

JUVENILE JUSTICE

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I. INTRODUCTION

This paper has the scope of providing a background to the issue of juvenile justice, particularly from the point of view of the research and work carried out in the field by the United Nations Interregional Crime and Justice Research Institute (UNICRI).

In order to promote justice and development, one of the aims of UNICRI is to foster just and efficient criminal justice systems in consonance with international instruments and other significant standards such as the Global Counter-Terrorism Strategy. For this purpose to be attained, one of the areas in which the Institute plays a leading role is juvenile justice.

With dedicated juvenile justice systems absent in many developing countries, young people caught breaking the law often end up in places of detention that are inappropriate for their age and development, and, as such, will not increase the likelihood of their reintegration into society. In such custodial or detention facilities, young people are forced to reside with adult criminals, putting them at risk on a number of different fronts. Violence, including sexual violence, bullying, extortion and torture have been found to be the most typical forms of mistreatment and abuse inflicted on young people by adult inmates, and sometimes also staff of such institutions, who take advantage of age and power differentials. Alcohol or drug intoxication, lack of appropriate food, and untreated illness are other common features of detention centres.

Although in some countries, young people are held in specific juvenile facilities, the detention conditions are often extremely poor and dangerous. Correctional centres and educational establishments can be arenas for fights, violence and abuse between rivals. In any case, international standards provide that detention should be a measure of last resort and used only for the most serious crimes. Moreover, ample research has shown that the intensity and duration of intervention and services should mimic the risk level of the juvenile, with higher risk youth receiving more intense services for longer periods of time.¹ Empirical research also demonstrates that intensive services provided to low-risk youth are often iatrogenic, having the unintended negative consequence of increased recidivism.²

Cognizant of the above, part of the work of UNICRI is to carry out action-oriented research to advance the understanding of juvenile justice-related problems, with the finality of aiding future policy. Using this research as a foundation, it offers training and technical cooperation programmes to Member States with regards to preventing violent extremism (PVE), as its mandate indicates.

Furthermore, UNICRI is working on several projects to protect the rights of young people in conflict with the law. In Angola and Mozambique, for example, UNICRI supported local governments in establishing juvenile courts and juvenile justice departments, while at the same time making sure that they were

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¹ Mazzaresse, D. & Bologna, C. (forthcoming). *Alternative Measures and Diversion in Youth Juvenile Justice*, in Klima, N. (forthcoming). *Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*. UNICRI, Turin.

² For further information, see: Andrews & Bonta, 2003; Andrews & Kiessling, 1980; Andrews et al., 1990; Baglivio et al., 2014; Gatti, Tremblay, & Vitaro, 2009.

administered in the best interests of young people. In Mozambique, the programme also conducted analysis and information-sharing through a juvenile justice forum and a database on minors in conflict with the law.³

II. CONCEPTUALISATION AND INSTRUMENTATION

Throughout this section, this paper will focus on the conceptualisation and instrumentation of juvenile justice and the policies, strategies, laws, procedures and practices that the area of countering terrorism entails. For this purpose to be attained, UNICRI's Guidance for Legislative Reform on Juvenile Justice provides, since its publication in 2016⁴, a thorough analysis that sheds light on the particular vulnerability of children and juveniles in the context of counter-terrorism, for which it examines children as perpetrators, direct victims and indirect victims of terrorist-related activity. Moreover, the utility of the Guidance further relies on its aim to increase the capacity of governments to integrate international juvenile justice and child protection standards into their national counter-terrorism standards, which is the reason why it explores radicalisation, de-radicalisation and counter-radicalisation.

A. Conceptualisation

As stated throughout the Guidance, juvenile justice (or children's justice, as it is sometimes referred to) is a general term used to describe the policies, strategies, laws, procedures and practices applied to children over the minimum age of criminal responsibility who have come into conflict with the law.⁵ The term 'juvenile justice' needs to be distinguished from the broader concept of 'justice for children', which covers children in conflict with the law (i.e. alleged as, accused of, or recognised as having infringed the penal law), children who are victims or witnesses of crime, and children who may be in contact with the justice system for other reasons such as custody, protection or inheritance.⁶

Albeit there is no generally accepted definition of the term 'juvenile', it is often used to signify a child who is over the minimum age of criminal responsibility and is alleged to, accused of, or convicted of a criminal offence.⁷ Moreover, it is a general term used to describe the policies, strategies, laws, procedures and practices applied to children over the age of criminal responsibility.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') simply define a juvenile as 'every person under the age of 18.' The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)⁸ provide the following definition: 'A juvenile is a child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult'. The Committee on the Rights of the Child (CRC) avoids the use of the term juvenile, referring instead to "children in conflict with the law".⁹

B. Instrumentation

The 1985 Beijing Rules and The Riyadh Guidelines¹⁰ established basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In 1989, the focus on safeguarding the human rights of children and young people was strengthened by the Convention on the Rights of the Child (CRC), which entered into force in 1990. In 1995, the United Nations adopted the World Programme of Action for Youth (WPAY), providing a policy framework and practical guidelines for national action and international support to improve the

³ Mazzaresse, D. & Bologna, C. (forthcoming). 'Alternative Measures and Diversion in Youth Juvenile Justice', in Klima, N. (forthcoming). 'Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building'. UNICRI, Turin.

⁴ Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. UNICEF. Available at: <http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf>.

⁵ See Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. UNICEF. Available at: <http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf>.

⁶ See Penal Reform International (2013) Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers. Available at: <<http://www.penalreform.org/wp-content/uploads/2013/11/Childrensrights-training-manual-Final%2%ADHR.pdf>>.

⁷ Ibid. 2011.

⁸ For further information, see United Nations (1985) Standard Minimum Rules for the Administration of Juvenile Justice.

⁹ Mazzaresse, D. & Bologna, C. (forthcoming). 'Alternative Measures and Diversion in Youth Juvenile Justice', in Klima, N. (forthcoming). 'Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building'. UNICRI, Turin.

¹⁰ For further information, see United Nations (1990) Guidelines for the Prevention of Juvenile Delinquency.

situation of young people.

Through the WPAY, the United Nations puts forth policy actions specifically tailored to young people between 15 and 24 years of age. The World Programme of Action for Youth aims at fostering conditions and mechanisms to promote improved well-being and livelihoods among young people. As such, it requires that Governments take effective action against violations of all human rights and fundamental freedoms and promote non-discrimination, tolerance and respect for diversity as well as religious and ethical values. The WPAY focuses on 15 priority areas, among which is juvenile delinquency. Under that priority area, it details proposals for action towards preventing juvenile delinquency and rehabilitating young people who have engaged in criminal activity.¹¹

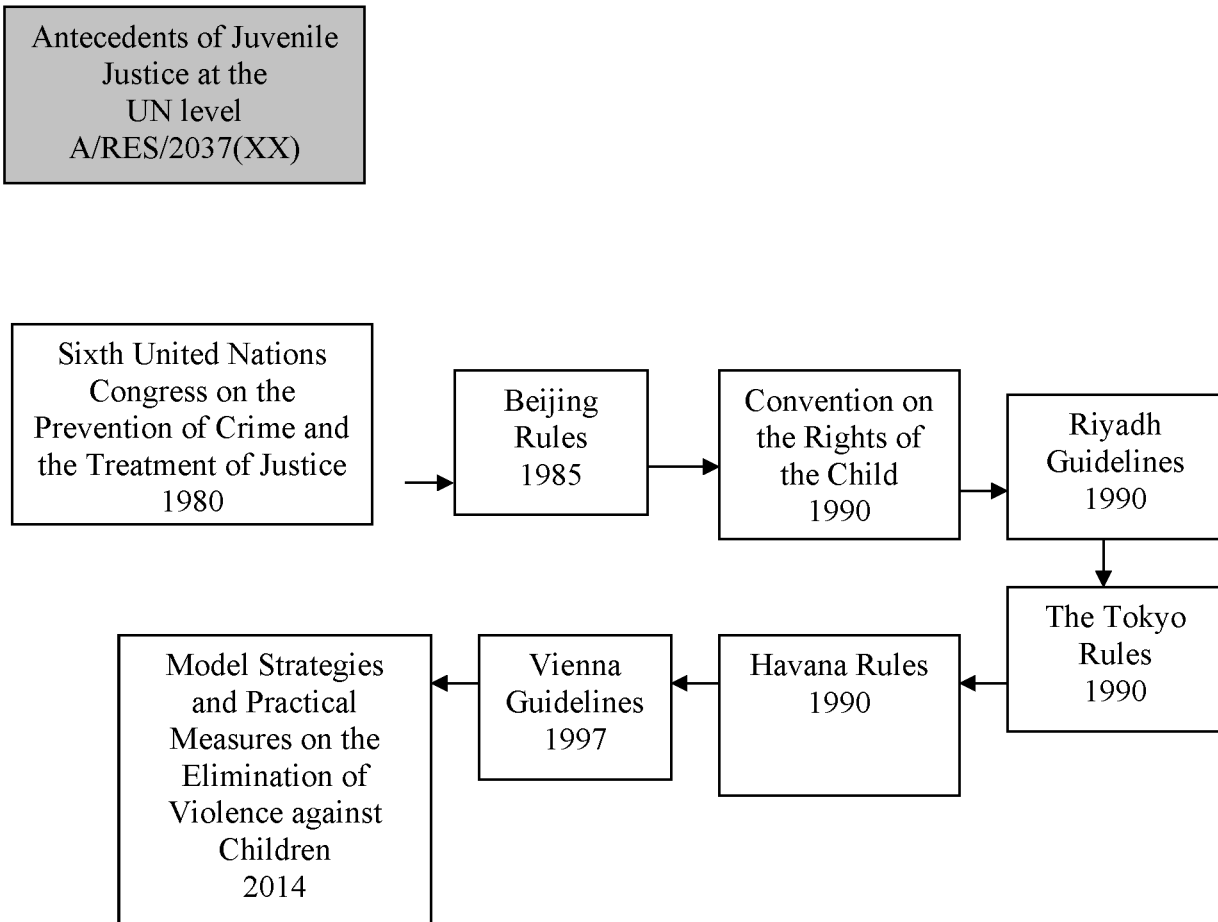


Figure 1: Antecedents of Juvenile Justice Framework at the United Nations level

C. Current Framework

The most important international instruments for the administration of juvenile justice are the CRC and the International Covenant on Civil and Political Rights (ICCPR). Article 40(3) of the CRC requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law. In other words, a State is required to establish a juvenile justice system. Children over the State’s minimum age of criminal responsibility and under the age of 18 who are charged with a criminal offence should be dealt with in the juvenile justice system, regardless of the nature of the charge. This applies just as much to terrorist offences as it applies to any other criminal offence.

¹¹ For current information on international standards, norms and instrument of reference for juvenile justice, see: United Nations Interagency Panel on Juvenile Justice: <<http://www.ipjj.org/resources/internationalstandards>>.

Regional instruments also address juvenile justice, including:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention);
- the African Charter on Human and Peoples' Rights (Banjul Charter);
- the African Charter on the Rights and Welfare of the Child;
- the Arab Charter on Human Rights (Arab Charter); the American Convention on Human Rights (American Convention);
- the American Declaration on the Rights and Duties of Man as well as the jurisprudence developed by the European Court of Human Rights (ECHR);
- the Inter-American Court of Human Rights;
- the Inter-American Commission on Human Rights, and;
- the African Commission on Human and Peoples' Rights.

III. CHALLENGES

Overall, youth are disproportionately represented in statistics on crime and violence, both as victims and as perpetrators, and in many developed countries violent crimes are being committed at younger ages than in the past. Moreover, there is growing concern that, in some countries, the proportion of violent crimes committed by youth has been increasing:¹²

- Statistical data in many countries show that delinquency is largely a group phenomenon. Between two-thirds and three-quarters of all offences committed by young people are committed by members of gangs or groups, which can vary from highly structured criminal organizations to less structured street gangs. Even those young people who commit offences alone are likely to be associated with groups.
- Though poverty and unemployment are not, by themselves causes of violence, they become important factors when coupled with other triggers such as lack of opportunity, inequality, exclusion, the availability of drugs and firearms, and a breakdown in access to various forms of capital, justice and education.
- While adolescence can be an age of “breaking rules” evidence shows that most first time offenders do not reoffend, and that diversion and other community-based measures are the best responses to offences committed by young people.
- Incarceration, including pre-trial detention, is still used frequently including for young people having committed very minor crimes (such as using drugs, or stealing basic commodities).
- Crime committed by young people is mainly an urban phenomenon. Evidence shows that the probability of being a victim of crime and violence is substantially higher in urban areas than in rural areas.

IV. GOOD PRACTICES

At the Sixth Ministerial Plenary Meeting in New York on 27 September 2015, Global Counterterrorism Forum (GCTF) Ministers endorsed the launch of the GCTF's *Initiative to Address the Life Cycle of Radicalization to Violence (Life Cycle Initiative)*. As part of this new initiative, Switzerland launched an initiative on juvenile justice in a counterterrorism context to address the emerging questions regarding children involved in terrorism, and the different phases of a criminal justice response, which include prevention, investigation, prosecution, sentencing, and reintegration.¹³

The aim of this initiative on juvenile justice in a counterterrorism context is to bring together practitioners and policymakers from a range of GCTF Members and other States representing a variety of disciplines to share experiences, explore good practices, and identify challenges in tailoring responses to threats of terrorism while protecting public safety and upholding the rights of the child. As a result of the Meeting, the memoranda of good practices — the Neuchâtel Memorandum on Good Practices for Juvenile

¹² For further information, see United Nations Office on Drugs and Crime & Latin America and the Caribbean Region of the World Bank (2007).

Justice in a Counterterrorism Context¹⁴ — intended to assist through shaping national, bilateral, regional, and multilateral capacity-building assistance in this area with a view to including consideration of the particular needs of children into counterterrorism policies and measures.

Hence, within the field of the Status of Children and their Protection under International Law and Juvenile Justice Standards, the practices relate to the importance of addressing children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards. Moreover, they urged States to assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.¹⁵

In relation to prevention, which plays a significant role in the United Nations Counter-Terrorism Strategy, the good practices focus on addressing children's vulnerability to recruitment and/or radicalization to violence through preventive measures and also focus on the need to develop targeted prevention strategies with a strong focus on the creation of networks to support children at risk.

However, the aspect of prevention also needs to consider and design diversion mechanisms for children charged with terrorism-related offences, even more significantly in light of recent indicators that attest that children are increasingly affected and victimised by terrorism, but at the same time, the last few years have shown them to be increasingly engaged in terrorist-related activity. For example, the Dutch counter terrorism coordinator estimates that at least 80 children with a Dutch connection live within Daesh-held territory in Syria and Iraq. Of these 80 known children, 30 % are between four and eight years old and around half of them are aged three or younger. According to French officials, there are around 460 French minors in Daesh claimed territory, with half of them under the age of five and a third born there. Belgian officials reported around 78 Belgian minors in Daesh-claimed territory.¹⁶

As for the field of Justice for Children, the importance of addressing children prosecuted for terrorism-related offences was highlighted, especially through the juvenile justice system. In this sense, it was further outlined the necessity to apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.¹⁷

Of utmost importance is also to consider and apply alternatives to arrest, detention, and imprisonment including the pre-trial stage, as well as to apply the principle of individualisation and proportionality in sentencing. Should children be deprived of their liberty, this should be carried in appropriate facilities, and all support for their protection and preparation for reintegration should be provided.¹⁸

In relation to the last point on reintegration, the good practices also refer to the development of

¹³ The Government of Switzerland proposed an initiative on juvenile justice in a counterterrorism context at the GCTF's Criminal Justice and Rule of Law Working Group Plenary Meeting in Malta on 13–14 April 2015. A first expert-level meeting was organized by the International Institute for Justice and the Rule of Law (IIJ) in Valletta, Malta, on 10–12 November 2015 under the auspices of the GCTF, with the participation of experts from governments, the judiciary, academia, international organizations, and civil society. A second expert-level meeting was organized by the IIJ at the United Nations Interregional Crime and Research Institute (UNICRI) in Turin, Italy, on 16–17 February 2016. The findings developed during these expert meetings led to the good practices and recommendations laid out in this Memorandum. However, the experts acknowledged that further empirical research and data is necessary to increase the understanding of the factors that drive children into violent extremism and to tailor responses accordingly. States are therefore encouraged to collect and collate information on children engaged in terrorism-related activities.

¹⁴ Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <<https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>>.

¹⁵ Ibid. 2015

¹⁶ See Meines, Marije, Merel Molenkamp, Omar Ramadan, Magnus Ranstorp, *RAN Manual, Responses to returnees: Foreign terrorist fighters and their families*, RAN Centre of Excellence, 2017.

¹⁷ Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <<https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>>.

¹⁸ Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <<https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>>.

Rehabilitation and Reintegration programmes for children involved in terrorism-related activities to aid their successful return to society.

Finally, the fifth set of practices based on the memoranda relate to capacity development, monitoring and evaluation, which could be implemented in line with the numerous relevant international standards, capacity development and specialised training of law enforcement officials, prosecutors, judges, corrections officers defence counsels and other actors dealing with children involved in terrorism-related activities — taking into consideration the applicable legal system. These are needed to help ensure the appropriate application of juvenile justice standards regardless of the charges. Technical assistance should thus be targeted to both policymakers and practitioners. It is likewise important to ensure that those involved in juvenile justice benefit from specialized training to handle terrorism-related cases.¹⁹

Additionally, with the purpose of ensuring the effective implementation of international juvenile justice standards, it was highlighted to design and implement monitoring and evaluation programmes.

V. RECOMMENDATIONS AND CONCLUSIONS

There is a common acknowledgment within the UN system that strategies to tackle juvenile delinquency are often too narrowly focused on tough penalties and law enforcement. Many countries still have “punitive” prevention programmes that try to suppress juvenile and youth offences and gang activity by means of police surveillance and prosecution.

The UN, however, also puts forward a series of recommendations for Member States to more effectively address youth crime-related issues. An initial stage suggests targeting communities severely affected by violence and other criminal activity with a holistic approach to the rule of law and justice that takes into consideration the causes of delinquency and its prevention through measures that address both individual needs and socio-environmental conditions.²⁰

These measures should provide meaningful alternatives for socialisation and achievement for young people. This can be achieved by:

- Providing rural areas with socio-economic opportunities and services to promote rural development as well as discourage young people from migrating to urban areas.
- Providing recreational, sport and leisure activities.
- Improving school quality, incorporating into school programmes seminars and lessons to raise awareness about issues related to violence, and expanding access to/retention in schools for high-risk individuals and communities, with meaningful after-school group activities.
- Providing tailored apprenticeship programmes that enable youth to enter the labour market through an alternative, effective channel.
- Preventing violence by involving families and entire communities, raising awareness of the importance of domestic support in the prevention of juvenile crime, and setting up information campaigns and training and educational programmes for family members or guardians.²¹

Overall, these recommendations and good practices on juvenile justice need to be seen as a vital part of the puzzle for the success of the pillars of the Counter-Terrorism Strategy launched by the United Nations and followed by UNICRI.

Being that juvenile justice is a meaningful element within counter-terrorism efforts and, more concretely, of the Counter-Terrorism Strategy, UNICRI plays a very important role while drawing the attention to this topic, making an emphasis on those countries where there is a systematic absence of juvenile justice platforms.

¹⁹ Ibid (2015).

²⁰ See United Nations Fact Sheet on Juvenile Justice (2015) <<http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>>.

²¹ See United Nations Fact Sheet on Juvenile Justice (2015) <<http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>>.

Therefore, the Institute's mandate to carry out action-oriented research to advance the understanding of juvenile justice-related problems further represents an opportunity to implement and innovate in ways to tackle the effects of young people caught breaking the law and committing terrorism-related crimes often ending up in places of detention that are inappropriate for their age and development, thus conditioning the likelihood of their reintegration into society.

BIBLIOGRAPHY

- Brett, R. (2002) Juvenile justice, counter-terrorism and children. Quaker United Nations Office. Available from: <http://www.quno.org/resource/2002/11/juvenile-justice-counter-terrorism-and-children>
- Boutin, B. (2016) "Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards", The International Centre for Counter-Terrorism (ICCT) – The Hague 7, no. 12.
- Entenmann, E., Van der Heide, L., Weggemans, D. & J. Dorsey, (2015) "Rehabilitation for Foreign Fighters? Relevance, Challenges and Opportunities for the Criminal Justice Sector", The International Centre for Counter-Terrorism - The Hague 6, no. 5.
- Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available from: <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>
- Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. UNICEF. Available from: http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdfp.3.
- Mazzarese, D. & Bologna, C. (forthcoming). Alternative Measures and Diversion in Youth Juvenile Justice, in Klima, N. (forthcoming). *Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*. UNICRI, Turin.
- Meines, Marije, Merel Molenkamp, Omar Ramadan, Magnus Ranstorp, (2017), *RAN Manual, Responses to returnees: Foreign terrorist fighters and their families*.
- Penal Reform International (2013) Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers. Available from: <http://www.penalreform.org/wp-content/uploads/2013/11/Childrensrights-training-manual-Final%C2%ADHR.pdf>
- United Nations (2005) Fact Sheet on Juvenile Justice. Available from: <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>
- United Nations (1990) Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") A/RES/45/112. Available from: <http://www2.ohchr.org/english/law/juvenile.htm>.
- United Nations Office on Drugs and Crime & Latin America and the Caribbean Region of the World Bank (2007). Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean. Report No. 37820 (March). Available from: http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf.

United Nations Resolutions

- United Nations (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Resolution A/RES/40/33. Available from: <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>
- United Nations (1990) Rules for the Protection of Juveniles Deprived of their Liberty, Resolution 45/113. Available from: http://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf