

# JUVENILE JUSTICE IN SOUTH ASIA:

## Improving Protection for Children in Conflict with the Law





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Regional Office for South Asia, 2006

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# Foreword

There are three main areas where young people come into contact with the state. In education and health considerable efforts are made to try and ensure that the results are beneficial. But when it comes to the criminal justice systems in South Asia very few compromises are made for extreme youth, vulnerability and the hardening experience inflicted on a child who is enmeshed in an adult system.

In recent years juvenile justice reform has received significant attention throughout the region and some promising practices and innovative initiatives are highlighted in this report. Throughout much of South Asia, however, an offending child will feel the heavy weight of outdated colonial approaches that rely on arrest, containment and institution-based rehabilitation.

Children who come into conflict with the law are often from the most vulnerable and marginalised segments of society. Both the Convention on the Rights of the Child (CRC) and UN guidelines encourage good practice that aims to ensure the dignity of the child and processes that promote reintegration into the community. Too often, however, children in South Asia are deprived of liberty because institutionalisation remains the first response. This is true whether they have been caught by the police or are simply in need of protection. And where alternatives do exist in theory, the procedures and infrastructure needed to put them into practice have not been sufficiently developed.

This Report, which was commissioned by the UNICEF Regional Office for South Asia to chart progress being made by countries against their obligations under the CRC, proposes some concrete steps that can be taken to promote a more child-centred, restorative system of justice for children. It is hoped that this report will mobilise all those concerned with justice in the region to prevent practices that are wasteful, harmful and an affront to child rights.



Cecilia Lotse

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# Executive Summary

One of the core requirements of States parties to the Convention on the Rights of the Child is 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 recent years, the issue of children in conflict with the law has become an increasing concern for countries in South Asia, and significant reform initiatives are underway in most countries in the region. While all countries have some differentiated procedures for children who commit crimes, as yet no country in the region has fully implemented a separate and distinct juvenile justice system to ensure that children in conflict with the law are treated in a manner substantially different than adults at all stages of the proceedings. The low age of criminal responsibility in most countries in the region remains serious cause for concern, as is the absence, in some countries, of juvenile justice protections for children between the ages of 16-18, or who have committed serious crimes.

In most countries, some steps have been taken to introduce specialised juvenile police units or special procedures for the arrest of children, as well as some form of differentiated court proceedings. However, implementation of these special juvenile protections has been far from universal. In several countries, children continue to be subject to arbitrary police arrest for vagrancy, prostitution and other status offences, and complaints of police abuse of children persist. With the exception of Maldives and to a lesser extent Afghanistan, the concepts of diversion and restorative justice have yet to take hold in South Asia. In general, insufficient emphasis has been placed, either legislatively or in practice, on introducing

alternatives to the formal justice system, or on changing the fundamentally custodial nature of the entire juvenile justice system. Currently, most children who come into conflict with the law end up deprived of their liberty either in police lock-ups, prisons, children's rehabilitation centres or vagrant homes. At all stages institutionalisation is the easiest option, and even where alternatives exist on the books, the procedures and infrastructure needed to put them into practice have not been sufficiently developed. Significant reforms are necessary throughout the region to ensure compliance with the CRC and UN Guidelines.

It is therefore recommended that each country in the region develop a coordinated, strategic plan for the reform of juvenile justice legislation, systems and practices that is designed to ensure that: extends juvenile justice protections to all children under the age of 18; sets a minimum age of criminal responsibility that conforms to international standards; draws clear distinctions between children offenders and children in need of protection; promotes more child-sensitive police practices and prohibits arrest or apprehension of children for vagrancy, prostitution and other status offences; promotes diversion and informal mechanisms to resolve minor juvenile crimes outside the formal system; prioritises the development of non-custodial sentencing alternatives; limits the use of detention, both pre-trial and as a sentencing option, to children who commit serious crimes of violence or persist in committing other serious offences; promotes partnerships with civil society and NGO service providers; ensures that children (both boys and girls) are separated from adults in all places of detention; institutionalising juvenile justice training; and improves mechanisms for monitoring and data collection on children in conflict with the law.



# Introduction

Throughout the world, children who come into conflict with the law as a result of being accused or suspected of committing a crime are at greatest risk of having their fundamental rights violated. For this reason, the Convention on the Rights of the Child (CRC) has established the following as the core guiding principle for the treatment of children in conflict with the law:

**State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society<sup>1</sup>.**

To this end, States parties are required to establish laws, procedures, authorities and institutions specifically applicable to children

alleged as, accused of, or recognised as having infringed the penal law.

This Report seeks to assess the progress made by South Asian countries in meeting these obligations. National juvenile justice systems, both laws and practices, are assessed against the key requirements of the CRC and the UN guidelines on juvenile justice: the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs);<sup>2</sup> the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);<sup>3</sup> and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).<sup>4</sup>

The first Part of this Report offers a snapshot of the juvenile justice systems across the region. This is followed by more detailed Country Profiles. Annex 1 contains a regional comparative chart based on the Implementation Checklist contained in UNICEF's Implementation Handbook for the Convention on the Rights of the Child, and Annex 2 contains brief descriptions of selected international promising practices.

1 Convention on the Rights of the Child, Article 40

2 Adopted by General Assembly resolution 45/113 of 14 December 1990

3 Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

4 Adopted by General Assembly resolution 40/33 of 29 November 1985



# Juvenile Justice Legislation and Procedures

With the exception of Bhutan, every country in the region has separate legislation governing procedures for children in conflict with the law.<sup>5</sup> In all cases, this legislation deals with both children in conflict with the law and children in need of protection, often with a lack of differentiation between these two groups. Although there has been significant impetus for reform in recent years, no country in the region has established a fully separate system of justice for children that ensures they are separated from adults at all stages of the criminal proceedings. Legislative reform is currently underway in Nepal, Sri Lanka and Maldives, and is being considered in Bhutan.

## 2.1 Jurisdiction and Scope

### a) CRC and UN Guidelines

The CRC requires all State parties to establish special laws, procedures, authorities and institutions specifically applicable to all children in conflict with the law. A “child” is defined as a person under the age of 18. State parties must also establish a minimum age below which children are presumed not to have the capacity to commit a crime.<sup>6</sup>

### b) Regional Assessment

With the exception of Afghanistan, the minimum age of criminal responsibility in all countries in the region is below international standards, ranging from seven (India, Pakistan, Maldives) to 12 (Afghanistan). Bangladesh has recently raised the age from seven to nine, and in Bhutan and Nepal it is 10.<sup>7</sup> The UN Committee on the Rights of the Child has repeatedly expressed concern about this issue in its Concluding Observations to each country’s Periodic Report.<sup>8</sup>

Afghanistan, Bhutan, India, Maldives and Pakistan extend juvenile justice protections to all children under the age of 18.<sup>9</sup> In Nepal, Sri Lanka and Bangladesh a juvenile is defined as a person under the age of 16.<sup>10</sup>

In most countries there are additional restrictions on the applicability of juvenile laws, and special protections do not apply universally to all children alleged to have committed an offence. In India, juvenile justice legislation does not apply in Jammu and Kashmir.<sup>11</sup> In Pakistan, it has not been extended to the Federally Administered Tribal Areas or the Provincially Administered Tribal Areas, and

5 Afghanistan Juvenile Code 2005; Bangladesh Children Act, 1974; India Juvenile Justice (Care and Protection) Act 2000; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended.; Nepal Children’s Act, 1992; Pakistan Juvenile Justice Systems Ordinance 2000; Sri Lanka Children and Young Persons Ordinance, 1936

6 Convention on the Rights of the Child, Articles 1 and 40(3)

7 For a full discussion of this issue, see South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children’s Rights, UNICEF 2005

8 UN Committee on the Rights of the Child, Concluding Observations: Bangladesh CRC/C/15/Add.221, 27 October 2003; Bhutan CRC/C/15/Add.157, July 2001; India CRC/C/15/Add.228, 26 February 2004; Maldives CRC/C/15/Add.91, 5 June 1998 ; Nepal CRC/C/15/Add.261, 3 June 2005; Pakistan CRC/C/15/Add.217, 27 October 2003; Sri Lanka CRC/C/15/Add.207, 2 July 2003

9 Afghanistan Juvenile Code 2005, Article 4; India Juvenile Justice (Care and Protection) Act 2000, Section 1; Maldives Ministry of Justice Circular No. 2004/03/MJ; Pakistan Juvenile Justice Systems Ordinance 2000, Section 2

10 Bangladesh Children Act, 1974, Section 2; Nepal Children’s Act, 1992, Section 11; Sri Lanka Children and Young Persons Ordinance, 1936, Section 88

11 India Juvenile Justice (Care and Protection) Act 2000, Section 1

provisions of the Hudood Ordinances take precedence for specific Islamic offences (rape, use of alcohol and drugs, theft, armed robbery, etc) if the child has reached puberty.<sup>12</sup> In Sri Lanka and Nepal, children who are jointly charged with adults are subject to adult proceedings. Sri Lanka also does not extend special protections to children charged with certain serious offences (murder, attempted murder and robbery).<sup>13</sup> In Bangladesh, special laws override juvenile justice protections and children above 16 years could be subject to stringent laws which allow life imprisonment and death penalty.<sup>14</sup>

## 2.2 Powers of Arrest and Arrest Procedures

### a) CRC and UN Guidelines

The CRC states that the arrest and detention of a child must be in conformity with the law, and should be used only as a measure of last resort. Children have the right to be informed promptly of the charges against them, and to have the assistance of their parents and a legal representative at all stages of the proceedings. They must not be subject to torture or other cruel, inhuman or degrading treatment or punishment, and their right not to be compelled to give testimony or to confess guilt must be guaranteed.<sup>15</sup>

The Beijing Rules state that, when a juvenile is arrested or detained, his or her parents must be notified immediately, or within the shortest possible period of time. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being and avoid harm

to the juvenile. Specifically, police must not use harsh, abusive or obscene language or physical violence in their dealings with children. In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles must be specially instructed and trained. In large cities, special police units should be established for that purpose.<sup>16</sup>

### b) Regional Assessment

To date, three countries in the region – India, Nepal and Maldives – have established, or are in the process of establishing, specialised juvenile police units. Comprehensive child-friendly police protocols are in the process of being developed in Nepal, Sri Lanka and in some states of India. The Maldives and most Indian states require that police wear plain clothes when dealing with children.

None of the countries offer alternatives to formal arrest as a means of initiating proceedings against a child, or require that arrest be used only as a measure of last resort. In most of the region, police have broad powers to arrest or apprehend children on a variety of grounds, including for status offences such as vagrancy (Pakistan, Nepal, Sri Lanka, Bangladesh), for public nuisance (Nepal), for being “incorrigible” or exposed to moral danger (Sri Lanka, Bangladesh, Nepal, Pakistan), for prostitution (Bangladesh, Sri Lanka, Nepal), and “on suspicion” (Bangladesh, Bhutan).<sup>17</sup> Street children and child sex workers are particularly vulnerable to arbitrary arrest under these provisions.

Restrictions are placed on the use of handcuffs against children in Afghanistan, India, Nepal, Pakistan, and Bhutan (for children under 13 only), but in some countries are reportedly not

12 Pakistan Juvenile Justice Systems Ordinance 2000, Section 247; Hudood Laws, 1979

13 Sri Lanka Children and Young Persons Ordinance, 1936, Sections 4 and 88

14 Public Safety Act 2000; Special Powers Act, 1974

15 Convention on the Rights of the Child, Articles 39 and 40(2)

16 UN Standard Minimum Rules for the Administration of Juvenile Justice, Articles 10 and 12

17 Bangladesh Children Act, Vagrancy Act, 1943, Code of Criminal procedure, Article 54, and Suppression of Violence against Women Act, 2000; Pakistan Punjabi Youthful Offenders Act, 1952 and Sindh Children's Act, 1955; Nepal Public Offences and Punishment Act, 2000; Sri Lanka Children and Young Person's Ordinance, 1936 and Vagrants Ordinance, 1841; Bhutan Code of Civil and Criminal Procedure

always followed in practice.<sup>18</sup> No country has explicit restrictions on the use of physical force in the arrest of children, and throughout the region there are continued reports of police corruption, illegal arrests, forced confessions and physical abuse of children during arrest or while in police custody, particularly in Pakistan, Bangladesh, India, Nepal and Sri Lanka.<sup>19</sup>

In all countries except Maldives, children cannot be held in police custody for more than 24 hours before they are brought before the Court. Maldives permits police custody of children for up to seven days to facilitate investigations or prevent re-offending.<sup>20</sup> Afghanistan, Sri Lanka, and Bangladesh explicitly require that, while a child is in police custody, he/she must be detained separately from adults.<sup>21</sup> In India, children may not be detained in a police station at all, and must be taken immediately to an Observation Home.<sup>22</sup> However, in practice not all police stations have facilities to ensure that children are separated from adults, and the detention of children in cramped police lock-ups for days or even weeks is reportedly common in Pakistan, Bangladesh and Nepal.<sup>23</sup> Mechanisms to monitor police conduct and police lock-ups are weak throughout the region.

All countries except Nepal and Maldives require that the police contact the parents of a child who has been arrested, and in Pakistan, Sri Lanka, and India they must also notify a

probation officer.<sup>24</sup> However, no country requires that the child be permitted to have a parent, support person or legal representative present when being questioned by the police. In practice, parental notification poses a significant challenge, particularly in urban areas where children are displaced from their families, and police often lack the time and resources to conduct family tracing. In some countries, such as Bangladesh, Sri Lanka, and India, police are increasingly relying on the support of probation officers, NGOs and child advocates to assist them with family finding.

## 2.3 Bail and Pre-trial Detention

### *a) CRC and UN Guidelines*

The CRC states that detention pending trial shall only be used as a measure of last resort and for the shortest possible period of time.<sup>25</sup> The Beijing Rules states that, whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used.<sup>26</sup> In addition, the JDLs state that juveniles detained under arrest or awaiting trial are presumed innocent and must be treated as such. Detention before trial must only be used in exceptional circumstances, and all efforts should be made to impose alternative measures. When detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest

18 Nepal Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Pakistan Situational Analysis of Juveniles in Jail, NCCWD, 2001; India Juvenile Justice System and the Rights of the Child, Prayas Institute, 2003

19 My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, SCF-UK, 2004; Nepal Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Pakistan Situational Analysis of Juveniles in Jail, NCCWD, 2001 and Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999; India Juvenile Justice System and the Rights of the Child, Prayas Institute, 2003; Sri Lanka Samaraweera, Vijaya, Report on the Abused Children and the Legal Process of Sri Lanka, 1997

20 Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended

21 Afghanistan Juvenile Code 2005, s.12; Bangladesh Children Act, 1974 s.1; Sri Lanka Children and Young Persons Ordinance, 1936, s. 13

22 India Juvenile Justice (Care and Protection) Act 2000, ss 10, 12, 13

23 Bangladesh My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, SCF-UK, 2004; Nepal Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Pakistan Situational Analysis of Juveniles in Jail, NCCWD, 2001 and Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

24 Afghanistan Juvenile Code 2005, s. 11; Bangladesh Children Act, 1974, s.13(2) and 50; India Juvenile Justice (Care and Protection) Act 2000, s. 12; Pakistan Juvenile Justice Systems Ordinance 2000, s. 10; Sri Lanka Children and Young Persons Ordinance, 1936, s. 17

25 Convention on the Rights of the Child, Article 37

26 UN Standard Minimum Rules for the Administration of Juvenile Justice, Article 13

possible period of detention. Juvenile detained at the pre-trial stage must be separated from convicted juveniles, and should have opportunities to pursue work and to continue their education or training.<sup>27</sup>

#### *b) Regional Assessment*

The police have the authority to immediately release children on bail into the custody of their parents in Afghanistan, Bangladesh, India, and Sri Lanka.<sup>28</sup> These provisions have the potential to greatly reduce the number of children held in police lock-ups, but are reportedly rarely used.<sup>29</sup> A major obstacle, particularly in urban areas, is locating the child's parents.

In all countries, the Court has the authority to release a child on bail or into the care of his/her parents pending the completion of the case. In Afghanistan, Nepal, India, Pakistan and Sri Lanka, children can also be released into the care of some other fit person or organisation. No country in the region has an explicit requirement that pre-trial detention be used as a measure of last resort. In Afghanistan, India, Maldives, and Pakistan, the presumption is in favour of bail, but the grounds for refusal are quite broad, including that the child, if released, would be exposed to moral danger or have contact with known criminals (India, Pakistan); that the "truth is not forthcoming from the child" (Maldives), and for all children charged with felonies (Afghanistan).<sup>30</sup> Monetary bonds are still

regularly required to guarantee a child's release in Bangladesh, India, Nepal, Pakistan, Sri Lanka, and are often set beyond the means of many families.<sup>31</sup> As a result, street children and children from disadvantaged families are at greater risk of pre-trial detention not because of the seriousness of the offence they committed, but because their parents cannot be located, cannot afford to pay for their release, or have been deemed unfit by the Courts or probation officers. In Bangladesh and Sri Lanka, child victims of crime are also subject to pre-trial detention in closed facilities, including adult prisons, to preserve their evidence.

Once committed to detention, it is not uncommon for children to languish for months or even years waiting for their cases to be completed due to delays in the criminal justice system and the failure of police, prosecutors and judges to prioritise cases involving children.<sup>32</sup> Four countries have specific limits on the length of time a child can spend in detention pending the completion of Court proceedings. Afghanistan has time limits for each stage of the process, requiring that proceedings be completed within two months from the date of arrest: one day (extendable to two days) from police arrest to submitting the case to the prosecutor for investigation; one week (extendable to three weeks) for the prosecutor to complete the investigation; one week for preparation and submission of the indictment to the Court (extendable for an

27 UN Rules for the Protection of Children Deprived of their Liberty, Articles 17 and 18

28 Afghanistan Juvenile Code 2005, s. 11; Bangladesh Children Act, 1974, s.48; India Juvenile Justice (Care and Protection) Act 2000, s. 12; Sri Lanka Children and Young Persons Ordinance, 1936, s. 14

29 Children in Afghanistan: An Opportunity Analysis, UNICEF 2005; Interview with Principle Magistrate, Delhi Juvenile Justice Board; Rahman, Mizanur, *Tracing the Missing Cord: A Study of the Children Act (Bangladesh)*, Save the Children UK, 2003; Samaraweera, Vijaya, *Report on the Abused Children and the Legal Process of Sri Lanka*, 1997

30 Afghanistan Juvenile Code 2005, s. 20 ; Bangladesh Children Act, 1974, s. 49; India Juvenile Justice (Care and Protection) Act 2000, s.12; Maldives Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, d. 289(4) and (5), as amended.; Nepal Children's Act, 1992, s. 50; Pakistan Juvenile Justice Systems Ordinance 2000, s. 10; Sri Lanka Children and Young Persons Ordinance, 1936, s.14

31 *Tracing the Missing Cord: A Study of the Children Act (Bangladesh)*, Save the Children UK, 2003; *My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh*, SCF-UK, 2004; *Cries Unheard: Juvenile Justice in Pakistan*, SPARC, 1999; *Situational Analysis of Juveniles in Jail*, Pakistan NCCWD , 2001; Pakistan: *Denial of Basic Rights for Child Prisoners*, Amnesty International, 2003; Samaraweera, Vijaya, *Report on the Abused Children and the Legal Process of Sri Lanka*, 1997; Interview with Principle Magistrate, Delhi Juvenile Justice Board; *Nepal Juveniles in Detention: Police Custody Monitoring Report*, UNICEF 2005

32 Ibid



additional three weeks, provided the child is not kept in detention); and 10 days after receipt of the file for the Court to issue its decision.<sup>33</sup> In India, all proceedings against children must be completed within four months.<sup>34</sup> In Nepal, the period of pre-trial detention cannot exceed the punishment applicable to the alleged offence.<sup>35</sup> Pakistan requires that if proceedings are not completed within stipulated time periods (ranging from four months to one year, depending on the seriousness of the offence), the Courts must release the child on bail.<sup>36</sup> However, due to limited court resources, these time limits are reportedly not always respected in Nepal, India, and Pakistan.<sup>37</sup>

All countries require that children be separated from adults in prisons and other detention facilities. In Afghanistan, India, Nepal, Sri Lanka, and Bangladesh juvenile justice legislation requires that children be detained in special children's remand homes.<sup>38</sup> However, in all countries, the number of separate facilities for children is quite limited, and the lack of broad geographic coverage means that children are either transferred long distance away from their families, or detained in adult jails. This is of particular concern for girls, since most countries either do not mandate that they be separated from adult females (Pakistan), or have no/fewer separate facilities available for them (Afghanistan, Bangladesh, Nepal, Maldives, Sri Lanka).<sup>39</sup> Whether in

adult prisons or special remand homes, children subject to pre-trial detention are generally kept in close confinement, with worse conditions and services than convicted children. In Bangladesh, although children on remand are sent to the same centres as convicted children, they are kept under full-time confinement and not permitted to take part in the centre's education, training and recreation programmes.<sup>40</sup>

The number and conditions of children subject to pre-trial detention has received significant attention, particularly in Bangladesh, India, Sri Lanka, and Nepal. In recent years, the high courts of Bangladesh, Nepal, and India have been very pro-active on the issue, and have issued directives requiring the release of children detained illegally or for lengthy periods of time. In addition, child rights activists and other NGOs have been active in Sri Lanka, Bangladesh, India, Nepal and Pakistan in providing free legal assistance and/or bail money to facilitate the release of children in pre-trial custody.

## 2.4 Juvenile Courts and Trial Procedures

### *a) CRC and UN Guidelines*

The CRC states that children alleged or accused of a law violation have the right to have the matter determined without delay by a

33 Afghanistan Juvenile Code 2005

34 Juvenile Justice (Care and Protection) Act 2000, s.14

35 Muluki Ain, No 118 and 119, Court Management

36 Juvenile Justice Systems Ordinance 2000, s. 10 (7)

37 The Status of Children in India: an alternate report to the UN Committee on the Rights of the Child, Asian Centre for Human Rights, 2003; Indian Juvenile Justice System, Prayas Institute, 2003; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999; Situational Analysis of Juveniles in Jail, NCCWD, 200; Interview with Chief Magistrate of Delhi Juvenile Justice Board;

38 Afghanistan Juvenile Code 2005, s. 12; Bangladesh Children Act, 1974, s.49; India Juvenile Justice (Care and Protection) Act 2000, s.12; Nepal Children's Act, 1992, s.50; Sri Lanka Children and Young Persons Ordinance, 1936, s.14

39 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999; Situational Analysis of Juveniles in Jail, Pakistan NCCWD, 2001; A Participatory Assessment of the Situation of Children in Kishore Unnayan Kendra (Child Development Centres, Bangladesh), Save the Children UK, 2005; A Gravy Train and Shackled Kids in Bangladesh, Asian Centre for Human Rights, 2004; Nepal Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Alder and Polk, Strategic Plan for the Reform of Juvenile Justice System (Maldives), 2004

40 A Participatory Assessment of the Situation of Children in Kishore Unnayan Kendra (Child Development Centres), Save the Children UK, 2005

### APARAJEYO BANGLADESH JUVENILE JUSTICE PROJECT - BANGLADESH

Aparajeyo, a local child rights NGO, has been promoting alternatives to pre-trial detention in selected districts through its Juvenile Justice Project. The project is staffed by a team of legal advisers, social workers and child rights officers. The social workers regularly visit the target police stations to facilitate the monitoring of children in conflict with the law and to negotiate the release of children from police stations. The legal advisor and panel of lawyers represent the children in court and advocate for the release of the child on bail. In some cases, Aparajeyo provides funding for bail bond if the child's parents cannot be located, or cannot afford to pay.

Aparajeyo social workers have built a close working relationship with low ranking police officers. They visit police stations every day and also respond to phone calls from police whenever a child is arrested. A telephone hotline has been set up so that the police can contact either Aparajeyo or one of its NGO partners at any time of day.

Children released from police custody or granted bail by the Court are taken to one of Aparajeyo's 24 safe shelters. The social worker attempts to locate the child's parents and turn the child over to them, and provides follow-up visits to check on the child after he/she has been returned. Parents are advised of the child's court date, and of the importance of ensuring that the child attends. Children whose parents cannot be traced or are unwilling to return to their family remain in the care of Aparajeyo and attend education and skills training at the safe shelter.

The Aparajeyo model shows how effective interventions by an adequately resourced probation officer could help reduce reliance on pre-trial detention. In particular, the extra time and resources spent conducting family tracing has resulted in a significant number of children being placed under the supervision of their parents, rather than the more costly option of remand facilities. The practice of using open shelters, rather than closed detention facilities, for pre-trial custody of children has also shown some success, though there have been setbacks. Bail for street children will continue to pose challenges, but experience from other countries suggests that referral to NGO-run shelters and other semi-institutional arrangements can be effective, provided the appropriate level of supervision and structured activity is provided.

competent, independent and impartial authority in a fair hearing. Throughout the proceedings, children have the right to have a parent present, and to have appropriate legal or other assistance. In addition, children must be provided the opportunity to express their views and to be heard in any judicial or administrative proceedings affecting them.<sup>41</sup>

The Beijing Rules state that proceedings must 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 fully and to express herself or himself freely.<sup>42</sup>

In addition, both the CRC and the Beijing Rules require that juveniles' right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labelling. No information that may lead to the identification of a juvenile shall be published.<sup>43</sup>

#### *b) Regional Assessment*

With the exception of Bhutan, juvenile justice legislation in all countries requires that fully separate juvenile courts be established (Afghanistan, India, Maldives), or provides the option of separate courts or designating

41 Convention on the Rights of the Child, Articles 12 and 40

42 Article 15

43 CRC Article 40(2); Beijing Rules Article 8

specialised children's magistrates (Bangladesh, Nepal, Pakistan, Sri Lanka). Afghanistan also has specialised juvenile prosecutors. In India and Nepal, children's cases are to be heard by a panel that includes both a magistrate and social worker(s).<sup>44</sup>

No country has introduced comprehensive child-sensitive rules of court, however legislation generally includes some provision to reduce the formality and intimidation of the courtroom. Legislation in Pakistan, Bangladesh, and Sri Lanka requires that children's cases be scheduled separately from adults. In all countries, juvenile proceedings should be closed to the public, and the publication of the child's name is prohibited. Parents are entitled to attend proceedings in all countries, and can be required by the court to be present in Afghanistan, Bangladesh, India, Sri Lanka and Maldives. However, no country explicitly recognises children's right to express their views in the proceedings, and legal provisions in Afghanistan, Bangladesh, India, and Pakistan permitting the court to dispense with the child's attendance violates both the right to participate and the right to due process.<sup>45</sup> In Bhutan, guilty pleas are entered by child's parent, rather than the child him/herself. In Nepal, the majority of juvenile offences are sanctioned by district administrators, rather than the courts, with no due process.

While India requires that children be brought to court by plain clothes police or staff from the

remand home, in Pakistan, Sri Lanka, and Bangladesh children are transferred from detention to court in adult prison vans, sometimes in handcuffs, and are held in court cells waiting for their case to be called. In Nepal, the Supreme Court has issued a directive forbidding the handcuffing of children in transit and in court, but it is routinely ignored.<sup>46</sup>

In general, countries throughout the region have been slow to introduce differentiated court proceedings for children. Cases are not systematically separated and scheduled differently from those involving adults, resulting in children's cases being tried in an adult environment with little to differentiate them from regular court proceedings. Even where separate juvenile courts have been established, they tend to replicate the same formalities as the normal courts. While children have the right to a lawyer in all countries, including to free legal assistance if they cannot afford to pay, legal representation is not always provided.<sup>47</sup> In Afghanistan, India, Bangladesh, Nepal, Sri Lanka and Pakistan, children's advocates and NGOs have been filling this gap by providing free legal assistance to children in detention.

However, there have been some innovative practices, including a new informal Juvenile Court in the capital of Afghanistan, and the practice of some magistrates in Bangladesh and Sri Lanka of holding court proceedings in their chambers rather than the courtroom. In the Indian State of Tamil Nadu, State Rules

44 Afghanistan Juvenile Code 2005, s.9; Bangladesh Children Act, 1974, s. 3 and 4; India Juvenile Justice (Care and Protection) Act 2000, s.4 and 29; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s. 289(7), (10), (12); Nepal Children's Act, 1992, s. 52; Pakistan Juvenile Justice Systems Ordinance 2000, s. 4; Sri Lanka Children and Young Persons Ordinance, 1936, s.2

45 While the intention of this provision is to shield children from the trauma of the courtroom, it prohibits them from participating in the proceedings, and also risks that children in pre-trial detention will get "lost" in the system if they are not brought regularly before the Court

46 Our Children in Jail, Odhikar, 2002; Tracing the Missing Cord: A Study of the Children Act (Bangladesh), Save the Children UK, 2003; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003; Dias, Malsiri, Study on State Receiving Homes, Remand Homes and Detention Centres for Children, Centre for Women's Research, 2001

47 Our Children in Jail, Odhikar, 2002; Tracing the Missing Cord: A Study of the Children Act (Bangladesh), Save the Children UK, 2003; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003; Dias, Malsiri, Study on State Receiving Homes, Remand Homes and Detention Centres for Children, Centre for Women's Research, 2001

require that Juvenile Justice Board proceedings be conducted like an informal conference, and that there be no raised dais or witness boxes. At a recent workshop, judges and magistrates from the state of Kerala went to observe the Juvenile Justice Board setting, and then returned to the classroom to brainstorm how it could be improved to be more child sensitive.

## 2.5 Sentencing

### *a) CRC and UN Guidelines*

The CRC states that deprivation of liberty shall be used only as a measure of last resort, for the shortest appropriate period. A variety of sentencing options, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care should be available to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18.<sup>48</sup>

The Beijing Rules require that any reaction to juvenile offenders must be in proportion to the circumstances of both the offenders and the offence. Before imposing a sentence on a juvenile, the background and circumstances in which the juvenile is living and the conditions under which the crime has been committed must be properly investigated. The sentence imposed should be proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile.

Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response. A wide variety of dispositions should be available, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. Furthermore, in order to promote minimum use of detention, appropriate authorities should be appointed to implement alternatives, and volunteers, local institutions and other community resources should be called upon to contribute to the effective rehabilitation of juveniles in a community setting.<sup>49</sup>

### *b) Regional Assessment*

All countries in the region have some form of special sentencing requirements for children who have been convicted of an offence.<sup>50</sup> Each requires that a child's background and circumstances be taken into consideration when deciding the penalty to be imposed. In all countries except Afghanistan, Bhutan, and Nepal, probation officers assist the courts by providing background reports on the child. However, Courts do not consistently request these reports, and probation officers throughout the region generally lack the skills and resources to conduct comprehensive assessments. In Sri Lanka, delays in the preparation of social reports contribute significantly to children's extended pre-trial detention.<sup>51</sup> India's strategy for overcoming this problem is to permit volunteers, generally social workers attached to NGOs, to prepare reports.<sup>52</sup>

The principles of proportionality and deprivation of liberty as a last resort have not

48 Articles 37 and 40

49 Articles 16, 17 and 18

50 Afghanistan Juvenile Code 2005, s.7, 8, 35-40; Bhutan Civil and Criminal Procedure Code, s. 213 and Penal Code, 2004; Bangladesh Children Act, 1974, s. 51-55; India Juvenile Justice (Care and Protection) Act 2000, s. 15; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s. 289 (3), (15), (18) (20); Nepal Children's Act, 1992, s. 12; Pakistan Juvenile Justice Systems Ordinance 2000

51 Samaraweera, Vijaya, Report on the Abused Children and the Legal Process of Sri Lanka, 1997

52 Interview with Prayas Institute staff, Delhi

been adopted anywhere in the region except Afghanistan and Maldives. Afghanistan's new Juvenile Code includes an explicit statement that confinement must be used as a measure of last resort, and for the minimal possible duration. In all other countries, institutionalisation, both in law and in practice, is the primary tool used to rehabilitate children in conflict with the law, regardless of the seriousness of the offence committed. Even where alternatives exist in law, children are routinely subject to detention for minor, property-related offences.

In Afghanistan, Nepal and Bhutan, children's sentences are a fixed percentage of the adult penalty for the specific crime. In Sri Lanka, Bangladesh, India and Pakistan, the length of time a child is committed to an institution is not proportionate to the offence or for the shortest appropriate period. Instead, legislation either stipulates a specific term that is applied to all children subject to a custody order (three years in Sri Lanka, minimum two years and maximum 10 in Bangladesh), or imposes a presumption in favour of institutionalisation until the child turns eighteen (India, Pakistan). When applied to minor crimes, these terms are well in excess of what the offence warrants, and harsher than what an adult would have received for the same crime. For example, while petty theft would rarely result in a prison term for an adult, in India a seven year-old who commits theft can be subject to deprivation of liberty for 11 years.

Legislation in Afghanistan, India and Sri Lanka provides the broadest range of non-custodial sentencing options. Placement under the supervision of a parent, probation officer or "fit person" are the most common alternatives. Community service is an option in Afghanistan, India, Sri Lanka, and Nepal, and counselling

orders are possible in India. In Maldives, the main alternative for children is house arrest. In Nepal and Bangladesh children may be imprisoned for non-payment of a fine, while Sri Lanka and India explicitly prohibit it.

All children between the ages of 16 and 18 are subject to adult penalties (including life imprisonment) in Sri Lanka, Bangladesh, Maldives, and Nepal. In addition, children may be excluded from special sentencing considerations and subject to adult terms of detention if they commit stipulated serious offences (Sri Lanka), if they are found to be "unruly or depraved" (Bangladesh), or if they are 16 years or older and commit a serious offence (India). Under these provisions, children as young as nine in Bangladesh and eight in Sri Lanka are subject to life imprisonment.

Sri Lanka permits court-imposed orders of corporal punishment against boys.<sup>53</sup> In Pakistan and Maldives, children who have reached puberty are subject to corporal punishment for certain offences under Islamic law.<sup>54</sup>

The death penalty may be imposed on children between the ages of 16 and 18 in Bangladesh, since the Children Act protections apply only to children under 16. In Pakistan, children of all ages who commit crimes in the federally administered territories, or who are convicted under anti-terrorism laws are subject to the death penalty.

As part of its ongoing juvenile justice reform plans, Maldives is introducing an innovative Sentencing Conference model. In deciding what disposition would be most appropriate, the Juvenile Court may conduct a Sentencing Conference to get input and recommendations

53 Children and Young Persons Ordinance, 1936, s. 29

54 Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s. 289 (20); Pakistan Hudood Laws, 1979

from the child, the child's parents, and the victim. Based largely on the New Zealand Family Group Conference Model, the Sentencing Conferences will be a form of group mediation where the child comes face-to-face with the victim to discuss his/her offending behaviour and decide what the child should do to repair the harm to the victim or the community, and to address the underlying problems that contributed to the offending behaviour.<sup>55</sup> A modified version of this approach is already being used by the juvenile court in Male, and there are plans to entrench these procedures in new juvenile justice legislation.

## 2.6 State Security / Anti-terrorism Laws

Nepal and Pakistan currently have anti-terrorism legislation in place that overrides all protections provided in juvenile justice legislation.<sup>56</sup> In Nepal, children suspected of Maoist affiliation may be detained by police or armed forces for up to one year without charge, trial or judicial oversight. In Pakistan, police have wide-ranging powers to arrest suspected terrorists, who are tried by special courts without the procedural protections of juvenile justice legislation. India and Sri Lanka have recently repealed similar legislation.<sup>57</sup>

### CASE STUDY: MALDIVES SENTENCING CONFERENCES

Athif has lived all his life in Male' with his mother, father and seven sisters. They live in a three-room apartment, part of a compound which has been carved up into seven tiny sections, each housing a different branch of the extended family. In total, 62 people live in the building. Combating the inevitable problems of congestion has been an uphill struggle for Athif's immediate family, and Sakeena, Athif's mother, tries to ensure that her children's immediate environment is one of love and affection. Despite Sakeena's valiant efforts, she has not been entirely successful in shielding Athif and his sisters from the troubles erupting all around them. In-house fighting is rife, with frequent violence by parents against their own children. Consequently, Athif's cousins have been involved in violent fights, as well as petty crime. Although younger than Athif, some of them have already been arrested for theft and assault.

Athif did not think anything was wrong when he was invited out by one of his cousins to join the gang on one of its sprees. "They took me to a house and told me to wait by the stairs while they brought down a VCR they were borrowing," he recalls. It turned out that the VCR was in fact being stolen and by the time Athif realized it, it was already too late. He was arrested for theft.

Prior to Athif's sentencing hearing at the Juvenile Court a family conference was held. At the family conferencing, Athif, his parents, a school representative, and a social worker met with the judge of the Juvenile Court to openly discuss the crime, Athif's character and background and any mitigating factors. Athif was found guilty of theft and sentenced to four months of house arrest, with a provision allowing him to go to school if accompanied by a parent. This is a relatively light sentence and one that was clearly influenced by the family conferencing that provided the opportunity for all parties to openly discuss the influences and factors leading to Athif's misdemeanor.

Athif is now attending school regularly, something he didn't do prior to his brush with the law. Athif does not ask much of life: "I want to study art and fishery sciences. But most of all I want to live somewhere peaceful, where people don't fight and steal."

UNICEF website, Feature Story, January 2003

55 Alder and Polk, Strategic Plan for the Reform of Juvenile Justice System (Maldives), 2004

56 Nepal Terrorist and Disruptive Activities (Control and Punishment) Ordinance; Pakistan Anti-Terrorism Act, 2002

57 India Prevention of Terrorism Act; Sri Lanka Prevention of terrorism Act, 1979

# Conditions in Detention

## *a) CRC and UN Guidelines*

The CRC requires that every juvenile deprived of liberty must be treated with humanity and respect for their inherent dignity, and in a manner which takes into account the needs of persons of his or her age. Juveniles must be separated from adults in all places of detention.

The JDLs set out a complete code for the care and treatment of juveniles deprived of their liberty, with a view to counteracting the detrimental effects of institutionalisation. The Rules promote the establishment of small, decentralised facilities for juveniles with no or minimal security. Children in detention must be afforded the same right to basic education as others, and should have access to vocational training and other meaningful activities. Emphasis is placed on promoting community contact through leaves of absence, outside schooling, and liberal family visit policies (in principle once per week). Rules should also be in place to ensure that children are not subject to corporal punishment, solitary confinement, or other cruel and inhumane punishments.

## *b) Regional Assessment*

In all countries in the region, laws and/or prison rules require that children be separated from adults in all places of detention.<sup>58</sup> However, in Afghanistan (outside of Kabul), Maldives, and Pakistan these protections are not available for girls, who are detained together with adult females. In Afghanistan, Bhutan, India, Nepal, Bangladesh and Sri Lanka, there is a general

prohibition on imprisonment of children (with stipulated exceptions), and children must be sent instead to a specialised juvenile rehabilitation centre. This is also the practice in Maldives, and is optional in Pakistan. In India,<sup>59</sup> Bangladesh, Sri Lanka, Maldives, Nepal and Pakistan, children in conflict with the law are mixed in the same institutions with children in need of protection, including child victims of abuse and exploitation.

Each country in the region has established one or more special juvenile rehabilitation centre. With the exception of Afghanistan, all of these centres are large, closed facilities. Those in Sri Lanka, Bangladesh, and Pakistan are modelled on the old British “borstal” model, using a strict daily regime to rehabilitate delinquent and “incorrigible” children into productive citizens. Studies on the conditions of children in institutions in Bangladesh, Bhutan, India, Pakistan and Sri Lanka have raised serious concerns about the treatment of children in institutional care. For the most part, the main function of these institutions is containment, and most lack the necessary staff and resources to effectively promote rehabilitation and reintegration. Basic facilities are often poor and in disrepair, few provide education based on the core school curriculum, counselling is limited, and family visits are tightly restricted. Each country has a limited number of specialised juvenile institutions (only one in Nepal, two in Pakistan) which are not distributed evenly, resulting in children being transferred long distances from

58 Afghanistan Juvenile Code 2005, s.35; Bhutan; Bangladesh Children Act, 1974, s.; India Juvenile Justice (Care and Protection) Act 2000, s.15; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s. 289 (3); Nepal Children's Act, 1992, s.15; Pakistan Prison Act and Prison Rules; Sri Lanka Children and Young Persons Ordinance, 1936, s.30

59 The Indian JJA, 2000 prohibits this mixing, but in practice it still occurs in many States

their families or detained locally in adult jails. Girls are particularly vulnerable because there are fewer specialised institutions for them. Due to prolonged periods of institutionalisation and limited community contact, many children lack basic living skills and family/community support networks to reintegrate into the community after their detention period has expired.<sup>60</sup> The response in India has been to introduce an additional three-year period of “after-care” institutionalisation.

The use of corporal punishment and other degrading punishments is common throughout the region.<sup>61</sup> Only Nepal and Pakistan have special restriction on the types of punishments that may be imposed on children in detention. In Nepal, solitary confinement is prohibited, and Pakistan prohibits corporal punishment, handcuffs and labour. Corporal punishment is explicitly permitted in Bangladesh and Sri Lanka.

Furthermore, in Afghanistan, Bangladesh, Nepal, and Pakistan children continue to be imprisoned in adult facilities, often with no separation from the adult population. Bangladesh and Pakistan in particular have consistently high numbers of children in adult prisons. This has generally been attributed to a lack of sufficient special facilities for children, poor geographical distribution of children’s institutions, and lack of awareness on the part of police and magistrates. Some prisons have a separate juvenile ward where children are

kept, however in areas where no separate facilities exist, children are placed in cells with adults, where they are subjected to physical and sexual abuse.

In India, Sri Lanka, and Nepal efforts have been made to improve conditions and services in institutions through the support of local and international NGOs. Through new legislation passed in 2000, India has introduced an innovative partnership approach for the management of children’s institutions. Under the law, State governments must establish special children’s homes on their own, or under agreement with voluntary organisations. This partnerships approach is being actively encouraged by the central government, and has shown considerable success. In some cases, NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. The state of Andhra Pradesh has put into practice a scheme of co-management of the state’s children’s institutions, under which each institution will have a key NGO co-managing the institution. In other cases, the State government has certified institutions that are fully operated and managed by a trusted NGO, with State funding support. This has reportedly improved the quality and range of services being provided to the children, since NGOs generally have specialised staff and are able to mobilise community involvement and volunteer professional services from doctors, lawyers, etc.

60 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999; Situational Analysis of Juveniles in Jail, Pakistan NCCWD, 2001; A Participatory Assessment of the Situation of Children in Kishore Unnayan Kendra (Child Development Centres, Bangladesh), Save the Children UK, 2005; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Children in Institutional Care: the Status of their Rights and Protection, Save the Children-UK (Sri Lanka), 2005; Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003; Situation of Women and Children in Bhutan, NCWC and UNICEF, 2005 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

61 Ibid



**PRAYAS OBSERVATION HOME, DELHI**

One of the best examples of India's new partnership approach to managing juvenile institutions is the Prayas Observation Home for Boys in Delhi. The Home's facilities are owned by the government, but managed by Prayas, a national children's NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. Upon taking over the facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers on staff who assess the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. Through its linkages with the broader NGO community, Prayas has also been able to expand its service by mobilising volunteer support from other professionals such as lawyers and doctors.



# Diversion and Alternative Sentencing

## *a) CRC and UN Guidelines*

The CRC requires State parties to promote the establishment of measures for dealing with juveniles in conflict with the law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.<sup>62</sup> The Beijing Rules provide further guidance on diversion, stating that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal proceedings. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without initiating formal proceedings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in the Rules. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, and must be subject to review by a competent authority. In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.<sup>63</sup>

## *b) Regional Assessment*

The concepts of diversion and restorative justice have yet to take hold in South Asia, and as yet no country has made it a core feature of

juvenile justice legislation. None except Maldives have established mechanism and criteria for children to be diverted from the formal system through police cautioning, mediation or some other form of informal dispute resolution. However, in all countries in the region, police have some discretion to issue warnings to children, rather than arrest them. In Bhutan in particular, this practice is used to keep most first and second-time offenders out of the formal system.<sup>64</sup> Under the new Afghan Juvenile Code, prosecutors have discretion to close the case if the child's parents agree to settle the conflict with support from a social institution, and the Court can issue a warning rather than impose a sanction on the child.

In addition, in Afghanistan, Nepal, and Bangladesh many minor offences are resolved informally within the community through customary and traditional dispute resolution mechanisms. However, concerns have been expressed that many of these practices do not adequately protect the rights of children, including their right to participate in the proceedings and to be protected from harsh or degrading punishments.<sup>65</sup> In Sri Lanka, a system of mediation boards has been established to resolve minor crimes outside the formal system, but it is unclear the extent to which the police are actually referring children to the boards.

62 Article 40(3)(b)

63 Article 11

64 Assessment of the protection factors for vulnerable children of Bhutan, Ministry of Health, Royal Government of Bhutan and UNICEF, 2004

65 Customary Law Survey and Children's Rights: Report on Customary Law Survey Results, Kabul University of Law and Political Science and UNICEF, December 2003; Juvenile Justice System in Nepal, Kathamandu School of law and the Centre for Legal Research and Resource Development, 2002; Committee on the Rights of the Child, Concluding Observations: Bangladesh, CRC/C/15/Add.221, 27 October 2003

Maldives has made the most progress in terms of embracing diversion and restorative justice. Under the country's Strategic Plan for the Reform of the Juvenile Justice System, police and prosecutors will be given broad discretionary powers to divert the majority of children in conflict with the law away from the formal justice system. Formal investigation and court proceedings would be used only for children who commit serious offences, who are repeat offenders, or where diversion attempts have previously been unsuccessful. All other children would be dealt with informally through police cautioning or referral to a Community Conference (family mediation)<sup>66</sup>.

As noted above, for children who have been processed through the formal court system, the laws in each country generally make some provision for non-custodial sentencing alternatives. The most common is to release the child under the supervision of a parent or probation officer, though some countries also include provision for counselling orders (India), community service work (Afghanistan, Sri Lanka, India), home confinement (Afghanistan, Maldives) and referral to a non-residential social institution (Afghanistan, India). However, throughout the region, very limited priority has been given to establishing the necessary infrastructure to make these options available and effective.

#### DIVERSION AND RESTORATIVE JUSTICE IN MALDIVES

In Maldives, Procedures and Guidelines for Family Conferencing have recently been developed jointly by the Juvenile Court, Ministry of Home Affairs, Attorney General's Office, and Police, with the support of UNICEF. The procedures promote diversion from the first point of contact with the police. A child who has committed an offence may be dealt with in one of the following ways:

- Informal, on-the-spot caution from the police, to be used for first-time offenders who commit minor offences;
- Formal caution from the police, delivered at the police station in the presence of the child's parents;
- Conditional Cautioning by the police, to be used for first-time offenders involved in more serious offences who admit the charges. The police hold a meeting with the child, parents and victim to discuss the conditions that have to be fulfilled in order to drop the charges, for example an apology, repair of the harm, or seek assistance to prevent re-offending. The conditions are included in a written contract that must be signed by the child and parents;
- Referral by the prosecutor to a Community Conference. Community Conferences will be used for repeat offenders or children who commit more serious offences. Based on the New Zealand Family Group Conference Model, they are a form of group mediation where the child comes face-to-face with the victim to discuss the child's offending behaviour and to develop an agreed plan for what the child should do to repair the harm to the victim (compensation, apology, work for the victim), to repair the harm to the community (community service work, volunteer work), and to address the underlying problems that contributed to the offending behaviour (counselling, participation in educational programmes, detoxification treatment, anger management, etc);
- Referral for adjudication by the Juvenile Court, for more serious offences (murder, manslaughter, armed robbery or other serious crimes of violence), where the child has already been to a community conference, or if the child does not admit to the offence.

66 Procedures and Guidelines for Family Conferencing (Draft), Attorney General's Office and UNICEF

All countries except Nepal and Afghanistan have some form of probation service, however they are generally woefully under-staffed and under-resourced. In several countries, probation officers are responsible both for children in conflict with the law and children in need of protection, which leads to further stretching of limited human resources. Probation tends to be limited to pro forma monthly check-ins and report-writing, and children are not systematically referred to programmes and services that are readily available in the community. Throughout the region, there are numerous NGOs providing a range of innovative programmes that could be used to provide supervision and competency

development to children on probation, including semi-custodial shelters, vocational training, peer educators/mentors, life skills programmes, non-formal education, etc. However, in general, probation services in the region have not been geared towards an individualised case management approach and there are no clear mechanisms and procedures for children to be referred to these programmes. There have been some innovative government/NGO partnerships piloting non-custodial forms of rehabilitation, but this is generally ad hoc, at the initiative of NGOs, and not based on a permanent, structured system for coordination between law enforcement and civil society.

#### AFGHANISTAN SEMI-OPEN JUVENILE REHABILITATION CENTRE

In 2003, the Juvenile Rehabilitation Centre was established in Kabul in 2003 with the support of UNICEF. The JRC is a semi-open centre which was established to provide daytime education and vocational training for children in conflict with the law, both as a means of pre-trial supervision, and as an alternative sentencing option. The children may return to their family at night, but spend the daytime at the Centre receiving supervision and support services (currently in practice, because a residential juvenile facility has not yet been built, most children spend the night at the centre). Ashiana, a local NGO working with street children, provides support to the JRC by working closely with the children in the centre and their families to facilitate the child's reintegration.



# Inter-agency Coordination, Monitoring and Reporting

All countries in the region currently have on-going juvenile justice reform initiatives. However, a lack of clear strategic focus and inter-agency coordination mechanism has resulted in many interventions being disjointed and unsustainable. In Afghanistan, Bangladesh and Nepal, high-level juvenile justice task forces have been established to provide greater coordination across the justice sector, and Maldives has drafted a comprehensive, inter-agency strategic plan for juvenile justice reforms.

Monitoring children's rights in general, and the rights of children in conflict with the law in particular, remains weak throughout the region. In all countries, an agency has been designated to monitor implementation of the rights of the child, and to report on progress to the UN Committee on the Rights of the Child. However, data collection remains a challenge, and no country in the region has established a comprehensive set of juvenile justice indicators

to monitor and evaluate the situation of children in conflict with the law. Some progress has been made on the development of indicators in Bhutan, India and Pakistan based on global indicators developed by UNICEF. India is introducing a web-enabled database to collect data on child protection throughout the country, and Pakistan has piloted the global indicators in selected provinces.

The lack of effective mechanism to monitor the treatment of children by police and in detention is cause for concern. No country in the region has a fully-functioning system to regularly inspect all places of detention. Judges and magistrates reportedly conduct regular visits to institutions in Afghanistan, Pakistan, Bangladesh, Maldives and India, but this is largely dependent on individual initiative. In Afghanistan, Pakistan, India, Bangladesh, and Nepal some independent custody monitoring is conducted by national human rights commissions or by local NGOs.





# Training and Capacity Building

## *a) CRC and UN Guidelines*

The Beijing Rules state that professional education, in-service training, refresher courses and other appropriate modes of instruction should be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.<sup>67</sup>

## *b) Regional Assessment*

In most countries in the region, training institutions have been established to provide induction training and professional development to justice-sector officials, including police academies, judicial academies, prison staff training centres, Bar councils, and law schools. However, few of these institutions have incorporated national and international juvenile justice provisions into the core curriculum. Where children's issues are covered, very limited time is dedicated. Knowledge of national children's laws is generally low across the justice sector, and limited steps have been taken to make juvenile justice laws more accessible by translating them into agency guidelines, police protocols, court rules, judicial bench books and institution manuals.

In the last few years, juvenile justice has received significant attention in all countries in the region, and numerous workshops, seminars, and training programmes have been conducted. However, in most countries capacity building initiatives have been largely NGO or donor driven, and often limited to a particular project site. Numerous manuals and training packages have been produced and

delivered on an in-service basis to police, judges, magistrates, lawyers, prison/institution staff, probation officers and welfare officers. This has reportedly had some success in bringing about changes in attitudes and practices in the target regions, but is not an adequate substitute for systemic and institutionalised training.

However, there have been some promising initiatives aimed at more systematic capacity building. In Bangladesh, Bench Books have been developed for both magistrates and judges, and training curricula developed for inclusion in the core courses offered at the judicial academy, the magistrates training course, and the police academies. Sri Lanka is in the process of developing inter-agency guidelines for dealing with children in conflict with the law and children in need of protection. In Bangladesh, an NGO has produced police pocket-books and posters for police stations that outline the core procedures for dealing with children in conflict with the law. In Nepal, an innovative, interactive police training and sensitisation programme is being developed by the police training unit. In India, the central government has funded an extensive, nationwide juvenile justice training programme through the National Institute for Social Defence, and the National Judicial Academy regularly brings together members of the Juvenile Justice Boards for training and experience-sharing. Respected High Court Judges are invited as resource people, which lends weight to the proceedings and has greater impact on JJB Magistrates than NGO-facilitated training.

67 Articles 12 and 22

### POLICE TRAINING AND SENSITISATION IN NEPAL

The Nepali police, with the support of UNICEF, are in the process of developing an innovative juvenile justice training programme for the officers who will be assigned to the newly-created juvenile police units. The manual is being developed by a task force made up of representatives from the police, the police training unit, legal human rights groups, and a UNICEF consultant. The 14-day training programme is being designed to be practical, rather than theoretical, focusing on the core skills, procedures and tasks that police need to know to process a juvenile offender in a child-friendly way. Using case studies, the training programme will encourage the police trainees to discuss practical issues or barriers to following the special procedures, and to develop solutions within the existing context. The manual will also include some innovative training approaches designed to change police attitudes towards children, and to motivate them to treat child offenders differently. As part of the manual development process, children in detention are being interviewed to collect their attitudes, perceptions and experiences with the police. The children's stories will be presented to police as part of the training programme through case studies and transcripts of group discussion. There are also plans to use a video-tape or theatre show to confront police with the children's perceptions of them. The inclusion of some form of interaction between the children and the police, such as a football match between the police and street children, is also being considered.

### POLICE SENSITISATION, VIJAYAWADA, INDIA

As part of a police sensitisation programme, the NGO SKCV started to invite individual police officers, with the permission and encouragement of their Commissioner, to visit the street children who were living in the NGO's long-term hostel. The police were encouraged to spend time talking with the children and listening to their stories. The experience deeply affected the police involved on a personal level, helping them to discover that these children were no different from the policeman's own children. The initiative works on the principle that sensitising and communicating with people on an individual level can make an impression that will stay with them no matter where they are posted later in the country.

This type of sensitisation proved much more effective than traditional training courses in a classroom because it was able to touch the participants emotionally. The scheme has proved so successful that the NGO has become recognised as an official part of the training course of the national police training school. Police officers are sent to spend time at the project as part of their curriculum. This has extended the effects of the sensitisation beyond the city in which the project is located to wherever the police will be posted.

However, extreme care must be taken with this type of direct contact approach between children and the police. The primary consideration must always be the welfare, protection and best interests of the children. Children might see such an approach as a betrayal of trust on the part of the NGO. What works in one place may not be suited to another.

# Public Awareness and Advocacy

## *a) CRC and UN Guidelines*

The CRC requires States Parties to undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.<sup>68</sup> Children in conflict with the law are generally some of the most marginalised in society and tend to generate limited public sympathy. Public awareness activities can help influence community thinking about juvenile crime and foster support for more restorative, child-centred responses. In addition, providing children in conflict with the law and their parents with clear and accessible information about children's rights within the justice process can help empower them to protect themselves from abuse or arbitrary action by justice sector officials.

## *b) Regional Assessment*

Most countries in the region have undertaken public awareness on the rights of children and the CRC in general, but have not as yet undertaken focused awareness activities on the rights of children in conflict with the law. In general, advocacy and awareness materials on juvenile justice have been targeted at justice sector officials, but not to the public at large. There are a few notable exceptions. The Maldives Attorney General's Office has conducted informational and training workshops to raise legal awareness amongst youth. In Pakistan, NGOs and children's activists have been publicly campaigning on the rights of children in conflict with the law, and networking between child rights NGOs and the media in Bangladesh has resulted in an increase of media reporting on the plight of children in prisons.



# Conclusions and Recommendations

As yet, no country in the region has fully implemented a separate and distinct juvenile justice system that ensures that children in conflict with the law are treated in a manner substantially different than adults at all stages of the proceedings. The issue has been receiving growing attention in recent years, and significant reform initiatives are underway in most countries. However, with the exception of Maldives, reforms have tended to focus on purely legalistic responses, most notably the establishment of juvenile courts and juvenile institutions. Insufficient emphasis has been placed, either legislatively or in practice, on introducing alternatives to the formal justice system, or on changing the fundamentally custodial nature of the entire juvenile justice system. Currently, most children who come into conflict with the law end up deprived of their liberty either in police lock-ups, prisons, children's rehabilitation centres or vagrant homes. At all stages, institutionalisation is the easiest option, and even where alternatives exist on the books, the procedures and infrastructure needed to put them into practice have not been sufficiently developed. Significant reforms are necessary throughout the region to ensure compliance with the CRC and UN Guidelines.

**Inter-Agency Coordination:** The administration of juvenile justice involves a broad range of actors, including police, prosecutors, judges, probation officers, social workers, prison staff, and NGOs. Real systemic reform requires coordinated efforts from all agencies. It is therefore recommended that a high-level, inter-agency task force be established in each country to promote

ongoing dialogue and coordination, and to ensure a consistent and coordinated response to children in conflict with the law at each stage of the process.

**Strategic and Coordination Reforms:** Equally important is having an integrated long-term strategy to guide reforms across the juvenile justice system. Currently, initiatives in most countries have tended to be conducted in isolation, generally by single agencies in partnership with donors or NGOs. For reforms to be comprehensive and sustainable, they will need to be institutionalised within government structures, and incorporated into a holistic, strategic approach that addresses all aspects of the system. For example, creating special juvenile courts and child-friendly court procedures will have minimal real impact on the outcome for children if resources have not been put in place to give judges viable alternatives to imprisonment. It is therefore recommended that each country develop an inter-agency strategic reform plan that: establishes clear and measurable objectives; identifies the main strategies and concrete activities that need to be undertaken to achieve those objectives; and designates responsible agencies and time frames for completion. All donor and NGO-supported reform initiatives should be integrated into the reform strategy, with a clear indication of how piloted initiatives will be integrated and sustained as part of the juvenile justice system.

**Legislative/Policy Development:** With the exception of Afghanistan, legislation throughout the region fails to provide a sound basis for development of a child-centred juvenile justice

system. Most of the hallmarks of modern juvenile justice legislation – diversion, limits on arrest, explicit preference for non-custodial alternatives, civil society engagement – are lacking. What is needed is more than merely piecemeal reforms, but rather a fundamental shift in the conceptual approach to children in conflict with the law. Most children’s legislation in the region continues to draw heavily from the U.K. Children’s Act of 1908, long since abandoned by the British, which was based on the outdated notion of rounding up and containing all delinquent and “incorrigible” children and converting them to productive citizens through lengthy periods of rehabilitative institutionalisation. This approach has been proven to be both costly and ineffective, and in most commonwealth countries has been supplanted by more child-centred, rights-based approaches based on restorative justice and community-based rehabilitation.

It is therefore recommended that comprehensive juvenile justice legislation be developed that is: grounded in a child-centred, restorative approach; that represents a complete and binding code for the treatment of all children under the age of 18 who are in conflict with the law; that establishes an appropriate age of criminal responsibility; and that draws clear distinctions between child offenders and children in need of protection. This should be developed through a consultative process involving all relevant stakeholders, including children. Maldives is in the process of drafting new juvenile justice legislation based on the principles of diversion and restorative which could serve as a model for the rest of the region.

**Promote Exposure, Experience Sharing and Research on Juvenile Justice:** Awareness of more recent trends in juvenile justice appears to be quite low in the region, and it is

recommended that opportunities for exposure to more progressive juvenile justice models be promoted through technical assistance, national and international research, review of model legislation from other countries, and exposure visits to countries outside the region. For example, a Regional Juvenile Justice Seminar could be held to bring together key juvenile justice stakeholders from each country. Guest speakers could include senior, respected practitioners from other countries who could share effective models and approaches, particularly on diversion and community-based rehabilitation. This would help develop a cadre of regional resource persons with greater understanding of global juvenile justice reforms. Research could also be commissioned to address specific contentious issues, such as the minimum age of criminal responsibility and extension of juvenile protections up to the age of 18. In the Philippines, for example, UNICEF/UNOHCHR funded a study on the age of discernment of street children, which revealed that, contrary to popular misconceptions, street children do not mature faster than other children, but rather suffer from delayed cognitive development, moral reasoning and decision-making skills due to the difficult circumstances in which they were living.<sup>69</sup> This helped support efforts to raise the minimum age of criminal responsibility from nine to 12.

**Promote Conceptual Separation between Children in Conflict with the Law and Children in Need of Protection.** While these two issues are in some respects inter-linked, they involve very distinct legal issues. Blending the two risks overlooking the essential due process rights and distinct concerns of children in conflict with the law, and criminalising child victims. Increasingly, these two categories of children are dealt with under completely separate pieces of legislation (UK, South Africa, Namibia, Canada, U.S., most Australian

69 Study on Age of Discernment of Out-of-School Children, Philippine Action for Youth Offenders and UNICEF/UNOHCHR, 2002

States) or at the very least two clearly delineated Parts of the same legislation, with separate decision-making bodies and procedures for each (India, New Zealand, some Australian states).

#### **Child-Friendly Procedures and Protocols:**

Legislative protections are often easier to implement if they are translated into clear guidelines, protocols and handbooks for police, prosecutors, judges, probation officers and prison staff. Guidelines on children in conflict with the law should be distinct from those for child victims, and should offer practical procedures that can be realistically implemented within the existing context. Pending legislative amendments, they could be used to promote liberal interpretation of existing legal provisions. Police pocket books and posters for police stations could be distributed as visual reminders of the core procedures to be followed. Juvenile Court procedures should ensure that proceedings are conducted expeditiously and in an informal atmosphere, but must still ensure that convictions are based on sound evidence, that children's due process rights are respected, and that children's views are sought and given due consideration.

**End Arbitrary Arrests of Children:** In a number of countries in the region, children are subject to arbitrary arrests on broad grounds unrelated to criminal activity. It is recommended that laws permitting police to apprehend children for vagrancy, begging, prostitution and other status offences be repealed as a matter of priority. Street children who have not committed a criminal offence should not be subject to arrest and compulsory institutionalisation in closed facilities, and more child-centred approaches to the issue need to be developed. While the government has been slow to change its policies, numerous NGOs in the region have already adopted more progressive interventions for street children, based on street outreach programmes, drop-in

centres, open shelters and building skills for independent living.

#### **Promotion of Diversion and Restorative**

**Justice:** Mechanisms should be established to resolve minor juvenile crimes outside the formal system through formalised police cautioning, mediation or other informal dispute resolution mechanisms, with arrest and court proceedings reserved for children who commit serious crimes or who are persistent offenders. Existing informal and customary dispute resolution mechanism should be reviewed to understand more about how they operate and whether they could be adapted to ensure respect for children's rights. Mediation or community conferencing models could be piloted or, where they exist, strengthened to form the primary response for first-time juvenile offenders.

#### **Prioritise Development of Non-Custodial**

**Alternatives:** Although there has been much talk throughout the region about reducing reliance on institutionalisation, to date there has been limited investment in developing the necessary alternatives. This will require concrete steps both to limit systemic bias towards institutionalisation, to strengthen community-based mechanism to provide children with support and supervision, and to expand the notion of probation beyond mere pro forma monthly checks and report writing. Clear standards, procedures and mechanism need to be in place to permit children on bail and probation to be referred to existing shelters, drop-in centres, counselling services, non-formal education programmes, vocational training, peer mentors, etc. A starting point could be local mapping and partnership-building exercises to identify and mobilise existing resources within the community. At the same time, there is a need for greater commitment to building the capacity of probation officers and the social work profession as a whole. Properly trained and resourced probation officers are essential to

the effective implementation of a comprehensive juvenile justice system based on diversion and community-based rehabilitation. Investment at this level generally leads to a reduction in expenditures at more costly levels of the system, such as the courts and institutions.

**Build Partnerships with Civil Society:** in most countries in the world, NGOs have become core service providers within the juvenile justice system, providing community-based life skills programs, group counselling, community work opportunities, day centres, and open custody group homes for children in conflict with the law. In light of the limited resources of government probation and child welfare services throughout the region, a shift to non-custodial alternatives will likely require partnership-building with NGOs, community groups and volunteers. A permanent, structured system for coordination between law enforcement and civil society should be integrated into the core juvenile justice system, rather than remaining dependent on individual relationships and NGO-driven initiatives.

**Limit the use of Institutionalisation,** both pre-trial and as a sentencing option. There is a need to overcome the common perception, inherited from the outdated British Borstal model,<sup>70</sup> that institutionalisation is a positive intervention, and that it is necessary to remove children from “undesirable environments” in order to promote their rehabilitation. Renaming these institutions “homes” or “development centres” does not change the fundamental fact that children spend their formative teen years growing up in closed prison-like centres deprived of their liberty and separated from their families and community. Placement in any closed facility (i.e. where the child cannot leave

at will) should be viewed as a serious penalty to be used only for children who commit serious crimes of violence or who persist in committing other serious offences.<sup>71</sup> In particular, depriving street children of their liberty in prisons or closed centres is never in their best interest, and never an appropriate substitute for alternative family care. A distinction needs to be drawn between institutionalisation as a penalty for a crime (which may involve deprivation of liberty, for the shortest appropriate period) and institutionalisation for children without parental care (which should never involve deprivation of liberty, and should always be provided in open facilities that create a family-like environment). Legislative amendments should: delineate clearly the distinct purposes of institutionalisation for children in conflict with the law and children in need of protection; explicitly require that deprivation of liberty be used only for children in conflict with the law, and only if they have committed serious crimes; introduce sentencing guidelines or principles that promote minimum use of detention; and eliminate institutionalisation until the age of 18 or for a minimum fixed term.

**Separate Children from Adults in all Places of Detention:** in most countries in the region, it is unrealistic to expect that specialised children’s institutions can be made available in every district, or that police and prison staff will always have resources for the efficient transfer of children to these facilities. Protocols that require children to be detained only in children’s institutions, without providing another viable alternative, almost always result in children falling through the cracks and ending up confined in cells with adults, particularly at the immediate post-arrest and

70 The “Borstal” model of juvenile prisons was introduced in Borstal, England in 1902, and was based on the philosophy of rehabilitation and character formation through a strict daily regime, harsh discipline, physical exercise and basic non-formal education and skills development. The UK abolished the Borstal system in 1982 (Criminal Justice Act 1982) and replaced it with a more progressive model of Youth Custody Centres

71 The Beijing Rules, Article



pre-trial stage. While the promotion of separate children's facilities is laudable, there is also a need for alternative arrangements where these institutions are not readily available. At minimum, every place of detention should have a separate ward or a designated separate cell where children can be isolated from adult detainees. This protection must be afforded equally to girls. In addition, minimum standards should be developed for the care and treatment of children in all places of detention, which should clearly prohibit corporal punishment and all other forms of cruel or inhumane treatment.

**Institutionalise Juvenile Justice Training:**

Currently, juvenile justice training is generally being conducted on an ad hoc basis, and numerous duplicative training manuals and training programmes have been developed with the support of various NGOs, INGOs and donor agencies. It is recommended that juvenile justice training be standardised and more systematic. Formally approved manuals and curricula should be developed by each agency, allowing for inter-agency training opportunities. Juvenile justice training should be incorporated into the existing curriculum at police academies, judicial training institutes, prison training centres, law schools, etc, and also offered on an in-service basis. Training programmes should be based on participatory techniques that promote sensitisation and behavioural change. Rather than simply presenting CRC and UN guidelines, there is a need for real engagement on how these standards can best be adapted and put into practice in the local context.

**Improve Monitoring and Data Collection:**

Mechanism for monitoring the juvenile justice system should be strengthened, with comprehensive indicators for collection of data on children in conflict with the law. In particular, mechanism should be in place for regular, periodic inspection and independent monitoring of all places where children are detained. Children should have access to child-friendly complaints mechanisms.

**Promote Community Awareness and**

**Sensitisation** to build community support for new approaches to juvenile justice and to provide children and their parents with the information they need to assert their rights. Simple brochures could be produced and distributed by police to explain to children/parents what their rights are and how to seek legal assistance.

**Integrate Juvenile Justice into Broader**

**Justice Reform Projects.** Many of the concerns about the treatment of children in conflict with the law cannot be fully addressed in isolation, and issues such as the police culture of violence and lack of accountability, or systemic delays within the court systems need to be addressed as part of over-arching justice reform. In most countries, broader justice-sector reform initiatives targeting the judiciary, police and prison system are being supported by UNDP, World Bank and other donor agencies. It is recommended that there be greater collaboration and cooperation with these reform efforts, and in particular that juvenile justice be incorporated as a core component of broader justice-sector reforms.



# Afghanistan

## 1. Juvenile Justice Legislation and Procedures

After more than 20 years of conflict and upheaval, Afghanistan's system for the administration of justice had virtually collapsed. Significant capacity building initiatives are underway to improve the system at all levels, and the government has ensured from very early on that the juvenile justice system was an integral part of reform efforts.

A country-wide assessment of the situation of children in conflict with the law and deprived of their liberty was conducted jointly by the Ministry of Justice and UNICEF in late 2002.<sup>72</sup> Following that, a Policy Seminar on Juvenile Justice was organised by the Ministry of Justice and a draft Plan of Action developed for improving the juvenile justice system. Key to that plan was the development of a Juvenile Code, which was drafted a high-level inter-agency working group and came into force in early 2005.

### 1.1 Jurisdiction and Scope

The Juvenile Code deals mainly with procedures and protections for children in conflict with the law, but it also includes some procedures for children in need of care and protection. The law sets 12 as the minimum age of criminal responsibility, and extends juvenile justice protections to all children who are under the age of 18. The relevant time for determining age is as at the date the offence was committed.<sup>73</sup>

The law applies throughout the country, however in rural areas, where formal institutions are not as strong, conflicts and minor offences tend to be resolved through traditional mechanisms (discussed in Section 3 below).

### 1.2 Powers of Arrest and Arrest Procedures

The Juvenile Code prohibits police from using handcuffs when arresting a child, unless there is risk of flight or if they pose imminent threat to themselves or others. Within 24 hours from the arrest, the police must notify the child's parents and social services institutions. The child's parent has the right to demand the child's release on bail immediately after the child's apprehension.<sup>74</sup>

Within 24 hours, the police must complete the first investigation report and refer the matter on to the prosecutor to complete the investigation. This period may be extended to 48 hours, in which case the prosecutor has the authority to hand the child

<sup>72</sup> Changing Lives. Children in Afghanistan: An Opportunity Analysis, UNICEF, 2003

<sup>73</sup> Juvenile Code, Article 4 and 6.4

<sup>74</sup> Juvenile Code, Article 11

over to his/her parents. The prosecutor is obligated to finish the investigation within one week after receiving the file. If necessary, the Court can extend the investigation period to three weeks.<sup>75</sup>

### 1.3 Bail and Pre-trial Detention

A countrywide assessment of the situation of children in conflict with the law and deprived of their liberty conducted in 2002 found that, due to the general breakdown of the justice system, children were being detained for long periods without being heard by competent judicial authorities. Although under the laws in place at the time most of them should have been placed under the guardianship of their parents pending trial, the majority were being kept in pre-trial detention.<sup>76</sup>

The Juvenile Code seeks to address this issue by providing clear limitations on the use of pre-trial detention, and on the length of time for the completion of proceedings. The Code states that the prosecutor and judge have the authority to release a child on bail without monetary deposit, unless his/her situation requires detention.<sup>77</sup> In particular, children who have committed a misdemeanour must be surrendered to their parents or relatives during the investigation period. If the child does not have a parent or relative, they must be released under the supervision of a juvenile rehabilitation centre or any other educational or training institution. Children who commit a felony shall be sent to the juvenile rehabilitation centre during the completion of the investigation.<sup>78</sup>

From arrest to completion of trial no child can be deprived of liberty for more than 40 days: one day (extendable to two days) from police

arrest to submitting the case to the prosecutor for investigation; one week (extendable to three weeks) for the prosecutor to complete the investigation; one week for preparation and submission of the indictment to the Court (extendable for an additional three weeks, provided the child is not kept in detention; and 10 days after receipt of the file for the Court to issue its decision. Children who are detained must be kept in a special temporary location, and have the right to social, education, vocational, psychological and health services.<sup>79</sup>

### 1.4 Juvenile Court and Trial Procedures

The Juvenile Code calls for the establishment of special juvenile prosecutor's office for the assessment, investigation and prosecution of juvenile crimes. These offices should be established in the capital and provinces.<sup>80</sup> The trial of all juvenile cases must be conducted by the Juvenile Courts, which will be established in provincial capitals. To date, one Juvenile Court has been established in Kabul, with infrastructure support from UNICEF and UNODC. Juvenile judges and juvenile prosecutors have been appointed in the capital.

Proceedings before the Juvenile Court are closed to the public, and the media is prohibited from disclosing the child's identity.<sup>81</sup> The child's parents are required to accompany the child when summonsed for trial, and can be fined for failing to do so.<sup>82</sup> At all stages of the investigation and trial, a child has the right to a lawyer and interpreter. If the child's parents cannot afford a lawyer or interpreter, then the court must appoint someone at the government's expense.<sup>83</sup> If the issues

75 Juvenile Code, Articles 13 and 14

76 Changing Lives. Children in Afghanistan: An Opportunity Analysis, UNICEF, 2003

77 Juvenile Code, Article 11.3

78 Juvenile Code, Article 20

79 Juvenile Code, Article 12

80 Juvenile Code, Article 9

81 Juvenile Code, Article 32

82 Juvenile Code, Article 24

83 Juvenile Code, Article 22

discussed during the trial might “harm the child psychologically” the Court can continue the hearing in the absence of the child.<sup>84</sup>

### 1.5 Sentencing

The Juvenile Code states explicitly that confinement of a child is a measure of last resort and requires the Court to impose confinement for the minimal possible duration.<sup>85</sup> Contemptuous and harsh punishment are prohibited.<sup>86</sup> The Court has a range of dispositions that it may impose on a child found guilty of an offence, including:

- Performing social service
- Sending the child to special social service institutions
- Issuance of warning
- Conditional suspension of punishment
- Home confinement
- Release to parents or guardian with a written guarantee that they will be responsible for monitoring the development and progress of the child;
- Confinement to a juvenile rehabilitation centre.
- If confinement is not more than two years, the child may be permitted instead to spend that period in one of the social service institutions, with one or more obligations: periodic stay, performance of specific tasks, education and training, enrolment in a rehabilitation programme, and apologise and compensate victim.
- Suspended sentence, if the sanction for the crime is for more than two years but less than three years.<sup>87</sup>

The Juvenile Code further stipulates that the sentence imposed on a child between the ages

of 12 and 16 cannot exceed one third of the maximum sentence stipulated in the Penal Code for adults. For children between the ages of 16 and 18, the sentence must be no more than half the adult sentence. Children cannot be subject to life imprisonment or the death penalty.<sup>88</sup>

When deciding what sentence to impose, the Court must take into consideration the child’s full background and circumstances. This information must be provided to the Court by the prosecutor.<sup>89</sup>

## 2. Conditions in Detention

Under the new Juvenile Justice Code, children who are subject to detention should be kept in Juvenile Rehabilitation Centres (formerly Child Correction and Rehabilitation Centres (CCRCs)). Currently, most CCRCs are located within adult prison buildings, and some are little more than a separate room where children are detained apart from adults. In 12 provinces, there are no separate facilities at all and children are detained together with adults. There is no separation of girls from women.<sup>90</sup> Concerns have been raised about the overcrowded and unhealthy conditions in prisons, particularly the women’s prisons. Many are in a serious state of disrepair.<sup>91</sup>

The Children’s Unit of the Afghani Independent Human Rights Commission conducts regular monthly monitoring visits to the CCRCs and other places of detention. It has raised several concerns about the conditions of children in detention, including:

84 Juvenile Code, Article 33.3

85 Juvenile Code, Article 8

86 Juvenile Code, Article 7

87 Juvenile Code, Articles 35, 37, 40

88 Juvenile Code, Article 39

89 Juvenile Code, Articles 17 and 36

90 The Situation of Afghan Children in 2005, Afghan Independent Human Rights Commission website; Parwez Ahang, Research Report on Situation of Child Correction and Rehabilitation Centres in Afghanistan, Afghani Independent Human Rights Commission, undated;

91 Report of the independent expert of the Commission on Human Rights on the situation of human rights in Afghanistan, September 2004

- Poor nutrition;
- Lack of qualified teachers and educational materials;
- Lack of adequate health facilities;
- Lack of adequate space and recreation facilities;
- Mixing of adults with children in many parts of the country
- Lack of qualified staff to provide counselling and rehabilitation services.<sup>92</sup>

AIHRC interventions have helped to improve the quality of education and health care for children, and it has been successful in lobbying for the separation of children from adults in Mazar-e-Sharif and Kandahar.

### 3. Diversion and Alternative Sentencing

Customary law and traditional justice are common in Afghanistan, especially in rural areas. Although there is no formal legal framework for it, the practice of resolving many disputes through local jirga/shura is widely accepted, and continues to be practiced, to a lesser extent, even in areas such as Kabul where formal justice systems are available. A customary law survey carried out by Kabul University and UNICEF revealed that, in general, minor juvenile cases are resolved locally, while major crimes such as theft, adultery and murder are referred to formal courts. While practices vary considerably throughout the country, jirgas/shura are essentially a form of family reconciliation, mediated by a group of impartial, respected community elders. The objective of the jirga ruling is to restore communal harmony in accordance with established conventional

norms. Emphasis is placed on formalised symbols of remorse and payment of compensation in cash, livestock or other goods.<sup>93</sup>

These mechanisms can be very useful ways of dealing with children in conflict with the law because they provide quick and immediate resolutions, and actively involve families and communities in the process. Jirgas/Shuras reportedly make special consideration for children, considering their actions to be unintentional. However, in some respects local practices are not in conformity with human rights principles, in particular the definition of “child” tends to be 12 or 15; in many areas, children are not permitted to participate in the proceedings except through a family representative; and in some areas, resolutions include imposing physical punishments or requiring the guilty part to provide the family of the victim with a young girl for marriage to compensate for damage caused.<sup>94</sup>

The Juvenile Code does not formally recognise traditional dispute resolution mechanisms as an alternative to formal arrest. However, it does permit some diversion at the discretion of the prosecutor. The Code states that if the child is charged with a minor offence, the prosecutor can invite directors of the juvenile rehabilitation centres and social service institutions to advise and encourage the child’s parents to settle the conflict. If the parents agree to the reconciliation, the prosecutor can decide to close the file.<sup>95</sup> It is notable that consent for diversion is obtained from the child’s parents, not the child him/herself, and is not predicated on an admission of guilt. The Code does not provide for a mechanism for the facilitation of reconciliation.

92 Research Report on Situation of Child Correction and Rehabilitation Centres in Afghanistan, Afghani Independent Human Rights Commission

93 Customary Law Survey and Children’s Rights, Faculty of Law and Political Science, Kabul University and UNICEF, 2003; The Customary Laws of Afghanistan, International Legal Foundation, 2004

94 Report of the independent expert of the Commission on Human Rights on the situation of human rights in Afghanistan, September 2004; Customary Law Survey and Children’s Rights, Faculty of Law and Political Science, Kabul University and UNICEF, 2003; The Customary Laws of Afghanistan, International Legal Foundation, 2004

95 Juvenile Code, Article 21

For children who have been formally processed through the Juvenile Court, as noted above the Court has a range of non-custodial sentencing options to choose from. Some progress has been made in putting the necessary services in place to support these options, however they are not yet available throughout the country.

One promising pilot is the non-residential Juvenile Rehabilitation Centre, established in Kabul in 2003 with the support of UNICEF. The JRC was established as an open centre to provide daytime education and vocational training for children in conflict with the law, both as a means of pre-trial supervision, and as an alternative sentencing option. The plan was for children to return to their families at night, but spend the daytime at the Centre receiving supervision and support services. However, because the closed juvenile centre has not yet been established (by UNODC), children who have committed serious crimes also reside in the centre. After the age of criminal responsibility was raised to twelve, no children have been sent home at night, as was the case for some seven years old children before. Ashiana, a local NGO working with street children, provides support to the JRC by working closely with the children in the centre and their families to facilitate the child's reintegration.

#### 4. Monitoring, Coordination and Reporting

Juvenile justice reform initiatives were coordinated by a multidisciplinary Task Force on Juvenile Justice. The Task Force was led by the Juvenile Justice Department within the Ministry of Justice and included representatives from the Ministries of Justice, Interior, the Judiciary, the Prosecutor General's

Office, UNODC, UNICEF and other relevant agencies.

The Afghan Independent Human Rights Commission (AIHRC), established in 2003, has a Child Rights Unit which, in cooperation with its eight satellite offices and three provincial offices, has been monitoring children's rights and coordinating awareness programs all over the country.

AIHR has a Monitoring and Investigations Unit that conducts regular visits to detention centres throughout the country. On a monthly basis, the AIHRC Child Protection Unit visits detention centres for children in Kabul, Herat, Parwan, Kapisa, Gardez, Mazar-e-Sharif, Kandahar and Jalalabad. Through these visits, the Unit has been able to identify some of the main problems and to bring some improvements in conditions at the centres. For example, the quality of education and health care for children in detention has improved through the intervention of the AIHRC. As well, the Child Protection Unit assisted in the release of more than 85 children who were illegally detained or had committed petty offences. The AIHRC also won the separation of child offenders from adult offenders in prisons in Mazar-e-Sharif and Kandahar.<sup>96</sup>

#### 5. Training and Capacity Building

Training and capacity building of professionals working with children in conflict with the law, including police, judges, prosecutors, lawyers, penitentiary personnel, and social workers, has been a key aspect of Afghan juvenile justice reform plans.

As noted above, a national two-day policy seminar was held in 2002 to develop a plan of

96 Research Report on Situation of Child Correction and Rehabilitation Centres in Afghanistan, Afghani Independent Human Rights Commission

action for improving the juvenile justice system. Since then, a number of planning workshops and training programmes have been held for professionals working with children in conflict with the law. Training and sensitisation programmes have been conducted throughout the country with the supported by UNICEF, Prison Reform International, the Children's Unit of the AIHRC and others. In addition, UNICEF has supported ongoing capacity building with the management and staff of the JRC to improve educational, vocational, and psycho-social support for the children.

With the introduction of the new Juvenile Code, training and sensitisation were conducted to ensure its full implementation. The Ministry of Justice, with support of UNICEF and UNODC, conducted a program in 2005 to train police, judges, prosecutors, lawyers, personnel of the Rehabilitation Center, forensic doctors and social workers on juvenile justice and the new Juvenile Code in all provinces of the country. These initiatives are taking place within the context of broader UN support to improve access to justice, targeting judicial authorities and the police.

As part of the capacity building programme the MoJ conducted a seminar on the UNICEF-published comparative study on CRC and Afghan legislation. Views and recommendations from the participants were sought which were reflected in a report to be the basis for any needed improvements, modifications and/or revisions to the national legislation and guidelines for children in conflict with the law, at risk or in difficult circumstances.

In addition, training workshops on the CRC were conducted for professionals including judiciary staff, police officers, field workers and NGOs from all regions of the country. During the different training programmes, resource and advocacy materials, including the CRC, various UN guidelines (Beijing Rules, Riyadh Guidelines and JDL) and the Afghan Juvenile Code were distributed.

## 6. Public Awareness and Advocacy

In order to promote greater understanding and acceptance of the juvenile justice reforms, some public awareness has been undertaken. A number of resource and advocacy materials, including the CRC and UN guidelines on juvenile justice, have been produced and distributed to those working with children at risk. The AIHRC has also distributed thousands of posters, press materials and brochures to raise public awareness regarding child protection issues.

## 7. Conclusion and Recommendations

The introduction of the Juvenile Code represents a significant step forward in the development of a comprehensive juvenile justice system. Ensuring full implementation will require continued, focused efforts to build the capacity of the Government, and to sensitise police, prosecutors, judges, rehabilitation officials, social workers and other professionals on the rights of children in conflict with the law.



# Bangladesh

## 1. Juvenile Justice Legislation and Procedures

In Bangladesh, the justice system for both children in conflict with the law and children in need of protection are governed by the Children Act, 1974 and the Children Rules, 1976. Although this legislation has been in place for almost 30 years, Bangladesh has yet to implement a fully comprehensive, separate system for children in conflict with the law.

In recent years there has been significant impetus for juvenile justice reform. The government has appointed a high-level Juvenile Justice Task Force, and has identified priority areas for action. A new National Social Policy on Models of Care and Protection for Children in Contact with the Law has been drafted to address both children in conflict with the law and children in need of protection.

### 1.1 Scope and Jurisdiction

In 2004, Bangladesh raised the minimum age of criminal responsibility from seven years of age to nine. Criminal liability of children between the ages of nine and 12 is subject to judicial assessment of their capacity to understand the nature and consequences of their actions.<sup>97</sup> While this amendment has made a modest improvement, the minimum age is still far below international standards.<sup>98</sup>

Another concern is that the current protections for child offenders do not extend to all children under the age of 18. Under the Children Act, “child” and “youthful offender” are defined as a person under the age of 16.<sup>99</sup> Children between the ages of 16 and 18 are treated as adults.

### 1.2 Powers of Arrest and Arrest Procedures

The Police have wide discretionary powers to arrest children under a variety of laws.<sup>100</sup> The Children Act, the Vagrancy Act 1943, and the Suppression of Violence Against Women and Children Act, 2000 give police the authority to take children into custody on very broad grounds, including for prostitution, begging, being in the company of a “reputed criminal or prostitute,” being “likely to fall into bad association or to be exposed to moral danger,” or being a victim of crime.<sup>101</sup> Both children who have committed crimes and children in need of protection are processed through the

97 Penal Code (Amendment) Act, 2004

98 South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights, UNICEF, 2005

99 Children Act, Section 2

100 Including the Penal Code, the Special Powers Act, the Arms and Explosive Act, the Drug Act, the Public Safety Act, and the Special Powers Act; Code of Criminal Procedure; Dhaka Metropolitan Police Ordinance

101 Children Act, Section 32

police station and subject to involuntary detention in a remand home or other “places of safety.” Girls who have been victims of abuse and exploitation are particularly vulnerable to detention on these grounds, and are often sent to adults jails due to lack of appropriate facilities.<sup>102</sup>

In addition, Article 54 of the Code of Criminal Procedure, 1898 and the Dhaka Metropolitan Police Ordinance allow police to arrest anyone on the grounds of “reasonable suspicion” that the person has been involved in a criminal act. These broad discretionary powers are reportedly used by the police during regular raids to round up street children and girls suspected of prostitution, to clean the streets before hartals or VIP visits, or to extract money from those who are arrested.<sup>103</sup> Street children are especially vulnerable to arrest under these laws, either on “suspicion” or for having engaged in criminal activity. They are often targeted by adult criminal elements, and are easily lured with small amounts of money to engage in drug and arms carrying, and bomb throwing during political agitation.<sup>104</sup>

Since police performance is evaluated on the basis of the number of arrests made, there is an incentive for police to make “easy” arrests under these broad powers.<sup>105</sup> In some cases, after a period spent in the police lock-up, the child is handed over to his/her parents in exchange for money.<sup>106</sup> In other cases, children arrested on suspicion spend lengthy

periods in custody while police frame charges. A study by Odhikar in 2001 found that in Dhaka Central Jail, 7% of children arrested on suspicion under section 54 had been in custody for more than two years.<sup>107</sup>

There are currently no specialised police units for dealing with children, and no comprehensive protocols or procedures governing how police should handle children in conflict with the law.<sup>108</sup> In practice, children are generally treated the same as adults, and there have been numerous reported cases of children being subjected to violence and abusive treatment by police.<sup>109</sup> Girls are particularly vulnerable to physical and sexual abuse at the hands of the police.<sup>110</sup> The Committee on the Rights of the Child has expressed concern at the incidence of violence, including sexual abuse and physical brutality, directed at children by police officers, and has called for the State to take all necessary measures to prevent and punish police violence.<sup>111</sup>

The Children Act does not contain any special provisions limiting the use of physical force, restraints or handcuffs in the arrest of a child, nor does it have any special provisions with respect to the taking of statements or confessions from children. There is no provision, either in law or practice, for measures that might protect children from abuse or intimidation during police questioning or interrogation, such as mandatory presence

102 Rights of Children in Bangladesh: Report on the implementation of the CRC in relation to Children in Conflict with the Law , World Organisation Against Torture, 2003

103 Aparajeyo Bangladesh Annual Report, 2003; My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004; The Rights of Children in Bangladesh: Report on the implementation of the CRC in Relation to Children in Conflict with the Law , World Organisation Against Torture, 2003

104 Aparajeyo Bangladesh Annual Report, 2003

105 Banks, Cyndi, Information Paper: Juvenile Justice in Bangladesh, CIDA, 2002

106 Rahman, Mizanur Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

107 Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

108 Dr. Kamal Uddin Siddiqui, Concept Paper: The Age of Criminal Responsibility and Other Aspects of the Children’s Act, 2004

109 Aparajeyo Bangladesh Annual Report, 2003 ;My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004; Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002; Rahman, Mizanur Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003; Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

110 Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

111 UN Committee on the Rights of the Child, Concluding Observations: Bangladesh, CRC/C/15/Add.221, 27 Oct 2003

of a parent, probation officer or lawyer. Mechanisms to monitor and supervise police conduct are weak, and they are rarely held accountable for abuses.<sup>112</sup>

When a child has been arrested, the police are required to immediately notify both the probation officer and the child's parents or guardian.<sup>113</sup> However, in practice this is generally not done, often because the police do not have time or resources to trace parents.<sup>114</sup> Furthermore, some police reportedly deliberately misstate the child's age on the charge sheet in order to avoid the added procedural bother that flows from identifying him/her as a child.<sup>115</sup> For example, of 32,000 pending cases before the Dhaka Metropolitan Court in 2005, only 32 have been identified as juvenile cases, a figure which is clearly inaccurate.<sup>116</sup>

Children subject to arrest must be brought before the Court within 24 hours. Although the Children Act states that children may be kept in custody at the police station only if arrangements are available to keep them separate from adults, in practice children are often mixed with adults in police lock-ups.<sup>117</sup> Police contend that, in the absence of adequate facilities they are compelled to detain children in the jails with adults until they are brought to Court.<sup>118</sup>

There have been some recent initiatives to improve police treatment of children in conflict with the law, which are already beginning to show promising results. In early 2005, the Ministry of Home Affairs issued directives on

police responsibilities regarding suspected child offenders. The directives require police to note all children's ages in red ink, to prepare separate charge and information sheets for arrested children, and to immediately notify a Probation Officer of the arrest. Both Save the Children UK and Aparajeyo have ongoing juvenile justice projects in selected districts which have used a combination of police sensitisation, regular monitoring, and individual advocacy to ensure compliance with procedures and to facilitate the release of children arrested on petty grounds.<sup>119</sup> Aparajeyo has printed and distributed pocket-size handbooks for the police that summarise their obligations under the Children Act and the CRC, and have also distributed colourful posters with a reminder list of "Do's and Don'ts" that have been posted in high-visibility areas of the police stations. While compliance is not universal, police in these selected districts have reportedly become more sensitive to children's rights and more respectful of the special procedures.

### 1.3 Bail and Pre-trial Detention

Under the Children Act, the officer in charge of a police station has the authority to release a child on bail, even for a non-bailable offence.<sup>120</sup> This provision potentially gives broad scope for the police to prevent children from being unnecessarily detained in police lock-ups. However, in practice this authority is rarely used, reportedly because police are unaware of the law, or do not have the resources to trace parents.<sup>121</sup> The law itself places restrictions on their authority, stating that the police should not release a child if it

112 Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

113 Children Act, Sections 13(2) and 50

114 Rahman, Mizanur, Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

115 Aparajeyo Bangladesh Annual Report 2003

116 Interview with Chief Metropolitan Magistrate

117 Aparajeyo Bangladesh Annual Report, 2005; Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

118 Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

119 Interview with staff from SCF UK; Interview with staff from Aparajeyo Bangladesh; Aparajeyo Bangladesh Annual Report 2003; Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo and ChildHope UK, 2005

120 Children Act, Section 48

121 Rahman, Mizanur, Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

will “bring the child into association with reputed criminals,” “expose him to moral danger”, or where release would “defeat the ends of justice.” These grounds are very broad and do not promote the minimum use of detention.

When a child who has been arrested is brought before the Court, the Court may release the child on bail or order him/her to be detained in a remand home or place of safety.<sup>122</sup> There is no stated preference for a non-custodial option. The Children Act does not contain any special considerations for the granting of bail to children, and they are subject to the same requirements as adults with respect to sureties and bond payment. In practice, the Courts often detain children prior to trial for minor offences, or set bail bond requirements that parents cannot afford to pay.<sup>123</sup> There are no limitations on the duration of pre-trial detention, and children can languish for years waiting for their case to be determined by the Courts.<sup>124</sup> Many are eventually found not guilty by the Courts due to lack of evidence.<sup>125</sup>

Children who are subject to pre-trial detention may be sent to one of the three specialised Remand Homes (two for boys at Tongi and Jessor, and one for girls at Konabari). Although these Remand Homes are located on the same grounds as the Child Development Centres, children who are on remand are kept under full-time confinement and are not permitted to take part in educational classes, trade courses or games and cultural activities.<sup>126</sup>

Furthermore, despite the fact that the children’s remand homes are consistently operating under capacity, the vast majority of children who are detained while awaiting their trial are sent to regular prisons.<sup>127</sup> For example, in one four-month period between October 1999 and January 2000, 476 children were sent to Dhaka Central Jail, while only 19 were sent to Tongi Correction Centre. The police note that they do not have vehicles to transport children out to Tongi, which is approximately 20 kms from Dhaka.<sup>128</sup> Due to lack of separate facilities, children in jails are generally not separated from adults and are subject to abuse.<sup>129</sup>

The government is acutely aware of the problem of children in pre-trial detention, and the High Court itself has issued several rulings requiring the release of children who have been detained on minor grounds, or for lengthy periods of time. Joint efforts of the National Task Force and NGOs have resulted in thousands of children being released from police custody and pre-trial detention. However, the problem of excessive reliance on pre-trial detention persists, largely due to the absence of alternatives deemed acceptable by the police and courts.

Aparajeyo Bangladesh, a local child rights NGO, has been promoting alternatives to pre-trial detention in selected districts through its Juvenile Justice Project. The project is staffed by a team of legal advisers, social workers and child rights officers. The social worker has built a close working relationship with low ranking police officers and regularly visits the target

122 Children Act, Section 49

123 My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004; Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

124 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

125 Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

126 A Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005

127 A Gravy Train and Shackled Kids in Bangladesh, Asian Centre for Human Rights, 2004

128 The Bangladesh Today, March 12, 2005

129 A Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005; My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004

police stations to monitor children in conflict with the law and to negotiate the release of children from police stations. The legal advisor and panel of lawyers represent the children in court and advocate for the release of the child on bail. In some cases, Aparajeyo provides funding for bail bond if the child's parents cannot be located or cannot afford to pay. Children released from police custody or granted bail by the Court are taken to one of Aparajeyo's 24 safe shelters. There they receive counselling and support for family reunification. The social workers attempt to locate the child's parents, and provides follow-up visits to check on the child after he/she has been returned. Parents are advised of the child's court date, and of the importance of ensuring that the child attends. Children whose parents cannot be traced or are unwilling to return to their family remain in the care of Aparajeyo and attend education and skills training at the safe shelter.<sup>130</sup>

The Aparajeyo model shows how effective interventions by an adequately resourced probation officer could help reduce reliance on pre-trial detention. In particular, the extra time and resources spent conducting family tracing has resulted in a significant number of children being placed under the supervision of their parents, rather than the more costly option of remand facilities. The practice of using open shelters, rather than closed detention facilities, for pre-trial custody of children has also shown some success, though there have been setbacks. Many children have remained in the shelter and benefited from education, vocational training and other programmes pending their trial. However there have been some problems with children bailed out by

NGOs such as Aparajeyo Bangladesh, Bangladesh Legal Aid and Services Trust (BLAST) and Ain O Salish Kendra (ASK) disappearing back onto the streets. Some of them continued to make their court appearances even after leaving the shelter, but some did not. Lengthy procedures and repeated court appearances mean that they must keep up with regular court attendance for months or years, and some eventually stop cooperating.<sup>131</sup> Bail for street children will continue to pose challenges, but experience from other countries suggests that referral to NGO-run shelters and other semi-institutional arrangements can be effective, provided the appropriate level of supervision and structured activity is provided.

#### 1.4 Juvenile Court and Trial Proceedings

The Children Act calls for the designation of specialised Juvenile Courts, and requires courts of all levels to follow the special juvenile court procedures when hearing cases involving an alleged offender under the age of 16.<sup>132</sup> When hearing juvenile cases, the Court should sit in a different building or room from the ordinary court sittings, or on a different day or time of day.<sup>133</sup> The Court is closed to the public, and the media is prohibited from disclosing the child's identity.<sup>134</sup> Proceedings must be conducted in as simple a manner as possible and in a "home-like atmosphere."<sup>135</sup> When being brought before the Court, children should not be under the close guard of a police officer, but should be permitted to sit in the company of a relative or probation officer.<sup>136</sup> The child's parents or guardian have the right to be present, and may be required by the Court to attend. However, there is no

130 Aparajeyo Bangladesh Annual Report, 2003; Institutional Responses to Children in Conflict with the Law/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo and ChildHope UK, 2004

131 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

132 Children Act, Sections 3 and 4

133 Children Act, Section 7(2)

134 Children Act, Section 9, 13 and 17

135 Children Rules, 1976, Section 4

136 Children Rules, Section 4

requirement that all children in conflict with the law have legal assistance, including free legal aid where required, and no explicit statement of their right to express their views and to participate in the proceedings. Contrary to due process rights, the Court may dispense with the attendance of the child and proceed without him/her if the Court is satisfied that the child's attendance is not essential to the hearing.<sup>137</sup>

To date, only two separate Juvenile Courts have been established, located at the Child Development Centres (KUK) in Tongi and Jessore, though plans are underway to establish an additional four Juvenile Courts.<sup>138</sup> The existing Juvenile Courts are no different from adult courts in terms of their physical design, and tend to re-create the same formal environment as the regular courts.<sup>139</sup> They have limited jurisdiction, and cannot hear cases of children who have committed serious offences. Most children in conflict with the law are therefore referred to the regular courts.

While children's cases should be referred to a designated juvenile magistrate, in practice this does not always occur. Most Courts do not comply with the requirement to separate juvenile cases and deal with them at a different time of day than the adult proceedings. The Children Act is reportedly not well-known by magistrates, and even when they are aware there is still the tendency to approach cases involving children like ordinary criminal matters.<sup>140</sup> Magistrates do not communicate

directly with the child, and it has been noted that children exhibit a great deal of fear in court and sometimes cry.<sup>141</sup> Although there is a legal aid system in place, many children are unrepresented, or are taken advantage of by unscrupulous lawyers.<sup>142</sup>

When being transported from the police station to the court, children are packed into ill-ventilated prison vans together with adults.<sup>143</sup> While waiting for their cases to be heard, children are kept in the court custody cell, sometimes for five or six hours, along with adults.<sup>144</sup> There continue to be incidents of children being brought into court in handcuffs.<sup>145</sup>

Children who are arrested under the Vagrancy Act are taken before the Special magistrate at the Vagrant Reception Centre, rather than the Juvenile Court. Hearings are reportedly very brief, and children are generally not given the opportunity to speak. The Vagrancy Act does not provide a fixed time for confinement, and children may be detained there for lengthy periods of time, particularly if they are unable or unwilling to provide the address of a parent or guardian.<sup>146</sup>

In the last year, there have been significant efforts by the Courts to make proceedings more child friendly. An initiative is underway to establish fully separate, specialised Juvenile Courts throughout the country. In the interim, special magistrates have been designated to hear juvenile cases in all 64 districts. In the

137 Children Act, Section 11

138 Update from Juvenile Justice National Task Force, November 2005

139 Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

140 Dr. Kamal Uddin Siddiqui, Concept Paper: The Age of Criminal Responsibility and Other Aspects of the Children's Act, 2004; Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005; Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003

141 Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002; Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

142 Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

143 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

144 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

145 Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

146 Report on the Vagrancy Act and Rules, UNICEF, Concern, SCFUK and Bangladesh Shishi Adhikar Forum, May 2004

Dhaka Metropolitan Court, the Juvenile Magistrate holds proceedings in chambers, and an officer has been designated to separate the children from the adults as they are brought to the courthouse.<sup>147</sup> Lawyer and Magistrates are reportedly becoming more aware about children’s rights and the Children Act,<sup>148</sup> and are becoming more sensitive to children’s issues.

### 1.5 Sentencing

When making an order under the Act, the Court must take into consideration the character and age of the child; the circumstances in which the child is living; and the report from a Probation Officer as to the child’s background and family history.<sup>149</sup> While probation officers may be instructed by the court to prepare a social inquiry report, in practice these are rarely requested.<sup>150</sup>

Upon finding a child under the age of 16 guilty of an offence, the Court may impose one of the following dispositions:

- Admonishment and discharge;
- Release on probation in the care of a parent or other fit person, and under the supervision of a Probation Officer for a period of up to three years;
- Commitment to a certified institution (now a Child Development Centre) for a minimum of two years and maximum of ten years, but not extending beyond the age of 18 years;
- If the offence is serious in nature or the child is “of so unruly or depraved of character” that he/she cannot be placed in a certified institution, the child can be

imprisoned for up to the maximum time stipulated for that offence in the Penal Code. The UN Committee on the Rights of the Child has expressed concern that this provision permits adult sentences of imprisonment, including life imprisonment, to be imposed on a child from the age of 7 (now 9).<sup>151</sup>

Children between the ages of 16 and 18 are not covered by the Act, and are therefore subject to adult sentences. While the Act states that no child shall be subject to the death penalty, this applies only to children under the age of 16, not 18, as explicitly required by Article 37(a) of the CRC.<sup>152</sup>

The Children Act does not include any statement of preference for non-custodial dispositions, and there are no guidelines governing the Court’s exercise of its sentencing discretion. The Act provides limited scope for non-custodial dispositions. In practice the Courts tend to impose custodial sentences, even for minor offences, since this is the easiest option.<sup>153</sup> Probation remains under-utilised.<sup>154</sup>

There is also no explicit requirement that deprivation of liberty be used only for the shortest appropriate period. To the contrary, under the law all institutional dispositions are for a minimum period of two years. The Court also has broad discretion to exceed the ten-year maximum penalty, in and itself quite severe, and to impose an adult term of imprisonment where the child is considered “unruly”. Sentences are often quite severe and

147 Interview with Chief Metropolitan Magistrate

148 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

149 Children Act, Section 15

150 Rahman, Mizanur, Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003; Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

151 UN Committee on the Rights of the Child, Concluding Observations: Bangladesh, CRC/C/15/Add.221, 27 Oct 2003

152 This Article makes explicit reference to the age of 18, which is mandatory regardless whether the State has chosen to define a child differently in other contexts

153 Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005; Rights of Children in Bangladesh: Report on the implementation of the CRC in relation to Children in Conflict with the Law, World Organisation Against Torture, 2003

154 Dr. Kamal Uddin Siddiqui, Concept Paper: The Age of Criminal Responsibility and Other Aspects of the Children’s Act, 2004

disproportionately heavy,<sup>155</sup> and there are no special protections at all for children between the ages of 16 and 18.

## 2. Conditions in Detention

There are three specialised institutions for the detention of child offenders, recently renamed Child Development Centres (KUK), which are under the responsibility of the Department of Social Services of the Ministry of Social Welfare. There are Centres for boys at Tongi and Jessore, and one for girls at Konabari. These are large institutional centres (150-200 children each), and care for a mix of children in pre-trial detention, child offenders under the age of 16 who have been sentenced by the courts, and children voluntarily admitted by their parents for being “uncontrollable.” One new KUK is under construction in Joypurhat district, and three more are in the process of receiving approval. Each would have a capacity of 300.<sup>156</sup>

The KUK provide general education up to primary level and some vocational training. Children also participate in weekly cultural programmes, sports and exercise. Each has at least one social case worker on staff to provide individual and group counselling and to promote behavioural development. The Centres are housed on quite large grounds, with gardens and facilities for outdoor games.<sup>157</sup>

Although the stated objective of these Centres is to promote the rehabilitation and reintegration of children, in practice they do not have the required skills or resources to fulfil

this objective effectively, and have been criticised for being simply places of confinement. Concerns raised by various reports include:<sup>158</sup>

- The quality and quantity of food is insufficient;
- Vocational training programmes do not provide certificates of qualification and the necessary equipment is generally inadequate;
- While the KUK aim to provide an individual case management approach, they do not have adequately trained and qualified staff to fulfil this function;
- The emphasis remains on confinement, rather than rehabilitation;
- Following an escape attempt at Tongi, all of the boys were kept locked in their dorms 24-hours per day for several months and were not permitted to participate in schooling, vocational training, or recreation programmes;
- Corporal punishment and other degrading punishments are used in all the institutions, including beatings, hanging by tying hands with a rope, and handcuffing. Corporal punishment is officially sanctioned under the Children Rules, which permit “caning not exceeding ten stripes” as a punishment for violating any one of the 30 stipulated rules of conduct;<sup>159</sup>
- Many children have limited family contact. The institution rules themselves are quite restrictive on family contact, stating that children are permitted only two letters per month and two visits with parents per month. This limited privilege may be cancelled as punishment, or increased to one visit every 10 days on good behaviour;<sup>160</sup>

155 Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002, citing one example of a child at a KUK sentenced to 30 years detention

156 Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005

157 Juvenile Justice Administration and Correctional Services in Bangladesh, Department of Social Services, 2002

158 Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005; My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004; Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

159 Children Rules, Sections 23, 24(e) and 24(4)

160 Children Rules, Section 22(5), (6), (8)



- There is limited support for reintegration of children who are released;
- While some children are released from KUK upon turning 18, others are sent to jail for the remaining period of their sentence. This depends on the precise formulation of the judgement, and is generally unrelated to the seriousness of the offence.

Children are also subject to detention in regular adult prisons. Despite the fact that the KUK are consistently operating under capacity, the police and Courts continue to send children under 16 to the adult facilities. The government reported that, in August 2003, there were a total of 1041 children under the age of 16 in different prisons nationwide.<sup>161</sup> Despite recent efforts to reduce imprisonment of children, that figure seems to have remained fairly consistent, with 1057 children in prisons in March 2005.<sup>162</sup> It is noteworthy that these figures represent only children under the age of 16, and only those who have been officially identified by the police to be children, therefore the number of actual children under the age of 18 is likely to be much higher.

Overcrowding in prisons is a chronic problem, and nutrition and sanitation are poor. There are limited recreation facilities, and all convicted prisoners are required to perform manual labour. Parents reportedly are required to pay a fee to visit children in jails.<sup>163</sup> Although the Act states that they must not be allowed to associate with adult prisoners,<sup>164</sup> in practice this is not always respected. There have been numerous reported cases of children being subjected to physical and sexual abuse in jails.<sup>165</sup>

### 3. Diversion and Alternative Dispositions

Diversion is not formally recognised in the Children Act. However, the draft National Social Policy on Alternative Models of Care and Protection of Children in Contact with the Law establishes the goal of diverting children from the formal justice system to the greatest possible extent, and calls for the development of procedures to deal with petty offences without intervention of the judicial system.

Informal measures are already in operation in many parts of the country. For example, the police can issue warnings to children rather than arresting them, and are increasingly making use of this discretion. In addition, traditional shalish courts are often used to deal with community problems involving children.<sup>166</sup> The Village Courts Ordinance, 1976 provides for trial of certain minor cases in rural areas by Village Courts, but they are currently prohibited from trying any case where the interests of a minor is involved.

There has been growing interest in promoting these informal mechanisms both to introduce a more restorative approach to conflict resolution, and also to reduce strain on the formal system. The World Bank's judicial and legal reform project is examining proposals for informal dispute settlement mechanisms. CIDA is also working in partnership with the Association for Correction and Rehabilitation of Offenders (ACRO) to develop strategies for the introduction of juvenile diversion in selected districts. However, care must be taken to ensure that the rights of children are respected

161 UN Committee on the Rights of the Child, Concluding Observations: Bangladesh, CRC/C/15/Add.221, 27 Oct 2003

162 The Daily Star, "Plan to release over 500 child prisoners", March 18, 2005

163 Banks, Cyndi, Information Paper: Juvenile Justice in Bangladesh, CIDA, 2002

164 Children Act, Section 51(2)

165 Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005; ; My Childhood in Chains: Juvenile Justice and Violence against Children in Bangladesh, Save the Children UK, 2004; Chawdhury, Afsan, Our Children in Jail, Odhikar, 2002

166 Dr. Kamal Uddin Siddiqui, Concept Paper: The Age of Criminal Responsibility and Other Aspects of the Children's Act, 2004

in these processes, and that they are not subject to harm. The UN Committee on the Rights of the Child has expressed deep concern at the reported inhuman and degrading punishment carried out by order of shalishes.<sup>167</sup>

In terms of children who have been processed through the formal court system, the main alternative sentence available is probation. The probation service has been in place in Bangladesh for many years, but its capacity and resourcing is limited. However, there have been some promising initiatives to strengthen their capacity, and the number of probation officers has recently been increased to cover all 64 districts. In addition, 42 District Social Services Officers, 44 Upazila Social Services Officers and 15 Urban Community Development Officers have been appointed to perform the functions of a Probation Officer in addition to their other duties.<sup>168</sup>

In addition, the CIDA Legal Reform Project has placed priority on strengthening the capacity and professionalism of probation services. The aim is to establish probationary services as a recognised area of expertise, with a corps of trained and accredited officers. A probation officers' policy and procedures manual is being developed, as well as a comprehensive training and accreditation programme. Some basic training has already been provided on counselling, file management and other core skills to probation officers in selected pilot districts.

While the number and capacity of probation officers remains limited, there is scope to improve community based support and supervision for juveniles through partnership-building with local NGOs, community groups

and volunteers. Bangladesh has a vibrant NGO community providing a host of innovative programmes for children in need of protection, including drop-in centres, non-formal education, peer mentoring, vocational training, life skills programmes and other community-based, non-institutional services. These services could be used both as diversionary measures, and as alternatives to institutionalisation. In particular, there is great scope to extend probation beyond formalistic supervision and monthly reporting by introducing referrals to constructive activities aimed at promoting accountability and competency development. Aparajeyo, as one example, has a network of outreach and centre-based programmes that could be used for diversion or as part of a probation order, including open-air street schools, drop-in centres, Boys and Girls Clubs (night and day shelter), non-formal education, psycho-social counselling, life skills development (including decision-making, problem solving, critical thinking, inter-personal relationships, etc), family reintegration, and practical vocation training and skills development.<sup>169</sup>

#### 4. Inter-Agency Coordination, Monitoring and Reporting

Following a Supreme Court judgement on children in detention in 2003, Bangladesh established a high-level, inter-agency National Task Force (NTF) tasked with improving the conditions of children in jail. Chaired by the Principal Secretary to the Prime Minister (Dr. Kamal Uddin Siddiqui), the NTF includes high-ranking government officials from all relevant Ministries,<sup>170</sup> as well as NGOs active in juvenile justice.<sup>171</sup> The NTF has developed a list of recommendations for action and meets

167 UN Committee on the Rights of the Child, Concluding Observations: Bangladesh, CRC/C/15/Add.221, 27 Oct 2003

168 Juvenile Justice Administration and Correctional Services in Bangladesh, Department of Social Services, 2002

169 Meeting with Aparajeyo staff and Aparajeyo Annual Report, 2003

170 Ministry of Establishment; Ministry of Social Welfare; Ministry of Home Affairs; Ministry of Women and Children Affairs; Ministry of Law, Justice and Parliamentary Affairs; Department of Social Services; Ministry of Education; Ministry of Finance, Local Government Division; Inspector General of Police; six Divisional Police Commissioners; Inspector General of Prisons

171 UNICEF, SCF-UK; Bangladesh Shishu Adikar Forum; Aparajeyo; Bangladesh National Women Lawyers Association

every three months to review the progress of implementation. In addition, district-level NTFs have been established in some areas and, with the support of Aparajeyo and SCF-UK, have been conducting local-level monitoring and facilitating the release of children arrested on petty grounds. This has reportedly helped improve commitment and coordination between district commissioners, judges, police and probation officers.

While progress has been made in terms of coordination, systematic monitoring and data collection on children in conflict with the law remains a challenge. The government has yet to introduce a comprehensive set of juvenile justice indicators for the effective monitoring and evaluation of the situation of children in conflict with the law.

The Bangladesh government is in the process of establishing a Child Rights Commission, which will serve as an independent body to monitor the implementation of children's rights. However, at present, there is no independent mechanism with a mandate to monitor, evaluate and receive complaints in respect of children's rights in general, and the rights of children in conflict with the law in particular.

Of particular concern is the lack of a mechanism to monitor and receive complaints with respect to the treatment of children by the police and in places of detention. Although the Children Act makes provision for the appointment of Inspectors and Boards of Visitors to monitor children in the KUK, these have never been established.<sup>172</sup> Inspections of police stations, jails and Child Development Centres has reportedly become a "paper formality."<sup>173</sup>

However, judicial activism is strong, and the

Courts have played an increasingly active role in ensuring that the rights of children in conflict with the law are adequately protected. Magistrates have reportedly made it a practice to visit jails in their district every month to check on the status of cases that have been through their court.<sup>174</sup> There are also many individual cases where the court has ordered the release of children who were illegally detained. In a landmark ruling in 2003, the High Court instructed the government to take specific steps for system-wide improvement as mandated by the Children Act, including: releasing juveniles in custody who were under the minimum age of criminal responsibility; expedition of cases against juveniles; withdrawal of charges against children charged with minor offences; greater involvement of legal aid committee to make bail motions for juveniles; separation from adults in places of detention; and transfer of juveniles to appropriate places of custody, remand or detention. Thousands of children were released from custody as a result of this decision.

There has also been active NGO involvement in monitoring the situation of children in conflict with the law. Organisations such as Aparajeyo, BLAST and SCF-UK have been active in monitoring police detentions, providing legal aid to children and sponsoring public interest litigation.

## 5. Training and Capacity Building

Currently, the existing curriculum offered through the Bangladeshi Public Administration Training Centre, Police Academies, Police Detective Training School, Bangladeshi Civil Service Administration Academy, Judicial

172 Participatory Assessment of the Situation of Children in KUK, Save the Children UK, 2005

173 Institutional Responses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and ChildHope UK, 2005

174 Banks, Cyndi, Information Paper: Juvenile Justice in Bangladesh, CIDA, 2002

Administration Training Institute, and law schools have limited or no component with respect to the Children Act and juvenile justice.<sup>175</sup> However, some recent steps have been taken to institutionalise juvenile justice training within the existing justice-sector training programmes. As follow-up to the recommendations of a Training Needs Assessment conducted in 2002, the following packages have been developed jointly by Ministry of Women's Affairs, Ministry of Law, UNICEF and CIDA:

- Judges Bench Book and training package (Trainers Guides and Text and Exercise booklets for trainees) for use by the Judicial Administration Training Institute;
- Magistrates Bench Book and training package for use by the Bangladeshi Civil Service Administration Academy; and
- Police Handbook and training package to be used for training sub-inspectors, inspectors and assistant superintendents of the Detective Training School and the Saradah Police Academy

In addition, police, magistrates, lawyers and probation officers have also benefited from numerous training workshops, seminars and orientations provided by Bangladesh Retired Police Welfare Association, ASK, BLAST, CIDA, Save the Children UK, Banchte Shekha, Madaripur Legal Aid Association, Aparajeyo, Bangladeshi Bar Council and other organisations.<sup>176</sup> Aparajeyo, for example, has developed a short training course for off-duty police that is conducted at selected police stations. The course is two hours per day over a three-day period, and focuses on their duties during arrest, filing the FIR, investigation, bail and detention of children in conflict with the law. As part of the training programme, police are taken to visit Aparajeyo facilities and interact with the children.

Emphasis has also been placed on high-level capacity building and advocacy for reform. In the latter half of 2005, the Ministry of Women and Children's Affairs, together with UNICEF, held training workshops with magistrate and judges to orient them on international instruments and recent developments in juvenile justice (diversion, restorative justice, etc) and to identify strategies for improving the existing system. National seminars and workshops were also held to contribute to the drafting of the National Social Policy on Models of Care and Protection for Children in Contact with the Law.

## 6. Conclusions and Recommendations

Bangladesh has yet to implement a fully separate system of justice for children in conflict with the law. While the Children Act includes some important procedural protections, it does not provide a particularly sound basis for the development of a child-centred, rights-based juvenile justice system. The Act draws heavily from turn of the century British legislation, which placed primacy on formal court structures, legalistic responses and institution-based rehabilitation. Many of the hallmarks of modern juvenile justice legislation – diversion, mediation, restorative justice, explicit preference for community-based rehabilitation, community and NGO involvement, clear separation between child offenders and children in need of protection – are lacking. Children are subject to arbitrary arrests on broad grounds unrelated to criminal activity, and lengthy periods of institutionalisation are mandated. At all stages, institutionalisation is the easiest option. Children are also subject to adult sentences, including life imprisonment, from as young as

175 Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

176 Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities, UNICEF 2002

nine, and there are no juvenile protections for children between the ages of 16 and 18.

Since 2003, there has been significant momentum building for juvenile justice reform, and there is clear commitment to change at the highest levels. The draft National Social Policy on Alternative Models of Care and Protection for Children in Contact with the Law has signalled a clear policy shift towards diversion and community-based rehabilitation of children in conflict with the law. Numerous initiatives have been undertaken to improve police and court practices, and to promote non-custodial alternatives. However, many of these initiatives have been conducted in isolation, within geographically restricted areas and with limited strategic focus. The National Task Force has developed a list of priority issues to be addressed in the juvenile justice system, but there is no clear action-oriented plan. For reforms to be sustainable, they will need to be institutionalised within government structures, and incorporated into a holistic, strategic approach to reforming all aspects of the system.

In addition to the General Recommendations in this Report, the following are recommended for consideration:

Development of Strategic Juvenile Justice Reform Plan. It is recommended that the NTF be designated as the key coordinating mechanism for all juvenile justice reforms, and that it limit its focus to core juvenile justice issues. Through a consultative process, the NTF should develop a detailed, strategic reform plan. The plan should set clear and measurable objectives, identify main strategies and concrete activities that need to be undertaken to achieve those objectives, and designate responsible agencies and time-frames for completion. All ongoing donor and NGO-supported reform initiatives should be integrated into the reform strategy, with a clear strategy for how piloted initiatives will be

integrated and sustained as part of the juvenile justice system.

Legislative reform: As noted above, the Children Act is outdated and in many respects fails to fully reflect the principles of the CRC and UN Guidelines. Rather than minor amendments, what is required is a fundamental shift in the conceptual approach to children in conflict with the law.

Opportunities should be made available for key justice sector officials and decision-makers to gain exposure to more modern approaches to juvenile justice based on diversion and restorative justice. In the interim, there is significant scope for creative interpretation of existing provisions, drawing in particular on the National Social Policy on Alternative Models of Care and Protection for Children in Contact with the Law.

Clear delineation between children in conflict with the law and children in need of protection in legislation, policies, guidelines and institutional care. The blurring of this distinction has generally resulted in the criminalisation of children in need of protection, and the failure to respect the due process rights of children in conflict with the law

Promotion of diversion and restorative justice approaches to resolving minor crimes outside the formal system through police cautioning, mediation or referral to a community-based diversion programme, reserving arrest and Court proceedings for children who commit serious crimes. A study of salish, village courts and other informal dispute mechanisms should be undertaken to understand more about how these mechanisms work, and whether they could be adapted to ensure respect for the rights of children.

End arbitrary arrests of children by repealing the Vagrancy Act, 1943, and curtailing the power of police to arrest children on “suspicion,” and to apprehend children who are

in need of protection. Interventions to support street children, child victims of commercial sexual exploitation and other child victims should be conducted primarily by child welfare officers, not the police. Immediate steps should be taken to stop the practice of detaining child victims in closed facilities, particularly adult prisons. In larger cities, specialised juvenile police units should be created to handle children in conflict with the law. Broader issues of police violence, abuse of power and accountability are presumably being addressed in wider police reform initiatives being supported by UNDP and DFID, and juvenile policing reforms should be situated within this broader reform context.

Place priority on developing non-custodial alternatives, both pre-trial and as a sentencing option. Although there has been much discussion of reducing reliance on institutionalisation, plans are currently underway to build more large-scale institutions. While the condition of children in detention needs to be addressed, ultimately the problem cannot be sustainably overcome until there is greater focus on creating viable alternatives. Concrete action is needed both to limit systemic bias towards institutionalisation, and to strengthen community-based mechanism to provide children with support and supervision. In light of the limited number and resources of probation officers, this will likely require partnership-building with NGOs, and in particular more systematic and coordinated

NGO involvement. Clear standards, procedures and mechanism need to be in place to permit children on bail and probation to be referred to existing shelters (for semi-custodial care of street children), drop-in centres, counselling services, non-formal education, vocational training, life skills programmes, peer mentors, etc. A permanent, structured system for coordination between law enforcement and civil society should be integrated into the core juvenile justice system, rather than remaining dependent on individual relationships and NGO-driven initiatives.

Place restrictions on the use of institutionalisation, both at the pre-trial stage and as a sentencing option. This should include: procedures for immediate family tracing; elimination of monetary bond requirements for children's bail; repeal of the presumption in favour of long-term institutionalisation and allowing the Court broad discretion to impose the most appropriate period (with a stipulated maximum term); requiring periodic reviews of detention orders at set intervals (i.e. every six months); and prohibiting imprisonment of children for non-payment of fines.

Separation of children in all places of detention. Reports of abuse being perpetrated against children in detention is cause for concern, and immediate steps should be taken in all detention facilities to provide, at minimum, separate cells or separate wards for children.

## Bhutan

In Bhutan, family systems have always been strongly maintained, and the country has not experienced social problems to the same degree as many other countries in the region.<sup>177</sup> However, modernization and urbanisation have brought new responsibilities and risks, including concern over increased youth crime rates.<sup>178</sup> Although there is crime in the rural areas, the highest rates appear to be in the urban areas, particularly Thimpu and Phuentsholing where there is greater social dislocation and more temptations.

However, Bhutan's juvenile youth rates remain comparatively very low, and the majority of crimes committed by children are non-violent in nature, the most common offences committed being theft, followed by burglary and drug abuse.<sup>179</sup> For example, statistics provided by the Government of Bhutan in its Written Reply to UN Committee on the Rights of the Child in 2001 indicated that in 2000, there were only 42 children convicted of offences in Bhutan, 28 for theft, five for burglary/robbery, five for drugs, one for rape, one for assault, one for cheating and one for pick-pocketing.

### 1. Juvenile Justice Legislation and Procedures

In its Concluding Observations regarding Bhutan's Initial Country Report under the CRC, the UN Committee on the Rights of the Child recommended that a comprehensive children's code be enacted that would incorporate the principles and provisions of the CRC.<sup>180</sup> However, this recommendation has yet to be acted upon by the Royal Bhutanese government.

Bhutan does not have separate juvenile justice legislation, or a comprehensive juvenile justice system. In the late 1990s, a proposed Administration of Juvenile Justice Act was drafted, with the intention of introducing a uniform legal framework for juvenile justice and a systematic and specialised approach towards children in conflict with the law.<sup>181</sup> However, the Act has yet to be approved.

The new Civil and Criminal Procedure Code, 2001 includes a short separate Chapter (Chapter 44) dealing with children in conflict with the law (detailed below).

177 An Overview of Juvenile Justice in Bhutan, T. Wangchuck, Royal Court of Justice, 1999

178 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

179 Situation Analysis of Women and Children in Bhutan, NCWC and UNICEF, 2005

180 Concluding Observations of the Committee on the Rights of the Child: Bhutan, CRC/C/15/Add.157, July 2001

181 An Overview of Juvenile Justice in Bhutan, T. Wangchuck, Royal Court of Justice, 1999

### 1.1 Scope and Jurisdiction of Special Protections for Juveniles

Bhutan's Penal Code establishes ten as the minimum age for criminal responsibility. All children over the age of 10 are liable for the crimes they commit, but are subject to the special protections for juveniles under the Civil and Criminal Procedure Code. The term "juvenile" is not defined in the law, but has generally been interpreted to mean a child under the age of 18, and the special protections for juveniles are applied when judging cases involving children under 18.<sup>182</sup>

### 1.2 Powers of Arrest and Arrest Procedures

Bhutan's Civil and Criminal Procedure Code prohibits arbitrary arrest and detention.<sup>183</sup> The Code requires arrest warrants as a general rule, but also includes a broad list of circumstances under which police can arrest a person without a warrant in a public place, or "stop and frisk" a person upon a reasonable suspicion of involvement in a criminal offence.<sup>184</sup> These provisions apply equally to adults and children, and there are no special provisions limiting the circumstances under which police can arrest or search a child.

In practice, the Royal Bhutan Police reportedly use their powers of arrest sparingly when dealing with children, and wherever feasible they resolve the matter without arresting the child or taking him/her to the police station.<sup>185</sup> In general, for the first offence the child is simply warned or counselled by the police. If a second offence is committed, the police will generally warn the child again and discuss the

situation with the parents. If the child persists in committing offences or commits a serious offence, he/she will be arrested.<sup>186</sup>

When a person is subject to arrest, the police cannot use more restraint than is reasonably necessary to prevent his/her escape, and torture, cruelty, inhumane or degrading treatment or punishment are prohibited.<sup>187</sup> Further protection is provided to very young children under the Police Act, 1980, which states that no handcuffs are to be used on a person below 13 years of age.<sup>188</sup> However, there is no general limitation on the use of physical force or restraint in the arrest of anyone under the age of 18, and recent interviews with children in detention revealed that in practice, police arrest of children is not without physical violence.<sup>189</sup> While some of the children said that the police had treated them well, others complained of being punched, beaten severely with canes or foot rulers, and having their hair pulled.

Immediately following arrest, the child must be informed of the charges and the police must make reasonable attempt to inform his/her parent, guardian or member of the family as soon as possible.<sup>190</sup> The Code states that juveniles arrested on a criminal charge have the right to be informed promptly and directly of the charge against them through their parents, family member or legal guardian.<sup>191</sup> It is noteworthy that, while the Code guarantees children the right to be accompanied by a parent, guardian or lawyer during the trial proceedings, there is no similar right to have a parent or support person present at the arrest stage and during police questioning.

182 Email correspondence with UNICEF-Bhutan child protection staff

183 Section 158

184 Civil and Criminal Procedure Code, Sections 165 and 166

185 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

186 The Situation of Women and Children in Bhutan, NCWC and UNICEF, 2005.

187 Civil and Criminal Procedure Code, Sections 159 and 160

188 Section 28

189 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

190 Civil and Criminal Procedure Code, Section 184 and 184.1

191 Civil and Criminal Procedure Code, Section 213



A person who has been arrested or detained cannot be held by the police for more than 24 hours before they must be brought before a judge.<sup>192</sup> Although no studies have been conducted, this raises the potential concern as to whether there are sufficient facilities throughout the country to ensure that children who are detained in police custody are separated from adults.

### 1.3 Bail and Pre-trial detention

The Civil and Criminal Procedure Code does not include any special provisions with respect to bail and pre-trial detention for children, therefore they are subject to the same procedures and considerations as adults.

Decisions about whether a suspect should be detained or released on bail are made by the court at the preliminary inquiry. The preliminary inquiry must take place within ten days of the case being registered with the Court, however if the police investigation cannot be completed in that time, the Court can delay the preliminary inquiry and authorise the detention of the accused for an additional period up to 49 days, or 108 days for heinous crimes.<sup>193</sup> These time limits are quite long, and there are no shorter time limits applicable to children.

If the offence is a bailable offence, the court may decide to release the defendant on bail upon execution of a bond (a sum of money) by one or more sureties. The amount of the bond is between ten to thirty percent of the income of the surety. The requirement for a cash bond may be waived by the Court where the defendant is indigent or the charge is not a serious threat to public safety, in which case the defendant may be released based on a promise to return and abide by other conditions set by the Court.<sup>194</sup> However, there is no explicit provision requiring that this alternative

should be preferred in all cases involving child defendants, and that they should not be detained solely due to the inability of a parent or guardian to pay a bond.

### 1.4 Juvenile Court and Trial Proceedings

Bhutan's judicial system consists of district courts and a High Court in Thimphu. There is no separate juvenile court, or specialised juvenile units within the existing courts.

In general, the Civil and Criminal Procedure Code guarantees everyone charged with an offence the right to a fair trial before an impartial Court, and to be presumed innocent until proven guilty beyond a reasonable doubt. The Code also guarantees the right to a speedy trial, and stipulates circumstances under which proceedings may be expedited or heard out-of-turn by the court, for example where there is imminent danger of loss or destruction of evidence.<sup>195</sup> However, there is no consideration for expediting proceedings in which children are involved, either as witnesses or as defendants.

Section 213 of the Code includes special provisions for trial proceedings involving juveniles. It states that juveniles have the right:

- to be accompanied by a parent, family member or legal guardian during trial unless it is considered not to be in the best interest of the child, in particular, taking into account his/her age or situation;
- to have the opportunity to be represented by a Jabmi (qualified lawyer);
- to have legal or other appropriate assistance in the preparation and presentation of his/her defence; and
- to have his/her privacy fully respected at all stage of the proceedings

192 Civil and Criminal Procedure Code, Section 188

193 Civil and Criminal Procedure Code, Section 190

194 Civil and Criminal Procedure Code, Chapter 41

195 Civil and Criminal Procedure Code, Sections 74 and 188

The Court is also given the discretion to exclude the press and the public from trial proceedings if there is a compelling need to do so to ensure certain specified interests, including protecting the privacy of a juvenile.<sup>196</sup>

However, it is unclear the extent to which children have the right to participate personally in the proceedings and to express their views in their own right. The provisions in the Civil and Criminal Procedure Code with respect to Court procedures for accepting guilty pleas, for example, seem to suggest that guilty pleas are entered by the child's parents, not by the child him/herself.<sup>197</sup>

### 1.5 Sentencing

The types of sentences that may be imposed on a person found guilty of a crime are stipulated in the Penal Code and include: imprisonment; release on probation; fine; or an order to pay compensation or damages and make restitution to the victim. Bhutan does not have capital punishment.<sup>198</sup> The Penal Code, 2004 as well as Section PA-14 of the Thrimzhung Chhenpo (General Law) state that persons below 18 years of age are to be awarded half of the sentences given to adults for criminal offences.

The Civil and Criminal Procedure Code states that the Court must take the following factors into consideration in making orders concerning a juvenile: age of the juvenile; physical and mental health; circumstances in which the juvenile was living; reports made by the police; and other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the Juvenile.<sup>199</sup>

Furthermore, the Court may allow a juvenile to go home after advice/admonition or release the juvenile on probation, having regard to the severity of the charges, the juvenile's past criminal record, the likelihood of flight, the juvenile's age and physical/mental health condition, and the potential threat posed to civil society.<sup>200</sup>

The law does not make any provision for the preparation of pre-sentence or social inquiry reports to assist the court in making these determinations, nor does it require that the views of the child be taken into consideration before making a disposition. Additionally, there is no explicit statement that imprisonment shall be used only as a measure of last, for the shortest appropriate period of time, or that preference should be given to non-custodial sentencing options.

While detailed statistics were not available for review, it appears that detention is not being used exclusively for children who commit serious crime involving violence or who persist in committing other serious crimes, as is required under the UN Beijing Rules. For example, in 2004, interviews with the juveniles at the YDRC revealed that, of the nineteen boys there at the time, 14 had been sentenced to detention for their first offence, and the majority had committed non-violent crimes of theft and burglary.<sup>201</sup>

## 2. Conditions in Detention

Children who are under the age of 18 at the time they are sentenced by the Court are sent to the Youth Development and Rehabilitation

196 Civil and Criminal Procedure Code, Section 4

197 Section 95 states: In the case of a juvenile, his/her parents, family member, legal guardian, Jabmi may make a plea of guilty or Nolo Contendere only in the best interest of the juvenile

198 Although Section 27 of the Civil and Criminal Procedure Code lists capital punishment as one of the possible sentencing orders, the King has passed a separate decree banning capital punishment, and therefore it is not listed in the Penal Code as a possible sanction for an offence

199 Section 213.2

200 Section 213.1

201 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

Centre (YDRC).<sup>202</sup> In addition, the Prison Act 1982 states that prisoners below 18 years of age are to be kept separately from adults, and should not be given work beyond their capabilities. Female and male prisoners are also to be kept separately in jail.

The YDRC was opened in Tsimakothi in June 1999 and is administered by the Royal Bhutan Police. The purpose of the Centre is to provide reformatory and rehabilitative training, as well as basic education and vocational courses to children under the age of 18 who have been sentenced to detention.<sup>203</sup> Due to Bhutan's low rate of juvenile crime, very few children have been sent to the YDRC. Between 1999 and mid-2005, only 84 children, all of them boys were sent to the Centre, the majority for crimes of theft or burglary.<sup>204</sup>

The YDRC has 18 staff members - 14 men and 4 women - all of whom are serving police officers who have not had any specific training for dealing with children in conflict with the law. The children are closely supervised, and there is a high student to staff ratio. Some go to nearby schools, where they seem to be well accepted. The others attend basic education and vocational training classes at the centre, where there is typically one teacher for every 3-4 pupils. One police officer has been trained in counselling young offenders and some group counselling is provided, however the Centre lacks trained social workers.<sup>205</sup> There are also group counselling sessions. Parents seem to visit only rarely, probably due to the distance from home. In some cases there are problems on release when parents do not want to take the child back. In these circumstances they will try to find work for them locally.<sup>206</sup>

The YDRC was part of a recent study on the protection factors for vulnerable children in Bhutan.<sup>207</sup> At the time of the study, there were nineteen boys at the centre. All the children said that, while they missed their homes, they were happy at the centre since the living condition and opportunities were much better than at home. Some said they resented the lack of freedom. The children live in a physically clean environment and follow a strict routine. The meals provided are adequate, and the children have access to radio, a television and recreation facilities, including basketball, football, table tennis and carom. All the children receive an education and a vocational skill at the centre. The children are not allowed out of the centre without permission, but otherwise they roam about freely within the premises; one child goes to school in the village. Their parents are permitted to visit them but only a few parents make the effort.

One area of concern raised by the study was the disciplinary practices of the YDRC staff. At the centre the Co-Commander, the police on duty or their captain hand out the punishments, which can include mild to severe forms of corporal punishment. The children advised that punishment is usually in the forms of shouting, foul language, canning, or as the children say 'police methods' which are hard physical exercises like frog jumping for long distances or rolling. The common reasons that invite punishment are: not maintaining discipline, fighting with each other, not carrying out assigned duties, watching television late at night, smoking, and going out of the premises. These forms of discipline, including any form of corporal punishment or punishments designed to humiliate or cause physical discomfort,

202 Written replies by the Government of Bhutan to the UN Committee on the Rights of the Child, CRC/C/8/Add.60, May 2001; email correspondence with UNICEF child protection staff clarifying that the age for admission to the YDRC is under 18, not under 16 as indicated in the Written Reply to the UN Committee on the Rights of the Child

203 Written replies by the Government of Bhutan to the UN Committee on the Rights of the Child, CRC/C/8/Add.60, May 2001

204 Situation of Women and Children in Bhutan, NCWC and UNICEF, 2005

205 Implementing the CRC in South Asia: Taking Stock of legal framework, government mechanisms and institutional capacities, UNICEF, 2002

206 Situation of Women and Children in Bhutan, NCWC and UNICEF, 2005

207 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

violate both the CRC and the UN Standard Minimum Rules for Juveniles Deprived of their Liberty.

No information was available with respect to the treatment and conditions for children over the age of 16 who are sentenced to a period of detention in a regular prison. It is uncertain whether appropriate arrangements have been made throughout the country to ensure that they are detained separately from adults.

### 3. Diversion and Alternative Sentencing

Bhutan does not have any legislated or formally recognised system of diversion. However as noted above, the police do, in practice, resolve most cases involving first and second-time juvenile offenders without formally arresting them. Warnings and counselling are used to allow the juvenile the opportunity to correct his/her behaviour without the stigma of a criminal record, and without being embroiled in the criminal justice system.

For children who are charged and referred to the Courts, the main alternative sentences appear to be advice/admonishment, payment of compensation and release on probation. The law does not make provision for other alternative sentences such as care, guidance and supervision orders; community service work; or suspended sentence. It is also unclear to what extent probation services are an available and effective alternative throughout the country.

In its Concluding Observations on Bhutan's Initial Country Report, the UN Committee on the Rights of the Child recommended that the Royal Government consider alternative measures to deprivation of liberty, such as probation, community service, or suspended

sentences, and that it train professionals in the area of rehabilitation and social reintegration of children.

However, it appears that emphasis at least in the first instance has been given to the establishment of institution-based rehabilitation programmes through the YDRC, rather than through community-based options. It is now known that this is neither the most cost-efficient nor the most effective approach. Institution-based rehabilitation has been proven to be far less effective than community-based strategies because it displaces children from their families and communities, socialises them within an artificial environment surrounded by other criminally-involved children, fails to address the underlying problems that contributed to their offending behaviour, and fails to provide children with the every-day living skills necessary to reintegrate into the community. The available statistics would suggest that very few juveniles in Bhutan are in fact committing crimes that warrant deprivation of liberty, and most of the children currently being sent to the YDRC could likely be more effectively (and cost-efficiently) rehabilitated through community-based programmes. Placement in a closed institution, even one specialised for children, should always be reserved for children who commit serious crimes of violence or persist in other serious offences.<sup>208</sup>

There appear to be a number of ongoing, innovative programmes that could be used to support the community-based rehabilitation of juveniles through a diversion scheme, or as part of a probation order. For example, children who commit minor offences could be referred by police or probation officers to:

- participate in youth activities and peer programmes under the Scouts programme;
- receive counselling and support through the existing school-based Youth Guidance and Counselling Services;

208 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

- participate in training and life-skills programmes through the Youth Centre in Thimphu;
- participate in the youth in action groups, career guidance, counselling and basic skills training programmes sponsored by the Youth Development Fund; or
- attend the YDRC on a day-basis to receive education, vocational training, and counselling while living at home with their parents.

These types of activities help promote a child's rehabilitation by building their basic social competencies, involving them with pro-social peers and positive adult role models, and structuring their free time through constructive activities.

#### 4. Monitoring and Reporting

Bhutan's lack of a designated body for monitoring children's rights and receiving complaints was highlighted by the UN Committee on the Rights of the Child in 2001.<sup>209</sup> In response, the Prime Minister of Bhutan launched the National Commission for Women and Children (NCWC) in May 2004. The NCWC comprises a nine member board representing Health, Education, Labour and Human Resources, Judiciary, Media, Civil Society, NGOs and the Academia. The NCWC has overall responsibility for reporting on and coordinating implementation of the CRC. Its functions include providing a forum for receiving and investigating reports on violations of rights of children and women, to be reported to the Government. UNICEF-Bhutan has been providing support to the NCWC to assist it in fulfilling this important mandate, including the establishment of a complaints mechanism.

However, it is unclear whether the NCWC has an explicit mandate to monitor the situation of children in police custody and in institutional care. The lack of an independent body to monitor the situation of children in institutional care was highlighted as a concern in the recent review of protective factors for vulnerable children.<sup>210</sup>

The lack of disaggregated data on children has also been recognized as an area of major concern. However, steps are being taken through the NCWC and the National Statistical Bureau to develop a child information database that will be used to collect key information pertaining to children, including statistics on children in conflict with the law.

#### 5. Training and Capacity Building

Bhutan does not currently have a systematic and ongoing training programme on juvenile justice, nor does it appear that children's rights, and in particular the rights of children in conflict with the law, have been incorporated into existing induction and in-service training programmes for justice sector officials such as judges, prosecutors, police, prison staff, probation officers and lawyers.

However, there have been some recent initiatives to raise awareness about the rights of children in conflict with the law, and to provide child rights training to justice sector officials. For example, in 1999, a workshop on juvenile justice was coordinated by the Judiciary, with the support of UNDP. Participants included government, the police force, members of the judiciary, and a cross section of society. In 2003, Save the Children US supported a workshop for the police on law

209 Concluding Observations of the Committee on the Rights of the Child: Bhutan, CRC/C/15/Add.157, July 2001

210 Ministry of Health, Royal Government of Bhutan and UNICEF. Assessment of the protection factors for vulnerable children of Bhutan. 2004

enforcement and administrative procedures under international juvenile justice standards.

In 2005, the first ever national consultation on child and women friendly police procedures was organised by the National Commission for Women and Children and the Royal Bhutan Police (RBP) with support from UNICEF. More than 40 police officers representing all parts of the country reviewed and discussed the recent reforms in the Bhutanese legislation in terms of CRC/CEDAW. The participants then went on to explore and develop a course of collaboration between RBP and the NCWC on instituting child and women friendly police procedures. The consultation endorsed 16 recommendations which broadly touched on establishing concrete partnerships; nation-wide sensitisation on Bhutanese legislations linked to CRC/CEDAW; mobilisation of resources; capacity building of duty bearers; gender mainstreaming in the police; initiate discussion on drafting the Juvenile Justice Act; and undertake studies in trafficking and domestic violence. These recommendations, including a proposed complaints mechanism for rights violations, will be further deliberated in the consultation with the judiciary, NGOs and other stakeholders that is scheduled for January 2006.

A more systematic approach to child rights training and sensitisation is necessary in order to affect real change in the treatment of children in conflict with the law, and in particular to address concerns about the use of physical force and corporal punishment by police and institution staff. In its Concluding Observations in 2001, the UN Committee on the Rights of the Child recommended that Bhutan develop systematic and ongoing human rights training programmes for all professional groups working for and with children, particularly judges, lawyers, law enforcement officials, civil servants, local

government officials, personnel working in institutions and places of detention for children, teachers, and health personnel. Further workshops and training sessions are planned for 2005 to sensitise judges and police from all districts on the CRC.<sup>211</sup>

## 6. Conclusions and Recommendations

Although juvenile crime is not a significant social problem in Bhutan, the Royal Government has nevertheless recognised that it is an issue that should be addressed to ensure protection of children's rights, and to prevent further escalation of juvenile crime rates. However, Bhutan currently lacks a comprehensive juvenile justice system that promotes a specialised approach to children in conflict with the law in conformity with the CRC. As noted above, the current provisions of the Civil and Criminal Procedure Code on juveniles are not particularly comprehensive, and do not fully reflect the principles of the CRC and UN Guidelines.

It is recommended that steps to be taken to develop a more comprehensive juvenile justice system which fully integrates international standards. This does not necessarily require the creation of costly separate juvenile courts and new institutions. Bhutan could effectively accomplish a more specialised approach to children in conflict with the law through the following:

**Develop detailed special procedures** for dealing with children at each stage of the criminal justice process, emphasising diversion and minimum use of detention, both at the pre-trial stage and in sentencing. This can be done either through the enactment of a new juvenile justice code, or through the development of guidelines, rules, standing orders, etc to guide

211 Interview with M. Pradhan, UNICEF-Bhutan

the exercise of discretion under the existing legislation;

**Provide training and sensitisation for relevant justice sector officials** on these special procedures, and incorporate this training into existing training programmes such as police academies, judicial training institutes, law schools;

**Formalise diversion and promote greater community-based rehabilitation** of children in conflict with the law by setting up procedures for them to be referred to existing counselling, peer mentoring, and vocational training programmes;

**Expand the use of the YDRC**, which appears to be consistently operating under capacity, to provide non-residential rehabilitation for children who have been diverted by the police, or who are on probation. As is done at the Juvenile Rehabilitation Centre in Afghanistan, the children can attend the centre on a day-basis to participate in rehabilitation and vocational training programmes, but return home to their families in the evenings.

The status of the draft Administration of Juvenile Justice Act is unclear, and the Assessment Report on Protective Factors for Vulnerable Children recommends that it be enacted as a matter of priority. However, the draft law is not in conformity with the CRC and UN Guidelines, and should be subject to further consultation and review before it is put forward for enactment. While a full copy of the draft was not available, the summary of its provisions contained in available reports<sup>212</sup> raises some concerns, in particular:

- The current very young age for criminal responsibility (10) is not addressed;
- The term “juvenile” should be clearly defined to include all children who are under the age of 18 at the time the alleged offence was committed;

- The draft does not include provisions with respect to diversion;
- While the informality of the proposed juvenile courts is laudable, the CRC requires that a child’s due process rights must be respected to ensure that children in conflict with the law have the full benefit of the presumption of innocence and are only convicted of an offence where there is sufficient, cogent evidence. The provisions in the draft stating that “social evidence will take precedence over legal evidence” in juvenile court proceedings is potentially concerning, depending on how this is interpreted.
- The time frames for the completion of juvenile court proceedings are the same as they are for adults under the Civil and Criminal Procedure Code, namely up to 108 days. This is a long benchmark, particularly if the child has been subject to pre-trial detention
- The draft offers no new non-custodial sentencing options, and no explicit statement that deprivation of liberty should be used as a measure of last resort, and for the shortest appropriate period;
- Periods of detention under the Act are for an indefinite period, in violation of the CRC. Children directed to the juvenile correctional centre remain there “until they cease to be a juvenile” or until they turn 18. This results in lengthy periods of detention (for example, 10-year old who commits a minor theft could be detained for 8 years) that are out of proportion to the offence committed, and harsher than what an adult would receive for a similar offence.

It is recommended that, if new juvenile justice legislation is to be enacted, the existing draft law should be updated to address these problems, and to take into account more recent global developments in the area of juvenile justice.

212 An Overview of Juvenile Justice in Bhutan, T. Wangchuck, Royal Court of Justice





# India

## 1. Juvenile Justice Legislation and Procedures

In 2000, India introduced a new Juvenile Justice (Care and Protection of Children) Act (JJA 2000). The Act governs both children in conflict with the law and children in need of protection, but has introduced greater conceptual distinction between these two categories of children. The JJA 2000 aims to create a separate system of justice for children at every stage, distinct from the criminal justice system for the adults.

While the JJA 2000 is central government legislation, implementation lies with the State governments, which have powers to make Rules, establish Juvenile Justice Boards, establish institutions, set up Special Juvenile Police Units, and develop rehabilitation and social reintegration programmes. The National government has issued Model Rules to guide the States in developing their own implementation rules. Most States have either adopted the model rules or framed their own.<sup>213</sup>

The implementation of the JJA 2000 varies significantly from state to state. However the process of drafting rules and promoting awareness on the new law has created a significant amount of synergy and impetus for reform. To help promote the implementation of the Act, the Ministry of Social Justice and Empowerment is providing matching funds to States seeking to establish or upgrade institutions under the JJA 2000.

### 1.1 Scope and Jurisdiction

The new Act is silent on the minimum age of criminal responsibility, which remains at seven years of age. Children between the ages of seven and 12 are only criminally responsible if they are capable of understanding the consequences of their actions.<sup>214</sup> This remains one of the lowest in the world, and the UN Committee on the Rights of the Child has repeatedly expressed concern over this issue.<sup>215</sup>

One major advance in the new law is the extension of juvenile justice protections to all children under the age of 18 (previously 16). However, the JJA 2000 is silent on the issue of whether jurisdiction is to be determined by the child's age at the time of the offence, or the time of trial. The Supreme Court has previously ruled that the child's age is as of commission of offence,<sup>216</sup> and an amendment to the JJA 2000 has been proposed to clarify this point.

213 According to information provided by MSJE, as of August 2005, all but five states have finalised their Rules, and those remaining five had made significant progress towards finalisation

214 Penal Code, Section

215 Concluding Observations of the UN Committee on the Rights of the Child: India, CRC/C/15/Add.228, 26 February 2004

216 Case No. Appeal (crl)210 of 2005-Pratap Singh vs State of Jarkhand and others Supreme Court Judgement dated 02/02/2005

The new Act does not apply to states of Jammu and Kashmir.<sup>217</sup>

### 1.1 Powers of Arrest and Arrest Procedures

The JJA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of protection. Every police station must have at least one officer designated and specially trained as the “juvenile or child welfare officer.”<sup>218</sup> The Act requires that every child apprehended by police be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. The officer in charge of the police station must inform the child’s parents/guardian and the probation officer of the arrest. If the child is not released from the police station on bail, he/she must be kept in an observation home pending appearance before the Board.<sup>219</sup>

The Act itself provides limited direction with respect to the operation of the special juvenile police units. These issues have been left to the discretion of States in the framing of Rules. The Model Rules recommend prohibiting the use of handcuffs in the arrest of a child, and state that children should normally not be arrested between sunset and sunrise. Preliminary inquiries should be conducted as quickly as possible, without causing stress to the child, and police should try to ensure that the child’s parents are present during questioning.

States have been slow to establish special police units due to limited resources. According to the information available on the Ministry of Social Justice and Empowerment website,<sup>220</sup>

only eight of the 29 States and UTs had established juvenile police units or designated specialised juvenile police by August 2005. Training for these special units has also been slow. A study conducted by Prayas in Bihar and Delhi found that only 4.3% of the designated juvenile police had undergone juvenile justice training through either police academies or NGOs, and only 35.2% in Delhi.<sup>221</sup> The problems of arbitrary arrests, police brutality and abuse of children persist, including incidents of extreme violence and torture.<sup>222</sup> Children interviewed as part of the Prayas study in Bihar and Delhi reported manhandling and arbitrary arrests at the hands of the police.<sup>223</sup>

However, there have been many interesting initiatives to promote more child-sensitive police practices. In Bangalore, for example, the Juvenile Police Unit is being supported by the NGO ECHO to develop child-friendly procedures for children in conflict with the law. The police are encouraged to divert juvenile cases by advising and counselling the child, rather than referring them to formal legal proceedings. In Karnataka, the JJA Rules state that the Special Juvenile Police Units will be assisted by recognised voluntary organisations. In some States, whenever the police apprehend a child they call Childline, India’s toll-free helpline for children. Childline has a resource pool of local NGOs and institutions and is able to arrange services such as shelter and counselling for the children.

### 1.2 Pre-trial detention

The JJA 2000 grants the Board and/or the officer in charge of the police station the authority to release a child on bail for any

217 JJA 2000, Section 1

218 JJA 2000, Section 63

219 JJA 2000, Section 10, 12, 13

220 [www.socialjustice.nic.in](http://www.socialjustice.nic.in)

221 Juvenile Justice System and the Rights of the Child, Prayas Institute of Juvenile Justice, 2003

222 The Status of Children in India: An alternate report to the United Nations Committee on the Rights of the Child on India’s First Periodic Report, Asian Centre for Human Rights, 2003; National Human Rights Commission website

223 Juvenile Justice System and the Rights of the Child, Prayas Institute of Juvenile Justice, 2003

offence, and eliminates the Code of Criminal Procedure distinction between “bailable” and non-bailable” offences for children. The presumption is in favour of bail, however the grounds for refusal are broad, and include situations where there “appear to be reasonable grounds for believing that release is likely to bring the child into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.”<sup>224</sup> There is no explicit requirement that detention shall be used only as a measure of last resort, and the broad grounds for detention based on exposure to “moral danger” do not promote minimal use of detention.

Street children are particularly vulnerable to pre-trial detention, even if charged with minor offences. One magistrate estimated that roughly 30% to 40% of children are not released on bail because their family is unfit or cannot be located. Bail is denied not because of the nature of the offence, but because there is no-one to take custody of the child.<sup>225</sup>

Children who are not released on bail must be committed to an Observation Home or a “place of safety.” The Act explicitly prohibits the detention of a child in a prison or police lock-up.<sup>226</sup> It also introduces an innovative government/NGO partnership approach to the management of Observation Homes, stating that they may be established and maintained by the government itself, or “under an agreement with voluntary organisations.”<sup>227</sup>

Most states have certified one or more Observation Homes for children on remand.<sup>228</sup> However, geographical distribution is not even, raising questions as to whether children continue to be kept in police lock-ups and jails

in some districts due to lack of available facilities.

One of the best examples of India’s new partnership approach is the Prayas Observation Home for Boys in Delhi. The Home’s facilities are owned by the government, but managed by Prayas, a national children’s NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. Upon taking over the facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers on staff who assess the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. Through its linkages with the broader NGO community, Prayas has also been able to expand its services by mobilising volunteer support from other professionals such as lawyers and doctors.

### 1.3 Juvenile Courts and Trial Proceedings

The JJA 2000 calls for the creation of two distinct bodies to make orders under the Act: 1) Juvenile Justice Boards, comprised of a magistrate and two social workers, to hear and determine cases of children who have committed offences; and 2) Child Welfare Committees, comprised of three social workers, to hear cases of children in need of protection.<sup>229</sup> Magistrates appointed to the Juvenile Justice Board must have special knowledge or training in child psychology or child welfare.

224 JJA 2000, Section 12

225 Interview with Principle Magistrate, Delhi Juvenile Justice Board

226 JJA 2000, Section 12

227 JJA 2000, Section 8

228 Status of the Implementation of the JJA 2000 in States and UTs, NSID website, August 2005. Only five states have not created Observation Homes

229 JJA 2000, Sections 4 and 29

Juvenile Justice Boards have jurisdiction over all offences committed by children under the age of 18 years, including cases where a child is charged jointly with an adult.<sup>230</sup> The Act calls on States to establish Boards in each district, or for a group of districts. As of August 2005, all but seven States had appointed Juvenile Justice Boards, though many have not appointed them in each district. In many cases, social workers have not been appointed and the Boards are presided over by a Magistrate alone.<sup>231</sup>

The JJA 2000 states that an inquiry must be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case.<sup>232</sup> However, this time limit has been difficult to comply with in practice due to limited resources and large case loads. In Delhi, for example, only one Board has been established for the entire city. It has 3000 cases pending, including over 700 serious cases.<sup>233</sup> As a result, many children spend lengthy periods of time in detention pending the completion of the trial proceedings, some up to two years or more.<sup>234</sup> Some children, despite the provisions of the JJA 2000, continue to be detained in jails with adults.<sup>235</sup>

The Act contains limited detail with respect to the physical lay-out and procedures of the Juvenile Justice Board, reserving that as a matter to be determined by State rules. There is no statutory requirement that proceedings of the Board be closed to the public. However, the Model Rules recommend that proceedings be closed, and that they be conducted in an

informal and friendly manner. Some State Rules, such as those in Tamil Nadu, go further and require that there be no raised dais or witness boxes, and that proceedings be conducted like an informal conference. In some States, the JJB has been holding proceedings in Magistrates chambers, rather than in the formal courtroom. However practices vary, and reportedly some JJB's exist on paper only. In others, as in Delhi, for example, the physical layout and environment of the courtroom is no different than the regular court.

Under the JJA, the child's parent or guardian may be required to attend.<sup>236</sup> The Board may also dispense with the attendance of the child if satisfied that the attendance of the juvenile "is not essential for the purpose of inquiry." This power to conduct proceedings without the child being present is contrary to children's right to due process and to participate and express their views in any judicial proceedings that affect them.

Provision is made for the protection of the privacy rights of children in conflict with the law, and to prevent stigmatisation. The media is prohibited from publishing anything that might identify the child, and the child will have no record of conviction.<sup>237</sup>

#### 1.4 Sentencing

Another major innovation in the JJA 2000 is the expansion of the types of dispositions available to the Juvenile Justice Board. The Act states that, where the Board is satisfied that a child has committed an offence, it may impose the following orders<sup>238</sup> :

230 JJA, Sections 6 and 18

231 Indian Juvenile Justice System, Prayas Institute of Juvenile Justice, 2003

232 JJA 200, Section 14

233 Meeting with Principle Magistrate, JJB Delhi

234 The Status of Children in India: An alternate report to the United Nations Committee on the Rights of the Child on India's First Periodic Report, Asian Centre for Human Rights, 2003; Indian Juvenile Justice System, Prayas Institute of Juvenile Justice, undated; Interview with Prayas Observation Home Staff

235 The Status of Children in India: An alternate report to the United Nations Committee on the Rights of the Child on India's First Periodic Report, Asian Centre for Human Rights, 2003

236 JJA 2000, Section 46

237 JJA 2000, Section 21 and Section 19

238 JJA 2000, Section 15

- allow the juvenile to go home after advice or admonition following appropriate inquiry and counselling to the parent or the guardian and the juvenile;
- direct the juvenile to participate in group counselling and similar activities;
- order the juvenile to perform community service;
- order the parent of the juvenile or the juvenile him/herself to pay a fine, if s/he is over fourteen years of age and earns money;
- direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person for up to three years;
- direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for up to three years;
- direct the juvenile to be sent to a “special home” until he/she turns eighteen, or in the case of a juvenile who is over seventeen years, for a period of not less than two years. The Board may reduce the duration of institutionalisation having regard to the nature of the offence and the circumstances of the case;
- if the child is 16 years or older and has committed a serious offence, he/she may be sent to a “place of safety” for detention for up to the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.<sup>239</sup>

Prior to making any order, the Board must obtain a social investigation report on the child. One innovative aspect of the new law is that these reports may be prepared either by a probation officer, or by a recognised voluntary organisation.<sup>240</sup> In Delhi, for example, in addition to the probation officers of the government social welfare department, the

probation officers at the Prayas Observation Home also provide this service to the JJB.

While alternatives to institutionalisation exist on paper, many States have been slow to develop the necessary infrastructure and procedures to put them into practice. Absent other viable options, the JJBs reportedly rely largely on either cautioning or institutionalisation.<sup>241</sup>

There is a need to develop a broader range of community-based supervision and rehabilitation options, and to have well-informed probation officers who can present these options to the JJBs.

The JJA 2000 does not contain any restrictions on the types of offences for which institutionalisation may be imposed, and no explicit statement that deprivation of liberty shall be used as a measure of last resort, and for the shortest appropriate period. To the contrary, the presumption is that children will be detained until they turn 18, or for 17-18 year-olds, a minimum of two years. Thus, for example, a seven year old child who commits a minor theft may be subject to detention in a Special Home for 11 years (followed by an additional 3 years in an “after-care home”), which is well in excess of what the offence warrants, and far greater than the sentence an adult would receive for a similar offence. There is no provision mandating review and reconsideration of the child's placement at regular, stipulated intervals.

The JJA 2000 states that a child may not be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. However, if a child 16 years or older commits an offence that is so serious in nature or whose conduct and behaviour have been such that he/she cannot be committed to a special home, the Board may order the child to be

239 JJA 2000, Section 16

240 JJA 2000, Section 15(2)

241 Indian Juvenile Justice System, Prayas Institute of Juvenile Justice, undated

detained in “such place of safety and in such manner as it thinks fit” for a period up to the maximum period of imprisonment stipulated for that offence.<sup>242</sup> This provision technically permits adult periods of detention for children between the ages of 16 and 18, however judges have reportedly interpreted this differently, stating that life imprisonment should not be imposed on juveniles, and that the essence of the Act would be defeated with extended periods of detention.<sup>243</sup> This issue, along with greater clarity as to what constitutes “protective custody” should be addressed through legislative amendment. According to the definition section, a “place of safety” cannot be a jail or police lock-up, however there is no other direction as to what this means, or where children subject to this order should be detained.<sup>244</sup>

### 1.5 Anti-Terrorism and Public Security legislation

India has recently repealed its Prevention of Terrorism Act (POTA). The Act had been criticised by human rights organisations because it permitted pre-trial police detention for up to 180 days and created special courts that were not bound by juvenile justice protections. Although the Madras High Court ruled that children should be tried under the Juvenile Justice Act, a large number of children were nonetheless arrested as alleged terrorists under the POTA.<sup>245</sup>

## 2. Conditions in Detention

The JJA 2000 states that Special Homes are to be established by the State or voluntary organisation for the reception and rehabilitation

of children in conflict with the law. Most States have established one or more Special Homes and have established Rules for the certification and management of the homes.

As with Observation Homes, the Act specifically promotes partnerships with NGOs in the running of the homes.<sup>246</sup> This partnerships approach is being actively encouraged by the central government, and has shown considerable success, particularly in Tamil Nadu, Maharashtra, Karnataka and Delhi. In some cases, Government/NGO partnerships arrangements have been established wherein NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. The state of Andhra Pradesh has put into practice a scheme of co-management of the State's children's institutions with selected NGOs. Under this scheme each institution will have a key NGO co-managing the institution and other member NGOs on a committee to monitor implementation.<sup>247</sup> In other cases, the State government has certified Special Homes that are fully operated and managed by a trusted NGO, with State funding support. This has reportedly improved the quality and range of services being provided to the children, since NGOs generally have specialised staff and are able to mobilise community involvement and volunteer professional services from doctors, lawyers, etc.<sup>248</sup>

Conditions in the Special Homes vary considerably across the country. No comprehensive report was available that assesses the quality and standards of care being provided. The preference appears to be

242 JJSO 2000, Section 16

243 Email correspondence with UNICEF-India child protection staff

244 JJA 2000, Section 16

245 The Status of Children in India: An alternate report to the United Nations Committee on the Rights of the Child on India's First Periodic Report, Asian Centre for Human Rights, 2003

246 JJA 2000, Section 9

247 Wernham, Marie, *An Outsiders Chance: Street Children and Juvenile Justice – An International Perspective*, Consortium for Street Children, 2004

248 Interview with Prayas staff

for large-scale institutions, with a boarding-school, rather than home-like environment. Reports of physical abuse of children in institutional are persist,<sup>249</sup> and most lack adequate facilities for education, vocational training, counselling and reintegration.

One concern raised was that, while the JJA 2000 clearly differentiates between Observation Homes (for children subject to pre-trial detention); Special Homes (for children convicted of an offence); and Children's Homes (for children in need of protection), in practice many homes are certified under one or more of these categories. This has resulted in the continued mixing children in conflict with the law with children in need of protection, thereby undermining the distinction the Act is trying to promote.

Another concern is that, while the institutions have become more open to NGO involvement, the Rules themselves continue to promote an environment based on confinement rather than community contact. For example, under the Model Rules, a child is permitted a family meeting only once per month, and there are strict limitations on leaves of absence and other community contact. The Rules also do not include any restrictions on discipline and use of force against children in institutions.

In terms of reintegration of children who have completed their term in a Special Home, the JJA 2000 makes provision for "after-care programmes" to assist them "to lead an honest, industrious and useful life." While the Act is not specific with respect to what this involves, the implication is that after-care is also premised on an institutional approach.<sup>250</sup> The Model Rules make provision for the establishment of "after-care homes," but do not provide guidance with respect to community-

based after-care services. This discretionary additional three-year period of institutionalisation is excessive and unwarranted.

### 3. Diversion and Alternative Sentences

The JJA 2000 does not contain any provisions for the diversion of children away from the formal system. All children who are arrested by the police are to be brought before the Juvenile Justice Board for a formal determination of guilt and disposition.

In terms of alternative sentences for children who have been processed through the formal system, as noted above, the Act includes a broad range of non-custodial options. However, to date, limited progress has been made in promoting the development of these options, and the focus of implementation efforts appears to have been on the establishment of JJBs and children's institutions. In most states, the necessary infrastructure has not been put in place to promote the use of community service, probation, and supervision by a "fit person" or "fit institution". Neither the Act itself nor the Model Rules give any guidance with respect to standards or procedures for the development of these non-custodial sentencing options. While the Act includes a Chapter on Rehabilitation and Social Reintegration, it has limited applicability to the community-based rehabilitation of children subject to counselling or probation orders. Rather, the Act defines rehabilitation and reintegration in terms of the process of releasing a child from institutional care through adoption, foster care (defined narrowly as temporary placement for infants), child sponsorship, and sending the child to an after-care organisation.<sup>251</sup>

249 Concluding Observations of the UN Committee on the Rights of the Child: India, CRC/C/15/Add.228, 26 February 2004

250 See, for example, s. 44(e) which states that a child may "stay" with an after-care organisation for up to three years

251 Rehabilitation and reintegration are narrowly conceived as beginning "during the stay of the child in a children's home or special home" and then continuing through adoption, foster care, etc.

Probation services have been in operation for many years, but they tend to be under-resourced and under staff. Reportedly, the number of probation officers in many States is barely adequate to meet their obligation to prepare social inquiry reports. Support for children on probation tends to focus on monthly visits and reporting, rather than individual case planning and referral. There are limited systems and procedures in place to ensure that children on probation are referred to appropriate programmes and services available in the community.<sup>252</sup>

Some States have made progress in improving probation and other alternatives to detention through partnerships with the local NGO community. JJBs are increasingly recognising NGO staff as probation officers, receiving reports from them and placing children under their supervision. In Tamil Nadu the JJA Rules state that, in order to promote effective use of existing community resources, the JJBs must maintain a list of NGOs and fit persons (prepared in consultation with the probation officer) who can provide care, community service work, and supervision on bail and probation. In Bangalore, an innovative Traffic Police Assistance Programme has been established with the support ECHO. Children in conflict with the law are referred to the programme to be trained as traffic police assistants. This helps to restore their sense of dignity and self-worth, and also improves relations between children and the police.

India has a vibrant NGO community providing a host of innovative programmes for children in need of protection, including drop-in centres, non-formal education, peer mentoring, vocational training, life skills programmes and other community-based, non-institutional services. These services could be used both as diversionary measures, and as alternatives to institutionalisation. In particular, there is

great scope to extend probation beyond formalistic supervision and monthly reporting to provide constructive activities aimed at promoting accountability and competency development.

#### 4. Inter-Agency Coordination, Monitoring and Reporting

The Department of Women and Child Development is responsible for the coordination of all activities regarding the implementation of the CRC. However, the Ministry of Social Justice and Empowerment has a specific mandate with respect to coordinating implementation of the JJA 2000, which cuts across several different government ministries at the central and State level. In order to promote greater inter-agency coordination, the JJA 2000 makes provision for a Central Advisory Board to coordinate implementation and monitoring of the juvenile justice system throughout the country. It also calls for the establishment of State and District Advisory Boards. The Advisory Boards are to include relevant government departments, social workers, representatives from voluntary organisations, and other child welfare professionals. These Advisory Boards have the potential to play a significant role in promoting policy development and coordinating reform initiatives. However, they are not yet fully functioning as coordinating mechanisms.

In Bangalore, an innovative Juvenile Justice Forum has recently been established to coordinate local juvenile justice reform initiatives. All relevant agencies – including the JJB, CWC, police, Department of Children and Women, and NGOS meet regularly to discuss the problems they are facing and propose solutions. The initiative is very new, but has the potential to be an effective mechanism for joint planning, information-sharing and coordination across the justice system.

252 Interview with Prayas staff and UNICEF-India child protection staff



Significant steps have also been taken to improve the collection of data on the situation of children in need of protection, including children in conflict with the law. With the support of UNICEF, the National Institute for Social Defence is developing a web-enabled database to collect and centralise information on children. The database will include a comprehensive set of juvenile justice indicators.

As yet there are no mechanisms in place at the State level for effective monitoring and inspection of institutions certified under the JJA 2000.<sup>253</sup> Of concern is that, while JJA 2000 provides for the creation of Inspection Committees and Social Auditing of institutions, these provisions apply only to Children's Homes (for children in need of protection) not Observation Homes and Special Homes for children in conflict with the law.<sup>254</sup>

A proposal has been drafted for the creation of a National Children's Commission with a mandate to monitor, evaluate and receive complaints in respect of children's rights. In the interim, this role is being undertaken by India's National Human Rights Commission, which regularly receives and investigates complaints regarding police abuses and conditions in detention facilities.

## 6. Training and Capacity Building

Since the enactment of the JJA 2000, there have been significant and ongoing training and capacity building initiatives targeting all justice sector professionals. The central government has taken the lead in capacity building and has funded extensive training and sensitisation through the National Institute for Social Defence (NSID). Immediately following the

introduction of the JJA 2000, regional workshops were conducted aimed at informing key State-level personnel of the provisions of the Act, and promoting the development of State Rules. NSID then developed a series of training manuals entitled Justice for Children for juvenile justice functionaries. A cadre of senior-level master trainers have been identified throughout the country to act as trainers and resource people for state-level training workshops. NSID supports three-day regional and State-level training workshops for members of the JJB and CWC, police, social welfare officers and probation officers, institution staff, and NGOs working in juvenile justice. NSID is also in the process of developing a one-month certificate course on Child Protection for personnel working in the juvenile justice sector, and is also developing a syllabus in juvenile justice for law undergraduates in the BL, LLB curriculum and Judicial Academies.

The National Judicial Academy has also played an active role in building the professional skills of magistrates and judges through its ongoing Juvenile Justice Training Programme. The Academy regularly brings together members of the JJBs and CWCs from all over the country for training and experience-sharing. Respected High Court Judges are invited as resource people, which lends weight to the proceedings and has greater impact on JJB Magistrates than NGO-facilitated training. The workshops have included some innovative inter-active training methods, including opportunities for trainees to discuss and resolve barriers to implementation. One training session in Kerala involved an analysis of the juvenile court setting – participants went to observe JJB proceedings, then returned to the classroom where they analysed what they saw and discussed how to make the setting and procedures more child-friendly.<sup>255</sup>

253 UNICEF- India Annual Report 2004

254 JJA, 2000, Section 35 and 36

255 Interview with UNICEF-India child protection staff

Capacity building initiatives have also been supported by numerous NGOs and INGOs throughout the country, which have either conducted their own juvenile justice training for local professionals, or have contributed as resource people to the NSID training programmes.

## 7. Conclusion and Recommendations

While India has not yet fully implemented a comprehensive juvenile justice system, there has been considerable impetus for change amongst professionals within the juvenile justice system. The JJA introduced significant new protections for children in conflict with the law, including the extension of juvenile protections to all children under the age of 18, the clear delineation between children in need of protection and children in conflict with the law, greater specialisation within the police and courts, and a broader range of non-custodial sentencing alternatives. It has also introduced innovative provisions promoting greater civil society involvement in the juvenile justice system and encouraging government/NGO partnerships.

However, many of these new provisions have yet to be fully implemented throughout the country, and a number of problematic aspects of the 1986 legislation have not been addressed, including the low age of criminal responsibility, the systemic bias towards institutional rehabilitation, and deprivation of liberty until the child turns 18. Many of the provisions common to modern juvenile justice legislation – diversion, mediation, restorative justice, explicit preference for community-based rehabilitation, reserving deprivation of liberty for children who commit serious violent crimes – are lacking. Insufficient emphasis has been placed, either legislatively or in practice, to changing the custodial nature of the entire juvenile justice system. This is demonstrated

most clearly by the fact that the Act and Rules themselves focus heavily on the establishment and regulation of JJBs and institutions, but provide virtually no guidance on the establishment of non-custodial alternatives. Systems and procedures to implement the new sentencing options have not been sufficiently developed, either in the Act itself, the Model Central Rules or in practice.

In addition to the General Recommendations in this Report, it is recommended that the following be considered:

**Legislative/policy development.** While some of the shortcomings outlined above could be addressed through more concerted and coordinated efforts to fully implement and enforce the JJA 2000, many will require further legislative and policy development.

Amendments to the JJA have recently been drafted, but they make only minor adjustments to the Act, rather than the comprehensive reform that is necessary. In the short-term, these amendments could be used to clarify imprecise language in some provisions of the JJA 2000. However, in the long-term it is recommended that the JJA be substantially overhauled, based on more progressive, child-centred legislative models. Opportunities should be made available for key justice sector officials and decision-makers to gain exposure to more modern approaches to juvenile justice based on diversion and restorative justice. In the interim, there is significant scope to promote policy development and creative application of the JJA through further refinement of State Rules and directions from the judiciary. Inter-disciplinary workshops and training programmes could be used as a mechanism to explore creative solutions and develop a more strategic approach to fully implementing the JJA 2000. Opportunities should also be created for children to participate in planning and decision-making around juvenile justice reform.

**Promote diversion and restorative justice** approaches to resolving minor crimes outside the formal system, reserving arrest and JJB proceedings for children who commit serious crimes. Police cautioning and referral to mediation or other forms of dispute resolution should be formalised in State Rules. Mapping could be conducted on a state-by-state basis to identify existing informal dispute resolution mechanism currently being used, and to identify promising practices for replication.

**Place priority on developing non-custodial alternatives.** This will require concrete steps both to limit systemic bias towards institutionalisation, and to strengthen the community-based mechanism necessary to make the non-custodial sentencing alternatives under the JJA 2000 a reality. State Rules should be amended or supplemented to provide greater guidance on how to effectively implement community service, community supervision and probation orders. Probation orders should be more than merely pro forma monthly status checks, and could be used more creatively to engage children in structured activities. In light of the limited number and resources of probation officers, this will likely require partnership-building with NGOs, and in particular more systematic and coordinated NGO involvement. Standards and procedures should be in place to identify and accredit NGOs and other “fit persons,” and to

appoint volunteer probation officers. The Rules should also detail a clear mechanism for how a child is to be referred to appropriate programmes, and stipulate monitoring and reporting requirements. A starting point could be local action research, mapping and partnership-building exercises to identify and mobilise existing resources within the community (drop-in centres, counselling services, non-formal education, vocational training, life skills programmes, community mentors, etc) that could be used to provide support and supervision to children who have been subject to a community-based sentencing alternative.

**Place restrictions on the use of institutionalisation,** both at the pre-trial stage and as a sentencing option. This could include: procedures for immediate family tracing; elimination of monetary bond requirements for children’s bail; introduction of judicial sentencing guidelines that restrict the use of institutionalisation to children who have committed serious act of violence, or persists in committing other serious offences; repeal of the presumption in favour of long-term institutionalisation and allow the Court broad discretion to impose the most appropriate period (with a stipulated maximum term); require periodic reviews of detention orders at set intervals (i.e. every six months); and promote community-based, rather than institutional after-care.



# Maldives

## 1. Juvenile Justice Legislation and Procedures

Maldivian law is based on *Shari'a*, and *Shari'a* generally prevails over nation laws and international treaties. The juvenile justice system is currently governed by the Law on the Protection of the Rights of the Child,<sup>256</sup> as well as a set of detailed guidelines on procedures for investigation, court and sentencing of children in conflict with the law.<sup>257</sup>

The country is in the process of significant reforms to its criminal justice system, including the drafting of a new Criminal Code. As part of that process, it has initiated a number of progressive juvenile justice measures, and plans to introduce comprehensive juvenile justice legislation. The Chief Judge of the Criminal Court and the Head of the Juvenile Court have been personally active and innovative in such efforts.<sup>258</sup> In late 2004, the Attorney General's Office, with the support of UNDP and UNICEF, drafted a Strategic Plan for Reform of the Juvenile Justice System. The plan calls for the development of a comprehensive juvenile justice system, with an emphasis on diversion and alternatives to detention. Activities will be implemented subject to the availability of funds.

### 1.1 Jurisdiction and Scope

Currently, the minimum age of criminal responsibility of seven applies to all offences for which hadd has been laid down under *Shari'a* law, as well as certain property related offences, intentional killing and narcotics offences. For all other offences, children become criminally responsible at the age of 14.<sup>259</sup> The UN Committee on the Rights of the Child has expressed concern with respect to the low minimum age of criminal responsibility,<sup>260</sup> however as part of its juvenile justice reforms, Maldives is considering raising the minimum age to 12.<sup>261</sup>

The special protection available to children in conflict with the law are governed by the 1991 Law on the Protection of the Rights of the Child, and the Rules Relating to the Conduct of Judicial Proceedings (No.6) which define a child as a person under the age of 16 years. However, as a result of recent amendments, these juvenile justice protections now apply to all children under the age of 18.<sup>262</sup>

256 Law No.: 9/91

257 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended

258 South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights, UNICEF, 2005

259 Section 289 (3) of the Rules Relating to the Conduct of Judicial Proceedings (No. 6), as amended, specifies the age groups and the types of offences for which children are liable

260 UN Committee on the Rights of the Child, Concluding Observations: Maldives CRC/C/15/Add.91, 5 June 1998

261 South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights, UNICEF, 2005

262 Ministry of Justice Circular No.: 2004/03/MJ, dated 24 February 2004

## 1.2 Powers of Arrest and Arrest Procedures

A Police Family and Child Protection Unit (FCPU) has been operating since 1999, and all cases involving children under the age of 18 are referred to it. The Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003 state that investigations of children in conflict with the law must be carried out by plain-clothed members of the FCPU, who must conduct the investigation with due regard for the age of the child. All aspects of the investigation shall be considered confidential.<sup>263</sup>

In practice, police reportedly refer all juvenile offenders in the first instance to the CPU.<sup>264</sup> If the child is between the ages of seven and 14, an investigation may only be initiated in relation to an offence prescribed under Islamic law or other specified serious offences. In all other cases, the child is referred to the Unit for the Rights of the Child (URC), which provides a range of counselling and advocacy services. Crimes committed by children between the ages of 14 and under 18 should only be investigated “in cases where such a necessity arises”,<sup>265</sup> and they too may be referred instead to the URC. The URC is a unit under the Ministry of Gender and Family that provides various counselling and advocacy services to children in conflict with the law and children in need of protection through its staff of social workers.

Until September 2004, the police were part of the National Security Services (where the Child Protection Unit was based) under the Ministry of Defence. The Maldives Police Service was formed as a civil force under the Ministry of

Home Affairs on 1st September 2004. The Family and Child Protection Unit established in 1999 now comes under the Maldives Police Service. The FCPU is functioning as a separate unit based in Male'. However, they are not present throughout the country. Nevertheless, the FCPU respond to cases of juvenile offences, child abuse, domestic violence and sexual offences throughout the country, and is attempting to develop more personnel. FCPU works in close collaboration with the Ministry of Gender and Family.<sup>266</sup>

## 1.3 Bail and Pre-trial detention

The Rules state that a child under the age of 18 shall not be subject to detention during the investigation. However, having due regard to the offence committed, where the truth is not forthcoming from child, or if the chance is highly likely that a dangerous act may be committed by the child, the child may be confined to a designated place for up to seven days until the investigation is complete. Further period of detention may be authorised by the Ministry of Defence and National Security.<sup>267</sup> This practice of detaining children for the purpose of obtaining information from them is contrary to the CRC.

Prior to 2000, children who were suspected of committing certain offences were placed with adults in jail pending their trial. This detention could sometimes last for three to six months. However currently, only a handful of children are kept under custody as perceptions and practices have changed, and children who are kept for investigation are kept in separate facilities in the main headquarters of the Maldives Police Service.<sup>268</sup> Since there are no separate facilities for girls, they continue to be subject to pre-trial detention with adult females.<sup>269</sup>

263 Rules Relating to the Conduct of Judicial Proceedings (No.6) Ministry of Justice, 2003, Section 289 (4)

264 Alder, Christine and Polk, Kenneth, Strategic Plan for Reform of the Juvenile Justice System, September 2004

265 Rules Relating to the Conduct of Judicial Proceedings (No.6) Ministry of Justice, 2003, Section 289 (4)

266 Email correspondence with UNICEF-Maldives child protection staff

267 Law No. 5/78; Rules Relating to the Conduct of Judicial Proceedings (No.6) Ministry of Justice, 2003, Section 289 (4) and (5), as amended

268 Email correspondence from UNICEF-Maldives child protection staff

269 Singh, Neelam, Implementation of the CRC in South Asia, UNICEF 2002; Alder, Christine and Polk, Kenneth, Strategic Plan for Reform of the Juvenile Justice System, September 2004

### 1.4 Juvenile Court and Trial Proceedings

The Rules state that offences committed by children must be adjudicated in a separate court, and by a judge especially dedicated for that purpose. A social worker or a counsellor from the URC attends all proceedings, and the Court can also summons the child's guardian to attend. The Court is closed to the public, and the Rules state that investigations involving juveniles should be expedited and treated as confidential.<sup>270</sup> Currently, there is one specialised Juvenile Court operating in Malé

Under the proposed Strategic Plan for Reform of the Juvenile Justice System, only children charged with serious offences (murder, manslaughter, rape, armed robbery and other very violent offences) or certain recidivists will be referred to the Juvenile Court. The majority of children in conflict with the law will be handled informally through police cautioning and community conferences. The proposed conferencing model is based on the principles of restorative justice and will involve the juvenile, the victim and both families in resolving the offence. Once the Court has made a determination of guilt, it may refer the juvenile to a Sentencing Conference to obtain recommendations on the most appropriate disposition.<sup>271</sup>

At the initiative of the Chief Judge of the Criminal court and the Head of the Juvenile Court, the Juvenile Court in Malé has already initiated some conferencing, although currently the victims are not involved. The Conferences are being used to provide the opportunity for the parties to openly discuss the influences and factors leading to the child's behaviour, and gives the child a chance to feel remorse for his/her actions. At the family conferencing, the child, the child's parents, a school

representative, and a social worker meet with the judge to openly discuss the crime, the child's character and background, and any mitigating factors. These discussions are taken into consideration by the Court in deciding what sentence to impose on the juvenile. However, as yet not all children in conflict with the law have access to family conferencing.<sup>272</sup> The programme is currently unavailable in the outer atolls, though there have been instances where children and their families who are not from Malé have been processed through the Malé family conference programme.<sup>273</sup>

### 1.5 Sentencing

The Law on the Protection of the Rights of the Child promotes rehabilitation, rather than punishment, of child offenders. Article 8 of the Act states that efforts must be made to discourage children from misbehaving and violating rules and regulations. It also states that the government must organise, in such manner as is possible, the rehabilitation and upbringing of children who are not reformed by such efforts. In addition, Article 9 provides for the establishment of special procedures to deal with juvenile delinquents that gives preference to rehabilitation without punishment.

Guidelines on the dispositions that may be imposed on child offenders are contained in the Rules Relating to the Conduct of Judicial Proceedings (No. 6). The Rules state that child offenders between the age of seven and 14 who commit serious offences shall be committed by the Juvenile Court to the Community Centre for Rehabilitation. A "serious offence" is defined to include: hadd offences of apostasy, rebellion, fornication, defamation, drinking and theft; property offences where liability exceeds 50,000; sedition and crime against the State; unlawful assembly in aggravated circumstances;

270 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289(7), (10), (12)

271 Procedures and Guidelines for Family Conferencing, 2004

272 UNICEF website, Feature Story, January 2003

273 Email correspondence with UNICEF-Maldives Child protection staff

offences relating to homicide; terrorism; counterfeiting; and drug related offences.<sup>274</sup> There is no other stated community-based rehabilitation option for children who commit these offences.

Children between the ages of 14 and under 18 who commit offences prescribed in Islam are subject to the prescribed penalties for those acts.<sup>275</sup> In general, children under the age of 18 are not subject to flogging, banishment or imprisonment, but shall instead be subject to fines or house arrest.<sup>276</sup> However, children under the age of 18 who have reached puberty may be subject to flogging for offences prescribed in Islam.<sup>277</sup>

For children between the ages of 14 and under 18 who commit offences other than offences prescribed by Islamic law and homicide, the following rules apply:<sup>278</sup>

- The maximum punishment shall be house arrest for a period of five years. If the child is enrolled in school or employed, the Judge may authorise him/her to attend school or work, under the supervision of his/her guardian.
- If a child under arrest commits an offence while under house arrest, he/she may be placed under house arrest for a further five years, and may be committed to a rehabilitation centre until he/she turns 18;
- For every offence for which the penalty is banishment or imprisonment, the sentence must be converted to house arrest for a maximum of five years.
- If the offence is not one that calls for banishment or jail, the punishment given to the child shall be two thirds of the lightest punishment prescribed for the offence;
- Where monetary compensation is claimed, it shall be paid by the child's guardian.

The primary disposition used in juvenile cases is therefore house arrest. Children subject to house arrest are provided advice and counselling by the URC.

## 2. Conditions in Detention

Boys who have been sentenced by the Courts may be referred to the Education and Training Centre for Children (ETCC) on Maafushi Island, which caters to boys between the ages of 10 and under 18 who have been neglected, abused, display delinquent behaviour, disregard communal laws or committed crimes. Periodic review of placements by the URC staff determines whether the children are ready to return home. The ETCC is a closed centre providing rehabilitative services, non-formal education, life skills and vocational skills such as welding, carpentry sewing and art. Some of the children also attend the government schools on the island. Children also have the opportunity to be engaged in recreational sports such as soccer, volleyball badminton, table tennis and swimming. At present there are 70 children in the centre with four trained teachers, one assistant teacher and 42 domestic staff. None of the staff have undertaken any formal training on institutional care, child rights or child protection.<sup>279</sup> There is no similar institution for girls.

In 2000, a Reform Centre for boys opened at Himmafushi, and was intended to be a detention facility for juvenile boys who come into conflict with the law. However, the Reform Centre is not functional at present, and children who are sentenced to this centre end up facing house arrest. Children in general are not detained in jail. However, children who are a threat to themselves and to persons in the

274 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289(3)

275 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289 (3) (c)

276 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289 (15) and (18). Ministry of Justice Circular 4/88 (6.4.88) and Presidential Administrative Directive 1-F/21/88/62

277 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289 (20)

278 Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, Section 289 (15)

279 Email correspondence with UNICEF child protection staff



community are held in adult jails (separated from adults) as there are no special facilities for children. Children who are kept for investigation are kept in facilities in the main head quarter of the Maldives Police Service.<sup>280</sup>

### 3. Diversion and Alternative Sanctions

As noted above, police have the discretion to refer children to the Unit for the Rights of the Child for counselling and advice rather than initiate a criminal investigation, particularly with respect to minor offences. Following an initial assessment, the URC will decide whether ongoing counselling is to be offered. Additionally, parents may be summoned to the offices to sign documents agreeing to look after, and attempt correction of, the child and, if property were damaged or lost, to make compensation.<sup>281</sup>

Under the proposed Strategic Plan for the Reform of the Juvenile Justice System, police and prosecutors would be given broad discretionary powers to divert the majority of children in conflict with the law away from the formal justice system. Formal investigation and court proceedings would be used only for children who commit serious offences, who are repeat offenders, or after attempts at diversion have not been successful. All other children would be dealt with informally through police cautioning or referral to a Community Conference (family mediation). Referral to conferencing would be available at all three levels: by the police, prosecution and court.

Procedures and Guidelines for Family Conferencing have been developed jointly by the Juvenile Court, Ministry of Home Affairs, Attorney General's Office, and Police, with the support of UNICEF. These procedures have

been approved by the Attorney General's Office, and the Ministry of Justice is currently seeking to incorporate them into s. 289 of the Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003 until the proposed Juvenile Justice Act is drafted and enforced. The procedures promote diversion from the first point of contact with the police. A child who has committed an offence may be dealt with in one of the following ways:

- Informal, on-the-spot caution from the police, to be used for first-time offenders who commit minor offences;
- Formal caution from the police, delivered at the police station in the presence of the child's parents;
- Conditional Cautioning by the police, to be used for first-time offenders involved in more serious offences who admit the charges. The police hold a meeting with the child, parents and victim to discuss the conditions that have to be fulfilled in order to drop the charges, for example an apology, repair of the harm, or seek assistance to prevent re-offending. The conditions are included in a written contract that must be signed by the child and his/her parents;
- Referral by the prosecutor to a Community Conference. Community Conferences will be used for repeat offenders or children who commit more serious offences. Based largely on the New Zealand Family Group Conference Model, they are a form of group mediation where the child comes face-to-face with the victim to discuss the child's offending behaviour and develop an agreed plan for what the child should do to repair the harm to the victim (e.g. compensation, apology, work for the victim), to repair the harm to the community (community service work, volunteer work), and to address the underlying problems that contributed to the

280 Email correspondence with UNICEF-Maldives child protection staff

281 Initial Country Report submitted to the UN Committee on the Rights of the Child by the Government of Maldives pursuant to Article 44 of the CRC, CRC/C/Add.33, 5 August, 1996

offending behaviour (counselling, participation in educational programmes, detoxification treatment, anger management, etc);

- Referral for adjudication by the Juvenile Court, for more serious offences (murder, manslaughter, armed robbery or other serious crimes of violence), or where the child has already been to a community conference, or does not admit to the offence.

Where a child is referred to the Courts for a serious or repeat offence, the preference will still be for a community-based sentencing option, depending on the nature of the offence and the background of the child. It is anticipated that there will be a broad range of community-based dispositions available to Judges under the new juvenile justice legislation, including: good behaviour bonds; community-based supervision; community service work; fines; house arrest; suspended sentence; and jail sentence.<sup>282</sup> In deciding what disposition would be most appropriate, the Juvenile Court may refer the juvenile to a Sentencing Conference for recommendations.

#### 4. Monitoring, Coordination and Reporting

The Attorney General's Office, Juvenile Court, Ministry of Home Affairs, and Police have been working jointly on strategic planning for the reform of the juvenile justice system. The Strategic Plan for Reform of the Juvenile Justice System calls for the creation of an inter-ministerial Juvenile Justice Development Committee, and also proposes the creation of a Juvenile Justice Unit within the government agency responsible for welfare of young people. However, this committee has not yet been established.

The National Council for the Protection of the Rights of the Child has overall responsibility for monitoring the goals set by the National Plan of Action, and plays a central role in the provision of services for children in need of protection and children in conflict with the law.

In addition, the Unit for the Rights of the Child (URC) within the Ministry of Gender and Family also plays a monitoring role with respect to children's rights. The URC has established a central data base to collect and store information on cases referred. Information is received from the atolls on a three-monthly basis and entered into the central database, for purposes of monitoring and research..<sup>283</sup> However, Maldives has not yet developed comprehensive juvenile justice indicators, and the URC database currently includes only cases of juvenile offences under the following categories: i) house arrest; (ii) detained at Police Headquarters; (iii) Detention Centre; and (iv) Jail.<sup>284</sup>

Responsibility for monitoring conditions of children in detention falls to Juvenile Court Judges, who are required by the rules to visit the rehabilitation centre to observe the behaviour of minors under rehabilitation. In addition, the Human Rights Commission of Maldives has the power to visit and observe any authority, jail or any organisation under the government of Maldives and to submit necessary recommendations on reforms to be made to the functions, procedures and physical facilities for the protection of human rights in the country. The Commission is also empowered to investigate and take appropriate action in response to complaints of human rights violations, or when the Commission notices such an act is being performed. The Commission can also investigate any complaint received about a government authority violating human rights and advise the

282 Alder, Christine and Polk, Kenneth, Strategic Plan for Reform of the Juvenile Justice System, September 2004

283 Supplementary Report: Maldives to the UN Committee on the Rights of the Child, CRC/C/8/Add.37, 24 July 1997

284 Email correspondence with UNICEF-Maldives child protection staff

government on the steps to be taken, based on the findings.

## 5. Training and Capacity Building

Both UNICEF and UNDP have been working closely with the Maldivian government to create a child-friendly juvenile justice system. This has included the provision of technical assistance, as well as numerous workshops and training opportunities. Moreover, the Juvenile Court has trained a batch of trainers to train conferencing facilitators. One batch of facilitators has been trained in Alif Dhaal Atoll, and guidelines for facilitators of family conferences have been developed and translated into Dhivehi language. The second round of training of trainers who will later continue with the training of facilitators for family conference is under way. Two batches of facilitators will be trained in Laamu and Raa atolls before the end of 2005.

## 6. Public Awareness and Advocacy

Efforts have also been taken in recent years to raise general awareness on children's rights and child protection issues. The URC produces posters and booklets on children's rights, and

has a weekly radio programme on child related issues.<sup>285</sup> The Attorney General's Office and the Juvenile Court, with the support of UNICEF, have also raised legal awareness amongst young people through informational and training workshops for youth.

## 7. Conclusions and Recommendations

Although the existing legislative provisions governing the juvenile justice system in the Maldives do not fully embrace the CRC and UN Guidelines significant reform initiatives are underway. Unlike most other countries in the region, Maldives has placed diversion and restorative justice at the centre of its reform initiatives. The Strategic Plan for the Reform of the Juvenile Justice System is a fairly comprehensive plan for bringing the Maldives system in line with international standards and best practices. It is recommended that the implementation of the Plan be made a priority, and that clear mechanisms be put in place to monitor reform initiatives, and to document lessons learned to share with other countries in the region. The legislative framework for the system is an urgent issue. However, legislation alone cannot bring about the desired changes, as there are several other steps such as training and capacity building for the institutions that need to be taken to set up the new system.

285 Initial Country Report submitted to the UN Committee on the Rights of the Child by the Government of Maldives pursuant to Article 44 of the CRC, CRC/C/Add.33, 5 August, 1996



# Nepal

## 1. Juvenile Justice Legislation and Procedures

Nepal does not currently have a comprehensive juvenile justice system. Although a Children's Act<sup>286</sup> was introduced in 1992 to govern procedures for dealing with children in conflict with the law and children in need of protection, the implementation of the law has been fragmented. Children are not systematically separated from adults at all stages of the criminal proceedings, and juvenile justice is not yet treated as a fully separate and independent system.

However, in recent years, there has been significant impetus for juvenile justice reform, culminating in the appointment in 2004 of an inter-agency Juvenile Justice Technical Committee. The Committee has identified legislative reform as one of its priority activities, and has undertaken a consultation process to elicit stakeholder input.

### 1.1 Jurisdiction and Scope

The minimum age of criminal responsibility in Nepal is 10.<sup>287</sup> The UN Committee on the Rights of the Child has expressed concern that this age is too low and has recommended raising it to comply with international standards.<sup>288</sup>

The Children's Act, 1992 stipulates special procedures and protections for children in conflict with the law. However, the law defines a "child" as a person under the age of 16. Children between the ages of 16 and 18 are considered as adult. Furthermore, where a child is co-accused with an adult, he or she is subject to the regular adult procedures. Age determination is a challenge due to lack of documentary proof of age, and failure of police and Courts to conduct comprehensive inquiries.<sup>289</sup>

### 1.2 Powers of Arrest and Arrest Procedures

Police have broad powers to arrest a child on a variety of grounds. In addition to stipulated crimes, children may also be arrested under the Public (Offence and Punishment) Act, 2000 for public nuisance, disturbing the peace, and indecent behaviour. These offences are vaguely defined, leaving significant room for interpretation. Street children are reportedly especially vulnerable to arrest under this Act as part of tourism campaigns or in advance of political demonstrations.<sup>290</sup> Girls involved in commercial sex work are also subject to arrest for creating a public

286 2049/2/7(May 20, 1992)

287 Children's Act, Section 11

288 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

289 South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights, UNICEF ROSA, 2005; Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

290 Indra Lal Singh, Street Children and Juvenile Justice in Nepal, presented at the Eighth Innocenti Global Seminar on Juvenile Justice, 1997; Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

nuisance or conducting immoral and obscene acts.<sup>291</sup> In many cases, children are arrested and held for a period of time, without ever being formally charged, and without any record of their arrest.<sup>292</sup>

The Children's Act includes some important protections for children who have been subject to arrest. Police are prohibited from using handcuffs or fetters in the arrest of a child,<sup>293</sup> and interrogations must be conducted in the presence of the public prosecutor or government attorney.<sup>294</sup> In practice, however, these safeguards are not consistently respected, and investigation system is not child friendly.<sup>295</sup> Surveys of children in conflict with the law have revealed that many children are subject to abuse and maltreatment at the hands of the police, either during arrest or while in police custody.<sup>296</sup> Police reportedly either fail to record the child's age, or deliberately increase the age to avoid having to comply with additional procedural protections.<sup>297</sup>

In addition, children may spend days or even weeks in police custody before they are brought before the Court. By law, a suspect can only be detained by the police for 24 hours without judicial authority. However, this is not always respected in practice, and police custody monitoring has revealed that a large percentage of children are detained for longer than legally permitted. In addition, not all police stations have separate cells for children, resulting in their detention together with adults.<sup>298</sup>

To address these concerns, the government has recently announced the creation of juvenile police units in 10 pilot districts. It has also requested support from UNICEF to develop a training programme to sensitise the police on their new responsibilities (discussed in more detail below). In addition, the government has created separate cells for women and children, which have now been established in 16 districts.<sup>299</sup>

NGOs and other lawyers have also been playing an important role in safeguarding the rights of children in conflict with the law. There are a number of NGOs and other groups providing free legal assistance to children in custody, and this has been a very successful means of facilitating the release of children detained illegally or unnecessarily. A government-funded legal aid scheme is available, however application procedures are not particularly child friendly, and it is difficult for people in detention to comply with the procedures required to obtain a certificate.<sup>300</sup>

### 1.3 Bail and Pre-trial Detention

When a child under the age of 16 is brought before the Court, the Court has the option of detaining the child under judicial custody until the final decision in the case; placing the child in the care of his/her parents, guardian, relative, or a social organisation working in children's rights; or releasing the child on bail. Children who are held in judicial custody must be placed in a Juvenile Rehabilitation Home.<sup>301</sup>

291 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Report on Laws and Legal procedures Concerning the Commercial Sexual Exploitation of Children in Nepal, ECPAT 2004

292 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

293 Children's Act, Section 16

294 Children's Act, Section

295 Yubaraj Sangroula, The Roles Opportunities and Challenges of the Juvenile Justice System in Nepal: Need of a Diversion from the Criminal Justice System

296 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Indra Lal Singh, Street Children and Juvenile Justice in Nepal, presented at the Eighth Innocenti Global Seminar on Juvenile Justice, 1997

297 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002

298 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

299 Report on Regional Consultation on Violence Against Children in South Asia, May 2005

300 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

301 Children's Act, Section 50

The Act does not include a requirement that deprivation of liberty be used only as a measure of last resort, and children are regularly subject to detained for minor offences such as theft.<sup>302</sup> The provision permitting children to be released into the care of their parents is used in a limited number of cases.<sup>303</sup> In most cases, the Courts require a monetary bond for the child's release, resulting in some children who are granted bail remaining in pre-trial detention because they or their parents cannot afford to pay for their release.<sup>304</sup> Street children or children from poor families are particularly vulnerable to pre-trial detention because of this.<sup>305</sup>

There is currently only one specialised remand centre for children, located in the Kathmandu Valley. The majority of children placed in judicial custody are sent to adult prisons, where they are often mixed with adults due to lack of segregated facilities.<sup>306</sup> Even in Kathmandu, where the separate juvenile home is available, custody monitoring revealed that 39% of children subject to pre-trial detention were sent to prison during their pre-trial detention period.<sup>307</sup> Furthermore, all children between the ages of 16 and 18 are committed to normal prisons pending their trial, since they are not covered by the Children's Act. Conditions in detention tend to be overcrowded and unsanitary, and children remain in closed quarters for long hours with limited activities.<sup>308</sup>

While the law requires that the period of pre-trial detention cannot exceed the punishment

applicable to the alleged offence,<sup>309</sup> this is not always followed in practice. Due to Court backlogs and limited resources, children often spend lengthy periods of time in pre-trial detention waiting for their case to be finalised. In some cases it can take one or two years for a case to be completed, with lengthy intervals between hearings. Thus, for example, while the maximum penalty for simple theft (the most common offence committed by children in pre-trial detention), is 1.5 months imprisonment, it is not uncommon for children to remain subject to judicial custody for several months, or even years.<sup>310</sup>

#### 1.4 Juvenile Courts and Trial Procedures

The Children's Act calls for the creation of specialised Juvenile Courts, or the designation of a Juvenile Bench, in each district to hear all cases involving children in conflict with the law. The Juvenile Bench is comprised of a judge, and may also include a social worker, child specialist or child psychologist.<sup>311</sup> Proceedings are closed to the public, and should follow special procedures. The Court cannot proceed with or decide a juvenile case unless there is a legal practitioner to defend the child, and if the child does not have a lawyer, the Court must appoint one.<sup>312</sup> The child's name and address cannot be disclosed to the public.<sup>313</sup>

This Juvenile Court system has not yet been fully established. In practice, children continue to be tried in regular Court, often without legal representation. Hearings reportedly follow the

302 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002

303 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

304 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005; Baseline Survey on Juvenile Justice, Kathmandu School of Law and National Police Academy, 2002

305 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

306 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002; Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

307 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

308 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

309 Muluki Ain, no 118 and 119 of Chapter on Court Management

310 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002

311 Children's Act, Section 55

312 Children's Act, section 19

313 Children's Act, Section 49

same procedures as those for adults, and are often conducted in open courtrooms. Although the Nepalese Journalist Association and Nepal Press Council have developed a Code of Conduct prohibiting the media from revealing the names of child offenders, in practice this is not always observed.<sup>314</sup>

Another concern is that a large number of children in conflict with the law fall under authority of the District Administrative Office, rather than the Courts. The District Administrative office has quasi-judicial authority to impose sanctions, including imprisonment, in relation to offences under the Public Offence and Punishment Act. These decisions are taken informally, with no due process and no legal representation.<sup>315</sup> A study by KSL revealed that over 65% of juvenile cases are heard by the District Administration Office rather than the courts.<sup>316</sup> In its Concluding Observations in relation to Nepal's Country Report under the CRC, the UN Committee on the Rights of the Child expressed concern that a large proportion of juvenile cases are dealt with through these quasi-judicial proceedings.<sup>317</sup>

The government has also acknowledged the shortcomings in the trial process for children and has recently taken steps to improve the court system. In April 2004, the government approved the establishment of Child Benches in each district court to hear and decide cases related to children in conflict with the law and children in need of protection. In addition, new procedural rules have been drafted for the

Child Benches which address the whole atmosphere of the proceedings and promote minimum use of detention both pre- and post-trial. Some districts have already established Child Benches, however there is a shortage of social workers and child psychologists to sit on the Bench.

The Supreme Court has also taken a very proactive role in promoting the rights of children in conflict with the law. It has condemned the practice of handcuffing children in court and in transit, issuing an order compelling the removal of handcuffs from juveniles who are travelling from the police cell to the courtroom.<sup>318</sup> It has also interpreted Children Act as obligating the establishment of juvenile benches in all trial courts, mandating the establishment of a juvenile rehabilitation home and forbidding the incarceration of children with adults.<sup>319</sup>

### 1.5 Sentencing

The Children's Act stipulates different categories of sentences for children, depending on their age:

- Children between the ages of 10 and 14 who commit crimes punishable with a fine will be warned. If the crime calls for imprisonment, they may be imprisoned for a maximum period of six months.
- For children over the age of 14 and under 16, the sentence is half that of adults.<sup>320</sup>

In addition, the Court has discretion to impose a suspended sentence rather than a period of imprisonment. Children under suspended

314 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002

315 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

316 Baseline Survey on Juvenile Justice, Kathmandu School of Law and National Police Academy, 2002

317 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

318 Balkrishna Mainali v. Ministry of Home Affairs and others, writ No. 3505

319 In Keshav Khadka vs. Dhankutta District Court and others (writ no. 3685 of 2000), the Supreme Court held placement of minor in incarceration with adult as inappropriate. In Ashish Adhikari vs. His Majesty's Government and others (writ no. 3391 of 2000) the Supreme Court obliged the Government to set up the juvenile reform home. In Poda Tamang vs. Sindhupalchowk District Court and others (writ no. 4022 of 2001), the Supreme Court reiterated the need of setting up of a reform home, and issues a stricture that the Government had given no proper attention toward the rights and interests of the children. In Sarita Tamang vs. Illam District Court and others (writ no. 21 of 2001) the Supreme Court directed the Jail authority to release the Child as she was not put into a reform home

320 Children's Act, Section 12



sentence are placed in the custody of their family, an appropriate social organisation or the Juvenile Reform Home.<sup>321</sup>

Recently, the Prison Regulations were amended to introduce a community service scheme.<sup>322</sup> People serving terms of three years imprisonment or less can apply to a judicial authority for community service instead of prison. However, there remain considerable challenges to fully implementing this measure, including lack of social workers and other professionals to undertake assessments, supervision and follow-up.<sup>323</sup>

While the law requires the Court to take a juvenile's background into consideration when imposing sentence, there is no provision for social inquiry reports. At present, there are no professional social workers working with the Courts to prepare comprehensive case studies and recommend necessary interventions. Although the Courts are reportedly quite supportive of the role that social workers can play in Juvenile Court proceedings, there are no clear implementing guidelines on the functions of the social worker within the justice system, and as yet no systematic means for social workers to support the Courts in making appropriate dispositions.<sup>324</sup>

Furthermore, the Act provides a very limited range of sentencing options. There is no stated preference for non-custodial sentences, or an explicit requirement that deprivation of liberty be used only as a measure of last resort. In practice, suspended sentence is reportedly rarely used,<sup>325</sup> and the majority of juveniles are imprisoned. A survey of court cases by the Kathmandu School of Law showed that, of the

cases reviewed, 80% of children found guilty by the courts received imprisonment or imprisonment combined with a fine.

Another concern is the imprisonment of children for non-payment of fine. Under the Muluki Ain, where a person fails to pay a fine, the fine may be converted into a period of imprisonment, according to a set formula. The maximum period of imprisonment for non-payment is two years for a child. A survey conducted by the Kathmandu School of Law showed that, of the 60 children who were in prison as a result of a District Court verdict, 17 were for non-payment of fine.<sup>326</sup>

### 1.6 Public Security and Anti-terrorism Laws

Another major concern is the application of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) to children. The Ordinance permits the police and armed forces to apprehend and detain anyone, including a child of any age, for suspected Maoist affiliation. Children can be subject to preventative detention in military barracks for up to one year, without charge, trial or judicial oversight.

Human rights organisations have documented numerous cases of children being detained under TADO, and have also raised concerns about children being extra-judicially executed or killed in armed encounters with security forces.<sup>327</sup> In June 2005, the Committee on the Rights of the Child expressed its concern that government forces target under-18s suspected to be members of the armed groups, and that children are subject to arbitrary detention by security forces.<sup>328</sup>

321 Children's Act, section 50(2)

322 Prison (10th amendment) Regulations 2005: Community Service and Open Prisons

323 Juveniles in Detention: Police Custody Monitoring Report, UNICEF 2005

324 Assessment of Social Work Education and Practice in Nepal (Draft Report), UNICEF, 2005

325 Baseline Survey on Juvenile Justice, Kathmandu School of Law and National Police Academy, 2002

326 Baseline Survey on Juvenile Justice, Kathmandu School of Law and National Police Academy, 2002

327 Nepal: Maoist Conflict and its Impact on Children's Rights, Asian Centre for Human Rights May 2005; Nepal: Children Caught in the Conflict, Amnesty International, July 2005

328 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

## 2. Conditions in Detention

The Children's Act states that children subject to detention must be placed in a Children's Rehabilitation Home. The Act prohibits solitary confinement or placement of children with adults.<sup>329</sup> However, these provisions apply only to children under the age of 16 years of age. Children between the ages of 16 and 18 are detained in regular prisons together with adults.

Although the Children's Act is somewhat unclear on the point, the Supreme Court has recently ruled that placement in reformatory homes is mandatory and children may not be sent to jail.<sup>330</sup> In response, the Ministry of Women and Children has established a Reform Home in the Kathmandu valley with the capacity to accommodate 60 children.

However, due to the lack of separate facilities throughout the country, many children continue to be sent to regular detention centres, not all of which have separate cells for children. Children in detention are reportedly subjected to cruel punishment and are vulnerable to abuse at the hands of adult inmates.<sup>331</sup>

Conditions in detention centres are generally poor, especially in terms of overcrowding and sanitation. During a visit in September 2005, UN the Special Rapporteur on Torture expressed concern that several 14 year-old boys were detained together with adults.<sup>332</sup>

The Committee on the Rights of the Child has also recently expressed concern over the conditions in detention, in particular that children are in most cases not separated from adults, and that there is a lack of educational facilities in prisons.<sup>333</sup>

## 3. Diversion and Alternative Sentencing

There is no provision in the law for diversion, however in practice many children who commit minor crimes are handled locally without government involvement. Community mediation has been piloted in selected districts,<sup>334</sup> and there is a multitude of traditional, village-based and non-formal social justice systems throughout the country. However, concerns have been expressed that these processes do not fully respect the rights of children. In particular, there are indications that the caste system seriously hinders justice at the local level.<sup>335</sup>

For children who are processed through the formal system, there is a limited range of sentencing options available to judges, and no procedures or guidelines governing the support and services to be provided to children on suspended sentence. Nepal does not currently have a probation system, and the Act does not provide for any role for social workers or child welfare officers in providing community-based supervision and support services to children in conflict with the law.

Social work is a new field in Nepal, and there are currently few qualified professionals working in the child welfare system. Under the Children's Act, Central and District Child Welfare Boards have been established, and one or more child welfare officers is appointed in each district to provide services to children in need of protection.<sup>336</sup> However, they lack properly qualified and skilled staff, and have no clear mandate with respect to children in

329 Children's Act, section 15

330 Bablu Godia v. Banke District Court, writ no 3390 of the Year 2057

331 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002

332 UN Special Rapporteur on Torture, quoted in the Kathmandu Post, September 17, 2005

333 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

334 Prison Reform International website. A three-year community mediation project was piloted in three districts (2001-2003) with DFID funding. No information was available on the outcome

335 Juvenile Justice System in Nepal: A Glance in view of International Standards, Kathmandu School of Law and the Centre for Legal Research and Resource Development, 2002; Indra Lal Singh, Street Children and Juvenile Justice in Nepal, presented at the Eighth Innocenti Global Seminar on Juvenile Justice, 1997

336 Children's Act, Section 32

conflict with the law.<sup>337</sup> There is a lack of professional knowledge and skills in assessment, planning, and intervention to support the recovery and reintegration of children in conflict with the law.<sup>338</sup>

However, Nepal has a strong tradition of volunteerism, and there are numerous individual volunteers, community mobilisers, para-professional social workers and NGOs who could be mobilised to provide support and supervision to children on suspended sentence or subject to community service work orders.

#### 4. Coordination, Monitoring and Reporting

In early 2005, the Government constituted a Juvenile Justice Technical Committee under the Ministry of Women, Children and Social Welfare, for strengthening the juvenile justice system and juvenile court. The Committee includes high-level representatives from the Ministry of Women, Children and Social Welfare, the Supreme Court, the Ministry of Law, Justice and Parliamentary Affairs, the police, the Social Welfare Council, the Central Child Welfare Committee, and NGOs working in the field of children's rights. The committee has identified three priority areas for action: 1) juvenile law reforms; 2) juvenile court strengthening; and 3) human resources development. Positive initiatives are underway in all three areas.

Currently, responsibility for monitoring children's rights is generally undertaken by the Central Child Welfare Board, District Welfare Boards, District Child Protection Committees, and the Ministry of Women, Child and Social

Welfare, Department of Women Development. The UN Committee on the Rights of the Child has expressed concern about the lack of clear and well-structured coordination among these bodies, and has recommended the appointment of a single inter-ministerial and inter-sectoral mechanism for the coordination, monitoring and evaluation of all activities regarding the implementation of the CRC.<sup>339</sup>

In terms of monitoring children in institutions, the Child Welfare Boards and Child Welfare Officers are responsible for monitoring and regularly inspecting the Children's Rehabilitation Home and all other child care institutions.<sup>340</sup> However, this mandate does not include inspection of police lock-ups, prisons, and security forces barracks.

Independent monitoring of human rights is undertaken by the national Human Rights Commission. It has a Children's Desk that monitors the implementation of children's rights, however it does not have a mandate to receive and investigate individual complaints from children.<sup>341</sup>

Numerous NGOs have also been very active in monitoring the rights of children in conflict with the law and launching litigation on behalf of children in detention. With the support of UNICEF, one well known local NGO, the Advocacy Forum, has been conducting regular police custody monitoring and supporting the police to address concerns that have been detected. Every three months, Advocacy Forum brings police, judges and lawyers together in a forum to discuss the findings of their monitoring and make recommendations for improvement.<sup>342</sup>

337 Assessment of Social Work Education and Practice in Nepal (Draft Report), UNICEF, 2005

338 Assessment of Social Work Education and Practice in Nepal (Draft Report), UNICEF, 2005

339 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

340 Children's Act, section 44

341 UN Committee on the Rights of the Child Concluding Observations: Nepal, CRC/C/15/Add.261, 3 June 2005

342 Interview with staff from Advocacy Forum

## 5. Training and Capacity Building

As part of the ongoing juvenile justice reform activities, numerous capacity-building initiatives have been undertaken. Starting in 2002, the Kathmandu School of Law and Centre for Legal Research and Resource Development implemented an extensive Juvenile Justice Reform Project in collaboration with the Judges' Society, Government Attorney Society, Police Headquarters, and Child Workers in Nepal (CWIN). A comprehensive assessment of the juvenile justice system was undertaken, and a number of national and regional workshops and forums were held, including international conference on Juvenile Justice and Human Rights, sponsored by the Kathmandu School of Law and the Danish Institute for Human Rights. In addition, a manual entitled Procedural Guidelines for Actors of the Juvenile Justice System was developed jointly by Kathmandu School of Law and the Prosecutors' Society, in consultation with an inter-agency team of experts, and over 100 professionals from various agencies were trained.

In addition to the KSL project, numerous other capacity building initiatives have been promoted by various NGOs and INGOs. For example, SCF UK has partnered with CAP-CRON, a Kathmandu-based NGO to raise awareness amongst legal practitioners on the rights of children in conflict with the law and to advocate for legal reform. Case studies which demonstrate that the concerned authorities have not followed the legal provisions in the Children's Act were collected and documented, and CAP-CRON organised interactive discussions at the district level with justice sector professionals and children's NGOs. The discussions were helpful in making the authorities aware of the situation of children in conflict with the law, and to create pressure for changes in the juvenile justice system.

In addition, numerous training programmes on child right in general, and juvenile justice in particular, have been conducted for police, judges, lawyers, district level officials and other authorities. This training has generally been project-driven and conducted on an ad hoc basis, using various manuals developed with support from different NGOs. However, there has been limited strategic focus or sustainability.<sup>343</sup> There is currently no structured juvenile justice training provided as part of the regular curriculum for all judges, lawyers, prosecutors, police, prison staff and child welfare officers.

The police, with the support of UNICEF, are in the process of developing an innovative juvenile justice training programme for the officers who will be assigned to the newly-created juvenile police units. The manual is being developed by a task force made up of representatives from the police, the police training unit, legal human rights groups, and a UNICEF consultant. It is being designed to be practical, rather than theoretical, focusing on the core skills, procedures and tasks that police need to know to process a juvenile offender in a child-friendly way. Using case studies, the training programme will encourage the police trainees to discuss practical issues or barriers to following the special procedures, and to develop practical solutions. The manual will also include some innovative training approaches designed to change police attitudes towards children, and to motivate them to treat child offenders differently. As part of the manual development process, children in detention are being interviewed to collect their attitudes, perceptions and experiences with the police. The children's statements will be presented to police as part of the training programme through case studies and transcripts of group discussion. There are also plans to use a video-tape or theatre show to confront police with the children's perceptions

343 Interview with UNICEF-Nepal child protection staff

of them. The inclusion of some form of interaction between the children and the police, such as a football match between the police and street children, is also being considered.

In addition, the Ministry of Women, Children and Social Welfare, with the support of UNICEF, is also promoting sustainable training and capacity building in the field of social work. The aim is to develop social work as a profession, as well as providing enhanced para-professional skills to community workers who are already engaged in community work. Plans include a training programme for social work professionals and para-professionals, enhancement of undergraduate and graduate social work curriculum, and development of standards in social work education and practice. As part of this initiative, UNICEF sponsored a study tour to the Philippines for senior members of the Supreme Court, Ministry of Law & Justice, Ministry of Women, Children and Social Welfare, Central Child Welfare Board, Nepal Police, and NGO Federation to learn about the role and responsibility of professional social workers in juvenile justice system. A post-study trip workshop was held in September where the key role of professional social work in juvenile justice reform was reconfirmed

In addition to these juvenile-specific capacity building initiatives, the Government is also undertaking a broader Access to Justice reform initiative with the support of UNDP and others.

## 6. Conclusions and Recommendations

Nepal does not currently have a comprehensive juvenile justice system, and existing approaches rely heavily on institutionalisation. In recent years, significant impetus for juvenile justice reform has been built, and the national task force is well placed

to transform that momentum into sustainable juvenile justice reform. In addition to the General Recommendations of this report, the following recommendations are presented for consideration:

**Legislative Reform:** some progress has already been made in drafting amendments to the existing Children's Act. However, it is unclear how comprehensive these reforms will be. What is needed is a fundamental shift in the approach to children in conflict with the law, not merely minor amendments. In particular, the legislation should be grounded in more child-centred approaches to juvenile justice based on diversion, restorative justice and the primacy of community-based rehabilitation. In keeping with the CRC and international standards, juvenile justice protections should be extended to all children under the age of 18 years, and the minimum age of criminal responsibility should be raised to international standards.

**Strategic Reform Plan:** to date, numerous reform initiatives have been undertaken by government and non-government organisations, but they have tended to be ad hoc and uncoordinated. The Juvenile Justice Technical Committee has the potential to be an effective mechanism for inter-agency coordination and sector-wide reform planning. The Committee is well positioned to promote a more strategic and sustainable approach by developing a comprehensive reform strategy and plan of action. In addition, the effectiveness of the Committee could be enhanced through the development of a clear monitoring mechanism and the introduction of a set of juvenile justice indicators for the effective monitoring and evaluation of the situation of children in conflict with the law.

**Legislate and enforce restrictions on police arrests of children:** prohibit or restrict the authority of police to arrest and detain children under the Public Offences and Punishment

Act. Develop clear, binding police protocols for the arrest and detention of children and ensure that there are mechanisms in place to monitor police conduct and to prosecute violations.

**Promote diversion and restorative justice** approaches to resolving minor juvenile offences outside the formal justice system. Diversion procedures should be clearly entrenched in the new legislation, and given primacy over formal interventions for minor, first-time offenders. As a starting point, a survey of existing informal and traditional dispute resolution mechanisms could be undertaken, with a view to identifying good practices that could be promoted and replicated.

**Ensure Fair Trial and Due Process:** Eliminate the authority of District Administrative Offices to make determinations against children, or review and amend procedures to ensure children's right to a fair trial is fully guaranteed. Develop child friendly court procedures, and ensure that the legislation includes clear and binding time limits designed to ensure that the cases of children are completed expeditiously.

**Promote the development of community-based sentencing option:** This will require concrete steps both to limit systemic biases towards institutionalisation, and to strengthen non-custodial alternatives. Legislative amendments should include a broader range of sentencing alternatives, including admonishments, counselling, guidance and supervision orders, community service work, compensation, probation, home detention, etc. It should also clearly stipulate the role of social workers both in the preparation of social inquiry

reports for the Court, and in providing supervision and support services to children subject to non-custodial dispositions. Continued commitment to building the capacity of social welfare services and social work professionalism is key to developing sustainable community-based alternatives, as is promoting partnerships with local NGOs, community groups and volunteers.

**Limit the authority to impose detention,** both pre-trial and as a sentencing option. In particular, this should include: elimination of the requirement for monetary bonds for bailing children; prohibiting imprisonment of children for non-payment of fine; and providing the Court with broader discretion to determine the shortest appropriate period of imprisonment.

**Amend anti-terrorism laws:** Implement, as a matter of priority, the UN Committee on the Rights of the Child recommendations with respect the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and armed forces engagement with children, including:

- Amend or repeal the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) in light of international juvenile justice standards and norms
- Ensure that persons under 18 are not held accountable, detained or prosecuted under anti-terrorism laws;
- Clarify in the Rules of Engagement for the security forces that children and other civilians are never to be targeted and ensure that all security forces personnel are aware of this.

# Pakistan

## 1. Juvenile Justice Legislation

In 2000, Pakistan introduced the Juvenile Justice System Ordinance (JJSO),<sup>344</sup> with the intention of establishing a comprehensive, country-wide juvenile justice system. Prior to that, only two provinces— Sindh and Punjab - had separate juvenile justice legislation.<sup>345</sup> The JJSO overrides the provincial laws to the extent that they conflict.

All provinces have now established rules under the new JJSO and are in the process of implementing them. In addition, ongoing law reform and review is underway to further improve the juvenile justice system. A new national Child Protection Law has been drafted, which would address both children in conflict with the law and children in need of protection.

In December 2004, the Lahore High Court struck down the JJSO on the grounds that it was “impracticable” and “unconstitutional”. The judgment stated that the ban on the death penalty for juveniles led to children being used by adults to carry out capital offences. The court also commented that the choice of 18 for the definition of a juvenile was as “arbitrary.” It opined that the socio-economic conditions, “hot climate and exotic and spicy food” in Pakistan all contribute towards a “speedy physical growth and an accelerated maturity of understanding of a child in our society.” This decision is currently under appeal.

### 1.1 Scope and Jurisdiction

Currently, the minimum age for criminal responsibility is seven, though children between the ages of seven and 12 are only held criminally responsible if determined by the Court to have sufficient maturity to understand the consequences of their actions.<sup>346</sup> The UN Committee on the Rights of the Child has expressed concern that this age is far too low.<sup>347</sup>

The JJSO extends juvenile justice protections to all children in conflict with the law who were under the age of 18 at the time the offence was committed (previously 16 under provincial laws).<sup>348</sup> However, the Ordinance does not yet apply to the Federally Administered Tribal Areas (FATA) or the Provincially Administered Tribal Areas (PATA) due to provisions in the Constitution of Pakistan,<sup>349</sup> which states that no act of Parliament shall apply to these areas until it is directed as such by the President of

344 Ordinance No. XXII of 2000

345 Punjab Youthful Offenders Act 1952; Sindh Children’s Act 1955

346 Penal Code, Section 83

347 Concluding Observations of the UN Committee on the Rights of the Child: Pakistan, CRC/C/15/Add.217, 27 October 2003

348 JJSO, Section 2

349 Article 247(3)

Pakistan. The President has yet to make this declaration, and as a result children in these two areas do not have the protection of the JJSO.

Another concern is that the Hudood Laws of 1979, which applies to specific offences including rape, adultery, use of alcohol and drugs, theft, armed robbery and slander, overrides both the Penal Code and the JJSO, including the minimum age provisions. The Hudood Laws include strict fixed punishments for certain crimes once adequate evidence is obtained. These fixed punishments – known as hadd – include stoning to death for fornication, judicial amputation for theft and armed robbery, and flogging for consumption of intoxicants. Although the hadd punishments may not be imposed on individuals convicted of crimes as children, the definition of a child in Hudood law is simply “a person who has not attained puberty.” Thus, a girl of 12 who has attained puberty is legally adult, and could be sentenced to hadd punishment under the Hudood laws. This is a matter for concern, as the JJSO does not legally override the Hudood Laws.

## 1.2 Powers of Arrest and Arrest Procedures

The JJSO contains some new and important protections for children who have been subject to arrest. Children cannot be arrested under the provisions of the Criminal Procedure Code permitting preventative detention. The use of handcuffs and fetters is prohibited, unless there is reasonable apprehension that the child may escape from custody.<sup>350</sup> The officer in charge of the police station where the child is detained must as soon as possible inform the child’s guardian, if s/he can be found, of the child’s arrest and the date/time/location of the

Juvenile Court before which the child will be produced. The officer must also inform a probation officer to enable him/her to obtain information about the juvenile’s background and circumstances.<sup>351</sup> Notably, the Ordinance does not explicitly give either the child’s guardian or the probation officer the right to be present when the child is being questioned by the police.

In practice, these provisions have yet to be fully enforced. There are continued reports of police abuse of children, and of the denial of access to parents, probation officers and legal representation. A situational analysis undertaken by the NCCWD in 2001 revealed that 80% of the juveniles interviewed had been handcuffed on arrest, and physical abuse by police during arrest was common. Sixty- Eight percent said that police forced them to confess guilt.<sup>352</sup> Furthermore, police reportedly use false arrests to extort bribes from children and their families. Children from families who can pay bribes are released, while almost all of those that remain accused, arrested and detained are poor children and street children. In many cases, after undergoing investigation and beating by police, children are released without being charged or produced before a magistrates.<sup>353</sup>

The JJSO states that a child who is accused of non-bailable offence must be brought before the Juvenile Court within 24 hours from arrest.<sup>354</sup> However, in practice, this time limit is not always met.<sup>355</sup> Children interviewed as part of the NCCWD study spent, on average, 17 days in police lock-up, ranging from one day to five months, and 30% said they were not allowed visitors.<sup>356</sup> While in police lock-up, children are regularly kept with adults and have to remain in closed quarters up to 24 hours per

350 JJSO, section 12(b)

351 JJSO, section 10

352 Situational Analysis of Juveniles in Jail, NCCWD, 2001

353 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

354 JJSO, section 10(2)

355 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

356 Situational Analysis of Juveniles in Jail, NCCWD, 2001



day. Conditions are unhygienic and it is uncommon for lock-ups to provide bedding or blankets.<sup>357</sup> The JJSO does not contain any requirement that children be separated from adults whenever they are in custody or detention.

### 1.3 Bail and Pre-trial detention

The JJSO includes new protections designed to reduce the pre-trial detention of children. Children accused of a “bailable” offence must be released by the Juvenile Court, with or without surety, unless there are reasonable grounds for believing that the release of the child will “bring him into association with a criminal or expose the child to danger.” If a child charged with a bailable offence is not released on bail, the Court must place the child under the custody of a Probation Officer or a suitable person or institution, but shall not under any circumstances be kept in a police station or jail. If the child’s parents are not present, the Court must direct that they be traced, and once located, the child can be immediately released on bail. For children under 15, the definition of a “bailable” offence has been extended to include all offences punishable with imprisonment for less than 10 years.<sup>358</sup>

The JJSO also includes provisions to limit the length of time a child may spend in pre-trial detention waiting for the trial to be completed, depending on the seriousness of the charges.<sup>359</sup> A child who is detained must be released on bail:

- for offences punishable by death, if the trial is not completed within one year;
- for offences punishable by life imprisonment, if the trial is not completed within six months;

- for any other offence, if the trial is not completed in four months.

However, an exception is made to these time limits permitting the court to refuse bail if the child is over 15 and is involved in an offence which is “serious, heinous, gruesome, brutal, sensational in character or shocking to public morality” or s/he is a previous convict of an offence punishable by death or life imprisonment.

These provisions have the potential to significantly reduce the number of children on pre-trial detention and the length of time they spend there, if liberally interpreted and applied. However, the authority to refuse bail on the grounds that the child might be brought “into association with a criminal” or exposed to danger is very broad and does not promote minimal use. The one-year period of pre-trial detention for some offences is also excessive by international standards.

Concerns have also been raised about the extent to which these provisions are being implemented in practice. The authority to release on bail children who have committed minor crimes is highly under-utilised due to a lack of awareness of this provision, a lack of faith in non-custodial measures, and poor communication between judges, police and probation officers.<sup>360</sup> When bail is offered with surety, it is nearly always far beyond the means of children from poor families and street children.<sup>361</sup> According to Amnesty International’s recent investigation, the average bail is set between 40,000-50,000 rupees (\$666-\$833). The average daily wage of a labourer is 100 rupees.<sup>362</sup> Studies have shown that on average, between 75 and 80% of

357 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

358 JJSO, section 10

359 JJSO, section 10(7)

360 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004.

361 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999; Situational Analysis of Juveniles in Jail, NCCWD, 2001

362 Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003

children in detention are awaiting trial, even though the majority qualify for bail.<sup>363</sup> Most children in detention are from poor families, and many are held for minor, property-related offences due to their family's inability to pay bail.<sup>364</sup> Since conviction rates are very low, most are eventually found to be not guilty by the Courts.<sup>365</sup>

Concern has also been expressed that the time limits for completion of children's cases are not being met due to court backlogs, procedural delays, and the failure of police and judges to prioritise children's cases. While the issue of Court delays has been repeatedly examined, progress has been slow in improving the situation.<sup>366</sup> Many children remain in detention past the legal time limits, and for periods that exceed the punishment for the crimes they are alleged to have committed.<sup>367</sup>

There is no explicit requirement in the JJSO that children who are detained pre-trial must be kept separate from adult detainees. There is currently only one separate juvenile remand home in the country, located in Karachi, where living conditions are unsatisfactory.<sup>368</sup> A large number of children are remanded to adult jails, where they are often not separated from adults and subject to abuse.

#### 1.4 Juvenile Court and Trial Proceedings

The JJSO requires Provincial governments to establish one or more Juvenile Courts, or to designate a Court of Sessions or Judicial Magistrate to exercise the power of the

Juvenile Court.<sup>369</sup> The Juvenile Court must not take up any other cases on the same day as a juvenile case. The proceedings must be closed to the public, and the media is prohibited from publishing any information that may identify the child unless the Juvenile Court specifically authorises it.<sup>370</sup> Every child who is accused of an offence has the right to legal assistance at the expense of the State.

The JJSO does not provide any guidance as to the conduct of Juvenile Court proceedings, or the presence of the child's parents. Provisions permitting the Court to dispense with attendance of the child when satisfied that "attendance of the child is not essential for the purpose of the trial" are not consistent with the child's right under the CRC to participate in any judicial decisions that affect him/her, and to due process.

To date, separate Juvenile Courts have only been established in Lahore and Karachi. All other provinces have conferred special powers to hear juvenile cases on senior judicial magistrates of the regular courts. However, due to Court backlogs and heavy caseloads, many of these judges are also assigned adult cases. Cases involving children are not systematically separated and scheduled differently than those involving adults, resulting in children's cases being tried on the same day, in an adult environment.<sup>371</sup> Children are mixed with adults both while they are being transported from detention to Court, and while waiting in the Court holding cells. In some areas they are brought into court in chains or tied together with a rope.<sup>372</sup>

363 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

364 Situational Analysis of Juveniles in Jail, NCCWD, 2001; Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003

365 Rights of the Child in Pakistan: Report on the Implementation of the Convention on the Rights of the Child by Pakistan, World Organisation Against Torture, 2003

366 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

367 Situational Analysis of Juveniles in Jail, NCCWD, 2001; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

368 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

369 JJSO Section 4

370 JJSO, sections 6 and 8

371 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

372 Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003

### 1.4 Sentencing

The JJSO states that a probation officer must assist the Juvenile Court by making a report about the child's character and background.<sup>373</sup>

The Ordinance also includes some new sentencing powers, designed to give Courts alternatives to imprisonment. The Court may:

- release the child on probation under the care of a parent, guardian or any suitable person executing a bond with/out surety;
- place the child in a borstal institution until 18 years or for the period of imprisonment stipulated for the offence, whichever is earlier;
- reduce period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation is unnecessary.<sup>374</sup>

However, these sanctions are merely optional alternatives to the adult penalties stipulated under the Penal Code, and the Court may still in its discretion impose an adult prison sentence on the child, including life imprisonment. There is no statement that detention shall be used only as a measure of last resort, for the shortest appropriate period. On the contrary, the presumption is that children sent to borstal institutions will remain there until they turn 18, unless the Court considers a lesser period appropriate.

Importantly, for the first time the JJSO prohibits the death penalty from being imposed on children under the age of 18.<sup>375</sup> However, as noted above, since the JJSO does not apply to federally administered territories, children are still subject to the death penalty in those areas. The death sentence continues to be used as a sentencing option for children; in July 2002, two boys were convicted and put on death row having been sentenced to capital punishment

by a court in the Swat district (PATA) of Pakistan.<sup>376</sup>

Another concern, as noted above, is that the Hudood Laws over-ride the JJSO and therefore children may be subject to hadd punishments. Hadd punishments are fixed, and include stoning to death for fornication, judicial amputation for theft and armed robbery and whipping for consumption of intoxicants.

Although the hadd punishments may not be imposed on individuals convicted of crimes as children, the definition of a child in Hudood law is simply "a person who has not attained puberty." Girls are therefore particularly vulnerable since they generally reach puberty earlier than boys, and generally below the age of 18. The UN Committee on the Rights of the Child has expressed concern that the Zina and Hudood Ordinances are in conflict with the principles and provisions of the CRC.<sup>377</sup>

### 1.5 Public Security/Anti-Terrorism Legislation

The Anti-Terrorism Act of 1997, amended in 2002, provides police with wide-ranging powers to arrest suspects of terrorism and establishes special courts to try cases speedily. The anti-terrorism law over-rides all other national laws, including the JJSO. Therefore, children of all ages (including children below the minimum age of criminal responsibility) can be tried by these special courts and sentenced to death.

## 2. Conditions in Detention

The JJSO allows for the establishment of "Borstal Institutions" where child offenders may be detained and provided education and training. The use of handcuffs, fetters and

373 JJSO, Section 9

374 JJSO, section 11

375 JJSO, section 12

376 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

377 Concluding Observations of the UN Committee on the Rights of the Child: Pakistan, CRC/C/15/Add.217, 27 October 2003

corporal punishment against children in institutions is explicitly prohibited, and children may not be required to do labour.

To date, two juvenile borstal institutions or training schools have been established – the Punjab Borstal Institution in Bahawalpur and the Youth Offender Industrial Schools in Karachi. Both are for boys, and there are no separate borstal institutions for girls. The Punjab Borstal Institution is governed by Punjab Borstal Schools Act and Rules, which require the schools to have adequate accommodation; proper sanitation; water supply; food and clothing; means to provide industrial training; school facilities (general education and trades); and a hospital or infirmary. Children are to follow a strict daily regime of education, vocational training and work. Visits with parents are strictly regulated, once per month for 20 minutes, and are considered a privilege that may be withdrawn as punishment.

Children who are not sent to these two institutions are detained in adult prisons. The JJSO does not require that children be separated from adults in all places of detention. However, the Prison Act and Prison Rules require the separation of male juveniles under 18 from adults. Girls must be separated from male detainees, but there is no requirement that they be separated from adult females. Many jails have designated separate juvenile wards or separate juvenile cells to promote separation between adults and children. For example, the Frontier Province has a separate Juvenile Circle in the Central Prison (Peshawar), the prison in Haripur has a juvenile camp located in Nathiagali, and in Balochistan, the juveniles are housed separately in the Central Prison in Machh.<sup>378</sup>

The Prison Rules include several special provisions for the treatment of children under the age of 18 who are in institutions. Juveniles should be placed in a separate juvenile ward, or if there is no such ward, they should be confined in a separate cell at night. They must receive careful individual attention, and treatment should include sustained work; physical, mental and moral training with a view to teaching them self-discipline. Juveniles should be kept out of sight of adult prisoners as much as possible, with no opportunity for contact or communication. Every inmate sentenced to more than one year must be provided an education course consisting of reading, writing and arithmetic for two hours per day.<sup>379</sup> When a juvenile prisoner is due for release and requires assistance to settle in life, the Superintendent must send an initiation to the Secretary of the District Committee of the Prisoner's Welfare Society one month prior to release.<sup>380</sup>

Pakistan's high number of children in detention and the poor conditions in which they are held have long been issues of concern. While there have been some positive developments in recent years that have helped to improve detention facilities, the conditions for children in both the Borstal Institutions and the adult prisons raise several concerns:

- Overcrowding is common to all prisons, including the borstals, and the vast majority of facilities are stretched far beyond their capacities.<sup>381</sup>
- At the Borstal Jail in Bahawalpur, health, education, recreation, drinking water and sanitation facilities remain poor. Due to the lack of alternative custodial institutions across the region, many children are admitted to Bahawalpur Borstal from far-flung villages, often making it impossible

378 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

379 Prison Rules 294 - 299

380 Rule 304

381 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

for their families to maintain contact with them because of the distance.<sup>382</sup>

- Conditions in adult prisons are also poor, with insufficient space for sleeping, inadequate clothing for cold weather, insufficient and poor quality food; poor sanitary and washing conditions, and limited access to medical treatment.<sup>383</sup>
- Heavy overcrowding in the adult prisons has made the separation of child offenders and adult prisoners in detention increasingly difficult.<sup>384</sup>
- Sexual abuse of juvenile inmates remains a significant problem. A 1994 medical report conducted on juvenile inmates of the Lahore District Jail revealed that 80% of the children were sexually abused, most of them repeatedly.<sup>385</sup>
- Although jail rules provide for education, skills development and sports facilities for prisoners, these are seldom implemented. The daily routine is dull and monotonous.<sup>386</sup>
- Children in borstals and prisons have little or no contact with the outside world, and family visits are tightly restricted.
- Staff lack the necessary specialised training and skills to handle juvenile prisoners, and most had limited knowledge of the CRC and JJSO.<sup>387</sup>
- The Prison Rules do not have separate provisions governing the use of force and discipline against juveniles. Although prohibited by the JJSO, the practice of imposing corporal punishment on children is widespread.<sup>388</sup> Other cruel and degrading punishments such as food

deprivation, being forced to stand in the hot sun or maintain uncomfortable positions, solitary confinement and manual labour assignments are also used.<sup>389</sup>

Some jails still use fetters against children.<sup>390</sup>

- It is difficult for children to lodge complaints about their treatment in prisons. Complaints can be blocked, take months to resolve, and may result in retaliation by jail staff.<sup>391</sup>

In its Concluding Observations on Pakistan's Second Periodic Report under the CRC, the UN Committee on the Rights of the Child expressed its deep concern at the high number of children in prisons, who are detained in poor conditions, often together with adult offenders and thus vulnerable to abuse and ill-treatment.<sup>392</sup>

### 3. Diversion and Alternative Sentencing

The JJSO does not make any provisions for diversion of children from the formal system through police cautioning, mediation, or some other form of informal dispute resolution.

For children who are processed through the formal court system, the number of alternative, non-custodial sentencing options is quite limited. The main alternative is probation, which is governed by the Probation of Offenders Ordinance of 1960. The Ordinance gives the Court wide discretion to add

382 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

383 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

384 Tufail, Feeny and Wernham, Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004

385 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

386 Situational Analysis of Juveniles in Jail, NCCWD, 2001; Cries Unheard: Juvenile Justice in Pakistan, 1999

387 Situational Analysis of Juveniles in Jail, NCCWD, 2001; Cries Unheard: Juvenile Justice in Pakistan, 1999

388 Tufail, Feeny and Wernham Street Children and Juvenile Justice in Pakistan, AMAL and Consortium on Street Children, 2004; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

389 Prison Bound: the Denial of Juvenile Justice in Pakistan, Human Rights Watch, 1999; Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

390 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

391 Cries Unheard: Juvenile Justice in Pakistan, SPARC, 1999

392 Concluding Observations of the UN Committee on the Rights of the Child: Pakistan, CRC/C/15/Add.217, 27 October 2003

conditions necessary to prevent re-offending and for rehabilitating offenders as an honest, industrious and law abiding citizen. In total, there are 70 probation officers throughout the country and 22 parole officers. Fifty-three of the probation officers are in Punjab and three in Sindh.<sup>393</sup> These numbers are insufficient to provide meaningful supervision and case management services to children in conflict with the law.

#### 4. Coordination, Monitoring and Reporting

The National Commission for Child Welfare and Development (NCCWD), established in 1980 to coordinate the implementation of children's rights, has made the rights of children in conflict with the law a priority. The Council has six national expert committees on six priority areas, including juvenile justice, to review existing legislation and policies, identify gaps, suggest amendments or propose new legislation, and prepare programme plans to implement the CRC.<sup>394</sup>

The NCCWD is also responsible for monitoring the implementation of children's rights, and has recently made monitoring in the area of child protection a priority. Significant progress has been made towards the introduction of comprehensive juvenile justice indicators. In 2004, the pre-testing of the Global Juvenile Justice Indicators was undertaken in Lahore and Karachi to understand and plan for strengthening juvenile justice in the country. A District Based Monitoring system is being set up and NCCWD is in the process of identifying child protection indicators on the basis of which information will be collected in 136 districts.<sup>395</sup>

However, the lack of clear and effective mechanism to regularly monitor the condition of children in detention is of concern. In some areas, judges and magistrates have been very proactive in visiting the juvenile section of the jails monthly or weekly to release children charged with petty offences.<sup>396</sup> Some NGOs have established relationships with prisons and other institutions, and conduct monitoring as well as education and other programmes. Pakistan's independent National Human Rights Commission conducts some prison monitoring, receives complaints regarding prisoner abuse, and also documents case of police abuses. However, there is no systematic, regular inspections of all places where children may be detained.

In Sindh province, legislation has been drafted to create a new Child Protection Authority. The new body will have authority to monitor and coordinate services for children in need of protection and children in conflict with the law, and to monitor enforcement of laws and law enforcers.<sup>397</sup>

#### 5. Training and Capacity Building

Currently there is no institutionalised and systematic training on juvenile justice incorporated into the core curriculum at police academies, the Judicial Academy, jail staff training centres, and law schools.<sup>398</sup>

However, since the introduction of the JJSO, a significant number of training and capacity-building initiatives have been undertaken to raise awareness on the new provisions and to sensitise judges, magistrates, police, probation

393 Telephone Interview with UNICEF-Pakistan child protection staff

394 Report on Regional Consultation on Violence Against Children in South Asia, Pakistan, May 2005

395 Report on Regional Consultation on Violence Against Children in South Asia, Pakistan, May 2005

396 Pakistan: Denial of Basic Rights for Child Prisoners, Amnesty International, 2003

397 Telephone interview with UNICEF-Pakistan child protection staff

398 Telephone interview with UNICEF-Pakistan child protection staff

officers, welfare officers, jail staff and other officials on the rights of children in conflict with the law.

The Federal Judicial Academy, with the support of UNICEF, has conducted juvenile justice training for judges and magistrates throughout the country to familiarise them with the JJSO and international juvenile justice standards. In addition, UNICEF has supported a capacity-building initiative undertaken by the Sindh Journalists Network for major stakeholders in the juvenile justice system including judiciary, police, prison, probation, parole, social welfare departments and NGOs. Three-day training workshops were conducted in six districts for officials from different government departments. The workshops included a jail visit, and at the end of the session participants were asked to discuss the problems in the juvenile justice system and prepare suggestions to overcome these constraints. A comprehensive set of recommendations emerged with input from all stakeholders, including civil society.

In addition, the Consortium for Street Children, in partnership with AMAL, implemented a project on street children and juvenile justice. In 2003, a major assessment of the situation of street children was undertaken, which involved several consultative workshops with national and international organizations, ministries and law enforcing agencies, and street children. The objectives of these consultative workshops included raising awareness and promoting a better understanding of the rights, laws, policies and programmes for street children in the juvenile justice system, and developing realistic and systematic plans to address the issues. The key findings of the consultative workshops were then discussed in a national conference in Islamabad attended by more than 60 participants from different

governmental ministries, NGOs and INGOs. This has helped to guide reform initiatives being undertaken on the various provinces.<sup>399</sup>

In addition to these juvenile justice-specific reforms, Pakistan is also in the process of implementing broader reforms to the justice system, including Justice Reform and Police Reform initiatives being supported by UNDP and the Asian Development Bank.

These capacity-building initiatives have reportedly begun to show some results in terms of overall awareness and application of the JJSO. However, more sustainable, systematic training and sensitisation will be needed to affect real change in the attitudes and behaviours of judges, lawyers and police.<sup>400</sup>

## 6. Public Awareness and Advocacy

Pakistan has a vibrant NGO community, including several child rights NGOs such as SPARC and AMAL that have been actively raising awareness on the rights of children in conflict with the law and campaigning for improvements to the juvenile justice system. Many NGOs, including SPARC, Lawyers for Human Rights and Legal Action, and Law Associates Legal Aid Cell (AGHS), also provide legal aid to children and promote public interest litigation on children's rights issues.

## 7. Conclusions and Recommendations

While the JJSO has introduced some new important protections for children in conflict with the law, it does not provide a particularly sound basis for the development of a child-

399 Tufail, Feeny and Wernham, *Street Children and Juvenile Justice in Pakistan*, AMAL and Consortium on Street Children, 2004  
400 Telephone interview with UNICEF-Pakistan child protection staff

centres, rights-based juvenile justice system. As with the provincial children's legislation before it, the JJSO draws heavily from outdated British legislation and places primacy on formal court structures and institutional-based responses to child offending. Many of the hallmarks of modern juvenile justice legislation – diversion, mediation, restorative justice, explicit preference for community-based rehabilitation, community and NGO involvement – are lacking. There is a heavy reliance on institutionalisation, both at the pre-trial stage and as a sentencing option, and the failure to detain children separately from adults is cause for grave concern. The minimum age of criminal responsibility remains unacceptably low, and juvenile justice protections, including the prohibition on capital punishment, do not extend to children who are in federally administered territories, or who are charged under the Hudood Laws or anti-terrorism legislation.

In addition to the General Recommendations in this report, the following is recommended:

**Strategic Reform Plan:** There is clear commitment both from government and non-government agencies to improve the juvenile justice system. However, many initiatives seem to be disjointed or ad hoc, and it is unclear whether the momentum created to date will translate into sustainable and systemic changes to the juvenile justice system. Greater coordination could be promoted through the establishment of a high-level inter-agency task force to coordinate juvenile justice reforms, and through the drafting of comprehensive reform strategies at both the national and provincial levels.

**Legislative/policy Reform:** As noted above, there are some significant gaps in the JJSO that need to be addressed through legislative reform. These issues go beyond piecemeal or minor adjustments, and require a fundamental shift in the conceptual approach to children in

conflict with the law. It is recommended that comprehensive new juvenile justice legislation be developed that is grounded in a child-centred, restorative justice approach, that represents a complete and binding code for the treatment of all children in conflict with the law, and that overrides all other legislative provisions (including Hudood and anti-terrorism laws). This should be undertaken through a consultative process involving all relevant stakeholders, including children. It may also require advocacy and sensitisation of key justice sector officials and decision-makers to promote acceptance of more child-centred approaches. For example, research on discernment, similar to that conducted in the Philippines (see Annex 2: Selected Models and Promising Practices of this Report) may be a helpful tool in promoting acceptance of a higher age of criminal responsibility.

Currently, a draft national Child Protection Law is being prepared which addresses both children in need of protection and children in conflict with the law. It is recommended that any new legislative and policy development should draw a clear distinction between these two categories of children, either through separate pieces of legislation, or at the very least two clearly delineated Parts of the same legislation.

**Develop child-friendly court procedures.**

Children's right to be present and to participate meaningfully at all stages of the proceedings should be respected. The maximum period that a child can be held in pre-trial detention should be shortened, and mechanisms should be in place to ensure that these limits are strictly enforced. Children should be exempt from prosecution under the Anti-Terrorism Act of 1997.

**Promote community-based sentencing alternatives.**

Legislative amendments should introduce a broader range of sentencing options, including admonishments, community



service work, guidance and supervision orders, compensation, suspended sentence, etc.

Concrete steps will also be necessary to strengthen community-based mechanisms for providing supervision and support services to child offenders. In light of the limited number and capacity of probation officers and social welfare services, the most effective strategy for building community-based rehabilitation programmes will likely be through partnership-building with NGOs, community groups and volunteers. Pakistan has a very active NGO community, including several that specialise in children's rights and provide innovative programmes for street children and other children in need of protection. These programmes could be tapped to provide effective alternatives to institutionalisation for children in conflict with the law. This would require a mapping of existing programmes and services, as well as the development of clear

mechanisms and procedures for assessment, referral, monitoring and reporting.

**Separation of children in all places of detention.** The high rates of abuse and sexual violence being perpetrated against children in detention is cause for concern, and immediate steps should be taken in all detention facilities to provide, at minimum, separate cells or separate wards for children.

**Limit authority to impose detention,** both pre-trial and as a sentencing option. This should include: elimination of the monetary bond requirement for children's bail; elimination of set terms that permit the imprisonment of a child until the age of 18, broad discretion for judges to impose the most appropriate period of imprisonment, and a prohibition on life imprisonment and the death penalty under all circumstances.



# Sri Lanka

## 1. Juvenile Justice Legislation and Procedures

Sri Lanka has had separate legislation governing the administration of juvenile justice since 1939. Children under the age of 16 who are in conflict with the law should be dealt with under the Children and Young Person's Ordinance 1939 (which also deals with children in need of protection), however the law has never been fully implemented throughout the country. As yet, there is no comprehensive justice system for children in conflict with the law, and children are not systematically separated from adults at all stages of the legal proceedings.

In recent years, there has been growing consensus on the need for reform, and several initiatives are already planned or underway to improve the juvenile justice system. While initial focus appears to have been on child victims and children in need of protection, there is increasing emphasis on the rights of children in conflict with the law. Recognising that the CYPO is out of date and fails in many respects to meet the standards of the CRC, the National Child Protection Authority has taken a leadership role in the process of reviewing and revising the legislation.

### 1.1 Scope and Jurisdiction

Currently, the minimum age for criminal responsibility in Sri Lanka is eight years of age. For children between the ages of eight and 12 years of age, whether they are criminally responsible depends on the Court's assessment of their capacity to understand the consequences of their actions.<sup>401</sup> The UN Committee on the Rights of the Child has reiterated its serious concern that this age is too low.<sup>402</sup> The NCPA's draft Juvenile Justice Procedures Code proposes raising the minimum age of criminal responsibility to 10 years of age, however this is still well below the recommended international standard.<sup>403</sup>

The UN Committee on the Rights of the Child has also expressed concern that the current juvenile justice system does not embrace all alleged offenders under the age of 18. The CYPO defines a "child" as a person under 14 years, and a "young person" as a person between 14 and under 16 years of age. The jurisdiction of the Juvenile Court, and the special protection afforded to juvenile offenders, do not apply to:

- Children between the ages of 16 and 18, who are not covered by the CPYO at all and are subject to regular adult criminal proceedings;
- Children eight years of age or older charged with a "scheduled" offence (murder, culpable homicide, attempted murder, and robbery), who are excluded from the

401 Penal Code, Section

402 UN Committee on the Rights of the Child, Concluding Observations: Sri Lanka, CRC/C/15/Add.207, 2 July 2003

403 South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's rights, UNICEF 2005

CPYO and are subject to regular adult criminal proceedings and adult penalties (except the death penalty);

- Children who have been accused of committing an offence jointly with an adult, who are to be tried in adult court.

In addition, the CPYO does not clearly indicate whether these ages refer to the child's age at the time he/she committed the offence, at the time he/she was formally charged with the offence, or at the time of trial.

## 1.2 Powers of Arrest and Arrest Procedures

Police have broad powers to arrest children in conflict with the law on a variety of grounds. In addition to the offences in the Penal Code, children may be arrested and charged for offences under the Vagrants Ordinance No. 4 of 1841 (for wandering, begging, loitering, and being in the company of immoral persons or reputed criminals) and the Brothels Ordinance No. 5 of 1889 (for prostitution-related offences), among others.

In addition, due to the lack of clear procedural distinction between children in conflict with the law and children in need of protection, it is also the responsibility of the police (rather than child welfare authorities) to apprehend children in need of protection and bring them before the Court. This includes children who have been victims of abuse or maltreatment, who are without parental care, or who are "falling into bad association, exposed to moral danger or beyond control."<sup>404</sup> These children are processed through police stations and may be (and in fact almost invariably are) detained in protective custody in a "place of safety" until they can be brought before the Juvenile

Court.<sup>405</sup> Places of safety may include a remand home, hospital, or NGO-run children's home, but in practice where these alternatives are not readily available, the children are detained in prison, sometimes together with adults. This issue is not addressed in the new draft legislation, which continues to perpetuate the primary role of the police as the first point of contact for children in need of protection.

When arresting a child or young person, the police must immediately notify a probation officer.<sup>406</sup> There is no clear requirement that the child's parents or guardian be informed immediately of the child's arrest, or that a parent, social workers or lawyer must be present whenever a child is questioned by the police.<sup>407</sup> The CPYO requires only that the police "cause the parent or guardian of the child or young person if he can be found, to be warned to attend at the court before which the child or young person will appear."

At present, Sri Lanka does not have a specialised juvenile police unit to deal with children in conflict with the law. Although Children and Women's Desks have been established in the majority of police stations throughout the country, they deal only with child victims of crime, not child offenders. There are no procedures governing how police should handle child offenders. In general, children are treated the same as adults, and there have been a number of reported cases of children being abused by police.<sup>408</sup> The CPYO does not provide for any alternatives to arrest, does not contain any special provisions limiting the use of physical force, restraints or handcuffs in the arrest of a child or young person, and does not have any special provisions with respect to the taking of statements or confessions from

404 CPYO, Section 34

405 CPYO, Section 37

406 CPYO, Section 17

407 Section 16 dealing with the parent's right to attend deals only with court proceedings.

408 Meeting with SCF, LHRD, IHR; Samaraweera, Vijaya, Report on the Abused Children and the Legal Process of Sri Lanka, 1997; State Violence in Sri Lanka: Alternative Report to the UN Human Rights Committee, World Organisation Against Torture, 2004 (OMCT Report)

children. These gaps have not been addressed in the draft Juvenile Justice Procedures Code.

Children who are under arrest must be brought to the Court within 24 hours. In the interim, they may be released to their parents, taken to a remand home, or held in police station lock-ups. The CPYO states that arrangements must be made to prevent the child or young person from coming into contact with adults while detained in a police station, and girls must be detained under the care of a woman.<sup>409</sup>

However, in practice many police stations do not have separate facilities for children. Very young children are generally kept in the custody of a matron, using a bench as a place to sleep. However, older children are often kept overnight in the Police Cells, where they are detained together with adults and exposed to abuse.<sup>410</sup>

### 1.3 Bail and Pre-trial detention

A child under the age of 16 who has been arrested for any offence, other than a scheduled offence, can be released into the custody of his or her parents (with or without a surety) by the office in charge of a police station.<sup>411</sup> This provision gives broad scope for the police to prevent children from being unnecessarily detained in police lock-ups. However, in practice this provision is reportedly rarely used.<sup>412</sup> The CPYO permits detention if it is necessary “to remove him from association with any reputed criminal or prostitute”, or where “the officer has reason to believe that the release of such person would defeat the ends of justice.”<sup>413</sup> These grounds for detention are very broad and do not promote the minimum use of detention.

When a child under the age of 16 is brought before the Courts, the Court may release the child on bail, commit the child to the custody of a remand home, or commit the child to the custody of a “fit and proper person”.<sup>414</sup> There is no stated preference for a non-custodial option. Neither the CPYO nor the Bail Act contain any special considerations for the granting of bail to children, and they are subject to the same requirements as adults with respect to sureties and bond payment.

In practice, children are often detained prior to trial for minor offences such as theft and drug possession, or because their parents cannot afford to pay for their bail. Statistics from 2000 show that the most common offence committed by juveniles in Remand Homes was theft, followed by a large number cited simply as being “on suspicion”.<sup>415</sup> The majority have families with whom they would like to be reunited.<sup>416</sup> However, the Courts reportedly rely heavily on the recommendations of the probation officer, who do not always explore the options fully and most frequently recommend that the child be detained.<sup>417</sup> This is perceived as the safest option, as probation officers do not want to risk being held responsible if the child is released and does not appear for court. Where children are granted bail, the Court always requires two sureties and a cash bond, which is often set at an amount that parents cannot afford to pay.<sup>418</sup> To address this issue, the Institute for Human Rights (IHR), with the support of Save the Children UK, has been making bail applications on behalf of some children in the remand homes and provides financial assistance to pay for their bond.<sup>419</sup>

409 CPYO Section 13

410 Samaraweera Report; meeting with Chair of the NCPA

411 CPYO, Section 14

412 Samaraweera Report

413 CPYO, Section 14

414 CPYO, Section 15

415 Dias, Malsiri, Study on State Recieveing Homes, Remand Homes and Detention Centres for Children, Centre for Women's Research, 2001

416 Ibid

417 Interview with Institute for Human Rights officer

418 Meeting with staff from Save the Children Fund, ,Istitute for Human Rights and Lawyers for Human Rights and Development.

419 Meeting with staff from Save the Children Fund, ,Istitute for Human Rights and Lawyers for Human Rights and Development

Once remanded into custody, children can languish for many months, and sometimes years, due to delays in the criminal justice system. It is not uncommon for children to spend six months or more in remand, even for minor offences, and an indictment to the High Court can take two to three years. There is no provision to expedite cases of children in detention, and no maximum time limit for the completion of cases. Even when found not guilty by the Courts, children can continue to be illegally detained in remand homes because staff cannot (or make limited attempts to) locate the child's family.<sup>420</sup>

Children under the age of 16 who are detained pending their trial should be transferred to a children's Remand Home. However, where there is no remand home readily available, children are often detained with adults in regular prisons.<sup>421</sup> Children under the age of 16 may also be remanded to a regular prison if they have been found by the Court to be "of so unruly a character" that they cannot be safely committed to a remand home or fit person.<sup>422</sup> Statistics show that in 2000, the regular prison system received twice as many children under the age of 16 on remand as did the state-run Remand Homes (1,624 to prisons vs. 804 to the children's Remand Homes).<sup>423</sup> Furthermore, all children between the ages of 16 and 18 are committed to normal prisons pending their trial, since they are not covered by the CPYO. Statistics from the Department of Prison show that on average, over 10,000 young persons between the ages of 16 and 22<sup>424</sup> are admitted on remand each year.<sup>425</sup>

There are four State-run children's Remand Homes in the country: three for boys located at Pannipitiya, Kithulampitiya and Halpotha, and only one for girls at Ranmuthugala. There are also some voluntary remand homes run by NGOs where children in conflict with the law may be referred, such as the Salvation Army home in Borella. The Remand Homes are not equitably distributed throughout the country, and tend to be concentrated in the southern and western provinces.<sup>426</sup>

The Remand Homes fall under the responsibility of the Department of Probation and Child Care Services, and are directly supervised and monitored by the provincial probation office. They are closed facilities, and in some, such as the Girls Remand Home of Ranmuthugala and the Boys Remand Home at Kitulampitiya, the children spend their entire day and night locked inside a small building.<sup>427</sup> Conditions in the remand centres are reportedly poor. Emphasis is placed largely on the secure containment of the children by restricting their movements, and there are limited education or rehabilitation opportunities available. There is no scheme for facilitating contact between children and their families. Visits must conform to court regulations and be supported by a letter from the Probation Officer, making the whole exercise too complicated for many parents.<sup>428</sup>

Even when they are detained separately from adults in remand homes, children are regularly detained together with adults during the process of being transferred to and from court.

420 Dias Report; Meeting with SCF, IHR and LHRD

421 Children in Institutional Care: the Status of their Rights and Protection, Save the Children Fund, 2005

422 CPYO, Section 15

423 Prison Statistics of Sri Lanka, Volume 23, 2004; Statistics from the Department of Probation and Child Care Services, contained in Dias Report. Note that this number only includes children charged with an identified offence, or who were "on suspicion". It excludes children who are not in conflict with the law, but detained for "disobedience", as "child servants", "stranded", "vagrancy" and "other".

424 Since Prison Regulations define a "child" as under 16 and a "young person" as between 16 and 22, there is no disaggregated data to show how many of these young people are under 18

425 Prison Statistics of Sri Lanka, Volume 23, 2004

426 in Institutional Care: the Status of their Rights and Protection, Save the Children Fund, 2005

427 Welfare of the Abuse Child: Report on the Mischief Sought to be Cured by the Proposed JSC Rules, Legal Sub-Committee of the NCPA, 2001

428 Dias Report

According to the CPYO, arrangements must be made to prevent children and young persons from coming into contact with adults while being conveyed to and from any criminal court, or while waiting before or after attendance in court. In addition, girls must be under the care of a woman while being conveyed or waiting.<sup>429</sup> However, in practice these provisions are not being followed, and the conditions under which children are transferred to and from court are cause for grave concern. Although children in remand homes are under the care and authority of the Department of Probation and Child Care Services, through an administrative arrangement the formal responsibility for conveying all children between institutions and the courts is undertaken by the escort branch of the prison service. In most parts of the country, children are transported together with adults in a windowless prison van, often over long distances with journeys lasting a full day. The general practice is to take the children from the remand home one or two days before the court hearing, which means they must spend one night or more in prison facilities, often mixed with adults.<sup>430</sup> Sometimes they can be stuck in the prisons waiting for transport back to the remand home for up to a week due to logistical problems.<sup>431</sup> This exposes the children to abuse at the hands of adults, girls being particularly vulnerable.

In Colombo, the transit lock-up facility at the Escort Branch of the Welikada Prison has been improved, with the support of UNICEF, to make it more child-friendly, and a separate van has been provided to transport the children

separately from adults. While this has improved conditions for child offenders appearing in the Colombo courts, it has not addressed the core logistical problems in terms of when, and by whom the children are transferred, or the fact that it is fundamentally inappropriate for the prison service to be transporting and detaining child victims and other children in need of protection.<sup>432</sup>

#### 1.4 Juvenile Court and Trial Proceedings

The CPYO requires the establishment of specialised Juvenile Courts, or the appointment of specialised Children's Magistrates at each Magistrates Court to hear all juvenile cases that come before that court.<sup>433</sup> The Juvenile Courts must sit in a different building or room from where regular court proceedings are held, and must be closed to anyone but the parties to the proceedings. Proceedings before the Juvenile Court cannot be published. When a child or young person is brought before the Court, it is the duty of the Court to explain the substance of the alleged offence to the child in simple language. For indictable offences (other than scheduled offences), the child is given the option of having the case dealt with summarily by the Juvenile Court, or by the higher court. The child's parents are entitled to attend during all the stages of the proceedings, and can be required, by summons, to attend where the Court deems it necessary.<sup>434</sup>

As noted above, the Juvenile Court has jurisdiction only with respect to children under the age of 16, and only for non-scheduled offences.<sup>435</sup> All children between the ages of

429 CPYO, Section 13

430 Interview with SCF, IHR and LHRD

431 Interview with Escort Branch, Welikada Prison

432 Alarming, these same transport procedures are also used for child victims of abuse who are witnesses in criminal court, or who must appear for child protection hearings. This is a serious violation of the children's rights, exposing them to stigma, physical abuse and psychological harm. Child victims should not be held in closed facilities under any circumstances, and should never be placed in the custody of prison officials. Where they must, in their own best interest, be referred to a place of safety for care and custody, this should be an open, home-like environment, and transport should be arranged by Department of Probation and Child Care Services. Where necessary, travel allowances or a special van should be provided to the Department of Probation and Child Care Services for this purpose.

433 CPYO, Section 2. The CPYO also gives the Court jurisdiction over child protection proceedings

434 CPYO, Sections 7, 11, 9, and 16

435 CPYO, Sections 4 and 5

16 and 18, as well as children between the ages of 8 and 18 who commit crimes of murder, culpable homicide and robbery fall within the jurisdiction of the regular adult courts. In addition, the Juvenile Court does not have jurisdiction to hear a case where a juvenile has been jointly accused with a person over the age of 16. In those cases, both the child and the adult are dealt with together by the adult courts.<sup>436</sup>

To date, only one separate Juvenile Court has been established, located at Bambalapitiya (Colombo). However, this Court deals almost exclusively with child protection proceedings, and rarely receives referrals of children in conflict with the law.<sup>437</sup> While the Court bench is not as elevated as the regular courtrooms, the courtroom nonetheless conforms to a traditional courtroom structure, with few of the hallmarks of informality or child-friendly procedures.<sup>438</sup>

All but a handful of children in conflict with the law are therefore processed through the regular Magistrates Court. Although special Children's Magistrates are supposed to be appointed to sit as the Juvenile Court in each district, in practice this has not occurred, and the required rules of court for regulating juvenile proceedings have yet to be developed.<sup>439</sup> Cases involving children are not systematically listed or scheduled separately from adults. While some magistrates hold juvenile proceedings in their chambers, in most cases the proceedings are held within the regular courtroom and are virtually indistinguishable from adult proceedings.<sup>440</sup> The Magistrate rarely speaks to the parties directly, and children are often exposed to

harsh cross examination during the course of the hearings. While waiting for their case to be heard, children are kept locked in court cells, often together with adults.<sup>441</sup>

There are no provisions to expedite the hearing of cases involving children, and Sri Lanka's judicial system has been plagued for years by lengthy delays. Often trials drag on for years, and it is not uncommon for children to attend court 10 to 15 times before the trial is concluded.<sup>442</sup>

Although children have the right to obtain the services of a lawyer, there is no specific legal requirement that children be provided with legal representation, if necessary free of charge. Many children lack access to legal assistance.<sup>443</sup> In recent years, several local NGOs, including the Institute for Human Rights and Lawyers for Human Rights and Development have been very proactive in providing legal assistance to children in conflict with the law, running legal clinics at remand homes to identify children in need of assistance.

### 1.5 Sentencing

In deciding what disposition to impose on a child or young person who has been found guilty of an offence, the Court must take into account "any information that is available about the child's antecedents and circumstances," including a social report which is to be prepared by a probation officer. To enable this information to be obtained, the Court can remand the child or young person to a Remand Home, or to the custody of a fit person, for a period of up to 21 days, extendable at the Court's discretion.<sup>444</sup> This practice of detaining

436 CPYO, Section 5 (c)

437 Interview with Magistrate of the Bambalapitiya Juvenile Court. The Study on the Substantive and Procedural Laws Relating to Children requiring Reform, conducted by Lawyers for Human Rights and Development revealed that only 4.34% of the cases dealt with by the Juvenile Court related to child offenders

438 Samaraweera Report

439 CPYO, Section 12

440 LHRD Study; Samaraweera Report

441 Dias Report

442 LHRD Study

443 State Violence in Sri Lanka: Alternative Report to the UN Human Rights Committee, World Organisation Against Torture, 2004

444 CPYO, Section 10



a child for “observation” by a probation officer is contrary to the principles of the CRC. In effect, this provision permits children to be detained solely for the purpose of facilitating the job of the probation officer, and leads to anomalous situation where a child may spend 21 days or more in detention waiting for a report to be prepared in relation to an offence that in itself does not warrant a custodial disposition. Although the child must be brought before the court every 21 days, there is no limit on the number of times the case can be adjourned waiting for the report to be prepared.

While some probation officer are very dedicated and diligent, lack of staffing and other practical and financial constraints make it difficult to fulfil their obligations under the CPYO. Delays in compiling Social Reports result in children spending lengthy periods in remand homes and making numerous court appearance waiting for the report to be completed. The case is repeatedly listed and called (sometimes over 20 times), requiring the child to be transported back and forth to the Court each time, until the Social Report is presented to the Magistrate.<sup>445</sup>

The Samaraweera Report also highlighted the woefully inadequate information contained in many of these social reports. Stock phrases and stock conclusions are common, and more often than not institutionalisation is recommended.<sup>446</sup> A recent study conducted by Save the Children UK found that there is an organisational culture in which probation officers looked to institutional care as a first resort for children, rather than a last resort as departmental policy requires.<sup>447</sup>

The legislation itself gives the Court both custodial and non-custodial options to choose

from when sentencing a child under the age of 16 who has been found guilty of an offence<sup>448</sup>:

- Admonishment and discharge;
- Conditional discharge;
- Released to a parent, guardian or relative (with or without sureties), on condition of keeping good behaviour for one year;
- Placed in the charge of some fit person (including a non-relative) for a period of three years;
- Released on probation, in accordance with any laws on the probation of offenders;
- Release on a Community Based Corrections Order (same as probation, but also includes an option for a community service work), for offences that have a prescribed penalty of less than two years imprisonment;<sup>449</sup>
- Fine, which may be paid by parent or guardian. Children under 16 cannot be committed to prison for non-payment of fine.
- Community Service Order directing the child to perform stipulated service for up to three years.<sup>450</sup>
- Committal to custody in a remand home for a period not exceeding one month;
- Committal to an approved or certified school, for children between the ages of 12 and 16. In all cases, the committal order is for a period of three years. Younger children are kept even longer than three years if they have not reached the age of 14 by the time the three-year term expires (e.g. a child who is 8 at the time of the order can be detained for six years). Even after release, children are subject to “recall” at the discretion of the institution management.
- Corporal punishment order of six strokes with a light cane for males only.
- Children under the age of 14 cannot be

445 Samaraweera Report ; Dias Report

446 Ibid

447 SCF Report

448 CPYO, Sections 26 to 30

449 Community-Based Corrections Act, No. 46 of 1999

450 Criminal Procedure Act No 15 of 1979, Section 18

imprisoned. Children between the ages of 14 and 16 may be imprisoned, if the Court certifies that they are so ‘unruly’ or ‘depraved’ that they cannot be placed in a children’s institution.<sup>451</sup>

- Children between the ages of 8 and under 16 who commit scheduled offences are subject to adult sentences for those crimes, and are detained “in such place and on such conditions as the Minister may direct”.<sup>452</sup>

Children between the ages of 16 and 18 are subject to adult sentences, with no special considerations. However, children under the age of 18 years may not be subject to the death penalty. Instead, they may be imprisoned indefinitely “at the President’s pleasure.”<sup>453</sup> In addition, boys between the ages of 16 and 22 who have been convicted by the High Court, who have previous convictions, or have violated a probation order may be committed to the Training School for Youth Offenders for a period of three years, pursuant to the Youthful Offenders (Training Schools) Ordinance.<sup>454</sup> There are no similar facilities for girls.

While the list of possible dispositions includes a number of alternatives, in practice the Court tends to impose custodial sentences, even for minor offences such as theft.<sup>455</sup> The CPYO does not include any statement of preference for non-custodial dispositions, nor does it state that deprivation of liberty shall be a measure of last resort, for the shortest appropriate period. To the contrary, its general principles promote institutionalisation by requiring the removal of children from “undesirable surroundings.” All institutional dispositions are for a set period of three years, and are not tailored to the nature

of the offence or the circumstances of the child offender. While referral to a regular prison is generally prohibited, there are broad exceptions based on the child’s “unruliness”, and no protections for children 16-18 and children charged with more serious offences.

Another major concern is that whipping is a recognized form of punishment under several pieces of legislation, including the CPYO, the Penal Code, and the Corporal Punishment Ordinance. There continue to be instances where it is imposed on children by the courts. The UN Committee on the Rights of the Child has expressed its deep concern that male child offenders can be sentenced to whipping or caning, and has recommended that the Corporal Punishment Ordinance be repealed.<sup>456</sup>

### 1.6 Safety and Anti-Terrorism Legislation

Sri Lanka’s 1979 Prevention of Terrorism Act has been repealed. While the legislation was in effect, adults and children alike could be detained for up to 18 months under administrative orders that were not subject to judicial review. If it is put back into force in the future, consideration should be given to excluding children from its provisions.

## 2. Conditions in Detention

Children in conflict with the law who have been sentenced by the Court may be detained in:

- A Certified School or Approved School for children under the age of 16;<sup>457</sup>
- the Training School for Youth Offenders (TSYO), for boys between the ages of 16 and 22;<sup>458</sup>

451 CPYO, Section 23

452 CPYO, Section 24(2)

453 Penal Code No. 2 of 1883 as amended; in Section 53

454 Youthful Offenders (Training Schools) Ordinance, No. 35 of 1940, Section 4

455 Samaraweera Report

456 UN Committee on the Rights of the Child, Concluding Observations: Sri Lanka, CRC/C/15/Add.207, 2 July 2003

457 CPYO, Sections 50 and 51

458 Youthful Offender (Training Schools) Ordinance

- A Correctional Centre for Youthful Offenders, for boys between the ages of 16-22

The Training School for Youthful Offenders (also known as Borstal school), is located in Pallansena. No formal schooling is provided, though a teacher comes two times per week to provide non-formal education. Vocational training is provided in carpentry, and the boys receive a certificate upon completion. The majority of the children are reportedly admitted for drug offences, though the centre has no programmes or services for drug rehabilitation. There are also two Correctional Centres for Young Offenders (CCYOs) located at Pallansena and Taldena, both for boys. They operate on the basis of the regular prison rules and regime. No education is offered, and the boys mainly do work, which involves some training.<sup>459</sup>

Both the TSYO and the CCYOs fall under the management of the Department of Prisons. There are no similar facilities for girls, and no facilities within the prison system to separate girls from adult females. Staff at the TSYO and CCYOs are on rotation from within the regular prison system, and do not receive any specialised training for working with young people. The standard three-month induction training provided to all new prison staff includes a short section on young people, but it is reportedly insufficient. The prison's training institute (the Centre for Research and Training in Corrections) and the University of Colombo's Human Rights Centre are in the process of developing a human rights manual and training programme, which will include a component on juvenile inmates.<sup>460</sup>

The certified or approved schools under the Department of Probation and Child Care

Services are intended for children between the ages 12-16 years found guilty by the courts. Their stated purpose is for the education, training and detention of children and young persons.<sup>461</sup> There are four certified or approved schools run by the state: the Certified School for Girls at Ranmuthugala, the Certified Schools for Boys at Mokola, the Certified School for Boys at Hikkaduwa, and Approved School for Boys at Maggona. The schools house both children in conflict with the law and children in need of protection.

There have been numerous reports examining the conditions in State-run and voluntary institutions under the Department of Probation and Child Care Services, including a comprehensive study recently completed by Save the Children UK.<sup>462</sup> These reports have found few good practices, and have generally concluded that conditions in the institutions are, with a few notable exceptions, extremely poor. They have been described as having a "prison-like" environment that is not conducive to their stated objectives of education and rehabilitation, and have become little more than detention camps. Concerns noted included the following:

- Although Remand Homes, Certified Schools and Receiving Homes were originally established for separate categories of children and for distinct purposes, these distinctions have been ignored. Children of all ages can be housed together, and child victims are mixed with offenders;
- The quality of care in most institutions is poor. Most are overcrowded and in a state of disrepair. There is generally inadequate food, limited health care, lack of clothing, poor sleeping arrangements, poor sanitation and inadequate supplies of basic necessities such as water, soap and toothpaste;

459 Interview with staff from Prison Branch

460 Interview with staff from Centre for Research and Training in Corrections

461 CPYO, Section 50

462 SCF Report; Dias Report; Welfare of the Abuse Child: Report on the Mischief Sought to be Cured by the Proposed JSC Rules, Legal Sub-Committee of the NCPA, 2001; Report of the Human rights Commission of Sri Lanka, 2004; Samaraweera Report

- Education is not provided consistently and to a high standard. Vocational training is not conducted in a systematic manner to enable children to become proficient in a trade, and is often based on gender stereotyping (woodworking for boys, sewing and needlework for girls).
- No provision is made for Tamil-speaking children who are unable to communicate in Sinhalese.
- Infrequent contact between children and their families is the norm even when the whereabouts of the family is known. In some institutions parental contact is discouraged, elsewhere parents are not supported to visit. The unequal distribution of institutions means children are often transferred far from their families and communities. Girl children in particular are subject to dislocation due to the limited number of institutions for them;
- Caning and other forms of corporal punishment are used, and is in fact a sanctioned form of discipline under the Prisons Act and Education Act. Children are also punished by locking them in dark, ill-ventilated rooms;
- Staff receive limited training to perform their job. Institutions have difficulty recruiting staff because salary scales are too poor to attract qualified people.
- There is a lack of planning for reintegration and many children remain in the institution past their sentence expiry date because adequate arrangement have not been made for their return to the community. Girls in particular are vulnerable to extended stay due to a reluctance to release them for independent living;
- There are no after-care services to support children released either from the Certified Schools or the prison system; and
- Institutions are not being regularly monitored and inspected.

### 3. Diversion and Alternative Sentences

Sri Lanka does not have a system for diverting children away from the formal court system, either at the time of arrest or during the early stages of the court process. However, in practice many cases are diverted informally by the police. For example, the minor complaints branch reportedly tries to persuade parties to settle minor offences rather than initiating formal criminal proceedings.<sup>463</sup>

In addition, under the Mediation Boards Act, certain specified offences, such as assault, mischief, and misappropriation of property, must be referred first to a mediation board before formal proceedings can be initiated.<sup>464</sup> The mediation boards may convene mediation conferences with all concerned parties to help them to reach an amicable settlement and resolve the underlying causes of the grievance. These mediation boards have the potential to be an effective way to resolve many minor juvenile offences quickly and informally. However, it is unclear to what extent police are referring children in conflict with the law to the mediation boards.

Once formal proceedings have been initiated against a child, there is no scope for early diversion out of the system, and all cases proceed to a determination of guilt/innocence and disposition order from the Court. As noted above, there are some non-custodial dispositions available that the Court may choose to impose on a child offender, particularly if he/she is under the age of 16. However, in practice, these options are underutilised, both due to a systemic bias in favour of institutional rehabilitation, and a lack of services to support alternatives.

463 Interview with UNICEF-Sri Lanka child protection staff

464 Mediation Boards Act, No. 72 of 1988

Globally, probation is considered one of the main alternative dispositions for children in conflict with the law, since it can provide a combination of supervision, capacity development and other support services. Sri Lanka's Probation of Offenders Ordinance No 42 of 1944 provides for the establishment and administration of a probation service, and there are currently 60 probation units with 180 probation and child welfare officers throughout the country. These officers are responsible for both child offenders and children in need of protection.

While the central government is responsible for policy development, the probation officers have, since 1987, been under the direct responsibility of Provincial ministries of social welfare. Some provinces have recently made efforts to build the capacity of probation services, but in general they lack appropriate training and are under-staffed and under-resourced.<sup>465</sup> While the Departmental Standing Orders permit the appointment of Voluntary Probation Officers, it is unclear whether this is done in practice. The central Department of Probation and Child Care Services has an additional 276 Child Rights Promotion Officers (CRPO) stationed in every Divisional Secretariat Office, but coordination between the CRPOs and probation officers is weak, and their respective roles are not clearly defined.<sup>466</sup>

While in theory probation officers have a case management approach based on individual case planning, in practice most officers do not have the time or resources to do this effectively, and they view their role as primarily preparing reports for the Court.<sup>467</sup> There is no systematic process for conducting individual assessments of children on probation, and no

clearly defined network of support services and community-based rehabilitation programmes to which children on probation may be referred. In most cases, probation officers simply prepare cursory, periodic reports on the child's progress but do not provide referrals to programmes and service aimed at developing the child's competencies or addressing the underlying factors that contributed to the offending behaviour.<sup>468</sup>

One promising initiative is the introduction, in 1999, of a Community-Based Corrections System, currently operating in 64 districts throughout the country.<sup>469</sup> In many countries, "community-based corrections" is the new name adopted to replace "probation services", however in Sri Lanka the two systems appear to be operating parallel.<sup>470</sup> Unlike the Probation Act, the Community Based Corrections Act is based on a modern, more holistic approach to community-based rehabilitation of offenders through a network of Community Based Corrections Centres. Community-based corrections orders go beyond mere "reporting and befriending", and can include a broad range of conditions aimed at 1) holding the offender accountable for his/her actions; and 2) requiring him/her to participate in programmes designed to address the factors that contributed to the offending behaviour. This may include performing a specified number of hours of community service work, and also participating in educational, vocational training, and personal development programmes, or undergoing treatment for drug or alcohol addiction.<sup>471</sup> Between January and October, over 4500 people have received community-based corrections orders, however the programme is not currently available for children under the age of 16.

465 SCF Report; Interview with consultant to Department of Probation and Child Care Services

466 Dias Report; SCF Report

467 Dias Report

468 Dias Report

469 Community Based Corrections, Act No 46 of 1999

470 The Community Based Corrections Act does not make any provisions with respect to the appeal or amendments of the Probation Act, and has only taken effect in some judicial zones

471 Community Based Corrections Act, Section 9

## 4. Monitoring, Coordination and Reporting

In 1998, the National Child Protection Authority was established to monitor and implement policies in relation to child protection, and to unify and coordinate the work of 10 line ministries in relation to child protection. The NCPA includes representatives from education, medical, law enforcement and legal professions and reports directly to the president. Its stated mandate relates largely to child abuse and the protection of child victims in the justice system,<sup>472</sup> but it also has the authority to “secure the safety and protection of children involved in criminal investigations and criminal proceedings.”<sup>473</sup> The NCPA has established 12 District Child Protection Committees which are involved in monitoring children’s rights at the district level. While steps have been taken to improve data collection on children, Sri Lanka has yet to adopt a comprehensive set of juvenile justice indicators to monitor and evaluate the situation of children in conflict with the law.

The Department of Probation and Child Care Services has primary responsibility for monitoring and supervising children in conflict with the law, and in particular monitoring children in institutional care. However, there are currently insufficient mechanisms in place at the provincial level to regulate and monitor children’s institutions.<sup>474</sup> While steps have been taken to improve data collection on children in need of protection, comprehensive juvenile justice indicators have yet to be developed.

Independent monitoring of all places of detention, including children’s institutions, is

conducted by the national Human Rights Commission.<sup>475</sup> In 2004, the Human Rights Commission undertook surprise visits to nine of the county’s 20 children’s homes and prepared a report outlining the concerns discovered. However, it is unclear whether they have a regular, ongoing programme of surprise visits. The CPYO allows for the appointment of one or more persons to be a “Visitor” for each certified school,<sup>476</sup> but they have not been operating for several years.<sup>477</sup>

## 5. Training and Capacity Building

Sri Lanka does not currently have systematic and ongoing training programme on juvenile justice, nor has juvenile justice been incorporated into existing training for justice sector professionals through police academies, law schools, judicial academy and the corrections training centre.<sup>478</sup>

However, in recent years, there has been growing attention to the issue of juvenile justice, and numerous studies, workshops, and training and capacity-building initiatives have been initiated, both by the government and by various NGOs and INGOs. For example, the NCPA has promoted training on child rights and child protection, and has collaborated with various media outlets to increase public awareness of children’s rights. The Centre for the Study of Human Rights, University of Colombo has been partnering with the police and the prison training centre to conduct human rights education with police and prison officers, including a component on the rights of children. Lawyers for Human Rights and Development is conducting research and

472 National Child Protection Authority Act, No. 50 of 1998

473 National Child Protection Authority Act, Section 14(j)

474 SCF Report

475 Human Rights Commission Act No 21 of 1996 Section 11 (d)

476 CYPO, Section 51(2)

477 Samaraweer Report

478 Samaraweer Report

advocacy on children's rights, as well as conducting orientation for the police. Save the Children Fund and the Institute for Human Rights has a Juvenile Justice Project which, in addition to providing legal assistance to children in remand homes, is also engaging in capacity building with staff of the remand homes and probation officers. As part of its programme to make the community aware of its rights, radio programmes on human rights are broadcast over Lakhandha Radio, including one programme in November 2003 on Rehabilitating Youth Offenders.<sup>479</sup>

The Ministry of Justice and UNICEF have recently reached an agreement on a Child Friendly Procedures Manual Project. An inter-agency Steering Committee will be formed and a consultant hired to develop a practical juvenile justice manual. The manual will include procedures to be followed in respect of children in conflict with the law and child victims/children in need of protection at police stations, probation units, Magistrate's Courts, Escort Branch, Hospitals and Residential Care institutions.

## 6. Conclusions and Recommendations

Sri Lanka has yet to develop a comprehensive, separate justice system for children in conflict with the law. While the CPYO includes some important protections for children, it does not provide a particularly sound basis for the development of a child-centred, rights-based juvenile justice system. The CPYO draws heavily from turn of the century British legislation, which placed primacy on formal court structures, legalistic responses and institution-based rehabilitation. Many of the hallmarks of modern juvenile justice legislation – diversion, mediation, restorative justice, explicit preference for community-based

rehabilitation, community and NGO involvement, clear separation between child offenders and children in need of protection – are lacking. The provisions permitting Courts to impose three-year, “one size fits all” detention orders and to inflict corporal punishment are clear violations of the CRC and UN Guidelines. It is hard to argue with Samaraweera Report's conclusion that legal process, both for children in conflict with the law and children in need of protection, is “so fundamentally flawed that ideally it should be scrapped.”

The need for juvenile justice reform has been acknowledged, and steps have already been taken to draft new legislation. However, whilst the draft includes some important new protections, it is still grounded in court-centred, institutional responses, does not fully incorporate UN juvenile justice guidelines, and fails to embrace newer, more child-centred approaches to juvenile justice based on diversion, restorative justice and primacy to community-based rehabilitation. It is recommended that, rather than minor amendments, what is required is a fundamental shift in the conceptual approach to children in conflict with the law, and in particular a shift away from arrest and containment approaches to care and rehabilitation towards a system based on diversion and restorative justice.

**Legislative/policy reform:** The current draft legislation should be substantially amended to fully reflect the CRC and UN Guidelines, drawing from countries which have taken a more child-centred and restorative approach to juvenile justice. This should be done through a consultative process involving all relevant stakeholders, including children. In the short term, it may possible to improve current practices by means of creative interpretation of the CYPO through the inter-agency guidelines that are being developed. However, in light of

479 Centre for the Study of Human Rights Annual Report, 2004

some of the fundamental problems with the legislation, it would be a challenge to develop agency guidelines grounded in the CPYO that would comply with the CRC and UN Guidelines. Furthermore, non-binding inter-disciplinary guidelines can have limited impact on actual practices, unless there is a clear sense of ownership from each individual agency and a commitment to changing internal standing orders, structures, procedures and resourcing. Comprehensive legislative reform would be preferable, and should ensure that juvenile justice protections are extended to all children under the age of 18, regardless of the offence committed.

**Clear delineation between children in conflict with the law and children in need of protection** in legislation, policies, guidelines and institutional care. The blurring of this distinction has generally resulted in the criminalisation of children in need of protection, and the failure to respect the due process rights of children in conflict with the law.

**Promote diversion and restorative justice** approaches to resolving minor crimes outside the formal system, reserving arrest and court proceedings for children who commit serious crimes. Existing mediation boards could be an effective means of resolving many minor juvenile crimes without the necessity of arrest and formal charging. This may require amendment to mediation board procedures to ensure that they are child friendly and promote child participation.

**End the practice of arresting children for status offences**, including repeal of the Vagrants Ordinance and the provisions of the CPYO that permit children in need of protection to be apprehended and held in police custody. Immediate steps should be taken to stop the practice of detaining child victims in closed facilities, particularly adult

prisons, and of transporting them to and from court through the prison escort branch. Under no circumstances should a police lock-up or prison be used as a “place of safety.”

**Develop child-friendly court procedures** for children in conflict with the law that are specific and distinct from those for child victims, and that ensure that the child’s due process rights are respected. Strict time limits should be in place for the completion of proceedings. No child should ever be detained, or have period of detention extended, solely for the purpose of “observation” or due to delays in the preparation of a social report.

**Prioritise the development of community-based sentencing alternatives.** This will require concrete steps both to limit systemic bias towards institutionalisation, and to strengthen non-custodial alternatives. The roles and responsibilities of probation officers, CRPOs and Community-Based Corrections Centres should be clarified, with one clear authority responsible for providing supervision and case management to child offenders.

**Limit the authority to impose institutionalisation**, both pre-trial and as a sentencing option. This could include: mechanisms for immediate family tracing; elimination of monetary bond requirements for children’s bail; repealing the three-year set term for institutionalisation and allowing the Court broad discretion to impose the most appropriate period (with a stipulated maximum term); requiring periodic reviews of detention orders at set intervals (i.e. every six months); and ensuring that special sentencing principles apply to all children, regardless of the crime committed.

**Prohibit corporal punishment** both as a sentencing option and as a form of discipline in institutions.



**REGIONAL COMPARATIVE CHART**

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
<b>General Principles</b>								
A fully separate and distinct justice system for juveniles has been established.	✓		✓	✓	✓		✓	
Juvenile protections apply to all children under the age of 18	✓							
The minimum age for criminal responsibility is consistent with international standards	✓							
Children have the right to legal representation at all stages of the proceedings	✓	✓	✓	✓	✓	✓	✓	✓
Legal representation is provided to all children in practice			✓					
The law limits the publication of the name or identity of a juvenile	✓	✓	✓	✓	✓	✓	✓	✓
<b>Arrest and Pre-Trial Detention</b>								
Arrest of children is used only as a measure of last resort					✓			
The law prohibits the arrest of children for status offences (vagrancy, truancy,)	✓				✓			
The law guarantees children the right to have the charges explained to them in language they understand	✓	✓		✓		✓	✓	
The law requires police to contact parents immediately upon the arrest or detention of a child	✓	✓	✓	✓			✓	
Police are obligated to have parents, legal guardians, defence lawyer present whenever questioning a juvenile								
Children have the right to remain silent and not to be compelled to give evidence or confess guilt	✓	✓	✓	✓		✓	✓	✓
The law restrict police use of force or restraints against children	✓			✓		✓	✓	

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
There is a defined maximum period for detention of a child in police custody	✓	✓	✓	✓	✓	✓	✓	✓
Children are only held in detention pending trial as a measure of last resort	✓							
The law provides for alternatives to pre-trial detention	✓	✓	✓	✓	✓	✓	✓	✓
Sufficient mechanism have been put in place to make these alternatives effective and available throughout the country								
The law requires that juvenile cases be expedited where the juvenile is detained pending trial					✓			
There a maximum period for pre-trial detention	✓		✓			✓	✓	
<b>Diversion</b>								
Legislation provides measures for dealing with juveniles without resorting to judicial proceedings	✓		✓		✓			✓
Informal mechanisms such as mediation or conferencing are used to resolve minor offences	✓	✓			✓	✓		✓
Prosecutors and judges have discretion to resolve cases through diversion	✓				✓			
Community programmes, such as temporary supervision and guidance, restitution, and compensation of victims been made available in order to facilitate diversion	✓				✓			
<b>Trial Proceedings</b>								
There are maximum time limit for the completion of juvenile trials	✓		✓	✓			✓	
The law guarantee juveniles the right to have their case determined by a competent and impartial authority or judicial body in a fair hearing	✓	✓	✓	✓	✓		✓	✓

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
The juvenile's parents have the right to be present at all stages of the proceedings	✓	✓	✓	✓	✓	✓		✓
The court can require parent's attendance where it is deemed to be in the child's best interest	✓	✓		✓	✓			✓
Juveniles have the right to examine or have examined adverse witnesses, and to obtain the participation and examination of witnesses on their behalf under conditions of equality	✓	✓	✓	✓	✓	✓	✓	✓
The law guarantee juveniles the right to be heard and to participate fully in the proceedings								
All hearings involving juveniles are closed to the public	✓	✓	✓	✓	✓	✓	✓	✓
There are special procedures for conducting juvenile trials to ensure that they are conducted informally, in an atmosphere of understanding, which allows the juvenile to participate fully.	✓	✓		✓	✓	✓		
Children have the right to have the court decision reviewed by a higher independent and impartial authority	✓	✓	✓	✓	No information	✓	✓	✓
<b>Sentencing</b>								
The law requires that the sentence imposed on a juvenile be appropriate to their well-being, and proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile								
The law requires that, before imposing a sentence on a juvenile, the background and circumstances in which the juvenile is living and the conditions under which the crime was committed must be properly investigated	✓	✓	✓	✓				✓
The law requires that pre-sentence or social inquiry reports be prepared and considered prior to imposing sentence on a juvenile		✓		✓			✓	✓

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
The law states that deprivation of liberty shall be used only as a measure of last resort, for the shortest appropriate period	✓							
Deprivation of liberty reserved for juveniles who have committed a serious act involving violence or are persistent in committing other serious offences	✓		✓		✓			
Life imprisonment of anyone under 18 is prohibited	✓		✓		✓	✓		✓
Capital punishment is prohibited for all children under 18	✓			✓				✓
A variety of dispositions are available, such as care orders; guidance and supervision orders; diversion to mental health treatment; victim reparation/restitution; counseling; probation; education or vocational training; community service orders; orders to participate in group counselling and similar activities; and orders concerning foster care, living communities or other educational settings	✓			✓				
<b>Juvenile Deprived of their Liberty</b>								
The law requires that juveniles be separated from adults in all places of detention, including police custody, pre-trial detention centres, and prisons	✓	✓	✓	✓	✓	✓	✓	✓
Children are separated from adults in practice	✓		✓	✓	✓			
Regulations have been established setting special standards for all juveniles deprived of their liberty		✓					✓	
All children in detention are provided:								
Sufficient bedding	Insufficient information		✓	Insufficient information	Insufficient information			
Access to clean and decent sanitary facilities	Insufficient information		✓	Insufficient information	Insufficient information			

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
Food that satisfies dietic, health and hygiene standards	Insufficient information		✓	Insufficient information	Insufficient information			
Quality education and vocational training	Insufficient information		✓	Insufficient information	Insufficient information			
Sports and recreation			✓	Insufficient information				
Protection from abuse and exploitation				Insufficient information				
Family contact is encouraged and frequent visits (weekly) are permitted	Insufficient information			Insufficient information	Insufficient information			
Disciplinary measures constituting cruel, inhuman and degrading treatment, including corporal punishment, placement in a dark cell, solitary confinement, use of handcuffs or restraints, reduction of diet and restriction on family contact are strictly prohibited	✓							
All children deprived of liberty have access to effective complaints procedures concerning all aspects of their treatment								
The law requires that juveniles deprived of liberty be subject to a periodic review of their situation					✓			
There is effective inspection and monitoring of all institutions in which children may be deprived of their liberty	✓							
Juveniles released from detention are provided with support for their reintegration into the community	No information							

## SELECTED INTERNATIONAL MODELS AND PROMISING PRACTICES

### 1. Coordination and Strategic Reform

#### Zambia Strategic Reform

In Zambia, the process of juvenile justice reform was initiated by a comprehensive situation analysis of the institutions and processes linked to juvenile justice. The situation analysis highlighted strengths and weaknesses peculiar to the Zambian system. The situation analysis led immediately to the formation of an inter-sectoral child justice forum, an open ended group of stakeholders chaired by a magistrate with a keen interest in child justice reform. With ongoing technical support from UNICEF, a number of key interventions followed, including the establishment of a child-friendly court and the upgrading of cells for children at three police stations. All police stations were then instructed that arrested children should be detained centrally at one of the upgraded police stations. Two key aspects set transformation in motion: the comprehensive situation analysis, which pinpointed areas of practice that would result in immediate and measurable improvements in children's best interest, and the constitution of the inter-sectoral child justice forum, which took ownership of the process.

#### South Africa One Stop Child Justice Centre

South Africa has introduced an innovative multi-disciplinary team approach to juvenile justice all under one roof. The "One-Stop" model is a juvenile justice centre with specialised police, court and probation officers (social workers) all in the same location. Juveniles who are arrested are taken to the centre to be processed by the police and assessed by a social worker. The centre has special separate cells for juveniles who are detained during the investigation, as well as a specialized juvenile court. The model has helped to improve coordination between the agencies, ensures that juveniles are kept separate and apart from adult offenders, and has allowed for more appropriate and timely resolution of juvenile cases.

### 2. Legislative Reform

#### Comprehensive and Consultative Law Reform, South Africa

Starting in 1997, South Africa's Law Commission undertook a comprehensive assessment and re-drafting of the country's juvenile justice legislation. An inter-agency committee was established, including pre-eminent academics and practitioners working in the field of juvenile justice. The Committee began by conducting comparative international research, and drafted an Issue Paper, circulated to stakeholders, posing key questions with respect to the philosophical approach and underpinnings of the proposed new juvenile justice system. This was followed by a more detailed Discussion Paper, and extensive consultations with government and non-government stakeholders through nation-wide workshops and seminars. A separate consultation process was also conducted to elicit input from children, including children in detention centres. Based on all of these inputs, the Law Commission drafted a comprehensive new Child Justice Bill which is grounded in the principles of the CRC and UN Guidelines, and which fully incorporates diversion, restorative justice and limited use of deprivation of liberty. The Bill is now before Parliament.

#### Philippines Study on the Age of Discernment of Out-of-School Children

As in other contexts, raising the age of criminal responsibility had been a contentious issue in the Philippines. In order to support the proposed increase in the age of criminal responsibility from 9 to 12, the Philippine Action for Youth Offenders (PAYO) conducted a Study on Age of Discernment of Out-of-School Children. Researchers interviewed 300 out-of-school children between the ages of 7 and 18, most of whom were street children. The study, which followed up on a similar study conducted with school children, concluded that out-of-school youth have a lower ability to make

positive choices in life and were generally at a very low level of discernment. At the age of 18, the out-of-school children tested were at a level of discernment comparable to a seven year old. This dispelled the common myth that street children "grow up faster" than school-going children, and in fact demonstrated that the contrary was true. While street children had development "street smarts", their moral reasoning and cognitive development were impaired by the surroundings in which they were living.

### 3. Juveniles and the Police

#### NZ Police Youth Aid Programme

New Zealand has instituted a Police Youth Aid programme throughout the country. Police Youth Aid officers deal with the majority of young people who are apprehended or who are considered "at risk of offending". Youth Aid Officers are not present at the incident but receive reports regarding youth offences from the arresting officer. The police also run youth education and youth development programmes, which have been successful in reducing offences by young people.

The Youth Aid Officers are fully qualified police officers who had chosen to specialise in dealing with young people and their families. It is his/her responsibility to manage matters pertaining to children and young people, including: implementing alternative methods of dealing with young offenders, other than through criminal proceedings; representing police at Family Group Conference; liaising with schools, government agencies and organisations; providing guidance and assistance to parents, and prosecuting or supporting prosecutors in Youth Courts (police in New Zealand prosecute in the court except in serious cases, or when the matter is being deliberated before a jury).

Youth Aid officers play a key role in the youth justice process, including seeking appropriate solutions through warnings, diversion and other methods of dealing with offenders (including those committing serious offences) without resort to youth court or Family Group Conference. The law does not preclude any offence from being dealt with in this way. The Youth Aid officer decides if there is an alternate way of handling the case, taking into consideration the attitude of the juvenile, and of the

family toward the offender. The majority of offences dealt with through this process are property offences such as shoplifting, property damage, offences involving motor vehicles, burglary and driving offences. When the offence involves more than minor violence, the Youth Aid Officer will refer the juvenile to a Family Group Conference. The Youth Aid Officer have been the key actors in making diversion options successful.

#### South Africa Family Finders Programme

In some communities in South Africa, police face many difficulties trying to locate the parents or guardian of a juvenile who has been arrested. This was resulting in juveniles being detained in police custody for unnecessary periods of time, waiting for a responsible adult to be found. In response to this problem, the police have begun to use community-based "family finders" to help them locate a juvenile's family. Each day, the family finders are given a list of the names and probable address of the parents of juveniles who have been arrested. On finding the juvenile's parents or family member, the family finder drives them back to the police station where the juvenile is in custody.

### 4. Diversion and Restorative Justice

#### Lao PDR Village Mediation Units

In Lao PDR, villages have long had Village Mediation Units to resolve adult civil and some criminal disputes. As part of a larger Children's Justice Project to promote diversion, SCF UK and the Ministry of Justice supported the establishment of Children's Mediation Units to operate at the village level. They mediate in children's cases primarily brought by victims, the local police and parents. Mediation will not take place if children do not admit the offence. If the offence is too serious (murder, rape, extreme violence) it will be referred to the police.

A Central Management Team of Ministry of Justice officials oversees the project on behalf of the Minister. At provincial level there is a Provincial Monitoring Committee and a Provincial Operations & Training Team; at district level there is a District Implementation and Monitoring Committee. Apart from the Central Management Team, these bodies are made up of a cross-section of senior members of the criminal justice system, e.g. the judiciary,

police, prosecutors' office, the mass organisations of the Lao Women's Union and the Lao Youth Union and other relevant ministries.

#### **New Zealand Family Group Conferences**

Family Group Conferences were formally introduced in New Zealand under the Children, Young Persons and their Families Act, 1989 and have since become the primary diversion and decision-making mechanisms for dealing with children in conflict with the law. A FGC is a meeting organised and facilitated by a co-ordinator from the Child Youth and Family Courts. It involves the juvenile, their family, the victims, the police (usually a Youth Aid representative) and other relevant individuals such as teachers. The young person is asked to admit to the charges and the conference members consider the offence. Then everyone works together to help the family put forward a plan to prevent the juvenile from committing the offence again, as well as to make restoration to the victims.

All juveniles, except for those charged with the most serious offences such as murder, rape and robbery, must first be processed through a FGC before they can be referred to the Youth Courts. The FGC participants determine whether the offence can be dealt with informally, or whether referral to the courts is more appropriate. Even after the case has been adjudicated by the courts, the Youth Court judge must take into consideration the recommendations or plans formulated by the FGC before issuing a sentence.

#### **Child Justice Committees and FREELAVA Diversion Programme, Philippines**

The Children's Justice Committee (CJC) was formed in 2002 as a community-based structure within the Barangay (village, or smallest government unit) Council for the Protection of Children (BCPC) to promote community level prevention, diversion and mediation measures for juveniles in conflict with the law. The NGO FREELAVA provides assistance to the CJC's members through guidance for implementing the project in their own localities.

When a case is referred to the CJC by the community or the police, the Committee members convene to verify the facts of the complaint. Community volunteers immediately inform the

parents of the child and explain the mechanisms of the diversion programme to the victim.

The CJC members summon both parties to discuss possible settlement/mediation of the case and to schedule subsequent meetings. If all parties agree to the mediation, the offender is asked to present his/her written or oral apologies to the victim and/or verbal reasons explaining why he/she committed the crime(s). Mediation must be heard in a private room, usually in one of the rooms of the CJC's Centre. In case no settlement is reached a formal filing of the case takes place.

Where settlement is reached, CJC members recommend steps for further psycho-social intervention for the juvenile through a centre-based or family-based approach. Community volunteers continue to monitor the child in conflict with the law through centre/family visits. The secretariat of the CJC keeps track of records through a system of data collection and monitoring.

FREELAVA offers a number of programmes to support juveniles who have been diverted through this process. This begins with community mobilisation to identify and select community volunteers and Peer Educators (PEs). With the support of these community members the following activities are offered:

- Skill training is provided to out-of-school youth in co-ordination with other government and NGO organisations. This includes electrical training, plumbing, automotive repair, refrigeration, carpentry, and culinary arts among others;
- Livelihood programmes are targeted to parents of the children to augment family income. These include micro loans to fund livelihood activities such as small-scale vending, pig raising, dressmaking, etc;
- Educational assistance through the provision of school supplies, school uniforms and enrolment fees
- STD & HIV/AIDS education and awareness
- Group counselling is organised by peer facilitators and community volunteers, who link the juveniles with other young people in the community in order to invite them to participate in group discussions. The peer facilitators and community volunteers receive training in order



to facilitate these discussions in an appropriate and supportive manner; and

- Psycho-social interventions provided include, counselling; case management support; educational, legal and medical assistance; and referrals to other institutions for further psycho-social interventions.

#### Youth Justice Committees, Canada

Youth Justice Committees are made up of volunteers in the community who work in partnership with criminal justice professionals to divert children accused of minor non-violent offenses away from formal court proceedings. Funded by the Ministry of the Attorney General, Youth Justice Committees are active and/or being implemented in communities throughout the country.

The Youth Justice Committee program is an alternative to formal court proceedings. Police may refer a child to a Committee before a charge is laid, or the prosecutor may refer a child after a charge is laid. In order for children to be referred to the committee, they must be prepared to be accountable for their actions, be willing to participate in the program and be aware of their options and rights. Children who do not agree are returned to the formal court system.

The Committee meets with the juvenile, his or her parents, and the victim (if they want to participate), to negotiate appropriate ways for the juvenile to make amends for his or her actions. Measures take into consideration the individual circumstances of the offence and the young person. An apology must be made in every case. Examples of measures that may be imposed include: community service; written project; curfews; paying back the victim and community; voluntary participation in counselling programs such as anger management sessions; and an agreement by the offender not to associate with a person or a group.

### 5. Alternatives to Pre-trial Detention

Many countries have struggled to find alternatives to detention for juveniles who are street children, or who come from troubled families that cannot provide appropriate supervision. The following are some promising practices that are used to provide supervision to juveniles during the investigation/pre-

trial stage, as an alternative to holding them in detention.

**Family responsibility:** In New Zealand, studies showed that lodging money for bail provided no real incentive for families to take responsibility for their children, so they discontinued the use of deposits of monetary bonds. Instead, family members are encouraged to take greater responsibility by being included, together with the juvenile, in the process of developing a supervision plan for the juvenile. Parents and the juvenile meet with the police and take part in deciding what conditions will be imposed on the juvenile. This ensures that they are fully aware of their obligations, and also allows parents to suggest conditions that they think will help them to better control their child.

**Mentor or Community Supervisor:** Under this model, a volunteer mentor or community supervisor is assigned to the juvenile to supplement the parent's supervision. The mentors are usually members of the juvenile's community or live in the same neighborhood. They spend 15 - 30 hours per week with the juvenile providing supervision and support, particularly after school and in the evenings. The mentor also makes home visits and telephone calls to check on a youth's adherence to their curfew or other conditions.

**Intensive Home Supervision:** Under this model, juveniles are placed under the supervision of their parents, but are subject to certain restrictions and frequent monitoring and supervision by a probation officer or social worker. The supervision is provided by government-paid social workers or by NGOs. The juvenile is required to follow a strict curfew, and must stay at home except to attend activities approved by the supervisor (for example school or work). The juvenile's free time is highly structured with productive activities and programs or services aimed at dealing with the problems that may have contributed to the juvenile's criminal behaviour (such as anger management problems, alcohol abuse, etc). In some cases, the program includes a weekly parents' group meeting to provide the parents with the training and support they need to develop effective skills for dealing with troubled juveniles. The supervisor makes frequent, random, unannounced home visits to check if the juvenile is following the curfew and conditions.

**Day or Reporting Centres:** The reporting centre model is designed to provide intensive supervision for juveniles who are not in school or who spend time on the streets. Under the reporting centre model, juveniles are placed under the supervision of their parents, but are required to attend a reporting centre for a certain number of hours per day. The centres can be any existing youth, sporting or cultural centre, and often promote the mixing of juvenile offenders into programs for non-offending peers. They are generally run by local authorities or NGOs, though some countries have established special police-run reporting centres. The reporting centres provide 6 to 12 hours of daily supervision and structured activities, after which the juveniles return home to their parents. The centres provide the juveniles with supervision, non-formal education, counseling, and recreation. The purpose is to promote constructive use of free time and to keep juveniles off the street.

**Youth Shelters/Open Custody:** Shelters provide an alternative for juveniles who require a residential placement because they are homeless and do not have a parent or other relative to provide supervision. Instead of being sent to a detention centre, the juveniles are placed in a home-like centres located in regular residential areas. The centres generally house between 10-15 youth and are staffed by workers who have been specially trained to deal with troubled adolescents. The centres rely primarily on close, 24-hour staff supervision, trust-building and a structured, daily routine to monitor the juvenile's behaviour. Juveniles under the care and supervision of a shelter are generally permitted to leave to attend school and for pre-approved activities. Staff provide life skills and independent living training, and individual and group counselling sessions. In some jurisdictions, reporting centres are used in conjunction with placement in a shelter. When not at the shelter, the juveniles participate in educational and recreational programs at a reporting centre to provide them with structured activities and prevent them from spending free time on the streets.

## 6. Child-Friendly Juvenile Courts

### Australia's Aboriginal Juvenile Court

In 2004, Australian state of Victoria created a new

Children's Koori Court. With this new initiative, the government is attempting to create a less formal, more culturally relevant justice experience for young aboriginal offenders, their families, and community.

The court is to conduct procedures with "as little formality and technicality" as possible. This includes taking steps to ensure that the proceedings are comprehensible to the juvenile, family members of the offender, and any member of the Aboriginal community present in the court.

In these courts, the physical setting is changed to create a more informal and culturally relevant environment. The magistrate does not wear the garb associated with his office and sits at eye level with the offender. Aboriginal community elders or respected persons sit beside the magistrate and offer insight on the particular case. The process includes all relevant voices to the case including Aboriginal justice offices, community members, and victims in developing a sentencing plan that will support recovery and reintegration.

### Iasi Juvenile Courthouse Romania

In 2001, Romania established a separate Juvenile Courthouse to hear all juvenile cases. The aims of the project were to ensure an optimal climate for hearing and judging cases involving children; to build a team of specialists for processing and judging juvenile cases; and to reduce the negative consequences suffered by children and their families during the process. Currently all cases involving juveniles in the region are being referred to the Juvenile Courthouse. In order to achieve its goals, the project undertook the following activities:

- Refurbishing the Juvenile Court with adequate furniture so that juveniles can feel more comfortable, and providing audio-video systems to allow for the contribution of evidence without being in the actual court;
- Printing of an information leaflet outlining the proper investigation and judging mechanisms for cases involving juveniles, with details of social assistance services offered by partner NGOs. These leaflets were given to juveniles under trial, their families and the public;
- The training (through a series of seminars) of 33 specialists to carry out penal cases with juveniles (10 police, 8 prosecutors, 7 judges, 2

attorneys, 4 social workers, and 2 psychologists).

To ensure correct functioning of the Juvenile Courthouse, a Coordination Committee was created, consisting of two representatives from each institution involved in the project in order to establish a common strategy based on the strategies of each institution and to find optimal solutions to implement the project.

#### **Philippines Court Appointed Special Advocates**

This volunteer program provides a mechanism for skilled and trained child advocates to provide needed services to juveniles in conflict with the law. Under the program, volunteer "special advocates/guardians" receive training and are appointed by the court to represent and support juvenile offenders. These volunteers may present written reports to the court recommending what they believe is best for the juvenile and providing the judge with information that will help the court make an informed decision. They also provide support and assistance to juveniles and their families throughout the proceedings, and when appropriate, may speak in the courtroom on behalf of the juvenile. Because they are specifically appointed to advocate for the interests of the juvenile in the court, the volunteers are regarded as one of the most important forms of assistance to children and their families. The volunteers have become a powerful voice for juveniles and have significantly helped judges in handling juvenile cases.

## **6. Non-Custodial Sentencing Alternatives**

### **Establishing Community Service Orders in Zimbabwe**

Zimbabwe's establishment of a community service program has been used as the model for similar initiatives throughout southern Africa. In 1992, Zimbabwe held a national seminar on Community Service, involving judges, relevant government bodies and other agencies and organizations. Following the seminar, a National Committee on Community Service was set up. The Committee includes judges and magistrates, representatives from the Ministry of Justice, the police, the Department of Social Welfare, and members of NGOs. The Committee embarked on a campaign of countrywide workshops to promote the idea of CSO

and conducted workshops with magistrates, prosecutors, police officials and prison staff. It developed and issued CSO guidelines for use by magistrates, prosecutors and heads of Institutions.

In order to manage CSO on a day-to-day basis, 22 Community Service Officers were appointed in the districts. Their functions are: to provide the National Committee with information and statistics on community service orders; to provide the court with reports and information regarding potential cases for referral to CSO; and to develop and maintain placements or institutions where offenders can perform community service.

In order to facilitate community participation and accountability, district committees were set up with representatives of the local police, prison service, social welfare, the courts, prosecution, charitable organizations, hospitals and NGOs. The Committees meet monthly to review and identify community service opportunities in the district.

Despite limited resources, Zimbabwe was able to implement CSOs by building political, judicial and community support for this sanctioning option. The workshop campaign provided the public and stakeholder education that established the basis for making this sentencing option easily understandable and accessible.

### **Day Reporting Centres**

Day Centres, or Day Reporting Centres are highly structured, community-based, non-residential programs for serious juvenile offenders. The goal of day centres is to provide both intensive supervision to ensure community safety, and also to provide a wide range of services to the juvenile to prevent future delinquent behaviour. The intensive supervision is fulfilled by requiring the juvenile to report to the facility on a daily basis at specified times for a specified length of time. Generally, programs are provided at the facility during the day and/or evening at least 5 days a week. Special weekend activities may also be conducted.

The reporting centre model is designed to provide intensive supervision for juveniles who are not in school or who spend time on the streets. Under the reporting centre model, juveniles are placed under the supervision of their parents, but are required to

attend a reporting centre for a certain number of hours per day. The centres can be any existing youth, sporting or cultural centre, and often promote the mixing of juvenile offenders into programs for non-offending peers. They are generally run by local authorities or NGOs, though some countries have established special police-run reporting centres. The reporting centres provide 6 to 12 hours of daily supervision and structured activities, after which the juveniles return home to their parents. The centres provide the juveniles with supervision, non-formal education, counselling, and recreation. The purpose is to promote constructive use of free time and to keep juveniles off the street.

#### **8% Early Intervention Program, Orange County, USA**

The 8% Early Intervention Program was developed by the Juvenile Systems Task Force to target young, high-risk juvenile offenders and their families. It was found that a small percentage (8%) of chronic offenders accounted for more than half of all juvenile arrests in Orange County. These chronic juvenile offenders were usually age 15 or younger at the time of their first violation and had at least two of the following characteristics: poor school behaviour or performance problems, family problems, substance abuse problems, and delinquency patterns. The Program employs experienced probation officers with caseloads of no more than 15 clients each, to work intensively with the juveniles and their families. First, staff try to control the offender's behaviour, ensure that he or she complies with the probation terms and conditions, and stabilise the juvenile's home environment through counselling, parent aides, and respite care. Then, the probation officer helps the juvenile develop the necessary skills to avoid a life of crime and trains parents on how to supervise and support their children. Volunteers assist by mentoring young people and developing jobs and literacy programs.

#### **RAILS Program, New South Wales, Australia**

The Resourcing Adolescents in Independent Living Situations (R.A.I.L.S.) Program is an Outreach Accommodation and Support Service programme for juveniles aged 14 to 17 who are homeless or at risk of being homeless due to difficulties in their family situation. The program assists juvenile offenders who are on probation to locate and

maintain accommodation suitable to their needs (supported or independent); to access education and vocational training, and to develop living and social skills. The aims of the programme are to: provide an outreach accommodation and support service; assist juveniles to develop the capacity to take responsibility for themselves and to give them the opportunity to explore their own independence whilst offering support, direction, encouragement and assistance; increase the juvenile's ability to make realistic decisions and choices; provide assessment and referrals to other services e.g. counselling, health; and prepare each individual with the knowledge and skills to enable them to live independently.

The RAILS programme uses an intensive case management and support approach. A case worker is assigned to each juvenile; each case worker has a maximum of 15 juveniles per year. A range of services may be provided, depending on an assessment of the juvenile's individual needs. This may include: accommodation in a group home or independent apartment; training in living skills (such as budgeting and bill paying, nutrition, etc) and social skills (such as anger management, conflict resolution, etc) through role modelling, group work and practicing; family reconciliation (to help the juvenile move back in with family); crisis intervention; advocacy; material and financial assistance (i.e. household appliances, furniture, clothing, etc); and case co-ordination, management and monitoring. Services are provided either directly by the RAILS case-worker, or through referral to other agencies and organisations within the community. RAILS has an extensive referral network of supporting agencies in the region.

## **7. Innovative Detention Centres**

### **Open Custody Group Homes**

"Open" juvenile facilities are being introduced in an increasing number of countries, including Canada, US, UK, and Australia. They are unlocked, home-like centres located in normal residential areas. They generally house between 10-15 juveniles and are staffed by workers who have been specially trained to deal with juvenile offenders. Most are run by NGOs on contract with the government.

The centres have minimal security, and rely instead

on close, 24-hour staff supervision, trust-building and a structured daily routine to monitor the juvenile's behaviour. Juveniles in open custody facilities are generally permitted to leave to attend school and for pre-approved activities, but must abide by strict curfews.

While at the centre, juveniles participate in a range of structured activities and programs, including life skills programs, independent living training, and individual and group counselling sessions. Centre staff support juveniles to re-establish and build relationships with their family, and to find employment or become enrolled in vocational training.

Open custody facilities are particularly appropriate for non-violent juveniles offenders who are not dangerous to the community, but who lack appropriate parental care. They provide juveniles with the necessary level of support and supervision they need to overcome their offending behaviour, but avoid the negative consequences associated with placement in a closed facility. Juveniles are not isolated from their family and community, and are able to take advantage of existing education and vocational training opportunities in the community with other non-offending youth. This helps to prevent marginalisation and stigmatisation.

#### **Open Prison, Ankara Reformatory, Turkey**

The Ankara Reformatory is based on a philosophy of integration rather than isolation, and more than half of the children leave prison every day, unaccompanied, to attend local schools and go to jobs in local businesses. There is nothing to stop the children escaping, should they choose to do so: there are no perimeter fences or guards. Yet very few run away as the conditions and opportunities available in the open prison are so preferable to those in closed prisons (where they would immediately be sent if recaptured) and, in many cases, to life outside. Conditions are described as "simple but very pleasant". Primary level classes are held on site, whilst secondary standard children attend regular school.

According to a Turkish law passed in 1971, any business with over 50 employees is required to ensure that 3% of the workforce are ex-offenders

and so boys over the age of 15 (official school leaving age) are found placements in local factories, depending on their skills, or trained in a craft at the reformatory. Anything they make during their classes (such as clocks, ceramics and stained glass) is sold to the community through regular craft fairs with the profits returned directly to the boy who made the item in the first place. Those with jobs get to continue their employment on release and to move into shared group accommodation. The Reformatory also arranges regular trips to football matches, the theatre, TV studios, the cinema and to museums.

Despite the serious nature of most of the offences of the boys in the Reformatory (more than half serving sentences of over five years for murder or serious sex offences), the local community not only does not object to the institution, but instead actively supports it through voluntary teaching and offering sports and crafts skills. The overall effect is that these boys are not isolated from society, but supported to integrate into the local community.

#### **Girls Service Unit, USA**

The Girls Service Unit of the San Francisco Juvenile Probation Department works with community-based organizations offering services for girls in detention and in the community after release. With funding through the state's juvenile justice crime prevention programme, the Girls' Service Unit entered into a collaborative partnership with community-based nonprofit organizations for enhanced victim advocacy, case management services and gender-specific programming for girls in detention and in the community. The Girls' Services Unit provides the following services:

- Case management for girls in detention, including gender-specific needs assessments; community-based referrals for mental health, legal services, job training, etc.; family contacts; and court accompaniment. The assessment is conducted on every girl entering the juvenile justice system and is used to measure her strengths and needs. The information is then used to develop an individual case plan for each girl that includes referrals to appropriate community-based services. The girl, her family and her probation officer all agree to the plan before the referral is made;

- Gender-specific education and programming for girls in detention
- Victim Services in detention for girls who have documented histories of abuse
- Inside Mentoring Program, created after it was discovered that girls in the juvenile justice system receive far fewer visits and family support than their male counterparts. Volunteer university interns and staff from community-based organizations visit girls in detention on a daily basis. Girls who do not receive family visits or who are incarcerated for long periods of time receive priority visiting. Since this program has been in existence, there has been a marked decrease in fights, suicide attempts and visits to the nurse's office in the juvenile institution.

## 8. Training and Capacity Building

### Terre des hommes Inter-Agency Training

Terre des hommes Foundation has been supporting Inter-sectoral Training Courses in Juvenile Justice in various countries. The participation of hierarchical superiors is considered essential in the first stage of training in order to secure support for the implementation of alternative measures on the ground. Once this commitment is in place, training courses are aimed at officials from various sectors who are in direct contact with children in conflict

with the law and who must find - and often improvise - solutions. Judges, prosecutors, police officers, military personnel, prison staff, lawyers, and social workers/educators participate in training events together. Inter-sectoral "role-plays" helps participants understand the possibilities and constraints of inter-connected professions within the justice system.

The analysis of events by the participants allows for immediate comparison with the current situation and the ideal situation and helps to create a team atmosphere among the practitioners who work with children in conflict with the law in the same geographical area.

By creating opportunities to interact at training events, Judges gain a better understanding of the constraints under which prison staff operate (for example, by going to the prisons where they send minors). Police officers understand the potential for lawyers and social workers to help police when a child comes into contact with the law. Police officers have been able to voice their opinions in front of judges, something which, in some countries, rarely or never arises outside of the inter-sectoral training. Prosecutors have made the acquaintance of social workers working in their respective jurisdictions.

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