepare the child for future employment
  Havana Rule 42, Rules 66(1) and 71(5) SMRTP and also in Beijing Rules 26.1 and 26.2
- Right to select educational and vocational training options, as far as that is feasible
  Havana Rule 43

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Treatment and rehabilitation

Opportunity to perform labour

- Labour is primarily viewed as a complement to vocational training that enhances the possibility of finding suitable employment
- No work for free: equitable remuneration
  Havana Rule 18(b) in connection with Rule 45
- Prison work not of an afflictive nature
  Rule 71 SMRTP

000062

Treatment and rehabilitation

Opportunity to perform labour

- National labour laws should explicitly apply to children in custodial facilities in the same way as to other children in the community
- No interference with the child's education
- All laws and regulations on children's labour should comply with the international standards set out in the CRC and International Labour Organisation Convention on the Worst Forms of Child Labour

000063

Treatment and rehabilitation

Exercise and recreational activities

- Appropriate recreational and physical training should be provided
  Rule 21 SMRTP, Havana Rules 18(c), 41, 47 and 62
- Adequate space, installations and equipment for recreational, physical and leisure activities
  Havana Rule 47 and Rule 21(2) SMRTP
- Each child should be physically able to participate in the available programmes of physical education
  Havana Rule 47 and Rule 21(2) SMRTP

000064

Treatment and rehabilitation

Religious, cultural and other rights

Art. 14 (1), 30 CRC, Rules 41, 42 SMRTP, Havana Rules 4, 48

- Enabling the attendance or conduct of services
- Providing the necessary books or items of religious observance
- Allowing representatives of religions to hold services and pay visits
- The right NOT to participate in religious services

000065

Treatment and rehabilitation

Disciplinary measures

- No cruel, inhuman or degrading treatment including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child

  Article 37(a) CRC, Article 7 ICCPR, Article 5 Universal Declaration of Human Rights, CAT, Beijing Rule 17.3, and Havana Rule 67

- No reduction of diet or restriction or denial of contacts with family members

  Havana Rule 67

000066

Treatment and rehabilitation

Methods of restraint

- Restrictions
  37(a) CRC, Havana Rule 64, Section K of the Havana Rules, Rules 33 and 34 SMRTP
- Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, never to be applied as a punishment
  Rule 33 SMRTP
- Carrying of weapons in any facility where a child is detained should be prohibited
  Havana Rule 65

000067

Treatment and rehabilitation

Places of detention should keep complete and secure records

Havana Rules 19, 21, 70

- Information on the identity of the child
- Fact of and reasons for commitment and the authority thereof
- Day and hour of admission, transfer and release
- Details of the notifications to parents and guardians on every admission, transfer or release of the child
- Details of known physical and mental health problems

000068

Treatment and rehabilitation

Upon admission in a detention facility

- Full reports and relevant information on the personal situation and circumstances of each child should be drawn up and submitted to the administration
  Havana Rules 23 and 27
- All children shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations
  Havana Rule 24

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Treatment and rehabilitation

Staffing

Qualified and trained personnel in institutions where children are deprived of liberty

Section V of the Havana Rules, Rules 46-54 SMRTP

000070

Treatment and rehabilitation

Complaint mechanisms

Havana Rules 75 and 76 and Rule 36 SMRTP

- Every child should have the opportunity to submit requests/complaints to:
  - the director of the detention facility
  - the Central Administration
- Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints and to assist in the achievement of equitable settlements

000071

Treatment and rehabilitation

Regular and independent system of inspection

- Qualified inspectors not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections, and should enjoy full guarantees of independence in the exercise of this function.

Havana Rule 72

000072

After release

Havana Rule 79

- Assistance to children in returning to society, family life, education or employment after release from institutionalisation
- Procedures, including early release, and special courses should be devised to this end

000074

After-care and reintegration

Review of custodial sentence on regular basis

- Conditional release
  Beijing Rule 28.1
- Release may be conditional on the satisfactory fulfilment of requirements

000075

After-care and reintegration

Support following detention

Havana Rule 80

- Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society
- They should ensure that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration.

000076

After-care and reintegration

Semi-institutional arrangements

Beijing Rule 29.1

- Halfway houses, educational homes, day-time training centres
- Diversified range of facilities and services designed to meet the different needs

000077

BY WAY OF CONCLUSIONS

- CRIME AND DEVELOPMENT
- SD GOAL 16
- INVESTING ON PREVENTION
- CHILDREN ARE NOT JUST SMALL OR LITTLE ADULTS….BUT….YOUNG HUMAN BEINGS WOSE RIGHTS MUST BE CONSISTENTLY AND EFFECTIVELY PROTECTED TO ENSURE THE SURVIVAL OF OUR FUTURE GENERATIONS

000078


SUSTAINABLE DEVELOPMENT GOALS
16 PEACE, JUSTICE AND STRONG INSTITUTIONS
PROMOTING JUSTICE TO END VIOLENCE AGAINST CHILDREN
UNODC
United Nations Office on Drugs and Crime
000079


Thank you for your attention!
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000080

MAKING JUVENILE JUSTICE INSTRUMENTS "REAL" THROUGH THE COURTS: THREE SOUTH AFRICAN CASE STUDIES

*Ann Skelton**

I. INTRODUCTION

A. The Relevant International Norms and Standards for Juvenile Justice

1. UN Convention on the Rights of the Child

In international law there are established principles that guide juvenile justice. The UN Convention on the Rights of the Child (CRC) contains two important articles relating to child offenders. Article 40 describes a system that treats a child in a manner consistent with the promotion of the child's dignity and worth, which reinforces the child's respect for others, and promotes the desirability of children being reintegrated and assuming a constructive role in society. Article 40(2) sets out a child's fair trial rights, and Article 40(2) requires states parties to establish special laws, procedures, authorities and institutions for children who commit crimes. The need to set a minimum age at not too low a level, to use alternative measures rather than judicial proceedings, and to have an array of dispositions are all important features of such systems.

Article 37 of the CRC is of particular importance to juvenile justice – it requires states parties to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons under the age of 18 years. The principle of detention as a measure of last resort and for the shortest appropriate period of time is enshrined in Art 37(b). Humanity, respect and dignity are required for children deprived of their liberty and every child so deprived shall have the right to prompt access to legal and other assistance and to challenge the detention.

The UN Committee on the Rights of the Child has also added detail and provided further, up to date guidance on the relevant provisions of the CRC in their General Comment no 10, on "Children's rights in Juvenile Justice", which was issued in 2007. This is a comprehensive document which identifies the key principles of juvenile justice as non-discrimination, the right to life, survival and development, the right to be heard and the right to dignity. It describes the following as the core elements of comprehensive juvenile justice:

- Prevention of juvenile delinquency
- Interventions/diversion
- Age and children in conflict with the law
- The guarantees for a fair trial
- Measures
- Deprivation of liberty (pre-trial and post-trial).

The Convention is supported and strengthened by three sets of rules or guidelines, namely the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", 1990); and the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines", 1990).[1]

2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985): "The Beijing Rules"

The first international instrument to provide dedicated attention to the issue was the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), referred to generally and

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hereafter as the Beijing Rules.[2] These Rules provide a framework of essential elements of a good system to deal with child offenders. The rules encompass the following:

- Countries need to set a minimum age of criminal capacity, at an age that is not too low, considering emotional and mental capacity of children
- The aim of juvenile justice is to emphasize the well-being of the child and ensure that any reaction will be proportionate to the offender and the offence.
- Encourages a high degree of discretion being granted to officials at all stages to allow for alternative measures, but discretion to be used in an accountable and judicious manner
- Diversion is encouraged.
- Specialization in the police is encouraged
- Children who are not diverted must be dealt with by a competent authority, in an atmosphere of understanding.
- Sentencing must be proportionate and must ensure that detention is a measure of last resort, corporal punishment as a sentence is prohibited.

3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) "The Havana Rules"

Whilst other instruments stress avoidance or limitation of detention, this instrument focuses on conditions of detention. It covers pre-trial detention, detention during trial and detention as a sentence. It is sufficiently broad to cover not only prisons and police detention, but all facilities which children cannot leave at will. The JDLs begin from the departure point that detention should be avoided, but where it occurs each child must be treated as an individual, having his or her needs met as far as possible. There is an emphasis on preparing that child for return to society from the moment of entry into the facility. The Rules deal with management of facilities including their administration, the physical environment and services they offer, appropriate disciplinary procedures, effective compliance monitoring through regular and unannounced inspections, and an independent complaints procedure.

4. United Nations Guidelines for the Prevention of Juvenile Delinquency (1990): "The Riyadh Guidelines"

These guidelines are preventive in nature, and focus on the child, the family and the involvement of the community. The document deals with "socialization processes", education, participation of youth within community structures, the role of the media, socio-economic circumstances. The idea of prevention is located squarely within a broader development context.

A. Introduction to the Focus on South African Law

1. Overview of the Relevant South African Cases

This paper will consider how these instruments have been used in practical ways in cases heard by the South African Constitutional Court. There will be a focus on three case studies, although these are not the only cases in which the Court has utilized international instruments pertaining to children's rights.[3] Other cases concerning criminal matters in which the South African Constitutional Court has used international and regional instruments include a matter concerning the rights of children whose caregivers are facing imprisonment,[4] the rights of child victims of crime,[5] and a very recent case in which the Court found that

[1] There are other important guidelines and resolutions that are relevant to juvenile justice, a full discussion of which is beyond the scope of this paper: United Nations Standard Minimum Rules for Non-custodial Measures (1990)United Nations Guidelines on Justice in matters involving Child Victims and Witnesses (2005); United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009); United Nations principles and guidelines on Access to Legal Aid in Criminal Justice Systems (2012). See further the United Nations Guidelines for Action on Children in the Criminal Justice System (1997); the Economic and Social Council resolution on supporting national efforts for child justice reform (2007), The Guidance note of the United Nations Secretary-General: United Nations Approach to Justice for Children (2008); the United Nations Resolution on Human Rights in the Administration of Justice, in Particular Juvenile Justice (2011). Furthermore there are tools produced by UNODC and UNICEF such as the Manual for Measurement of Juvenile Justice Indicators (2007), the UNODC and OSCE Criminal Justice Assessment Toolkit (2006) and the UNODC and Inter-Agency Panel on Juvenile Justice Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes (2010).

[2] General Assembly resolution 40/33 adopted on 29 November 1985.

[3] For a full discussion of the use of the CRC and other instruments see Ann Skelton 'South Africa' in T Liefaard and J Doek Litigating the rights of the child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence (2015).

[4] S v M (Centre for Child Law as Amicus Curiae) (CCT 53/06) [2007] ZACC 18.

when deciding whether to arrest a child, a police official must apply the best interests principle.[6] In this presentation, the first case to be discussed concerns a law which applied minimum sentences (including life imprisonment) to child offenders.[7] The second concerned a law which criminalized consensual sex between adolescents aged 12 to 16 years.[8] The third concerned a law which required the automatic inclusion of child offenders on the sex offender register.[9] In all three cases, the laws were found to be unconstitutional insofar as they were applied to children. Before discussing the cases, it is important to understand the constitutional and legal system in South Africa.

2. Introduction to the South African Constitutional and Legal System

South Africa is a constitutional democracy. The Constitution contains a progressive Bill of Rights comprising civil, political and socio-economic rights. These rights are justiciable—any law or conduct inconsistent with them may be declared invalid by the superior courts. The legal system is a hybrid one, based on British common law and Roman-Dutch civil law. Procedurally, the law takes a largely common law approach, incorporating the rule of *stare decisis*, meaning the law is developed through precedents set by case law. The Constitution is the supreme law, which means that if the Constitutional Court finds any law or conduct to be unconstitutional, then it can declare that law to be invalid.[10] It can read words into a statute, or strike words out. It can also declare the law invalid, but suspend that declaration so that it does not come into effect immediately, and allow the legislature time to change the law to bring it in line with the Constitution.

3. Children's Rights in the South African Bill of Rights

South Africa's Bill of Rights has been hailed internationally as a good example of a Constitution providing for protection and advancement of children's rights.[11] A range of obligations are placed on the state for the promotion, protection and realization of children's rights. With the exception of the right to vote or stand for public office, children are entitled to all rights contained in the Bill of Rights. So fair trial rights, for example, apply to both adults and children.

The Constitution also has a specific children's rights section—Section 28—which includes a range of rights that pertain specifically to children.[12] A child is defined as a person below the age of 18 years. For the purpose of this paper, I will focus on the subsections that are particularly relevant to child offenders.

Section 28(1)(g) states that every child has the right not to be detained except as a measure of last resort and then only for the shortest appropriate period of time. If detained, a child has the right to be kept separately from persons over the age of 18 years, and treated in a manner and kept in conditions that take account of the child's age.

The wording of section 28(1)(g) is clearly drawn from section 37(b) of the CRC—which contains the phrase "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The remainder of section 28(1)(g) is similar to that in section 37(c) of the CRC. The direction to use detention as a measure of last resort is also enunciated in the Beijing Rules at rule 13 (for detention pending trial) and rules 17(1)(c) and 19 (for detention as a sentence). Issues relating to the conditions of detention are spelled out in detail in the Havana Rules.

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[5] Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development (CCT 151/15) [2016] ZACC 24.

[6] Radhuvha v Minister of Safety and Security (CCT 151/15) [2016] ZACC 24.

[7] Centre for Child Law v Minister of Justice and Constitutional Development (CCT 98/08) [2009] ZACC 18.

[8] Teddy Bear Clinic for Abused Children v Minister of Justice (CCT 12/13) [2013] ZACC 35.

[9] J v National Director of Public Prosecutions (CCT 114/13) [2014] ZACC 13.

[10] The Courts that have the power to decide on the Constitutional validity of law or conduct are the High Courts, the Supreme Court of Appeal and the Constitutional Court see Masiya v Director of Public Prosecutions, Pretoria & Another (Centre for Applied Legal Studies & Another as Amici Curiae) 2007 (5) SA 30 (CC), 2007 (3) SACR 435 (CC). Where law or conduct is declared invalid, that finding must be confirmed by the Constitutional Court.

[11] P Alston and J Tobin Laying the foundations for children's rights UNICEF Innocenti Research Centre, Florence (2005).

[12] These include the rights to name and nationality; family care or parental care or appropriate alternative care when removed from the family environment; basic nutrition, shelter, basic health care services and social services; to be protected from maltreatment, neglect, abuse or degradation; to be protected from age-inappropriate or exploitative labour; to legal representation at state expense in civil proceedings if substantial injustice would otherwise result; and not to be used in armed conflict.

Section 28(2) of the South African Constitution provides a further layer of protection by specifying that a child's best interests are of paramount importance in every matter concerning the child. Again, the wording is reminiscent of article 3(1) of the CRC—but note that the use of the words "the paramount consideration" in section 28(2) provides stronger protection than the CRC which uses the phrase "a primary consideration".

4. The Influence of International Law on South African Law

In addition to the influence of international law on the Constitution and the domestic laws, the Constitution also directs the courts to pay attention to international law. Section 39(2) of the Constitution obliges courts to consider international law when interpreting a right in the Bill of Rights. The Constitution provides that the court *must* consider international law, and *may* consider foreign law, when interpreting the Bill of Rights.[13] South Africa is described as having a dualist legal system because section 231(4) states that an international agreement only becomes law once it is enacted by national legislation. The CRC has not directly been enacted into law, although the Preambles to the Children's Act 38 of 2010 and the Child Justice Act 75 of 2008 do refer to the CRC. At the same time, the courts are enjoined to "consider international law".[14] According to international law expert, John Dugard, a treaty that has been signed and ratified is binding on South Africa, regardless of whether it has been signed into law).[15] Some authors have argued that South Africa has "crossed the line from dualism and monism" in relation to child law. This claim is demonstrated by the fact that the courts go further than referring to binding instruments—they even refer to "soft law" in their judgments.[16]

The South African Courts have paid particular attention to articles 37 and 40 of the CRC, together with the non-binding instruments relating to juvenile justice, in particular the Beijing Rules. In addition to the Constitutional Court cases, a raft of High Court and Supreme Court cases have incorporated these into South African jurisprudence.[17]

II. THE CASE STUDIES

A. The Case that Found Minimum Sentences Unconstitutional for Child Offenders

The South African Constitutional Court has paid particular attention to the principle incorporated in section 28(1)(g) of the Constitution (modelled on article 37(b) of the CRC) that the detention of children should be a measure of last resort, and if detained, this should be for the shortest appropriate period of time. The *Centre for Child Law v Minister of Justice*[18] was a challenge to the constitutionality of the minimum sentences law, insofar as it applied to 16 and 17 year olds. The law links certain serious offences to minimum sentences (for example, a conviction for certain types of murder carries a minimum sentence of life imprisonment). The law excluded children below the age of 16 years but included 16 and 17 year olds within its ambit, even though the Constitution clearly defines a child as a person below 18 years of age. The Centre for Child Law (hereafter referred to as the Applicant), acting on behalf of children who would be sentenced under the new law, challenged the constitutionality of the provision. They argued that subjecting children aged 16 and 17 years of age to the minimum sentencing regime was in breach of the Constitution and South Africa's international law obligations.

Although the Applicant acknowledged that long sentences of imprisonment might sometimes be necessary when 16 and 17 year olds commit very serious crimes, it submitted that such sentences should only be determined by the court in accordance with the constitutional principles of "last resort" and "shortest appropriate period of time", as well as the principles of proportionality, individualization and the best interests of the child. A court sentencing a child offender should start with a "clean slate", and not be prescribed to by a minimum sentencing law. Even though the law empowers the court to depart from the minimum sentence if

[13] S 39(1).
[14] S 39(1).
[15] John Dugard International Law – A South African Perspective. Juta, Cape Town (2005)
[16] J Sloth-Nielsen and H Kruuse "A maturing manifesto: The constitutionalisation of children's rights in South African jurisprudence 2007–2012" 2013 International Journal of Children's Rights 646.
[17] S v Z en vier ander sake 1999 (1) SACR 427 (E); S v Kwalase 2000 (2) SACR 135 (C); S v Nkosi 2002 (1) SA 494 (W); Director of Public Prosecutions, Kwa-Zulu Natal v P 2006 (1) SACR 243 (SCA) and S v N 2008 (2) SACR 135 (SCA); S v B 2006 (1) SACR 311 (SCA).
[18] (CCT 98/08) [2009] ZACC 18.

it finds substantial and compelling reasons to do so, this nevertheless sets up long terms of imprisonment as the first (and not the last) resort. Furthermore, the impugned provisions failed to require that imprisonment be imposed for the shortest possible time, indeed they required the opposite. The minimum sentencing regime was also unconstitutional with regard to child offenders because it did not allow or require the sentencing judge to consider the principles of individuality and proportionality. Finally, the law was constitutionally impermissible because it treated children aged 16 and 17 the same as adults, at least in respect of sentencing.

One can see much evidence of the international law being used in these arguments. The "last resort" and "shortest appropriate period" have been discussed above. The "clean slate" argument is linked to the last resort principle, because a law that ties the court's hand also limits discretion, whereas a clean slate means the court can start by considering a non-custodial sentence, and only proceed to an institutional measure if that is the only suitable option. The importance of discretion is specifically mentioned in Rule 6 of the Beijing Rules.[19] The principles of individuality and proportionality are also found in the Beijing Rules.[20]

The Applicant's argument was bolstered by the use of comparative foreign law. The only country comparison which could be found that imposed minimum sentencing regimes on children in the same manner it does to adults was the United States,[21] which was one of only two countries in the world at the time that had not ratified the Convention on the Rights of the Child.[22] The Applicants pointed out that those countries that have undertaken law reforms since the advent of the CRC had ensured that minimum sentences either do not apply to child offenders or that if they do, the sentences are for shorter periods of time than those applicable to adults.

The Minister of Justice took the position that the law was not unconstitutional because it respected the "last resort" and "shortest appropriate period" principles, but that Parliament had determined how those principles should be applied—namely to 16 and 17 year olds, and in the scheduled crimes. Furthermore, certain features of the law—particularly the ability of the court to depart from the minimum sentence, ameliorated the effects of the law in a way that would benefit child offenders. Their youthfulness, it was argued, would often amount to a substantial and compelling circumstance. The Minister also argued that the law was not in breach of international law principles because the Convention on the Rights of the Child only prohibits life imprisonment without the possibility of parole which does not exist in South Africa.[23]

The Constitutional Court held that the minimum sentencing legislation should not apply to children aged 16 and 17 years old. The majority of the Constitutional Court found that the minimum sentencing legislation limited the discretion of sentencing officers by directing them to hand down long sentences (including life imprisonment) as a first resort. Furthermore, the legislation discouraged the use of non-custodial options, it prevented courts from individualizing sentences, and was likely to cause longer prison sentences. All of these features of the law amounted to an infringement of child offenders' rights in terms of section 28(1)(g).

In addition to relying on article 37(b) of the CRC on which the section is based, the Court found that the following instruments "count in favour of the view that minimum sentences should not be applied to child offenders": The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing

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[19] Rule 6: In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

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

[21] This was prior to the judgment of Miller v Alabama, 132 S. Ct 2455 (2012). Scott et al (supra note 15 at 26) point out that in the post-Miller era laws that subject juveniles to mandatory minimum sentences on the same basis as adult offenders are problematic on proportionality grounds and are likely to be the focus of future reforms. The authors point to State v Lyle, 854 N. W. 2d 378 (Iowa 2014) which found that mandatory adult sentences exclude the consideration of juvenile offenders' immaturity, which is against the principle set down in Miller.

[22] The United States is now the only country that has not ratified the CRC, because in 2015 Somalia became the 196th State to ratify the CRC.

[23] The Applicants countered this argument by pointing out the Committee on the Rights of the Child General Comment no 10: Juvenile Justice (2007) called upon states parties 'to abolish all forms of life imprisonment for offences committed by persons under the age of 18 years.

Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). The court specifically emphasized Rule 17(1)(a) of the Beijing Rules which provides in relation to sentencing that "[t]he reaction taken shall always be in proportion not only to the circumstances and gravity of the offence but also to the circumstances and needs of the juvenile as well as the needs of society".[24] The court also quoted article 40(1) of the CRC in full in a footnote.

From all these instruments the Court distilled the following principles: proportionality; imprisonment as a measure of last resort and for the shortest period of time; children must be treated differently from adults; and that the well-being of the child is the central consideration.[25] The Court found that the international principles are "amply" embodied in the Bill of Rights which led directly to the conclusion by the court that the law was unconstitutional. The Court found that children should be treated differently from adults not for sentimental reasons, but because of their greater physical and psychological vulnerability and the fact that they were more open to influence and pressure from others. The Court found it to be vitally important that child offenders are generally more capable of rehabilitation than adults. These are the premises, the Court said, on which the Constitution requires the courts and Parliament to differentiate child offenders from adults. The court went on to explain:

> We distinguish them because we recognise that children's crimes may stem from immature judgment, from as yet unformed character, from youthful vulnerability to error, to impulse, and to influence. We recognise that exacting full moral accountability for a misdeed might be too harsh because they are not yet adults. Hence we afford children some leeway of hope and possibility.[26]

The Court's interpretation of the last resort principle is interesting. The judgment pointed out that the Constitution does not prohibit Parliament from dealing effectively with child offenders—the fact that detention must be used only as a last resort in itself implies that imprisonment is sometimes necessary. However, the Bill of Rights mitigates the circumstances in which such imprisonment can happen. It must be a last (not first or intermediate) resort, and it must be for the shortest appropriate period. "If there is an appropriate option other than imprisonment, the Bill of Rights requires that it be chosen. In this sense, incarceration must be the sole appropriate option. But if incarceration is unavoidable, its form and duration must also be tempered, so as to ensure detention for the shortest possible period of time".[27]

B. The Case about Decriminalization of Consensual Sex between Adolescents

South Africa's parliament passed new Sexual Offences legislation in 2007.[28] The new law had good intentions of protecting children from sexual abuse. However the case of *Teddy Bear Clinic v Minister of Justice* shows that it went too far by criminalizing all consensual sexual activity from kissing through to intercourse between adolescents aged twelve to sixteen years. The law contained a requirement that when children who are both between the ages of twelve and sixteen years indulge in any form of consensual sexual violation (penetrative or non-penetrative) and a decision is taken to prosecute them, then both must be prosecuted.[29] The protection of children from sexual advances by adults is clearly beneficial and had long been part of South African law (i.e., a person above sixteen years may not have sexual relations with a person below sixteen years, regardless of consent). However, the idea that if children who were both between twelve and sixteen years engage in consensual sexual activity they are both committing a crime due to their inability to consent was a new idea and a concerning one.

This "crime" was linked to a mandatory reporting provision, so parents, teachers and counsellors who knew about such activities were required to inform the police. The law exposed adolescents to the risk of prosecution, and if convicted, their names would be placed on the sex offenders register. Two children's

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[24] This is one of the guiding principles in adjudication and disposition under the Beijing Rules.
[25] Centre for Child Law v Minister of Justice at para 61.
[26] Centre for Child Law v Minister of Justice Para 28.
[27] Centre for Child Law v Minister of Justice Para 31.
[28] The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereafter Sexual Offences Act).
[29] The minutes of the Parliamentary portfolio committee indicate that the members of the legislature were particularly proud of the gender neutral nature of this amendment – they said it would obviate what they called the 'angry father syndrome' which, they considered, operated unfairly against males in the old system.

rights organisations, Teddy Bear Clinic for Abused Children and Resources aimed at Child Abuse and Neglect (RAPCAN), legally represented by the Centre for Child Law, challenged this law on the basis that it unjustifiably infringed the rights of children to dignity, privacy, sexual autonomy and to have their best interests considered paramount. The Constitutional Court handed down a judgment in October 2013, declaring the law unconstitutional and therefore effectively decriminalizing consensual sex between adolescents.

In papers before the court, the Applicants made the point that adolescents (twelve to sixteen years of age) are in a special position. Physiologically, they are rapidly developing and maturing, but psychologically they are not yet fully developed and are still vulnerable to the influence of adults. It is for this reason that the Applicants accept that the legal provisions are constitutionally permissible insofar as they criminalize the sexual conduct of *adults*. However the Applicants contended that, to the extent that the sections criminalize the sexual conduct of *children*, they are unconstitutional.

The Applicants' founding affidavit placed reliance on an expert opinion which showed that the onset of puberty generally occurs before or around twelve years of age, most other physical indications of sexual maturity manifesting between the ages of twelve and sixteen years. Furthermore, intimate relationships between adolescents are "developmentally normative", with up to 87% of a cross section of Grade 8 to Grade 11 pupils in one study indicating they were or had been in an intimate relationship.

The court papers filed by the Applicant pointed out further anomalies in South African law. Whilst section 15 of the Sexual Offences Act make it a crime for children to engage in sexual intercourse, section 134 of the Children's Act 38 of 2005 provides that no person may refuse to sell or provide condoms to a child over the age of twelve years. Other contraceptives can be provided on request by a child if the child is at least twelve years of age and has been physically examined. These children are entitled to confidentiality under the Children's Act, but under the Sexual Offences Amendment Act a person who knows that a sexual offence is being committed (including statutory offences arising from consensual sexual activity) has a duty to report it to the police. Furthermore, the Termination of Pregnancy Act allows girls of any age to decide to terminate their pregnancies without parental consent, provided they have had counselling. However, if they discuss their pregnancy with anyone, that person is required to report a sexual offence.

The court papers pointed out that the above-mentioned provisions aimed to make reproductive health services available to children who need them, but are in stark contrast to the reporting requirements under the Sexual Offences Act.

In essence the Applicant's case was that while it might be reasonable for the state to take an interest in discouraging sexual activity among children between the ages of twelve and sixteen years, this could be achieved through educative approaches. There is no need for the law to criminalize sex between teenagers. The Applicants included an interesting paragraph in their papers before the court:

> Indeed, the fact that the relevant aspects of the impugned provisions criminalize only children is itself of major concern. On 23 September 2011, the UN Human Rights Council adopted a resolution in which it called upon States *to enact or review legislation to ensure that any conduct not considered a criminal offence or not penalized if committed by an adult is not considered a criminal offence and not penalized if committed by a child, in order to prevent the child's stigmatization, victimization and criminalization.* [30]

This is an example of using a UN resolution—the status of which is not strong in international law. However, this clause captured exactly the problem which the new Sexual Offences law had brought about.

The Respondent (Minister of Justice and Constitutional Development) focused on moral concerns as well as concerns about teenage pregnancy and sexually transmitted diseases. The measures were necessary in order to protect children from their own immature judgment. The Minister also claimed that although the law authorised prosecution, it did not require it and the children could, under the Child Justice Act, be diverted from the criminal justice system. This ameliorated the effects of the impugned provisions.

[30] UN Human Rights Council Human rights in the administration of justice, in particular juvenile justice' A/HRC/18/L.9, para 14.

However, the Applicants strongly countered this last point. They pointed out that the fact that children will often be diverted (in terms of the Child Justice Act[31]) once a decision to prosecute has been made does not avoid the substantial trauma and harm that they will endure. Before being diverted children would be exposed to the earlier process in the criminal justice system such as arrest, being required to provide detailed statements about their sexual conduct, being questioned by police and other authorities about their sexual conduct or even from being detained in police cells.

This is an interesting point, because diversion is encouraged by article 40(3)(b) of the CRC and also in rule 11 of the Beijing Rules. The Minister, in defending the law, said that diversion cured the problems in the law. Although the Applicants considered diversion to be a positive process, they disagreed that the possibility of diversion solved the problems in the law. An unconstitutional law, they said, cannot be "saved" because its application is discretionary.

On 3 October 2013 the Constitutional Court handed down a unanimous judgment which found the impugned provisions infringed adolescents' rights of dignity and privacy and further violated the best interests principle. The court relied on the expert evidence adduced by the Applicants, and concluded that the impugned provisions criminalized developmentally normative conduct for adolescents and negatively affected the very children the law sought to protect. Thus the law was not rationally connected to its purpose. Justice Khampepe, who wrote the judgment, said that it was important to stress what the case was not about. It was not about whether children should engage in sexual conduct, nor was it about setting a lower age of consent. The case was about the narrow issue of whether it was constitutionally permissible to use criminalization to deter chldren's early sexual intimacy and combat the associated risks.

Justice Khampepe underlined the dignity of children, describing the law as having placed youthful transgressors in a state of disgrace. She clearly recognised that sexual intimacy and sexual choices are part of the innermost sanctity of a person's dignity, and she included children's intimacy within that constitutionally protected ambit. She also clearly stated that the impugned provisions, by prohibiting consensual intimate relationships, intruded into the core of adolescents' privacy. Furthermore, in discussing children's best interest she found that the impugned provisions ran contrary to that best interests principle because they harmed children.

Justice Khampepe clearly understood the concerns about criminalization and stigmatization—as mentioned in the Human Rights Council resolution that was included in the Applicants' papers. She said:

> It cannot be doubted that the criminalization of consensual sexual conduct is a form of stigmatization which is degrading and invasive. In the circumstances of this case, the human dignity of adolescents targeted by the impugned provisions is clearly infringed. If one's consensual sexual choices are not respected by society, and are criminalized, an innate sense of self-worth will inevitably be diminished.

The references to "dignity" and "self-worth" are also terms that we find in Article 10(1), which enjoins State Parties to treat every child who is accused of, charged with or convicted of a crime to be "treated in a manner consistent with the promotion of a child's sense of dignity and worth". In this case, the court goes further—the statute which criminalizes the Act affects children's sense of dignity and worth is unconstitutional, and the court declared the law invalid in as far as it applied to adolescents. Although the Teddy Bear Clinic judgment does not set out the international law in the detail that the Centre for Child Law judgment does, it nevertheless embodies the juvenile justice standards.

C. The Case that Found Automatic Placement of Child Offenders on the Sex Offenders' Register Unconstitutional

The third case study selected for discussion in this presentation is called *J v National Director of Public Prosecutions* (*J v NDPP*).[32] The Sexual Offences Act of 2007 established a National Register for Sex Offenders, which aims primarily to prevent persons who have been convicted of sexual offences against children from working with children.[33] The register is not public, but employers are obliged to check against the register

[31] Act 75 of 2008.
[32] 2014 (2) SACR 1 (CC).

when they are considering employing someone who will work with children—and this even applies to volunteers. Once a person is convicted of any sexual offence, his or her name must be placed on the register, the presiding officer has no discretion in this regard. The length of time the name stays on the register depends on the sentence—and anyone sentenced to more than 18 months imprisonment (including a suspended sentence) or who has more than one conviction, goes on the register for life. It is clear, therefore, that the implications of a person's name going on the register are profound.

The section applied to all sex offenders, and the constitutionality of its application to child offenders was raised by a High Court judge who was reviewing the sentence of a 14 year old boy, IJ, who had been convicted of three counts of rape and one of serious assault in which the victims were also children. He had been sentenced to five years' compulsory residence in a Child and Youth Care Centre, and depending on his behavior, a further three years in prison thereafter. The reviewing judge upheld the sentence, but was very concerned about the fact that the court ordered (as it was required to do by law) that the boy's name must be placed on the sex offenders register. The judge was of the view that this approach clashed with the approach of South Africa's Child Justice Act 75 of 2008, which is based on international standards. The preamble to the Child Justice Act specifically mentions that the law aims to establish a criminal justice system that is "in accordance with the values underpinning our Constitution and our international obligations" and it goes on to name the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Section 2 of the Act lists the objects of the Act, which include several clauses, and section 3 contains 9 guiding principles, which are modelled on international law. These are attached as annexures to this paper as annexure 1.

The case of *J v NDPP* ended up in the Constitutional Court, and there three child rights organisations known as Teddy Bear Clinic, Childline and National Institute for Crime Prevention and Reintegration of Offenders (NICRO),[34] made joint *amici curiae* (which means "friends of the court") submissions which were influential in the outcome of the case. The *amici curiae*'s argument emphasized the fact that the Child Justice Act rests on principles of international and regional law, as reflected in articles 37 and 40 of the Convention on the Rights of the Child and article 17 of the African Charter on the Rights of the Child.[35]

The submissions pointed out the following important principle in the Act: "All consequences arising from the commission of an offence by a child should be proportionate to the circumstances of the child, the nature of the offence and the interests of society". One of the objectives of sentencing, set out in 69(1)(b) of the Child Justice Act, is to "promote an individualized response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society". This was also highlighted in the court papers.

Furthermore, the *amici curiae* reminded the court that children must be treated differently from adults and they placed a significant amount of documentary evidence to the court that showed that most child sex offenders would not go on to be adult sex offenders.[36]

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[33] The Act is broader than this. Firstly, sex offenders who commit crimes against persons with mental disabilities are also included in the register. Furthermore, in addition to not being able to work with children, persons on the register, it also prevents them from adopting or fostering children.

[34] Represented by the Centre for Child Law.

[35] These instruments are elaborated on by soft international law instruments United Nations Guidelines for the Prevention of Juvenile Delinquency (1990) ('Riyadh Guidelines'); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) ('Beijing Rules'); and by General Comment no 10 on Juvenile Justice, issued by the Committee on the Rights of the Child in 2007.

[36] Footnote 62 of the judgment in J v NDPP sets out the most pertinent of these references including: Jaffé "Child and adolescent abusers – For a rehabilitative approach driven by scientific evidence" in Council of Europe Protecting children from sexual violence: A comprehensive approach (Council of Europe Publishing, Strasbourg 2010) at 225 and 231; Lussier and Blokland "The adolescence-adulthood transition and Robin's continuity paradox: Criminal career patterns of juvenile and adult sex offenders in a prospective longitudinal birth cohort study" (2013) 42 Journal of Criminal Justice 153. Available at http://dx.doi.org/10.1016/j.jcrimjus.2013.07.004, accessed on 3 March 2014; Piquero et al "Sex offenders and sex offending in the Cambridge study in delinquent development: prevalence, frequency, specialization, recidivism, and (dis)continuity over the life-course" (2012) 35 Journal of Crime and Justice 412 at 412; Reingle "Evaluating the continuity between juvenile and adult sex offending: a review of the literature" (2012) 35 Journal of Crime and Justice 427; Vess et al "International sex offender registration laws: research and evaluation issues based on a review of current scientific literature" (2013) 14 Police Practice and Research: An International Journal 205 at 209; and Zimring et al "Investigating the continuity of sex offending: Evidence from the second Philadelphia birth cohort" (2009) 26 Justice Quarterly 58.

The *amici curiae* acknowledged that there may be some child sex offenders who pose a risk—but that the automatic placement of all children on the sex offenders register was unconstitutional because it did not allow for an individualized, proportionate response, and because it treated children in the same way as adults. It did not allow the constitutional principle of the best interests of the child to be a paramount consideration, because there was no discretion that allowed a court to weigh their interests. Once convicted, they automatically went on the register.

The *amici curiae* also argued that although the register was not a public one, children would nevertheless be stigmatized by their names being included on it. They further stressed the importance of a rehabilitative rather than punitive approach to child sex offending—what was required was not shaming, which excludes and isolates, but rather reintegrative processes, such as restorative justice.

The Constitutional Court found that the best interests of the child was the correct departure point to take in evaluating the matter. The court found that

> [t]he contemporary foundations of children's rights and the best interests principle encapsulate the idea that the child is a developing human being, capable of change and in need of appropriate nurturing to enable her to determine herself to the fullest extent and develop her moral compass. This Court has emphasized the developmental impetus of the best-interests principle in securing children's right to 'learn as they grow how they should conduct themselves and make choices in the wide and moral world of adulthood'.[37] In the context of criminal justice, the Child Justice Act confirms the moral malleability or reformability of the child offender.[38]

The court then went on to list a number of key principles that arise from the "best interests" approach. Firstly, the court found that the law should generally distinguish between adults and children[39]—and that therefore it was a problem that the law treated children and adults alike.

Secondly, the court found that the law should allow for an individuated approach to child offenders, stating that the best-interests standard must always be flexible because individual factors will secure the best interests of a particular child. Here the court referred to the principle of proportionality too, and drew attention to the fact that that principle is embedded in the Child Justice Act.

Thirdly, the court held that children should be given an opportunity to make submissions before a decision to place them on the register is made—in keeping with the principle of children's participation. Here the court goes into some detail about the international law standards. In footnote 45 of the judgment, direct reference is made by the Court to Article 12 of the CRC (right to express views and have them given due weight), and also the CRC committee's General Comment no 12 (2009): "The right of the child to be heard" CRC/C/GC/12, at paras 1 and 15, and at para 57, which states that the right extends "throughout every stage of the process of juvenile justice". In the same footnote, the judgment also makes reference to the CRC committee's General Comment no 10 (2007): "Children's rights in juvenile justice"; CRC/C/GC/10 at paras 12 and 43–5. Paragraph 12 states that "[t]he right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice. The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

Paragraph 43 requires a child to "be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child" either directly or through a representative or appropriate body. Paragraphs 44 and 45 add more detail to this statement, emphasizing that the right applies at all stages of proceedings and that the child "should be given an opportunity to express his/her views on any 'measure' to be imposed". The child is not to be treated as "a passive object". It is significant that the South African Constitutional Court paid attention not only to the Convention, but also to the General Comments issued by the Committee on the Rights of the Child, as these documents are more up to date, and provide significantly

[37] This is a quote from S v M (Centre for Child Law as amicus curiae), a 2007 judgment of the court.
[38] J v NDPP para 36. The court uses 'she' and 'her' throughout the judgment, which while being a gender sensitive strategy also serves to remind us that girls may also be sex offenders, although J is a boy and the majority of sex offenders are boys.
[39] J v NDPP para 36.

more detail.

The court was concerned that there was no discretion for a judge in the law as it stood. This meant that children were not given any right to participate and also that the court could not of its own accord decide not to place a child on the register. The law required the registration follows automatically upon conviction.

The Court went on to look at the serious implications of having one's name on the register:

> Child offenders who have served their sentences will remain tarred with the sanction of exclusion from areas of life and livelihood that may be formative of their personal dignity, family life, and abilities to pursue a living. An important factor in the realizing the reformative aims of child justice is for child offenders to be afforded an appropriate opportunity to be reintegrated into society.

Although the Court found that the aims of the Sex Offender's Register were laudable (i.e., protecting children from being sexually abused),[40] the Court found that there were less restrictive means to achieve the aims of the register, such as allowing discretion. The court declared the impugned provisions to be unconstitutional and suspended the order of invalidity, allowing Parliament a period of 15 months to bring the legislation in line with the Constitution.

The Sexual Offences Amendment Act 5 of 2015 introduced significant amendments to the Sexual Offences Act, in line with the cases *Teddy Bear Clinic* case and *J v NDPP*.[41] The law was amended in a way that made it clear that adolescents between 12 and 16 years old cannot be charged if they engage in consensual sexual interactions with one another. The amendment also changed the law so that if a child is convicted of a sexual offence his or her name does not automatically go on the register. If the prosecutor intends to request a child sex offender's name to be placed on the register, s/he must give notice of that intention, and the defence must have an opportunity to ensure that the child is properly assessed by a professional, and to make arguments why the child's name should not go on the sex offenders' register.

III. CONCLUSION

This paper has demonstrated the power of the international instruments at the country level. Where these instruments are used by advocacy groups, law makers, lawyers and courts, they can make a practical and significant impact on juvenile justice. The principles embodied in the instruments can provide guidance in legislation, and in the interpretation of laws by the courts. In South Africa, which is a constitutional democracy, the instruments have provided legal support for judges who have found laws that do not conform to the international law to be unconstitutional.

[40] The court balances the rights of child victims and offenders see Z Hansungule "Protecting child offenders rights: Testing the National Register for Sex Offenders" 2015 (50) SA Crime Quarterly 23.

[41] For a discussion of the ways in which the new amendments give effect to the judgments see P Mahery "The 2015 Sexual Offences Amendment act: Laudable amendments in line with the Teddy Bear Clinic case" 2015 (8) 2 South African Journal of Bioethics and the Law 4; P Stevens "Recent developments in sexual offences against children – A constitutional perspective" Potchefstroom Electronic Law Journal 2016 (19) 1.

Annexure 1 Excerpt from the Child Justice Act

CHILD JUSTICE ACT 75 OF 2008

(English text signed by the President)

as amended by

Judicial Matters Amendment Act 42 of 2013
Judicial Matters Amendment Act 14 of 2014
Legal Aid South Africa Act 39 of 2014

also amended by

Prevention and Combating of Trafficking in Persons Act 7 of 2013
[with effect from a date to be proclaimed - see PENDLEX]
Regulations under this Act

ACT

To establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the Republic; to provide for the minimum age of criminal capacity of children; to provide a mechanism for dealing with children who lack criminal capacity outside the criminal justice system; to make special provision for securing attendance at court and the release or detention and placement of children; to make provision for the assessment of children; to provide for the holding of a preliminary inquiry and to incorporate, as a central feature, the possibility of diverting matters away from the formal criminal justice system, in appropriate circumstances; to make provision for child justice courts to hear all trials of children whose matters are not diverted; to extend the sentencing options available in respect of children who have been convicted; to entrench the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law; and to provide for matters incidental thereto

Preamble

RECOGNISING-

• that before 1994, South Africa, as a country, had not given many of its children, particularly black children, the opportunity to live and act like children, and also that some children, as a result of circumstances in which they find themselves, have come into conflict with the law;

AND MINDFUL that-

• the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all its people and to free the potential of every person by all means possible;

• the Constitution, while envisaging the limitation of fundamental rights in certain circumstances, emphasises the best interests of children, and singles them out for special protection, affording children in conflict with the law specific safeguards, among others, the right-

* not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period of time;
* to be treated in a manner and kept in conditions that take account of the child's age;
* to be kept separately from adults, and to separate boys from girls, while in detention;
* to family, parental or appropriate alternative care;
* to be protected from maltreatment, neglect, abuse or degradation; and
* not to be subjected to practices that could endanger the child's well-being, education, physical or mental health or spiritual, moral or social development; and

• the current statutory law does not effectively approach the plight of children in

conflict with the law in a comprehensive and integrated manner that takes into account their vulnerability and special needs;
AND ACKNOWLEDGING THAT-
• there are capacity, resource and other constraints on the State which may require a pragmatic and incremental strategy to implement the new criminal justice system for children;
THIS ACT THEREFORE AIMS TO-
• establish a criminal justice system for children, who are in conflict with the law, in accordance with the values underpinning our Constitution and our international obligations, by, among others, creating, as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system, in appropriate circumstances, while children whose matters are not diverted, are to be dealt with in the criminal justice system in child justice courts;
• expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed;
• recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for reoffending;
• balance the interests of children and those of society, with due regard to the rights of victims;
• create incrementally, where appropriate, special mechanisms, processes or procedures for children in conflict with the law-
* that in broad terms take into account-
— the past and sometimes unduly harsh measures taken against some of these children;
— the long-term benefits of a less rigid criminal justice process that suits the needs of children in conflict with the law in appropriate cases; and
— South Africa's obligations as party to international and regional instruments relating to children, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
* in specific terms, by-
— raising the minimum age of criminal capacity for children;
— ensuring that the individual needs and circumstances of children in conflict with the law are assessed;
— providing for special processes or procedures for securing attendance at court of, the release or detention and placement of, children;
— creating an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;
— providing for the adjudication of matters involving children which are not diverted in child justice courts; and
— providing for a wide range of appropriate sentencing options specifically suited to the needs of children.

CHAPTER 1
DEFINITIONS, OBJECTS AND GUIDING PRINCIPLES OF ACT (ss 1-3)
1 Definitions
--- 2 Objects of Act
The objects of this Act are to-
(a) protect the rights of children as provided for in the Constitution;
(b) promote the spirit of *ubuntu* in the child justice system through-
(i) fostering children's sense of dignity and worth;
(ii) reinforcing children's respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community;

(iii) supporting reconciliation by means of a restorative justice response; and
(iv) involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures in terms of this Act in order to encourage the reintegration of children;
(c) provide for the special treatment of children in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage these children to become law-abiding and productive adults;
(d) prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children and in accordance with the Constitution, including the use of diversion; and
(e) promote co-operation between government departments, and between government departments and the non-governmental sector and civil society, to ensure an integrated and holistic approach in the implementation of this Act.

3 Guiding principles
In the application of this Act, the following guiding principles must be taken into account:
(a) All consequences arising from the commission of an offence by a child should be proportionate to the circumstances of the child, the nature of the offence and the interests of society.
(b) A child must not be treated more severely than an adult would have been treated in the same circumstances.
(c) Every child should, as far as possible, be given an opportunity to participate in any proceedings, particularly the informal and inquisitorial proceedings in terms of this Act, where decisions affecting him or her might be taken.
(d) Every child should be addressed in a manner appropriate to his or her age and intellectual development and should be spoken to and be allowed to speak in his or her language of choice, through an interpreter, if necessary.
(e) Every child should be treated in a manner which takes into account his or her cultural values and beliefs.
(f) All procedures in terms of this Act should be conducted and completed without unreasonable delay.
(g) Parents, appropriate adults and guardians should be able to assist children in proceedings in terms of this Act and, wherever possible, participate in decisions affecting them.
(h) A child lacking in family support or educational or employment opportunities must have equal access to available services and every effort should be made to ensure that children receive similar treatment when having committed similar offences.
(i) The rights and obligations of children contained in international and regional instruments, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

Juvenile Justice in Thailand – an Overview

Dr Kittipong Kittayarak

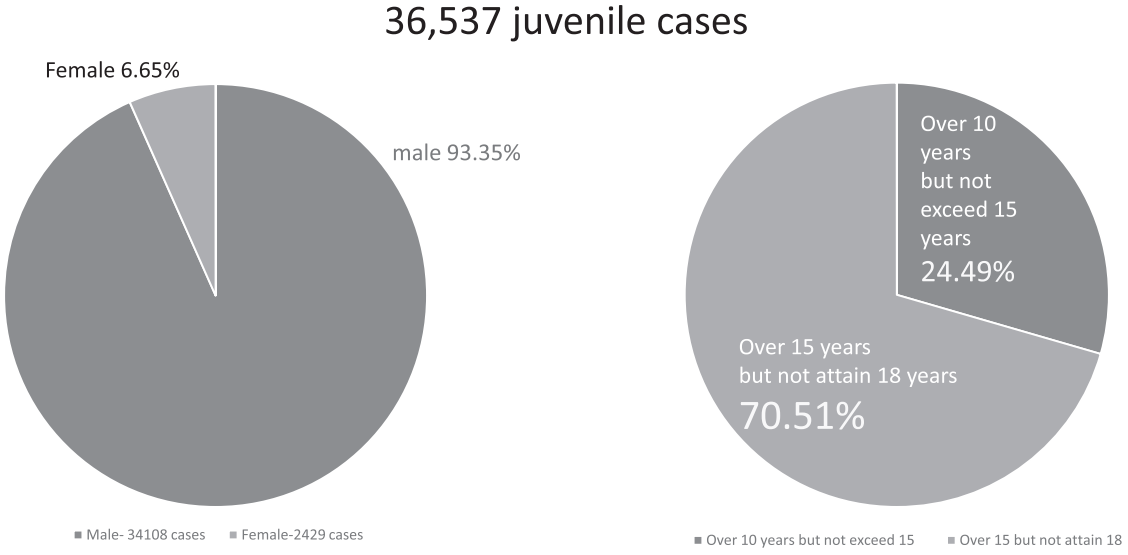
Executive Director

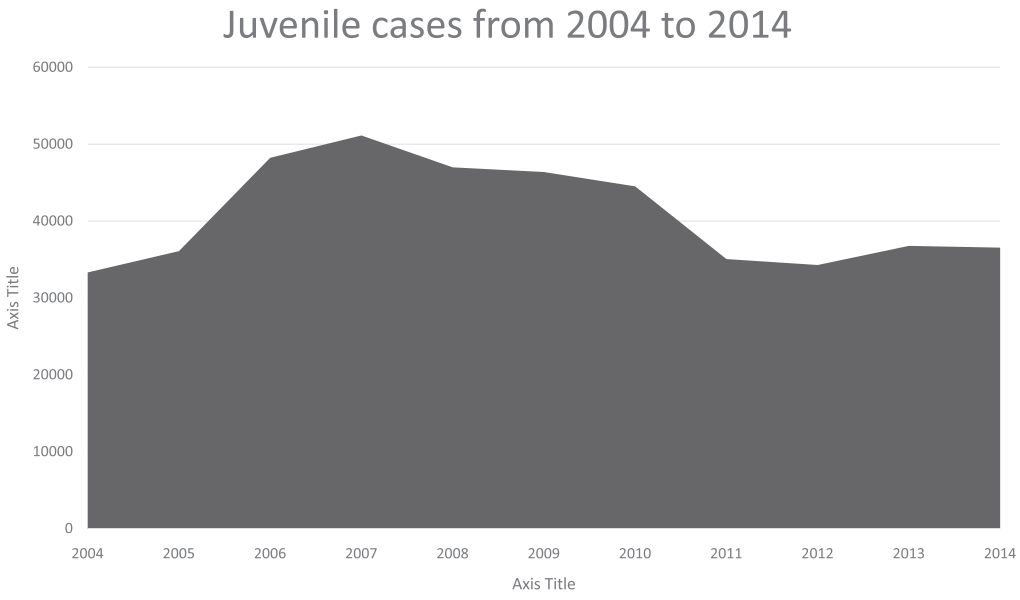
Thailand Institute of Justice

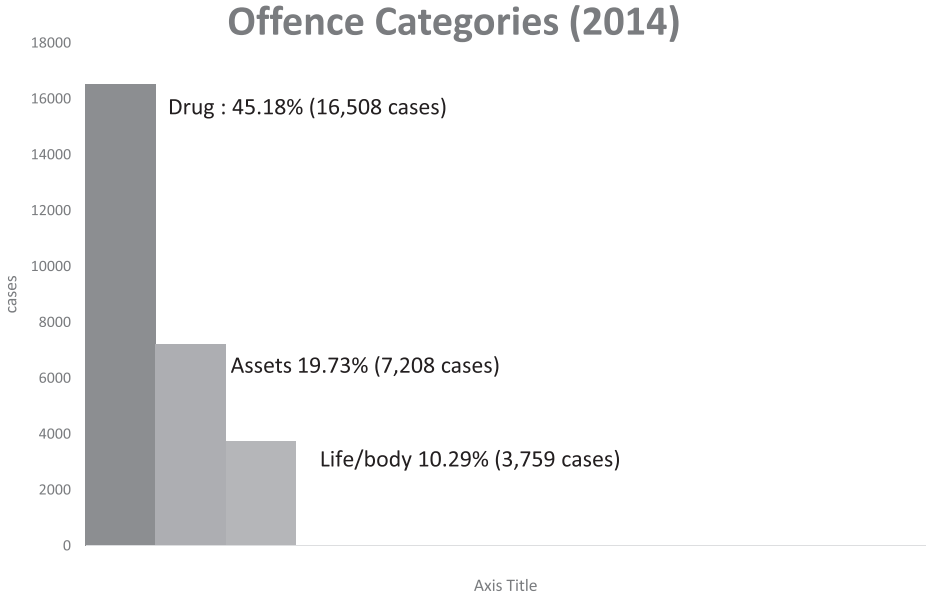
Presentation Outline

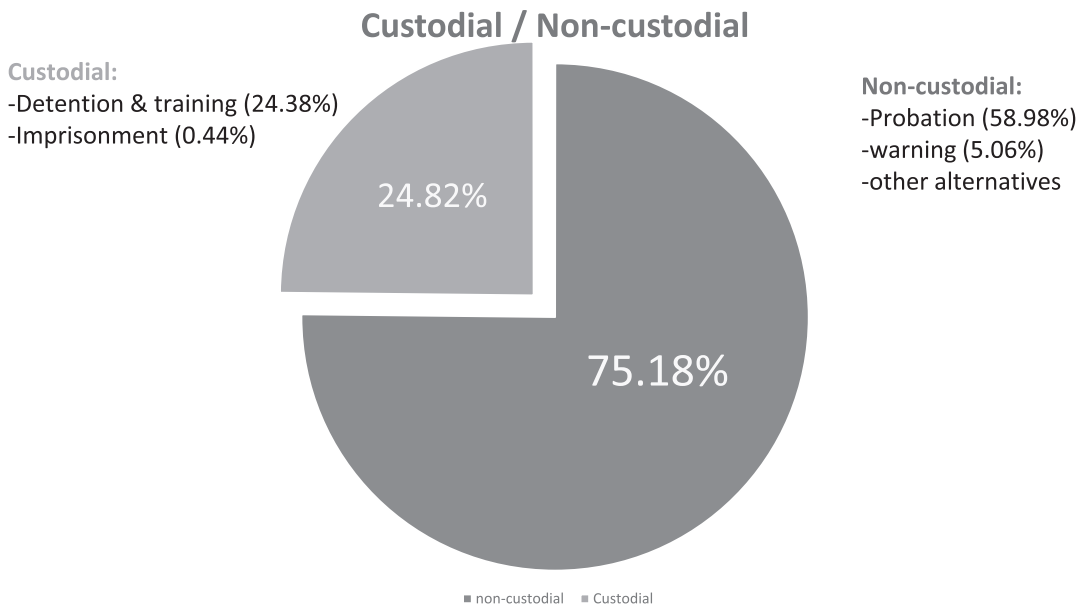
- Overview of the situation
- TIJ activities in support of the reform of juvenile justice system
- Moving forward

Overview of Current Situations



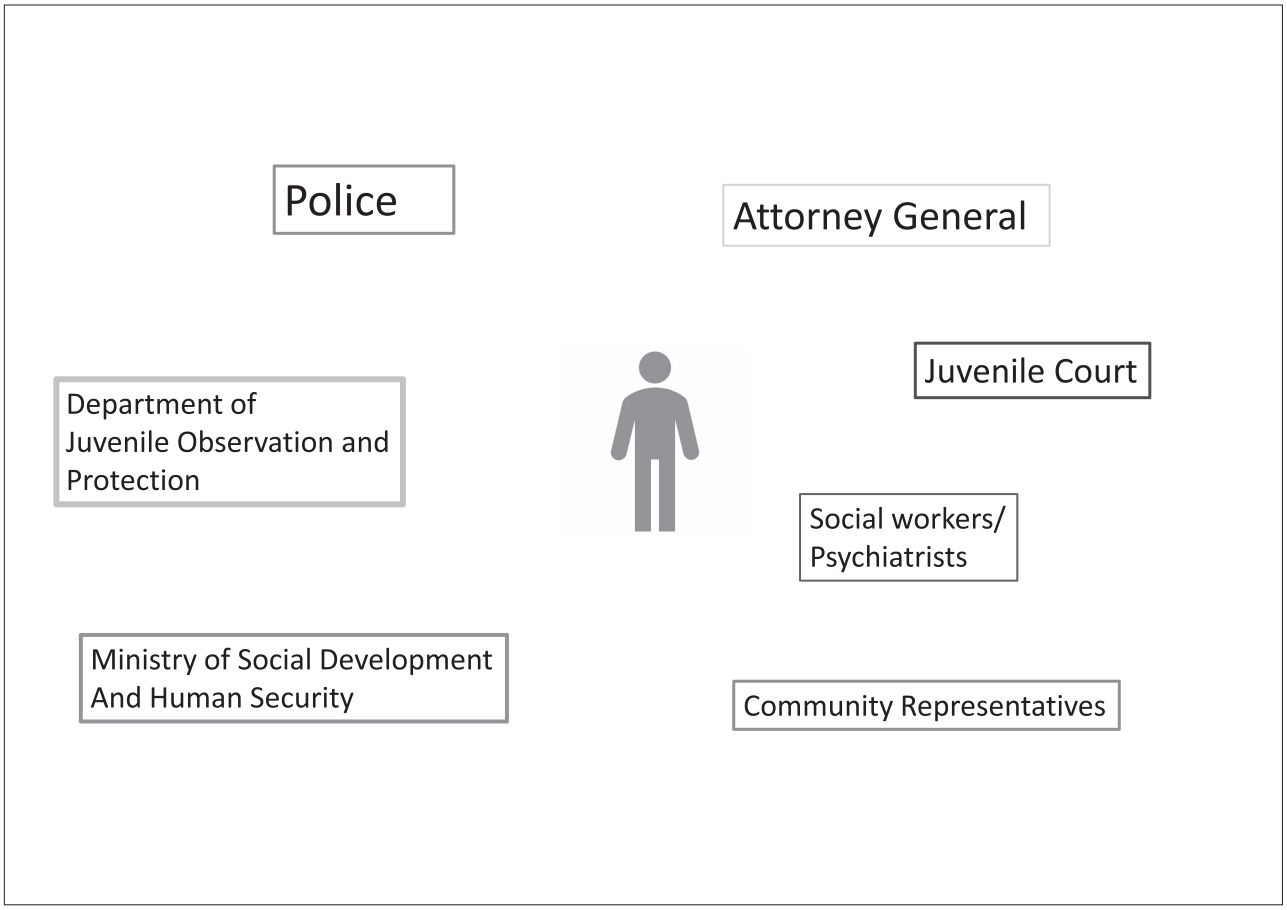

Juvenile cases from 2004 to 2014
60000
50000
40000
30000
20000
10000
0
Axis Title
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
Axis Title


Offence Categories (2014)
18000
16000
14000
12000
10000
8000
6000
4000
2000
0
cases
Drug : 45.18% (16,508 cases)
Assets 19.73% (7,208 cases)
Life/body 10.29% (3,759 cases)
Axis Title



Legal Framework

- Juvenile and Family Court Procedure Act (2010)
- Child Protection Act (2003)
- Civil and Criminal Code
- Criminal Procedure Code



Challenges

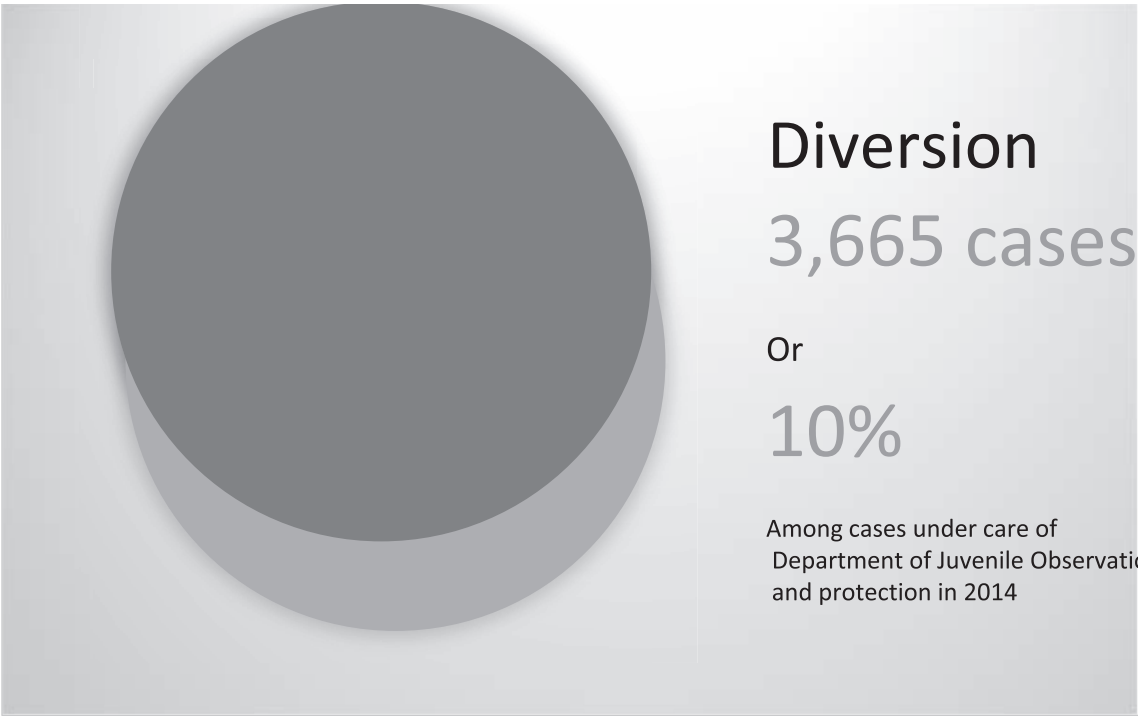
Overcrowded conditions

limited systematic follow-up after being released

Inadequate capacity-building for staff

Emerging good practices

- Restorative justice as diversionary measures
- Communication with parents through video-conference



TIJ activities in support of the reform of the juvenile justice system

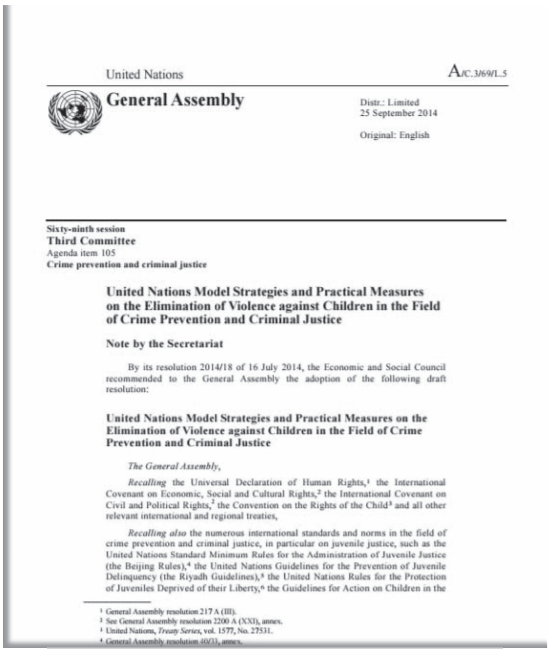
THAILAND INSTITUTE OF JUSTICE

TIJ Philosophy

- To promote crime prevention, criminal justice reform and the rule of law through research, policy advocacy and capacity building
- To encourage Thailand's participation in UN frameworks related to crime prevention and criminal justice.
- To translate international standards into the implementation at domestic and ASEAN regional levels

14

United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice



United Nations A/C.3/69/L.5

General Assembly

Distr.: Limited
25 September 2014

Original: English

Sixty-ninth session
Third Committee
Agenda item 105
Crime prevention and criminal justice

United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

Note by the Secretariat

By its resolution 2014/18 of 16 July 2014, the Economic and Social Council recommended to the General Assembly the adoption of the following draft resolution:

United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

The General Assembly,

Recalling the Universal Declaration of Human Rights,[1] the International Covenant on Economic, Social and Cultural Rights,[2] the International Covenant on Civil and Political Rights,[3] the Convention on the Rights of the Child[4] and all other relevant international and regional treaties,

Recalling also the numerous international standards and norms in the field of crime prevention and criminal justice, in particular on juvenile justice, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),[4] the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[5] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,[6] the Guidelines for Action on Children in the

[1] General Assembly resolution 217 A (III).
[2] See General Assembly resolution 2200 A (XXI), annex.
[3] United Nations, *Treaty Series*, vol. 1577, No. 27531.
[4] General Assembly resolution 40/33, annex.

Mobilizing Support for Implementation In Thailand

Informal Approach

The Dusit Thani Group among key domestic stakeholders :

- juvenile court,
- the Department of Juvenile Observation and Protection,
- Attorney General,
- Ministry of Social Development and Human Security,
- Academia
- NGOs

-The UNSG Special Representatives on Violence against Children (Ms.Martha Santos Pais)

Implementation In Thailand

THAILAND INSTITUTE OF JUSTICE

Towards a National Roadmap

- Gap analysis
- Action plans for
  - children as victims of crimes,
  - children as witnesses of crimes,
  - child offenders

Moving Forward

THAILAND INSTITUTE OF JUSTICE

Rights-based Juvenile justice system
&
Sustainable Development Goals…

TIJ
THAILAND INSTITUTE OF JUSTICE

Thank You

Civil Citation Program 13th Judicial Circuit

Administrative Office of the Courts

Juvenile Diversion Programs (JDP)

(Hillsborough County)

Monica Martinez, B.A.

Presenter Richard Dembo, Ph.D.

Introduction to the Juvenile Diversion Program (JDP) of the Administrative Office of the Courts

The Juvenile Diversion Program offers a community based alternative to formal court processing of eligible juvenile criminal referrals.

History
- The Law Enforcement Assistance Administration grant late 1970s
- 1979 13th Judicial Circuit assumed responsibility to implement program

Role
- Diversion
- Accountability
- Reduce Recidivism
- Resources

Process
- Referral sources
- Intake and sanctioning process
- High risk youth

Civil Citation Process

BACKGROUND:

The first Civil Citation Program in Florida was established at the Miami- Dade County Juvenile Services Department, Juvenile Assessment Center, in 2007. Ms. Wansley Walters was Director of the Miami-Dade Juvenile Services Department.

Ms. Walters was appointed Secretary of the Florida Department of Juvenile Justice in January 2011 by Governor Rick Scott. As Secretary of DJJ, Ms. Walters was a driving force behind legislation, reflected in Florida Statute 985.12, authorizing local governments to establish Civil Citation programs.

I have brought copies of this legislation.

Ms. Walters retired as Florida DJJ Secretary in June 2014.

Evolution of Civil Citation Program

School Based Civil Citation Program Pilot (SBCC)

- In 2004-2005 fiscal year, Hillsborough County had the highest number of juvenile arrests in Florida
- A Pilot Project began in the later part of the 2005-2006 school year with school-based, Tampa Police Department School Resource Officers
- Included 9 offenses: Petit Theft, Battery, Affray, Criminal Mischief, Trespassing, Disorderly Conduct, Disruption of a School Function, Simple Possession of Alcohol and Violation of City, and County Ordinances

School Based Program Expands County Wide

- In the 2006-2007 school year, the school based Civil Citation program was taken county wide.
- The Florida DJJ monitored the community service hours
- Program received funding in summer of 2007 through a 3 year State Advisory Group (SAG) Grant.
- The SAG grant expired in July 2010 and supervision of the program was assumed by the Circuit 13, Juvenile Diversion Program, to avoid the loss of the school based Civil Citation program.

Evolution of Civil Citation, continued

Juvenile Arrest Avoidance Program (JAAP) Pilot

- In August 2010, the Hillsborough County Sheriff's Office began sending direct referrals to JDP for youth committing Petit Theft offenses in HCSO District 4
- In November 2010, the pilot expanded to all HCSO districts

JAAP Expansion

- In March 2011, Juvenile Justice Stakeholders met and agreed to expand the JAAP pilot model countywide
- On June 2011, the JAAP expanded countywide and an MOU was created between the juvenile justice partners
- The SBCC and JAAP evolved into one service model managed by the Circuit 13, Administrative Office of the Courts/JDP

Eligibility Criteria

- Limited to 1st time, non-violent misdemeanors
  - Officer may contact the Juvenile Assessment Center 936-9099 to verify eligibility
- Juvenile Justice Stakeholders agreed to issue civil citation for:

Petit theft	Simple battery/assault	Affray
Criminal Mischief	Disorderly conduct	Possession of alcohol
Trespassing	Disruption of school function	City/County ordinance

- The juvenile's guardian must agree to the intervention, sign a Criminal Report Affidavit (CRA) and JAAP form
- The juvenile must accept responsibility and agree to participate

Procedure

- Each law enforcement agency has developed standard operating procedures outlining policy on the Juvenile Arrest Avoidance Program
- In general, when a juvenile is found eligible for JAAP:
  - Officer contacts the guardian
  - Officer completes the CRA and the JAAP form
  - Copy of JAAP form is provided to guardian
  - CRA and the JAAP forms are turned in to designated staff in the department who scans and enters each case in tracking log
  - The original CRA and the yellow copy of JAAP form is delivered to main clerk's office or JDP

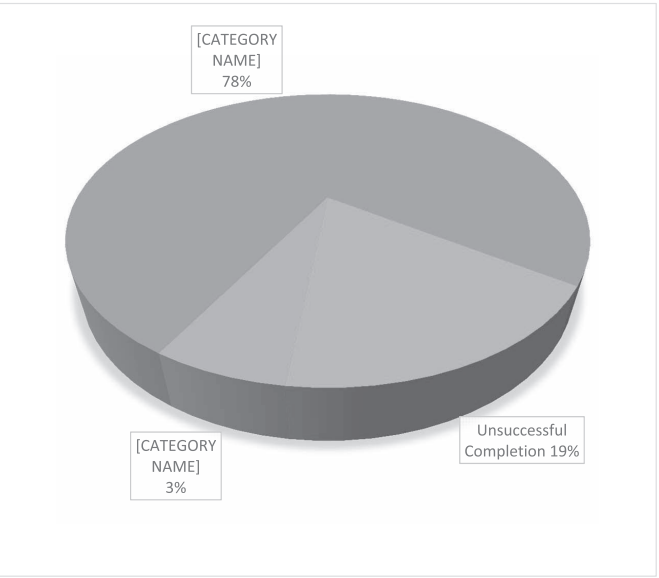
Benefits of Civil Citation-1

- Keeps youth that pose no real threat to public safety out of the system
- Saves tax payers money
- Frees up limited resources to focus on more serious offenders
- Youth are expedited quickly and held accountable
- Risk assessment and referrals
- Individualized sanctions
- Enhances public safety
- Improves youth outcomes
- Helps strengthen family unit

Benefits of Civil Citation-2

- Lowers referrals to JJ system for minor crimes
- Addresses minority overrepresentation
- **No criminal record**

Juvenile Arrest Avoidance Program
Cases Referred by Referral Date, June 2011 – October 2016



Active Cases	96
Unsuccessful Cases	523
Completed Cases	2199
Total	2818

"Unsuccessful" Reasons	
Denied Allegation	45
Failed to Complete	193
Ineligible	107
New Law Violation	52
No Show	53
Parent/Youth Decline	53
Refer Higher Supervision	4
Return Requested by SAO	7
Unable to Locate	9
Total	523

Juvenile Arrest Avoidance Program
Cases Referred by Referral Date, June 2011 – October 2016

Citation Source	Frequency
Community-Based	2113
School-Based	705
Total	2818

Gender	Frequency
Female	1482
Male	1336
Total	2818

Race	Frequency
African American	1223
Asian	33
Caucasian	1559
Other/Unknown	1
Native American	2
Total	2818

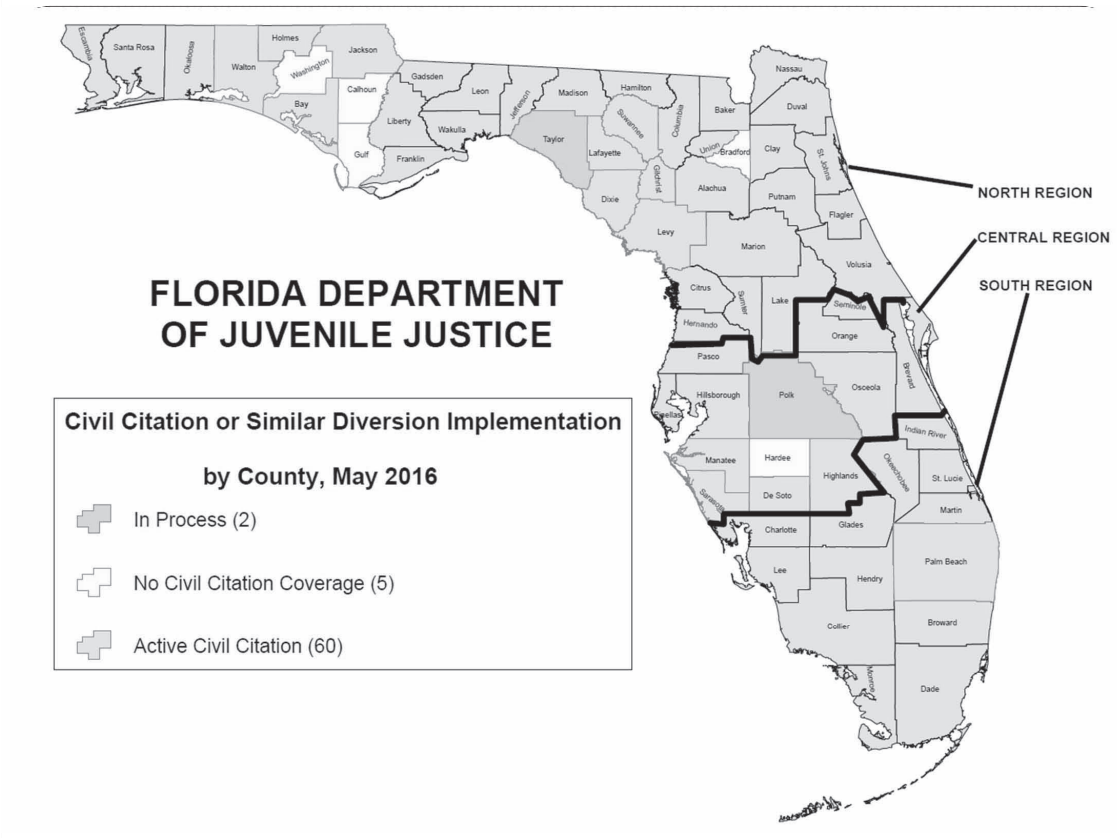
Age	Frequency
8	5
9	11
10	35
11	83
12	187
13	343
14	479
15	495
16	605
17	568
18	7
Total	2818

Cost Savings

- $5,000 — The cost of processing one juvenile arrest
- $386 — The cost of processing a civil citation
- 2199 — Number of youth that successfully completed Civil Citation from June 2011 to March 2015
- 10 Mil — Potential cost savings

Youth Outcomes

- Hillsborough County Civil Citation Program measures recidivism as any criminal act that results in a referral to the Department of Juvenile Justice within 12 months of exiting the program, regardless of outcome (i.e. no filed, adjudication withheld)
- 423 Civil Citation Youth completed the program in 2014
- 43 (10%) of the youth completing the program in 2014 reoffended
- 90% of youth completing the Civil Citation program in 2014 did ***not*** reoffend within one year of completion



Recent Developments

Hillsborough County Juvenile Justice Stakeholders formed three workgroups in the Fall of 2015 to address opportunities for improvement of the Civil Citation process. The workgroups were tasked with the responsibility of developing goals and making recommendations on strategies to implement the goals.

- Friendly Door Workgroup
- Optimal Utilization Workgroup
- Expanded Eligibility Workgroup

Friendly Door Workgroup

The primary goal identified by this workgroup is to review and make recommendations on the steps that can be put into place to establish a "friendly door" at the Juvenile Assessment Center (JAC). This would enable law enforcement to drop off Civil Citation eligible youth at the JAC without having to process the youth as an arrest.

The JAC leadership has identified a potential process for implementation. The work of this group is ongoing. There have been a series of meetings to review each step of the identified process and to address concerns and potential challenges.

The coordinating agency for the JAC, ACTS, Inc., plans to build an extension to the existing JAC building to serve Civil Citation eligible youth.

Optimal Utilization Workgroup

Hillsborough County stakeholders entered into a Memorandum of Understanding (MOU) in June of 2011 to expand the use of Civil Citation countywide. The task of the Optimal Utilization Workgroup is to make recommendations on action that can be taken to increase the utilization rate of Civil Citation as outlined in the current MOU. The Civil Citation utilization rate in Hillsborough County was 43% in 2015 (SOURCE: Florida Department of Juvenile Justice 2015 data).

Optimal Utilization Workgroup CONTINUED

The workgroup has made five recommendations to the Juvenile Justice Board, which are to be discussed at the Juvenile Justice Board Executive Board meeting in January 2017:

- All agencies adopt a policy statement as part of their Civil Citation policy recognizing that the impetus of law enforcement with respect to juveniles should be rehabilitative and not punitive; efforts should be made to divert juveniles from juvenile justice system when appropriate.
- Supervisory approval shall be obtained if a law enforcement officer declines to issue a civil citation to an eligible youth.
- Each agency shall capture on the Criminal Report Affidavit (CRA) the reason why an eligible youth did not receive a civil citation.
- Law enforcement agencies report on a quarterly basis detailing the number of youth that were eligible for Civil Citation who did not receive a civil citation and document the reasons.
- The Juvenile Justice Board should create a subcommittee to conduct periodic internal, systemic quality assurance and effectiveness evaluation no less than on an annual basis.

Expanded Eligibility Workgroup

The Expanded Eligibility Workgroup developed three goals to expand the use of Civil Citation in Circuit 13:

- Expand civil citation eligibility to include Possession of Marijuana.
- Expand civil citation eligibility to include other misdemeanor offenses.
- Expand civil citation eligibility to include 2nd and 3rd misdemeanor offenses.

Expanded Eligibility Workgroup CONTINUED

The work of this group is ongoing:

--Discussion regarding the inclusion of Possession of Marijuana as a Civil Citation eligible offense has been set aside.

--Independent of this workgroup, a pilot program allowing the use of Civil Citation was implemented by the civil citation stakeholders in the circuit. The workgroup will monitor this pilot and will make recommendations after the pilot is concluded. This Pilot is discussed on the next slide.

--The workgroup reviewed the 216 misdemeanor offenses. The workgroup is making recommendations to the Juvenile Justice Board to include all but 12 of the misdemeanor offenses as Civil Citation eligible.

--New Civil Citation legislation permits youth with minor infractions to receive Civil Citation for a 2nd or 3rd offense. However, the workgroup agreed unanimously that it is pre-mature to take on the issue of 2nd and 3rd offense eligibility. The workgroup determined it is more practical to work on the successful implementation of the other goals before taking on additional tasks.

Delinquent Act Citation (DAC) Pilot

The 13th Judicial Circuit Civil Citation stakeholders are collaborating on a pilot, involving the Tampa Police Department, to allow the use of Civil Citation for possession of marijuana (20 grams or less) or possession of drug paraphernalia. The Delinquent Act Citation pilot was launched in August of 2016.

Delinquent Act Citation (DAC) Pilot

- Criteria
  - Youth ages 8-17 with no prior involvement in the Juvenile Justice System.
  - Youth must accept responsibility.
  - Youth and parent/guardian must agree to participate in the program.

Delinquent Act Citation (DAC) Pilot

Procedure

- Youth must appear at the Juvenile Diversion Program office the day following the offense for an interview, drug screen, and risk assessment.
- Youth will be referred to a treatment provider for a drug evaluation and treatment recommendation.
- Low risk youth will be monitored by the Juvenile Diversion Program.
- Youth needing a higher level of supervision will be monitored by Juvenile Drug Court

Delinquent Act Citation (DAC)
August 2016 – October 2016

	Aug-16	Sep-16	Oct-16	TOTAL
STATUS				
ACTIVE	6	10	14	**30**
COMPLETED SUCCESSFULLY	0	0	0	**0**
DECLINED PROGRAM- (PARENT)	0	0	1	**1**
DECLINED PROGRAM- (PARENT) FINANCIAL CONSTRAINT	0	0	0	**0**
DECLINED PROGRAM- (PARENT) TIME CONSTRAINT	2	0	0	**2**
DECLINED PROGRAM- (YOUTH)	0	1	0	**1**
DENIED ALLEGATION	1	0	0	**1**
FAILED TO COMPLETE	0	0	0	**0**
FAILURE TO REPORT ON TIME (NO SHOW)	0	0	1	**1**
INELIGIBLE	2	0	0	**2**
TOTAL	**11**	**11**	**16**	**38**
CHARGES*				
POSSESSION OF DRUG PARAPHERNALIA	1	0	0	**1**
POSSESSION OF MARIJUANA	**11**	**11**	**16**	**38**
GENDER				
FEMALE	3	2	9	**14**
MALE	8	9	7	**24**
TOTAL	**11**	**11**	**16**	**38**
ETHNICITY				
HISPANIC	1	5	9	**15**
NON-HISPANIC	10	6	6	**22**
UNKNOWN	0	0	1	**1**
TOTAL	**11**	**11**	**16**	**38**
RACE				
AFRICAN AMERICAN	2	1	7	**10**
ASIAN	1	0	0	**1**
CAUCASIAN	7	9	8	**24**
NATIVE AMERICAN	0	0	0	**0**
OTHER	1	1	1	**3**
TOTAL	**11**	**11**	**16**	**38**
AGE				
12	2	0	4	**6**
13	1	3	2	**6**
14	0	2	3	**5**
15	**5**	**2**	**3**	**10**
16	2	1	3	**6**
17	1	3	1	**5**
18	0	0	0	**0**
TOTAL	**11**	**11**	**16**	**38**

Delinquent Act Citation (DAC) Pilot

Information for youth that have accepted the program and received a risk assessment and urinalysis

	Community	School	Total
DAC ADMISSIONS			
August 2016	4	3	7
September 2016	2	9	11
October 2016	0	14	14
Total	6	26	32
OFFENSE			
Possession of Marijuana	6	26	32
Possession of Drug Paraphernalia	0	0	0
Total	6	26	32
URINALAYSIS RESULTS			
Positive*	4	13	17
Negative	2	13	15
Total	6	26	32
RISK ASSESSMENT RESULTS			
Low	4	17	21
Moderate	1	8	9
High	1	1	2
Total	6	26	32
SUPERVISION RECOMMENDATION			
Juvenile Diversion Program	2	14	16
Juvenile Drug Court	2	12	14
Withdrew	2	0	2
Total	6	26	32
OUTCOMES			
Active	4	24	28
Completed Successfully	0	0	0
Unsuccessful**	2	2	4
Total	6	26	32

** Reasons cases were unsuccessful	Community	School	Total
Failure to Complete	0	0	0
Failure to Report on Time	0	1	1
Parent Declined to Participate (no specific reason)	0	1	1
Parent Declined to Participate-Financial Constraint	0	0	0
Parent Declined to Participate- Time Constraint	2	0	2
Youth Declined to Participate	0	0	0
Parent/ Youth Refused Services	0	0	0
Subsequent Law Violation	0	0	0
Totals:	2	2	4

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JUVENILE ASSESSMENT CENTERS

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What are they and What do they do?

- Juvenile Assessment Centers (JACs) are centralized adolescent receiving, processing and intervention facilities.
- Many, like the Hillsborough County, FL JAC are 24-hour operations.
- Their development reflects an appreciation that an effective juvenile justice system necessitates inter-agency, collaborative efforts.

What are they and What do they do? – Cont'd

JACs provide creative solutions to four major programmatic needs:

1. Help law enforcement achieve expeditious disposition of juveniles, permitting their return to law enforcement functions; and help resolve difficulties in making clinical decisions on appropriate placement of youth.
2. Locating youth who are not eligible for secure detention and accomplishing the screening, assessments, and processing required to support judicial and non-judicial dispositions.
3. Problems experienced by clinical staff in achieving child and family compliance to participating in assessments needed to guide dispositional recommendations to juvenile court.
4. Problems experienced by the State Attorney's office and Juvenile Judges in affecting meaningful dispositions without an adequate range of dispositional alternatives.

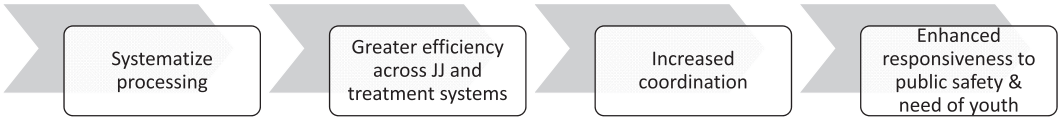
What are they and What do they do? – Cont'd

- These problems are not the result of lack of motivation or commitment by participating agencies. Rather, they reflect infrastructure problems that can be improved greatly by co-locating relevant agency operations to permit simultaneous accomplishment of required legal and social service interventions.

- These include:
  1. Preliminary screening, and, if indicated
  2. In-depth assessment, followed by
  3. Referral for additional evaluation or treatment

What are they and What do they do? – Cont'd

- This multi-agency collaborative approach helps systematize the processing of juveniles, resulting in greater efficiency across the juvenile justice and treatment service systems, their increased coordination, enhanced responsiveness to public safety, and, ultimately, to the needs of troubled youth and their families.



What are they and What do they do? – Cont'd

- JACs represent an important opportunity to identify the problems of troubled youth and promptly involve them in helping services and intervention programs. These facilities are an innovative service at the front end of the juvenile justice system in the communities in which they operate
- JAC operations are support by a comprehensive MIS
- JACs are in operation throughout Florida and in several other locations in the U.S. (e.g., Kansas).

Brief History of JACs

- Following a 15-month development period, involving extensive discussions and collaboration with various community stakeholders, the first Juvenile Assessment Center (JAC) was established in Hillsborough County (Tampa), Florida, in 1993. Federal block grant funded (competitive).
- Historical development
  - Tampa JAC opened its doors to truant youth in January 1993
  - May 1993, the JAC began accepting youth arrested on felony, and weapons misdemeanor, charges
  - In July 1994, the JAC opened its doors to all arrested youth.

Brief History of JACs

Brief History of JACs – Cont'd

- In June 1993, a special session of the Florida Legislature was held to address the issue of prison overcrowding.
- Prior to this special session, the head of the Florida House of Representatives, Appropriation Committee, visited the Tampa JAC with his wife. Impressed with the center, he was instrumental in including $1.2 million in the special appropriation budget resulting from this special session to establish three additional JACs.
- In 1994, the Florida Legislature established the Florida Department of Juvenile Justice and added an additional $2 million to the budget to set up 8 more JACs in the state.

Brief History of JACs – Cont'd

- In the mid to late 1990s, word about the Tampa and other Florida JACs (e.g., Orlando, Miami, Tallahassee) spread, and several other states expressed an interest in opening similar facilities in their jurisdictions (e.g., Colorado and Kansas).
- Since this early period, JACs have spread throughout the United States. In 2003, there were approximately sixty operating JACs in the United States (Davis, OJJDO, personal communication, 2004).
- Currently, there are 18 operating JACs in Florida.

Key Elements of JACs

Although JACs may differ in a number of ways (e.g., organizational structures, staffing patterns, operating schedules), they generally share a number of common elements (Oldenettel & Wordes, 2000):

1. *Single point of entry:* There is a 24–hour centralized point of intake and assessment for juveniles who have come or are likely to come into contact with the juvenile justice system.
2. *Immediate and comprehensive assessments:* Service providers associated with the JAC make an initial broad-based screening; and, if necessary, a later, in-depth assessment of youths' circumstances and treatment needs.
3. *Management information systems:* Needed to manage and monitor youth, they help ensure the provision of appropriate treatment services and to avoid the duplication of services.
4. *Integrated case management services:* JAC staff use information obtained from the screening and assessment processes, and the management information systems, to develop recommendations to improve access to services, complete follow-ups of referred youth, and periodically reassess youth placed in various services.

The JAC Flow-Through Process

- Brief Description of the Hillsborough County Juvenile Assessment Center
- All youth less than 18 years of age arrested in Hillsborough County are processed at the JAC.
- Youth aged 18 and over that are currently on DJJ supervision charged with violation of supervision and/or OTIC/warrants.
- Following booking:
  - Youth receive a Detention Risk Assessment to determine eligibility for diversion to the community (charged with a Misdemeanor offense or nonviolent Felony offense with a limited history) OR
  - Transferred to the Department of Juvenile Justice as a secure detention case or home detention case (DJJ: arrested for a serious felony or misdemeanor offense and/or having an extensive criminal history).

The JAC Flow-Through Process Cont'd

Step 1

- Agency for Community Treatment Services, Inc.(ACTS) conducts Intervention Assessments which are provided to DJJ, SAO, PD and Diversion programs
- Diversion-eligible youth are recommended to the State Attorney's Office (SAO) for placement in one of several diversion programs. (The vast majority of ACTS staff recommendations are approved.)

Step 2

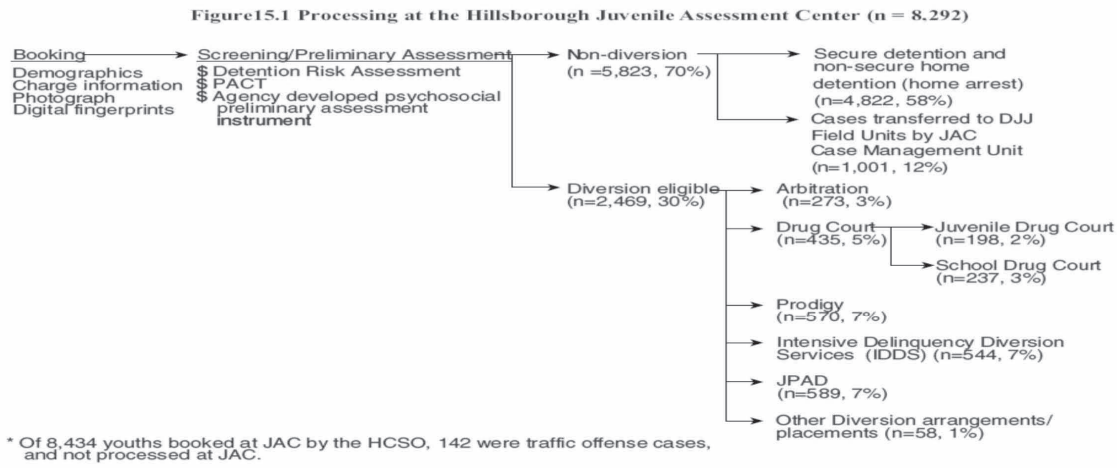
- During the Intervention Assessment conducted by ACTs Intake Staff, a voluntary urine sample is taken.
- Following the assessment, the intake staff then prepares a summary report which includes service recommendations

Step 3

- Detention-eligible offenders are transported to a detention facility.
- Diversion-eligible youth are further interviewed with their parents/guardians by an ACTS staff member, who discusses a service plan and identifies possible community services to access.

*The JAC is supported by ACTS' twenty bed, twenty-four–hour a day adolescent detoxification and stabilization facility, with medical and psychiatric back up.

The JAC Flow-Through Process Cont'd



The JAC Flow-Through Process Cont'd

- As an example, Figure 1 schematically presents the flow of arrested youth through the JAC in 2010.
  - Each arrested youth is expected to be processed within six hours of entry.
  - All youth entering the JAC are booked by the Hillsborough County Sheriff's Office.
- Hillsborough County Sheriff's Office detention deputies operate the secure wing of the JAC. Following booking, processed youth are administered a Detention Risk Assessment Instrument (DRAI).
  - The DRAI collects information on the instant offense, offense history, and aggravating and mitigating circumstances surrounding the current arrest, which is used to determine a youth's eligibility for diversion or transfer to DJJ.
  - Youth are, then, administered the Positive Achievement Change Tool (PACT) screening instrument and undergo an intervention assessment.

The JAC Flow-Through Process Cont'd

An ACTS developed intervention assessment collects information on the following domains:

1. Substance use history (ever used, current use, age first used, frequency/amount of use of alcohol and 18 illegal drugs);
2. Psychiatric history (prior psychiatric treatment, history of trauma, psychiatric medications, current emotional/behavioral problems);
3. Mental status (assessor's rating of mood, affect, alertness, judgment, insight, or evidence of specific mental health condition);
4. Physical health history and current medications (current medications, history of nineteen health conditions, chronic illness);
5. Legal history (number of previous arrests, gang association, current probation or other case, number of prior JAC admissions);
6. Educational/vocational history (grade completed, learning disabilities, school suspensions); and
7. Risk and protective factors (checklist of 39 risk factors and 22 protective factors).

The JAC Flow-Through Process Cont'd

- In addition, the JAC intake assessor administers a Risk Assessment Questionnaire with the following human immunodeficiency virus (HIV) risk behavior items:
  - Injected drugs
  - Had sex while using drugs or alcohol
  - Engaged in transactional sex
  - Had sex with another male (MSM) or a female having sex with an MSM
  - Had unprotected intercourse
- Processed youth twelve years of age or older are also able to participate in free sexually transmitted disease (STD) testing, and indicated follow-up treatment, as part of a JAC collaboration with the Florida Department of Health in Hillsborough County (We shall have more to say about this collaboration in another presentation.)

The JAC Flow-Through Process Cont'd

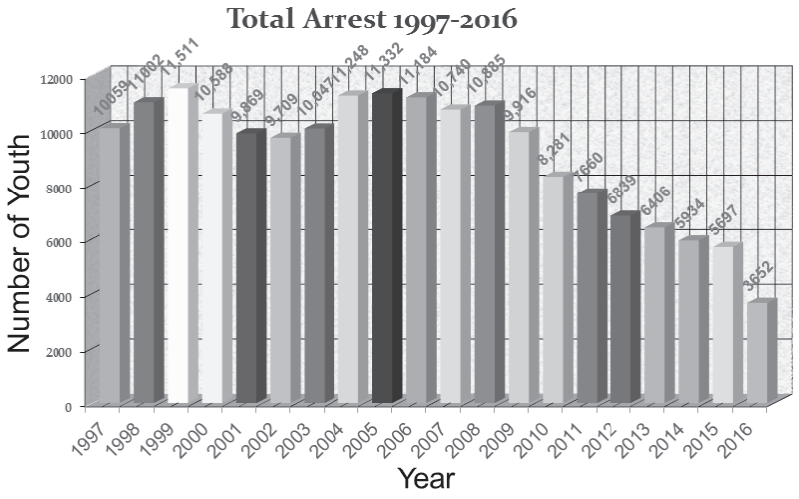
- At this point, the youth is either assigned to:
  1. DJJ – for placement in detention center or on non-secure home detention (home arrest)
  2. The JAC case management unit, which further evaluates the youth, and recommends to the SAO that he/she be placed in a diversion program. The report that is sent to the SAO includes the youth's drug test results. (Some youth, especially those arrested on misdemeanor property charges, may have their case file sent directly to a court diversion program for admission.)
- As an example, as Figure 1 shows, for the 8,292 cases processed at the JAC (in 2010), 5,823 of the youth were determined to be non-diversion cases, with nearly a third being recommended for placement in one or another diversion program.
- Prodigy, Intensive Delinquency Diversion Services (IDDS), and a Juvenile Post Arrest Diversion Program (JPAD) were most often recommended, followed, at a lower rate of referral, by drug court and arbitration.
- It is important to note that 18% of the 2,469 diversion eligible youth were referred to the drug court program.
  - While the diversion programs referred to have changed somewhat over time, the flow model remains.

Demographic & Charge Data for November 2016 Booked Cases

- Total intake: n= 388
- Gender
  - Male: 81%
  - Female: 19%
- Ethnicity
  - African American: 61%
  - Anglo: 20%
  - Hispanic: 19%
- Age
  - <10-11: 0.6%
  - 12-13: 11%
  - 14-15: 35%
  - 16-17: 50%
  - 18+: 4%
- Charge type
  - Felony: 29%
  - Misdemeanor: 31%
  - Court Order: 40%

*The demographic characteristics of JAC processed youth, as reflected above, have remained stable over time.

Stats through August 2016



Program Placement Recommendations for JAC Processed Youth

Youth in non-diversion cases are assigned to DJJ, and they are assigned a Juvenile Probation Officer as their cases are being processed through the juvenile court system. Each of these placements is discussed briefly below.

- Placement in Detention: Youth scoring twelve or more points on the DRAI need to be placed in secure detention.
  - They are transported to a detention center from the JAC by a van operated by DJJ twenty-four hours a day.
  - The law requires that these youth appear before a juvenile court judge within twenty-four hours of placement in detention, at which time a decision is made to retain the youth in detention while their cases are being processed by the court or release them to the community.
- Placement in Non-Secure Detention (Home Arrest): Youth who score between seven and eleven points on the DRAI are released to a parent or guardian, and they are required to make scheduled court appearances until their cases are resolved by the court.

Program Placement Recommendations for JAC Processed Youth – Cont'd

- Cases Assigned to Department of Juvenile Justice Field Units by the JAC Case Management Unit: Youth initially assigned to the JAC case management unit for recommended placement in a diversion program are not found to be diversion eligible (i.e., do not meet the criteria for placement in any diversion program).
  - Case management staff transfer these youth to DJJ field units for assignment to a Juvenile Probation Officer for case supervision.
- For each of these categories of youth, the results of their JAC intake and assessments, including their drug test results, are shared with their assigned juvenile probation officers, who will include such information in community-based service program or residential commitment program plans that are formulated for them.

Program Placement Recommendations for JAC Processed Youth – Cont'd

Diversion Cases

- Youth processed for diversion are not assigned to DJJ, but rather are recommended by the JAC case management unit to the SAO for placement in one of four approved diversion programs.
  - Each of these programs is discussed briefly below.

Program Placement Recommendations for JAC Processed Youth – Cont'd

Juvenile Drug Court	• 17 years of age (must be more than 6 months of turning 18) • Drug/alcohol issues/drug related charges • Cannot be drug dealing offenses (with intent to sell/deliver)
School Drug Court	• 17 years of age (must be more than 6 months of turning 18) • School related drug offenses only • Cannot be drug dealing offenses (with intent to sell/deliver)
JDAP	•17 and under •Misdemeanor 1st or 2nd offense; Felony 3rd degree 1st offense •Must meet 2 out of 4 criteria on checklist •May still be eligible without signed waiver
Arbitration	• 1st offense only • No GTA charges • No waiver needed on misdemeanor offenses; previous non-file still eligible
Long Distance Diversion (LDD)	• 1st time misdemeanor offender • Waiver must be signed • Live more than 2 hours away

Program Placement Recommendations for JAC Processed Youth – Cont'd

Juvenile Drug Court is designed as a 12-month program, divided into several phases, including:

1. Assessment: The primary focus of assessment is to determine the level of services that are appropriate for the youth. It includes an orientation to the program, interviews with the youth and family members, urinalyses, and a review of the youths' JAC packet.
2. Several treatment phases, with decreased frequency of court appearances based on clean urine screens and good program performance (e.g., attending TX sessions), culminating in program completion/ graduation.
3. Once a client successfully completes the Juvenile Drug Court Program, his/her current charges will be dismissed.

School Drug Court is very similar to Juvenile Drug Court, with the school recommending youth to the program.

- Youth placed in School Drug Court are charged with simple possession of marijuana on school grounds or felony possession of a controlled substance on school grounds.

Program Placement Recommendations for JAC Processed Youth – Cont'd

JDAP (formerly known as Intensive Delinquency Diversion Services)

- A 5-7 month program designed to serve the higher-risk portion of the youth population.
- Contracted case management services are provided by a local agency. Continuous and extensive contact with the youth, parents, guardians, school, employer, and an assigned case manager, among other service providers, are considered essential to the youth's success in the JDAP program.
- Whether or not a youth is deemed a "success" or a "failure" depends upon the youth's performance in the program, his/her level of progress, and an assessment of his/her future threat to the community.
- Youth who do not successfully complete the program are referred back to the SAO for formal prosecution of the original charge(s).

Program Placement Recommendations for JAC Processed Youth – Cont'd

Arbitration

- The parents or guardians and the juvenile appear at a hearing before a court counselor.
  - The court counselor explores the details of the case by interviewing the juvenile.
  - The court counselor also conducts a risk assessment and obtains information from the parents.
  - The court counselor makes a decision as to the most appropriate sanctions for the particular set of circumstances, imposes these sanctions on the juvenile, and sets a deadline date.
- The Court Counselor monitors completion of assigned sanctions.
  - Compliance with program rules (e.g., consistent school attendance, acceptable behavior at home) is also monitored and can result in program extension or unsuccessful completion from the program.
- Although program involvement can last up to a year, on average, youth complete the program in ten weeks.
- Youth who complete all that is asked of them are deemed program "successes," and their case is closed. Youth who do not complete the assigned sanctions are considered "failures," and their cases are referred back to the SAO for formal prosecution of the original charge(s).
- The victim has the right to be notified throughout the process and can choose to be present at the initial interview to provide input.

Further Opportunities to Serve Youth with Substance Use and Related Problems

- It is important to realize that JACs serve youth at the high end of community risk continuum.
- As we just discussed:
  1. Many arrested youth entering the Hillsborough JAC, and arguably other JACs as well, are drug involved
  2. Programs have been developed to serve these youth.
- At the same time, other opportunities exist for JACs to serve other target groups of youth involved in drug use or experiencing problems often related to their drug use. Following is a discussion of two such target groups.

Truant Youth

- Truancy represents a growing epidemic in academic settings across the United States. Unfortunately, efforts to address truant behavior are all too often sanction and procedure oriented, with truant youth being treated as disciplinary and management problems.
- Interventions that do not target the root causes of such behavior fail to address the problems that can lead many seriously troubled truant youth to move into the juvenile justice system. However, some truancy programs, such as the Hillsborough County, JAC Truancy Program, have started to move away from one-dimensional strategies by involving collaborative and holistic approaches.
- Truant youth represent a challenging, yet very promising, group of at-risk youth to serve. In addition to having problems in school, they frequently experience troubled family situations, failing grades, psychosocial difficulties (including substance use), and contact with the legal system.

Truant Youth – Cont'd

- Reaching these youth before they become seriously involved in drug use and other delinquent behavior provides an excellent opportunity to reduce the likelihood they will move into the juvenile justice system. It is least often the case that youth are picked up for truancy because they are in the wrong place at the wrong time; rather, their behavior makes them visible to official agencies such as law enforcement.
- Available studies involving selected samples of truant youth indicate these youth are often experiencing serious interrelated problems in regard to a stressed family life; alcohol or other drug use; emotional/psychological functioning problems; and educational functioning issues (e.g., low grades, high rates of being retained in grade or placed in remedial or special programs).
- Truant youth tend to be young and primarily involved in the use of alcohol or marijuana, and they are at risk of becoming seriously involved in drug use. Involving these youth in early intervention services holds promise of redirecting their patterns of behavior in more salutary directions in a shorter period of time, at less cost, and with greater effectiveness, than treating older adolescents who are involved in the use of other drugs such as hallucinogens and cocaine.

Truant Youth – Cont'd

- We recently completed a study of 300 truant, funded by NIH/NIDA.
- Eligible youths met the following criteria:
  1. Age 11 to 17
  2. No official record of delinquency or up to two misdemeanor arrests
  3. Some indication of alcohol or other drug use, as determined, for example, by a screening instrument (Personal Experience Screening Questionnaire [PESQ, Winters, 1992]) or as reported by a Hillsborough County school social worker
  4. Lived within a 25-mile radius of the Truancy Center

Truant Youth – Cont'd

- Depending on date of project enrollment, follow-up data were collected on the youths 3 months, 6 months, 12 months, and 18 months following completion of the intervention.
- Follow-up data at all time points, through 18-month follow-up, were available on *n* = 215 youths.
  - High, overall completion rates of 94.0%, 93.7%, 92.1%, and 88.5% were achieved for the 3-month, 6-month, 12-month, and 18-month follow-up interviews, respectively
- Most youths in the study were male (63%), and averaged 14.80 years in age (SD = 1.30).
- Thirty-seven percent of the youths were Anglo, 26% were African American, 29% were Hispanic, 1% were Asian, and 7% were from other, mainly multi-ethnic backgrounds.

Truant Youth – Cont'd

- Only 17% of the youth lived with both biological parents, with 33% living with their mother alone.
- 93% of parents reported family experience of stressful/traumatic events:
  - Death of a lived one (58%), unemployment (50%), parent divorce (39%)
  - Serious illness (31%), legal problem resulting in jail time or detention (26%)
  - Overall, an average of 2.99 stressful/traumatic events were reported (SD=1.76)
- Overall, the families in the project had modest annual incomes:
  - Annual income of $25,000 or less: 40%
  - Annual incomes between $40,000 and $75,000: 23%
  - Annual incomes were greater than $75,000: 10%

Truant Youth – Cont'd

- A review of official records indicated the youth received an average of 0.89 arrest charges (range=0 to 6) (SD=1.04) prior to enrollment in the project.

- In addition:
  a) 19% of truant youth reported being sent to live away from home (mainly for behavior problem reasons—e.g., difficulty getting along with father)
  b) 17% reported having an alcohol/other drug abuse problem (mainly marijuana)
  c) 48% reported receiving services for emotional/behavior problems

Truant Youth – Cont'd

- The youths reported relatively high rates of delinquency during the year prior to their initial interviews.
  - High prevalence rates were reported for index offenses (50%)
  - Crimes against persons (75%), general theft (75%), drug sales (29%), and total delinquency (94%).
  - Further, from 1% to 15% of the youths reported engaging in the offenses (represented by the various indices) 100 times or more; some reported many hundreds of offenses.
- The youths reported high rates of sexual risk behavior:
  a) Reported they had sexual intercourse: 67%
  b) Had sexual intercourse without using a condom: 33%
  c) Having 2 or more sexual partners: 30%

Truant Youth – Cont'd

- Urine tests indicated 46% of the youths recently used marijuana.
  - Little use of other drugs was found.
  - Relatively few youths reported use of amphetamines, barbiturates, cocaine, opioids, hallucinogens, PCP, Club Drugs (e.g., Ecstasy), and inhalants
  - Urine tests confirmed the very low, recent use of amphetamines, cocaine, and opiates.
  - We found significant validity problems in the youths' reported use of alcohol. Analysis showed that, at each time point, over 90% of youth found to be UA positive for marijuana but denied use of the drug, also denied the use of alcohol.
- At baseline, there are mixture of positive and negative attitudes towards school, although negative attitudes are more often reflected in the youths' replies to these questions. For example, truant youth indicated:
  - 80% of the truant youth reported finishing school is important
  - 53% indicated school feels good
  - On the other hand, 83% of the youth can't wait until school is over
  - 56% don't like thinking about school
  - 81% indicated they get bored in school
  - 71% felt school had too many rules.

Truant Youth – Cont'd

- Our study used a brief intervention for substance abuse among youth developed by Winters and his associates that integrates techniques from Motivational Interviewing (MI), Rational-Emotive Therapy (RET), and Problem-Solving Therapy (PST).
  - MI: is a client-centered counseling technique developed specifically for substance abuse intervention (Miller, 1983).
    - The techniques of MI include increasing self-efficacy and increasing readiness for change.
    - MI has demonstrated effectiveness with treating substance-abusing adolescents.
  - RET: is a form of cognitive behavior therapy that focuses on correcting negative and self-defeating emotions that interfere with an individual's abilities to achieve goals.
    - While little research on RET, itself, has examined its effect on reducing substance use among adolescents, specifically, research has demonstrated RET has a significant impact on problem behaviors among youth.
  - PST: recognizes that problem-solving skills are key to an individual's ability to cope, and focuses on applying general problem-solving and coping skills to various situations.
    - Has demonstrated promise for adolescent substance use relapse prevention.
- By integrating techniques from MI, RET, and PST, the brief intervention encourages the development of adaptive beliefs and problem-solving skills to promote abstinence from substance use and prevent relapse among youth populations. This brief intervention has demonstrated effectiveness in reducing substance use among adolescents in a school setting.

Truant Youth – Cont'd

- We tested the effectiveness of the Brief Intervention on the youths' marijuana use. Brief interventions are promising solutions for substance use treatment among truancy populations, because they are low cost, and offer short-term treatment options that are easily transportable to various settings.
  - Brief interventions can be as brief as a single, 15-minute discussion, but typically they range between 2 to 4 standard-length sessions.
- The study was a prospective, longitudinal, intervention study of substance-involved truant youth, involving random assignment of youth to assess the impact of two Brief Intervention strategies (1. BI-Youth [2 sessions] and 2. BI-Youth [2 sessions] plus Parent [1 session]) in comparison to Standard Truancy Services [STS](control condition) on the youth's marijuana use.
- Following the completion of the consent and assent processes and baseline interviews, the youth and parent/guardian were randomly assigned to one of three project service conditions: (1) BI-Youth (BI-Y), (2) BI-Youth plus Parent (BI-YP), or (3) the Standard Truancy Services (STS).
- ***The results of the indicated that, overall, truant youth receiving Brief Intervention services, experienced a significant reduction in marijuana use at 18 month follow-up (one-tailed test). Relatedly, truant youth receiving BI-Youth services were significantly less likely to be involved in marijuana use at 18 month follow-up, than truant youth receiving Standard Truancy Services. The effect sizes were in an appreciable range, -0.509 and -0.941, respectively.***

The Olivia Project – A Prevention Service

- This is a non-arrest, prevention service.
- Began in 2014 at Hillsborough JAC
- Ms. Brown receives referrals from the community as well as program staff. Parents call into JAC asking for help with troubled youth. Parents are referred to Ms. Brown.
- Ms. Brown is a licensed Life Coach. She serves as a mentor and advocate for the youth.
- She completes a JAC Intervention Assessment with the youth (including urinalysis), and meets with the parents/guardians, to clarify the issues the child is experiencing
- Then, speaks with child and family, often resulting in recommendations for referral to community agencies to address the child's specific issues (e.g., drug use, grief)
- Ms. Brown will also work with some youth on specific issues they are facing—such as low self-esteem, problems with authority, bullying.
- The free services include continuing support after initial appointment
- All youth, and parents, are contacted by Ms. Brown for follow-up, either via phone or face to face, so she can learn how they are doing and provide any assistance needed to serviced the family

Final Note: The Importance of JACs

- **JACs provide an extremely valuable opportunity to complete legally required processing activities**
- **As well as identify the problems of troubled youth and involve them in community-based, public health and behavioral health services and intervention programs.**
- **These single intake facilities have transformed the front end of the juvenile justice system in the communities in which they operate. Involving the collaboration of law enforcement, juvenile justice, public health, and human service agencies, JACs reduce duplication of effort, and overcome workload and juvenile justice "systemic" problems. They continue to represent an exciting, innovative development in juvenile justice.**

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1

Comprehensive Health Services for Youth Entering the Justice System: An Innovative Health Coach Approach

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2

Brief Historical Background to the Health Coach Project

- In 2006, Richard Dembo (Co-PI) and Steven Belenko (PI) received an NIH/NIDA grant to conduct STD testing at the Hillsborough County, FL Juvenile Assessment Center (JAC). Testing involved splitting youth urine specimens at a Department of Health laboratory, with one half being tested for STDs (Chlamydia and gonorrhea), and other half being tested for recent drug use.
- 506 male and 443 female arrestees 12-18 years of age were tested between June and December 2006, with striking results.
- Overall, 10.5% of male, and 19.2% of female, arrestees were found to be STD positive—with African American girls having the highest rate of STDs (26.9%).
- We met with the Director of the Florida Department of Health in Hillsborough County and key STD program staff, in June 2007, to share our results.
- Based on our study results, the Director declared the JAC a DOH testing site, effective August 2007, and agreed to pay for the testing and any indicated follow-up treatment.
-

3

Brief Historical Background to the Health Coach Project- Cont'd

- STD testing of JAC processed youth between August 2007 and 2016 continued to indicate high levels of STDs among them.
- In early 2015, the Florida Department of Children and Families asked us about our STD rates, which remained high. Following sharing these aggregate data with the Department of Children and Families, we were asked to develop a project to include, among other topics, STD and HIV testing, with indicated treatment follow-up.
- Dr. Dembo and Dr. DiClemente developed the Health Coach project, with input/advice from Agency of Community Treatment Services, Inc. staff, during May and June 2015.
- After a several month implementation period, including site renovations, MIS development, staff hiring and training, we began operations on 10/19/15.

4

Goals and Focus of the Health Coach Service

There are four major goals for the Health Coach Service:

- Offer HIV risk reduction information and education to youth using an evidence-based gender and developmentally – appropriate online curriculum.
- Provide rapid HIV testing in addition to the current STD testing being provided, which may include Hepatitis C when indicated by the screening tool.
- Health Coaches will follow-up with youth and provide prompt, appropriate linkage to treatment for all youth who are drug involved, test positive for HIV and other STDs, or have indication of elevated depression.
- Health Coaches will refer all youth who report they do not have a Primary Care Physician to a collaborating family health center for assignment to one, and track their engagement in care.

5

The Need for Health Services

- THE NEED FOR PUBLIC HEALTH SERVICES AT THE FRONT END OF THE JUVENILE JUSTICE SYSTEM
- KEY SEXUAL RISK BEHAVIOR/SEXUALLY TRANSMITTED DISEASE RISK FACTORS AMONG YOUTH
  - SUBSTANCE USE
  - DEPRESSION

6

High Risk Groups

- GROUPS AT HIGHER RISK OF SEXUALLY TRANSMITTED DISEASES AND THEIR EFFECTS
  - AGE
  - GENDER
  - RACE/ETHNICITY

7

Juvenile Assessment Center

8

Birth of the JAC

- The Hillsborough Juvenile Assessment Center (JAC) was the very first of its kind in the country and is a model site for other JACs across the world
- The JAC has been in operation for over twenty years serving Hillsborough County
- JAC was established in 1993

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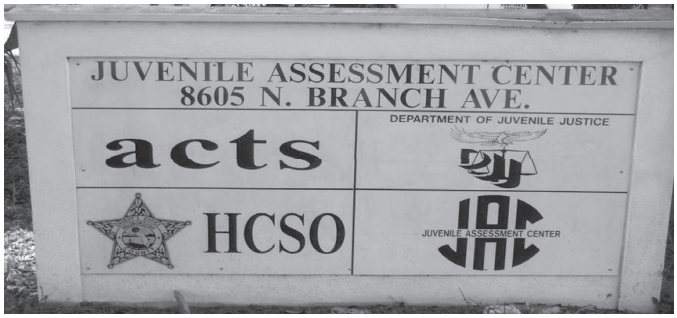
JAC Partners

- Collaboration with:
  - Department of Juvenile Justice
  - Hillsborough County Sheriff's Office



10

What We Do

- 24-hour centralized facility that provides screening and prevention/intervention services for juveniles taken into custody by law enforcement officers for:
  - new law violations (18 and under); court orders; violations of probation, conditional release or home detention; traffic offenses
- Hours of operation: 24 hours a day, 7 days a week including State and National Holidays.
- Intervention Assessment Services- include identification of needs and referrals to appropriate community resources.
- Urine and STD Testing
- Olivia Project
- 6 Hour Rule

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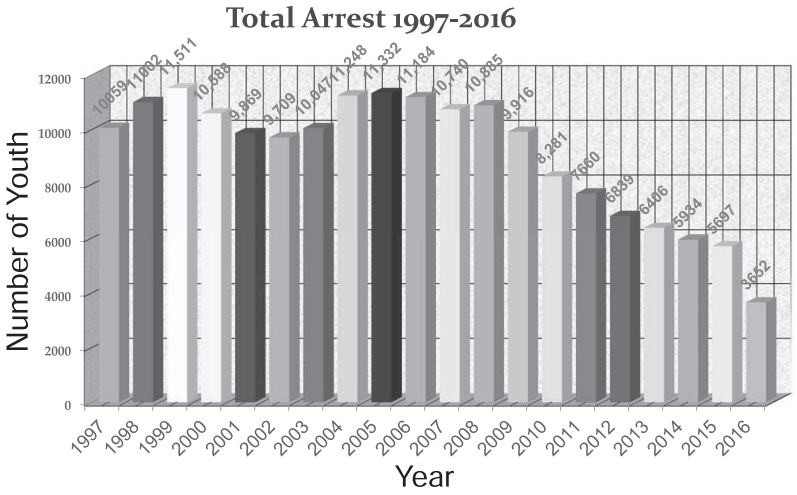
JAC Stats



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CSA HIV Partnerships

- Central Florida Behavioral Health Network
- Florida Department of Health
- Tampa Family Health Center
- Maxim Healthcare Services
- University of South Florida

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CSA/HIV Project Start Up

- Renovations
  - Health Coach Office
  - Counseling Office
  - Expansion of Offices
- Screening Forms
- Integration of HIV & JAC Processes

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Nurse's Station

15

Identifying Eligible Youth

- Consenting Youth

Females age 12 – 17	Males age 15 - 17

- Florida Statute 384.30

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HIV Project Team

- Health Coaches
- System's Navigator
- Intervention Counselor

17

Health Coach Services

- Screening
- Testing (HIV & STD)
- Pre and Post Test Counseling
- Follow Up

18

System's Navigator

- Care Coordination
  - Linkage to Services
    - Warm handoff
    - Onsite Counseling
    - Community Referrals
  - Schedules appointments for Behavioral Health Consultations
    - Schedules/Reminders/Verifications/Follow Up
  - Follow up on community referrals
  - Identifying barriers and provides assistance

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Counseling Services

- Accepts warm hand offs
- Provides outpatient services with the family and the youth
  - Onsite
  - Mobile Unit
  - Follow up services for one year

Intervention Services
1. Importance of Primary Care Physicians
2. Behavioral Health
3. Educational Goals
4. Family Relationships
5. Aspirational Goals

20

Benefits to Youth in Program

- Identifying Risky Behaviors
- Free Testing and Treatment
- Comprehensive continuity of care
- Prevention and Education

Prevention Component: On-site and Community-Accessed Media-Based Risk-Reduction

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Adolescents are exposed to a "point-of-contact," multi-media-based risk-reduction video during post-JAC designed to:

- Be engaging to maintain adolescents' attention
- Provide age- and culturally-appropriate HIV/STD risk-reduction information; dispel misconceptions
- Provide an opportunity for modeling risk-reduction skills; vicarious learning (i.e., sexual negotiation)
- Influence adoption of healthy peer norms of sexual behaviors (counteract negative role models in community)
- Enhance adolescents' motivation and self-efficacy to adopt risk-reduction practices
- Reinforce healthy relationship (i.e., gender equity) and how power imbalanced relationships enhance risk of HIV/STD
- Be a catalyst for behavior change (as one piece of a broader multi-component intervention that extends from the JAC to the community designed to enhance sustainability)

- **How to access on returning to the community:**
  - Adolescents are given access to a program website which contains the 40 minute video;
  - Adolescents can view the video multiple times (reinforce learning) and share with friends;
  - An electronic record is kept of each youth's access to the video.

Media-based Technology Interventions Potential for Enhancing HIV/STD Prevention

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- Potential to be cost-effective
  - Require less staff and financial resources to implement
  - Require less time and travel for recipients
  - More times they are used, the cost-per-time used decreases (development is a fixed cost/frequency of use)
- Offers possibility of widespread dissemination with high fidelity
- Flexible administration approach (automation) with tailoring
- Mitigate concerns (breach of confidentiality, reduce reporting biases) of face-to-face interventions
- Flexible delivery formats and modalities: (a) computer, tablet, mobile phone; (b) internet
- Can be an ***effective programmatic*** and ***efficient dissemination platform***

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Media as a Catalyst for Promoting the Adoption of HIV/STD and Pregnancy Prevention Behaviors among Youth in Juvenile Assessment Centers

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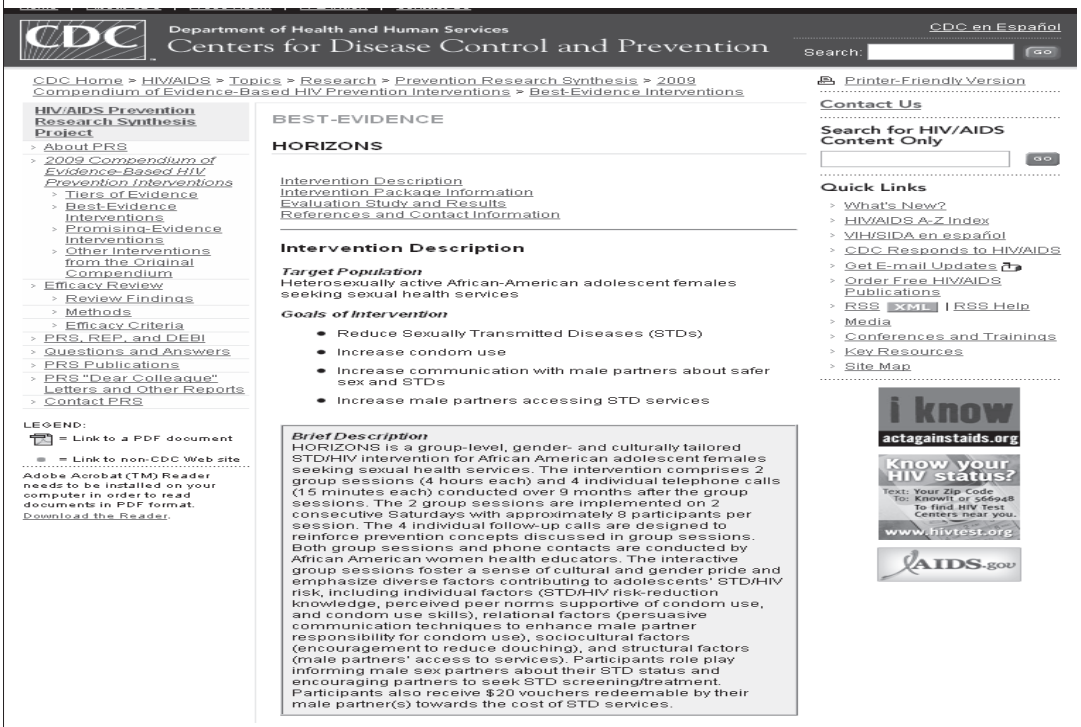

Department of Health and Human Services
Centers for Disease Control and Prevention

CDC en Español

Search: GO

CDC Home > HIV/AIDS > Topics > Research > Prevention Research Synthesis > 2009 Compendium of Evidence-Based HIV Prevention Interventions > Best-Evidence Interventions

HIV/AIDS Prevention Research Synthesis Project

- About PRS
- *2009 Compendium of Evidence-Based HIV Prevention Interventions*
  - Tiers of Evidence
  - Best-Evidence Interventions
  - Promising-Evidence Interventions
  - Other Interventions from the Original Compendium
- Efficacy Review
  - Review Findings
  - Methods
  - Efficacy Criteria
- PRS, REP, and DEBI
- Questions and Answers
- PRS Publications
- PRS "Dear Colleague" Letters and Other Reports
- Contact PRS

LEGEND:
= Link to a PDF document
= Link to non-CDC Web site

Adobe Acrobat (TM) Reader needs to be installed on your computer in order to read documents in PDF format.
Download the Reader.

BEST-EVIDENCE

HORIZONS

Intervention Description
Intervention Package Information
Evaluation Study and Results
References and Contact Information

Intervention Description

Target Population
Heterosexually active African-American adolescent females seeking sexual health services

Goals of Intervention

- Reduce Sexually Transmitted Diseases (STDs)
- Increase condom use
- Increase communication with male partners about safer sex and STDs
- Increase male partners accessing STD services

Brief Description
HORIZONS is a group-level, gender- and culturally tailored STD/HIV intervention for African American adolescent females seeking sexual health services. The intervention comprises 2 group sessions (4 hours each) and 4 individual telephone calls (15 minutes each) conducted over 9 months after the group sessions. The 2 group sessions are implemented on 2 consecutive Saturdays with approximately 8 participants per session. The 4 individual follow-up calls are designed to reinforce prevention concepts discussed in group sessions. Both group sessions and phone contacts are conducted by African American women health educators. The interactive group sessions foster a sense of cultural and gender pride and emphasize diverse factors contributing to adolescents' STD/HIV risk, including individual factors (STD/HIV risk-reduction knowledge, perceived peer norms supportive of condom use, and condom use skills), relational factors (persuasive communication techniques to enhance male partner responsibility for condom use), sociocultural factors (encouragement to reduce douching), and structural factors (male partners' access to services). Participants role play informing male sex partners about their STD status and encouraging partners to seek STD screening/treatment. Participants also receive $20 vouchers redeemable by their male partner(s) towards the cost of STD services.

Printer-Friendly Version

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- Site Map

i know
actagainstaids.org

Know your HIV status?
Text: Your Zip Code
To: Knowit or 566948
To find HIV Test Centers near you.
www.hivtest.org

AIDS.gov

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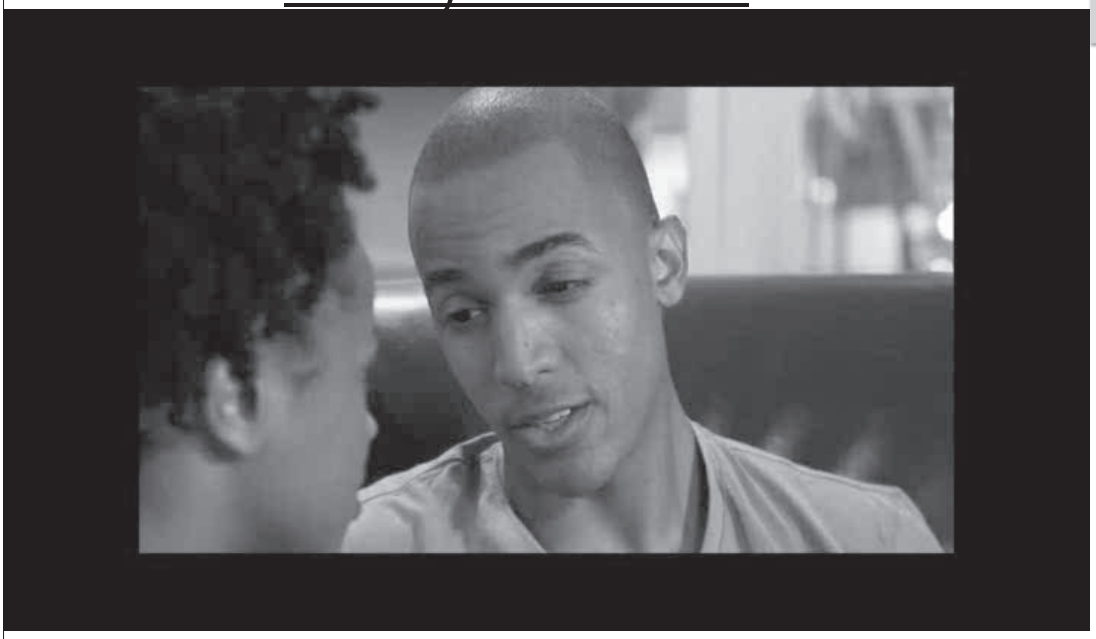
"The New Media"

I like you but….

27



Healthy Relationships – Real Men Listen

28

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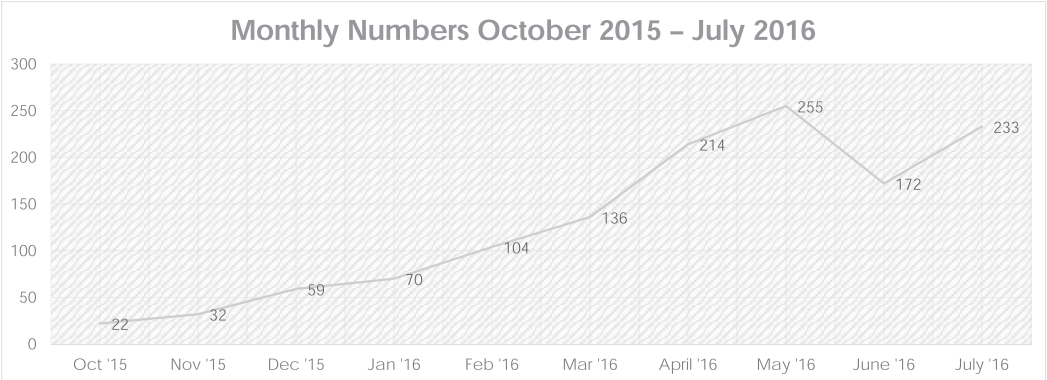
A First Look At Health Coach Service Data



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Description of Health Service Served Youth

- Date range for these data: 10/19/2015—3/21/2016.
- Health Coach services began with females, males were added to service on 2/4/2016
- Number of youth served: males=103; females=258
- Participation rate: males=55.4% (103/186); females=75.4%(258/342)
- These participation stats are based on total admissions, which include 18 cases admitted to JAC 2x during this period of time.

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Description of Health Service Served Youth—Cont'd

	MALES (N=102)	FEMALES (N=241)
AGE*		
12	1.0%	4.1%
13	----	10.0%
14	----	18.3%
15	19.6%	17.4%
16	42.2%	25.7%
17	37.3%	24.5%
{Average age:	16.1 years	15.2 years}
	100.0%	100.0%

* Significant difference

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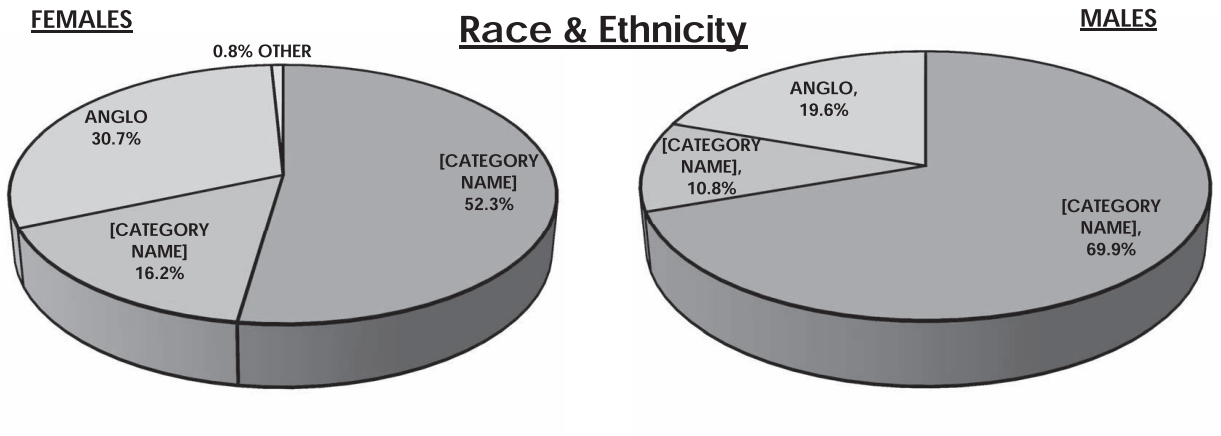
Description of Health Service Served Youth—Cont'd



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Behavioral Health Issues - Depression

* Significant difference	Females (N= 241)	Males (N= 102)
Average Depression Score (8 item evidence based measure)*	5.20	2.81
Score of 7+ *	30.7%	14.7%

(Statistical analyses confirmed the psychometric structure of the depression measure was the same for the male and female youth.)

39

Correlates of Depression Among Male and Female Youth

Predictors of Depression	Males (n=63)	Females (n=182)
Age	1.690*	0.375
African American	0.589	-2.107
Hispanic	5.755	-0.311
Age1Arr	-0.177	-0.044
TCU Score	2.175	1.198*
Number of Partners	-0.699*	0.825*
STDs	0.803	-1.674
UAMJ	-2.911	-1.057

*Statistically significant per multi-group, maximum likelihood regression analysis

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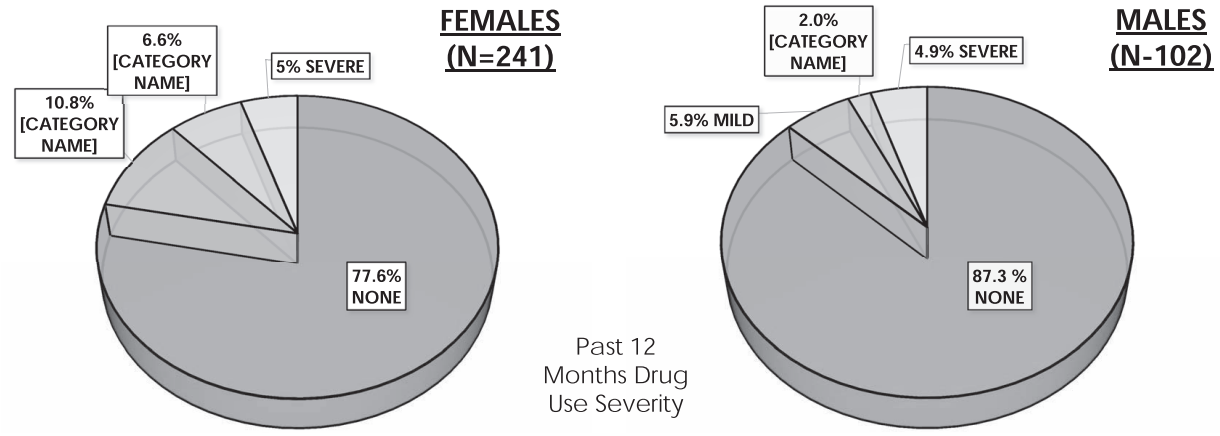
Behavioral Health Issues – Drug Use



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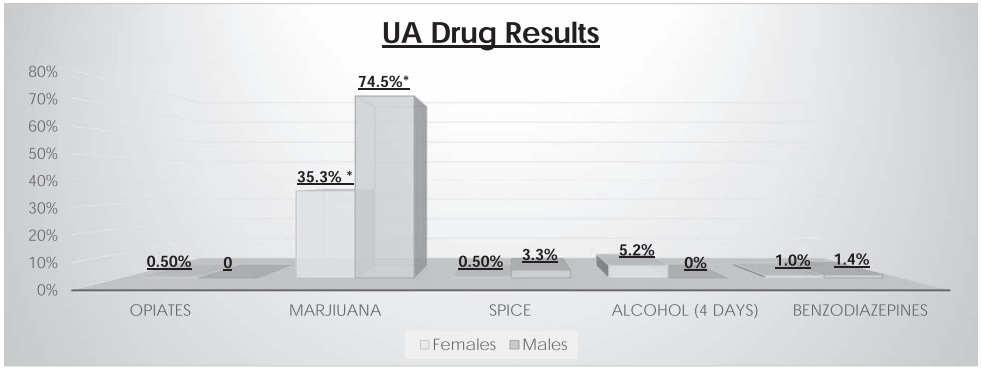
UA Drug Use Results



* Significant Difference

No youth tested positive for Cocaine or Methamphetamines

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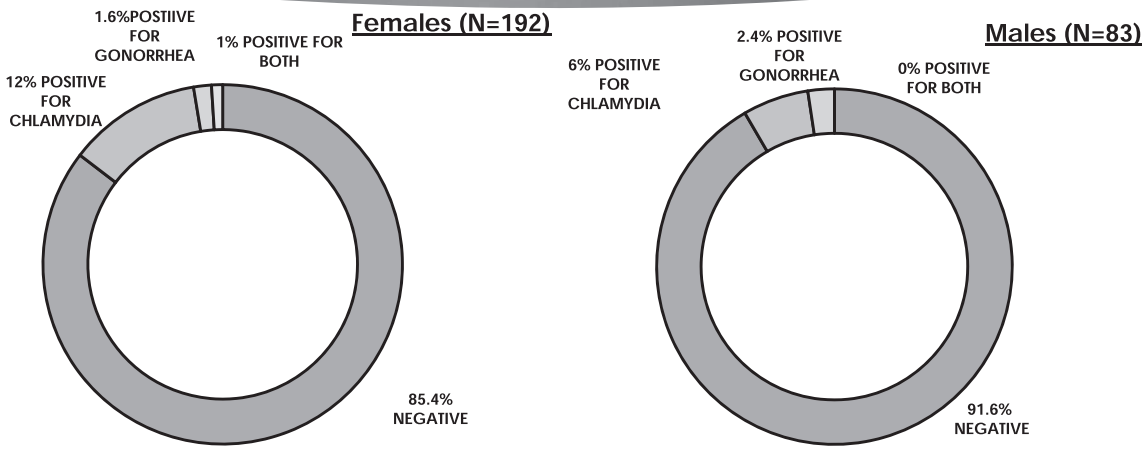
STD Results



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Number of Sexual Partners

	Females (N=241)	Males (N= 102)
Average Number*	1.77	3.99

- 35.3% for female youth versus 6.9% of male youth reported no sexual partners
- On the other hand, 43.1% of male youth versus 7.9% of female youth reported 6+ sexual partners

* significant difference

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Relationships Among Behavioral Health Issues for Male and Female Youth

Females (N=241)

	Partnum	STD's	MJ
Partnum	---	.518*	.501*
STD's		---	.423*
MJ			---

Males (N=102)

	Partnum	STD's	MJ
Partnum	---	.263	.176
STD's		---	.118
MJ			---

* Significant relationship

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SUMMARY LATENT CLASS ANALYSIS RESULTS—GIRLS (n=241)

	Low Risk (n= 129, 53%)	Higher Risk (n=65, 27%)	Highest Risk (n=47, 20%)
Mean Partnum	0.360*	2.236*	5.113*
Results in Probability Space STD positive	0.000*	0.279*	0.398*
UA MJ Positive	0.145*	0.567*	0.670*
Moderate/Severe Drug Involvement Score	0.076*	0.141*	0.194*

*Statistically Significant

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Comparing Health Risk Groups on Various Characteristics

	Higher health risk vs Low health risk (reference group)	Highest health risk vs Low health risk (reference group)	Highest health risk vs Higher health risk (reference group)
Age	0.784*	0.903*	0.120
Age at 1st arrest	-0.146	-0.332*	-0.186
Race (1= African American)	0.010	-1.067*	-1.076*
Ethnicity (1= Hispanic)	0.801	-1.489	-2.291*
Depression	0.003	0.094*	0.091*

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Individual and Community Level Factors Related to Youth Health Risk –Girls (N=241)

Individual Level

Health Risk Factor	Unstandardized Estimates. Standardized Estimates in Parentheses
Number of Sexual Partners	1.000 (.742)*
STD Status (1= STD+)	0.348 (.439)*
UA MJ Test Results (1= MJ+)	0.785 (.740)*
TCU Drug Severity Level	0.349 (.439)*

* Statistically Significant

48

Individual and Community Level Factors Related to Youth Health Risk--Cont'd

Characteristics Related to Individual Health Risk Factor:

	Health Risk Factor
Age	0.608 (.634)*
Age at 1st Arrest	-0.145 (-.183)*
African American	-0.323 (-.115)
Hispanic	-0.159 (-.042)
Depression	0.065 (.294)*

Unstandardized estimates. Standardized estimates in parentheses
* Statistically Significant

Individual and Community Level Factors Related to Youth Health Risk – Cont'd

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Community Level Characteristics Related to Youth STD Status

	STD Status (1= Positive)
POVERTY	-0.030 (-.742)
RESMOBIL	0.013 (.182)
UNEMPL	0.085 (.917)
FEMHHKID	0.006 (.108)
NOHSED	-0.009 (-.180)

Variable definitions: POVERTY: Percent below Poverty level; RESMOBIL: Percent households moved in past year; UMEMPL: Percent in labor force unemployed; FEMHHKID: Percent families with female headed households with children; NOHSED: Percent population 25 and older with less than high school education

The American Community Survey (ACS) for 2014 was the source of census data

Further Community Characteristic Analysis

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- In an additional analysis, involving an expanded data set of 651 male and female youth, we developed the following measure (named ZIPRATE): For each zip code, the proportion of STD+ youth (range 0 to 1.0).
- We, then, examined the relationship between ZIPRATE and community level characteristics, reflecting community disadvantage.
- In addition to the 5 community disadvantage factors noted in an earlier slide, we added a measure of ethnic heterogeneity, intended to measure potential ethnic/racial barriers existing within each zip code area. Communities that are more heterogeneous in race/ethnicity experience greater challenges to establishing strong social networks and cohesion among their residents due to potential differences in language and culture. Ethnic heterogeneity was calculated as one minus the sum of the squared proportion of each given race/ethnic group in each zip code area. Values of zero indicated complete ethnic homogeneity; values of one indicated complete maximum heterogeneity. The mean value for ethnic heterogeneity equaled 0.928 (standard error=.009).
- Correlation analysis results suggested linkages between STD status and the community disadvantage characteristics—as shown in the next slide
- The small number of STD+ cases in our analyses (n=71) limited our community variable analyses
- We are planning for more extensive data analyses with future, expanded data sets.

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Community Level Factors Related to ZIPRATE (N=651)

	ZIPRATE (Range 0 to 1.0)
POVERTY	.163*
RESMOBIL	.102*
UNEMPL	.214*
FEMHHKID	.123*
NOHSED	.103*
ETHNIC HETEROGENEITY	.110*

* Statistically Significant

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Health Coach Service Stakeholder Reports

- In addition to special studies of project collected data, we also issue periodic reports to our community Stakeholders.
- These reports share information on project enrollment statistics, participation rates, and Health Coach client sociodemographic characteristics.
- We also share information on client health issues, including:
- ---rates of depression
- ---self-reported and UA tested drug use
- ---STD and HIV test results
-

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Important Take Away's

- Health Coach served youth have multiple, overlapping, behavioral health needs
- Interventions need to accommodate to this reality, if they are to be effective
- Research indicates community level factors are important in understanding and addressing youth health issues. Although this pilot study, involving a relatively small number of cases, did not find evidence of this, we plan to conduct further study involving a larger number of cases.
- Effective interventions should ideally include individual and community level interventions
- Girls are more impacted by health issues, than boys – and require special attention
- Important to identify subgroups of girls for services matching with effective intervention services

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Individual Health Benefits

- Delay in first sexual intercourse
- Decline in the number of sex partners
- Increase in condom or contraceptive use
- Early screening and intervention for behavioral health concerns
- Expedited services and intervention for behavioral health concerns
- Increase in positive supports to discuss reproductive questions, sexual risks and behaviors
- Increased self-efficacy when discussing abstinence and safer sex with current or potential sexual partner(s)

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Community Health

Healthy People 2020 Objectives

- Increase the proportion of adolescents who have had wellness checkup in the past 12 months
- Increase the proportion of sexually experienced females aged 15 to 44 years who received reproductive health services in the past 12 months
- Increase the proportion of adolescents and young adults who have been tested for HIV in the past 12 months
- Increase the proportion of sexually active unmarried females aged 15 to 44 years who use condoms
- Reduce Chlamydia rates among females aged 15 to 44 years

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Community Health—Cont'd

National HIV/AIDS Strategy

- Goal 1: Reducing New HIV Infections
  - Prevention Efforts
  - Effective Evidence-based approaches
  - Education
- Goal 3: Reducing HIV-Related Disparities and Health Inequities
  - High Risk Communities
  - Structural Approaches—service linkages
  - Reduce Stigma and Discrimination—multi-cultural interventions

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References

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165th International Senior Seminar

Panel on Juvenile Justice and the United Nations Standards and Norms
January 30, 2017

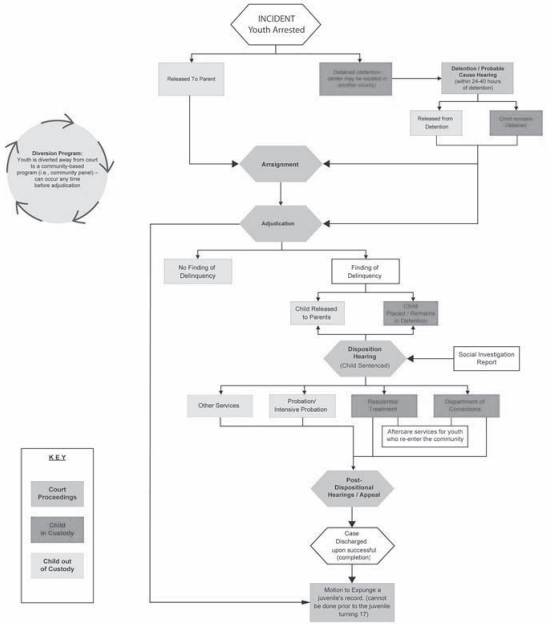
How the United States Tries to Comply

Gary Hill
Garyhill@cegaservices.com

The Good and the Bad

- The Bad
  - Most justice professionals and legislators in the United States know little or nothing about the:
    - United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
    - United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)
    - United Nations Rules for the Protection of Juveniles Deprived of their Liberty
    - Guidelines for Action on Children in the Criminal Justice System
    - Convention on the Rights of the Child (CRC)
- The Not So Bad
  - The United States has several sets of standards and laws that address just about every aspect of juvenile justice
    - For the most part they are detailed, measurable and monitored

United States Juvenile Justice Flow Chart



https://www.ojjdp.gov

Child Protection
- child abuse/exploitation
- Internet
- missing children
- safety/well-being

Core Resources
- federal/state resources
- OJJDP resources

Corrections/Detention
- aftercare/reentry
- alternatives to incarceration
- confinement
- intake/assessment
- personnel
- probation

Courts
- case management
- defense
- prosecution
- sentencing/sanctions
- waiver/transfer
- youth/specialty courts

Gender/Race/Ethnicity
- American Indian/Alaska Native
- disproportionate minority contact
- gender
- minorities

Law Enforcement
- arrests
- community policing
- investigations

Offending by Juveniles
- drug offenses
- gangs
- hate crimes
- offenses by young juveniles
- property offenses
- serious/habitual/chronic offending
- sex offenses
- status offenses
- violent offenses

Prevention
- community/faith involvement
- conflict resolution
- family strengthening/parenting
- mentoring
- risk and protective factors
- youth involvement

Schools
- bullying
- dropout/expulsion
- school involvement
- school safety
- truancy

Health
- assessment
- disabilities
- drugs
- mental health
- physical health
- underage drinking

Statistics
- aftercare/reentry
- corrections/detention
- courts
- juvenile victims
- law enforcement
- offending by juveniles
- population
- probation

Victims
- exposure to violence
- juvenile victims
- victims of family violence
- victims of offenses by juveniles

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AMERICAN CORRECTIONAL ASSOCIATION COMMISSION ON ACCREDITATION

- The Commission on Accreditation for Corrections (CAC) is the official accrediting body of the American Correctional Association. Created in 1974, the Commission is the official arbiter of accreditation status for all facilities and agencies. 1,400 Facilities Accreditated.
- Standards
  - Standards for Juvenile Probation & Aftercare
  - Performance Based Standards for Juvenile Correctional Facilities
  - Standards for Juvenile Day Treatment
  - Standards for Juvenile Detention Facilities
  - Standards for Small Juvenile Detention Facilities
  - Standards for Juvenile Boot Camp Programs
  - Standards for Juvenile Community Residential Facilities

ACA Standard and Accreditation

- Standards are evidenced-based
  - Standards are developed and field tested and continuously updated
  - Auditors are trained and tested
    - Most have an extensive background
  - Facility must show documentation to prove standards are complied with
    - Most facilities have a standards or accreditation manager or facilitator
  - Auditors visit facility, tour, review documentation, visit with staff and inmates
  - Auditor reports are reviewed and accreditation can only be awarded after the facility goes before a review panel
  - Accreditation lasts 3 years and the renewal process includes a full inspection
- Courts, legislatures, media and NGOs follow the accreditation process and use standards to judge the facilities and treatment of offenders
- Applicable standards of health, safety, educational and professional organizations must also be complied with

Sexual Harassment

1-CTA-1C-14 **Written policy, procedure, and practice prohibit sexual harassment.**

Comment:

The agency administrator should have as his or her objective the creation of a workplace that is free from all forms of discrimination, including sexual harassment. Agency policy must clearly indicate that sexual harassment, either explicit or implicit, is strictly prohibited. All employees and agents of the agency, including volunteers, contractors, and vendors, must be advised that they are subject to disciplinary action, including dismissal, termination of contracts, and/or services, if found guilty of sexual harassment charges brought by employees, inmates, juveniles, or residents.

SELF -EVALUATION *Agency Personnel*	*STANDARDS COMPLIANCE AUDIT* *Visiting Committee*
Staff Signature(s):	**Auditor Signature(s):**
☐ Compliance (List documentation) ☐ Noncompliance (See plan of action) ☐ Not Applicable (Justification attached) ☐ Plan of Action Waiver Requested (Justification attached)	☐ Compliance ☐ Noncompliance ☐ Not Applicable ☐ POA acceptable ☐ POA unacceptable ☐ Waiver acceptable ☐ Waiver unacceptable
Prepare one of the following, as appropriate: **1) List documentation to support compliance.** **2) Explain nonapplicability of standard.** **3) Explain plan of action waiver request.**	**List deficiencies if standard is in noncompliance; include the square footage number deficiency, if appropriate:**

Making the U.N. Standards Measurable

Mandela Rules Work Sheet

Before using, familiarize yourself with your nation's Constitution, relevant prison laws and procedures, Code of Ethics, and Department Mission Statement. Those documents take precedence over these Rules. If you see major differences, report them to your supervisors.

International Corrections and Prisons Association (ICPA) Staff Training and Development Committee: Garyhill@cegaservices.com

Standard	Comply		Documentation	Notes
	Yes	No		
I. Rules of General Application				
Basic Principles				
Rule 1				
All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.				
Rule 2				
1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.				
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.				
Rule 3				
Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.				
Rule 4				
1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.				

Questions – Comments

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PARTICIPANTS' PAPERS

THE CHALLENGES OF DIVERSION IN THE BRAZILIAN JUVENILE JUSTICE SYSTEM

*Alessandra Charbel Janiques Rebouças**

I. INTRODUCTION[1]

Diversion stands as one of the top best practices[2] among the international guidelines for more effective juvenile justice systems. All the international influence towards diversion did not go unnoticed in Brazil's settlement of a child rights framework. The Brazilian mechanism of diversion — the so-called 'remission' – has had a privileged theoretical and procedural placement since 1990 and has been exhaustively granted by prosecutors and judges on a daily basis. However, 27 years later, the interventions made through remission have not always been effective in achieving diversion's benefits and, hence, juvenile justice's and society's aims. What are the challenges faced? What could be of help?

Despite the existence of notorious failures from local Executive Powers in the implementation of the interventions determined through remission, there still are deficiencies in which prosecutors and judges can intervene for the improvement of the system.

The effectiveness of remission has a special importance for the Brazilian system because it targets first-time offenders and those without persistence in criminality, whose offence was committed without violence or serious threat. Interventions over these juveniles are more likely to bring positive results, since "recent research has suggested that the deeper that a young person penetrates into the youth justice system, the less likely he or she is to desist from further offending".[3] Considering the big number of cases under this situation, effective interventions over this targeted group, besides contributing for the well-rounded development of a great number of juveniles, minimizes overburdened courts and overcrowded treatment institutions, shifting the focus to more serious cases; thus, it makes the system more effective and reduces State's costs.

Drawing upon the daily experience in Brazilian juvenile courts, coupled with the study of few others international best practices in the field, this paper intends to address three of the identified challenges that put remission's effectiveness at risk: the poor assessment of the juvenile needs; the use of limited intervention methods and the delay in starting the interventions applied. Perhaps it is time to: 1) prioritize the creation of multidisciplinary team support to assist in the procedure, 2) shift the paradigm in intervening with youth and 3) fight for an articulated and collaborative action among the actors of the system.

For the sake of clarity, this paper is structured in parts, where Part 2, besides illustrating the Brazilian legal context in the 1990s, lists the consequences of international and local commitments to child rights. Part 3 briefly describes the Brazilian current social context and suggests this as the moment to reflect about what can be changed in the juvenile justice system, especially since major legislative changes are underway. Part 4 deals with the main purpose of this paper. First, it pinpoints a few specific definitions and important elements of the Brazilian juvenile justice and briefly delineates its procedure, in order to demonstrate remission's important placement in the system. Second, it provides separate topics for critically analysing three of the

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[1] This paper is based on studies done by the author for her 'Research Project' submitted to SAO/McGill University, Montreal/Canada, in December/2013, with the title: 'The MP's contribution to transforming the youth system in Brazil'. This paper, however, has a different perspective — a different focus —, building new ideas.

[2] See e.g. UNICEF Regional Office for CEE/CIS, "Good Practices and Promising Initiatives in Juvenile Justice in the CEE/CIS Region" (2010), online: UNICEF <https://www.unicef.org/ceecis/>.

[3] Nicholas Bala, Peter Carrington & Julian Roberts, "Evaluating the Youth Criminal Justice Act after Five Years: A Qualified Success" (2009) 51 Canadian J. Criminology & Crim. Just. 131, at 135 (Hein Online).

identified challenges that put remission's effectiveness at risk. Each topic initially examines the theoretical background and the limitations of the daily practices; at the end, based on the experience in juvenile courts and on a few international best practices, it brings ideas for concrete changes in the Brazilian juvenile justice system, for effective fulfilment of its role.

II. BRAZIL IN THE 1990s: SETTING A CHILD RIGHTS FRAMEWORK

The human rights commitments by States, in both international and domestic spheres, were a milestone in the second half of the twentieth century. Like other States, Brazil was not only engaged in building a social net to guarantee its population's basic needs, but also in articulating, abroad and at home, a human rights framework, to ensure the exercise and enjoyment of all types of rights.

Brazil was among the 48 members of the United Nations General Assembly in 1948 that voted in favour of adopting the Universal Declaration of Human Rights, "thereby endorsing a new international vision of the role of governments in fostering and promoting human rights as a collective value".[4] Over the years that followed, the country became signatory to all major international human rights treaties, including the United Nations Convention on the Rights of the Child[5] (hereafter, CRC).[6]

In the domestic scenario, the international influence reflected on the inauguration of a new legal system at the end of the 1980s, with the adoption of a progressive Federal Constitution in 1988 (hereinafter FC/88)[7], consolidating democracy after a long period of military dictatorship. Later on, many legal documents that comply with the international guidelines for rights in general (including child rights) were established, alongside with the creation and strengthening of institutions and specialized agencies, in order to structure the whole system of protection.[8]

More specifically, the FC/88 introduced a new perception of childhood and youth, with a new approach in dealing with them. In 1990, Brazil published the Child and Adolescent Statute (hereinafter CAS/90)[9], the landmark youth legislation in the country and one of the most advanced laws governing children in the world. Furthermore, after a few legislative changes to the Statute, the most significant complement was introduced in 2012, with the creation of the National System of Socio-educational Measures (SINASE) and the regulation to implement socio-educational measures (Law of SINASE/12).[10]

The FC/88 elevated children and adolescents as holders of autonomous legally protected interests before the family, the society and the State, which were all given the duty to ensure and protect their fundamental rights with absolute priority and attention to the peculiar condition of persons in development.[11] It determined that "[m]inors under eighteen years of age shall not be held criminally liable and shall be subject to the rules of special legislation",[12] as well as any measure that restrained freedom must comply with the principles of brevity and exceptionality.[13]

The CAS/90, following the constitutional provisions, embraces a wide range of aspects and interests of minors. The CAS/90 brings three systems of protection:[14] the Primary covers general public policies; the

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[4] Martha Jackman, "From National Standards to Justiciable Rights: Enforcing International Social and Economic Guarantees through Charter of Rights Review" (1999) 14 J. of L. and Social Policy, at 72 (Hein Online).
[5] Convention on the Rights of the Child (CRC), 20 November 1989, 1577 UNTS 3, online: United Nations Treaty Collection <http://www.treaties.un.org/>.
[6] Decree n° 99.710 of 21 November 1990, DOU 22 November 1990, Brazil, online: Planalto <http://www.planalto.gov.br>.
[7] Constitution of the Federative Republic of Brazil, 1988, DOU 05 October 1988, Brazil, online: Camara dos Deputados <http://livraria.camara.leg.br/> (see English version) [*FC/88*].
[8] See Valerio Mazzuoli, *Curso de Direito Internacional Publico*, 6 ed. (São Paulo: RT 2012), at. 836.
[9] Law n° 8.069 of 13 July 1990, DOU 16 July 1990, Brazil, Child and Adolescent Statute, online: CONANDA <http://www1.direitoshumanos.gov.br/conselho/conanda/legis/link6/>(English version) [*CAS/90*].
[10] Law 12.954 of 18 January 2012, DOU 19 January 2012, Brazil, Law of SINASE, online: planalto <http://www.planalto.gov.br>.
[11] *FC/88*, *supra* note 7, Article 227.
[12] Ibid. at Article 228.
[13] Ibid. at Article 227, 3°, V.
[14] João Batista Costa Saraiva, *Desconstruindo o Mito da Impunidade:* um ensaio de Direito (Penal) Juvenil (Brasilia: Centro de Defesa dos Direitos da Criança e do Adolescente – CEDEDICA, 2002) at 50.

Secondary covers protective measures targeted at children/adolescents at personal or social risk; the Tertiary deals with the accountability of juveniles in conflict with the law and with the so-called juvenile justice (Police/Prosecution/Defence/Judiciary/Executing Agencies and Institutions).[15] The Law of SINASE/12, though related to the implementation stage of measures applied by the juvenile justice, is an important source of principles that can be used in the whole child's system.

As for the consequences of all these international and local legal commitments, Brazil has undertaken obligations to ensure, respect, protect, promote and fulfil fundamental rights, as well as to positively implement policies and programmes, with absolute priority to the ones related to children/adolescents. This position disallows any attempt to deny or empty child rights contents, that is, to treat them as if they were not rights, but mere guidelines; rather, they impose concrete actions and policies on the Powers of the State for the achievement of their purposes.

III. 27 YEARS AFTER THE CAS/90: TIME TO RETHINK

Written law often differs from the reality of its enforcement. Twenty-seven years have passed since the CAS/90 and Brazil's reality still does not reflect the theoretical promise. A common picture in all of its large cities is children begging, selling objects at traffic lights and looking after parked vehicles, usually in exchange for very small amounts of money.[16] Poverty, hunger, illiteracy, lack of education and economic opportunities, unemployment, population density, poor hygienic condition, social discrimination, politics, the easy access to firearms and drugs, among others, are also big issues.

Alongside with the lack of family structure and childhood violence, this social and economic picture reflects, in a drastic way, on youth delinquency and, hence, on juvenile justice. Survey data from the Brazilian Ministry of Human Rights demonstrates a huge increase on juvenile incarceration between 1996 and 2014, raising from 4,245[17] to 24,628[18], also indicating a rise on the numbers of serious crimes, like drug trafficking, sexual offences, armed robbery, homicide and firearms possession.

Even with this elevated number of incarceration and despite enough evidence showing that institutional treatment does not deter juvenile offences and that rehabilitation must be the aim,[19] public opinion believes that youth delinquency is increasing because the juvenile system is too "soft", either by not 'punishing' or, when measures are applied, by being too mild, especially the non-custodial ones. As a result, there are two legislative proposals in progress to increase rigour and repression, with widespread support from the public. The first, a constitutional amendment for the reduction of the age of criminal responsibility: from 18 to 16;[20] and second, a law project to increase the maximum length of institutional treatment: from 3 to 5 years.[21]

On the other hand, for many specialists who work in the field, the CAS/90, despite its decades of existence, has never been implemented in its essence. To quote Saraiva: "There are failures, serious failures, but these failures are not of legislation."[22] So, what went wrong?

According to the UN Interagency Panel on Juvenile Justice, despite on-going reform efforts over the past 20 years, "globally, there has been only modest and uneven progress ..., [t]he social and institutional responses to juvenile crime ... are not always resolutely focused on the rehabilitation and reintegration of young offenders ... [and] have not always been very effective in preventing crime and contributing to public safety."[23]

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[15] See *CAS/90*, *supra* note 9, e.g Articles 4, 101, 103–128 and 171–190; see FC/88, *supra* note 7, Article 227.
[16] See e.g UNICEF, "Report on Children in an Urban World: the state of the world children 2012" (2012), online: UNICEF <http://www.unicef.org>.
[17] Brazil, National Human Rights Secretariat, *Levantamento Nacional do Atendimento Socioeducativo ao Adolescente* (2011), at 7, online: SDH <www.sdh.gov.br/assuntos/criancas-e-adolescentes/pdf/SinaseLevantamento2010.pdf>.
[18] Brazil, Ministry of Human Rights, *Levantamento Anual SINASE 2014* (2017), at 19, online: SDH <www.sdh.gov.br/noticias/pdf/levantamento-sinase-2014>.
[19] see e.g Ariel de Castro Alves, "Reduçao da idade penal e criminalidade no Brasil" (2007), online: MPPR <http://www.crianca.mppr.mp.br/>.
[20] Brazil, Proposal for constitutional amendment n. 20/1999, online: Senado <http://www.senado.gov.br>.
[21] Brazil, Law project n. 7.008/2010, online: Câmara dos Deputados <http://www.camara.gov.br>.
[22] "falhas há e são graves, mas não são falhas de legislação" (free translation by the author). João Batista Costa Saraiva, "Medidas Socioeducativas e o Adolescente Infrator" (2000), Revista da Ajuris n. 78, at 129, online: MPSP <http://www.mpsp.mp.br>.

Undoubtedly, Brazil has not been different.

In fact, no legislative change — although very welcome in a few aspects — will have the magic power to make urgent social problems (such as juvenile delinquency) disappear in Brazil. So, finding ways to turn the system more effective must be a greater concern for the entire network of services/protection of children and youth, as constitutional and legal provisions cannot be understood as merely rhetorical or intentional. It is time to carefully rethink, to reflect about what can be changed in the system, including the juvenile justice.

Even though legal, social and economic realities are very peculiar from country to country, finding ideas for reforms based on comparative law and international guidelines is an important part of this process. In addition, international law on criminal and juvenile justice is very rich, allowing critical analysis regarding procedures and methodologies currently performed.

Through this process, one can see that diversion stands as one of the top best practices extracted from the international standards and norms in juvenile justice. So, how is diversion inserted in the Brazilian legal framework? What are its main aspects? What are the challenges? What are the few possible solutions? These are the questions this paper intends to answer.

IV. DIVERSION IN BRAZIL: A FEW CHALLENGES AND SOLUTIONS[24]

The focus of this paper on the challenges the Brazilian diversionary mechanism in juvenile justice ('remission') faces and on a few solutions for its effectiveness lies not only on the international recognition of its importance for any juvenile justice system, but also because of the dimension it has within the Brazilian procedure.

Diversion, the process of channelling children away from formal judicial proceedings and court convictions at any stage of criminal procedures, is "an integral part of an effective child rights-based child justice system".[25] This differentiated treatment in juvenile justice is, first, based on the respect for a sound development of the child and on the assumption that investing in alternatives to traditional proceedings will effectively help prevent recidivism, positively contributing to the system's objectives. Promisingly, children are more capable of long-term changes than adults.[26]

In addition, diversion, by its very nature, minimizes overburdened courts and overcrowded treatment institutions, giving them space to focus on more serious cases; hence, it makes the system more effective and reduces State's costs. The high rate of offenders brought to court, under the classical interventions, raises the chances of inappropriate use of custody, increasing the cost of the system without increasing public safety.[27]

The CRC makes diversion a binding feature for States: "...[w]henever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."[28] As for what is referred to as the 'UN standards and norms in juvenile justice'[29], first, the 'Beijing Rules' (1985)[30] explicitly state that "[c]onsideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority",[31]

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[23] UNODC, IPJJ – Interagency Panel on Juvenile Justice, "Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes" (2010), at 4, online: IPJJ <http://www.ipjj.org/>.
[24] For more information related to this theme see the author's 'Research Project', *supra* note 1.
[25] UNICEF, "UNICEF Toolkit on Diversion and Alternatives to Detention 2009 — International human rights instruments relevant to diversion and alternatives to detention – summary of provisions and commentary" (2009), at 2, online: UNICEF <http://www.unicef.org>.
[26] See Heather Hojnacki, "*Graham v. Florida*: How the Supreme Court's Rationale Encourages Reform of the Juvenile Justice System Through Alternative Dispute Resolution Strategies" (2012) 12 Pepp. Disp. Resol. L.J. 135 at 145.
[27] Bala, Carrington & Roberts, *supra* note 03, at 160.
[28] CRC, *supra* note 5, Article 40(3) (b).
[29] The Beijing Rules, the Riyadh Guidelines and the JDL Rules, together, are referred to as the UN standards and norms in juvenile justice. See *supra* note 25, at 10.
[30] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules), GA Res 40/33, GAOR, 40th Session Supp. No. 96, U.N. Doc A/RES/40/33, (1985).
[31] Ibid., Article 11.1.

given that it outlines detailed guidelines for its practice; second, the principles and provisions addressed by the 'Riyadh Guidelines'[32] (1990) and the 'JDL Rules'[33] (1991) give ideas for the promotion of diversion and alternative programmes.[34] Furthermore, among many others, the Vienna Guidelines[35] (1997) and the United Nations Common Approach to Justice for Children[36] (2008) make specific reference to diversion's importance, including for a well-functioning child justice system.

All this international influence towards diversion did not go unnoticed in the Brazilian settlement of a right's framework. By the end of the 1980s, "diversion ... became common ... in western jurisdictions, [as it] is now universally seen as an integral aspect of the rehabilitative and reintegrative parts of each and every child justice system."[37] Not differently, Brazil's system theoretical background favours diversion through principles, explicit rules, legal tools, proceedings and actors' duties.

Brazil also wants all the benefits of diversion. In fact, diversion is exhaustively granted through prosecutors and judges on a daily basis, as it has a privileged procedural placement. However, the interventions made through remission have not always been effective in achieving its goals and that of the juvenile justice's purposes. So, what are the present challenges? What could be of help to its effectiveness?

A. Specific Definitions and Important Elements of Brazilian Juvenile Justice

In order to reach a uniformity of terms and a better understanding of this paper, it is important to pinpoint a few specific definitions and important elements of the Brazilian juvenile justice:

- Specific legislation (civil law country): FC/88, CAS/90 and the Law of SINASE/12, binding to all states of the Brazilian Federation.

- 'Juvenile offence': a conduct analogous to a crime or misdemeanour – listed in the Criminal Code[38] or extravagant criminal laws[39] — committed by juveniles, as they cannot be held criminally liable.[40]

- 'Juvenile': an individual from 12 to 17 years of age, which is referred to as 'adolescent'; [41] a person 18 years and older is considered 'adult', subjected to criminal justice. Although a 'child' – an individual under the age of 12 – may commit an act similar to a crime, he/she is not held accountable in criminal matters and, hence, is not under the State's coercive power.

- Purposes: first, following the 'Beijing Rules', the promotion of the well-being of the juvenile, by the adoption of the 'doctrine of full protection' and the 'principle of the best interests of the child' as dogmas for the whole system; second, in line with the CRC, the promotion of juvenile's rehabilitation and reintegration, avoiding merely punitive sanctions.[42] In the end, another important aim is preventing crime, contributing to public safety.

- Types of measures applied: protective and socio-educational measures (hereinafter, SEM). The fact that children and adolescents cannot be criminally convicted does not imply they are exempt from

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[32] *UN Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines),GA Res 45/112, GAOR, 45th, Supp. No. 68, U.N. Doc A/RES/4/112, (1990).
[33] *UN Rules for the Protection of Juveniles Deprived of Their Liberty* (JDL Rules), GA Res 45/113 GAOR, 45th Sess., Supp. No. 68, A/RES/45/113, (1991).
[34] See UNICEF, *supra* note 25, at 15.
[35] *Guidelines for Action on Children in the Criminal Justice System,* UNESCOR, 36th plenary meeting, Annex, UN Res 1997/30 – Administration of Juvenile Justice (1997) at para 15, online: UN <http://www.un.org>.
[36] *UN Common Approach to Justice for children*, UN Secretariat-General, Guidance Note (2008), guiding principle 8, online: UN <http://www.un.org>.
[37] Violet Odala, "The Spectrum for Child Justice in the International Human Rights Framework: From Reclaiming the Delinquent Child to Restorative Justice" (2011–2012) 27 Am. U. Int'l L. Rev. 543 at 555 and 563 (Hein Online).
[38] Decreto-lei n. 2.848 of 07 December 1940, DOU 13 December 1940, Criminal Code of Brazil, online: planalto <http://www.planalto.gov.br>.
[39] Such as the Brazilian Laws n. 11.343/06 (about drug use and trafficking) and 10.826/03 (about firearms).
[40] *CAS/90*, *supra* note 9, Articles 103 e 104, and *FC/88*, *supra* note 7, Article 228.
[41] Ibid., Article 2.
[42] Ibid., Articles 1 and 3.

the justice system. Children (up to 11 years of age) are only subjected to protective measures,[43] which can be applied with or without judicial interference. Adolescents (between 12 and 17 years of age) may receive protective and/or SEMs,[44] and depend on judicial proceedings. Protective measures are those without any kind of punitive character and directed to the protection from a hazardous situation caused by threat of or actual violation of rights (such as drug addiction treatment, mandatory school attendance, therapeutic care and temporary guidance, support and monitoring).[45] SEMs are accountability measures, which carry both a retributive character (disapproving the act and preventing new infraction) and, above all, a pedagogical character, "intended to interfere in their development process, aiming at better understanding of reality and effective social integration"[46] (principles of rehabilitation and reintegration). There are six types of SEMs: admonition, damage repair, community service, assisted freedom, semi-liberty and institutional treatment.[47] Only semi-liberty and institutional treatment bring constriction of freedom.

- *'Ministério Público'* (MP): for the purpose of this paper it will be referred here to as 'The Office of the Prosecution Service'. The *'Ministério Público'* is a permanent, independent and autonomous (functionally, administratively and financially) institution of the Brazilian State, essential for the jurisdictional function and responsible for the protection of the legal order, the democratic regime and inalienable social and individual interests. It has a constitutional placement and a wide range of powers that are rarely found in counterpart institutions in comparative law. The MP's members are usually referred as 'prosecutors' (despite their differences) and play an essential role in the protection of society against crimes (including the exclusive responsibility for prosecution) and in implementing and ensuring the effectiveness of fundamental rights (even of the juveniles they formally charge).[48]

B. Remission: The Brazilian Mechanism of Diversion

Similarly to the Brazilian criminal justice procedure for adults, there are three phases in the juvenile justice until sentence/disposition delivery (before the implementation stage): police, prosecutorial (ministerial) and judicial. Nevertheless, the possibility of prosecutors and judges in granting remission — the typical Brazilian mechanism of diversion in juvenile justice — is one of the major specificities that arise, among others,[49] due to the different goals of the two systems.

A brief explanation of the specific legal procedure from the moment of the juvenile's arrest or notice of infraction at the police station until the SEM is implemented is necessary to better understand remission's important placement. The following rules were extracted from the CAS/90[50], slightly complemented by a few jurisprudential developments:

> As for the police phase, when an infraction is attributed to an adolescent, the specialized police office investigates the facts, and hears the alleged offender, the victim and witnesses, among other duties. If the adolescent is apprehended while committing an infraction (known as *flagrante delicto* [caught red-handed]), the police authority informs him of his rights and notifies his family, the judge and the MP [The Office of the Prosecution Service]. As a general rule, the adolescent is immediately released to his parents/guardian, on their commitment to present him to the MP [The Office of the Prosecution Service]. If imperatively necessary,[51] the adolescent can be detained at least until the next day, "for the

[43] Ibid., Article 105.
[44] Ibid., Article 112.
[45] Ibid., Articles 98 and 101.
[46] "tendentes a interferir no seu processo de desenvolvimento, objetivando melhor compreensão da realidade e efetiva integração social" (free translation by the author). Olympio de Sá Sotto Maior Neto, "Ato infracional, medidas sócio-educativas e o papel do sistema de justiça na disciplina escolar", online: MPPR <http://www.mppr.mp.br>.
[47] *CAS/90*, *supra* note 9, Article 112.
[48] *FC/88*, *supra* note 7, Articles 127–130.
[49] For example: 1) the existence of an informal hearing of the adolescent and his parents/guardian (as well as the victims and witnesses, if needed) chaired by the prosecutor, before deciding how the case should proceed; 2) a very short term for pre-trial detention: maximum of 45 days counted from the day the adolescent is apprehended until the day the sentence/disposition is delivered, unlike the many months for adults; 3) the maximum limit of 3 years for de SEMs of internment or semi-liberty, while adults can receive a penalty of many years; 4) adolescents' records and proceedings are confidential, while public for adults.
[50] *CAS/90*, *supra* note 9, Articles 171–197.

guaranty of his personal security or the maintenance of the public order, due to the gravity of the infraction and its social repercussion."[52] After collecting evidence, the investigation file is sent to the Juvenile Court and forwarded to the MP [The Office of the Prosecution Service] (along with information on the youth's antecedents).

The ministerial [prosecutorial] phase starts when the prosecutor receives the investigation file. In cases of *flagrante delicto* [caught red-handed] when the adolescent is not released to his parents/guardian, the police authority will present him to the MP [The Office of the Prosecution Service] within 24 hours; the prosecutor will then "proceed immediately and informally to the hearing and, if possible, to the testimony of his parents or guardian, victim and witnesses";[53] he will also pronounce on the need for the adolescent's temporary internment (i.e. if the adolescent is to remain interned during the judicial phase [pre-trial detention]). In the absence of 'flagrante delicto' and in cases of 'flagrante delicto' with immediate release by the police authority, the prosecutor may call parents/guardian to present the adolescent at the MP [The Office of the Prosecution Service], in order to implement the 'informal hearing'.

Through informal hearing,[54] the prosecutor talks to the adolescent (preferably accompanied by an attorney/public defender and by his parents/guardian) about the facts. The adolescent and his parents/guardian also discuss his social and family realities [circumstances]. If necessary, the prosecutor can hear the victim and/or witnesses. Alongside other legal powers inherent in the MP [The Office of the Prosecution Service] (...), the prosecutor can return the investigation file to the police authority for implementation of additional diligences, necessary to clarify the act's dynamics. After analyzing the facts, the evidence collected, the seriousness of the infraction, the adolescent's social and family environments, his criminal antecedents etc., the prosecutor takes one of the following actions: promoting the permanent filing of the investigation file, granting remission or presenting the case to the Juvenile Court to initiate judicial proceedings. Permanent filing occurs when no evidence is found to prove an infraction has occurred or the adolescent's involvement, despite exhausting all investigative actions. Extrajudicial remission removes the case from judicial proceedings and does not imply recognition or proof of guilt, nor does it prevail for purposes of criminal history. The case is presented to the Court when deemed inadequate for remission; in this situation it is possible, as a last resort, to temporarily intern [pre-trial detention] the adolescent. In all three possibilities the whole investigation file (with all the documents produced by the police and the MP [The Office of the Prosecution Service]) will either return to the Juvenile Court for simple approval in the two first situations, or for decision in the last.

The judicial phase begins with the Judge's decision to accept the case presented by the MP [The Office of the Prosecution Service]. The Judge will decide on the need for temporary internment [pre-trial detention] (lasting up to 45 days) and schedule a hearing to interrogate the adolescent. In this first hearing, the Judge may grant judicial remission, after registering the prosecutor's opinion, or continue proceedings. In the latter case, another hearing is scheduled for the production of proofs (usually through victims and witnesses' testimony), under the principles of contradictory and full defense; once completed, based on all evidence collected and the interprofessional team support's report, the parties (MP [The Office of the Prosecution Service] and adolescent) will make their final pronouncement and the Judge will issue sentence [/disposition]. If the adolescent is proved to have committed the infraction, the Judge will apply any socio-educational or protective measures listed in the CAS.

The implementation stage is the next step after the sentence/disposition applies a SEM.[55] Similarly this stage is triggered when a SEM is combined with an extrajudicial ([by the Prosecutor in the] ministerial phase) or judicial remission (which can be granted up until the moment the sentence [/disposition] is delivered). (...)

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[51] See Cristiane Dupret, *Curso de Direito da Criança e do Adolescente* (Belo Horizonte: ius, 2012) at 286–287.
[52] *CAS/90, supra* note 9, Article 174.
[53] *CAS/90, supra* note 9, Article 179.
[54] Ibid. The informal hearing is an exclusive duty of the Prosecutor. See also MPSP, "Manual Pratico das Promotorias de Justica da Infância e Juventude" (2012), online: MPSP <http://www.mpsp.mp.br/>.
[55] Aee Law of SINASE, *supra* note 10.

> The mandatory presentation of the adolescent apprehended in *flagrante delicto* but not released by the police and the possibility of summoning the adolescent who is free before the authority that can prosecute him may sound strange to those who come from another legal system. In fact, considering the MP's constitutional profile, it is the prosecutor who, in a prominent position, must ensure adolescents' rights, taking suitable firsthand precautions for adolescents' full protection. Certainly the informal hearing may provide more elements to the prosecutor's conviction on the adolescent's committing the act and its circumstances. From another angle, the informal hearing is an opportunity (as he has the right to silence) for the adolescent to expose his version of the facts and his social and family environments to the one who will decide how the case should proceed, with the power to channel him away from formal judicial proceedings, instead of prosecuting.[56]

In summary, remission can occur in two phases of the procedure:[57] prosecutorial and judicial; i.e., before or after the juvenile is formally prosecuted. In the prosecutorial phase, the decision of not putting the case before the judge is a prosecutor's prerogative, based on legal limits; if remission is granted, the juvenile is spared from court proceedings and the case's formal file is dismissed. On the other hand, if the prosecutor decides to put the case before the court and initiate court proceedings, remission can be granted in the judicial phase (up to disposition) by the judge —also based on legal limits —, after hearing the prosecutor's opinion; if remission is granted (usually in a hearing), the juvenile is spared from continuing on court proceedings and from eventual proof of guilt; in this situation, remission will imply suspension or extinction of the case's formal file.

In many cases, non-intervention through simple remission — i. e., without its combination with any protective or SEM —will be the 'optimal response', as highlighted in the Beijing Rules.[58] But often it is appropriate to combine remission with other interventions, especially with protective measures and/or with the SEMs of admonition, damage repair, community service or assisted freedom,[59] as these may provide services that suit the juvenile's needs; in this case, remission takes the form of an 'agreement' between the prosecutor or judge, the juvenile, his parents/guardian and the defence attorney, depending only on court homologation.[60]

So, as stated elsewhere: "in addition to 1) avoiding a criminal record, 2) preventing stigmatization or contamination through contact with criminal proceedings, 3) minimizing deprivation of liberty and contact with more hardened offenders, remission provides the adolescent with the possibility of learning valuable lessons from programmes and acquiring social responsibility through community service or amendments to the victim."[61] In other words, remission's theoretical grounds and legal rules place it alongside other diversionary practices in line with the international instruments and norms/standards.

C. The Practice: The Challenges Faced by Remission and a Few Solutions

Put into practice, there have been countless remissions delivered on a daily basis, formally in line with rapid proceedings. However, a great number of these remissions have not been effective in achieving its goals, often due to the lack/deficiency of the interventions' implementation or to the way they are established. Indeed, remission's effectiveness faces many challenges. Considering that every juvenile justice system "requires a commitment to the realization of the jurisdiction's results, not satisfied, by definition, by the fulfilment of formal procedures",[62] ideas must arise to minimize these challenges.

It is not even necessary to resort to numbers to conclude that juvenile delinquency in Brazil is rising. The yearly increase of the sense of insecurity already gives the answer. This is even more visible for those who work in the field, due to the number of juveniles who return to the system, sometimes in less then one month

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[56] This citation was extracted from the author's research project, *supra* note 1, at 27-30.
[57] *CAS/90*, *supra* note 9, Article 126.
[58] Beijing Rules, *supra* note 30, commentary to Article 11.
[59] Semi-liberty and Interment can only be applied through formal court proceedings (through judicial sentence), due to the restriction of freedom both carry. *CAS/90*, *supra* note 9, Article 127.
[60] *CAS/90*, *supra* note 9, Article 127. See Leoberto Brancher, "Justiça, Responsabilidade e Coesão Social" (2006), at 20-21, online: TJRS <http://www.tjrs.jus.br>.
[61] This citation was extracted from the author's research project, McGill University, *supra* note 1, at 21.
[62] "[E] xige-se compromisso com a materialização dos resultados da jurisdição, não se satisfazendo, por definição, com o cumprimento de protocolos formais" (free translation by the author). Brancher, *supra* note 60, at 19.

of the last release done through remission.

Although recidivism is influenced by numerous factors, this situation draws attention to an urgent problem within the Brazilian juvenile justice and calls for immediate solution. Considering that first-time offenders and those without persistence in criminality (target group for remission) are the ones which are having poor response to the offence committed (usually limited to a one day contact with police officers and/or prosecutors/judges), the system, instead of preventing re-offending, ends up encouraging it by the sensation 'that nothing happens'. In fact, these juveniles are perhaps the ones who most need prompt and effective interventions. The "earlier the investment in an individual, ... the more cost effective the investment."[63]

Evidently, the effectiveness of remission is closely linked to the implementation of the interventions determined (mostly SEMs). Although the implementation stage of any SEM (including the ones applied through remission) has prosecutorial supervision and judicial decision (for changes, extinctions, among others), the administration of the institutions and bodies responsible for implementing the measures, as well as the forms and methodologies used in their work for reintegration/rehabilitation, are from the Executive Power of each state of the federation. That is, it stays out of both the Office of the Prosecution Service and the Judicial Power control.

However, despite the existence of notorious failures from the local Executive Powers — cited by the practitioners in the field as one of the major causes of the system's ineffectiveness —, there are still deficiencies in the ministerial and judicial phases of the procedure that also need improvement. So, a few deficiencies have been identified and will be analysed below as challenges, considering they are issues in which prosecutors/judges can intervene for the improvement of remission's effectiveness.

1. First Challenge: The Poor Assessment of the Juvenile's Needs[64]

(a) Theoretical background and daily practices' limitations

In the opportunities to adjust remission, through informal (prosecutorial) or judicial hearings, prosecutors and judges briefly collect information and impressions about the juvenile's personality, social and family environments, reasons for his/her actions etc., which often allow an overview of his/her needs and the identification of the adequate interventions. Nevertheless, due to limitations of time, technical approaches and familiarity with all programmes/services, in countless cases, prosecutors/judges are not able to appropriately assess the various aspects of the juvenile's life. Hence, the interventions determined may not be the most suitable, minimizing their effectiveness.

In the decision-making process, according to the law,[65] prosecutors/judges shall analyse the "circumstances and consequences of the fact, to the social context and personality of the adolescent and to his greater or lesser participation in the offence".[66] Frequently, problems involving school evasion, family violence, parental abandonment, emotional or sexual abuse, illness and drug use – commonly associated with the phenomenon of delinquency — are detected.[67]

Regardless of the course given to the case, protective measures can be applied immediately, whereas the list is merely illustrative.[68] Often it is suitable to combine remission with the juvenile's commitment to fulfil a non-custodial SEM (i.e. admonition, damage repair, community service or assisted freedom), as it may provide

[63] United Nations, "United Nations Fact Sheets on Youth", online: UN <http://www.un.org>.
[64] For more information see the author's research project, *supra* note 1.
[65] *CAS/90, supra* note 9, Articles 126 and 186.
[66] So, among other functions, the prosecutor/judge must: 1) take the adolescent's version of the facts, 2) analyse the facts and evidence gathered, 3) talk about the juvenile's social and family environments, 4) evaluate the need for protective and/or SEM, 5) take relevant extrajudicial provisions, if necessary, 6) check if any right was violated during police investigations, 7) decide on the case's course, 8) evaluate the need for pre-trial detention when the case is presented to the Court, 9) prepare petitions/decisions. When granting remission, the prosecutor/judge shall also explain its legal and social implications to the adolescent and his parents/guardian. See Maria Cristina Sanson, "Considerações teórico-práticas sobre a audiência de apresentação de adolescente autor de ato infracional perante o Ministério Público: finalidade e condução" (2009), online: MPPR <http://www.mppr.mp.br>.
[67] See Sanson, *supra* note 66.
[68] *CAS/90, supra* note 9, Articles 98 and 101.

the appropriate response/services, as stated before.

Moreover, the Brazilian playing field for juvenile justice is not limited to legal rules — even though it remains its primary source. Although the list is exhaustive in the case of SEM, the legal framework encourages diversity of methodologies/interventions within each SEM, as well as extrajudicial provisions by the Office of the Prosecution Service and the Judiciary, all in the 'best interest of the child' and for the achievement of their roles.[69] For example, often juveniles need referrals for school change, engagement in sports activities/arts/charity, internship etc., in order to remove or reduce risky behaviours.

However, informal (prosecutorial) or judicial hearings can perhaps take as little as 15 minutes,[70] depending on the jurisdiction's number of cases and administrative structure. Besides the limitation of time, the lack of specialized technical approaches from non-legal backgrounds also often prevents an adequate assessment. In addition, prosecutors/judges will rarely be aware of or familiar with all community, private sector and State's programmes/services available for referral, especially for extrajudicial provisions.

For example, if remission is to be combined with a protective or SEM, the choice of the measure, as well as of the possible referrals and other extrajudicial provisions, might not always be the most appropriate; if simple remission (without any measure) is found to be the best response, the opportunity to make suitable interventions in the juvenile's last contact with the system regarding the offence committed may be wasted. Thus, the response delivered may not best suit the juvenile's interests and, consequently, these situations put diversion's effectiveness at risk.

(b) An idea for change: insertion of multidisciplinary team support

The approximate 30 minutes[71] of informal (prosecutorial) or judicial hearings (including the ones that adjust remission) are more often insufficient for both the interrogatory about the facts related to the offence and the comprehensive assessment of juvenile's various needs. In addition, the prosecutor/judges' technical approaches used in the these hearings depend on the their personality and skills. In many cases, the limitation of time and techniques to address more complex issues will prevent an accurate and reliable diagnose of the juvenile's situation, with a chance of leading to inadequate, ineffective or unenforceable interventions. Therefore, the need for professionals from other fields, such as psychologists and social workers, in the prosecutorial and judicial phases of the procedure is intuitive, as they have technical skills and familiarity with the wide range of community and State programmes/services; in addition, they can devote more time to specific cases, all of which optimize interventions.

The relevance of this backup structure has not gone unnoticed in the Brazilian legislation: since 1990 the CAS/90 predicts not only the establishment of specialized and exclusive Child and Youth Courts in the jurisdictions, but also determines that the Judiciary must keep a multidisciplinary team within its structure.[72]

The reality on the ground, instead, is quite different. In 2014, only 159 of the 1,303 Brazilian Child and Youth Courts around the country handled, exclusively, with cases involving children and adolescents[73] and most of them had no or insufficient multidisciplinary staff.[74] Considering the compatibility with its constitutional role, the Office of the Prosecution Service of a few jurisdictions has created these teams to assist the work of prosecutors in children and youth matters, in both civil and criminal fields.[75]

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[69] See e.g. *CAS/90*, *supra* note 9, Article 201, paragraph 2.
[70] This finding is based on the experience of the author in the field.
[71] Ibid.
[72] CAS, *supra* note 9, Articles 145 and 150; See also Law of SINASE, *supra* note 10, Article 53.
[73] The law does not require all 2,643 judicial districts of Brazil to have Child/Youth Courts, as it depends on the amount of their population. However, 159 of specialized Child and Youth Courts is still a very small number. G1, "Só 12% das Varas da Infância no país são exclusivas, segundo CNJ" (24/05/2014), online: Globo <http://g1.globo.com/>.
[74] Brazil, Institute of the Rights of Child and Adolescent, "O Sistema de Justiça da Infância e da Juventude nos 18 anos do Estatuto da Criança e do Adolescente" (2008), at 15 and 41, online: ABMP <http://www.abmp.org.br/UserFiles/File/levantamento_sistema_justica_ij.pdf>. See also Dourados Agora, "MS tem número insuficiente de varas da Infância e Juventude" (2008), online: Dourados Agora <http://www.douradosagora.com.br>. See Brazil, National Council of Justice, Provimento n. 36 of 05 May 2014, online: CNJ <http://www.cnj.jus.br>. See Brazil, National Council of the Rights of Child and Adolescent, Resolução n. 113 of 19 April 2006, Article 7, I, online: Ministerio dos Direitos Humanos <http://dh.sdh.gov.br>.

As a matter of fact, due to the adoption of the 'doctrine of full protection' and the 'principle of the best interests of the child/adolescent' as dogmas, all issues related to child and adolescent in Brazil must be handled with a holistic and comprehensive approach[76] — another international good practice in juvenile justice closely linked to diversion. According to international guidelines, "an 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."[77] So, different juveniles may receive different responses to similar offences.

Thus, the implementation of this type of team support — given the relevance of its potential functions[78] to the effectiveness of the interventions determined — should not be an isolated initiative from the Judiciary and the Office of the Prosecution Service in only a few jurisdictions. Considering the primacy conferred to youth by the FC/88, it should be priority for both institutions in all jurisdictions, above all other important areas that also need it.

2. Second Challenge: The Use of Limited Intervention Methods

(a) Theoretical background and daily practices' limitations

Whether by principles or explicit rules, the Brazilian system provides openings for the introduction of various methods of interventions with juvenile offenders. The adoption of the 'doctrine of full protection' and the 'principle of the best interests of the child/adolescent' allied to the malleability given to remission is sufficient enough to reach this conclusion. Yet, in practice, the use of the traditional methods is still frequent, even though they can bring 'gaps of content'[79] in addressing problems that are daily handled in the juvenile justice.

In fact, despite the flexibility and discretion conferred to prosecutors/judges through remission, Brazil is a civil law country, with more inflexible criminal law than common law countries, due to the principles of legality and unavailability of prosecution. Naturally, prosecutors/judges have the tendency to rely on the usual legal forms of interventions even within the juvenile justice. Moreover, Brazilians still nourish a retributive culture, despite the rich legal framework towards the dogmas of protection. As example, the legislative changes in progress indicate the Legislative Power and society's predisposition to treat juvenile delinquency with increasing rigour and repression.

Besides that, the Brazilian justice system is still attached to consider the State as the biggest victim of the offence, though a few legal changes have emerged in this aspect.[80] In practice, victims usually still remain secondary in the judicial procedures and their participation is basically restricted to testifying as witnesses in court. That is, the victim is "used" in the gathering of evidence to alleviate or to harden the judicial consequences for the offender, rather than in a healing process of his/her suffering or loss.

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[75] For example, the Federal District and Pará. See the Office of the Prosecution Service of the Federal District and Territories, *Regimento Interno Estrutura Administrativa*, Anexo da Portaria Normativa n. 476 (20 December 2016) at Article 217, online: MPDFT <http://www.mpdft.mp.br>. See Alexandre Theo de Almeida Cruz, "O adolescente autor de ato infracional: um cidadao", online: MPPA <https://www.mppa.mp.br>. See also Brazil, National Council of the Prosecution Service, Recomendação n. 33, 05 April 2016, Diário Eletrônico CNMP, Caderno Processual, 04 May 2016, at 1/3, online: CNMP < http://www.cnmp.mp.br>.

[76] For more information see the author's research project, *supra* note 1.

[77] United Nations Office on Drugs and Crime, "Manual for the measurement of juvenile justice indicators" (2006), at 1, online: UNODC <http://www.unodc.org>.

[78] "This team may subsidize the prosecutor's informal hearing by, for example: 1) interviewing the adolescent and those responsible for him — perhaps using different approaches and clinical tools — to suggest the most appropriate measures based on personal skills and the assessment of psychosocial and family environments; 2) diagnosing cases of psychological/mental problems and drug abuse, to determine if the adolescent requires specialized treatment; 3) contacting the victim about theharm caused, the possibility of mediation, expectations etc.; 4) guiding adolescents' family members, to make them aware of their responsibility in education and resocialization; 5) identifying the need for extrajudicial provisions, to send adolescents and their families to public or private programmes related to arts, education, sports, charities etc.. This team may also: 1) keep track of and intimate connection with social networking services regarding all programmes for referral; 2) develop, implement, coordinate and evaluate internal and external projects of interest to the MP; 3) analyze plans, projects, programmes, and operate public and private entities for the referral of adolescents etc." This citation was extracted from the author's 'Research Project', *supra* note 1, at 43.

[79] See Brancher, *supra* note 60, at 4.

As a consequence, in the daily practice of juvenile justice, whenever remission is agreed with SEM, the option is often limited to community service or assisted freedom, under their traditional approaches. Damage repair — the measure that could come closest to these legal changes — is rarely used. Indeed, even though almost 50% of the infractions are property offences,[81] the SEM of damage repair is rarely applied. In addition, extrajudicial provisions and referrals, such as to State and community programmes, to educational and artistic projects, sports activities, charity etc. are often not of big focus. So, this Brazilian practice moves away from the 'best interest of the child', minimizing, again, diversion's potentials.

(b) An idea for change: shift of the paradigm in intervening with youth

Alongside with the lack of State resources, other objective factors, such as the number of cases within the jurisdiction, technical training, conditions stipulated for referrals, procedural flow between the Office of the Prosecution Service and the Judiciary, organizational structure and management, influence the types and quantities of methodologies/interventions chosen in the prosecutorial and judicial phases. Nevertheless, subjective factors are also important obstacles, within prosecutors/judges, for the adoption of new methods of interventions with youth through remission, for better rehabilitation and reintegration.

Indeed, a big challenge for diversity in this field is the cultural change, minimizing the retributive culture, to allowing new openings in the interventions determined. There is space for creativity, especially if a multidisciplinary team is involved.

In order to make a real shift in paradigm, first, there is a growing need for increased awareness of the importance in improving existing practices and of how even small changes can positively contribute to transforming the system. Fortunately, a few initiatives, such as seminars, workshops and group discussions through social networks, as well as the social pressure for legislative changes in youth legislation, are a few ways of expanding this awareness.

Second, there is a growing need to involve professionals with non-legal background in the decision-making process, such as specialized internal or external teams/bodies, victim, offender, community, social assistants, psychologists etc.. For example, it will not do any good to have a multidisciplinary unit and not make use of it. Encouragingly, there is growing recognition that juvenile justice depends more and more on other areas of knowledge for effective decisions.

Third, there is a need for undergoing training and educational programmes etc. More importantly, the exchange of information with other States and empirical experiences in a comparative law perspective, as well as a deep analysis of the current international framework in juvenile justice, may shed light on what can be created or modified. Luckily, since most prosecutors and judges studied and experienced the Brazilian juvenile justice law from the new legal order's perspective (over 27 years old), many of them are already receptive to accept and promote ways to insert new tools for action.

Fourth, there is a need for expanding the types of interventions applied, as the Brazilian practice of limiting interventions only to protective measures and SEMs, under their traditional compliance approaches, goes against the effectiveness of the system. For example, sometimes a new intervention can simply be the prosecutor/judge's effort of working the offence from a different perspective, allowing time to sensitize the juvenile to the consequences of the conduct, to recognition of his/her responsibility and to the importance of repairing the harm.[82] In others, it can be the referral to social projects, meetings and programmes created by the Judiciary or the Office of the Prosecution Service itself, or other extrajudicial provisions.

In fact, this practice also moves away from the tendency of using restorative justice interventions — another international best practice in juvenile justice, cited by the United Nations Committee on the Rights of the Child as "an integral part of effective, child rights-based child justice system",[83] in the same vein as

[80] See amendments to the Brazilian Code of Criminal Procedure by the Laws 11.719/08 and 11.690/08, online: Planalto <www.planalto.gov.br>. See Law of SINASE, *supra* note 10, Article 1, paragraph 2, I.
[81] Brazilian Ministry of Human Rights, *supra* note 18, at 28.
[82] See Lélio Ferraz de Siqueira Neto, "Oitiva Informal – uma perspectiva garantista e restaurativa" at 8, online: MPDFT <http://www.mpdft.mp.br>.
[83] UNICEF, *supra* note 25, at 2.

diversion. According to the United Nations, restorative justice is an approach "in which the victim and the offender, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator."[84] So, unlike 'retributive justice', which concentrates on the crime and punishing the offender via a two-way relationship (offender and State), restorative justice focuses on problem-solving in a three-way relationship (between the offender, victim and society), addressing needs, harm, accountability, personal development, community involvement and obligations, to 'restore' harmony as much as possible.[85]

Juveniles are expected to understand choices' implications and be accountable for actions, to repair harm, learn to respect others, tackle guilt feeling and to develop personally in order to meet the community's needs related to the offence.[86] These expectations are advantageous and highly compatible with juvenile justice's aims, as they tend to contribute to the process of reintegration and to make the young offender take responsibility for actions, in order to change behaviours and to transform him/her into an active contributor of society, and, hence, increase public safety.[87] No wonder restorative justice initiatives, despite its challenges,[88] have grown significantly worldwide, including in juvenile justice.[89]

In Brazil, although the Law of SINASE/12 expressly mentions restorative practices as one of its principles,[90] its use is still limited to very few jurisdictions.[91] Only in 2005 the development of three pilot projects with distinct proposals within the Judiciary officially began.[92] Two of these projects (Sao Caetano do Sul/SP and Porto Alegre/RS) have focused on juvenile justice.[93] From these experiments, other initiatives emerged in the country, usually in the form of restorative circles (inspired by the Canadian model[94]). Yet, considering Brazil as a whole, restorative justice in juvenile justice is still in an embryonic stage.

Diversion does not always imply the use of restorative justice approaches, as it is a complementary method, not suitable in all cases.[95] Nevertheless, restorative justice can definitely enrich remission, by adding consistency, content and reliability.[96] For example, as stated elsewhere: "depending on services rendered by the actors involved in the juvenile system in each Brazilian state, the prosecutor[/judge] can refer the juvenile and other interested parties (victim, relatives and community) to restorative programmes of the community, the State or the MP, so the set of commitments between them is taken into consideration when granting remission[97]"[98] And continues: "[i]f this referral is not possible or is inappropriate, remission can always be granted combined with a protective or SEM, putting the restorative elements in generic terms, so the commitments to be covered in compliance with the measure will be further specified in the implementation stage."[99]

3. Third Challenge: The Delay in Starting the Interventions Applied

(a) Theoretical background and daily practices' limitations

The Brazilian judicial procedure ensures celerity in establishing measures for the young offender, since

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[84] *Basic principles on the use of restorative justice programmes in criminal matters*, UNESCOR, 37th plenary meeting, 24 July 2002, Annex, Res 2002/12 at para I.2.

[85] Ibid.

[86] UNICEF, Toolkit on Diversion and Alternatives to Detention – Definitions – Restorative Justice, at 5, online: UNICEF <http://www.unicef.org>.

[87] See CRC, *supra* note 5, Article 40.1.

[88] Such as well-trained facilitators, proper case selection, immediate funding (despite its potential to reduce long-term costs), elements to ensure offenders' rights and meet victims' needs (e.g., security, respect, information, testimony, restitution), as well as to prevent secondary victimization and pressure on participants etc. See Canadian Resource Centre for Victims of Crime, " Restorative Justice in Canada: what victims should know" (2011) online: rjlillooet <http://www.rjlillooet.ca>.

[89] Nessa Lynch, "Restorative Justice through a Children's Rights Lens" (2010) 18 Int'l J. Child. Rts. 161 at 162 (Hein Online).

[90] See Law of SINASE, *supra* note 10, Article 35, III.

[91] For example, Heliopolis and Guarulhos: see Ednir Madza org, "Justiça e educação em Heliópolis e Guarulhos: parceria para a cidadania" (2007), Sao Paulo, online: MPSP <http://www.mpsp.mp.br>. For Belo Horizonte and Sao Jose de Ribamar/MA see Caio Augusto Souza Lara, "Dez anos de práticas restaurativas no Brasil: a afirmação da justiça como política pública de resolução de conflitos e acesso à justiça" online: Publica Direito <http://www.publicadireito.com.br>.

[92] Brazil, Justice Ministry and PNUD, Catherine Slakmon, Renato De Vitto & Renato Gomes Pinto, org., *Justiça Restaurativa* (2005) at 221, online: UFPE <https://www.ufpe.br>

[93] For Porto Alegre/RS, see Brancher, *supra* note 60. For Sao Caetano do Sul/SP, see Brazil, Human Rights Special Secretariat, Eduardo Rezende Melo, Mazda Ednir e Vania Curi Yazbek, *Justiça Restaurativa e Comunitária em São Caetano do Sul – Aprendendo com os conflitos a respeitar direitos e promover cidadania* (2008), online: TJSP <http://www.tjsp.jus.br>.

most cases are related to adolescents caught in *flagrante delicto* and pre-trial detention can only last up to 45 days until sentence/disposition.[100] However, after the SEM or protective measure is applied through remission or by sentence, the implementation of interventions without restriction of liberty (usually SEMs of community service, assisted freedom or damage repair) commonly takes months or even years to begin (ultimately, perhaps hindered by time-barring) in most — if not all — of the Brazilian states. Obviously, if the juvenile's convocation to initiate the measure applied takes too long, he/she will not take full advantage of the valuable educational aspects of the measure he/she has the right to comply and will feel a 'sensation of impunity'. This sensation affects, in a very negative way, rehabilitation and reintegration, encouraging, in the end, recidivism.

These consequences can be even worse in cases of measures applied through remission. Considering that, in practice, this benefit is granted to first time offenders or to those without persistence in criminality, whose offence was committed without violence or serious threat,[101] in the absence of a rapid response, the offender, in addition to not taking advantage of the educational aspects of the measure, will not have felt the weight of court proceedings and conviction (from which he/she was channelled away). So, the 'sensation of impunity' tends to be bigger, even because the hope in rehabilitation/reintegration of the juvenile will basically lie on his family (if present), which does not always achieve good results on its own, as the State's opportunities to help were squandered. In other words, the possibility of re-offending increases, putting, once again, diversion's scope at risk.

(b) An idea for change: articulated/collaborative action among the system's actors

For years, the answer to the delay in starting the implementation of the interventions determined by the juvenile justice — which, as stated before, is a local state power responsibility — has always been the same: the insufficient number of available spots in the programmes/services. Some say the reason for that is scarce resources; others understand it as the lack of political will. Regardless, the disarticulation and physical distance between the bodies involved in determining the interventions (prosecutors/judges) and in implementing them (administrative bodies of the local states) are other important factors that contribute to this time gap.

The integration of entities from public security (military/civilian polices), the Justice system (Prosecution, Public Defence and Judiciary) and social assistance (bodies from the local state) has been predicted in the CAS/90 27 years ago.[102] However, very few jurisdictions have Operational Integration Centres for the whole of the procedures.[103] A few others only provide this structure for juveniles apprehended in *flagrante delicto* and not released to their families by the police authority.[104]

According to the Beijing Rules, "[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".[105] So, celerity is an extremely important 'best practice' in all youth interventions for the healthy development of the juvenile and, hence, for the system's effectiveness.[106] Indeed, "by promptly addressing the causes and consequences of their behavior, 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."[107]

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[94] In Canada, the first recognized case of restorative justice (victim-offender mediation) was documented in Kitchener/ON, in 1974. See Department of Justice of Canada, 'Restorative Justice in Canada' (2000), online: Justice <http://www.justice.gc.ca>.
[95] See UNICEF, *supra* note 86, at 10.
[96] Brazil, National Human Rights Secretariat and CEAG/UnB, *Modulo IX* - Curso SINASE, *JR no ECA e mecanismos diversórios*, at 3, online: TJMG <http://www.tjmg.jus.br>.
[97] See Brancher, *supra* note 60, at 15.
[98] This citation was extracted from the author's research project, *supra* note 1, at 33.
[99] Ibid.
[100] CAS/90, supra note 9, Article 108.
[101] Ibid, Article 178.
[102] Ibid, Article 88, V.
[103] For example, Belo Horizonte/MG.
[104] For example, the Federal District and Recife/PE.
[105] Beijing Rules, *supra* note 30, Commentary to rule 20.1.
[106] See Sanson, *supra* note 66.

Since the dilemma between scare resources and political will tends to never end, as a start, it seems that the Office of the Prosecution Service and the Judiciary, besides pressing for government's investments in the filed, must direct strong efforts in bringing the local state agencies responsible for the implementation stage to the surroundings of the prosecutorial and judicial phases, as active daily partners. In this way, whenever interventions are established (e.g., a remission agreed with a SEM), the juvenile is immediately directed to the state's agency, to decide the starting date of the services/programmes and other important details and orientations.

This physical articulation between the institutions and agencies that work in the system as a whole brings, at least, the following advantages: 1) the disruption of the compartmentalization of the actors, allowing approximation;[108] 2) the creation of collaborative relations between these actors; 3) the exchange of knowledge and experiences concerning different variables of the system; 4) the de-bureaucratization of procedures; 5) the opening for new methodologies of intervening with youth; 6) cost division. As for the juvenile, this coordination reduces the 'sensation of impunity' (whereas at least there was a kick-off on the implementation of the interventions determined) and increases the chances of being notified to start to comply with the measure, as all actors will be working together in that direction. At the very end, perhaps all these actors together might be able to better pressure the local state power to positively implement policies and programmes.

V. CONCLUSION

The 254th meeting of the Committee on the Rights of the Child noted: "what was in the best interests of the child was in the best interests of society, hence a juvenile justice system that did not function well failed not only the children, but society as a whole, for, far from protecting society, it merely generated criminals to prey upon it."[109] Indeed, juvenile justice needs to focus on concrete results, as it is a strategic field for action in preventing the spread of violence and crime for current and future generations.

Considering the large number of cases with first-time offenders and those without persistence in criminality (whose offence was committed without violence or serious threat), effective interventions over this target group through remission not only contributes for the well-rounded development of a great number of juveniles, but also minimizes overburdened courts and overcrowded treatment institutions, shifting the focus to more serious cases. Thus, it makes the system more effective and also reduces State's costs.

Attacking criminality's root causes seems to be a better tactic than responding only to its symptoms. However, Brazil has been mostly attacking the symptoms, as this type of offender more often doesn't receive any response, while it focuses on increasing rigour and repression, especially through institutional treatment.

The poor assessment of the juvenile needs, the use of limited intervention methods and the delay in starting the interventions applied are constantly putting remission's benefits at risk. Drawing upon a few other international best practices, juvenile justice must use a holistic and comprehensive approach to the aspects of the offender life, must be open to different types and methods of approaches, including restorative justice, and must be fast and prompt in the response. Yes, indeed juvenile justice shall assist juveniles with services in other sectors of society, such as education, health care, social assistance etc., if those are needed for their sound development.

Lastly, "the biggest challenge is not on the law but on the need to overcome cultural barriers that deplete their interpretation and application."[110] Only after overcoming this barrier, it will be possible to see the importance of a multidisciplinary team support, to shift the paradigm in intervening with youth and to fight for an articulated/collaborative action among the actors of the system, towards its effectiveness.

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[107] Hojnacki, *supra* note 26, at 155.
[108] See Vera Lucia Deboni, "Centro Integrado de Atendimento à Criança e Adolescente" (2010), 'Prêmio Innovare – Edição VII', online : Premio Innovare <http://www.premioinnovare.com.br>.
[109] Odala, *supra* note 37, at 573.
[110] 'O maior desafio nao esta na lei, mas na necessidade de superar barreiras culturais que empobrecem a sua interpretacao e aplicacao.' (free translation by the author). Brazil, National Human Rights Secretariat and CEAG/UnB, *supra* note 96.

COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS IN KENYA: A CASE STUDY OF KIKUYU SUB-COUNTY IN KIAMBU COUNTY

*Zacharia Kuria Mwangi**

I. INTRODUCTION

A. Summary of Community-Based Treatment of Juvenile Offenders in Kenya

The probation office plays a major role in management of juvenile delinquents. The two categories of offenders handled include those put on probation by the Children's Court and persons released from a juvenile institution on or before completion of their term.[1] The Children's Act provides that a child is any person less than 18 years of age and safeguards the best interests of the child. Agencies involved in the juvenile justice system include the Police, Medical services, Registration of Persons, Social Workers and Non-Governmental Organizations.[2] This method of treatment, also known as the "closer-to-home principle", has been championed by experts as being cost effective whose results are tenable.[3] It has been practised in the country since the onset of modern criminal justice system though on a lower scale compared to institutional-based interventions, namely incarceration, that led to congestion in the available facilities.[4]

II. LEGAL FRAMEWORK SUPPORTING COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS

A. International Legal Instruments

Kenya has adopted the international legally binding tools, among them the United Nations Convention on the Rights of the Child, the Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The government has facilitated the adoption of these mechanisms in the local laws.

B. Local Laws

1. The Constitution

The Constitution of Kenya 2010 has enshrined a Bill of Rights in Chapter four that is rated as being among the most comprehensive in the world. These principles are cognizant of the international legal instruments safeguarding human rights including child rights.

2. Local Acts

Subsequently parliament has enacted relevant laws to give effect to the principles enshrined in the constitution. Other laws have been amended to address changing of the society including: the Criminal Procedure Code, Penal Code, Borstal Institutions Act, Probation of Offenders Act, Community Service Orders Act, Children's Act, Sexual Offences Act, National Police Service Act, Prohibition of Female Genital Mutilation Act and Basic Education Act.

III. CURRENT SITUATION

The rate of crimes involving juveniles indicates an increase in the number of reported cases in the recent past, meaning that the number of offenders subjected to the justice system is increasing. Common crimes include assault, stealing, theft, property damage, drug and substance abuse, violence, sexual offences and

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[1] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

[2] Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.

[3] Robert, Hoge, et al. (ed.) *Treating the Juvenile Offender* (New York: Guilford Press, 2008), p. 108.

[4] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

organized crime.[5] The age of committing first crime is also decreasing.

A suspected juvenile is handled separately from adult offenders and has his/her rights upheld. Milimani Children's Court is one of the institutions that handles children's matters.[6] After release they return to the community hardened, a situation that negates the aspirations of institutional-based correctional services namely, reforming offenders with consideration of the best interests of the child, and most reoffend while others abscond.[7] Juveniles whose prison terms go beyond their 18th birthday are removed from Borstal institutions and taken back to their parents/guardians only if the environment is conducive and they continue with treatment. Those who fail to comply with requirements have a warrant of arrest issued against them.[8]

IV. EFFECTIVE TREATMENT AND EVALUATION

Juveniles are taken through courses of their choice geared towards whole personal development to become responsible adults, thus enhancing their welfare. They are offered formal and informal education to enhance literacy and acquire trade skills, respectively. Thereafter they sit for examinations, are graded and are awarded certificates that do not reflect they were offenders.[9] This is to avoid discrimination against the child that may lead to stigmatization. Diversion is applied where offenders are subjected to Community Service Orders to perform duties aimed at promoting well-being of the society.[10] The Probation Office facilitates sessions for reconciliation with aggrieved parties. Offenders are free to apologize or compensate victims who may voluntarily forgive them. They are also verbally sanctioned by reprimand or warning.[11]

Kamiti Youth Training Centre provides vocational training in plumbing and carpentry to males. Kamae Girls' Correctional Centre (the only girls' facility in the country) offers dressmaking, hairdressing, beauty therapy and food and beverage production examinable courses that are graded accordingly. Good nutrition, medical and counselling services are offered.[12]

Minors are referred to the institution by probation offices through the court. There is also temporary accommodation in probation hostels for low-risk offenders and needy cases in transit to the community. Parents/guardians visit them through the remote parenting programme that was initiated to establish and maintain bonds between parents and their offspring.[13]

V. THE SOCIAL ENVIRONMENT

Social Disorganization theorists argue that factors in the neighbourhood, such as insecurity, single parenthood and poverty among others, influences behaviour of children through their ability to promote or impede social institutions such as family and other social groups which serve to preserve social order.[14] Peer influence contributes to the well-being of children and young adults.

Negative peer pressure aggravates behaviour of deviant juveniles.[15] Minors have great respect for peer groups; hence they are easily influenced by negative conduct.[16] This has the profound effect of abnormal

[5] Oral Interview with Julius Kaimenyi, a Police Officer based at Gender and Child Protection Office, Kikuyu Police Station on 04/11/2016.
[6] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[7] Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.
[8] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[9] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[10] Examples: Building and construction, cleaning and environmental conservation.
[11] Oral Interview with Obonyo, a civil servant based at the probation office, Kikuyu Sub County on 06/01/2017.
[12] Oral interview with FairBay, Superintendent in Charge, Kamae Girls Training Centre (Formerly In-Charge Youth Training Centre) at Kamiti Maximum Security Prison on 05/05/2016.
[13] Oral interview with FairBay, Superintendent in Charge, Kamae Girls Training Centre (Formerly In-Charge Youth Training Centre) at Kamiti Maximum Security Prison on 05/05/2016.
[14] Tama, Leventhal and Jeanne, Brooks-Gunn, "The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes", *Psychological Bulletin*, Vol.126, No.2, 2000, pp.309–310. Accessed: *http://www.gxe2010.org/Speakers/pubs/Brooks-Gunn_2000a.pdf* on 06/11/2016.
[15] Kenneth, Dodge (et. al), *Deviant Peer Influences in Programs for Youth: Problems and Solutions* (New York: Guildford Press, 2006), p. 3.

adulthood. The school environment has intense influence over child growth and development. School community, programmes, rules and regulations interact with the child and shape personality development.[17] Both desirable and undesirable attributes are acquired, and the child may engage in delinquency as a learned response to negative stimuli such as bullying.[18]

VI. COOPERATION BETWEEN INSTITUTIONAL AND COMMUNITY-BASED TREATMENT

Researchers attest that though treatment done to juvenile offenders while incarcerated was successful, cases of recidivism were reported after being released. Therefore, treatment programmes must be continued after they go back to the community. Hence there must be cooperation between institutional and community-based treatment to enhance sustainability.[19] Among cases handled in the probation office, a majority of juveniles are reformed and resume law abiding lives, but there were cases of those who exhibited recidivism. They were re-arrested and subjected again to the juvenile justice system. If there was a suspended sentence it is enjoined later in the proceedings. The community-based approach is employed to enhance treatment of those serving sentences while still integrated in the community and also the ones released from prison.[20] Therefore, a two-pronged approach is applied to maximize achievement of objectives.

The broader community is brought on board directly through regular public forums commonly known as *barazas*, such as chiefs' forums, Community-Based Policing or indirectly through their leaders. During these interactive sessions, they are sensitized on the need to collectively enhance public safety and security by identifying suspected offenders and reporting to the authorities. They are also informed how the criminal/juvenile justice system functions to eradicate ignorance. This breeds community ownership of programmes and other initiatives.

A. Challenges of Community-Based Treatment

1. Resource Constraints

Inadequate resources, among them, insufficient financial allocation hampers expenditure during service delivery. There is lack of enough qualified personnel to adequately handle the workload; hence, available staff are overstretched. Professional staffing is insufficient to deal with specialist cases such as guidance and counselling, a situation aggravated by the high attrition[21] rate of qualified staff. This leaves available staff overburdened by job demands.[22]

2. Weak Family Units

These are occasioned by poor parenting. Most cases were attributed to parents who absconded from their responsibilities leaving out roles to be performed by house help, teachers and other external parties. Consequently, children become strangers to their parents, leading to poor mentorship and criminality.[23] Child offenders who have been disturbed psychologically, mentally and physically are predisposed to suffer from mental illness.[24] This negatively affects the treatment process in the wake of insufficient specialist staff.

3. Safety and Security

A section of staff members and witnesses receive death threats when they handle sensitive cases. This demoralizes them and affects the quality of service delivery, leaving them hopeless and unable to discharge their mandate effectively. Witnesses are also threatened with dire consequences if they support prosecution

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[16] Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.
[17] Arthur, Reynolds, et al, "Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest", *American Medical Association*, Vol. 285, No. 18, pp. 2339–2341. Accessed: *http://www.precaution.org/lib/effects_of_early_intervention.010509.pdf* on 04/11/2016.
[18] Gayre, Christie, et al, "Reducing and Preventing Violence in Schools" *Seminar Paper*, 1999, pp. 1–6. Accessed: *https://www.peacebuilders.com/media/pdfs/research/QueenslandUniversity.pdf* on 05/11/2016.
[19] David, Tate, et al, "Violent Juvenile Delinquents: Treatment Effectiveness and Implications for Future Action", *American Psychological Association*, Vol. 50, No. 9, 1995, pp. 779–780. Accessed: *www.researchgate.net* on 06/11/2016.
[20] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[21] These includes resignation, dismissal and retirement, among others.
[22] Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.
[23] Oral interview with Harriet, Children's officer, Kikuyu Sub County on 05/11/2016.
[24] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

of powerful and influential accused persons.[25]

4. Drug and Substance Abuse

There is rampant abuse of drugs among children and young offenders due to availability of the contraband namely *cannabis sativa* (bhang), cocaine and hashish. They also abuse drugs meant to treat mental illness. When high, children's thought processes are compromised and they easily commit crime.[26] The effects of drug use inhibit their moral reasoning, and they engage in crime and violence without feeling guilt.

5. Lack of Information

Lack of information about the juvenile justice system impairs proper understanding of its operations and procedures. This knowledge gap in the community breeds prejudice based on ignorance which erodes public trust and confidence. When a juvenile suspect was out on bond pending hearing and determination of the case in court, the public perceived that corruption took place and the offender secured freedom. Ex-convicts are stigmatized by society which makes reintegration difficult and predisposes them to recidivism.[27]

6. Weak Legal Framework

The laws governing administration of juvenile justice were found to have gaps that weaken the process. There is no separate provision for juveniles; hence they are subjected to the same laws as adult offenders though these contain provisions for subjecting juveniles to the justice system.[28] In this scenario, the best interests of the child are not adequately catered for.

B. The Way Forward

There is need to allocate more resources to key agencies involved in the administration of juvenile justice. This will enable efficient implementation of relevant policies, programmes and laws. Family is key for shaping an individual to become a socially fit adult. Hence there is need to empower parents to enable them to mentor children from early life.

Mental health is key to being a productive human being in the society, and is closely related to drug and substance abuse. Therefore, there is need to revamp the mental healthcare system for the sake of juveniles and young offenders in an effort to assist them to reform and lead productive lives. Safety and security of personnel working in the administration of juvenile justice, be they members of staff, victims or witnesses, need to be enhanced.

There is need to enhance the dissemination of information to ensure citizens are empowered with knowledge, and hence bridge gaps that cause ignorance, prejudice and misinformation. Trainings, workshops, seminars and related programmes should be reinvigorated. The existing legal framework that includes but is not limited to the Children's Act and Probation Act among others should be reviewed to address emerging issues in the administration of juvenile justice.

Research and development is key to enrich the existing wealth of knowledge. Towards this endeavour, experts in relevant fields should be brought on board and be given an opportunity to improve the juvenile justice system. There is also need for exchange programmes and benchmarking visits to and among countries with best practices. Lessons learned and experiences acquired should then be adopted and domesticated to improve local standards.

Moreover, continuous monitoring and evaluation of policies, programmes and other initiatives is vital to ensure maximum positive impact is generated and sustained in the juvenile justice system. This will ensure emerging gaps occasioned by dynamic needs of the society are addressed and enhance sustainability of the results achieved.

[25] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[26] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[27] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.
[28] Oral interview with Leah, Probation officer, Kikuyu Sub County on 04/11/2016.

VII. CONCLUSION

Community-based treatment is considered better than institution-based therapy because those confined to institutions are "programmed" in their daily lives; hence, they become mechanical.[29] Thus, the former needs to be revitalized to accommodate more juvenile offenders, and incarceration should be a last option. Treatment programmes, monitoring and evaluation enhance achievement of desired results and are closely connected with factors in the social environment which impact on personality development. When players in the administration of the criminal justice system cooperate, they create synergy; thus, achievement of the set goals is maximized. The programmes put in place focus on adopting the international and local instruments for safeguarding interests and promoting well-being of juveniles to grow and develop to become productive adults.

VIII. APPENDIX

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Oral Interview with Mr. Robert Mulwa, senior Superintendent of Police, Kikuyu Sub County Commander, Administration Police Service on 04/11/2016.

[29] Oral interview with Harriet, Children's Officer, Kikuyu Sub County on 05/11/2016.

Oral Interview with Julius Kaimenyi, a Police Officer based at Gender and Child Protection Office, Kikuyu Police Station on 04/11/2016.

Oral interview with Leah, Probation Officer, Kikuyu Sub County on 04/11/2016.

A MALDIVIAN PERSPECTIVE ON JUVENILE JUSTICE

*Zaeema Nasheed Aboobakuru**

I. INTRODUCTION

The Maldives is a signatory to the *United Nations Convention on the Rights of the Child*.[1] In 1991, the Maldivian parliament enacted the *Law on the Protection of the Rights of the Child*,[2] to give effect to the rights and state obligations under the Convention. Sections 9 and 29 of the said Law, prescribes a separate criminal justice system for minors accused of criminal wrongdoing.[3] The new *Penal Code of the Maldives* reinforces the requirement of a specialized justice system for juvenile offenders.[4]

The number of minors engaged in criminal behaviour has increased rapidly over the years, and their involvement in serious criminal offences such as murder, gang violence, organized crime, and drug trafficking offences has risen at an alarming rate. With the limited resources and expertise that are currently at our disposal, we have attempted to gain some understanding of the causes and patterns of juvenile offending in the Maldives. Some factors that stand out in this discussion are our unique geography, as well as the underlying socio-economic issues.

In this paper, we aim to provide information about the relevant legislation governing this area of the law, a brief outline of the causes and patterns of juvenile offending in the Maldives, the extent of compliance with international standards and norms and best practices, challenges in implementing crime prevention and criminal justice policies as well as exploring possible solutions.

II. JURISDICTION OVER JUVENILE CRIMES

On 1st August 1997, the Juvenile Court was established in the capital city, Male', vested with jurisdiction to adjudicate criminal offences committed by children under the age of 18, unless otherwise provided by law. Although the Juvenile Court came into existence prior to the enactment of the *Judicature Act*,[5] the jurisdiction of the Court has now been incorporated in the *Judicature Act*.[6]

The Drug Court has special jurisdiction under the *Drug Act*[7] to adjudicate drug abuse offences, where the juvenile confesses to the abuse of drugs.

Further, magistrate courts in the atolls also have jurisdiction over juvenile offences where the matter falls within the judicial sector in which the court operates, unless it has been exempted under the *Judicature Act*[8] or in any other statute. However, major criminal offences such as murder, rape, sedition and treason, terrorism, dishonesty offences that exceed a monetary value of Maldivian Rufiya 100,000.00, counterfeit offences, and property offences that exceed a monetary value of Maldivian Rufiya 5000,000.00, and all drug offences are exempted from the jurisdiction of the magistrate courts.[9] The above-listed cases must therefore,

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[1] *United Nations Convention on the Rights of the Child* (1989) (A/RES/44/25, 20th November 1989).
[2] *Law on the Protection of the Rights of the Child 1991* (No: 9/91).
[3] *Law on the Protection of the Rights of the Child 1991* (No: 9/91) (1991), ss 9 and 29.
[4] *Penal Code of the Maldives 2014* (No: 9/2014), s 53(d).
[5] *Judicature Act 2010* (No: 22/2010).
[6] *Judicature Act 2010* (No: 22/2010), sch 4.
[7] *Drug Act 2011* (No: 17/2011).
[8] *Judicature Act 2010* (No: 22/2010).
[9] *Judicature Act 2010* (No: 22/2010), sch 5.

be submitted to the Juvenile Court in Male'. This is law as of 19th December 2016.

Given the fact that the country is now implementing the new *Penal Code of the Maldives*,[10] as well as the *Criminal Procedure Act*[11] set to come into force on the 2nd of July 2017, more changes are to be expected.

III. THE JUVENILE JUSTICE UNIT

The Juvenile Justice Unit (JJU), which operates under the Ministry of Home Affairs, is tasked with the mandate to formulate national policies on juvenile justice, and to provide assistance and rehabilitation services to children in conflict with the law.[12]

Social workers and counsellors from the JJU work in close collaboration with the relevant government agencies, in order to provide the optimum outcome for the juvenile concerned. As such, the institution has become an integral part of the juvenile justice system in the Maldives. Where a juvenile offender is concerned, the JJU is a party to the proceedings. The *Juvenile Court Regulation* expressly requires the JJU's presence at the proceedings at the Court.[13]

IV. LEGISLATION

Article 35(a) of the *Constitution of the Republic of Maldives*[14] affords special protection and special assistance to children and young persons, provided by the family, the community and the State. The Maldivian legal system recognizes the international definition of children, as those below the age of 18 years.[15]

The Juvenile Justice Bill,[16] which is comprehensive legislation, is currently in the final stages of drafting at the Attorney General's Office. At present, matters concerning the administration of juvenile justice are governed by the *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences*[17] which has been given force of law in Schedule 2 of the *General Regulations Act*.[18]

Section 4 and 5 of the said regulation lists details about the age of criminal responsibility in the Maldives, which begins at 10 years.[19] Between the ages of 10–15 years, minors can be charged for prescribed Shari'ah offences (Hadd offences) such as apostasy, treason, fornication, defamation (Qadf),[20] aAlcohol consumption, murder and related offences, as well as all drug-related offences. Minors above the age of 15 years can be held accountable on all criminal offences. With the operation of the new *Penal Code of the Maldives*,[21] more changes are to be expected to the current regime of juvenile offences.

Special laws such as the *Prohibition on Gang Violence Act,*[22] allows authorities to charge minors of and above the age of 14 years for gang-related criminal activity.

Juvenile offenders who confess to the abuse of drugs have their cases forwarded to the Drug Court, which has special jurisdiction under the *Drug Act*[23] to adjudicate drug abuse offences. Indicative assessments are made to evaluate the level of addiction and to determine the most appropriate treatment plan for the individual.[24] As per section 67 of the *Drug Act*, the court may issue "Rehabilitation Orders" for the individual

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[10] *Penal Code of the Maldives 2014* (No: 9/2014).
[11] *Criminal Procedure Act 2016* (No: 12/2016).
[12] Juvenile Justice Unit / Ministry of Home Affairs <http://jju.gov.mv/>.
[13] *Juvenile Court Regulation 2014* (R-25/2014), s 54(4).
[14] *Constitution of the Republic of Maldives 2008*, art 35(a).
[15] *Law on the Protection of the Rights of the Child 1991* (No:9/91), s 30; *Penal Code of the Maldives 2014* (No: 9/2014), s 17(64); *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 2(a).
[16] Juvenile Justice Bill.
[17] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ.
[18] *General Regulations Act 2008* (No: 6/2008), sch 2.
[19] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile* Offences (2006)/XX/MJ, ss 4 and 5.
[20] Defamation ("Qadf") in Islamic Sharia amounts to the malicious accusation of adultery.
[21] *Penal Code of the Maldives 2014* (No: 9/2014).
[22] *Prohibition on Gang Violence Act 2010* (No: 18/2010), s 19(b).
[23] *Drug Act 2011* (17/2011).

to participate in the drug rehabilitation programme carried out by the National Drug Agency.[25] In cases of non-compliance, the court has power to terminate rehabilitation orders and to issue orders for incarceration under section 82(b) of the *Act*.[26]

The new *Drug Act*[27] was the result of changed community perceptions that saw drug addiction as a medical condition that needed treatment. At the same time it was also an attempt to strike a balance between this new perception and the necessity of saving the community from the scourge of drug addiction and the associated socio-economic costs. The new legislation therefore imposed harsher penalties on the sale and trafficking of drugs.

In addition to other general defences, the new *Penal Code of the Maldives* provides a defence for children below the age of 15 years accused of criminal wrongdoing, who are entitled to the defence by reason of their immaturity.[28] The defence excludes Hadd offences under the Islamic Shari'ah and violent criminal offences.[29] However, the legal operation of this very technical defence remains to be seen as thus far, it has not been argued by the defence in any of the proceedings before the Court. Moreover, it raises interesting questions about the desirability of early intervention in the case of at-risk youth. As this is an issue that has direct relevance to the age of criminal responsibility in the Maldives, it remains to be seen how the High Court of the Maldives may interpret the provision, and provide guidance to the authorities.

Except in cases where the Islamic Shari'ah prescribes punishment (*Hadd* offences), juvenile offenders receive 2/3rds of the minimum penalty stipulated under the relevant law.[30] If it is a first offence, the judge has discretion to issue a suspended sentence,[31] and the Court has greatly used this discretion in order to provide the juvenile with the chance to reform.

Where Islamic Shari'ah prescribes punishment for certain offences (*Hadd* offences) such as murder, the court or judge has no discretion to provide any leniency in the sentence.[32] As per the *Constitution* of the Maldives, our legal system is governed by the principles of Islam, and no law contrary to this can be enacted in the country.[33] Islamic Shari'ah prescribes capital punishment for persons convicted of murder, where the heirs of the victim are unanimous in seeking legal retribution. However, the implementation of the sentence will be postponed until the juvenile attains 18 years of age.[34] The regulation governing capital punishment lists various procedural safeguards before the implementation of a death sentence, such as the exhaustion of the appeal process, and mediation between the offender and the victim's family with regard to the death sentence.[35] The Ministry of Islamic Affairs has the mandate to coordinate the process of mediation with due consideration to the best interests of the child. Beginning from 2013, the court has sentenced five (5) juveniles to death. All five have appealed to the High Court of the Maldives.

Given the seriousness of Shari'ah offences and the prescribed punishments, as well as to ensure justice is served, the Supreme Court has issued Circular No: 2015/14/SC[36] requiring the courts to send cases involving Shari'ah offences for automatic appeal to the High Court and the Supreme Court of the Maldives.

In addition to this, there are special provisions in the new *Criminal Procedure Act*[37] that recognize procedural differences in the investigation, prosecution and adjudication of offences committed by minors.

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[24] *Drug Act 2011* (17/2011), ss 62 and 63.
[25] *Drug Act 2011* (17/2011), s 67.
[26] *Drug Act 2011* (17/2011), s 82(b).
[27] *Drug Act 2011* (17/2011).
[28] *Penal Code of the Maldives 2014* (No: 9/2014) s 53(b)(1) and (2).
[29] *Penal Code of the Maldives 2014* (No: 9/2014) s 53(c).
[30] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).
[31] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 24.
[32] The Holy Quran, Ch(2):178; Ch(17):33.
[33] *Constitution of the Republic of Maldives 2008*, s 10.
[34] *Regulation on Investigation and Execution of Sentence for Willful Murder 2014* (R-33/2014), s 11(1)(a); *Penal Code of the Maldives 2014* (No: 9/2014), s 53(c).
[35] *Regulation on Investigation and Execution of Sentence for Willful Murder 2014* (R-33/2014), ss 8 and 9.
[36] Supreme Court of the Maldives, Circular No: 2015/14/SC (15.11.2015) <www.supremecourt.gov.mv>.
[37] *Criminal Procedure Act 2016* (No: 12/2016).

Parents or guardians of juveniles arrested must be duly informed of the reasons for arrest, and the law stipulates a maximum period of four (4) hours to fulfill this notification procedure.[38] Further, minors may only be interviewed by the Police, in the presence of a parent or guardian or in the presence of those able to guarantee the best interests of the child, such as social workers from the Juvenile Justice Unit.[39]

V. BRIEF OUTLINE OF THE CAUSES AND PATTERNS OF JUVENILE OFFENDING IN THE MALDIVES

A large majority of the population resides in the capital, Male' city, often living in congested housing conditions. This includes children and their families who migrate from the islands in the hope of attaining better education, health services and job opportunities, facilities that are inadequate within the atolls. The meagre income their families earn is spent on rent. As a result, in some cases, children turn to sources other than their families to fulfill their needs and wants.[40]

Underage girls and boys engage in prostitution and drug offences as a means of earning income.[41] Gangs exploit these vulnerabilities within the community and have also increasingly made use of the leniency granted to minors under the law, to manipulate juveniles into committing the crime of drug trafficking.[42] For instance, whereas an adult can be sentenced to 25 years imprisonment for drug trafficking,[43] juveniles may only be sentenced to 2/3rds of that time,[44] i.e., a term of 16 years and 8 months, which may be revoked by the Juvenile Court if the juvenile successfully completes the rehabilitation programme. Juvenile offenders who have gained notoriety within the system are well aware of the leniency the law affords them, and hence, have at times abused the process. Juveniles who are arrested with drugs, with a quantity that amounts to the offence of drug trafficking, have sometimes confessed to the abuse of drugs, even though they are clean – for the sole purpose of having their cases channeled to the Drug Court for rehabilitation orders and to avoid the much harsher sentence of trafficking in drugs.[45]

Minors have also been used by wealthy business persons and politicians to commit political violence such as vandalism, serious assault and murder.[46] Criminal gangs attract juvenile offenders who come from neglected family backgrounds to their lifestyle, providing them with a sense of identity and brotherhood as well as protection from rival gangs.[47] Once in, they find it next to impossible to exit gang life, for fear of their and their family's safety.[48]

Further, some cultural factors contribute in this cycle of poverty, helplessness and crime. Maldives has one of the highest divorce rates in the world.[49] Most juveniles who are brought to court come from dysfunctional families, lacking the normal hierarchical structures of a stable family life. They either live with their single mothers, step parents or grandparents, who at times have proved to be unable or unwilling to provide the necessary care, support and nurturing conducive to a stable environment for a child to thrive in.[50] Fathers, who are seen as authority figures within our culture, are in some cases, completely absent from the lives of their children. In very unfortunate situations, some juveniles have been completely abandoned by their families, who refuse to attend the court hearings or visit the juvenile in prison. The Juvenile Court has

[38] *Criminal Procedure Act 2016* (No: 12/2016), s 43(e).
[39] *Criminal Procedure Act 2016* (No: 12/2016), s 46(j).
[40] Human Rights Commission of the Maldives, *Submission to the Universal Periodic Review of the Maldives*, April-May 2011 <http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf>, p. 4.
[41] Ibid.
[42] "Rapid Situation Assessment of Gangs in Male" Maldives 2012 The Asia Foundation in collaboration with MIPSTAR, p.9 (available online at: <http://asiafoundation.org/publication/rapid-situation-assessment-of-gangs-in-male/>).
[43] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).
[44] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).
[45] Anectodal evidence from consultations with key stakeholders during case conferences at the Juvenile Court.
[46] "Rapid Situation Assessment of Gangs in Male" Maldives 2012 The Asia Foundation in collaboration with MIPSTAR, pp 18–19 (available online at: <http://asiafoundation.org/publication/rapid-situation-assessment-of-gangs-in-male>).
[47] Ibid.
[48] Ibid.
[49] "The haven for honeymooners where everyone gets divorced", *The Telegraph*, 26 September 2016 (available online at: <http://www.telegraph.co.uk/travel/maps-and-graphics/mapped-countries-with-highest-divorce-rate/>).
[50] Information contained in the confidential Social Inquiry Reports submitted to the Court by the Juvenile Justice Unit.

issued six (6) "Protection Orders" between 2014 – 2016 granting the State, custody over children in conflict with the law, who come from such neglected backgrounds and are in dire need of care and support for them to be reintegrated into society as rehabilitated individuals.

Most children who enter into criminal life become repeat offenders and gain notoriety within the system. They begin with petty crimes and progress in their descent to serious criminality. Juveniles who have been convicted of murder had a series of criminal records that initially began with minor offences such as theft, disturbance of peace and order offences, etc.[51] Some of these juveniles had served time and had been released to the community after a period of rehabilitation. Nonetheless, lack of proper intervention mechanisms and treatment programmes—that takes into account our cultural and socio-economic factors, led to their relapse into criminal behaviour. As for the gender disparities, girls are more likely to be involved in sexual offences, whereas boys are involved in various criminal offences, including sexual offences.[52]

VI. COMPLIANCE WITH INTERNATIONAL STANDARDS AND NORMS

As per the *Strategic Plan for Reform of the Juvenile Justice System*,[53] the nation follows the principles of the restorative justice model that seeks to address the injury caused to the victim, the wrong done to the society, as well as the accountability, rehabilitation and reintegration of the offender. Rules and regulations on investigation, prosecution and adjudication have been designed to give effect to the rights and obligations under the *CRC* and other international human rights treaties.[54] Additionally, the UN Guidelines on Juvenile Justice have become an integral part of practice at the Juvenile Court of the Maldives.[55]

A. Investigation

The regulation governing the conduct of criminal matters involving juveniles stipulates the confidential and expeditious determination of cases at every phase of the criminal justice system.[56] Investigating officers are required to be in plain clothes and must consider the best interests of the child at all times.[57] Having considered the nature, seriousness and gravity of the offence, and the criminal record of the child, the investigating authorities have discretion to issue informal and formal warnings, providing the child with an opportunity to reform, instead of forwarding the matter for prosecution.[58] Such warnings take the form of a binding agreement between the authorities and the juvenile and their parent or guardian, with conditions and consequences in the event of breach.

All interviews and communications with the child must be undertaken in the presence of a parent/guardian or in the presence of such other persons able to guarantee the best interests of the child.[59] Provisions in the new *Criminal Procedure Act* require the police to audio or video record interviews of all arrested persons.[60]

Once an arrest is made, the Maldives Police Service is required to send referrals to the Juvenile Justice Unit,[61] which will then assign a case worker for the juvenile, to provide support and assistance throughout the criminal justice process.

Article 48(d) of the *Constitution of the Republic of Maldives* requires any person(s) arrested to be brought before a judge within 24 hours to determine the validity of arrest and further remand in police custody.[62]

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[51] Court Registry of Criminal Records (Confidential information).
[52] Court Registry of Criminal Records.
[53] *Strategic Plan for Reform of the Juvenile Justice System* 30 September 2004, Attorney General's Office (available online at: <http://www.mvlaw.gov.mv/pdf/publications/5.pdf>).
[54] *United Nations Convention on the Rights of the Child* (1989), art 2, 3, 12 & 40; *International Covenant on Civil and Political Rights* (1966) (RES/2200A (XXI))(16th December 1966) art 14.4.
[55] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985).
[56] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, ss 3 and 21; *Juvenile Court Regulation* 2014 (R-25/2014), s 122(1).
[57] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 9(b).
[58] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 10.
[59] *Criminal Procedure Act 2016* (No: 12/2016), s 46(j).
[60] *Criminal Procedure Act 2016* (No: 12/2016), s 46(k).
[61] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 11(b).

According to the Juvenile Court statistics, 597 remand hearings were held in the year 2015, of which most were brought in for subsequent offending.[63] Beginning from 2016, there has been a steady decline in the number of juveniles brought to court for further remand in custody with 500 hearings in 2016 and just 111 hearings by the end of May 2017.

B. Prosecution

Juvenile cases received at the Prosecutor General's Office (PGO) are investigated, and if the case warrants a prosecution, it is submitted to the Court. Prosecutorial Guidelines[64] on juvenile offences are as follows:

1. Where appropriate, having regard to the nature and gravity of the offence, to dispose of cases committed by children without recourse to formal trial proceedings.

2. As a general rule, having regard to the sufficiency of evidence received, sexual offences committed against children (including those perpetrated by juveniles) are to be sent for prosecution, save for exceptional circumstances.

The current policy at the Prosecutor General's Office, is to minimize the number of cases sent for prosecution, unless they are serious in nature. Instead, the PGO relies on agreements with juveniles, diverting them away from prosecution, with conditions and consequences in the event of subsequent criminal behaviour. The *Criminal Procedure Act* provides a mechanism for the Prosecutor General's Office to counsel offenders who commit minor offences and who confess to the crime during the investigatory stage, instead of pressing charges and prosecuting the matter.[65] According to section 100 of the *Act*, the Prosecutor General must enter into an agreement with the accused if the Prosecutor General decides not to prosecute the matter, with assurance from the accused to abide by the conditions of the agreement.[66] The Prosecutor General must consider the interests of justice as well as the best interests of the child in concluding such an agreement.[67] Juveniles are then required to participate in rehabilitation programmes under the supervision of the Maldives Police Service and the Juvenile Justice Unit.

Further, the Prosecutor General also has discretion to discontinue proceedings or withdraw charges at any time before the court issues a verdict.[68] The office of the Prosecutor General has frequently used this discretionary power to withdraw minor cases from the Court, in order to pave way for the rehabilitation of juveniles.

C. Adjudication

1. Case Management

In order to facilitate a speedy process in juvenile cases, the Court requires the Prosecutor General to submit written reasons explaining the delay in submitting the case if a year has lapsed between the submission and the date of the incident.[69] The court, on its own initiative, implemented case management procedures such as stricter guidelines to schedule hearings in order to ensure continuous proceedings. Unless there are justifiable circumstances for the delay, a first hearing must be scheduled within 3 working days of the court receiving the case documents.[70] Further, judges must decide on cases assigned to them within 6 months, and if it exceeds that period, must submit written reasons to the Chief Judge of the Court, and report to the Chief Judge on the progress of the case at least once a month.[71] The Supreme Court of the Maldives has issued Practice Directions (No: 2015/08)[72] requiring all courts to streamline its case management procedures to provide for the speedy determination of cases. Additionally, the *Criminal Procedure Act* envisages the implementation of continuous hearings[73] and pre-trial procedures,[74] to further expedite the trial

[62] *Constitution of the Republic of Maldives 2008*, art 48(d).
[63] Disaggregated data unavailable, but evident from the Court Registry of Criminal Records (Confidential information).
[64] Published on the Prosecutor General's Office website <www.pgoffice.gov.mv>.
[65] *Criminal Procedure Act 2016* (No: 12/2016) s 100.
[66] *Criminal Procedure Act 2016* (No: 12/2016) s 100.
[67] *Criminal Procedure Act 2016* (No: 12/2016), s 99.
[68] *Constitution of the Republic of Maldives 2008*, art 223; *Prosecutor General's Act 2008* (No: 9/2008), s 15.
[69] *Juvenile Court Regulation 2014* (R-25/2014), s 35(9).
[70] *Juvenile Court Regulation 2014* (R-25/2014), s 43.
[71] *Judges' Act 2010* (No: 13/2010), s 55(a).
[72] Supreme Court of the Maldives, Practice Directions (No: 2015/08) 12.08.2015 (available online at: <www.supremecourt.gov.mv>).

process—the Maldivian judiciary is still in the process of adapting to these new procedures.

2. Proceedings

According to the spirit of the CRC[75] and the relevant UN Guidelines, all hearings at the Court are closed to the public to ensure maximum protection and privacy to the juvenile.[76] All personal information of the juvenile are redacted from the media releases and case reports published on the Court's website.

Case workers from the Juvenile Justice Unit are required to attend all proceedings including remand hearings and trials, along with the parent or guardian.[77] In cases, where the juvenile is also a victim of abuse, the Ministry of Family and Gender as well as the Human Rights Commission of the Maldives, may apply to intervene in the proceedings as and when necessary.[78]

Every child brought before the court is guaranteed due process and a fair trial. They are provided with all legal rights, including the right to legal representation.[79] Article 53(b) of the *Constitution* states: "In serious criminal cases, the State shall provide a lawyer for an accused person who cannot afford to engage one."[80] Currently, legal aid is provided only in cases involving serious criminal offences such as murder, trafficking in drugs, major assaults with a lethal weapon, assaults causing grievous bodily harm, terrorism cases, counterfeit offences, dishonesty offences that exceed a monetary value of Maldivian Rufiyaa 50,000.00, offences of sedition and treason, as well as offences that stipulate a mandatory sentence of 25 years' imprisonment.[81] The Attorney General's Office is currently holding consultations to finalize the *Draft Legal Aid Bill* and to establish a mechanism for pro bono legal representation, and the Public Defenders' Office.

The Court conducts its judicial proceedings in compliance with Article 12 of the *CRC*, by respecting the child's right to be heard in all matters affecting the child.[82] Juveniles are actively encouraged to speak at judicial proceedings as well as at the community conferences held at the Court. Any child who does not understand or speak the local language is provided with an interpreter at the hearing. The Juvenile Justice Unit is required to submit social inquiry reports both at the remand stage and during trial and sentencing.[83] It must be noted that the views of the child are given due weight in the disposition of remand hearings, where the child is given responsibility to adhere to the conditions of release, or house arrest. Generally, the judge would order the child to attend school or vocational centres at designated times, under the supervision of the parent or guardian.

3. Conferencing

The Court conducts three types of conferences in relation to the cases submitted to the Court: Case Conference; Family Conference and Community Conference.

A Case Conference enquires into the desirability of proceeding to trial, by exploring other options for the juvenile. It may also be held to clarify issues related to the juvenile and to bring the parties up to date with the records of the juvenile concerned. All stakeholders, including the Maldives Police Service, the Prosecutor General's Office and the Juvenile Justice Unit take part in this conference.

A Family Conference is usually held when there are pressing family issues that need to be addressed, for instance, lack of family care and support for the juvenile, or cooperation with the authorities.

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[73] *Criminal Procedure Act 2016* (No: 12/2016), s 142.
[74] *Criminal Procedure Act 2016* (No: 12/2016), ch 13.
[75] *United Nations Convention on the Rights of the Child* (1989), arts 2, 3, 12, & 40.
[76] *Constitution of the Republic of Maldives 2008*, art 42(c)(2); *United Nations Convention on the Rights of the Child*(1989), art 40(2)(b)(vii); *International Covenant on Civil and Political Rights* (1966), art 14.1; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r 8.
[77] *Juvenile Court Regulation 2014* (R-25/2014), s 54.
[78] *Juvenile Court Regulation 2014* (R-25/2014), s 54.
[79] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 8; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r 7 and 15.
[80] *Constitution of the Republic of Maldives 2008*, art 53(b).
[81] Attorney General's Office Guidelines on Legal Aid (available online at: <www.agoffice.gov.mv>).
[82] *United Nations Convention on the Rights of the Child* (1989), art 12.
[83] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985), r. 16.

In the final stages of the case, the Probation Officer, would make arrangements to hold a Community Conference, where prospects of the juvenile's rehabilitation may be explored. In keeping with the principles of the restorative justice model, the conference serves as an avenue for the victim and the offender to meet, paving way for a dialogue between the parties. If the Court thinks it is in the best interest of the victim and the juvenile to meet, the court may make such arrangements. Juvenile offenders are encouraged to apologize, compensate for the injury or pain caused, or provide restitution for the damage caused. In 2015, the Court held a total of 52 conferences in relation to cases submitted to the court.

4. Sentencing, Incarceration, Rehabilitation and Reintegration

Where the judge has discretion to sentence the juvenile to house arrest, the juvenile may be ordered to attend educational or vocational centres,[84] and the Maldives Correctional Services would take on the task of monitoring the juvenile. Juveniles enrolled in the rehabilitation programme are subjected to periodic reviews. Between 2010 and 2015, eighty-nine (89) juveniles were admitted into the rehabilitation programme, of which 11.2% successfully completed the programme having been released with the remainder of their sentences revoked. 44% of non-compliance cases were sent back to serve the remainder of their sentences.

Conviction for serious offences, such as drug trafficking, leads to a lengthy period of incarceration.[85] There are no separate detention centres for juveniles. They are currently held in adult facilities, albeit separate from the adults. These institutions lack the necessary resources and capacity to conduct rehabilitation for the juveniles. However, some measure of rehabilitation opportunities are provided while in prison. This includes encouraging them to enlist in O/L courses and Quranic learning "Qari" courses. They are also provided with Islamic counselling services, individual counselling sessions with the Juvenile Justice Unit, as well as programmes aimed at raising awareness about crime and criminal behaviour in order to prevent further offending.

The Juvenile Justice Unit, in close collaboration with the Maldives Police Service, the Prosecutor General's Office, the Juvenile Court and the Maldives Institute of Technology, began an ambitious juvenile rehabilitation programme titled "Ummeedhu (Hope)" in June 2016, with Phase I of the programme held as a boot camp at Dh Atoll. Vaani. The programme enlisted 20 participants with minor to serious criminal records. As this is a very recent programme, with Phase II consisting of educational and vocational training and job placements, yet to be completed, evaluating the success of the programme remains inconclusive for now.

D. Challenges

Resources and capacity are the most significant hurdles in implementing international best practices in this area of the law.

Key legislation remains pending. The *Draft Juvenile Justice Bill*, which would enable wide-ranging changes to the current system, is yet to be enacted as law.

Unreasonable delays in the investigation and prosecution of matters involving minors is of great concern. There have been instances where cases have been submitted to court by the Prosecutor General, after two or more years have passed since the incident. Delays in the prosecution of juvenile offences have consequences for the child's educational and employment prospects. In some instances, juvenile offenders are adults with dependent families and responsibilities by the time their cases are submitted to the court. Under the restorative justice model, the juvenile's sense of wrongdoing is a basic requirement for his or her reformation to begin, but delays in the prosecution and adjudication would mean that the chances of the restorative justice procedures to have impact would have elapsed. This is partly due to the difficulties encountered in submitting cases to the Magistrate Courts in the atolls, as well as difficulties in tracing the whereabouts of the accused.[86]

The country lacks a systematic rehabilitation programme that clearly identifies target groups and their

[84] *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006/XX/MJ (R-25/2014), ss 17(b) & 19.
[85] *Drug Act 2011* (No:17/2011).
[86] Concerns raised by the Prosecutor General's Office during stakeholder consultations.

particular risks and needs. Different categories of offenders require different types of interventions and treatment programmes.[87] Although it is too early to evaluate the success of the "Ummeedhu (Hope)" programme—authorities have noted instances of relapse to criminal behaviour among some participants, once they were brought back from the camp. This was due to the lack of a suitable environment for the juveniles to reform, as the ground realities remained unchanged. The Prosecutor General's Office has decided to prosecute minors who reoffended, as they had breached the conditions agreed with the Prosecutor General's Office.

Given that we have been unable to implement a successful rehabilitation scheme yet in the Maldives, institutional arrangements become crucially important especially in the case of juveniles. There are no juvenile specific detention or rehabilitation centres at the moment.[88] The Education and Training Centre for Children (ETCC) which had some measure of success in conducting juvenile rehabilitation has now been closed due to maintenance purposes. The Court has been in consultation with the relevant government agencies since 2010, but thus far, there has been no progress on this issue. In order to raise concern over this and encourage authorities to implement this measure, the Juvenile Court has begun issuing orders for juveniles to be placed specifically in juvenile rehabilitation centres beginning on 1st of July 2015.

In addition, although the *Drug Act* 2011 stipulates the establishment of child-specific detoxification and treatment centres within eighteen months from the date of ratification of the law,[89] there are no specific treatment centres for juveniles convicted of drug abuse. The current practice is to treat them while in the community. This has not proved to be very effective, as attendance at these community treatment centres that also cater for adults are based on voluntary compliance with the court order.

Our unique geography has also proved to be a factor hindering efforts at implementing a nation-wide juvenile rehabilitation scheme. Article 20 of the *Constitution* guarantees, "equality before and under the law, and the right to equal protection and equal benefit of the law".[90] Most magistrate courts in the atolls lack the capacity and resources to provide probation and juvenile rehabilitation facilities. Some of the international best practices followed at the Juvenile Court in Male' are unavailable in the magistrate courts. There is no presence of the Juvenile Justice Unit (JJU) within the atolls, to some extent the Ministry of Family and Gender has stepped into the breach to provide support to juveniles accused of crime. But the lack of JJU's presence within the atolls is a major factor impeding efforts to coordinate rehabilitation programmes for juveniles residing in the islands.[91] The Juvenile Court has had limited success in coordinating rehabilitation efforts with the island councils.

Inter-agency coordination has at times been difficult to achieve, due to overlapping mandates and the absence of a unified approach to child care and juvenile justice. This is especially true in the case of dual status youth, who make up the bulk of children in conflict with the law. The social inquiry reports submitted by the JJU are replete with instances of abuse, neglect and abandonment of children—issues that should have put the authorities on notice, before the children ended up in the criminal justice system as offenders.

E. Possible Solutions

The authorities need to step up efforts to pass the Juvenile Justice Bill in order to devise a comprehensive mechanism for the administration of juvenile justice in the Maldives.

The new *Criminal Procedure Act* introduces electronic submission of cases.[92] Agencies working within the criminal justice system must enforce a concerted effort in the expeditious processing of juvenile offences at every stage. It is expected that this would provide some remedy to the problem of delayed submission of cases.

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[87] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r. 26; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990), ss. C, D & E.
[88] *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/45/113) (1990).*
[89] *Drug Act 2011* (No: 17/2011), s 47(a)(3).
[90] *Constitution of the Republic of Maldives 2008*, art 20.
[91] Discussions at stakeholder consultations.
[92] *Criminal Procedure Act 2016* (No: 12/2016), s 78.

The country needs to devise a comprehensive rehabilitation and reintegration plan. International best practice dictates that such treatment programmes should proceed on a risks and needs basis, and must be individualized to fit the particular circumstances of the juvenile concerned.[93] The plan must also take into account our geographical uniqueness and address issues of coordination between Male' and the atolls. The Maldives Police Service is looking to expand their role in juvenile crime prevention, by planning and implementing school programmes for minors who are within the vulnerable age-group as well as the at-risk group.

Establishing juvenile detention and rehabilitation centres is critical to the implementation of effective rehabilitation schemes. A juvenile drug rehabilitation facility is of utmost importance to combat drug addiction among minors, and existing structures need to be strengthened as well as compliance and monitoring mechanisms. We have renewed our efforts and are currently in dialogue with the Ministry of Home Affairs and the relevant government agencies concerning the establishment of well-resourced detention and rehabilitation centres for juvenile offenders. The current Minister of Home Affairs has been briefed about the situation and the changes that are required immediately.

We need to find ways to transfer knowledge and expertise from Male' to the magistrate courts in the atolls, where juveniles can be provided with equal protection and equal benefit of the law. To counter the infrastructural deficiencies within the atolls, an option is to enlist the support of the magistrate courts in the supervision and monitoring of juvenile offenders who have been placed on probation or in rehabilitation by the Juvenile Court orders. In addition, civil society groups can act as an auxiliary to the formal structures of the criminal justice system, by providing monitoring and support facilities within the atolls.

Specialization within their respective agencies and departments is vital for the successful implementation of juvenile justice policies.[94] The Family and Child Protection Unit (FCPU) is a specialized unit of the Maldives Police Service that investigates domestic violence and juvenile offences; however, other units and departments, such as the Drug Enforcement Department and the Serious and Organized Crime Department, also investigate crimes where juveniles are involved. Many of the batches of investigating officers, corrections officers and custodial personnel now receive introductory guidance to the principles of juvenile justice and international standards and norms. To effect real change in the entrenched mindsets and less than favourable practices, officers need much more than a week-long training workshop. They need to be able to internalize the belief that the special principles and functions of the juvenile justice system serve an important purpose and contribute to the overall strengthening of the law enforcement agencies and the criminal justice system.

Similarly, prosecutors and defence lawyers handling juvenile cases need to be trained in juvenile justice principles and best practices, as the juvenile justice trial proceedings greatly vary from the mainstream criminal justice processes. Further, they should be aware of their respective duties to the court and to the accused. In this respect, special communication skills have proved to be vital. Most juveniles and minors who become witnesses in court, lack the ability to converse in formal language or to follow-through rigorous examination and cross examination. Lawyers therefore should be able to adapt their language according to the understanding of the accused or witness.

Child care and protection agencies must step-up efforts to be vigilant, and pay special attention to the category of dual status youth who initially enter the system as victims. Issues of abuse or neglect must be dealt with promptly and effectively. While international best practice recommends children not to be removed from family life as far as possible, there may be cases when, in the best interests of the child, that is the right thing to do. Further, inter-agency coordination is vital for the successful implementation of child rights and juvenile justice polices. To that end, an efficient, child victim and juvenile offender database is important, in order to keep the agencies up-to-date with the location and status of minors, involved in the system.

More research is required to understand the causes of juvenile offending and ways to better implement

[93] *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990).
[94] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985), r 12; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990), V.

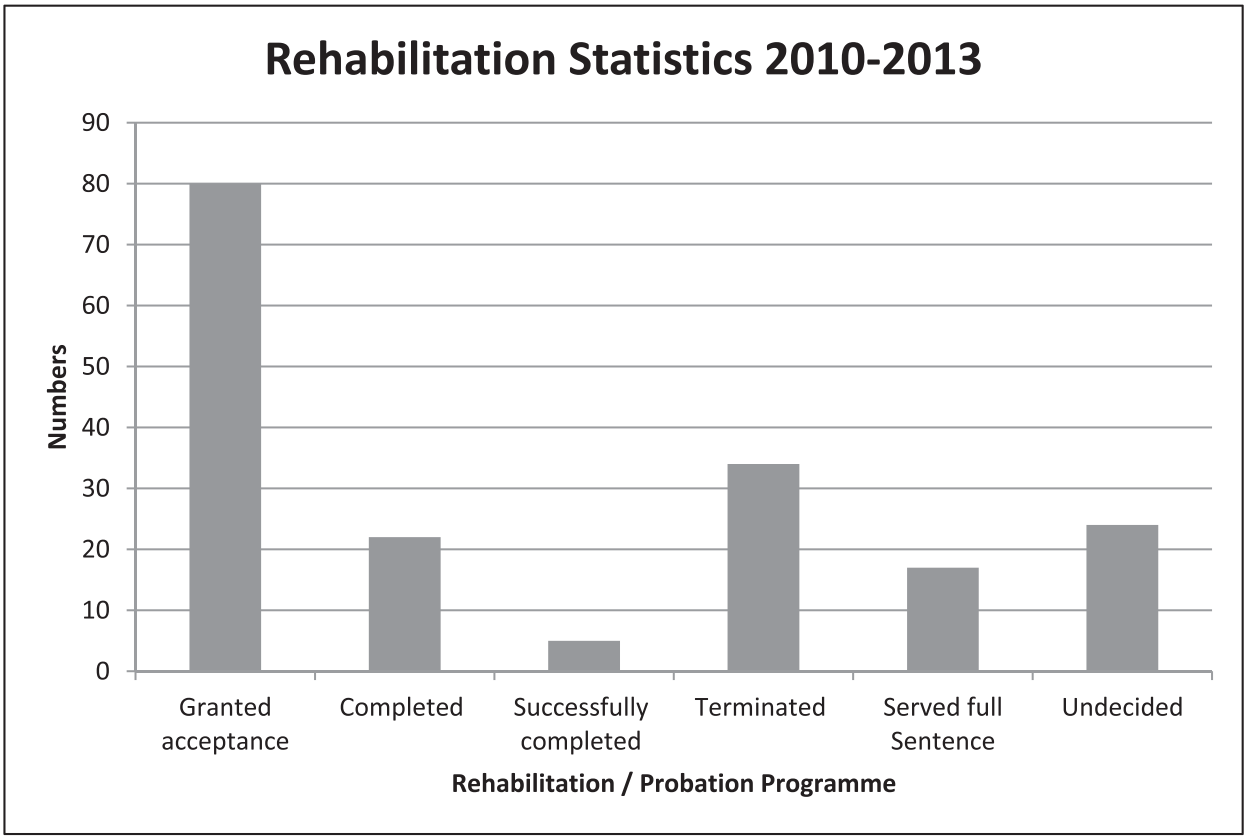
juvenile justice policies. Maintaining a systematized statistical database is a requirement for analytical studies on this subject. Partnering with international organizations and foreign governments and institutions would be of assistance to improving our current regime of juvenile justice.

VII. CONCLUSION

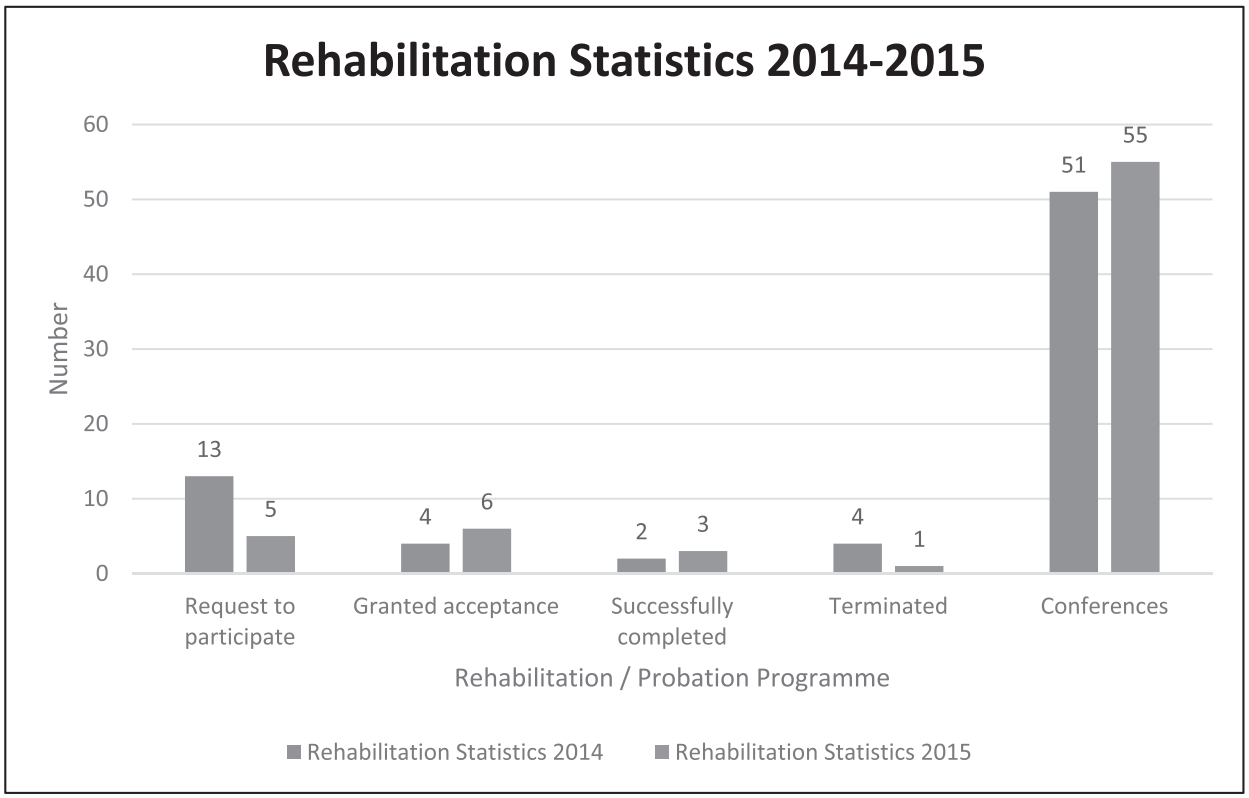
The country has made significant improvements in the field of Juvenile Justice since becoming party to the *UN Convention on the Rights of the Child*.[95] A look at the current system would reveal the progress achieved in implementing international norms and best practices in this area of the law. The nation has incorporated the restorative justice model in its juvenile justice policies, and has had some measure of success in implementing rehabilitation and reintegration programmes.

Still, hurdles remain. Capacity, lack of resources and expertise stand out as the most crucial factors hindering further development. The recent reforms to the criminal justice system have highlighted the need for reform of the juvenile justice system, which are more urgent than ever. We aim to maintain a sustained effort towards our commitment to the development of the juvenile justice system in the Maldives.

ANNEX A
JUVENILE REHABILITATION STATISTICS – JUVENILE COURT OF THE MALDIVES



[95] *United Nations Convention on the Rights of the Child* (1989).



**Request to participate* – generally juveniles who are accused of criminal behaviour are given an opportunity to participate in the rehabilitation programme by submitting documents of confirmation from an educational institution, vocational training centre or job confirmation from employer.

**Granted acceptance* – the total number of juvenile applications accepted into the programme during the year. This will include undecided applications from the previous year.

**Completed Programme* – the number of juveniles who completed the rehabilitation programme for the designated duration.

**Successfully completed* – the number of juveniles who successfully completed the rehabilitation programme, with the remainder of their sentence revoked by the Court.

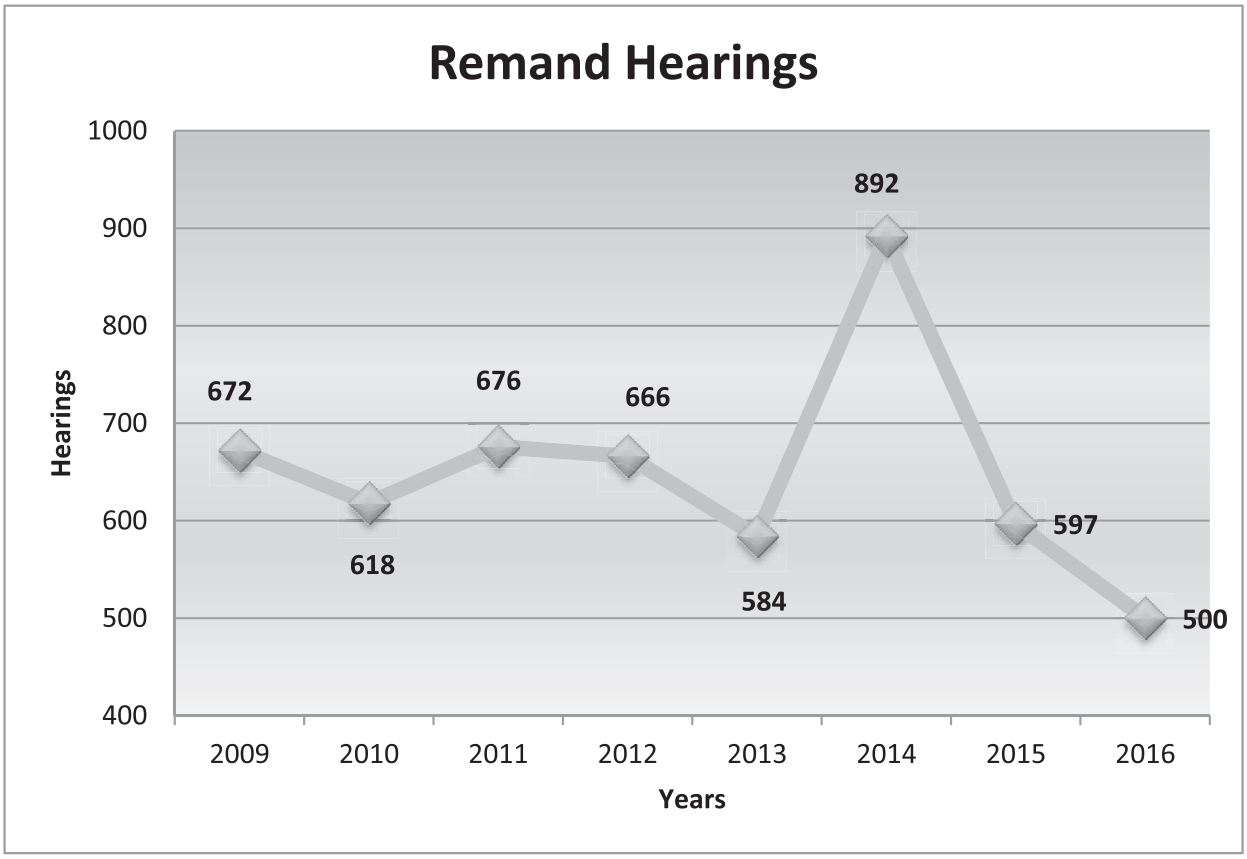
**Terminated* – the number of juveniles who were terminated from the rehabilitation programme and sent back to prison to serve the remainder of their sentence.

**Served Full Sentence* – the number of juveniles who took part in the rehabilitation programme but also served their full sentence.

**Undecided* – the number of applications to participate in the rehabilitation programme that remained undecided at the end of the year

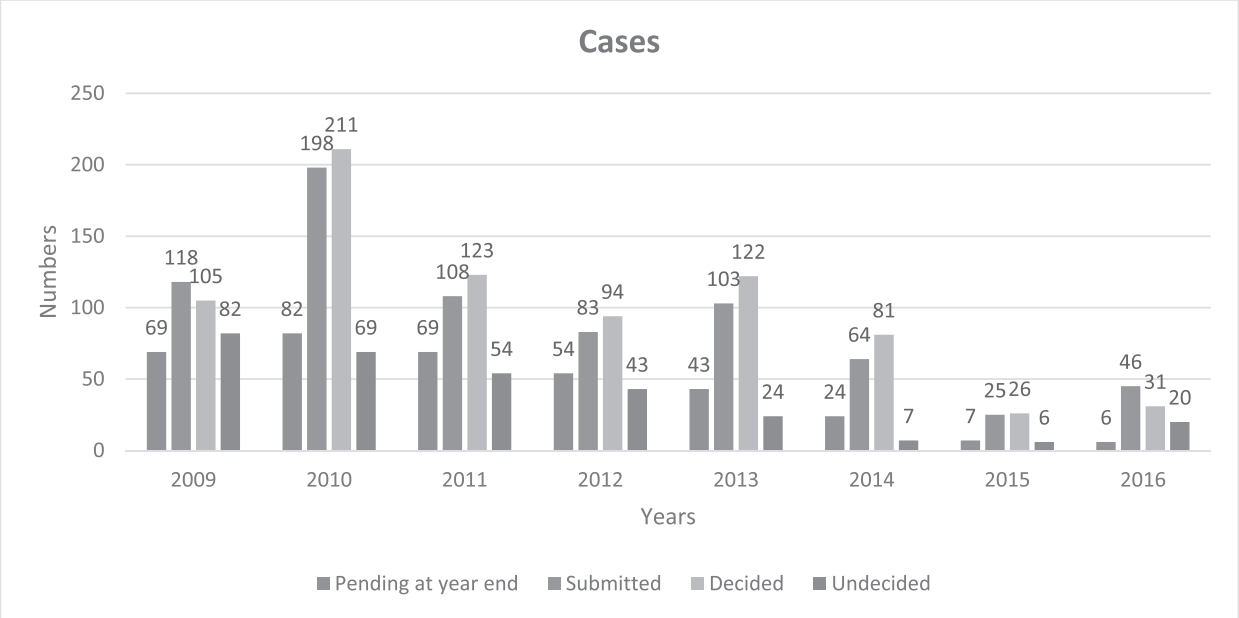
**Conferences* – the number of conferences held regarding juvenile offenders during the year. This may include several conferences held on individual juvenile offenders.

ANNEX B
REMAND HEARING STATISTICS – 2009-2016



as of 19.12.2016

ANNEX C
CASES SUBMITTED TO COURT – 2009-2016



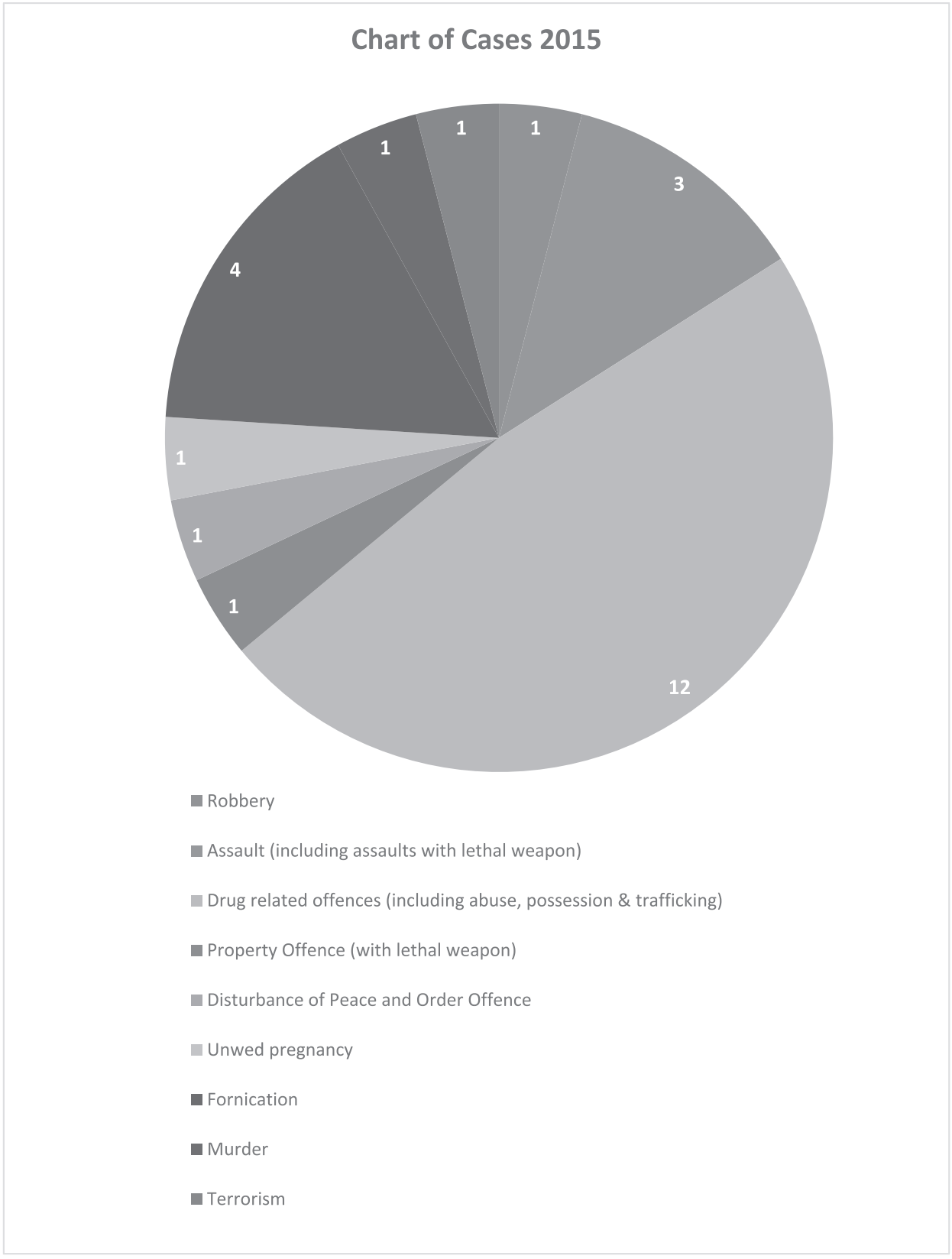
**Pending at year end* – the number of undecided cases from previous years at the beginning of the current year (there was a huge backlog of cases which was reduced after the establishment of the Drug Court)

**Submitted* – the total number of cases submitted to court during the year.

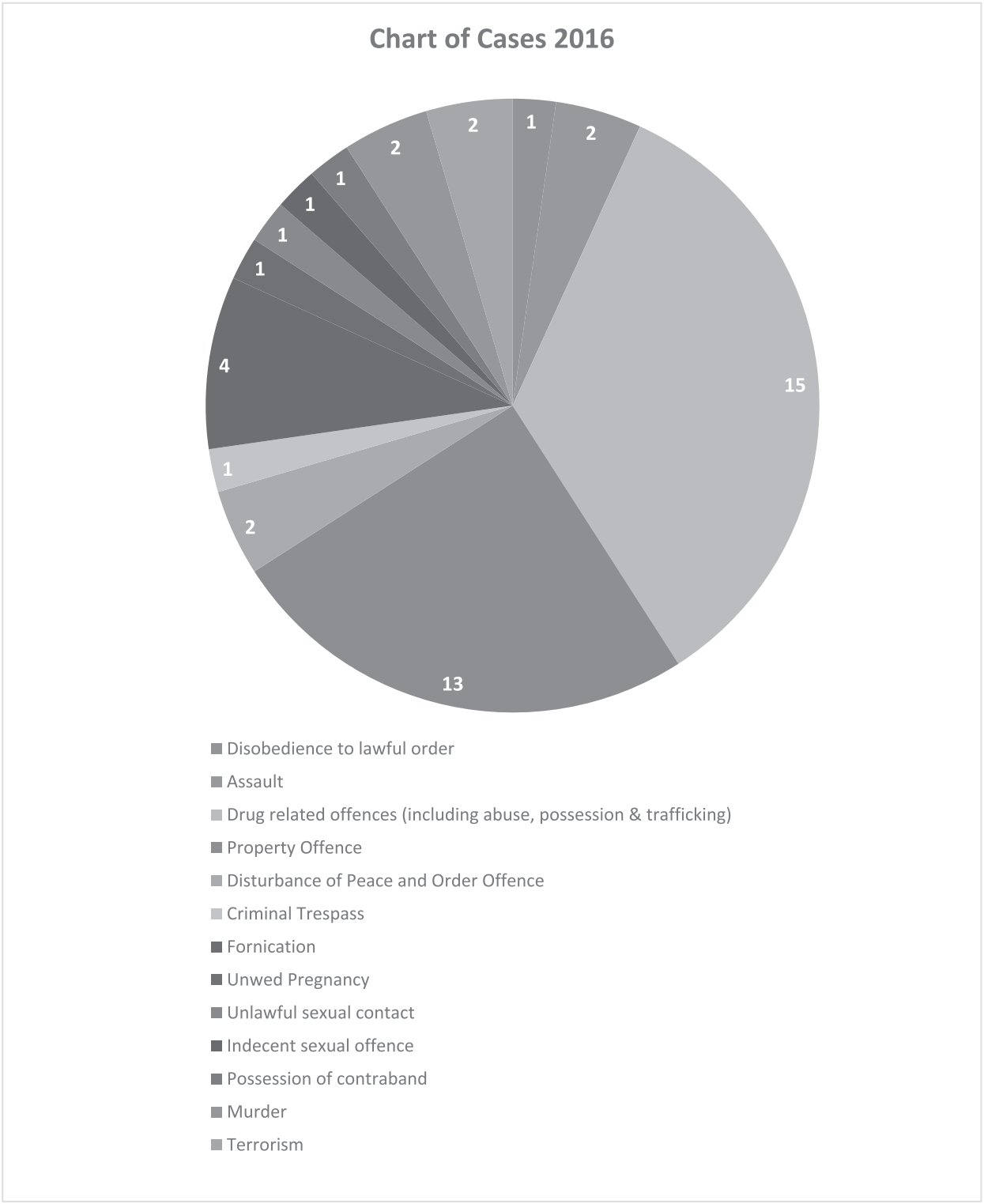
**Decided* – the number of cases in which the court has passed a verdict and issued a sentence

**Undecided* – the number of cases that remained undecided at the end of the current year.

ANNEX D
TYPES OF CASES – 2015



ANNEX E
TYPES OF CASES – 2016



REPORTS OF THE SEMINAR

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 165th 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."[1] 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.[2] 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."[3] The "earlier the investment in an individual, [...] the more cost effective the investment."[4]

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[5] 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.[6] 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 Statues, 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.[7]

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

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[1] Butts, Jeffrey; Cusick, Gretchen, and Adams, Benjamin. Delays in Youth Justice. Google books. Doc nr : 228493, October 2009, p. 10.

[2] See Butts, Jeffrey; Cusick, Gretchen, and Adams, Benjamin. Delays in Youth Justice. Google books. Doc nr : 228493, October 2009, p. 10.

[3] 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

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

[5] Dembo, Richard, "Juvenile Assessment Center" (lecture, 'UNAFEI 165th International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms', January 25, 2017), slide 4.

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

[7] Dembo, Richard, "Civil Citation Program – 13th Judicial Court" (lecture, 'UNAFEI 165th 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."[8]

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.[9] 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."[10]

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.[11] 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."[12] So, juveniles need to be served in a holistic manner, "not one problem at time terms."[13]

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

[8] Tokyo Probation Office. *Profile of the Tokyo probation office*, 18th January 2017. p. 03. (UNAFEI 165th International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms', site visit at Tokyo Probation Office, January 2017).
[9] See Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. Journal of Child & Adolescent Substance Abuse, vol 3(2), 28.
[10] Ibid, p. 27.
[11] See R. Brian Howe, "Children's Rights as Crime Prevention" (2008) 16 Int'l J. Child. Rts. 457 at 457.
[12] *Ibid*.
[13] 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[14] and the UN standards and norms on juvenile justice.[15] 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).[16]

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".[17] 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".[18] 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."[19] 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".[20] 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]" [21], 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."[22] JACs "represent an important

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[14] CRC, Article 40.4.
[15] 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.
[16] 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>
[17] Kawamoto Seigan, "Juvenile Justice Procedure in Japan" (lecture, 'UNAFEI 165th International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms', January 30, 2017), slide 9;
[18] Ibid.
[19] Ministry of Justice of Japan, Correction Bureau. *Juvenile Classification Homes* (UNAFEI 165th 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>.
[20] Masayo Ysohimura, "Welcome to Kyoto Juvenile Classification Home" (lecture, 'UNAFEI 165th 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.
[21] Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. Journal of Child & Adolescent Substance Abuse, vol 3(2), 25.
[22] Dembo, Richard, "Juvenile Assessment Center" (lecture, 'UNAFEI 165th 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".[23] 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.[24] 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.[25] 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".[26] 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.[27]

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.[28] 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).[29] 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.[30], which may allow an overview of his/her needs and, possibly, the choice of appropriate interventions. However, due to the

[23] Ibid, slide 6.
[24] Ibid, slides 13 and 14.
[25] Ibid, slide 16.
[26] Dembo, R & Brown, R. (1994). The Hillsborough County Juvenile Assessment Center. Journal of Child & Adolescent Substance Abuse, vol 3(2), 28.
[27] Juvenile Service Department Miami, FL, USA, Miami-Dade County. *Civil Citation Program* (UNAFEI 165th International Senior Seminar on Juvenile Justice and the United Nations Standards and Norms', January 26, 2017).
[28] Despite rules 16.1 and 7.1 of the 'Beijing Rules' and the 'Tokyo Rules', respectively
[29] Article150, Child and Adolescent Statute, Brazil;
[30] 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 subsides 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[31] 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;

[31] 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.

GROUP 2

REDUCING JUVENILE CRIME AND RECIDIVISM: DISCUSSIONS AND SUGGESTIONS

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I. INTRODUCTION

"Juvenile justice system" (JJS) refers to the structure of the criminal system responsible for dealing with crimes and offences committed by juveniles, usually between the ages of 10 and 18 years. The juvenile justice system operates according to the premise that youth are fundamentally different from adults, both in terms of level of responsibility and potential for rehabilitation. It must be considered, as stated in the Riyadh Guidelines[1], "that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood." The existence of the system is justified based on the need to prevent delinquency and to adopt protective measures which can guarantee opportunities to the juvenile to retake control of their lives and reintegrate into society. Its main goals involve protection, prevention of offences, treatment and rehabilitation. For almost all countries, one of the main problems faced by the JJS is related to adoption of measures to reduce recidivism, and how to do that by using multi-agency and inter-organizational cooperation approaches.

A. Factors Contributing to Juvenile Recidivism

Factors that have been known to contribute to recidivism include ineffective intervention programmes, inadequate follow up after release, insufficient coordination and cooperation among related agencies, inadequate resources and infrastructure for youth rehabilitation services. Even though these factors are widely accepted to be the causes, to be able to address juvenile recidivism in each country effectively, one would need to understand the specific context and development of the problems.

1. Brazil – Since enactment of Child and Adolescent Act in 1990 (Law 8069/1990), Brazil is seeking to provide measures for adequate treatment to prevent recidivism. Existing structures are unable to provide necessary conditions to achieve the objectives proposed by law that support and refer the country's position towards international treaties and rules regarding the guarantees of children and adolescents of which the country is a signatory. Increased violence is becoming a national concern that mainly affects juveniles[2], in many cases related to drugs and substance abuse, as well as the tendency to co-opt children and adolescents to serve as forced labour for drug trafficking. There are several reasons that lead to increased violence against the youth in Brazil such as lack of programmes and structures in the follow-up services, parental supervision, skills training, community-based rehabilitation, school-based peace-building and commitment to school. In addition, the public preference of applying harsher punishment to criminal offences committed by

[1] 45/112. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

[2] According to Atlas da Violência, homicides in Brazil are responsible for 17.3% of 10–14 year-old youth deaths, 53.0% of 15–19 year-old youth deaths, 49.0% of 20–24-year-old men deaths and 40.7% of 25–29 year-old male deaths. IPEA – Instituto de Pesquisa Econômica Aplicada. Atlas da Violência, 2016. Available: <http://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=27406&Itemid=6> accessed 30 Oct 2016.

youth could lead to a vicious cycle of violence in the society. However, there are still alternatives to imprisonment that can and should be brought on board before starting to ineffectively simplify criminal treatment. As the juvenile criminal justice system in the country has gaps, some measures taken in other countries may prove interesting and could help to readjust the criminal justice system and improve policies of protection, prevention, correction and rehabilitation.

2. Cook Islands – In Cook Islands, a combination of factors leads to recidivism. Family issues such as large families, domestic violence, divorce, death of parents/guardians and poverty. Juveniles lack psycho-social and other support which triggers children to leave home and to live with friends, and as a result they go hungry which influences them to steal; breaking the law becomes the norm. Most of these juveniles come from a poor home environment where both parents are alcoholics, which results in children being neglected and left without parental guidance. Children are then left to fend for themselves, and the only way to do that is to steal. Those released after detention sometimes commit another offence just to get back into the system due to the poor family situation; they want to remain in prison where there can have free accommodation, meals three times a day and so forth. Training facilities are inadequate to provide vocational skills that help them to build better career paths. Lastly, children are being co-opted to commit crimes by adults. Once they are released from the prison, they ended up being used to commit another offence.

3. Côte d'Ivoire – In Côte D'Ivoire, the phenomenon known as street children or street families observed in the early 1990s as a result of the economic crisis, has intensified in recent years because of the military-political crisis. This situation, aggravated by high levels of poverty and cases of irresponsibility of the parents has caused children to move into the streets and resort to committing crime for survival. It has developed gangs composed of children called "microbes" who, armed with machetes, attack passers-by before robbing them; often they commit murder during aggression. This armed and economic crisis resulted in diverting attention of government towards other priorities such as the post-conflict reconstruction. There are limited alternatives to imprisonment for children who commit crimes. When children are held in custody, it is usually for a long period of time and, without appropriate care, results in the regular violation of the physical and moral integrity of the children. Children born in prison or living with their mothers in custody are not at all taken care of: the prison administration has nothing for them. This pushes them to criminality.

4. Japan – In Japan, there are several main factors that contribute to juvenile recidivism. The first is social stigma. Once juveniles become stigmatized, it is difficult to obtain jobs or reintegrate into their community. The second is the lack of places to live upon release, such as, safety houses, schools and workplaces. The third is lack in perseverance or impatience, namely, habits that are not helpful to the work requirements. Some juveniles do not want to work, and this habit comes from poor child rearing, lack of good role models and the inability of parents to communicate and convey proper values to their children. Furthermore, there is relative poverty leading to the cycle of crime among children due to lack of adequate provision of basic needs. Juvenile offenders are stigmatized which makes them feel hated and become recidivists.

5. Kenya – In Kenya, the situation is dynamically characterized by multi-faceted causative factors. The age of the juvenile has been floated as contributing to recidivism. The age of first onset of criminal behaviour is declining. Those who engage in drugs and substance abuse reoffend in order to get money to buy drugs and also achieve gratification of other desires with a "dead conscience". Family conditions such as poverty, breakdown and poor relationships lead to reoffending. The broader social environment comprised of school community, mass media when characterized by vices such as bullying, criminal gangs, violence, drug abuse and questionable conduct push juveniles toward offending. Negative role models such as known current or former criminals who appear wealthy as compared to low or middle class educated working or business persons attract recidivism because it appears in the mind of juvenile that he/she stands to gain from engaging in crime. Adolescents also have great respect for their peers and the influence if negative leads to delinquency. Retrogressive cultural beliefs and practices often times promote crime and violence by encouraging youth to commit murder, livestock theft, and sexual violence among other vices. The perpetrators are honored and held in high esteem. This promotes ethnic-based conflicts that remain protracted.

6. Myanmar – In Myanmar, there is a high rate of crime due to lack of funds to promote after-care facilities and to create more infrastructure, which implies that the treatment process is not sustained.

Discrimination by society after juveniles are released from correctional facilities such as training schools makes them feel unwanted; thus, they opt to reoffend. This is compounded by inadequate human resource capacity, especially social workers.

7. Nepal – Nepalese society is faced with the problem of street children from broken homes. Juveniles become vulnerable and develop high affinity for reoffending. Crimes commonly committed by the youth in Nepal include pickpocketing, theft in abandoned houses while under the influence of the drugs. Poverty levels are high hence juveniles lack provision of basic needs. There are situations that drive children to the streets and force them to resort to committing crime for survival. In addition, recidivism also is caused by lack of aftercare facilities and discrimination by society after release. There is also a lack of correctional facilities as currently there are 3 of 75 districts with facilities, which compromises the treatment process.

8. Papua New Guinea – Papua New Guinea is plagued by social and economic issues, where former offenders have little chance to be successful in normal society. They go back to the same area, same criminal friends and criminal enterprises. It becomes a vicious cycle of arrest, conviction, sentence and a repeat of those elements. Family conditions characterized by poverty and broken marriages lead to single parenthood, large families, violence and abuse. He/she feels frightened, angry and unsafe at home and may join street families. Poor education due to dropping out of school denies juveniles skills and knowledge to compete for socio-economic and other opportunities in the broader environment, which makes the juvenile feel useless and causes them to lose hope. As a consequence, many resort to habitual criminality. Juveniles have great respect for peer groups; hence fear of being rejected by fellow members leads to recidivism when the influence is negative. Rapid social change leads to a high rate of urbanization, where people move from rural areas to towns in search of a better life. In most cases their expectations are not met, they become jobless, and most youths resort to crime and reoffending. The criminal justice system has gaps that lead to recidivism. Juveniles are confined together with adults and learn bad habits. Juveniles become hardened, join gangs and other criminal organization. When released they try to emulate their peers and thereby reoffend.

9. Thailand – Juveniles commit criminal offences for various reasons, but mainly due to the fact that society has failed to provide appropriate care for them. Once they are committed to the juvenile justice system, it is the responsibility of the society to help rehabilitate and bring them back to their homes and communities. Limited utilization of evidence-based intervention programmes for youths, both in the community and in the residential placements, is one of the key factors contributing to the high rate of youngsters returning back to their former criminal activities. Reformation is in process but it is slow due to an inadequate number of researchers to address many areas that need improvement and expansion, particularly, for the development of alternatives to judicial process and community-based intervention. Limited involvement of family due to lack of awareness, failure of the juvenile justice systems to empower the family unit, and lack of coordination among the related organizations in reintegrating the youth back into their communities are the main factors contributing to the rise of juvenile recidivism.

B. Ways to Address Recidivism

The factors that lead to recidivism may not be the same factors that are needed for children to stop committing offences. During our group discussion, we found several practical suggestions to improve the situation of recidivism that could be useful to address the specific issues in different countries.

1. Brazil – To reduce recidivism in Brazil, some measures must be taken to restructure the services offered by the State. This may imply the need to create new services and remodel existing ones. At the government level, for example: (1) Revise diversion programmes, offering new structures as family courts, juvenile courts, probations offices and officers. In some countries, an alternative taken into consideration was the recruitment of volunteer probation officers, to provide wider coverage in services, enhance community-based follow-up services and to involve ordinary people in juvenile rehabilitation. (2) Create new services and facilities like halfway houses. (3) Revise the procedures of the court system, applying new concepts according to the services and international procedures. (4) Reinforce juvenile policy as a priority. (5) Reinforce family awareness, offering counselling for parents. (6) Reinforce law enforcement against the recruitment of children to crime. This may require some adjustments in the penal system, but it is a necessary step to be taken.

2. Cook Islands – Among other reasons, similar to many other countries such as inadequate parental supervision, stigmatization, and insufficient facilities to provide appropriate care for the juveniles, an ability of

the Cook Islanders to travel freely to New Zealand and Australia was perceived to be one of the main causes of the increase in juvenile crime and recidivism. Unable to count the number of its own population due to this mobility, the information regarding the amount of the juvenile offences and the effectiveness is a main challenge to solving the problems. Moreover, it was believed that the New Zealand authorities have used the Cook Islands as a dumping ground for delinquent teenagers of Cook Island descent[3]. From the suggestion of the participants in this group, the improvement of the situation can be accomplished by creating an agreement or a memorandum of understanding among the three countries to deal with the problems. The issues that need to be discussed among the three countries relating to the issues are standard of data collecting and sharing of the information among agencies in the justice system, factors that contribute to juvenile crime and recidivism, and effective treatment and intervention programmes for children in conflict with the law across the three countries.

3. Côte d'Ivoire – For Côte d'Ivoire, at the national level, it is desirable that the government makes the issue of children a national priority of governmental policy by establishing a national programme for the care of street children in general and those in difficulty with the law in particular with a view to their re-socialization. In this regard, the state must set up specialized centres in education, assistance, vocational training and the psychological care of minors in difficulty in general, including the training of appropriate and competent staff in the treatment of juvenile delinquency as a priority. Because the country is currently in the process of developing, it is as paramount to receive support from international organizations to ensure its ability to conform to the international standards and norms in administration of the juvenile justice system. For the actors such as police officers, social workers and magistrates who are already involved, the State must strengthen their capacity and provide them with the necessary means to carry out their tasks.

4. Japan – In Japan, the number of juvenile offenders has been decreasing over the last decade, but the rate of juvenile recidivism has been increasing. As a result, the rehabilitation programmes provided by the juvenile training schools and probation offices need to be improved to be able to serve the youth and reduce recidivism. The intervention methods that could help reduce recidivism are to assist the parents and teachers and correctional personnel to develop skills in communicating with the juveniles to instill social norms and values, foster appropriate work habits for youths and reduce stigmatization from the community. But nowadays, at the end of parole, a number of youths cannot return back to schools or jobs and recommit offences. Multi-agency cooperation is necessary to assist and support the youths in their return to school or finding employment. More juveniles will be reintegrated into society and prevented from reoffending if the governmental organizations, NGOs and NPOs take action to help remove the stigma. In Japan, this idea is referred to as creating a "Place to Belong" and creating "Opportunity" in the Community. The problems of negative views of the juveniles that resulted in inadequate support for youth after release can be addressed by creating campaigns and events to develop a better understanding of the nature of juvenile behaviour and the value of public support for reintegration of the youth. Since Japan has set the goal to become the safest country in the world, this goal can be used as part of the campaign to communicate to the public using the slogan "together, we can." The acceptance of the community may help to increase the chances that the youth will find their turning points and continue to prosper and be productive members of society.

5. Kenya – For Kenya, it is suggested that institutional reforms be adopted to make the justice system more friendly to juveniles. Comprehensive monitoring of the related agencies in the criminal justice system needs to be developed and executed. Another important point that needs to be addressed, as it is relevant to the country's development history, is the inequality of the opportunities provided for men and woman. For example, there is a Youth and Women Fund that provides loans to youth and women for investment but none for men. The aggressive campaign to empower girls in the 1990s and affirmative active action policy by the government led to the emerging disparities in the social, economic and political achievements where women appear to be gaining more mileage than men. The suggestion is for the government to encourage more empowerment for boys. This will address the recidivism issues by having more involvement of men in the provision of care for children in the family resulting in empowerment of family units socially and economically.

[3] From "A Situational Analysis of Children Youth & Women." Government of Cook Islands with Assistance from UNICEF, 2004, p. 11.

6. Myanmar – In Myanmar, recidivism of juvenile crime can be reduced by increasing awareness of the public and relevant agencies in the communities of their imperative roles in rehabilitating and reintegrating youth back into society. Involvement of the agencies will lead to a greater variety of alternative ways to treat children in conflict with the law. In addition, increasing political will power and convincing the related government entities to allocate their resources to this population are the keys to improving the quality of services that the youths need.

7. Nepal – For Nepal, because the resources from the government sector are quite limited, it is more practical, and possible in a shorter time, to obtain support from non-governmental entities, not only from the organizations but also from the people from the community and family themselves. This can be done by disseminating the information by using the mass media such as radio or television broadcasting to the people in communities of the significant roles that they have in helping to prevent juvenile crimes and increase chances for the children to be reintegrated back into their homes and communities. In Nepal, there is plenty of assistance being provided by INGOs and NGOs, and they are all required to register their services with the government, but the quality of services in addressing the recidivism is not yet determined. Thus, to be able to utilize the already available resources from the NGOs, it is helpful for the related government agencies to develop an evaluation system to ensure the effectiveness of the work of these organizations. With these activities, the problems of street children and the number of children who return to commit more crimes may be reduced. For a longer-term plan, more government facilities that provide intervention and reintegration services for youth should be built since the services provided in those districts are effective and have contributed to the reduction of recidivism.

8. Papua New Guinea – For Papua New Guinea (PNG), four main solutions to the problems were proposed. (1) Improve the quality of the rehabilitation programmes for youth to ensure that they receive programmes that provide education, job skills, pro-social life skills, and effective behaviour intervention that fit their individual needs and interests. The support should also continue after they are released from the institutions to ensure successful reintegration. (2) Develop a comprehensive data collecting and management system to capture the situation of recidivism so that the state can make policy and plan to address the problems more accurately. (3) Increase the use of administrative measures such as diversion, mediation, and Alternative Dispute Resolution (ADR) instead of judicial measures. (4) Provide regular training for related personnel including probation officers, psychologists, and particularly in the judiciary (judges/magistrates) to avoid the order of confinement and to use alternative penalties such as suspension of sentences and probation. Also, it is important to increase public awareness by disseminating information and promoting a better understanding of the importance of the reintegration of youth. To achieve these suggestions, Juvenile Rehabilitation Bills would need to be drafted to ensure full financial and managerial support from the government.

9. Thailand – For Thailand, the juvenile justice system is undergoing a major reform to ensure that it complies with the international standards and norms and also to serve the main purpose of the system, that is, to prevent reoccurrence of criminal offences committed by youths. Advancement can be seen in the development of the risks and needs screening system and some research studies that showed promising results in reduction of recidivism. However, the greater challenges were in the implementation of the system nationwide. With offices located in 77 provinces and about 4,000 staff members working under the department, the training and monitoring of the implementation of the programmes are the targets that need to be attended to. In addition, more creative and efficient ways of inviting participation from the public and private sectors are needed, and most importantly, members of the youth's family must be a part of the intervention and reintegration process. Finally, the evaluation of the effectiveness of the programmes is in dire need. Not until last year, in 2016, did we know how many youths recommitted crimes after release from juvenile training schools. The indicators of success should be set in ways that reflect the goal of the juvenile justice system. To accomplish that, better use of information technology would need to be in place so that data entering and utilization of significant processes and outcomes can be done to aid the monitoring and evaluation effort.

C. Multi-agency Cooperation with the Community and the Private Sector

1. Brazil – To stimulate and expand inter-agency cooperation to contribute to the protection, treatment and rehabilitation of juveniles, it is necessary to adopt initiatives that seek to facilitate the involvement of non-governmental organizations, favouring the formation of networks. In this sense, it is necessary (1) to stimulate

companies to offer more opportunities of work to youths, offering, for example, tax reduction and providing tax incentives, or financial support to do that. (2) Stimulate companies to offer training for youths that need to improve job skills. (3) Stimulate community treatment and counselling for youths involved in minor cases. (4) Create programmes based on volunteer work to offer counselling and guidance, or improve job skills. (5) Create anti-discrimination programmes based on acceptance of differences, avoiding stigmatization. These initiatives should be carried out within communities and especially in the school environment, with mass media support. (6) Create programmes based on school, promoting academic achievement and self-esteem.

Within non-governmental organizations, initiatives can range from (1) recruitment of volunteers to diverse activities aimed at rehabilitating young people, to the (2) accreditation of institutions for the reception and/or treatment of young people with drug abuse problems. Besides that, (3) companies must open their doors to offer more opportunities to employ and to encourage youths to change their lives. Offering vocational training can contribute to building solid foundations for a future professional career, to rebuild self-esteem and to develop a work culture. (4) Schools, mainly the public ones, need to be prepared to receive youths on parole. This may require prior preparation of the school environment and training of staff to be able to offer suitable conditions for reception and rehabilitation of juveniles. (5) Involve community structures, such as community boards, to work together with the juvenile justice system. In this case, the community boards need to be trained for that, being prepared to offer counselling and guidance. (6) Promote, with the support of international humanitarian agencies such as UNICEF and other agencies, a joint effort to prevent violence and recidivism, building a culture of peace. Inter-organizational cooperation is imperative for government efforts to integrate services and provide adequate conditions for the application of new concepts related to the juvenile justices system. Starting with (1) the adoption of integrated registration systems for cases involving juvenile delinquency, the lack of reliable data does not allow for a deeper understanding of the problem nor help to define priorities or policies. Thus, there is a need to define indicators and invest in local, national and international research, as well as share results and experiences, especially those of success. In addition, it is (2) necessary to promote a wide discussion about the roles in prevention, treatment and rehabilitation of juveniles. At this point, the role of agencies in areas such as education, health, social welfare and the juvenile justice system in the prevention and reduction of criminal behaviour needs to be clearly defined.

2. Cook Islands – The country does not have juvenile rehabilitation centres or classification homes to accommodate juveniles in conflict with the law. This is because the country is yet to adopt the United Nations Standards and Norms. The government has established two vocational training centres in the country: The "Cook Islands Trade Training Centre", where they offered some training on job skills such as electrician, carpentry and mechanics/engineering, and the "Cook Islands Hospitality Training Centre", which offers training on catering and hotel services. However, these training centres are not specifically established for juveniles in conflict with the law or detainees, but provide job skills training for the general community. These training centres have been very effective in offering training and guidance to offenders. On completion of the training, the trainees are issued trade certificates which can help them get into the labour market. However, even though these training centres are fully funded by the government, it only funds half of the enrolment fee and the other half must be covered by the trainees. So for the programme to be effective, the Department of Probation Service has to look for sponsorship to help out with the fees. We also have two NGOs that also play a big role in the country's justice system. One is the "Pananga Tauturu", which provides counselling and support to women and children victims of violence, and the "Rotaianga Men's Support Center", which provides counselling on anger management and alcohol abuse.

3. Côte d'Ivoire – In Cote d'Ivoire, there are a number of international partners, like UNICEF, BICE (International Catholic Child Office), International Rescue and Aid to Prisoners (LISAP), the World Health Organization (WHO), Prisoners Without Borders and the International Committee of the Red Cross, that support rescue apart from other humanitarian activities provided to prisoners. The national partners are Akwaba St Camille, the Red Cross, ANAP (National Prisoners' Assistants Associations), Caritas of the Catholic Church, the Association of Visitors to Prisons, private orphanage centres, and several other NGOs that intervene directly in prisons. They aim to provide assistance in the form of care, intervention programmes for juveniles, orphanages and prisoners to improve the conditions of detention of minors by providing necessities and the preparation of their reintegration or social reclassification. Legal assistance is also provided for juveniles. At least there is some level of collaboration but more work needs to be done by national agencies to create a policy framework enabling agencies to collaborate and to address issues of

minors. Also, the State could grant facilities such as removing customs barriers and providing all kinds of conveniences necessary to their activities for the welfare of minors.

4. Japan – There are many governmental organizations which are involved in the prevention of juvenile recidivism; however, from the statistical point of view, those organizations do not function well so far. Therefore, NGOs and NPOs have an important role to prevent juveniles from reoffending by providing assistance in the fields of education, welfare, employment, and medical care. Above all, "Therapeutic communities" which achieve a measure of success in treating addiction in the United States and Canada are also useful in Japan. The "Kodomo-Shokudo" (children's diner), one of the NPOs, creates a "Place to Belong" for youth and their single-parents all over Japan.

5. Kenya – Like in most developing countries, Kenya has experienced a higher rise of recidivism by minors. There are international and national agencies present to ensure reduction of delinquency recidivism. The agencies and intuitions basically start at home, working with parents and the community, and provide initial guidance, counselling and support. Everyone should contribute to the juvenile's up-bringing and ensure there is no stigmatization or offender labeling. The national and county governments are responsible to ensure good governance and strategic planning to addressing issues of law and order in the country. The government has developed polices that address youth empowerment and poverty eradication. The main aim is to bring effective and efficient basic service delivery to the majority of the country's population. Meanwhile law enforcement agencies have a much bigger role in building awareness targeted at juveniles, through talk shows, counselling and instilling professionalism. Faith-based organizations (churches and mosques), agencies of the United Nations, Non-Governmental Organizations, the media, corporate entities, e.g., banks, among others contribute to providing guidance to juveniles and empowerment programmes. They complement government efforts and, thus, fill gaps left due to resource constraints in diverse areas, e.g., health, education, water and agriculture. They engage in assisting recipient communities in agriculture, nutrition, education through scholarships, promote ethics in their work such as responsible journalism, and programmes to discourage delinquency. They have scholarship programmes and deserving cases of bright children, personal and development loans for university's and also partnered with prisons services.

6. Myanmar – The involvement of the public and private sectors needs to be encouraged. Many professionals who deal directly with the criminal justice system and the causes of violence have insufficient training to be able to develop their activities satisfactorily and contribute to building a safer society. In addition, the country needs to adjust to international standards to deal with juvenile violence and recidivism, prioritizing policies aimed at raising awareness among the public. To achieve these goals, it is necessary to (1) increase public awareness, which can be done by using mass media capable of reaching large audiences across the country and helping to develop greater awareness of public safety responsibility; (2) Capacity building for social workers and related organizations; (3) Counselling programmes for juveniles who committed crimes, supporting initiatives for job skills training and school achievements; (4) Increasing political will power and convincing the related government entities to allocate their resources to be placed for juvenile delinquency prevention and rehabilitation. In terms of support coming from international and national non-governmental agencies, Myanmar relies on UNICEF (which provides funding and technical assistance), the WHO (which takes care of children and women), the UNODC (which works in cooperation with UNICEF to provide funding and technical assistance to enhance capacity building), MANA – Myanmar Anti Narcotic Association – (Assists by paying for public awareness campaigns to prevent juvenile crime), the Child and Women Care Association (CWCA), which assists in caring for children and women, the Women Association (which assists in caring for women's rights and children), the Volunteer Red Cross Association (which assists in the collaboration and coordination within youth communities) and the Volunteer Fire Brigade Association (which assists in collaboration and coordination within youth communities). Finally, more coordination between these different agencies related to crime prevention is needed to reduce recidivism.

7. Nepal – In Nepal, the Ministry of Women and Children Central Level Coordination Committee provides extensive programmes for child care and development addressed to abandoned orphans and also offers support to children from low income families and strengthens the capacity of the nationwide network. Non-governmental agencies like the UCEP (Under Privileged Children Educational Program) provide behavioural, educational and vocational programmes for underprivileged and disadvantaged children in partnership with the government. CIWIN (Child Workers in Nepal) seeks to empower homeless children. This programme is available for 10 of 75 districts. The institution Namaste Children Nepal rescues children, including ex-

offender youth. Institution Fresh Nepal also offers security, health and education for at-risk children. Karuna Foundation helps to rescue children in conflict with the law, including ex-offender youth. The different non-governmental institutions must submit their programmes to government evaluation and work as partners of the Ministry of Woman and Children Welfare.

8. Papua New Guinea – Apart from parents who provide basic support and assistance, unconditional love, attention and support for the offenders' well-being and development, various government and non-governmental organizations also cooperate and work together to reduce juvenile recidivism in the community. The law and justice agencies represent the state as the key players in the juvenile justice system, which includes the judiciary, police, Community Based Correction Services, juvenile institutions and Correctional Services to ensure the Juvenile Justice Act is implemented. There are specific juvenile justice policies and guidelines that encourage agencies to be involved to ensure good governance and that juveniles are dealt with fairly and justly in line with the international standards and norms. The Juvenile Justice Act also provides for the formation and appointment of National and Provincial Juvenile Working Committees that convene meetings to address juvenile issues and to be the mouthpiece of the provincial and national governments for agency support. Statutory organizations like the local radio and television are important media for dissemination of information to a wider audience to enhance awareness, law talks and use of airtime for panel discussions on new laws and juvenile delinquent issues. Also, Non-Government Organizations like the City Mission, Gini Goada, and Morata halfway house provide care for the homeless and disadvantaged, while the Young Women's Country Association (YWCA) provides day training and career guidance. UNICEF and AUS-AID (JSS4D) provide financial and much needed technical assistance in capacity building and training for all law and justice agencies including juvenile justice for progressive implementation of its activities. Similarly, various religious organizations are contracted to assist in the management of four of the State-owned juvenile institutions located in the provinces with subsidized management fees paid annually from the state's budget. Others like the Salvation Army, Haus of Hope, Haus Root and Life-line provide spiritual enrichment, counselling and guidance. In order for effective coordination between agencies to exist, it is suggested that a separate bill for Rehabilitation Centers be passed, as it would oblige agencies to cooperate and focus more on rehabilitation and re-integration of juveniles to reduce recidivism. The process will also involve parents, victims and communities in restoring and building a harmonious and peaceful society. Also, it will gain more attention and support from the government to be successful.

9. Thailand – For Thailand, even though the establishment of the Juvenile Court Act of 2010 does provide an opportunity for the Department of Juvenile Observation and Protection (DJOP) under the Ministry of Justice to authorize and provide monetary support to non-governmental organizations to provide services and intervention programmes for the youth, until now, the rules and regulations have not yet been developed. As a result, the level of participation of the non-governmental organizations in providing rehabilitation for youth is limited. Also, like other countries, multi-agency cooperation to provide services for children needs to be well organized. The youth entering the justice system need supervision and support from adults until they can stand on their own feet. Merely having the agencies that provide service is not sufficient. So, with all of the services available, the effective case management for each young person should also be available. This can be done by working with the Department of Probation to strengthen the skills of probation officers and volunteer probation officers in organizing the services available in the community to fit the needs of each individual youth in his or her own community.

II. CONCLUSION

The purpose of this paper is not to provide an extensive review of the causes and the ways to eradicate juvenile recidivism, but rather to shed some light on the problems and possible solutions from the experiences of the members of the participating countries. We hope the information shared in this report will help the reader understand the situation of the juvenile justice system that we currently experience and be inspired to take part in reformation of the system to better serve the youth and their families for a just, safe and secure society for all.

GROUP 3
A HOLISTIC APPROACH TO THE JUVENILE JUSTICE SYSTEM

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I. INTRODUCTION

This paper aims to compare and contrast different practices, legal systems and best available choices of our respective countries and to look for means and ways which may be practical and result oriented in addressing Juvenile Delinquency. Irrespective of different environment, norms and mores and religious backgrounds, we can agree upon minimum standards for the improvement in the juvenile justice system. There need to be continued and sustained efforts in this regard. Considering the diversity of cultural, political and economic aspects of our countries and the varying differences in our criminal justice systems, establishment of equal treatment for juveniles worldwide according to international standards and norms may prove to be challenging.

But keeping in view the international instruments as explained through various conventions, guidelines and rules, we are required to set certain criteria in the pursuit of our ideals. With the coming into being of the Universal Declaration of Human Rights (UDHR) and the evolution of human rights, a series of norms that focus on the issue of juveniles in conflict with the law have been built gradually, including:

A) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");

B) The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines");

C) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

D) The UN Convention on the Rights of the Child (CRC).

The scope of the discussion is limited to the topics which the group believed can help in the formulation of workable policies and measures that will address, if not resolve, the current challenges in our respective countries, as follows: the minimum age of criminal responsibility, diversion, special procedures for juveniles (compared to adults), inter-organizational cooperation among related agencies, and multi-agency cooperation with the community and the private sector.

A. Minimum Age of Criminal Responsibility

1. Standards

The definition of "juvenile" in Article 2. 2 (a) of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, "The Beijing Rules", adopted by General Assembly Resolution 40/33 on 29th November 1985, is: "A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult."

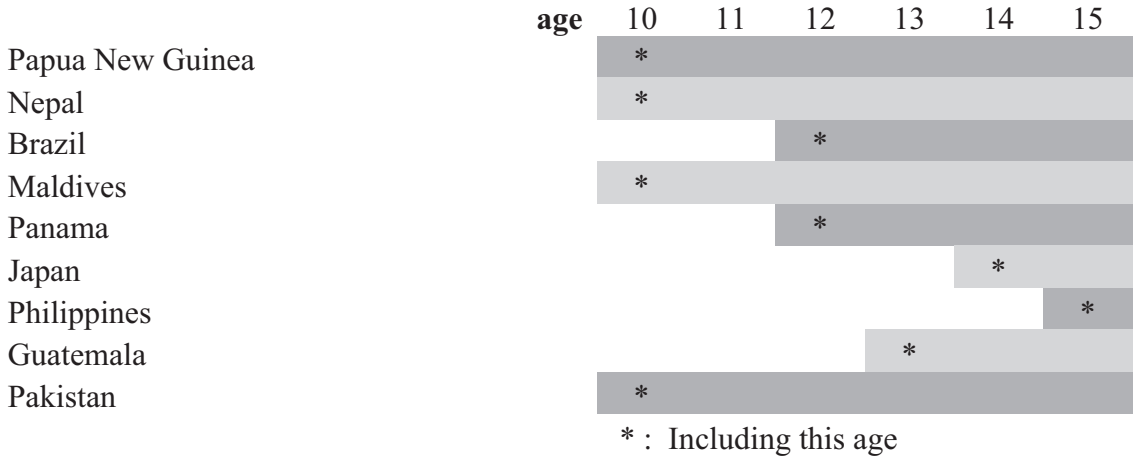
In the Convention on the Rights of the Child, Article 1 states, "A child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". Professor Matti Joutsen[1] says that General Comment 10 of the Committee on the Rights of the Child seeks to provide guidance to be used in establishing age limits for criminal responsibility:

> "...MACR (*minimum age of criminal responsibility*) shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended State parties not to set a MACR at too low a level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. State parties are encouraged to increase their lower MACR to age of 12 years as the absolute minimum age and to continue to increase it to higher age level.[2]"

2. Practice

Although most of countries have signed or ratified the CRC, discrepancies still exist in the minimum age of criminal responsibility. However, efforts are underway to enhance this limit to 12 years.

The Minimum Age of Criminal Responsibility



As we observe, the minimum age of criminal responsibility in Japan is fourteen years, while in some countries variation in minimum age of criminal responsibility ranges from ten to fifteen years. Therefore, the need of the hour is to have unanimity regarding the minimum age of criminal responsibility.

B. Diversion

The baseline definition in Article 11.1 of "The Beijing Rules" is: "Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority…"[3]

Diversion, invoking removal from criminal justice processing and redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration, e.g. the stigma of conviction and sentence. In some cases, non-intervention would be the best response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

The first analysis of the differences among the diversion systems of the countries in question looks at the

[1] JOUTSEN Matti. From Soft to Hard Law. Tokyo, Public Lecture, 2017, p. 23.
[2] JOUTSEN Matti. From Soft to Hard Law. Tokyo, Public Lecture, 2017, p. 23 (citing General Comment 10 of the Committee on the Rights of the Child).
[3] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985.

points where diversion is available, i.e., the police, social workers, prosecutors, courts, etc. Commonly used diversion measures are caution, reprimand, counselling, referrals, warning, apology, compensation, restitution and affidavit/bond. Further, differences have been noted in the formal procedures and measures of diversion among the countries under discussion.

In **Brazil**, the prosecutor can handle diversion without trial but these measures have to be approved by the judge. The Brazilian diversion system provides juveniles with educational measures by prioritizing their reintegration instead of placing them under protection. The Brazilian Federal Law 8.069/90 "Statute of Children and Adolescents," adopted an ideology based on the theory of integral protection, placing children and young people in the special category of human beings under development and considered vulnerable.

The **Guatemalan** legal system expressly establishes in the "Law on the Comprehensive Protection of Children and Adolescents and Adolescents in Conflict with the Criminal Law", the minor offences: 1. Reconciliation 2. Remission 3. Opportunity Criterion (Imposing on the adolescent the obligation or prohibition of performing certain actions such as attending therapies or restraining visits to certain places). One of the weaknesses of the diversion measures in Guatemala is that the relationship between the justice system and citizen participation is still weak. Strengthening community participation is needed. In that sense, it is important to make the public aware to avoid misconceptions about juvenile offenders, particularly about the rehabilitative measures.

Japan, as a policy, refers all cases to the family court, and the diversion takes place through the family court. However, the family court can refer juveniles who commit heinous crimes to the prosecutor. The most commonly applied diversion measures in the Japanese system are probation (non-custody) or referral to the juvenile training school (custody). These diversions come in to effect at the hearing stage. Prior to the hearing stage, another diversion system exists. During a social investigation by the family court investigating officer, various types of educative measures for juveniles take place, e.g. "on-site learning," "group work," "equipping knowledge," "employment assistance" and so on. These measures are intended for juveniles, who commit minor offences. Using these steps, Family Court investigating officers enhance the juvenile's perception of delinquency, remorse, and self-recognition. These measures assess the reflection of juveniles and the likelihood of their transformation. In most cases, these measures are effective. Then, the judge dismisses the case after hearing (or without a hearing). According to the statistics (Final Rulings in 2014), dismissal without hearing takes place in 51% of all cases, and 20% percent are dismissed after hearing. Family court investigating officers have to select the most efficient measure based on the particular juvenile. Findings are based on three viewpoints: Biological, Psychological, and Sociological (the "BPS" model).

In **Maldives**: There are two stages of diversion being practiced. Matters relevant to children in conflict with the law are governed by the *Regulation on Conducting Trials Investigation and Fair Sentencing of Juvenile Offences*. The first is at the police level where juveniles are provided with an "informal caution" in the presence of a parent or guardian, followed by a "formal caution" if they persist in criminal behaviour. Next, the Prosecutor General has discretion to issue a formal caution and to divert the child to a rehabilitation programme under the guidance of the Juvenile Justice Unit (JJU), or to sign an agreement with the juvenile to comply with certain conditions (attending an educational or vocational centre) and to refrain from criminal behaviour. The JJU operates under the Ministry of Home Affairs and is tasked to provide support and assistance to children in conflict with the law. There is no court-level diversion in the Maldives. However, the Office of the Prosecutor General often withdraws cases registered at the court, in order to provide the juvenile with the chance to rehabilitate. Except for serious offences, or offences that warrant a sentence under Islamic Shari'ah, the general approach is to divert juveniles away from trial.

Nepal has no specific legal framework regarding diversion. However, measures like caution, reprimand, warning, apology, conciliation, compensation and affidavit/bond are being practiced at police units. If these measures are incorporated in the legal system of the country, their efficacy and effectiveness is expected to improve.

Pakistan, like Nepal, has no specific legal framework regarding diversion. However, measures like caution, reprimand, warning, apology, reconciliation, compensation, fine and affidavit/bond are informally being practiced at police stations and in the courts. If these measures are incorporated into the legal system of the country through legislation, their efficiency and effectiveness is expected to improve. Since these

diversions are being practiced without a specific legal framework, sometimes it causes complications for practitioners.

Panama has the following forms of diversion provided by law: 1- remission, in which the judge, in specific cases designated by the law, dismisses the case. 2- Criteria of opportunity. The prosecutor decides to refrain from prosecuting the case. 3- Conciliation. The teen has met the obligations imposed. Additionally, in the most recent amendment to the law, enforcement was established: "reparation of harm", community service and the obligation of an assistance programme and orientation.

Papua New Guinea Juvenile Justice Acts provide for a wide range of diversion programmes in dealing with minor juvenile offenders. Forms of diversion include caution and discharge, formal apology, counselling service, community service, reconciliation, restitution, compensation, juvenile/family conferencing, and restorative justice approaches such as mediation. Diversion takes place at two stages (i). Diversion by Police-Initial Contact and (ii). Diversion by Court – Pre-hearing.

In the **Philippines**, when a juvenile/child over the age of 15 but under 18 commits an offence, the child shall be referred to a social worker who shall determine whether the child acted with discernment. If with discernment, the child will be subjected to a diversion programme as the case may be. If without discernment, the child shall be referred to his parents through the *barangay* ("village") for a proper intervention programme. A child aged 15 and below who committed a minor offence shall be referred to the parents through the social worker for proper intervention, and if the child committed a serious offense or is a repeat offender, the child shall be referred to a youth rehabilitation centre for proper intervention.

C. Special Procedures for Juveniles (Compared to Adults)

Since juveniles are the most vulnerable section of the society and they are yet to attain maturity, special procedures are of utmost importance for the investigation, adjudication and imposition of punishment, wherever necessary for offences committed by juveniles. Preference shall be given to the best interests of the child by rehabilitation without imposing punishment on such child.

Brazil: The statute addresses all issues related to children and adolescents including the rights of juveniles as well as the obligations of parents and family, and public servants involved in the processes and the State. The law created a specific structure, parallel to the ordinary criminal justice system, to deal with the misconduct, treatment, and rehabilitation of juveniles. For the Brazilian law, young people cannot formally commit crimes; rather they commit "infraction acts." Therefore, they are treated differently and held in detention until the fulfillment of socio-educational measures in specific establishments.

Guatemala: since 2003, the Law of Integral Protection of Children and Adolescents and Adolescents in Conflict with the Criminal Law has been approved. This law is in consonence with the international standards and norms. This law establishes the creation of special courts, specialized prosecution and specialized police units for juvenile justice. They are supported by Specialized Juvenile Courts (Courts of First Instance and the Appeals Chamber), and the Prosecutor's Office is specialized in adolescents in conflict with the criminal law (assistance by interdisciplinary teams of experts).

Japan: There are three basic principles in the procedures for juveniles: the educational principle, the principle of individual treatment, and the inquisitorial principle. These principles promote educational treatment for rehabilitating juveniles that have fallen into delinquency (educational principle). Family courts should strive to eliminate delinquency by protective measures. Imposing penalties on juveniles is the exception. Moreover, all juvenile cases are referred to family courts. Family courts should perform treatment according to the needs of each juvenile delinquent (principle of individual treatment). Treatment is decided according to the problems of the juvenile's nature and the juvenile's environment. Treatment is not decided only according to the weight of the facts/evidence constituting the alleged delinquent acts. In addition, because of the special nature of juvenile hearings, it is not open to the general public. Family courts preside over the procedures themselves (inquisitorial principle). At the hearing, prosecutors and juveniles do not oppose each other, and judges speak directly to the juveniles. All attendees of the hearing have the purpose of rehabilitating juveniles.

Maldives judicial procedure mandates that the cases of juveniles must be referred by the Police to the

Juvenile Justice Unit (JJU) immediately. It is pertinent to mention that JJU is under the administrative control of the Ministry of Home Affairs. The JJU will then assign a case worker who will provide support and assistance to the juvenile throughout the criminal justice process. No child can be questioned without the presence of a parent or guardian or a representative of the JJU. It is mandatory for the JJU to attend all hearings at the court including remand hearings and trial. Social Inquiry Reports are obtained during remand, trial, pre-sentencing and the post-sentencing rehabilitation stage, which will provide background information on the juvenile to the authorities in the disposition of the case. The juvenile court proceedings are closed to the public. There is a specialized unit of the Police (Family and Child Protection Department), but other departments also deal with juveniles accused of serious offences. Except for serious offences, juveniles are usually placed on house arrest subject to conditions.

Nepal, after the ratification of the CRC, has passed different laws and initiated various policies to implement the juvenile justice system. The Children's Act 2048 (1992) and Juvenile Justice (Procedure) Rules 2063BS (2007) are the primary laws that stipulate juvenile justice procedures. The Children's Act, 2048 (1992) introduced the concept of juvenile justice as a separate branch of the justice system which includes the legal provisions in order to protect the rights and best interests of the children for physical, mental and intellectual development. The Women and Children Services Directorate of the police is specially tasked to deal with matters of juvenile and other vulnerable social groups. It has established 23 separate buildings for the Women and Children Service Center (WCSC), 40 districts with juvenile justice officers, and 20 child friendly rooms at the district level. As a special measure, adolescents cannot be investigated during the night and even not for more than one hour per day. Juvenile offenders may not be handcuffed, cannot be compelled to provide statements and have the right to be silent. Free legal assistance to the juvenile is the responsibility of the state. Their cases must be tried expeditiously. On the initiative of the Nepal Police, the state of Nepal has formulated "Gender Policy 2069". It has facilitated the incorporation of gender issues in various police training curricula, separate posting of 1,344 personnel for WCSC units, establishment of a national centre for children at risk with a hotline number 104, and formulating victim support SOP- 2070. The police and legal counsel shall appear in civilian clothes in closed proceedings. Provisions relating to the investigation include a requirement that all police staff shall introduce themselves by showing identity and explaining the cause for the arrest, informing the child about his or her constitutional rights in a language understood by him/her, informing both parents of the child as far as possible, at least one if both are not available, and he or she shall examine the physical and the mental health of the child.

In **Pakistan**, no proper or separate procedure to deal with juvenile offenders has been established. However, the country, being a signatory of the CRC and other related international treaties, has promulgated the Juvenile Justice System Ordinance, 2000 (JJSO), Child Welfare Commission Act and the Bursal Institute Act to deal with the offenders. Moreover, with the approval of High Courts, the District and Session Judges have been declared as juvenile judges to handle the cases of adolescents. Statements of the accused cannot be recorded without the presence of his/her guardian or counsel. No other hearing is fixed on the date when the juvenile case is to be heard by the judge. All hearings are in camera. Juvenile offenders are provided with free legal assistance by the state. All juvenile cases must be decided within four months. The victim is allowed to participate in the hearing. Juveniles have the right to remain silent. If the police officer wants to join the proceedings, the police officer must not be in uniform; instead he/she should participate in plain clothes. Media coverage is not allowed.

In **Panama**, there is a separate family court to deal with the affairs of children, and there are criminal courts for juvenile offenders. These courts are part of the judiciary. There is also a police unit of childhood and adolescence, specialized in protection of minors when they are victims and a special adolescents unit to take care of juvenile offenders judicially, under the control of the Ministry of Security. Moreover, there is the specialized division of adolescents, charged with the responsibility of assisting the prosecution of teenagers in investigation. There are specialized prosecutors to prosecute juvenile cases supervised by the Public Ministry.

Papua New Guinea: The Juvenile Justice Act and Juvenile Justice Policy provide for special Juvenile Justice Procedure with strong emphasis on community-based treatment options such as diversion measures and non-custodial sentencing (Probation, good behaviour bond and fine). These measures are effective in treating juvenile offenders, and custodial sentences are only ordered as a last resort and for the shortest necessary period. Diversion takes place at two stages: the juveniles cannot be placed in police cells; rather

they are released or handed over to their parents or guardians or are kept in juvenile remand centres pending trial. The country has a separate court with trained juvenile court magistrates and trained police prosecutors. The police shall appear in civilian clothes, including legal counsel, in closed proceedings. Free legal aid is provided by the government. Social Inquiry Reports are mandatory before disposition. Juveniles who commit serious offences are sent to juvenile institutions or to a separate juvenile section in a correctional institution depending on the nature of the offence and surrounding circumstances. It is mandatory for juvenile justice officers to be present at any juvenile court proceeding. In addition, the police protocols and the juvenile court protocols on magistrates provides for juvenile police officers', juvenile court magistrates', police prosecutors', juvenile court officers' and the correction services officers' duties and responsibilities in handling juvenile cases.

In the **Philippines**, during the initial contact (the term "arrest" is avoided), the Women and Children Protection Center/Desks of the police handle cases involving children. Juveniles shall be turned over to a social worker within 8 hours for proper disposition. Custody of the child while undergoing diversion or intervention shall be referred to the parents, youth rehabilitation centre or to the social worker. Additionally, the juvenile shall be provided with a lawyer (Public Attorney's Office) during investigation. In the case of adults, the general investigation of the police shall handle the criminal case, which shall be referred to the Prosecutor's Office within 9 hours for minor offences, 18 hours for less serious offences and 36 hours for serious offences. The prosecutor, upon determination of probable cause, shall file the case with the court for trial. The adult shall be committed to jail.

D. Inter-Organizational Cooperation among Related Agencies

Bearing in mind the intricacies of the issue, the objectives of the system cannot be achieved without inter-organizational cooperation among the relevant stakeholders and organizations. Since juvenile justice institutions are directly involved in the process while some have to be involved for the well-being of the child, such as health, education, social welfare, etc.; therefore, there has to be close collaboration and cooperation among them.

Brazil: Without a doubt, one of the biggest challenges for the Brazilian system is cooperation. Inter-agency cooperation throughout the criminal justice system chain is considerably integrated and rapid. The problem is that to the extent the new legislation imposes a system based on protective measures, a structure of protection, shelter and re-education for young offenders is needed. At the moment, the demand coming from the criminal justice system, due to the high participation of youths in crimes, does not find institutional support for the reception of youth. The Brazilian State urgently needs to improve and expand the institutions that work with juvenile offenders after passing through the system of justice.

Guatemala: It has been made possible to establish a workspace composed of the highest level officials of each of the public institutions involved in the juvenile justice system: the Public Ministry; the judiciary; the Institute of Public Criminal Defense; the Ombudsman's Office and the Secretariat of Social Welfare. As a result, a Strategic Plan on Adolescents in Conflict with the Criminal Law has been implemented in a holistic way for the cases of adolescents as a vulnerable group, which deserves adequate intervention and protection of the State. As a recommendation, good practices and procedures should be institutionalized so that juveniles do not depend on a particular person.

Japan: When family courts make final rulings, the courts receive input from juvenile classification homes and probation offices (both of them are organizations of the Ministry of Justice). In addition, family courts give information to juvenile training schools, probation offices and children's self-reliance support facilities (which operate under the organization of the Ministry of Health, Labor and Welfare) for determining concrete educative measures for the juveniles.

Maldives: There is a good level of inter-agency cooperation in Maldives. The Police work in close collaboration with the Juvenile Justice Unit and notify the unit if and when an arrest is made. Consultations take place between the different agencies on how best to deal with a particular juvenile. The Prosecutor General's Office also takes into consideration the recommendations made by the JJU as to the circumstances of the individual child in deciding on the alternatives to prosecution. Agencies have cooperated in the recent diversion programmes run by the Police and the JJU. However, there are calls for improvement. All police personnel handling juveniles must be trained in juvenile justice principles and standards, regardless of

department or division. In addition, the Prosecutor General's Office must also train special prosecutors who may only handle juvenile cases, in order to make the system more efficient. Further, parental cooperation is crucial to the successful implementation of juvenile justice policies. The State therefore needs to raise awareness about juvenile justice matters.

Nepal: Inter-organizational cooperation among related agencies is in place. The national and district levels are composed of different departments (social welfare, police, justice, education, health, etc.) to supervise the implementation of the juvenile system. The Co-ordination Committee conducts meetings to review administrative policies on the juvenile system.

Pakistan operates the Ministry of Human Rights, the National Commission for Human Rights, the Social Welfare Department, and the Probation and Parole Department at the national level. Whereas in private sector, relevant INGOs/NGOs are also working, the Ministry of Human Rights is a monitoring body for this system since the government has multiple departments to look into this issue and all are state owned. Therefore, strong cooperation, coordination and collaboration exists among them.

Panama: The Ministry of Social Development through the National Secretariat of Children, Adolescents and the Family (SENNIAF) provides training and education for juveniles. The Commission of Parliament is working on new laws for juvenile protection according to the international standards. The Ministry of Public Security and Office of Citizen Participation (responsible for the national police) developed community programmes in coordination with the General Prosecutor (independent), which aim to provide protection of juvenile offenders, prevent crimes, contribute to public safety and to reduce the social cost of crime.

Papua New Guinea: The main agencies involved in the PNG Juvenile Justice System are the Police, the Courts, the Ministry of Justice (Community-Based Correction (CBC) – Probation, Parole and the Juvenile Justice Services Office of the Public Solicitor, which provides free legal service, the Office of the Public Prosecutor, which prosecutes heinous crimes in the National Court), the Ministry of Correctional Service and Ministry of Community Development – Juvenile Welfare. Apart from these, NGOs and churches in PNG assist in rehabilitation programmes.

Philippines: Inter-organizational cooperation among related agencies is in place. The Juvenile Justice and Welfare Council was created at the national level composed of different departments (social welfare, police, justice, education, health, etc.) to supervise the implementation of the juvenile system. The council regularly conducts meetings to review administrative policies on the juvenile system.

E. Multi-Agency Cooperation with the Community and the Private Sector

The baselines of prevention initiatives or programmes regarding the strengthened relationship between government and the private sector are necessary to carry out the objectives of the juvenile justice system. Some countries have a strong partnership with the INGOs/NGOs, and other agencies are left to their own fate. The latter system remains weaker and vulnerable to unwanted interventions.

During the discussion, it was identified that all the countries have a multi-agency framework to implement between the community and juvenile working groups including INGOs/NGOs, which work in the area of juvenile justice. In some countries, Volunteer Probation Officers (VPOs) are working closely with the government authorities to provide juvenile rehabilitation services. Moreover, it highlighted the importance of close networking among the government authorities and INGOs/NGOs.

Most of the countries under discussion are working closely with UNICEF to streamline and strengthen their juvenile justice systems. However, due to overlaping mandates of government agencies, stakeholders and INGOs/NGOs, it is difficult to work together. Most of the INGOs/NGOs have their own plans of action, which sometimes conflict with government stakeholders' mandates or action plans. Moreover, some of the INGOs/NGOs are working self-centeredly, which creates complications and hindrances to the way forward.

II. CHALLENGES, RECOMMENDATIONS AND CONCLUSIONS

A. Challenges

In line with the international standards and norms, the participants are encouraged to improve their

respective juvenile justice systems. But due to various reasons, despite having good legislation, they have not been able to achieve standardized results. To outline the hindrances and obstacles in the process of improvement, the following points have been identified:

1. Lack of community participation and mobilization of the public;

2. Juvenile justice systems in every aspect in terms of resources and capacity are lacking priority;

3. Untrained personnel;

4. For some countries, key pieces of legislation remain pending;

5. Some countries lack a systematic rehabilitation programme that clearly identifies target groups and their particular risks and needs;

6. The difficulty of implementing a successful rehabilitation scheme due to lack of arrangements, like institutional arrangements, become crucially important especially in the case of juveniles;

7. Lack of inter-agency/multi-agency cooperation and coordination;

8. Unreasonable delay in the investigation and prosecution of matters involving minors is a great concern;

9. Lack of specialized programmes and the expertise in dealing with drug offenders;

10. Lack of legal frameworks to institutionalize diversion;

11. Non-compliance with UN standards and norms to implement a minimum age of criminal responsibility.

B. Recommendations

1. Strengthen the community participation/mobilization of the public by utilizing community police and Volunteer Probation Officers (VPOs);

2. More research is required to understand the causes of juvenile offending and ways to better implement juvenile justice policies;

3. Specialization within their respective agencies and departments is vital for the successful implementation of juvenile justice policies. Competent officers would be better to comply with the laws and international guidelines concerning juvenile offenders, thereby contributing to the development of institutions;

4. Authorities need to step up efforts to pass the relavent juvenile justice bills and regulations in order to establish a comprehensive mechanism for the administration of juvenile justice in relevant countries;

5. Some countries need to devise comprehensive rehabilitation and reintegration plans for juveniles that take into acount the different categories of offenders in their particular needs and risks;

6. Establishment of relevant institutions;

7. Networking with international organizations and foreign governments and institutions would be great help in improving the current situation of juvenile justice;

8. Agencies working within the juvenile justice system must enforce a concerted effort in the expeditious processing of juvenile offences at every stage. It is expected that this would provide some remedy to the problem of delayed submission of cases;

9. For some countries, establishing a child-centered drug rehabilitation facility is of utmost importance to combat drug addiction among minors, and existing structures and facilities need to be strengthened as well as compliance and monitoring mechanisms;

10. Countries should establish a legal framework to institutionalize diversion;

11. In compliance with UN standards, countries with ages of criminal responsibility below age 12 are encouraged to increase the age to this level.

C. Conclusion

The participating countries have made significant improvements in the field of juvenile justice since the ratification of the UN Convention on the Rights of the Child. Investigation, prosecution, adjudication, and treatment and supervision of juvenile offences have been streamlined according to international standards and norms.

The participating countries have also incorporated the Restorative Justice Model into their juvenile justice policies, and have had some measure of success in the implementation of rehabilitation and reintegration programmes. And still there is room for more improvement. Capacity, lack of resources and expertise stand out as the most challenging factors for further development in this area of the law. The participants aim to maintain a sustained effort towards the commitment to the development of the juvenile justice system in their countries.

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PART THREE

SUPPLEMENTAL MATERIAL

The Basic Principle and Revision of the Juvenile Act
by Prof. Toshihiro Kawaide (Japan)

Anti-Corruption Measures: A Short History in Japan
by Mr. Tsuyoshi Yukawa (Japan)

UNAFEI

THE BASIC PRINCIPLE AND REVISION OF THE JUVENILE ACT

*Toshihiro Kawaide**

I. THE BASIC PRINCIPLE OF THE JUVENILE ACT

A. Trends in the Juvenile Act

Because juveniles are generally less mature than adults, but more plastic, in other words, they have more promise, it is regarded as necessary and reasonable to treat juvenile offenders differently from adult offenders. This view has been widely accepted, whether ancient or modern, eastern or western. Based on this view, juvenile delinquents have been specially treated by special proceedings.

Each country has enacted a juvenile law or a juvenile court law as the basic law for the treatment of juvenile delinquents. Roughly, there are two trends in juvenile law. One of them is based on the theory of criminal justice developed with the progress of criminology. It is based on the view that the purpose of crime prevention can be achieved better by imposing an appropriate punishment through not only judging the objective aspects of a crime from a legal perspective but also paying attention to the individual criminal. From this point of view, because juveniles are highly plastic and can be improved by education, the treatment of each juvenile delinquent by the use of an educational method is effective for making the juvenile a healthy member of society, which also meets the purpose of social defense. According to this view, a juvenile law is a special criminal law that covers juveniles who have committed a criminal act.

The other trend in juvenile law is based on the tutelary and welfare view that originated from the idea of equity. According to this view, if a child has not received appropriate protection from his/her parents or sufficient welfare, the State is responsible for giving him/her the care and education and promoting the child's social adaptation and independence in place of his parent or guardian by exercising judicial power. This view is based on the idea of *parens patriae*. That is to say, if a child commits a crime, the child will be treated like a child who commits delinquency or has been abused or neglected by the parents. This idea on juvenile protection was born as a result of the child-saving movement in the US in the 19th century. The idea was embodied when the first juvenile court was established in Cook County, the State of Illinois in 1899. After that, juvenile courts were established all over the US. In 1943, a revised Standard Juvenile Court Act was published by the National Probation and Parole Association. It has been regarded as a culmination of such movements.

B. Principle of Delinquency Control

The difference between these two trends arises from what grounds a State has to intervene in a juvenile delinquent's rehabilitation, even against his will. The former trend is based on the view that the State's grounds for intervention lie in the juvenile's infringement of another person's interest through delinquency (the "principle of harm"). The prevention of repeat delinquency through reformatory education of juveniles is deemed to be the same as special prevention as a purpose of criminal punishment, and the purpose of the juvenile law is to ensure the safety of society by preventing the juvenile from committing a delinquency again. According to this, the juvenile law is clearly a part of the criminal justice system. This view has been adopted by continental-law countries. In Germany, for example, the Juvenile Court Law, which is based on "educational ideology" and only covers criminal juveniles, is regarded as a special law for the criminal code, the code of criminal procedure, and the code of Prison Administration, and this field of law is called "juvenile criminal law."

According to this view, a special disposition (protective measures) to which a juvenile delinquent is

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sentenced under the juvenile law is imposed as a sanction against the juvenile's delinquency based on the juvenile's blameworthiness. In this sense, the disposition is a form of criminal punishment and is regarded as a special criminal punishment imposed with consideration for juveniles' lower criminal responsibility than adults, and juveniles' high plasticity.

On the other hand, the latter trend is based on the view that any measures under the juvenile law is allowed only for the benefit of a juvenile who has committed a delinquency. Because the juvenile does not have sufficient judgment due to immaturity, if he is left as he is, he may repeat delinquencies and become unable to live a decent or normal life. Therefore, the State intervenes to prevent this from occurring, for the benefit of the juvenile himself. In this view, the State's intervention in juvenile delinquents can be explained by the principle of protection (paternalism). This idea typically appears in the above-mentioned idea of *parens patriae*.

According to this view, protective measures are taken not for the purpose of blame for juveniles' delinquency but on behalf of juveniles. In this sense, they are not sanctions. Therefore, protective measures are completely different from criminal punishment, and the juvenile law will be regarded as a law for the welfare of children like other social welfare laws.

II. CHARACTERISTICS OF THE JAPANESE JUVENILE ACT

A. Purpose of the Juvenile Act

In Japan, the first Juvenile Act was enacted in 1922. It was revised after World War II and the present Juvenile Act came into force in 1948. Article 1 of the existing Juvenile Act provides that the purpose of this Act is to subject delinquent juveniles to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, for the purpose of juveniles' sound development. Based on this provision, the basic idea of the Juvenile Act is the sound development of juveniles. This means that the purpose of the Juvenile Act is not to punish juveniles for crime or delinquency they committed but to educate juveniles to prevent them from repeating a crime or delinquency. Because of this, the proceedings based on the Juvenile Act are called juvenile protection proceedings.

B. Outline of Proceedings under the Juvenile Act

1. Target of Proceedings

The target of the proceedings under the Juvenile Act is juveniles (defined as a person under the age of 20) who have committed a delinquency. They include three types of juveniles: juvenile offenders, juveniles engaged in illegal behavior, and pre-delinquent juveniles. Juvenile offenders are juveniles who have committed a crime. Juveniles engaged in illegal behavior are juveniles under 14 years of age who have violated any criminal law or regulation. Because the Penal Code provides that any juvenile under 14 years of age has no criminal responsibility, an act by such a juvenile that violates a criminal law or regulation is not a criminal act. Therefore, no punishment is imposed on the juvenile under the Penal Code. However, the Juvenile Act deals with such acts too. Pre-delinquent juveniles are juveniles who meet any of the four criteria specified in Article 3 (1) (iii) of the Juvenile Act (the "cause of pre-delinquency") and, in light of their characteristics or environment, have the possibility to commit a crime or a violation of a criminal law or regulation. The four criteria for pre-delinquency are: (a) having a propensity not to submit to legitimate supervision by the custodian; (b) staying away from home without a justifiable cause; (c) associating with persons with a criminal nature or immoral persons, or frequenting places of ill repute; and (d) having a propensity to engage in harming the morals of the juvenile or those of others. None of these violates a criminal law or regulation.

In this way, the Juvenile Act also covers the violations that are not regarded as crimes under the Penal Code because the offenders have not reached the age of criminal responsibility; and it also covers juveniles who have committed pre-delinquent acts that do not fall under *corpus delicti* (crime).

2. Flow of Proceedings

The proceedings for juvenile delinquents under the Juvenile Act are greatly different from the criminal proceedings for adults. I would like to show the characteristics of juvenile protection proceedings as compared with criminal proceedings.

Firstly, the court of the first instance for an adult criminal case is a district or summary court in principle, while a juvenile case is under the exclusive jurisdiction of a family court. Because of this, a juvenile case is referred from a police officer or a public prosecutor to a family court. Each family court has not only judges but also family court investigating officers. Both a judge and a family court investigating officer jointly deal with each case. Most family court investigating officers are specialists in psychology, pedagogy, sociology, etc. and are expected to investigate each juvenile's problems and play a part in determining the most suitable disposition for the juvenile's improvement and rehabilitation.

Secondly, the principle of discretionary prosecution is adopted for adult criminal cases, under which public prosecutors have the power to suspend prosecution. On the other hand, in juvenile cases, the investigating authority refers all cases to family courts, in principle, as long as there is any suspicion. This is based on the following view: even if a juvenile case seems trivial from its objective aspects, it may indicate the juvenile's deep criminality; therefore, it is necessary to examine it well and carry out the most appropriate measures for the juvenile; and the agency appropriate for such examination and judgment is not the investigating authority but a family court that has sufficient staff.

Moreover, if a juvenile who violates criminal law is under the age of 14 or a pre-delinquent juvenile is under the age of 14, the case will be referred to a child consultation center, which is a welfare institute for children. Only if the center decides that, instead of taking measures itself, it is better for a family court to decide how to deal with the juvenile, and sends the case to a family court, the family court will deal with the case. This is called the principle of prior deliberation by a child welfare institution. This is based on the view that it is better for juveniles under the age of 14 to be treated under the Child Welfare Act, which has the main purpose to promote the welfare of children, instead of being treated under the Juvenile Act which is a part of the criminal justice system.

Thirdly, in the criminal proceedings, if an indictment is brought and the court accepts the case, a public trial will begin after some preparatory proceedings are carried out. On the other hand, in a juvenile case, after the case is accepted by a family court, a family court investigating officer carries out the investigation as to what problems the juvenile has concerning his characteristics and family environment and what measures will be necessary for improving the problems. Moreover, the juvenile may receive assessment, or mental and physical diagnosis carried out by the expert in the Juvenile Classification Home. Because the criminal proceedings in Japan have no pre-sentence investigation system, this point is one of the great differences between the juvenile protection proceedings and the criminal proceedings. In addition, during the investigation, the family court investigating officer not only carries out the investigation but also actively encourages the juvenile to receive reformatory education. In this way, the juvenile is given treatment through the process of the proceeding. It is another difference from the criminal proceedings that this practice has been squarely approved.

Fourthly, in a criminal case, it is examined during the trial whether the defendant committed the charged offence. In a juvenile hearing, however, examination is carried out as to not only whether the juvenile committed the delinquency, but also whether the juvenile is likely to commit a delinquency again. This factor is called the "need of protection". Because of this, even if it is found that the juvenile committed the delinquency, no family court hearing will be held and the proceedings will end if it is found as a result of the investigation that the juvenile has no need of protection. In addition, if need of protection disappears as a result of a judge's encouragement or the like after the beginning of the hearing, no disposition will be rendered and the hearing will end.

Fifthly, the judge, the juvenile, and the juvenile's guardian attend the hearing without fail. If an attendant (i.e., a defense lawyer in the criminal procedure) is appointed, the attendant has the right to attend the hearing. On the other hand, the public prosecutor is allowed to attend the hearing with the permission of the court only if the case is serious and the prosecutor's attendance is necessary for finding the facts of the delinquency.

Sixthly, a juvenile hearing is held in camera. The hearing itself is not open to the public and the results are not published. The principle of confidentiality is applied not only to the hearing but also to the investigation at the family court and the investigation by police or prosecutor.

Seventhly, while the adversary system is applied to the trial in a criminal case, the inquisitional system is applied to the juvenile hearing. Because the purpose of the hearing is not to examine the juvenile's criminal responsibility but to clarify the problems of the juvenile himself and his environment, and determine the most appropriate measure for the juvenile's improvement and rehabilitation, it is more appropriate to apply proceedings whereby every person concerned, including judge, attendant and prosecutor, cooperate with each other, than to apply proceedings whereby the parties are opposed to each other. In addition, to use a hearing as an opportunity for reformatory education and counseling, it is desirable for the judge to advance the proceedings, talking directly to the juvenile.

In this way, to respond flexibly to each juvenile's problems by a method similar to case work, it is desirable to apply proceedings suitable for each case at the court's discretion rather than establishing a strict form of proceedings beforehand. For this reason, the Juvenile Act has very few provisions concerning examination of evidence and rules of evidence at a hearing.

However, because the protective measures also restrain the freedom of juveniles against their will, it is required to guarantee due process even in the case of a family court hearing, It especially applies to the cases in which the juvenile denies the alleged delinquency. Therefore, at present, some provisions for guaranteeing the juvenile's procedural rights are placed in the rules of juvenile proceedings: concretely speaking, notifying the juvenile of the facts constituting the alleged delinquency and giving him opportunities to present his defense; notifying him of the right to remain silent and the right to appoint an attendant. In addition, in the practical affairs of a juvenile hearing, when the juvenile denies the alleged delinquency, the court is supposed to guarantee the opportunity to cross examineimportant witnesses. Furthermore, in order to secure a juvenile's procedural rights effectually, it is very important to receive the assistance of an attorney. From this viewpoint, when the juvenile and his or her guardian cannot employ an attorney themselves due to poverty etc., the court can appoint an attendant who is an attorney for the juvenile. This system was introduced in 2007, and the range has been extended to cases where the juvenile is detained for an offence that is punishable by the death penalty, life imprisonment, or imprisonment for more than three years. It covers a fairly large range. For example, this system also applies to cases involving theft.

Eighthly, if, in a family court hearing, the facts of the delinquency are proven, and it is found that the juvenile is in need of protection, the court renders a decision to impose protective measures. There are three types of protective measures: (1) probation; (2) referral to a children's self-reliance support facility or a foster home; and (3) referral to a juvenile training school. Which measure should be applied is determined according to the juvenile's need for protection in light of which measure is the most appropriate for giving reformatory education to the juvenile and preventing him from committing a delinquency again. The content of the delinquency is only indirectly taken into consideration as an important factor for the judgment about need for protection.

On the other hand, if a family court judge finds it more appropriate to impose criminal punishment on the juvenile rather than protective measures, the court will make a decision to refer the case to a public prosecutor. After the public prosecutor files the case, a criminal trial will be held under the Code of Criminal Procedure as in an adult criminal case. There is no special proceeding for juvenile defendants. However, there are special rules about punishment. For example, indefinite imprisonment can be imposed on juveniles, unlike adults.

C. Legal Characteristics of the Juvenile Act

What characteristics does the Juvenile Act of Japan have in light of the above-described trends and the principle of delinquency control? The enactment of the existing Juvenile Act in 1948 was greatly influenced by the General Headquarters (GHQ) based on the idea of *parens patriae,* which was predominant in the US at the time. It can be said that the framework of the present system is suitable for the principle of protection (paternalism), because the purpose of the system is to foster juveniles' sound development, public prosecutors are excluded from the hearing in principle, and family courts with expert staff impose protective measures according to each juvenile's need for protection.

However, the existing Juvenile Act only covers juvenile offenders, juveniles engaged in illegal behavior, and pre-delinquent juveniles; it does not cover a wide range of juveniles in need of protection like the juvenile courts in the US in the 1940's. In addition, the idea of *parens patriae* is based on the view that protective

measures for juveniles are completely different from criminal punishment. As opposed to this, the existing Juvenile Act includes provisions concerning criminal proceedings and punishment after cases are referred to public prosecutors and the juveniles are indicted. These provisions also reflect the juveniles' sound development specified in Article 1 of the Juvenile Act. In other words, in the existing Juvenile Act, protective measures and punishment for juveniles coexist within the framework of the criminal justice system. In this sense, the existing Juvenile Act is not a system based on the idea of *parens patriae* in a pure sense. This is reflected also in the fact that the Child Welfare Act was enacted in addition to the Juvenile Act in 1947 after World War II and, as a result, the treatment of juvenile delinquents was administered by two laws.

In this way, the Juvenile Act is not a welfare law in a pure sense but a law within the criminal justice system. Therefore, it is impossible to explain the intervention based on the Juvenile Act only by the principle of protection, and it seems hard to deny that the intervention is based on the principle of harm. In other words, under the Juvenile Act, the State's intervention is based on both the principle of harm and the principle of protection. The two principles are not mutually exclusive, but justify measures for preventing juveniles from committing a delinquency again through reformatory education. Although punishments and protective measures are common as long as they are based on the principle of harm, the two are different from each other in that protective measures aim for only special prevention, while punishment aims for retribution and general prevention.

III. BACKGROUND AND CONTENTS OF RECENT REVISIONS OF THE JUVENILE ACT

Although the Juvenile Act had not been revised for more than 50 years after it was enacted in 1948, it was extensively revised in 2000, 2007, 2008, and 2014. These four revisions vary in contents, but they are common in that all of them reduced special treatment for juveniles. Because the direction differs among the four revisions, it cannot be simply summarized as making punishment for juvenile crimes stricter as stated frequently by the opponents of the revisions. The following are explanations about the background to the revisions and the relations of the revisions to the basic principle of the Juvenile Act.

A. The Background of the Revisions

The revisions vary in content and background. The factors for the revisions can be roughly divided in the following four:

1. Clarification and Accurate Fact-finding of the Delinquency

The first factor is a request for the clarification and accurate fact-finding of the delinquency. Under the Juvenile Act, the family court intervenes on the ground of the juvenile's misconduct. Because the intervention is disadvantageous to the juvenile, whatever the final purpose, in that it is accompanied by the limitation of freedom against the juvenile's will, the existence of the delinquency, which serves as the ground for the intervention, must be proven. In addition, because the intervention is carried out by the family court as a judicial agency, it is natural for the court to have the intention to determine the facts accurately.

Even before the revision in 2000, the view that the facts of the delinquency should be regarded as more important factors in juvenile cases was firmly established for the family courts' practical affairs. This was based on the firm establishment of the view that the object investigated in a juvenile hearing is not only the need for protection but also the facts constituting the alleged delinquency. Based on this view, attention has been paid to the procedure for determining the facts of the delinquency. For example, this was reflected in the Supreme Court's decision that a family court's examination of evidence about the delinquency must be based on reasonable discretion and on the fact that the following view has become the main trend in the family courts' practical affairs: the view is that the family courts are obliged to examine evidence at their own discretion as long as the examination is necessary for discovering the truth, whether advantageous or disadvantageous to juveniles.

In this way, the interpretation and practical use of the Juvenile Act were accumulated in the direction of placing importance on the facts of the delinquency. Recently, however, the courts encountered problems that could not be solved in this practical way. As a result, some judges began to demand revision of the Act.

From the 1990s, there were a series of cases where finding the facts of the delinquency at family court

hearings was regarded as problematic. In such cases, the courts' judgment differed as to whether juveniles committed the delinquency. This revealed difficulties in finding facts at family court hearings if the juvenile denied the alleged delinquency. It was pointed out that the fact finding procedure at family court hearings under the then Juvenile Act had systematic problems if the juvenile fiercely disputed the alleged delinquency, because of the following: (1) even if a case was serious and difficult, the hearing was held by only one judge; and (2) since a public prosecutor could not attend the hearing, if the judge finds it necessary to clarify facts, the judge has to carry out acts disadvantageous to the juvenile, for example, impeach the witness who testified in favor of the juvenile. As a result, the judge and the juvenile might look as if they had been opposed to each other.

Responding to this criticism, the Juvenile Act was revised in 2000. In the revision, the collegiate court system was adopted, public prosecutors became able to participate in hearings to avoid any adversarial situation between the court and the juvenile and to obtain multiple viewpoints, and a system for the participation of a court-appointed attendant, who is an attorney, was introduced in the case of a prosecutor's participation.

Subsequently the Juvenile Act was revised in 2007, responding to several serious crimes committed by younger children. In this revision, some provisions were added to establish the police's power to investigate cases where juveniles under 14 years of age violated a criminal law or regulation. These provisions were added to solve the problem in the following situation: because the police could not investigate sufficiently and the child consultation centers did not have sufficient investigating ability to clarify the facts of the delinquency, sufficient evidence was not collected concerning the facts of the delinquency when family courts accepted cases, resulting in difficulties of fact finding in the hearing. In this sense, it can be said that this revision also aimed to find the facts of the delinquency accurately.

The latest revision in 2014 expanded the range of cases in which public prosecutors and court-appointed attendants can participate in the hearing. This revision also primarily aimed to improve the appropriateness of the procedure for finding the facts of the delinquency in the hearing.

Such improvement of the procedure for finding the facts of the delinquency was encouraged not only by the above-mentioned demand from within the family courts but also by the increased attention of the general public to issues of juvenile justice. The background to this trend included the following: demand for the transparency of the public agencies' activities was expanded to the juvenile protection proceedings; and social interest in victims sharply increased from the second half of the 1990s.

Specifically, one of the grounds for approval of public prosecutors' participation through the revision in 2000 was establishing the trust of victims and other members of the general public in family court hearings. In addition, in the revision in 2007, a provision was enacted to the effect that the directors of the child consultation centers must, in principle, send certain kinds of serious cases to family courts, while maintaining the principle of prior deliberation by child welfare institutions. This aimed to increase the transparency of the judicial proceedings for the general public and victims through the family courts' findings of fact of the delinquency and determination of disposition, instead of keeping juvenile cases at the child consultation centers.

2. Juveniles' Criminal Responsibility

The second factor for the revisions is that increasing attention was paid to the view that if a serious crime is committed by a juvenile, an appropriate punishment should be imposed on the juvenile. Generally, this is regarded as demand to impose stricter punishments for juvenile crimes.

This view itself was not necessarily new. Under the former Juvenile Act, a case should be referred to a public prosecutor if a criminal punishment is suitable for the crime. It involves the cases in which it seems impossible to reform the juvenile by protective measures and it is possible to do so, but it is inappropriate to treat the juvenile by protective measures due to the facts of the case or the social influence of the case. Many people supported this opinion, which was based on the following view. Because the juvenile justice system occupies a part of the criminal justice system, when the family court decides how to treat a juvenile who committed a delinquency, it is not allowable to ignore the viewpoint of social defense and general prevention. In addition, even the juvenile justice system cannot work well unless it has the support of the general public.

In practice, serious cases were referred to public prosecutors more frequently than less serious cases. On the other hand, because the principle of giving priority to protection was deeply rooted in the family courts, a cautious attitude was assumed toward the referral of cases to public prosecutors. However, since the second half of the 1990s, there was a trend across society towards the imposition of stricter punishment for crime. A series of atrocious crimes by juveniles occurred, and the above-mentioned trend applied to juvenile cases too. The case that had the greatest impact on society was a 14-year-old boy's murder of children in 1997. In this case, the boy, a third-year student in junior high school, hit an elementary school girl on the street with a hammer. The girl died from a brain contusion. About two months later, he strangled an elementary school boy, cut off his head, and left it in front of the main gate of a junior high school.

As a result of this situation, the Juvenile Act was revised in 2000 concerning the referral of juveniles to public prosecutors. Two points were revised. First, although previously juveniles under 16 years of age could not be referred to public prosecutors, it became possible to send juveniles aged 14 and 15 to public prosecutors and impose criminal punishment on them. The other point was that although judgment regarding whether to send juveniles to public prosecutors was previously made according to uniform standards, it was provided that if a juvenile aged 16 or older killed someone by a willful criminal act, the juvenile must be referred to a public prosecutor in principle.

According to the view that even juveniles should undergo reasonable punishment if they commit serious crimes, the punishments imposed after the referral of juveniles to public prosecutors should be proportional to their crimes with consideration for their ages. Responding to this opinion, the Juvenile Act was revised in 2014 to make it possible to impose punishment proportional to criminal responsibility. To this aim, the maximum term of indefinite imprisonment was raised from 5–10 years to 10–15 years.

3. Consideration for Crime Victims

The third factor for the revisions is the demand for considering crime victims and protecting their rights and interests. In Japan, victims originally had no special status even in criminal proceedings. That was especially true in juvenile protection proceedings, the basic principle of which is sound development of juveniles. For example, victims could neither observe the hearing nor receive notice of its result on the ground that the hearing is not open to the public.

However, in a series of cruel serious offences in the 1990s, when victims spoke out and the press covered their stories, social concern about crime victims increased rapidly. In response, policy measures considering the rights of victims were developed by the police, prosecutors and the courts. In 2000, the act was amended to protect victim's interests in both criminal and juvenile protection proceedings

In the revision in 2000, three systems were introduced. The first is to notify victims of the results of the hearing. The second is to enable victims to read and copy hearing records. The third enabled the family court to hear the opinions of victims.

The relevant provisions of the Juvenile Act are summarized as follows. For the first system, the notification to the victim, upon a request from the victim, the family court shall inform the victim of (i) the name and residence of the juvenile and the legal representative of the juvenile and (ii) the date of the ruling, the main text thereof and summary of the reasons. The second system, inspection and copying of records by the victim, authorizes the victim to inspect or copy records, excluding the so-called "social record". The third system, hearing of opinions by victims, requires the family court, upon a request from the victim, to hear by itself or order a family court investigating officer to hear from the victim.

These systems were introduced aiming at a victim's own interests, without bringing it into question whether it contributes to the juvenile's sound development or not. These systems ensure that the existence of a victim is clearly recognized by the Juvenile Act, and it was clarified that the victim has a special legal status in juvenile protection proceedings. However, all systems introduced by this revision are accepted on the condition that they do not hinder the sound development of the juvenile. For example, the hearing of opinions from victims is not always carried out in front of the juvenile at the hearing, unlike a victim's statement of opinion in a criminal trial. This is because there is a risk that the statement by the victim may obstruct the educational function of the family court hearing and the entirety of the proceedings in that case if the victim can always be heard during the hearing upon his request. For example, suppose what might happen if the

victim displays intense anger directed at the juvenile during the hearing.

After the revision in 2000, victims and victim support groups requested further revision, noting that the contents of the above-mentioned revision were insufficient. In addition, the Basic Act on Crime Victims was enacted in 2004, and in this act the expansion of victim participation in juvenile protection proceedings was called for. In response, the Juvenile Act was revised again in 2008. In this revision, two new systems for the victim were introduced. The first is to enable victims to observe hearings. The second is explaining the status of hearings to victims.

Among these, the first system permits, upon the request of the victims, observation of hearings by victims under limited circumstances. The family court may permit the victim to observe the hearing of a case of a juvenile who committed an intentional criminal act that caused the death or injury of the victim. However, observing the hearing is not permitted when a juvenile under 12 years old committed a criminal act. The second system allows, upon request from the victim, the family court to explain the status of the hearing to the victim. For example, the family court may explain the role of the juvenile's attendant, the procedure of the family court, and what the juvenile said during his or her statement in the hearing. There is no limitation based on the type of crime committed.

These two measures are permitted when the family court finds it unlikely to hinder the sound development of the juvenile. On this point, the fundamental view since revision in 2000 has been maintained.

On the other hand, in criminal proceedings, a victim participation system was introduced in 2007. In this system, the victim of certain serious offences can attend court on the trial date, examine witnesses within certain limitations, ask the accused questions and state an opinion on the findings of fact or the application of the law. In comparison, the involvement of victims in juvenile protection proceedings is limited in order to achieve the sound development of the juvenile, which is the purpose of the Juvenile Act.

4. Improvement of the Appropriateness and Effectiveness of the Juvenile Protective Proceedings

The fourth factor for the revisions is the demand for making the determination and execution of the protective measures more appropriate and effective in practice. For example, in the revision in 2007, the minimum age for referring juveniles to juvenile training schools was lowered from 14 to about 12, responding to the opinion of some practitioners that, from the viewpoint of rehabilitation, it is sometimes desirable to refer juveniles under 14 years of age to juvenile training schools rather than to children's self-reliance support facilities to give them reformatory education earlier. In addition, the Juvenile Act was also revised to make it possible to send juveniles on probation to juvenile training schools if they violate probationary conditions, responding to a remark that the effectiveness of probation could not be secured because there was no means to cope with cases where juveniles on probation violate their conditions of probation. Although some people criticized these revisions for promoting stricter punishment, such criticism is based on a misunderstanding, for the revisions make it possible to treat juveniles more appropriately according to each case and aim to strengthen the treatment of juveniles. The same is true for the revision in 2014 to expand the range of cases in which court-appointed attendants can participate, because the expansion contributes to the determination of appropriate treatment through environmental coordination with the participation of an attendant from the hearing stage, as in the case of improving the appropriateness of the procedure for finding facts of the delinquency.

B. Influence on the Basic Principle of the Juvenile Act

None of the four revisions made from these various factors touched Article 1 of the Juvenile Act, which specifies juveniles' sound development as the basic principle of the act. When the revision in 2008 was under discussion, there was the opinion that even the juvenile protective proceedings should place equal importance on both the sound development of juveniles and the protection of victims' rights and interests, for the Basic Act on Crime Victims covers juvenile cases. However, this opinion was not adopted.

Among the above-described four factors, the fourth factor aims to improve the system for contributing to juveniles' sound development, which clearly supports the basic principle of the act. The first factor, which aims to improve the procedure for finding the facts of the delinquency is also consistent with the basic principle of the act, because accurate fact-finding of the delinquency is essential for determining appropriate treatment of juveniles. However, depending on how to prepare the procedure, it may go against the basic

idea. The revision in 2000 took this into consideration and maintained the existing inquisitional system instead of adopting the opinion that the adversarial system should be introduced into juvenile hearings too. Responding to this basic thinking, a system unusual from the viewpoint of comparative law was adopted concerning the participation of the public prosecutor. Although public prosecutors were allowed to participate in hearings, they were neither a party to the proceedings nor a plaintiff demanding punishment, but a cooperator for the hearing who participates only in the stage of fact-finding of the delinquency to the extent necessary.

The third factor for the revisions – consideration for victims – brought into the Juvenile Act a heterogeneous element that does not directly contribute to juveniles' sound development. However, all systems introduced as a result of the revisions are limited to those approved as long as they do not hinder the sound development of the juvenile. Therefore, those systems have been designed not to contradict the basic principle of the Juvenile Act.

What is problematic is the second factor. If it aims only to make punishment for juvenile crimes stricter, it seems to contradict the basic principle of the Juvenile Act. What is the most problematic is the revision of the provision concerning the referral of the case to public prosecutors. During the process of legislation, the proposer of the revision explained that this revision aimed to promote juveniles' sound development by increasing their awareness of social responsibility and their normative consciousness. In that sense, this revision was also regarded as being within the framework of the juveniles' sound development, because it does not aim to impose severe punishment for serious crimes, but to prevent crimes by developing juveniles' responsibility and normative consciousness. I think it doubtful whether this explanation is persuasive, but this explanation somehow reflects the legislators' efforts to protect the basic principle of the Juvenile Act, despite efforts to reject the basic principle itself.

IV. RECENT TRENDS

In Japan, the suffrage age, the age of adulthood under the Civil Code, and the age of adulthood under the Juvenile Act have been uniformly set at 20. However, as a result of the revision of the Public Offices Election Act, the suffrage age was lowered to 18, and the new suffrage age came into force in June last year. Consequently, consideration is required for the treatment of the age of adulthood under the Civil Code and other laws and ordinances. With regard to the age of adulthood under the Civil Code, the Legislative Council of the Ministry of Justice has already submitted a report to the effect that the age of adulthood should be lowered to 18 if some conditions (useful for protection of young adults) are fulfilled. Following that, the discussion about lowering the age of adulthood under the Juvenile Act will begin in the Legislative Council of the Ministry of Justice soon. At present, this is the hottest topic concerning the Juvenile Act.

There is strong objection to lowering the age of adulthood under the Juvenile Act. Those who oppose lowering the age of adulthood insist that the Juvenile Act has so far effectively functioned to give reformatory education to juveniles who have committed crimes at the age of 18 and 19 and prevented them from committing crime again. Therefore, if the age of adulthood under the Juvenile Act is lowered, the repeat offenses by persons in this age group will likely increase because the application of the proceedings and protective measures under the Juvenile Act is denied. In addition, there is the opinion that the mental maturity of the person at the age of 18 and 19 is lower than before, and therefore they should not be treated as adults. Concerning the lowering of the age of adulthood in other areas of law, they insist that the age of adulthood should be determined according to the purpose of each law, and therefore it is unnecessary to unify the age of adulthood in different fields of law.

There is also the opinion that even if such a view (that it is unnecessary to unify the age of adulthood) is generally correct, it is necessary to coordinate ages if laws have common grounds for applying different treatment between adults and minors. On the ground that juveniles are immature and highly plastic, from the viewpoint of reformatory education, the Juvenile Act allows guardian-like intervention by the State, which is not allowed in the case of adults. Because minors are subject to their parents' supervision under the present Civil Code, there is no inconsistency in the treatment of minors under the two laws. However, if the age of adulthood is lowered to 18 under the Civil Code, it might not allow the State to make guardian-like interventions against the will of 18- and 19-year-old juveniles, who are not subject to their parents' supervision. For this reason, the age of adulthood under the Juvenile Act should be lowered in accordance

with the age of adulthood under the Civil Code. On the other hand, in order to eliminate the negative effects of the exclusion of 18- and 19-year-old juveniles from the target of the Juvenile Act as much as possible, it is necessary to establish a system for giving special treatment to 18- and 19-year olds and other young adult offenders through correction and rehabilitation.

ANTI-CORRUPTION MEASURES: A SHORT HISTORY IN JAPAN

*Tsuyoshi Yukawa**

I. INTRODUCTION

The theme of this lecture is Japanese anticorruption measures. Japan is sometimes referred to as a successful country with regard to combating corruption. Yes, as I indicate later, the number of corruption cases has decreased in recent years, but Japan does not have any agencies specialized in combating corruption. Moreover, Japan still has not ratified the United Nations Convention against Corruption, and some quite useful tools of investigation are lacking in the Japanese criminal procedure. These tools include wiretapping and plea bargaining in corruption cases. If asked what is the important element in Japanese criminal procedure to combat against corruption, I would say that the continuous efforts of the Japanese prosecutors have played a vital role. Thus, in my presentation, I will highlight some issues in our experience in Japanese history to fight against corruption, especially with regard to the relationship between corruption and politics.

II. ANTI-CORRUPTION MEASURES BEFORE WORLD WAR II

I understand that there are many UNAFEI alumni here, and you have learned at UNAFEI about the Japanese criminal justice system. As for criminal procedure, Japan first introduced the continental legal system, such as in France or Germany, but after World War II, Japan was occupied by the United States, and our criminal procedure was heavily affected and drastically changed by the common law system. Although I will not go into the specific changes here, I would like to start my presentation by focusing on actual cases of corruption experienced in Japan before World War II.

A. The First Major Corruption Case and Some Background Information

The first major corruption case which appeared in Japanese history was the "Nitto" case, which was revealed in 1909, more than 100 years ago. As the political and economic climate in Japan contributed to the corruption case, both of these factors deserve brief mention here. In 1867, a "new" or modernized Japanese government was formed. Before that, Japan was in the Samurai era, during which Japan was, in principle, closed to international commerce and immigration. At that time, European countries and the US struggled with each other to acquire colonies, and the new government of Japan emerged to form a modernized legal system to be recognized as an independent nation. Thus, it enacted many laws, including the "Meiji" Constitution in 1889. It also made several laws and regulations in the criminal justice field, and the Penal Code enacted in 1907 was one of those efforts. Actually, this Penal Code is still in force today, although it has been amend many times. The first major corruption case arose just after the enactment of the current Penal Code. From the late 19th century to the beginning of the 20th century, Japan fought wars against China and then Russia. The Russo-Japan War took place from 1904 to 1905, and the war was fought in northeastern China. This war exhausted the Japanese economy, and after the war ended Japan suffered a severe depression. Many companies struggled during this period, and one of those companies was the Nitto Company, which had a big share in the market for sugar.

B. The *Nitto* Case

Representatives of Nitto gave bribes to the parliament representatives to enact laws related to sugar products. First, a law about taxes over sugar products was successfully passed through the parliament, but a bill to establish a national sugar company failed. The Nitto Company made efforts to field candidates for the

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parliament election to obtain some influence in the parliament.

At that time, police and prosecutors were authorized to conduct investigations, and in this case prosecutors took the initiative to investigate. It is said that this was the first real case in which prosecutors took charge of an investigation, and the prosecutors conducted the investigation independently from the police. They succeeded in prosecuting many members of parliament and executives of the company.

This was a very big case at that time, and prosecutors had found other evidence which suggested that another oil company also tried to influence the parliament and bribed some of its members. Prosecutors were actually proceeding with the investigation against this company and other politicians, but suddenly the investigation was terminated. It was reported that the Prime Minister called the Prosecutor General to stop the investigation. As far as I know, there was no legislation or regulation authorizing the Prime Minister to terminate investigations. But at that time, the Prosecutor General was appointed by the Cabinet, so he had no choice but to follow the instruction.

C. The Navy Corruption Case

Although the Nitto investigation was terminated, after a few years prosecutors found another big corruption case in the Japanese Navy. This was just before World War I and the Japanese Navy was eager to buy weapons, ships and other equipment from European companies. There was evidence that Siemens and Vickers, both European weapon companies at that time, bribed some high officials in the Japanese Navy to sell their products. Prosecutors conducted an investigation under the leadership of the Prosecutor General, who had been the Head of the Tokyo Appellate Prosecutors' Office, which conducted the Nitto case investigation. This investigation was successful and some high officials were prosecuted. This case also raised a serious question about the budget of the Navy and caused a political dispute in the parliament. The Prime Minister was, unluckily enough, from the Navy. As a result of the dispute he failed to pass the budget bill in the parliament and had to resign his position.

D. Observations

Even in this early stage of the history of the Japanese prosecution service, prosecutors were quite eager to investigate these corruption cases. Their proactive attitude was also supported by the public. At the time when the Navy case was revealed, there were several public demonstrations in support of the investigators and protesting against the Cabinet and Navy. Prosecutors were admired in Japan. After these cases, the system of nomination of the Prosecutor General was altered so that the Emperor would directly appoint the Prosecutor General, instead of the Cabinet. This was an honourable solution for the Japanese people becuase the Emperor at that time was the most powerful figure in the country.

Regarding the influences on politics, the first major investigation, as mentioned above, was terminated by the order of the Prime Minister, who was a politician. Also, the Navy case showed that the investigation could heavily affect political disputes. Actually, the authority of investigation is quite powerful, and it can be easily abused. Our history just before World War II tells us that such authority can be abused to suppress political opinions, which resulted in Japan's engagement in the tragic World War II.

III. ANTI-CORRUPTION MEASURES AFTER WORLD WAR II

As mentioned, Japan was occupied by the United States, and the US headquarters ordered the Japanese to modify their criminal procedure under the influence of the American legal system. In practice, the post-war period in Japan experienced quite a lot of criminal cases.

A. Creation of the Special Investigation Department

One case involved the misappropriation of the equipment of the Japanese Army and Navy after the war. The US headquarters ordered the seizure of the equipment, but much of it was lost. In 1947, a special division to investigate such misappropriation cases was established in the Tokyo District Prosecutors' Office, and capable prosecutors were engaged in the investigation. Later, this special division changed its name to the Special Investigation Department, which is generally in charge of economic crimes, tax evasion cases and also corruption cases.

This Special Investigation Department was created first in Tokyo, then in Osaka and Nagoya. As you

probably know, Japan does not have any special agency focusing on the investigation of corruption cases, but these Special Investigation Departments have played a major role in the investigation of corruption cases. Prosecutors assigned to SIDs are known in Japan as specialists in investigation, especially against political corruption, and it is also known that most cases they prosecute result in conviction. There are many high-profile cases handled by this Department, such as the Lockheed case in which the SID arrested the Prime Minister.

B. Independence from Politics

After World War II, a new law was enacted, which clearly stated that only the Minister of Justice has the authority to designate the Prosecutor General to take action with respect to a particular case. So now, in a legal sense, the Prime Minister cannot directly instruct prosecutors to take action on a case, and even the Justice Minister cannot order individual prosecutors to handle a case in a particular way.

The Justice Minister is also a politician, as he or she is nominated by the Prime Minister from among the members of parliament belonging to the ruling party. It might be easy to conclude that the Justice Minister would allow political circumstances to influence an ongoing investigation. This actually happened in 1954, but since then there are no other cases in which this authority was exercised.

C. Corruption Case in 1954

This case involved a shipbuilding company that bribed high-level government officials and members of parliament. The Special Investigation Department in the Tokyo Prosecutors Office conducted the investigation, and four members of parliament were arrested and prosecuted.

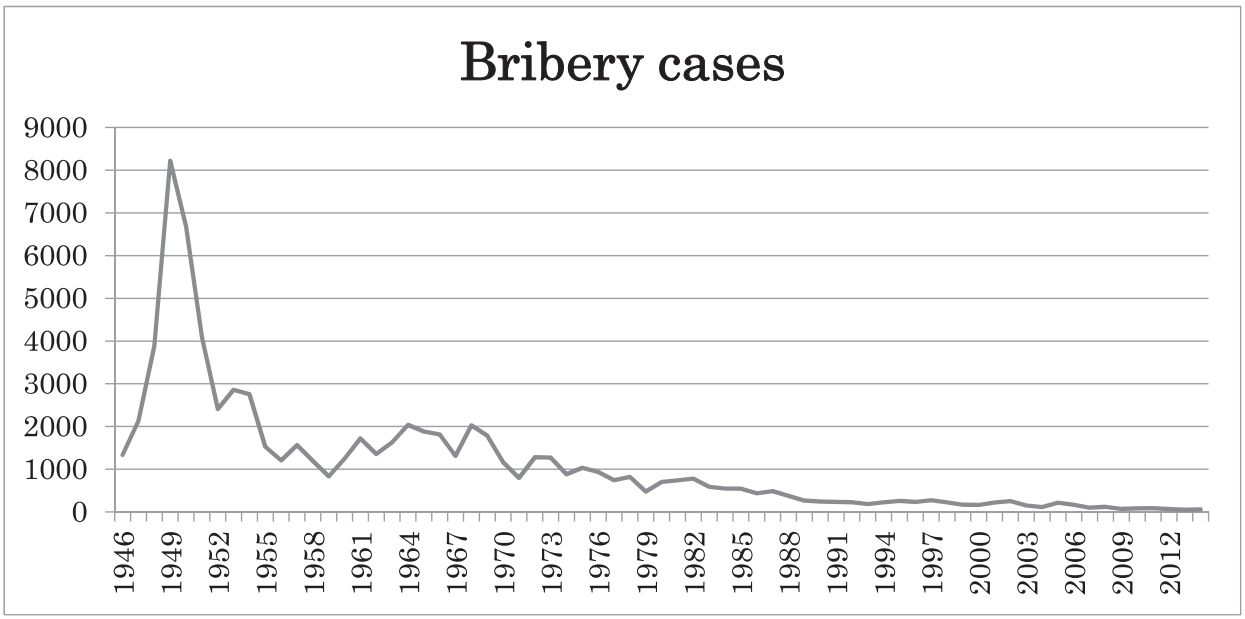
The next target of the SID was the Secretary General of the ruling party, who was suspected to have received money from the shipbuilding company. It is said that the prime minister strongly advised the Justice Minister to exercise his authority to terminate the investigation. In May 1954, the Justice Minister ordered the Prosecutor General not to arrest the secretary General, and right after he exercised this authority the Justice Minister resigned his position. This also caused a dispute in the parliament, and the Prosecutor General was called to the parliament to testify about his conduct. The public strongly opposed his conduct, and therefore this authority has never been exercised again.

D. Observations

Even after World War II, the prosecutors' proactive attitude against corruption remained the same. This attitude is also widely supported by the public, which even hinders the exercise of the authority that has been clearly delegated to the Justice Minister by law. As a result, prosecutors have achieved de facto independence from politics. The authority to investigate and prosecute cases may be strong enough to affect politics, but prosecutors in Japan after World War II have been careful not to influence politics. They prosecute the cases in which evidence is sufficient to obtain a conviction, regardless of the political party that the suspects belong to.

E. Current Situation of Anti-corruption Measures in Japan

Below are some statistics, which indicate the number of bribery cases handled in Japan. The number was quite high right after the war, but it has decreased significantly since then. In recent years, statistics show that there are only 30 or 40 bribery cases a year.



Then, what kind of tools do we have in order to investigate corruption cases? Wiretapping, undercover operations, or plea agreement — these are recognized as quite effective tools to investigate corruption cases, but in Japan these measures are not allowed. We have some laws that allow wiretapping, but this tool is quite restricted and used only in drug dealing cases in practice. Thus, Japanese prosecutors rely on traditional measures such as financial investigation, search and seizure, and interrogation of suspects.

F. Financial Investigation

What makes the SID of the Tokyo Prosecutors' Office the most special one is its techniques for conducting financial investigation. The Japanese Code of Criminal Procedure authorizes prosecutors to ask private or public entities without a warrant, as a non-compulsory measure, to provide financial records. Even on a voluntary basis, when prosecutors ask banks for certain account information, banks are very cooperative in providing it. The prosecutors use this method for seeking account information and bank records quite often. We refer to it internally as "opening the account", which means to ask the bank for account information. There are many other methods for conducting financial investigation. One of those methods is to cooperate with tax agencies, which have a lot of information about transactions that taxpayers in Japan engage in. Tokyo SID is in charge of tax evasion cases, and it is quite good at cooperating with the Tokyo Tax Agency.

G. Recent Legislation

Lastly, I would like to touch upon legislation in Japan. Some important conventions on corruption have been adopted over the past two decades. One of them is the 1997 OECD convention against bribing foreign public officials. Japan ratified this convention and amended its domestic law to criminalize the act of giving bribes to foreign public officials.

There is also an important UN convention, which is the United Nations Convention against Corruption. Japan signed the convention in 2003 but has not yet ratified it, because the amendment of criminal law and procedure to ensure the domestic legislation compatible to the Convention was the subject of a hot dispute in the parliament. This amendment was just adopted in the parliament last week, so I am sure that the Japanese Government will ratify this convention very soon.

Also recently, there was an amendment to the Code of Criminal Procedure which passed the parliament last fall, which introduces the plea agreement into Japanese criminal procedure. Before that, plea agreements were prohibited in Japan. Of course, plea agreements are quite useful tools to accomplish fruitful investigations, like in Operation Lava Jato or other cases in Brazil. This amendment will enter into force in 2018, and I hope this tool will be utilized properly in Japan. This amendment refers also to issues such as extending the list of crimes subject to wiretapping, but corruption crimes still fall outside the scope of wiretapping in Japan.

This is the end of my presentation. I believe that this seminar has allowed us to better understand each other in order to strengthen future cooperation in the fight against corruption.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- ***165th International Senior Seminar***

UNAFEI

The 165th International Senior Seminar

Left to Right:

Above
Mr. Gary Hill (United States), Dr. Matti Joutsen (Finland), Dr. Kittipong Kittayarak (Thailand), Dr. Anne Skelton (South Africa)

4th Row
Ms. Oda (Staff), Ms. Iwakata (Staff), Mr. Ozawa (Staff), Mr. Haneda (Staff), Ms. Yamada (Staff), Mr. Miyagawa (Staff), Mr. Furuhashi (Staff), Ms. Sato (Staff), Mr. Sakap (Papua New Guinea), Ms. Eto (Japan), Mr. Nishie (Japan), Mr. Nakagawa (Japan), Mr. Nakazawa (Japan), Ms. Yamamoto (JICA)

3rd Row
Ms. Odagiri (Chef), Mr. Pereira (Brazil), Mr. Perez Alvarado (Guatemala), Mr. Duarte (Brazil), Ms. Kaiun (Papua New Guinea), Mr. Obeda (Cook Islands), Mr. Mainali (Nepal), Ms. Chaudhary (Nepal), Ms. Vuvut (Papua New Guinea), Mr. Yamamoto (Japan), Mr. Mohamed (Maldives), Ms. Aboobakuru (Maldives), Ms. Ortega (Panama)

2nd Row
Ms. Ema (Staff), Ms. Ratanadilok (Thailand), Ms. Naphal (Papua New Guinea), Mr. Dorji (Bhutan), Mr. Fidel (Philippines), Mr. Manavaroa (Cook Islands), Mr. Mwangi (Kenya), Mr. Gul (Pakistan), Mr. Aboya (Cote d' Ivoire), Mr. Ali (Pakistan), Mr. Boti (Cote d'Ivoire), Mr. Zegarro (Panama), Mr. Zaw Min Oo (Myanmar), Mr. Baniya (Nepal), Ms. Reboucas (Brazil)

1st Row
Mr. Schmid (LA), Prof. Yukawa, Prof. Watanabe, Deputy Director Morinaga, Dr. Richard Dembo (United States), Director Senta, Dr. Vetere (Italy), Prof. Hirano, Prof. Akashi, Prof. Yamamoto