



IPRT
Irish Penal Reform Trust

Detention of Children in Ireland: International Standards and Best Practice



The Irish Penal Reform Trust is an independent non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as last resort.

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FOREWORD

Relatively little is known about Irish children who come into conflict with the law and much work needs to be done to identify the barriers children face exercising their rights in the criminal justice system. However, research undertaken in Ireland indicates that such children come from poor socio-economic backgrounds; many of them have lived out-of-home or been in care; they have weak attachment to family and invariably have problems with drugs and/or alcohol. They are typically early school leavers and mental health and behaviour problems are particularly prevalent among this group. Where these risk factors converge, the risk of being involved in criminal behaviour is multiplied.

Through our investigation of individual cases in the Office of the Ombudsman for Children we are finding evidence of a system that is not designed to respond to these complex needs. We see the results of criminal behaviour taking precedence over the welfare needs of children and young people.

The central ethos of the Children Act, 2001 is the diversion of children away from the criminal justice system. The approach taken in the Act, focusing on preventative measures and restorative justice mechanisms, is the right approach and the one which best protects the rights of children and young people in conflict with the law in line with Ireland's legal obligations. Through this approach, the complex needs of children can be addressed without the need to resort to youth justice measures.

However, the implementation of non-custodial solutions for children in conflict with the law in Ireland is slow, and more needs to be done to make the principle of detention as a measure of last resort a reality.

When detention of children is deemed necessary, it should only be used for the shortest appropriate time. The conditions in which children are held and the support which they are to be afforded is laid out in detail in international standards which are described in this report. I have seen for myself in Ireland that the Children Detention Schools, operating under the umbrella of the Irish Youth Justice Service, employ many practices that aim to respect the rights of children in their care.

The continued detention of boys in St Patrick's Institution (pending the construction of the National Children Detention Facility) remains a serious concern, and is not in compliance with international human rights standards. Having visited all of the Detention Schools and St Patrick's Institution, I am convinced that the detention of children in prisons must end. Of additional concern is the fact that I cannot investigate complaints from children held in St Patrick's Institution due to an exclusion in the Ombudsman for Children Act, 2002. I therefore particularly welcome the recommendation contained in the report that supports both my own and the Committee on the Rights of the Child recommendation to extend the remit of the Ombudsman for Children's Office to include the power to receive complaints from children so held.

The system of detention of children in Ireland is currently undergoing a major change. This is a real opportunity to get things right from the outset and the best interests of children must be at the heart of any developments in this area. I believe that the future development of the system of Children Detention Schools should be centred on the principles of rights, rehabilitation and care.

One of my greatest concerns is a pervasive culture and attitude more generally towards children who come into conflict with the law. If we are to really change the system we need to confront these attitudes to children in the youth justice system. Article 40 of the United Nations Convention on the Rights of the Child states “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”.

In this year, at a time of such change in the youth justice system and on the 20th anniversary of the UN Convention on the Rights of the Child, the Irish Penal Reform Trust report *Detention of Children in Ireland: International Standards and Best Practice* is particularly timely. My hope is that the recommendations contained in this report will be viewed by the Irish Youth Justice Service as not only offering guidance during the planning of the physical design of the new National Children Detention Facility, but as also offering an approach that genuinely respects that children and young people in the youth justice system have a right to be treated in a way that promotes their sense of dignity and worth.

The publication of this report into children detention standards by the Irish Penal Reform Trust is timely, and I encourage those working in the area to give serious consideration to the recommendations contained within.

Emily Logan

Ombudsman for Children

Dublin, October 2009

INTRODUCTION

The arrest, detention or imprisonment of a child should be a measure of last resort and for the shortest appropriate period of time.¹ This is enshrined in the UN Convention on the Rights of the Child (Article 37), which was ratified by Ireland in 1992. Detention as a last resort means that the use of custody for children should be limited to exceptional cases, for example where a child has been found guilty of a violent offence.² As long as detention exists as a measure, places of detention for children should aim to maximise their chances of rehabilitation and integration into society by providing a humane, safe and secure environment whereby the offending behaviour of children can be addressed, and where children will be assisted to make better choices about their lives during custody and on their return to society.³ This report considers how these aims can best be achieved in the Irish context.

In Ireland, section 96 of the Children Act 2001 states that detention of children should only be used as a last resort and the Criminal Justice Act 2006 amends the 2001 Act to make provision for all children under 18 years who are detained to be held in Children Detention Schools under the auspices of the Department of Justice, Equality and Law Reform. In 2007, responsibility for existing Children Detention Schools was transferred to the Irish Youth Justice Service within that Department, and in 2008 the Government approved plans to build a new National Children Detention Facility to be located in North County Dublin to accommodate all detained children aged under 18 years. A vital part of this plan is to remove children from St. Patrick's Institution – part of the prison system – in accordance with the provisions of the Children Act 2001. Until this is achieved, the Criminal Justice Act 2006 makes provision for interim arrangements in relation to boys aged 16 and 17 who may continue to be detained in St. Patrick's Institution until places are available in the new National Children Detention Facility.

After a long period of inactivity, therefore, the detention of children is attracting the attention of policy-makers

and government agencies and, after years of neglect, plans are being made to make modern provision for the detention of children in Ireland. This presents an important opportunity to put in place a system of detention for children that respects their rights and ensures the highest standards of treatment. To inform this process, the Irish Penal Reform Trust commissioned independent research in 2006 to identify the lessons to be learned from other jurisdictions and from international standards regarding the detention of children. This report presents the findings of this research which, it is hoped, will usefully inform the planning and building of the new National Children Detention Facility and the practices and procedures that will apply there when it is complete. It is not suggested that all of the evidence here is new – those working in the existing Children Detention Schools are already very familiar with well-established best practice, and that is why the experience of the existing Detention Schools is also included here. However, IPRT considers it important to identify and collate best practice in one document so that it can usefully be set down as a marker against which all future progress will be measured.

Currently, there are three Children Detention Schools in Ireland: the former industrial and reformatory schools of Oberstown Girls' School, Oberstown Boys' School and Trinity House School (also situated on the Oberstown campus). The Finglas Child and Adolescent Centre provides assessment of children in conflict with the law, as well as providing residential accommodation for sentenced boys. St. Patrick's Institution, which is a closed, medium security prison, caters for approximately 240 young men between the ages of 16 and 21 years. Unlike the Oberstown Schools and Trinity House, St. Patrick's has long been the subject of criticism of both national and international bodies. In 1985, the Whitaker Report recommended that St. Patrick's Institution should be closed down immediately.⁴ It was described as “outdated, lacking in educational and recreational facilities and an environment that would contribute to the further

¹ Article 37 (b) UN Convention on the Rights of the Child (CRC) and Rules 1 and 2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Havana Rules).

² Rule 17.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (available at: <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>).

³ Kilkelly, U. et.al. (2002) *In Our Care: Promoting the rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p. 52.

⁴ *The Report of the Committee of Inquiry into the Penal System* (1985) Dublin: Stationery Office in Walsh, D. (2005) *Juvenile Justice*, Dublin: Thomson Round Hall, p.483.

delinquency of the juvenile rather than any rehabilitative function.” More recent criticisms have come from the Irish Human Rights Commission,⁵ the Council of Europe Committee for the Prevention of Torture (CPT)⁶ as well as campaigners like Fr Peter McVerry SJ, who in 2006 described the institution as “a disaster” and an “obscenity”.⁷ While many of the concerns related to the buildings themselves, others related to the inappropriate application of a prison regime to the detention of children and the failure to ensure that appropriate facilities are in place to meet their needs.

According to the Irish Human Rights Commission (IHRC),⁸ the continuing use of St. Patrick’s Institution runs counter to human rights standards. The IHRC accepts that, while it may not be possible to put appropriate facilities in place immediately for the detention of children, the continuing use of an institution that also serves as an adult prison for this purpose is totally unacceptable. While the commitment has been made to transfer 16 and 17 year olds from St. Patrick’s Institution at some point in the future, it remains unclear when this will take place or how the future detention regime will be organised.

Children in Detention in Ireland: An Overview

To set the context for discussions about children detention in Ireland, it is useful to look at information about the characteristics of the population of children who are detained.

Under the Children Act 2001, as amended, the age of criminal responsibility was raised to 12 years. Under section 52 of the 2001 Act, the consent of the Director of Public Prosecutions is required before any child under 14 years of age can be charged with a criminal offence. As discussed in more detail in Chapter 1 of this report, the Act also requires that detention is only used as a last resort, and only when no other means of addressing offending behaviour can be used. Moreover, according to section 143(2) of the 2001 Act, judges are required to justify the use of detention in an open court.

When detention is considered necessary by the Courts, children can be sent to Children Detention Schools or St. Patrick’s Institution. Sentences to Children Detention Schools can be imposed for up to 3 years (section 149 of the 2001 Act). Detention Schools may also hold children detained on remand, and provide assessment services to the Courts.

Children in Ireland can be held on remand or committed on sentence to:

- a) St. Patrick’s Institution (part of Mountjoy complex) – holding boys and young men between 16 and 21 years of age;
- b) Finglas Child and Adolescent Centre – holding boys between 12 and 16 years of age;
- c) Trinity House School – holding boys between 12 and 16 years of age;
- d) Oberstown Boys’ School – holding boys between 12 and 16 years of age;
- e) Oberstown Girls’ School – holding girls between 12 and 18 years of age.

Detailed descriptions of all the facilities are included in Chapter 1 of the report.

Remand and committals on sentence to St. Patrick’s Institution

The Irish Prison Service *Annual Report* for 2008 records that in that year there were 241 committals to St. Patrick’s Institution of boys between 16 and 17 years of age (on remand and on sentence).⁹ Of those, 131 committals were on sentence.¹⁰

Remand and committals in Children Detention Schools

The most recent data published in inspection reports by the Health Information and Quality Authority (HIQA)

⁵ Irish Human Rights Commission, *Observations on Proposals for Amendments to the Criminal Justice Bill 2004 (Youth Justice)* 30 March 2006, p.11 [available at: <http://www.ihrc.ie>] [accessed 17 June 2009].

⁶ *Report to the Government of Ireland on the visit to Ireland carried out by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment from 2 to 13 October 2006*, Council of Europe Document CPT/Inf (2007) 40.

⁷ McVerry SJ, P. (2006) “Rehabilitation – Are we for Real?” *Working Notes*, Issue 53 October 2006, p.3.

⁸ Irish Human Rights Commission, *Observations on Proposals for Amendments to the Criminal Justice Bill 2004 (Youth Justice)*, 30 March 2006 p.12 [available at: <http://www.ihrc.ie>] [accessed 17 June 2009].

⁹ Irish Prison Service (2009) *Annual Report 2008*, p.17 [available at: <http://www.irishprisons.ie/documents/IPSanualreport2008e.pdf>].

¹⁰ Irish Prison Service, *op.cit.* above, p. 19.

on visits to the four existing Children Detention Schools shows that:

- a) Between January and December 2008, there were 64 remands involving 50 children to the Finglas Child and Adolescent Centre (FCAC). The average age on admission was 15 years and four months, and the average length of remand was 32 days. Forty-seven children were remanded for assessment.¹¹
- b) Between January and October 2008, there were nine committals to FCAC. The average age on committal was 15 years, and the average length of sentence was eight and a half months.¹²
- c) Between November 2007 and November 2008, there were 20 remands involving 17 children to Trinity House School. The average age on admission was 15 years and four months, and the average length of remand was 13 days.¹³
- d) In the same period, there were 24 children committed on sentence to Trinity House. The average age on committal was 15 years and six months, and the average length of sentence was eight and a half months.¹⁴
- e) Between November 2007 and October 2008, there were 81 remands involving 61 children in the Oberstown Boys' School. 86% of the children on remand were 15 years of age. The average length of remand was two weeks and two days.¹⁵
- f) In the same period, there were 14 committals on sentence, involving 12 people in the same School. The average length of committal was nine months and three weeks.¹⁶
- g) In 2008, there were 50 admissions involving 37 children to the Oberstown Girls' School. Thirty-eight

had been remands, while 12 were committals.

The average age on admission was just over 16 years, with half being over 17 years of age, and the youngest being 12 years 5 months. The average length of remand was just under three weeks, while the average length of committal on sentence was ten and a half weeks.¹⁷

In 2007, a National Study of the Children Court which analysed cases of 400 children in conflict with the law, found that in relation to the category of offences, the most prevalent charges were for road traffic offences (30.3%); theft, robbery, fraud or larceny (22.7%) and public order offences (22.5%).¹⁸ The study noted that the ten most common occurring charges in the 400 cases examined were:

1. Theft of property;
2. Breach of peace;
3. Criminal damage to property;
4. Being drunk in a public place;
5. Assault;
6. Driving without insurance;
7. Trespass and burglary;
8. Driving a car without the consent of the owner;
9. Driving without a driving licence; and
10. Failure to produce car insurance.¹⁹

Importantly, the study includes contextual information in relation to the gravity of offences grouped into the above categories, and therefore gives a more complete

¹¹ Health Information and Quality Authority (2009) *Finglas Child and Adolescent Centre: Children Detention School. Inspection Report ID Number: 281*, Dublin: Health Information and Quality Authority, p.7.

¹² *Ibid*, p.8.

¹³ Health Information and Quality Authority (2009) *Trinity House: Children Detention School. Inspection Report ID Number: 270*, Dublin: Health Information and Quality Authority, p.8.

¹⁴ *Ibid*.

¹⁵ Health Information and Quality Authority (2009) *Oberstown Boys' Detention School: Inspection Report ID Number: 269*, Dublin: Health Information and Quality Authority, p.8.

¹⁶ *Ibid*, p.9.

¹⁷ Health Information and Quality Authority (2009) *Oberstown Girls' Detention School: Inspection Report ID Number: 282*, Dublin: Health Information and Quality Authority, p.7.

¹⁸ Carroll, J. and Meehan, E. (2007) *The Children Court: A National Study*, Dublin: Association for Criminal Justice Research and Development, p. 30.

¹⁹ *Ibid*.

picture than one presented by bare statistics. The report notes, for example, that in respect of theft, many of the charges related to property of low monetary value (such as a can of deodorant or a pack of sandwiches). The study also noted that while the charge of assault was one of the most common (144 charges), 24% of those were charges of assault causing harm.²⁰

In relation to the characteristics of children in detention, a study into the emotional intelligence and mental health needs of boys sentenced to Children Detention Schools in 2007 found that:

1. On average, children in this group were 14.9 years of age;
2. They were often detained on multiple charges;
3. On average, they were detained for 314 days; and
4. The vast majority of them had been detained on at least one other occasion previously.²¹

This study also found that children in detention often come from families with at least one other member who has a criminal conviction; the majority present with a history of behavioural problems and mental health difficulties, and often with drug and other substance abuse since early childhood.²²

St. Patrick's Institution is a medium-security prison, managed by the Irish Prison Service, holding remand and sentenced prisoners. The Irish Prison Service *Annual Report 2007* shows that the majority of young men held in St. Patrick's that year were committed there for offences against property without violence, offences against the person (excluding murder, manslaughter and sexual offences) and road traffic offences.²³ Out of 1,053 overall committals to prison of persons between 16 and 21 years of age, 360 were for non-violent crimes against property, 233 were for road traffic offences, and 217 were for 'other offences'.²⁴ Those three categories, therefore, constituted 77% of all offences.

Background to the report

In 2005, the Irish Penal Reform Trust secured funding from the Irish Youth Foundation to commission research on the treatment of children in custody in other jurisdictions, with particular emphasis on those who commit serious crime. In 2006, Verona Ní Dhrisceoil, BCL, LLM (Criminal Justice) was commissioned to undertake the research under the supervision of Dr Ursula Kilkelly, now Chair of the Board of IPRT and Senior Lecturer at the Faculty of Law, University College Cork. The findings were updated and amended in 2009 by IPRT staff, in accordance with developments that took place in recent years.

The aims of the report are to:

- Present the international human rights standards relevant to children in custody;
- Examine the practices of other jurisdictions regarding treatment of children in custody; and collect best practice examples relevant to particular standards;
- Make recommendations regarding the future detention of children in Ireland.

Method and outline of the report

This report is intended to act as a discussion paper and a foundation for further exploration of the issues rather than a comprehensive and complete report on the treatment of children in custody in other jurisdictions. The study was carried out primarily through the analysis of sources such as inspection reports, academic research, and analysis of legal instruments. The report provides some examples of good practices identified from these sources; it is, however, by no means exhaustive. Rather, these serve to illustrate approaches in other jurisdictions that can assist in the design of a human rights compliant system of youth detention in Ireland.

²⁰ *Ibid.*

²¹ Hayes, Dr J.M. and O'Reilly, Dr G. (2007) *Emotional Intelligence, Mental Health and Juvenile Delinquency*, Cork: Juvenile Mental Health Matters.

²² *Ibid.*, p. 7.

²³ Irish Prison Service (2008) *Annual Report 2007*, p. 12 (available at: http://www.irishprisons.ie/documents/IPS_AR_2007.pdf).

²⁴ *Ibid.*

Chapter 1 of the report provides information about the legal and policy framework for the detention of children in Ireland. It also describes briefly the existing detention facilities, and outlines recent developments concerning the planning and building of the new National Children Detention Facility.

Chapter 2 of the report outlines the general international standards applicable to detention of children. It discusses in detail obligations placed on States by the UN Convention on the Rights of the Child, and provides information about other standards developed by international bodies.

Chapter 3 briefly outlines comparative information about the detention of children in a variety of jurisdictions. Examples of best practice from those countries are included in the thematic chapters.

Chapters 4 to 13 outline international standards applicable to ten thematic areas relevant to the detention of children – from admission and induction to a detention centre, through to rehabilitation and reintegration into the community post release. Conclusions in each chapter summarise the requirements which should be considered in the design and planning of children detention facilities.

Lastly, Chapter 14 summarises all recommendations made earlier in the report.



Part I

Detention of Children – the Context

Part I of the report provides contextual information regarding the legal and policy frameworks for the detention of children in Ireland, describes briefly the existing detention facilities, and outlines the recent developments concerning the planning and building of the new National Children Detention Facility. It further discusses international standards applicable to detention of children, outlining in detail the requirements placed on States by the UN Convention on the Rights of the Child, and provides information about other standards developed by international bodies.

This part also briefly outlines comparative information about the detention of children in a variety of jurisdictions. Examples of best practice from those countries are examined in the thematic chapters of Part II.

Chapter 1: Detention of children in Ireland

1.1 Legal and policy frameworks

Children Act 2001

The Children Act 2001, as amended, represents the modern statutory framework for the treatment of children in conflict with the law. The Act places the Garda Juvenile Diversion Programme on a statutory basis, introduces family conferencing as a means of avoiding conviction, and a range of community sanctions as a means to divert children from detention.

Section 96(1)(a) of the act provides that any court when dealing with children charged with offences shall have regard to the principle that children have the same rights and freedoms before the law as adults. Section 96(2) provides that a period of detention should be imposed only as a measure of last resort and, under section 143(1) a court may not make an order of detention unless it is the only suitable way of dealing with the child. Additionally, section 143(2) stipulates that where detention is ordered, the judge must give reasons for doing so in an open court.

Critical to ensuring detention is used only as a measure of last resort is the implementation of the range of community sanctions for which Part 9 of the Children Act 2001 makes provision. These include Day Centre Orders, Probation Orders incorporating training or activities, intensive supervision and residential supervision, Suitable Person (Care and Supervision) Orders, Mentoring Orders. The establishment of Young Persons' Probation and the further resourcing of the Probation Service to undertake this work means that alternatives to detention are slowly becoming part of the range of choices available to the Courts nationwide.²⁵

In 2005, in response to the slow pace at which the 2001 Act was being implemented, a review of the youth justice system was undertaken with a view to identifying the measures to be adopted to achieve greater implementation. This Review, undertaken by the Department of Justice, Equality and Law Reform, recommended substantial changes *inter alia* to the arrangements for the detention of children²⁶ and these

were implemented by the Criminal Justice Act 2006. In particular, the 2006 Act: transferred responsibility for the detention of all children to the Department of Justice, Equality and Law Reform;²⁷ made provision for the detention of all children under 18 years in Children Detention Schools; and, until that could be achieved, it made interim provision for the detention of 16 and 17 year olds in St. Patrick's Institution.²⁸ All outstanding provisions of the 2001 Act, as amended, commenced on 1 March 2007.²⁹

The National Youth Justice Strategy

In 2008, the Irish Youth Justice Service (IYJS, an executive office of the Department of Justice, Equality and Law Reform) published a *National Youth Justice Strategy 2008-2010* (the *Strategy*), a document outlining the IYJS's mission statement and high level goals, as well as more detailed objectives, actions, outcomes and performance indicators for the Service's administration of youth justice. The IYJS has a wide remit, encompassing: diverting children from crime and the criminal justice system; promoting restorative justice; enforcing community sanctions; facilitating rehabilitation; and, as a last resort, providing for detention. The IYJS also focuses on multi-agency working, recognising that the success of the *Strategy* depends on effective and efficient cross-agency collaboration.

In the *Strategy*, the IYJS set out five high levels goals for all the agencies working in the system:

1. To provide leadership and build public confidence in the youth justice system;
2. To work to reduce offending by diverting children from offending behaviour;
3. To promote greater use of community sanctions and initiatives to deal with children who offend;
4. To provide a safe and secure environment for

²⁵ The Probation Service (2007) *A Century of Change, Challenge and Service: Annual Report 2007*, Dublin: The Probation Service [available at: <http://www.probation.ie/pws/websitepublishing.nsf/Content/Publications+-+General+Information~Annual+Reports%2C+Reviews+and+Statistics>].

²⁶ Department of Justice, Equality and Law Reform (2006) *Report on the Youth Justice Review*, pp. 40-41 [available at: <http://www.justice.ie/en/JELR/YouthJustice%20Review.pdf/Files/YouthJustice%20Review.pdf>].

²⁷ See section. 122 of the Criminal Justice Act 2006.

²⁸ See section. 143 of the Criminal Justice Act 2006.

²⁹ See: Children Act 2001 (Commencement) Order 2007, S.I. No 064 of 2007.

detained children that will assist their early reintegration into the community;

5. To strengthen and develop information and data sources in the youth justice system to support more effective policies and services.

The *Strategy* focuses on children who have already been in conflict with the law, and does not therefore encompass early intervention initiatives that aim to prevent children from getting into contact with the criminal justice system in the first place. However, the IYJS is mindful of the role of the early intervention in diverting children from the formal system and this is reflected in the document.

The *Strategy's* key aim, as formulated in the document, is to divert children from crime and the criminal justice system. The document therefore sets out a number of goals in relation to the extension of initiatives such as the Garda Youth Diversion Projects, Garda Juvenile Diversion Programme and programmes developed under the National Drugs Strategy. The *Strategy* also contains a commitment to further development and support of restorative justice initiatives such as restorative conferencing provided by the Probation Service.

The *Strategy* sets out a high level goal for the IYJS of promoting a wider use of community sanctions and initiatives for children who have come into contact with the Courts and are convicted of a crime. In this respect, the IYJS recognises that it needs to ensure that alternatives to detention are properly resourced and managed, and that it needs to ensure effective co-operation between the Probation Service and a number of other agencies involved in the delivery of such sanctions in local communities.

Lastly, the *Strategy* commits the IYJS to providing safe and secure environment for children in detention, with the aim of assisting their early reintegration into the community. The *Strategy* recognises that detention should only be used as a last resort, and only for the shortest possible time. While currently resourcing and working with existing Children Detention Schools (see below), the IYJS is also taking a lead in the development of the new National Children Detention Facility described in more detail later in this section.

Standards for inspection of places of detention for children in Ireland

New standards for the inspection of places of detention for children in Ireland have emerged in the last 5 years. In 2004, the Department of Education and Science issued its *Standards and Criteria for the Children Detention Schools* (the *Standards*),³⁰ which now govern the inspections undertaken by the Health Information and Quality Authority (HIQA) of all Children Detention Schools in Ireland.

The *Standards* set out a number of detailed guidelines in the following areas:

1. The content of the School's Statement of Purpose and Function, which should contain, for example, an outline of the purpose, ethos and philosophy of the School; description of the target group/ children admitted to a particular centre; key policies developed by the Schools to manage and care for the children admitted; and guidelines for the development and accessibility of the Statement to children (including accessibility in a format understood by children).
2. The principle that children are cared for by staff to whom they can relate effectively. This is achieved through staff establishing good relationships with children while showing respect for their individuality and being aware of confidentiality; allowing choice for children's personal appearance, clothing and style; facilitating practice of religion; providing a balanced diet with choice in food and involvement in menu preparation; providing the opportunity to pursue leisure activities in which children exhibit an interest or talent; offering life skills training; having a written care and control policy, as well as a statement on the use of restraint and separation; having a written policy and protocol regarding absconding, drug policy, home leave, non-return; having a written policy on privacy.
3. Child protection: the *Standards* require that a child protection procedure is in place and is known to all staff, children, their parents and other professionals having contact with the children; the procedure outlines clearly the steps to be followed and the persons to be notified; all staff members receive training in, and are familiar with, the signs,

³⁰ *Standards and Criteria for the Children Detention Schools* Department of Education and Science, 2002 and 2004 (available at: <https://www.education.ie>).

symptoms and behaviour associated with bullying, being used as a scapegoat, harassment or abuse; that a whistle-blowing system is in place for staff wanting to bring their concerns to the attention of appropriate bodies.

4. Children's rights: the *Standards* require that children in detention receive care in a manner which safeguards their rights and actively promotes their welfare. This is to be achieved through: staff being aware of the centre's policies on rights and responsibilities; clearly outlined complaints procedure, containing definitions of what constitutes a complaint and how children can avail of the appropriate procedure and make a complaint both within and outside the School; children being involved in the preparation of reports for meetings, etc, and being consulted about decisions that will impact on their life; access to information about independent advocacy services; access to information in general; assistance in understanding the rights and responsibilities of children in detention.
5. Planning for children in detention: each centre or School must have a written care plan for each child in their care. The *Standards* require that individual plans are developed in consultation with parents/guardians and the child concerned; that it is subject to regular review; that the plan stresses the need for regular family contact and prepares the child for leaving care; that the plan promotes the general welfare of the child including appropriate provision to meet his/her educational, health, emotional and psychological needs.
6. Staffing and management: including the requirement that the School is managed by an appropriately qualified person; that the School has procedures for the recruitment of appropriately trained and checked staff; policies are in place for the support, supervision, training and development of staff; the School has sound administrative systems in place, including records, case review notes, etc.
7. Education: the Schools are required to promote education and provide educational assessment to children in their care, as well as provide life skills programmes while minimising disruption to education and keeping mainstream education open as an option.
8. Health: the *Standards* state that health care is an essential element in the arrangements for the care of children in detention. Accordingly, the Schools are required to promote healthy lifestyles; keep complete medical records for each child and provide for regular health checks with the consent from the child and their parents or guardians; provide emotional and other required specialised support; exercise control over the administration of medicines; provide educational programmes in sex/relationships, drug misuse, effects of smoking, etc.; promote healthy eating habits and provide nutritious food in adequate quantities; provide regular leisure activities and recreation.
9. Premises, safety and security: the *Standards* require that Schools are located in premises that are suitable, safe and secure for the purpose of providing residential care to children. In this respect, the *Standards* state that each child should have their own room which is furnished to acceptable standards and permits personalisation; there should be sufficient space to meet the full range of children's needs, including for recreational activities both indoors and outdoors; each School should have a written statement on safety policy, fire precautions and emergency procedures which is understood by both staff and children; each School should perform regular risk assessment of the premises.
10. Dealing with offending behaviour: the *Standards* require that individual offending behaviour programmes consistent with the child's assessed needs are in place for each child detained, and that they are regularly monitored and evaluated.

Standards adopted by the Office of the Inspector of Prisons in relation to the inspection regime for St. Patrick's Institution

The Office of the Inspector of Prisons was established in 2002, and placed on a statutory footing by the *Prisons Act 2007*. The Inspector of Prisons carries out announced and unannounced inspections to all prisons, including St. Patrick's Institution, not only during

31 See description of inspection procedures at: http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Prison_Inspections.

business hours but also at night if necessary.³¹ The current Inspector of Prisons has made it known that he will perform his functions in an independent manner, as required by the statute.³² Reports of such inspections, as well as an annual report on the Inspector's activities, are presented to the Minister for Justice, Equality and Law Reform who in turn is obliged to lay a copy of each report before the Oireachtas.³³

The Prisons Act 2007 outlines the general areas which the Inspector is obliged to report on in respect of any prison, and these include:

- a) the general management of the prison, including the level of its effectiveness and efficiency;
- b) the conditions and general health and welfare of prisoners detained there;
- c) the general conduct and effectiveness of persons working there;
- d) compliance with national and international standards, including in particular the Prison Rules 2007;
- e) programmes and other facilities available and the extent to which prisoners participate in them;
- f) security; and
- g) discipline.³⁴

While providing the outline of the general areas that should be subject to inspection, the Prisons Act 2007 fails to provide any further direction as to what measures should be used to assess the situation in prisons. Recognising this gap, the Inspector of Prisons published his *Standards for the Inspection of Prisons in Ireland* on 24th July 2009,³⁵ as well as a supplementary set of standards for the inspection of the conditions in which 16-17 year old boys are held in St. Patrick's Institution, published on 1st September 2009.³⁶ The

standards against which particular areas of prison management and prison regimes will now be judged are based closely on the requirements of international human rights law pertaining to the situation of children deprived of their liberty, including the UN Convention on the Rights of the Child, the Havana Rules and the European Rules.

The *Standards for Inspection of Prisons in Ireland: Juvenile Supplement* (the *Standards for Inspection*) recognise that detention of children should only be used as a measure of last resort, and the Inspector stresses in the foreword to the document the responsibility of the State to treat children in custody in a manner consistent with Ireland's international obligations. As the *Standards for Inspection* are supplementary to the main document (*Standards for the Inspection of Prisons in Ireland*), they focus on those areas where different treatment of children in custody is particularly important, including:

1. Physical environment and accommodation: the *Standards for Inspection* require that children are detained separately from adults, and that their accommodation takes into account their need for privacy; they also stress that children should be able to keep their personal belongings, wear their own clothes and have regular access to sanitary facilities.
2. Sentence management: the *Standards for Inspection* stress that each child should have a sentence management plan and that the child's views should be given appropriate consideration when the plan is drawn up.
3. Safety: the *Standards for Inspection* require that physical restraint is only used in exceptional circumstances and that the use of force shall be the minimum necessary and for the shortest required period of time; the document also highlights the need for medical examination of a child following the use of restraint and the need to keep a record of such examination. In the area of safety, the *Standards for Inspection* also require that appropriate

32 Inspector of Prisons (2008) *Interim report presented to the Minister for Justice, Equality and Law Reform by Judge Michael Reilly, Inspector of Prisons, September 2008* (available at: <http://www.inspectorofprisons.gov.ie/en/IOP/Prison%20Inspector%20Interim%20Rpt.pdf/Files/Prison%20Inspector%20Interim%20Rpt.pdf>), at para. 6.

33 Section 31(3) and Section 32(3) of the Prisons Act 2007.

34 Section 32(2) of the Prisons Act 2007.

35 The Office of the Inspector of Prisons (2009) *Standards for the Inspection of Prisons in Ireland* (available at: <http://www.inspectorofprisons.gov.ie/en/IOP/Standards%20for%20the%20Inspection%20of%20Prisons%20in%20Ireland.pdf/Files/Standards%20for%20the%20Inspection%20of%20Prisons%20in%20Ireland.pdf>).

36 The Office of the Inspector of Prisons (2009) *Standards for the Inspection of Prisons in Ireland: Juvenile Supplement* (available at: http://www.inspectorofprisons.ie/en/IOP/Pages/inspection_stdts_juvenile_suppl).

steps are taken to address bullying and inter-prisoner violence.

4. Health and mental health: the *Standards for Inspection* stress the need for health information to be available to children in St. Patrick’s Institution, and the need for drug abuse prevention and rehabilitation programmes. The document also places much importance on the appropriate training of health professionals working with children and the need for the provision of medical care equivalent to that in the community. Lastly, the *Standards of Inspection* stress that policies should be in place to prevent self-harm and suicide among children detained in St. Patrick’s Institution.
5. Regimes: in this area, the *Standards for Inspection* state that education and vocational training should be given priority over work, and that a reasonable period of time should be afforded to children on a daily basis to take part in recreational activities.
6. Contact with family and community: the document stresses the importance of family contact and requires that such contact is facilitated; the *Standards of Inspection* also state that contact with family should never be withdrawn as a disciplinary measure.
7. Complaints and disciplinary procedures: the *Standards for Inspection* state that children should be permitted, and facilitated if required, to make complaints to an independent authority. The document also stresses that when disciplinary measures are required, mediation should be prioritised over other methods, and that solitary confinement should never be imposed as a disciplinary measure.
8. Reintegration: the *Standards for Inspection* state that it is a responsibility of staff and management of St. Patrick’s Institution to foster an ethos that is conducive to normalising the environment which counteracts the harmful effects of detention. In this area, the document also stresses that children should have access to programmes which will help them address their offending behaviour, and that they should be afforded opportunities for contact and interaction with communities outside of the prison. Most importantly, the *Standards for*

Inspection stress that support should be available to children following release and that the prison authorities should, therefore, be in close contact with outside services.

9. Staff selection and training: lastly, the *Standards for Inspection* enumerate a number of requirements regarding staff selection and training.

The publication of specific standards for inspection of conditions of detention, and the relevant regime in St. Patrick’s Institution, is a welcome step towards a comprehensive assessment of the situation in this facility against human rights standards pertaining to the situation of children in detention. The Inspector of Prisons states in the *Foreword* to the *Standards for Inspection* that he will keep the supplementary standards under review. In this regard, areas in which the standards might be developed further include the need for an overarching reference to the right to be heard (as per Article 12 of the CRC) and the need for age-specific policies and practices in all the areas covered by the document. It is also clear from the formulation of some of the existing standards that their application will be limited by considerations of prison security.

1.2 Current facilities for the detention of children in Ireland

St. Patrick’s Institution

St. Patrick’s Institution is a medium-security prison, managed by the Irish Prison Service, holding remand and sentenced male prisoners aged between 16 – 21 years. Following criticism by the CPT in its 2006 report on Ireland, certain measures have been taken to separate the 16- and 17-year olds from adults; some of them, however, remain in the main units on protection.³⁷ St. Patrick’s Institution is located at the same site in Dublin as Mountjoy Prison.

In 1985, the Whitaker Committee was “highly critical” of St. Patrick’s Institution as a detention centre for young offenders which it assessed as totally inappropriate as a place for children in conflict with the law. It was seen to have a “demoralising effect” and the conditions of detention – including the fact that residents spent at least 17 hours a day in their cells, and were allowed only one visit and two outgoing letters per week – could

³⁷ Kilkelly, U. (2008) *Children’s Rights in Ireland: Law, Policy and Practice*, Dublin: Tottel Publishing, p. 554.

³⁸ Cited in Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin: Irish Academic Press, p. 226.

“easily lead to the psychological deterioration of the young offenders in the institution”.³⁸

The lack of recreational and vocational facilities along with the stark conditions of detention highlighted in 1985 have continued to be criticised more recently, including by the Council of Europe Committee for the Prevention of Torture (CPT) and the Inspector of Prisons. The CPT observed in 2006:

*Given the age structure of the inmate population of St. Patrick’s Institution and the particularly difficult backgrounds of most of the juvenile males, it is imperative that every effort is made to encourage inmates to attend educational classes and to participate in workshops where they can learn skills to assist them upon their release, extra efforts should be made to ensure that literacy classes are made available to all inmates in need.*³⁹

The Committee went on to say that:

*[...] the limited work and recreational activities on offer and the lack of interest shown in educational classes provided are symptomatic of an inadequate activities regime at St. Patrick’s Institution. Much more needs to be done to ensure that inmates are offered, and are encouraged to participate in, a programme of activities specifically designed to meet the requirements of the young male population. Young offenders should be kept fully occupied during their period in custody, otherwise the deficiencies noted above are likely to have particularly deleterious effects on them, with corresponding implications for them on leaving prison.*⁴⁰

One of the most pressing problems in St. Patrick’s Institution was, and continues to be, the level of availability of drugs. In recent years a number of measures have been taken to try and alleviate the problem. Netting has been installed in the exercise

yards and CCTV cameras introduced. These measures have reduced the amount of drugs coming into the prison but have reportedly increased the level of bullying and intimidation between prisoners where more vulnerable boys are being forced into accepting drugs during visits for others. The CPT delegation noted during their visit in 2006 that some prisoners regularly avoided outdoor exercise due to their fear of being bullied and/or assaulted by other prisoners.⁴¹

In more recent years, however, the Visiting Committee to St. Patrick’s has identified some improvements in the conditions and the regime there, as referred to below.

Education and vocational training

Following a number of criticisms by international and national monitoring bodies, the two most recent reports of the Visiting Committee to St. Patrick’s Institution noted significant improvements, including in the provision of education.⁴² In 2007, the Visiting Committee noted that the new school building (which opened in September 2007) provides a “comfortable learning and adaptable environment” for those prisoners who wished to continue their education.⁴³ The Visiting Committee was satisfied that the school offers a wide range of subjects, and noted that prisoners are afforded the opportunity to sit the State Examinations.⁴⁴ However, in line with other reports of monitoring bodies, it noted the very low levels of literacy and numeracy impacting on levels of academic achievement in St. Patrick’s Institution.⁴⁵

Following the afore-mentioned widespread criticism of the unavailability of vocational training and activity in the prison, a number of workshops were opened in St. Patrick’s Institution in 2006. The Visiting Committee noted in 2007 that all of them are well attended and that some (for example, the metal workshop and the computer workshop) give the prisoners an opportunity to train for vocational qualifications.⁴⁶

39 Report to the Government of Ireland on the visit to Ireland carried out by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment from 2 to 13 October 2006, Council of Europe Document CPT/Inf (2007) 40, at para 59.

40 *Ibid.*, at para 59.

41 *Ibid.*, at para 39.

42 St. Patrick’s Institution Prison Visiting Committee Annual Report for year ending 31st December 2006 and St. Patrick’s Institution Prison Visiting Committee Annual Report for year ending 31st December 2007 (both available at: http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation).

43 St. Patrick’s Institution Prison Visiting Committee Annual Report for year ending 31st December 2007, p. 2.

44 *Ibid.*

45 *Ibid.*

46 St. Patrick’s Institution Prison Visiting Committee Annual Report for year ending 31st December 2007, p. 3.

Health and drug use

There is a drug free unit within the prison which opened in 2000 and has a capacity of 76. To be accepted, prisoners have to provide a number of drug-free urine samples and once accepted receive certain 'perks'. However, young men committed to St. Patrick's Institution are reported to receive no assistance in becoming drug-free and the majority on the D wing are those who have never used drugs rather than those who have received help and support to give them up.⁴⁷ In addition to the lack of extensive treatment for drug users in St. Patrick's, there are no programmes available to the prisoners to address their offending behaviour.⁴⁸ The CPT delegation also noted during their 2006 visit to Ireland that no counselling was available to those prisoners in St. Patrick's that have been placed on methadone substitution.

The Committee was also concerned about the quality of psychiatric care and suicide prevention in the prison. In its report it noted that prisoners who were self-harming and/or had attempted to take their own life in the recent past while in prison were usually not provided with any psychological support following an incident. Their medical records were inadequate. The CPT also noted that most of the prisoners interviewed who had committed acts of self-harm or had attempted to take their own life were drug and/or alcohol-dependent.⁴⁹ This situation has not improved in recent years, with the Visiting Committee noting an increase in the number of instances of self-harm in the last two years for which reports are available.⁵⁰

Family contact

Contact with family and friends has been identified by international standards as being extremely important for children in detention. In St. Patrick's, however, recent changes in security regimes and, in particular,

the erection of screens in the visiting area and the prohibition of physical contact during visits may potentially have negative impact on family contact.⁵¹ Difficulties in this area are also exacerbated by the unavailability of visiting time at weekends, limiting the opportunities to visit for family members who are unable to come to the prison during the week.⁵²

The Irish Youth Justice Service took over responsibility for the detention of boys under the age of 16 and girls under the age of 18 years from the Department of Education and Science in March 2007. Until arrangements can be made for the transfer of boys from St. Patrick's to the new National Children Detention Facility, the separation of children from adults in St. Patrick's Institution has been achieved by the creation of a separate school with a capacity of 44 beds for boys aged 16 and 17.⁵³

Children Detention Schools

The primary objective of Children Detention Schools as outlined in section 158 of the 2001 Act is to provide appropriate educational and training programmes and facilities for children referred to them by the Court and to promote the child's reintegration into society by having regard to the child's health, safety, welfare and interests, including their physical, psychological and emotional wellbeing; providing proper care, guidance and supervision to the children; preserving and developing satisfactory relationships between the children and their family; exercising proper moral and disciplinary influences on them; and recognising the personal, cultural and linguistic identity of each child.

Following the transfer of responsibility from the Department of Education and Science on 1st March 2007, the Irish Youth Justice Service is now responsible

⁴⁷ Inspector of Prisons, *St. Patrick's Institution 2004-2005*, p.34.

⁴⁸ McVerry SJ, P. (2006) "Rehabilitation – Are we for Real?" *Working Notes*, Issue 53 October 2006, p.6.

⁴⁹ *Report to the Government of Ireland on the visit to Ireland carried out by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment from 2 to 13 October 2006*, Council of Europe Document CPT/Inf (2007) 40, at para 83.

⁵⁰ *St. Patrick's Institution Prison Visiting Committee Annual Report for year ending 31st December 2006 and St. Patrick's Institution Prison Visiting Committee Annual Report for year ending 31st December 2007* (both available at: http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation).

⁵¹ *St. Patrick's Institution Prison Visiting Committee Annual Report for year ending 31st December 2007*, p. 4.

⁵² *Ibid.*

⁵³ Some exceptions from this regime pertain to sex offenders and vulnerable prisoners who are held in other parts of the prison. See: *Response of the Government of Ireland to the Report of the European Committee for the Prevention of Torture or Inhumane or Degrading Treatment or Punishment (CPT) on its visit to Ireland from 2 to 13 October 2006* (available at: <http://www.cpt.coe.int/documents/irl/2007-41-inf-eng.pdf>).

for the four children detention schools:

1. Trinity House School in Lusk;
2. Oberstown Boys' School in Lusk;
3. Oberstown Girls' School in Lusk, and
4. Finglas Child and Adolescent Centre in Finglas West.⁵⁴

Following the publication of the final report of the Expert Group on Children Detention Schools in December 2007, work has begun on the design of a new facility which will be built on the grounds of the Oberstown campus in Lusk, County Dublin. In its recent newsletter, the Irish Youth Justice Service stated that:

*The new facility will be developed on a phased basis to ensure an integrated and unified service to children remanded and committed by the Courts. [...] This development will allow for the expansion of the children detention school model to all children under 18 years of age ordered to be remanded or detained by the Courts.*⁵⁵

The building of the new National Children Detention Facility is discussed in more detail later in this section.

The Children Detention Schools provide an environment of care and education for children detained therein, and under the current plans will eventually provide the same service to all children of 18 years of age or less. There is much in the way of good practice in the Children Detention Schools noted through the process of inspection and review of the Schools' operations by the Department of Education and Science, the Health Information and Quality Authority, as well as from independent authorities.

The Schools have varying functions, accommodate children with differing needs, and provide care at

different points along a continuum of open to secure custody. In 2001 a review of the existing residential provisions was commissioned, and it recommended that the lack of coherence between the Schools be urgently addressed by appointing a single management structure.⁵⁶ The adoption of *Standards and Criteria for the Children Detention Schools* (the *Standards*)⁵⁷ published by the Department of Education and Science in November 2004 to guide a common inspection process of all Schools was a step in the right direction in this regard.⁵⁸

Following a drought of information regarding the Schools, a number of care inspections have been carried out in recent years in all of them and it is evident that they measure relatively well against the *Standards and Criteria for the Children Detention Schools*, as well as against international standards.⁵⁹ However, improvements are required in a number of important areas. The following sections provide information about all of the Schools based on the most recent inspection reports published by the Health Information and Quality Authority (HIQA) in 2009.

Finglas Child and Adolescent Centre (FCAC)⁶⁰

Background to the School

Finglas Child and Adolescent Centre (FCAC) provides a residential service to the Courts for boys aged between 12 and 16 years. The FCAC comprises an assessment and remand unit, a committal unit and an education unit. At the time of the last inspection (January 2009), the school employed 99 staff. The FCAC has a maximum capacity of 18.

Information on school practices

Good practices identified:

At the time of the last inspection, the HIQA inspectors

54 St. Joseph's Special School in Clonmel which until March 2007 worked as children detention school was transferred to the Health Service Executive (HSE) and became a premises provided and maintained under the *Child Care Act 1991*.

55 Irish Youth Justice Service (2009) *IYJS News: Newsletter of the Irish Youth Justice Service*, Issue 2, Spring 2009, p. 10.

56 For more see: Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin: Irish Academic Press, p.202.

57 *Standards and Criteria for the Children Detention Schools ("the Standards")* Department of Education and Science, 2002 and 2004 [available at: <https://www.education.ie>].

58 Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin: Irish Academic Press, p.202.

59 Most recent inspection reports are quoted in the next section of this report.

60 All information in this section is derived from: Health Information and Quality Authority (2009) *Finglas Child and Adolescent Centre: Children Detention School. Inspection Report ID Number: 281*, Dublin: Health Information and Quality Authority. More information about the FCAC can be accessed at: <http://www.finglasdetentionschool.ie/index.htm>.

found that relationships between the staff and children were very good, with children reporting feeling well cared for and respected. The inspectors stated in their report that the standards of care in the FCAC were well met and children were very positive about their education, knew their keyworkers and met them regularly, and thought their families were well respected and very welcome to the FCAC. Children also spoke positively about their privacy being respected.

The inspectors noted that all children were informed about their rights and children reported that their rights were respected, and that they knew how to make a complaint in case of any concerns. A high number of children interviewed by the inspectors felt that they had a say in meetings such as case conferences, and they were well aware of their individual care plans. The area where few children felt that they had a say was the establishment of rules for management of behaviour.

The inspectors found that the aspect children liked the least about being in the FCAC was separation from family and friends; however the inspectors also acknowledged that children can keep in regular contact with them by telephone. The HIQA inspectors found that the standard of contact with families was good, and staff facilitated visits to and from families.

Children in the FCAC were reported to have a choice about their own clothing, were able to personalise their bedrooms, and had a choice of activities each evening and at weekends. In particular, the inspectors were impressed by the choice of activities offered by the FCAC, including the use of facilities in the Centre such as a swimming pool, a tennis court, a football pitch, and a gymnasium. The FCAC offers a wide range of activities ranging from cycling and sailing through to going out to the cinema and shopping under staff supervision. The Centre also offers a wide range of indoor activities in the association areas.

The HIQA inspectors praised the choice of food offered in the FCAC, and the fact that staff sit together with children at meal times. Children also have access to smaller kitchens in individual units to prepare snacks in-between the main meal times.

The FCAC was also reported to work well with external agencies, with probation officers and social workers

involved in the assessment process and thereafter if the child stayed in the Centre on committal. Children in the FCAC reported that they were frequently visited by their social workers, and could phone them and talk to them confidentially outside of the visits as well.

The inspectors noted a good standard of health care provision in the FCAC, with access to General Practitioners, nursing staff, dental care facilities and ophthalmic assessments.

Practices where improvements were recommended:

The HIQA inspectors were concerned at the use of single separation as a routine method of behaviour management in the FCAC. The inspection report noted 472 instances of single separation between December 2007 and December 2008, with varying length of separation (from one hour to 7 days). While acknowledging that the FCAC had legal authority to use single separation, the inspectors stated that its use as a routine method of effecting compliance was unacceptable and recommended that the FCAC review the use of single separation, reduce its use and ensure that the practice reflects the standards of children's rights in this respect.

The inspection report noted that the standard on staff vetting in the FCAC was not met, and there were deficiencies in both Garda vetting and requests for references for some of the staff. Similarly, inspectors were concerned about an apparent confusion between the resolution of complaints about care and treatment in the Centre and child protection concerns, and recommended a review of practice in this area.

Trinity House School⁶¹

Background to the School

Trinity House Children Detention School in Oberstown provides residential service to the Courts for boys between 12 and 16 years of age. It mostly caters for children who have been committed on sentence, but also offers remand places. Trinity House School (Trinity House) comprises three residential units and a tuition unit. It also has a separate step-down unit which

⁶¹ All information in this section is derived from: Health Information and Quality Authority (2009) *Trinity House Children Detention School. Inspection Report ID Number: 270*, Dublin: Health Information and Quality Authority. More information about Trinity House School can be accessed at: <http://www.trinityhouseschool.ie/>.

is used for preparation for release, although it was temporarily closed owing to understaffing at the time of the inspection.⁶² At the time of the last inspection (December 2008) the School employed 107 non-teaching staff. Trinity House is the only secure residential facility within the detention school system. The maximum capacity of Trinity House is 27.

Information on school practices

Good practices identified:

The HIQA inspectors noted that the staff of the step-down unit in Trinity House provided aftercare services, including the tracking of children following their release. The staff also provide outreach services and carry out exit interviews with children on release.

In their report, the inspectors praised the standard and choice of food, and the fact that staff and children in Trinity House sit down to meals together in the residential units. Inspectors noted that the standard of contact with families was good, with children being able to phone their family and friends daily. Staff also facilitate visits from and to families. Parents, and in their absence other relatives, are invited to case conferences and planning meetings.

The majority of children interviewed by the inspectors felt that their relationships with staff were good. They were also pleased with their education and felt that their families were respected and made welcome in Trinity House. Most children could identify their keyworkers as people who they could trust.

Trinity House was commended for the introduction of an adventure therapy programme, giving children access to outdoor pursuits and highly regarded by the boys. Inspectors also noted that the School offers a creative and varied programme of campus-based activities during the summer holidays.

Inspectors noted that the standard of health was well met in the School, with children having access to GPs, dental and ophthalmic assessment and treatment. All children are examined at the point of admission.

Practices where improvements were recommended:

While there was evidence of good relationships between

children and the staff in the School, the inspectors noted that managers and staff had faced some difficulties in the year prior to inspection, and that – by their own assessment – the relationships between staff and children needed to improve.

Children interviewed by the inspectors stated that they did not feel enough was being done to respect their privacy in Trinity House, and several mentioned not being allowed to be present when their rooms were being searched.

The inspectors noted that children felt there were too many rules in the School and that they felt they had no sufficient say in the development of rules.

The inspection report highlighted the fact that bedrooms in Trinity House didn't have appropriate furnishings to enable children to store their own clothes or to put a TV or a radio on a secure surface. Inspectors found that accommodation in Trinity House was confining and found its general quality unsatisfactory.

The HIQA inspectors expressed concern about the considerable confusion between the system of complaints, procedures for processing staff grievances, and reporting and investigation of child protection concerns. Additionally, children were not sure about their rights, even though they received information about those and about complaints procedures on admission. The complaints procedure is letter- rather than form-based, and this limited the complaints options for children who had limited literacy skills. No information was included on the right to appeal and the appropriate appeals process.

While the inspectors acknowledged that there was evidence of good practice in relation to the contact with keyworkers, they also noted that children in Trinity House largely felt that they had limited say in matters affecting their daily lives. Children found the restrictions imposed on mobility and access to outdoor recreation facilities difficult and unfair.

Similar to the situation in the FCAC described above, HIQA inspectors noted that the use of single separation did not meet the level required by the *Standards* and found that it was routinely used to manage behaviour, a practice that is "unacceptable". The inspection report also recorded significant deficiencies in staff vetting

⁶² Some staff continued to provide limited services, as outlined in the next section.

procedures and recommended that all staff are Garda-checked before offered employment in Trinity House.

Oberstown Boys' School⁶³

Background to the School

The Oberstown Boys' School provides a residential service to the Courts for boys aged 12 to 16 years. The School comprises three residential units, with two units offering long-term care and education to boys committed on sentence, and one unit providing remand places. At the time of the last inspection (November 2008), the School employed 74 staff.⁶⁴ The maximum capacity of Oberstown Boys' School is 20.

Information on school practices

Good practices identified:

In their report published in April 2009, the HIQA inspectors noted the view of children interviewed that they were well looked after by staff who were friendly, easy to talk to and "very reasonable". Children can name individual staff members that they feel they can trust, and know who to complain to in case of any difficulties. Children feel safe in the units and there is an expectation that everyone will be treated with respect.

Each child in the School is provided with an opportunity to phone family and friends daily, while the staff facilitate regular visits from and to families. Children have an opportunity to go on home leave if their behaviour is of good standard, and visits to family members in other institutions are facilitated. Parents interviewed by the inspectors, and those who completed questionnaires, spoke highly of staff in the School and praised the standard of care received by their children.

The inspectors found that the standards of education and health were both well met. The School has a well-equipped education unit and the relationships between the boys and the education staff were reported to be good. The inspectors noted that all boys in the

School are registered with a GP, and receive a medical examination on admission.

Practices where improvements were recommended:

Children in Oberstown Boys' School expressed particular concerns about the quality of their accommodation, including the lack of en-suite toilet facilities. The lack of en-suite facilities means that children have to press an in-bedroom buzzer at night and wait for their bedroom to be unlocked by a member of staff. The bedrooms are small, ventilation is inadequate, and children reported feeling cold in their rooms.

While noting the wide variety of indoor activities available to children in the School, the inspectors recommended a review and extension of the choice of outdoor activities, including using the facilities that are available on the campus.

The HIQA inspectors found that the regime for children on remand was much more restricted than the regime for those committed on sentence, and noted that the development of individual plans was delayed owing to delays in court decisions.

Again, as in the case of the FCAC and Trinity House, inspectors found unacceptable levels of the use of single separation as a routine method of managing behaviour (303 instances in the year prior to inspection). Similarly to the two other Schools, inspectors noted significant deficiencies in staff vetting procedures, with no evidence of Garda checks on at least 21 staff.

Oberstown Girls' School⁶⁵

Background to the School

The Oberstown Girls' School accepts girls between 12 and 18 years of age, both on remand and on committal on sentence, currently accommodated together in the Cuan Beag unit – a six-bed secure unit with an integrated outdoor recreational space and a gymnasium.

⁶³ All information in this section is derived from: Health Information and Quality Authority (2009) *Oberstown Boys' Detention School. Inspection Report ID Number: 269*, Dublin: Health Information and Quality Authority.

⁶⁴ *Ibid*, at p.5. The staff numbers were 74.5 staff in 81.5 posts.

⁶⁵ All information in this section is derived from: Health Information and Quality Authority (2009) *Oberstown Girls' Detention School. Inspection Report ID Number: 282*, Dublin: Health Information and Quality Authority. More information about the Oberstown Girls' Detention School can be accessed at: <http://www.ogc.ie/?browserHasJs=1>.

At the time of the last inspection (January 2009), the School employed 57 staff in 31.3 posts. The maximum capacity of Oberstown Girls' School is 12. The step-down unit is currently closed.

Information on school practices

Good practices identified:

During interviews, the girls told the inspectors that they were well looked after by staff and that staff were friendly and easy to talk to. Girls who have been in the School for a while could name individual staff members that they could trust and to whom they would complain should that be necessary.

The HIQA inspectors praised the choice and quality of food available in the School, and noted that girls can request their favourite dishes, as well as having access to snacks in-between meals. Staff eat meals with the girls.

As with the other Schools described above, inspectors found that the School had good contact with the girls' families. Residents can make two phone calls a day to friends and family, as well as receive phone calls. Staff facilitate visits from and to families, including to family members in other institutions (such as hospitals).

Girls in the School have access to a full educational curriculum and largely reported that they enjoyed their education. The School has a well-equipped education facility shared with the Oberstown Boys' School. Similarly to other Schools, the standards of health care are well met, although the inspectors noted that in some cases medical records for the girls were inadequate. All girls receive medical examination on admission.

Practices where improvements were recommended:

Children interviewed during the inspection complained about the lack of adequate heating and problems with ventilation in their bedrooms. Children also complained about the lack of choice of activities in the School.

Some concern was noted about the lack of privacy, and the girls complained that they were under constant supervision and had very little time alone. Girls also raised their concerns about the ban on whispering and quiet conversation with peers. The inspectors noted that the ban was informally introduced as part of the anti-bullying policy, however there was no written policy on

the issue.

The HIQA inspectors recommended that all staff be trained in children's rights standards as part of their professional development. They also recommended that a review takes place of how those standards should be implemented in practice, including how to secure more privacy for the girls without compromising their safety.

One of the most important issues noted for improvement was the limited planning of aftercare following the closing down of the step-down unit. Inspectors were also concerned that two rooms previously used as quiet rooms were being converted to bedrooms to accommodate additional residents.

The overuse of single separation and deficiencies in staff vetting were also noted.

1.3 Expert Group report and the building of the new National Children Detention Facility

The Children Act 2001, as amended by the Criminal Justice Act 2006, makes provision for the remit of Children Detention Schools to include detention of all children under 18 years. To effect this change, an Expert Group on Children Detention Schools was established in April 2006, comprising representatives of the Irish Youth Justice Service, the Department of Education and Science (then responsible for the existing Children Detention Schools), the Irish Prison Service and the Office of Public Works (which will take the lead on the design and delivery of the new facilities). The task of the Expert Group was twofold:

1. to conduct the necessary planning and consultation to facilitate the transfer to the Irish Youth Justice Service of the responsibility for the detention of children from the Department of Education and Science, and when appropriate also from the Irish Prison Service (in relation to St. Patrick's Institution), and
2. to plan for the necessary redevelopment of existing detention facilities, if required, to meet the future residential accommodation requirements of children under 18 years of age ordered to be detained by the Courts.

The Expert Group produced three reports: in December

2006, in September 2007 and in December 2007. The first task of transferring responsibility for detention schools, and for the detention of girls aged 16-17 to the Irish Youth Justice Service was achieved on the 1st of March 2007. The transfer of boys aged 16-17 from St. Patrick's Institution to the new National Children Detention Facility will progress when the facility is ready for use.⁶⁶

In relation to the second part of the remit, the Expert Group made a number of recommendations and chose a facility design to be progressed by the Office of Public Works, based largely on the design of the Woodlands Juvenile Justice Centre in Bangor, Northern Ireland.⁶⁷

The Woodlands Juvenile Justice Centre (JJC) is the only custodial facility for children between 12 and 17 years of age in Northern Ireland,⁶⁸ purpose-built to provide secure accommodation and "premised on the expectation that only serious or persistent offenders should be sent there, and that custody should be used as a last resort."⁶⁹ Children are sent to the JJC by two different routes: by criminal courts either on remand or on sentence, or by police on foot of Police and Criminal Evidence Order (PACE) proceedings.⁷⁰ Indeed, PACE placements constituted 48% of all 655 admissions to custody between January 2006 and October 2007, with a further 45% of placements regarding children on remand. On 30th November 2007, only 7% of children in the JJC were actually there on sentence. Details of certain aspects of the design and regime in the Woodlands Centre are mentioned later in Part II of this report.

In relation to the new National Children Detention Facility, the Expert Group's final recommendation stated that this should be built on the current

Oberstown Campus in Lusk. The Expert Group also conducted a capacity planning exercise to advise the Government on the number of places needed in the future to accommodate children in detention. Its final recommendation on this matter stated that the bed capacity of the system (including all children under 18 years of age) should be capped at 167, consisting of 157 places for boys and 10 places for girls. This estimate does not include additional places in step-down units, about which the Expert Group made no recommendation.⁷¹ The recommendations were presented to the Minister for Children in March 2008, and the preferred option for design of the new centre approved. The Government decision in March 2008 also approved the establishment of a working group to separately examine the possible future uses of the Finglas Child and Adolescent Centre (FCAC). The working group's report was published in August 2009, recommending the closure of the FCAC in light of the fact that remand, assessment and detention services will all be provided by the new National Children Detention Facility.⁷²

Following the decision by the Government to approve the recommendations of the Expert Group, the Irish Youth Justice Service (IYJS) undertook a consultation with a range of bodies and individuals, from both within and outside the youth justice system, on children's rights standards for the National Children Detention Facility. A working group established for the purposes of this consultation in May 2008 published a report in February 2009.⁷³ The working group received advice on international human rights standards pertaining to the detention of children, and also consulted with children in the existing Detention Schools. The working group's stated purpose was to focus on the design of the future facility and on the incorporation of international

⁶⁶ Expert Group on Children Detention Schools, *Final Report 14th December 2007* (available at: <http://www.iyjs.ie/en/IYJS/Expert%20Group%20Report.pdf/Files/Expert%20Group%20Report.pdf>).

⁶⁷ For the discussion of the design model, and detailed information about the Woodlands JJC, see Section 4 of the Expert Group on Children Detention Schools, *op.cit.above*.

⁶⁸ The Young Offenders Centre in Hydebank Wood provides custodial places for young men aged 17-21 (in some cases, until they turn 24).

⁶⁹ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

⁷⁰ The purpose of PACE placements is to ensure that children are held in secure accommodation pending court appearance, usually with children being kept overnight or over the weekend. The Inspection report raised a concern about the use of PACE placements in light of the fact that 42% of the children so held are subsequently released by the courts. See: Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

⁷¹ Expert Group on Children Detention Schools, *Final Report 14th December 2007* (available at: <http://www.iyjs.ie/en/IYJS/Expert%20Group%20Report.pdf/Files/Expert%20Group%20Report.pdf>).

⁷² Irish Youth Justice Service (2009) *Report of the Working Group on the future of the Finglas Child and Adolescent Centre* (available at: <http://www.iyjs.ie/en/IYJS/Finglas%20Report.pdf/Files/Finglas%20Report.pdf>).

⁷³ *Working Group on Children's Rights Standards for the National Children Detention Service at Oberstown, Lusk, Co. Dublin* (report available at: <http://www.iyjs.ie/en/IYJS/Report%20on%20Standards%20Working%20Group.pdf/Files/Report%20on%20Standards%20Working%20Group.pdf>).

standards for the detention of children into any future development in Ireland.⁷⁴

While the working group recognised that there were “a number of minimum standards and rights of children which were absolute (eg. the child’s right to protection, to health care and to education)”, it also stated that:

*In other respects, the principal [sic] of proportionality was accepted as a means of striking the right balance between the rights of the child (e.g. to privacy, protection) and that of other concerns, including public safety.*⁷⁵

The IYJS conceded, however, that ensuring the team working on the design of the new facility was aware of international standards would ensure that the new facility is planned with those standards in mind and that this would also ensure that the policy objectives of the IYJS (in particular, the provision of safe and secure accommodation supporting the early reintegration of children back into their families and communities) are properly achieved.

In the document, the IYJS responded to and made commitments about a number of concerns raised by the consultees, including those in relation to the implementation of international human rights standards. These included a commitment to make the standards available to the design team; making sure that the design of the new detention facilities facilitates ongoing family contact; ongoing commitment to providing children with appropriate health care; ongoing commitment to the promotion of contacts between children and their wider communities, including friends; ongoing commitment to the use of restraint and isolation only as a last resort, and for the shortest possible time; commitment to continuous training of staff; ongoing commitment to the collection of monitoring data on children who are remanded and committed to detention.

While these commitments are very welcome, a number of concerns remain in relation to the design and the functions of the new facility.

1.4 Concerns relating to the design and regime in the new National Children Detention Facility

The new National Children Detention Facility will be designed to hold all children under the age of 18, remanded or committed to detention by the Courts for criminal offences. As outlined earlier in this section, this will mean that the facility will hold children aged under 18, for a wide range of sentences or assessment purposes, and on remand. The implementation of the Children Act 2001 in the area of community sanctions to a greater extent than is currently available should mean that only the most serious offenders will be sentenced to detention. However, before this shift happens in practice, the facility should be designed in such a way that it facilitates the rehabilitative aim of detention rather than the punitive sanction based on security considerations.

The placement of all children in one facility (those there for assessment purposes, on remand and on sentence) will mean that there is a great need to make the design flexible enough to accommodate the security and other needs of all children.

Another concern is the proposed central location of the new National Detention Facility. Provision of all detention spaces in one place will mean that children will be held a considerable distance away from their families and their communities. In particular, direct family contact may be negatively affected by the distance which families will need to travel to visit their children. Costs of transport to the facility and accommodation, if an overnight stay is needed, will almost certainly be prohibitive to at least some families. The central location of the facility will also impact on opportunities for contact with local communities during sentence and may therefore impinge on the successful reintegration of the children following release.

The importance of small, localised facilities where provision of individualised care is possible and contact with family supported to the greatest possible extent has most recently been stressed in a report by the Council of Europe’s Commissioner for Human Rights:

A range of facilities is required to ensure that the needs and rights of young people in detention are met. In particular, states must operate both secure

⁷⁴ *Ibid*, p. 2.

⁷⁵ *Ibid*, p. 4.

facilities for juveniles and facilities with minimal or no security measures. It has been shown in practice that small facilities make it easier to provide individualised treatment while diminishing the risk of tension. Children must be sent to institutions with the least restrictive level of security required to hold them safely, a measure which clearly necessitates facilities with varying levels of security. Detention facilities for juveniles should be decentralised and small-scale detention facilities should be set up and integrated into the social, economic and cultural environment of the community. Easy access for the family is of particular importance.⁷⁶

The current proposals for a centralised facility in Ireland holding all children on one campus (either on remand or on sentence) go against this recommendation and should be reconsidered.

⁷⁶ Commissioner for Human Rights (2009) *Children and Juvenile Justice: Proposals for Improvements*, Strasbourg: Council of Europe, p.16.



Chapter 2: International Standards

Before mapping the examples of good practice in other jurisdictions, it is important to look at the international standards and principles of youth justice and in particular the rights of children in custody. The following chapter is divided into two sections: the first concentrates on specific standards pertaining to the situation of children in custody or in the youth justice process, and the second discusses briefly the requirements imposed by the European Convention on Human Rights.

2.1 International standards specific to the administration of juvenile justice

The UN Convention on the Rights of the Child

Theories of youth justice have greatly evolved throughout the past century and have culminated in international conventions, standards, treaties and rules. The most important piece of international law governing the rights of children is the United Nations Convention on the Rights of the Child (CRC). This Convention was unanimously adopted on the 20th of November 1989 by the General Assembly of the United Nations⁷⁷ and entered into force on the 2nd of September 1990. The CRC is a binding international treaty which imposes legal obligations. In addition to its status as a binding treaty, the almost universal acceptance of the CRC gives its principles and provisions a particular moral force, strengthening the duty to implement its standards at domestic level.⁷⁸ CRC is the most important document regarding children's rights that exists; and the CRC establishes "non-negotiable minimum standards and obligations" for the treatment of children.⁷⁹

One of the basic principles of the CRC is that the best interests of the child must be a primary consideration in all actions taken concerning children. Article 3 states that in:

[all] actions concerning children whether undertaken by public or private social welfare institutions, courts

of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In the context of the administration of juvenile justice, the Committee on the Rights of the Child commented on this principle in 2007 in the following terms:

Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interest of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.⁸⁰

Other central principles include the principle of non-discrimination (Article 2), the right to life and development (Article 6), and the right of the child to express his/her views and have them given due consideration in matters that concern the child (Article 12).

In its *General Comment No. 10*, the Committee on the Rights of the Child outlined its position in relation to how those central principles of the CRC impact on the development of an integrated youth justice policy. The Committee stressed that, in accordance with the principle of non-discrimination, all children in conflict with the law have to be treated equally. The Committee was mindful of the fact that in this context, particular attention should be paid to indirect discrimination, or *de facto* discrimination, resulting from a lack of consistent youth justice policy. Such discrimination has the potential to impact negatively particularly on the more vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girls, children with disabilities and children who are repeatedly in

⁷⁷ United Nations General Assembly Resolution 44/25.

⁷⁸ Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin: Irish Academic Press, p.xviii. By 1997 the United Nations Convention on the Rights of the Child had reached almost universal ratification; the United States and Somalia remain the only two countries to not have ratified the Convention.

⁷⁹ UNICEF in Bala, N. et al, (2002) *Juvenile Justice Systems: An international comparison of problems and solutions*, Toronto: Thompson Educational Publishing, p.10.

⁸⁰ Committee on the Rights of the Child (2007) *General Comment No.10 (2007) Children's rights in juvenile justice*. CRC/C/GC/10, 25 April 2007, at para.10.

conflict with the law.⁸¹ The Committee went on to say that:

*In this regard, training of all professionals involved in the administration of juvenile justice is important [...] as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.*⁸²

The principle of non-discrimination also extends beyond the immediate scope of the juvenile justice system, and into the arena of the child's reintegration into society, where appropriate support and assistance should be provided to child offenders following release from detention or the end of other sanctions.

It is also worth quoting here the views of the Committee on the implementation of the right to be heard (Article 12 of the CRC) in the context of youth justice. The Committee stressed that the right of the child to express his/her views should be "fully respected and implemented throughout every stage of the process of juvenile justice"⁸³. The Committee went on to say that the requirements of that right mean that the child has the right to be heard throughout the proceedings – whether judicial or administrative – either directly or through a representative or through an appropriate body representing the child's interests. The right to be heard is fundamental to fair trial⁸⁴, and it must be observed at all stages of the criminal justice process, starting at the pre-trial phase and continuing throughout the implementation of any sanctions under the law. For the right to be heard to be effective, the Committee stated that the child, in order to be able to take part in the proceedings effectively, must be informed not only about the charges but also of the process as such and of the possible measures that can be imposed.⁸⁵

Articles 37, 39 and Article 40 of the CRC contain provisions regarding children in conflict with the law

and are therefore extremely important to this study. In particular, Article 37 sets down specific provisions for all those under 18 years of age who have been deprived of their liberty.

The CRC specifically requires that the detention of a child must be a measure of last resort and for the shortest period of time.⁸⁶ Life imprisonment for persons below eighteen years of age is prohibited.⁸⁷ The Convention clearly places an obligation on the State to provide a wide range of rehabilitative services:

*A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*⁸⁸

The Convention provides that children in conflict with the law have a right 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 reintegration and the child's assuming a constructive role in society.⁸⁹

There is no doubt that the CRC has been instrumental in recent developments in the area of children's rights in States-parties to the Convention, including political, economic, social, cultural and educational rights for children. On the reverse side however, the Committee on the Rights of the Child, established under Article 44 and responsible for monitoring the implementation of the CRC, has said that states have been notoriously slow in implementing certain Articles of the CRC, namely Articles 37, 39 and 40.⁹⁰

81 *Ibid*, at para 6, p. 4.

82 *Ibid*.

83 Committee on the Rights of the Child (2007) *General Comment No. 10 (2007) Children's rights in juvenile justice*. CRC/C/GC/10, 25 April 2007, at paras 43-45.

84 *Ibid*.

85 *Ibid*, at para.44.

86 Article 37 (b) of the CRC.

87 Article 37 (a) of the CRC.

88 Article 40 (4) of the CRC.

89 Article 40 (1) of the CRC.

90 Hamilton, C. and Harvey, R. (2004) "The Role of Statistics and Public Opinion in the Implementation of International Juvenile Justice Standards" in *The International Journal of Children's Rights*, Volume 11, Number 4, 2004, pp. 369-390(22).

Recognising that very few, if any, States-parties to the CRC achieve full compliance with the Convention in the area of juvenile justice, the Committee on the Rights of the Child in its *General Comment No. 10* compiles and elaborates on the general principles of a comprehensive policy on juvenile justice and its core elements.

The Committee outlines the following core elements of a comprehensive juvenile justice policy:

- a) the prevention of juvenile delinquency;
- b) interventions without resorting to judicial proceedings (for example, diversion schemes, restorative justice schemes);
- c) interventions in the context of judicial proceedings;
- d) the minimum age of criminal responsibility and the upper age limits for juvenile justice;
- e) the guarantees for the fair trial; and
- f) deprivation of liberty including pre-trial detention and post-trial incarceration.

In relation to the prevention of juvenile delinquency, the Committee urged the States-parties to implement the UN Guidelines for the Prevention of Juvenile Delinquency 1990 (the Riyadh Guidelines), with particular focus on prevention policies that facilitate socialisation and integration of all children. While recognising the importance of parental involvement and support, the Committee also underlined that:

*The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.*⁹¹

The CRC states very clearly that arrest, detention or imprisonment of a child can only be used as a last resort, and only for a minimum necessary time. It is

therefore essential that the State has at its disposal other measures that can be used as alternatives to detention. The Committee outlines two kinds of measures in this respect: interventions outside of judicial proceedings, such as diversion programmes, and interventions in the context of judicial proceedings, such as probation orders, supervision orders or community service.

Other International Rules and Guidelines for the Administration of Juvenile Justice

The CRC provides the foundation regarding children's rights but it is not the only international document concerning the rights of children in conflict with the law. During the 1980s and 1990s several international documents established minimum standards for the treatment of children in conflict with the law. These provide an important basis for any juvenile justice system and are of crucial importance and value to the process of youth justice reform.

In 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) were adopted by the UN General Assembly.⁹² The general principles and perspectives of the Beijing Rules aim to promote juvenile welfare to the greatest extent possible and to minimise the necessity of intervention by the justice system and therefore reduce the harm caused by such intervention.

In 1990 the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)⁹³ and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)⁹⁴ were adopted. The Havana Rules seek to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children in conflict with the law.⁹⁵ Accordingly, this report will refer to provisions of the Havana Rules throughout.

In brief, the Havana Rules recognise the rights of children in detention and outline the most appropriate treatment of children in detention. Reintegration and rehabilitation are recognised by the Havana Rules as

⁹¹ *Ibid*, at para.18.

⁹² Available at: http://www.unhchr.ch/html/menu3/b/h_comp48.htm.

⁹³ Available at: http://www.unhchr.ch/html/menu3/b/h_comp37.htm

⁹⁴ Available at: http://www.unhchr.ch/html/menu3/b/h_comp47.htm.

⁹⁵ Defence for Children International (2003) *Kids Behind Bars: A Study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam: Defence for Children International, p.12 (available at: www.kidsbehindbars.org (accessed 1st Sept 2006).

central to the administration of juvenile justice and the manner in which children in custody are treated. While in detention children have the right to a wide range of stimulating activities including education and vocational training, recreation and contact with the outside world. The Havana Rules also point out that ongoing training for those working with children and a comprehensive record keeping system are crucial. Furthermore, the Havana Rules note that a complaints mechanism must be put in place in all institutions involved in detaining children.

The most recent document outlining international standards in this area is the *European Rules for juvenile offenders subject to sanctions and measures* (the European Rules), adopted by the Committee of Ministers of the Council of Europe in November 2008.⁹⁶ The European Rules were adopted with the aim of upholding “the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty”.⁹⁷ The document outlines a number of guidelines for the implementation of the European Rules by Member States in the following areas:

1. Basic principles, scope and definitions;
2. Community sanctions and measures;
3. Deprivation of liberty;
4. Legal advice and assistance;
5. Complaints procedures, inspections and monitoring;
6. Staffing requirements;
7. Evaluation, research, work with the media and the public.

The European Rules are based on a general principle that children subject to sanctions or measures within the criminal justice system shall be treated with respect for their human rights; the Rules also state in the section on basic principles that imposition and implementation of sanctions or measures should be

based on the best interests of children in conflict with the law, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

The European Rules, like other established standards in this area, stress that deprivation of liberty shall be a measure of last resort, and imposed and implemented for the shortest possible time. The European Rules also stress that special efforts must be undertaken to avoid pre-trial detention. Other general principles outlined in the European Rules include:

1. the principle of non-discrimination, requiring that sanctions or measures are imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political and other opinion, national or social origin, association with a national minority, property, birth or other status;
2. the principle that mediation or other restorative measures should be encouraged at all stages of dealing with children in conflict with the law;
3. the principle of participation which requires that any justice system dealing with children ensures their effective participation in the proceedings concerning the decision-making process regarding any potential sentence or other measure as well as the implementation of sanctions or measures. In this respect, children should not have fewer rights or safeguards than those provided to adult offenders by the general rules of criminal procedure;
4. the principle of community involvement and continuous care requiring that any justice system dealing with children should follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for children in order to ensure a holistic approach to and continuity of care.

Importantly, the European Rules require that the execution of any sanction or measure – whether a

⁹⁶ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions and measures [available at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>].

⁹⁷ *Ibid.*

community sanction, other alternatives to detention, or detention as a last resort – should be subjected to regular government inspection and independent monitoring.

While the focus of this report is on standards for detention facilities, it is worth mentioning that the European Rules require that a wide range of community sanctions and other non-custodial measures should be provided at all stages of the juvenile justice process. The focus of such sanctions should be on educational impact, as well as on measures that constitute a restorative response to the offences committed by children.

The European Rules outline a number of detailed guidelines in relation to deprivation of liberty in areas such as: institutional structure for the detention of children; placements; admissions; standards of accommodation; hygiene; clothing and bedding; nutrition; health; regime activities; contact with the outside world; freedom of thought, conscience and religion; searches and the use of physical restraint, separation and disciplinary measures; transfer between institutions; preparation for release; detention of foreign national children; the care for children from ethnic and linguistic minorities, as well as children with disabilities. The European Rules also address the conditions that should pertain in police custody, pre-trial detention and other forms of deprivation of liberty such as placement in closed mental health institutions. The detailed standards in these areas provided for by the European Rules are referenced in the thematic sections of the report below.

Lastly, it is worth mentioning here the work of the European Committee for the Prevention of Torture (CPT) in the area of youth detention. The CPT devoted the 9th *General Report* (1999) to the issue of children in detention, stating that regardless of the reasons for which they may have been deprived of their liberty, children are inherently more vulnerable than adults. The CPT therefore expressed the view that:

*In consequence, particular vigilance is required to ensure that their physical and mental well-being is adequately protected.*⁹⁸

The CPT observed in the Report that children run a higher risk of being deliberately ill-treated in police custody than in other places of detention and stated that with this observation in mind, it is essential that all children deprived of their liberty enjoy, from the moment of first contact with the police, the right to notify a relative or other person of their choice of the fact of their detention. They should also be given access to a lawyer and access to a doctor.⁹⁹ As examples of good practice in this area the CPT singled out the countries in which an obligation is placed on the police itself to inform an appropriate adult about the fact of detention of a child, and those countries where police officers are not allowed to interview a child unless a lawyer and/or appropriate person is present.

On a general level, the CPT stressed that children in detention should, as a rule, be accommodated separately from adults, particularly to prevent abuse and eliminate the potential for other forms of ill-treatment.¹⁰⁰ Specific standards referring to detention of children developed by the CPT are also referenced in thematic sections of the report below.

2.2 Other international standards: European Convention on Human Rights (ECHR)

Aside from international standards specifically designed to address the situation of children in the criminal justice system, other rights stemming from general human rights instruments are also applicable. When designing the system of children detention, these rights and instruments have to be kept in mind. In this context, the primary document applicable in Ireland is the European Convention on Human Rights (ECHR),¹⁰¹ incorporated into Irish law by the *European Convention on Human Rights Act 2003*.¹⁰²

⁹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (1999) 9th *General Report on the CPT's activities covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

⁹⁹ *Ibid*, p. 13.

¹⁰⁰ *Ibid*.

¹⁰¹ Other instruments that need to be kept in mind include: a) United Nations instruments: The International Covenant on Civil and Political Rights (ICCPR); The Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT); The UN Standard Minimum Rules for the Treatment of Prisoners (1977); The UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988). Additionally, the following Council of Europe standards apply: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; The European Prison Rules (2006).

¹⁰² Available at: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2003/a2003.pdf>.

While the ECHR does not contain specific provisions outlining children's rights, its application to the situation of individual children has arisen in a number of cases before the European Court of Human Rights (ECtHR). As Kilkelly notes, while much of the case law concerns the situation of individual children, and they are often included as applicants, many of the cases have been decided from the perspective of the parents and very few cases have been taken so far by children in their own right.¹⁰³

So far, the vast majority of cases concern issues arising under Article 8 of the ECHR, guaranteeing the right to respect for private and family life. The jurisprudence of the ECtHR in this area covers many areas of family law in particular, including adoption, international child abduction, aspects of alternative care, custody and access rights, guardianship and identity issues.¹⁰⁴ The activity of the ECtHR regarding the rights of children is not, however, limited to Article 8 issues, and the Court has also heard a number of cases regarding the situation of children in protective and punitive detention.¹⁰⁵ These cases are of clear relevance to this report, and to the policy and practice regarding the detention of children in Ireland.

In particular, the case of *D.G. v Ireland* (2002) merits special attention in this context.¹⁰⁶ The case concerned a teenager who, having been in care placements from the age of 2, came into conflict with the law and had a history of criminal convictions and serious incidents, including violent behaviour. Following his release from St. Patrick's Institution in 1997, a case conference regarding the applicant's situation was held by the Eastern Health Board and it was decided that his needs would be met if he was placed in a high-support

therapeutic unit for 16- to 18-year olds. As no such unit existed in Ireland at the time, it was decided that the Board would look into placements outside Ireland and into interim options in Ireland. Following a decision at the case conference, the applicant resided in a number of hostels, and in June 1997 a case was heard by the High Court regarding his further placement as the Eastern Health Board's representatives stated that their facilities could no longer cater for the applicant. On hearing evidence in the case, including on the applicant's history of violent behaviour, the High Court judge ordered his detention in St. Patrick's Institution stating that he considered St. Patrick's the most suitable in the circumstances of the case while other options were being looked at. While stating that he was "extremely unhappy at having to make this order", the judge ordered that the applicant was brought to St. Patrick's by the police and detained there for three weeks. The judge attached certain conditions to D.G.'s detention, stating in particular that he was to be subject to the "normal discipline" of St. Patrick's Institution, and was to have a full psychiatric assessment. Suicide risks presented by D.G. were to be notified to the Governor.

Following an unsuccessful challenge of the High Court decision in the Supreme Court, D.G. brought the case to the European Court of Human Rights. He argued that his detention violated the provisions of Article 5 of the ECHR (the right to liberty) and did not fall within the scope of any of the exceptions to the application of this right set out in Article 5(1), and in particular it did not fulfil the requirements of Article 5(1)(d) allowing for detention for the purposes of "educational supervision".¹⁰⁷

The ECtHR found in this case that, while the placement of D.G. in St. Patrick's Institution was lawful under

¹⁰³ Kilkelly, U. (2008) *Children's Rights in Ireland: Law, Policy and Practice*, Dublin: Tottel Publishing, p.40.

¹⁰⁴ *Ibid.*

¹⁰⁵ See for instance: *Güveç v Turkey*, Application No 70337/01, Judgment 20 January 2009.

¹⁰⁶ *D.G. v Ireland*, Application No 39474/98, Judgment 16 May 2002.

¹⁰⁷ Article 5 (1) of the ECHR states:

"Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

Irish law, the nature of the placement could not be seen as one effected “for the purpose of educational supervision”. The applicant was subject to a regular regime in St. Patrick’s Institution and taking part in education was voluntary. The Court also stated that it could not consider D.G.’s detention in St. Patrick’s as an interim custody measure preliminary to a regime of supervised education, and found a violation of Article 5(1) of the ECHR. According to Kilkelly, the case:

[...] makes it absolutely clear, therefore, that if a child or young person is considered in need of care in secure accommodation, they may only be detained in a penal or other institution where specific provision is made for their educational and care needs. ¹⁰⁸

The European Convention on Human Rights Act 2003 incorporated the ECHR into the Irish law, making the provisions of ECHR directly enforceable through Irish courts. Additionally, the 2003 Act placed an obligation on organs of the State to act in a manner compatible with the State’s obligation under the ECHR.¹⁰⁹ As the importance of the ECHR to the practice in Ireland becomes more evident in other areas, the authorities – including those who manage detention facilities on a daily basis – should be aware of its provisions, and of the developing jurisprudence of the ECtHR and the Courts in Ireland.

¹⁰⁸ Kilkelly, U. (2008) *Children’s Rights in Ireland: Law, Policy and Practice*, Dublin: Tottel Publishing, p.307.

¹⁰⁹ Section 3 of the European Convention on Human Rights Act 2003.

Chapter 3: Detention of children – experiences in other jurisdictions

There is no uniform global approach to the detention of children and comparisons between various jurisdictions are notoriously difficult. Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, noted in his recent report on juvenile justice that:

*Comparative study of juvenile justice is a difficult exercise, complicated by the use of different definitions, the lack of data and differences in the way in which data are collected.*¹¹⁰

In particular, it is difficult to compare data on rates of detention of children up to 18 years of age, mostly due to differing definitions of a ‘juvenile offender’.¹¹¹ Any statistics presented below should therefore be treated with caution.

In the context of this study, emphasis is placed on the strengths of approaches and examples of good practice as the objective of this report is to learn from the experiences of others and develop better approaches in Ireland. While invaluable, comparative research must be undertaken with some caution, “as developments in any single nation cannot be fully explored without reference to sub-national, regional and local diversity as well as acknowledging the impact of international and global forces”.¹¹² The structural, cultural and political dynamics of each country must also be taken into account.

The examples of good practice in other jurisdictions are taken from available documents which review policy and practice in a number of detention facilities in Europe. The following sections include brief descriptions of those practices, and introduce the facilities available in a number of countries for the detention of children.

a) Detention of children in Scotland

Scotland’s very distinct system of juvenile justice is based on the Children’s Hearing System.¹¹³ This system was established in 1971 following recommendations by the Kilbrandon committee.¹¹⁴ Remand and committal in

Scotland of children under 16 years of age in the context of criminal proceedings takes place in residential, including secure, accommodation provided by local authorities. In principle, detention lasts up to half of the sentence imposed and can then be substituted by other supervision measures. Approximately 500 children are detained in Scotland, which represents 6.2% of the overall prison population.¹¹⁵

The innovative Children’s Hearing System is based on the philosophy of focusing on “the needs not the deeds of the child”. Such an ideology can be seen in the treatment of children in St Mary’s Kenmure Secure Accommodation in North Glasgow,¹¹⁶ the practice in which is referred to in Part II of this report. St. Mary’s Kenmure is a secure residential unit to which children are referred from the Children’s Hearing System and occasionally from the Sherriff Court. The facility caters for 36 children between 11 and 16 years of age.

b) Detention of children in Northern Ireland

The main legal framework for the detention of children in Northern Ireland is provided by the Criminal Justice (Children) Order 1998. A new detention centre for children was opened in 2007 and replaced all the other, older facilities with one integrated Juvenile Justice Centre. The Woodlands Juvenile Justice Centre, the practices and policies of which are noted later in the report, accommodates children aged between 14 and 17 (boys and girls) and has a capacity of 48.¹¹⁷

In June 2009, children constituted 0.7% of the overall prison population in Northern Ireland of 1,524. A report by the Criminal Justice Inspectorate of an inspection of the Woodlands JJC in 2007 provides invaluable information about the profile of children in custody in Northern Ireland. The report notes that on the 30th of November 2007, there were 30 children in the JJC, comprising 25 boys and 5 girls. The majority of children in the JJC at the time of inspection were 16 years of age (20). 21 children resident at the time of inspection were on remand, and only 9 were sentenced.

¹¹⁰ Commissioner for Human Rights (2009) *Children and Juvenile Justice: Proposals for Improvements*, Strasbourg: Council of Europe, p.3.

¹¹¹ In a number of countries, ‘juvenile offender’ is defined as a person of up to 21 years of age and statistics therefore include children up to 17 years of age and young people between 18 and 21 years.

¹¹² Muncie, J. and Goldson, B., [Eds] (2006) *Comparative Youth Justice*, London: Sage Publications, p.196.

¹¹³ For detailed analysis of the Scottish Juvenile Justice System see: Buist, M. and Asquith, S. “Juvenile Crime and Justice in Scotland” in Bala, N. et. al. (Eds) (2002) *Juvenile Justice Systems: An International Comparison of problems and solutions*, Toronto: Thompson Educational Publishing.

¹¹⁴ Kilbrandon, L. (1964) *Children and young persons, Scotland. Cm 2306*. Edinburgh: Scottish Home and Health Department.

¹¹⁵ Numbers are approximate as the rate of children per whole prison population refers to 2007. For details see: Prison Brief for United Kingdom: Scotland at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=171.

¹¹⁶ For more information, see: <http://www.stmaryskenmure.org.uk/cfyf/>.

¹¹⁷ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p.4.

c) Detention of children in the Netherlands

The Netherlands, whose approach to youth justice was “once heralded as the beacon of tolerance and humanity”,¹¹⁸ has recently embarked on a substantial prison building programme as well as tightening the laws relating to children in conflict with the law. Data for 2008 shows that children constituted 7.6% of the overall prison population of 16,416 in the country.¹¹⁹ In practice, however, commitment to welfare remains strong and welfare institutions play active roles in the response to children in conflict with the law.

In the Netherlands, children can be placed in closed institutions on the basis of criminal law disposals, as well as family law orders. The position of children in prison in the Netherlands is regulated by the Youth Custodial Institutions Act (YCIA) of 2001. The new law makes a distinction between two types of closed facilities: reception centres and treatment centres. Reception centres hold: children in pre-trial detention, and those convicted by the youth judge to a maximum of 12 months (12-15 year olds) or 24 months (16 - 17 year olds); children in detention based on immigration law; children on placement in a closed institution based on a family law supervision order; children held in cases of emergency or when a child is waiting for a treatment centre. Treatment centres hold children placed in a closed institution for treatment based on a measure taken by the youth judge on the basis of criminal law or on the basis of a family law supervision order.

The Jongerenopvangcentrum (JOC) is one of 14 youth custodial institutions in the Netherlands. It is a reception centre in Amsterdam and will be referred to later in Part II of the report.

d) Detention of children in Germany

In terms of Germany’s juvenile justice system, the premise has been the desirability of directing responses to crimes committed by children towards sanctions that foster pro-social development. The key is education and re-socialisation; to achieve these principles detention is seen as a measure of last resort. In Germany, the juvenile justice system deals with children and young people between 14 and 21 years of age and operates

on the basis of the Juvenile Justice Act 1923 which was greatly reformed in 1990.

The principle of the Juvenile Justice Act is based on “minimum intervention” and the possibilities of diversion were greatly extended in the 1990 amendments. Four levels of diversion are identified: diversion without sanction (non-intervention) is given priority in cases of petty offences; diversion with measures taken by other agencies (parents/schools) or in combination with mediation is the second level (diversion with education); the third level is “diversion with intervention” whereby the prosecutor proposes that the juvenile court judge impose a minor sanction, such as a warning, community service, mediation or participation in a training course; the fourth level of diversion is the introduction of levels one to three at the juvenile court proceedings after the charge has been filed.¹²⁰ Community sanctions include community service, special care orders, social training courses and mediation. Furthermore, educational measures of the juvenile court comprise different forms of directives concerning the everyday life of children in conflict with the law.¹²¹ The judge can, for example, forbid contact with certain people and prohibit going to certain places. As mentioned above, a penal sanction is only imposed where absolutely necessary.

Under Section 92 of the Juvenile Justice Act, detention takes place in one of the following facilities: a closed juvenile institution; a semi-open juvenile institution; and open facilities. The minimum length of detention is six months and the maximum is five years for 14 to 17 year old juveniles. In the case of serious crimes, for which adults would be punished with more than ten years’ imprisonment, the maximum length of youth imprisonment is ten years. Practices in the Halle Juvenile Prison, the only institution in Saxony-Anhalt for boys who are sentenced and on remand, and the ‘Justizvollzugsanstalt’ in Sieberg in Nordrhein-Westfalen have been reviewed to inform this report. Halle has a capacity of 454; Justizvollzugsanstalt has a capacity of 800.

e) Detention of children in Sweden

In Sweden, the responsibility for responding to crimes

¹¹⁸ Muncie, J. and B. Goldson (Eds) (2006) *Comparative Youth Justice*. London: Sage Publications, p.3.

¹¹⁹ For more details see: Prison Brief: Netherlands [available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=157].

¹²⁰ Dünkel, F. (2004) “Juvenile Justice in Germany”, www.uni-greifswald.de/~ls3, p.5 [accessed 31 October 06].

¹²¹ *Ibid*, p.6.

committed by children is shared by the social services and the judicial system.¹²² The extent to which the judicial authorities and the social services share responsibility is mainly dependent on the age of the offender. Those aged below 15 years are dealt with entirely by social services, while those between 15 and 17 years are the responsibility of both social services and judicial authorities.

Under the law in Sweden a court may, upon application by the local social services, order compulsory care for a person aged 19 or less whose health or development is at risk, in cases of substance abuse, criminal activity or other socially damaging behaviour. Such care takes place in 'LVU' homes under the authority of the National Board for Institutional Care.¹²³ Furthermore, a court may place a person below the age of 18 who has committed a criminal offence in a designated institution. Such placements are also in LVU homes.

The Barby Home for Young Persons, included in this study, is an LVU home with an official capacity of 29, catering for boys between the ages of 14 and 19.

f) Detention of children in Norway.

Under the 1992 Child Welfare Act in Norway children deemed to have serious behavioural problems may be placed involuntarily in an institution following a decision by a five-member County Board panel composing of a judge, psychologist, social worker and two elected officials. Such placements may be extended but must be based on a separate hearing and decision by the County Board. The institutions which receive children are dispersed throughout Norway and are relatively small, with capacities ranging from 8 to 20. They are often located in converted residential houses.¹²⁴

The practices of three facilities in Norway have been reviewed to inform this report (all receive boys and girls up to 18 years of age):

- a) the BUS Acute Institution in Oslo (capacity 8) which is used for short-term placements for observation

purposes;

- b) the Fossum Collective in Spydeberg (capacity 20) which is a rehabilitation institution for children with substance abuse problems;
- c) and the Øvstun Centre in Nesttun (capacity 8), which is used for both assessment and long-term placements.

It is clear from the examples above that there is much diversity in the way in which children in conflict with the law are treated and in the levels and types of detention used. The following chapters identify examples of good practice from some of the above countries under a number of key headings.

¹²² See: Sarnecki, J. and Estrada, F. (2004) *Juvenile crime in Sweden: A trend report on criminal policy, the development of juvenile delinquency and the juvenile justice system*, Stockholm University: Department of Criminology.

¹²³ LVU homes are those established under the Swedish *Care of Young Persons Act 1950* (with the acronym referring to the Swedish title of the 1950 Act).

¹²⁴ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

Part II

Detention of Children

– International Standards and Best Practice Examples

Part II of the report discusses in detail international standards regarding all aspects of the system for detention of children. The following chapters provide information on the requirements those standards place on national authorities as regards:

- a) placements in detention,
- b) procedures for admission, orientation and induction,
- c) the physical environment and accommodation in detention facilities,
- d) personal and social development of children in detention,
- e) health care provision,
- f) child protection procedures,
- g) the use of disciplinary measures,
- h) the system for inspection and consideration of complaints,

- i) suitable personnel,
- j) contact with the outside world, and
- k) the rehabilitation and social integration into the community following release from custody.

The standards are each illustrated with examples of good practices found in other jurisdictions and places of detention in the countries discussed in Chapter 3, followed by the recommendations that can be drawn from the analysis of standards and good practice examples.

This analysis of the standards and good practice examples is provided with a view to developing a set of recommendations to inform the process of the physical design of the new proposed National Children Detention Facility in Ireland, as well as the further development of policies and practices that will govern such detention.

Chapter 4: Placements, Admission, Orientation and Induction.

International standards

International standards make it clear that if detention of children is to have a positive effect it must involve a serious and co-ordinated effort to address the problems that give rise to the child's offending behaviour and prepare him or her for life following release.¹²⁵ To this end, the placement of children in closed institutions, including detention facilities, should be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being.¹²⁶ Accordingly, individual institutions should have an appropriate system in order to secure a placement for the child according to their educational, developmental and safety needs.¹²⁷ No child should be admitted to or held in a detention centre without a valid commitment order.¹²⁸

On admission to the detention facility, in recognition of the child's participation rights, the child must be informed about the institution and the rules and regulations that apply. The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) clearly stipulate that all children must be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand; this is also required by the European Rules. The child must also be notified of the address of the authorities competent to receive complaints as well as organisations that provide legal assistance.¹²⁹ For children who have difficulties reading, information should be conveyed in a manner enabling full comprehension.¹³⁰ The European Rules require that notification of the placement of the child, information on the rules governing the particular detention facility, and other relevant information should also be given immediately to his or her parents or legal guardians.

On admission, or as soon as possible afterwards, each child should be interviewed, and a psychological and

social report identifying any factors relevant to the specific type and level of care and programme required by the child should be prepared.¹³¹ This report, along with the report prepared by a medical officer who has also examined the child on admission, should be forwarded to the manager of the given institution for the purposes of determining the most appropriate placement within the facility and the specific type and level of care and programme required. Following on from this, trained personnel should prepare a written, individualised treatment plan, specifying treatment objectives and the timeframe within which it should be achieved.¹³²

Central to securing an effective assessment and monitoring process which enables children to return safely to society on release is a modern, comprehensive system of recording, storing and communicating information.¹³³ Such a system is in keeping with international standards, which require that every child detention centre should have a complete and secure record of each child with information on: identity; the fact and reasons for commitment; details regarding admission, transfer and release; family contact information; and details of known physical and mental health difficulties including addiction.¹³⁴ The European Rules (2008) require that on admission certain information should be recorded immediately about each child admitted to the detention facility. Such information should include:

- a) information concerning the identity of the child and his or her parents or legal guardians;
- b) the reasons for commitment and the authority responsible for it;
- c) the date and time of admission;
- d) an inventory of individual property of the child that is to be held for safekeeping, if any;

¹²⁵ Kilkelly, U. et.al. (2002) *In Our Care: Promoting the rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p. 52 (available at: <https://www.nihrc.org>).

¹²⁶ Rule 54, European Rules.

¹²⁷ Rule 61, European Rules.

¹²⁸ Rule 62.1, European Rules.

¹²⁹ Rule 24, Havana Rules.

¹³⁰ *Ibid.*

¹³¹ Rule 27, Havana Rules. See also: Rule 62.2, European Rules.

¹³² Kilkelly, U. et.al. (2002) *In Our Care: Promoting the rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p. 52 (available at <https://www.nihrc.org>).

¹³³ *Ibid.*

¹³⁴ Rule 21, Havana Rules.

- e) any visible injuries and allegations of prior ill-treatment;
- f) any information and any report about the child's past and his or her educational and welfare needs; and
- g) subject to the requirements of medical confidentiality, any information about the child's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the child or to that of others.

All records, reports and any other documents relating to the form, content and detail of treatment of the individual should be placed in a confidential individual file, which should be kept up to date and be accessible only to authorised persons and classified in such a way that is easily understood. Where possible, every child should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, the detention centre should operate procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of children shall be sealed, and, at an appropriate time, expunged.¹³⁵

Examples of Good Practice

The 2007 inspection of the Woodlands JJC (reported on in 2008) found that staff at the Centre were very consistent in requiring a valid order of commitment authorising a child's detention, and all files contained a copy of the relevant authorisation.¹³⁶

On arrival, children receive a pat-down search and have their property recorded and removed for safe storage.¹³⁷ The Centre keeps the child's money in a 'bank account' and gives them information about the amount held in the account on a regular basis. All children have a shower upon arrival and house units have spare clothes and toiletries that children can use until their

own clothing and other private possessions are made available to them.¹³⁸

The inspection report noted that inspectors were told by both staff and children in the Centre that admissions procedures worked well. Children stated that they received the right amount of information on arrival, and the inspectors noted that all new children were given information about the JJC in accessible format, including a copy of the complaints leaflet.¹³⁹ The inspection also found that health and educational assessments are undertaken at an early stage, and that comprehensive files are opened on each child as soon as they arrive at the JJC. Children are encouraged to participate in the Centre's life "both individually in planning for their future, and collectively in relation to group living arrangements".¹⁴⁰

The inspection also found that each child is allocated a key worker on admission, and all children in the Centre were able to identify a member of staff with whom they had a positive relationship.¹⁴¹

Recommendations: Admission

1. On admission, the child should be assessed in terms of their specific health, education and behavioural needs and a medical (including psychological) and social report prepared identifying any factors relevant to the specific type and level of care and programme required by the child while in detention. A trained member of staff should prepare a written, individualised treatment plan, specifying treatment objectives and the timeframe within which this should be achieved.
2. All children should be given a detailed booklet of information outlining the rules, policies and procedures and complaints process of the place of detention. This information should be presented in a manner that is child friendly and easily understood. For those with low levels of literacy, appropriate

¹³⁵ Rule 19, Havana Rules.

¹³⁶ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 15.

¹³⁷ *Ibid*, p. 15.

¹³⁸ *Ibid*, p. 15.

¹³⁹ *Ibid*, p. 16.

¹⁴⁰ *Ibid*, p. 16.

¹⁴¹ *Ibid*, p. 21.

steps should be taken to ensure the information is understood by the child.

3. To secure an effective assessment and monitoring process, a modern, comprehensive system of recording, storing and communicating information is necessary. A report on each individual should include information on identity, the fact and reasons for commitment, details regarding admission, transfer and release, and family contacts. These reports should be kept in a confidential individual file.

Chapter 5: Physical Environment and Accommodation

International standards

The UN Convention on the Rights of the Child requires that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person in a manner which takes into account the needs of persons of his or her age.¹⁴² Article 39 demands that the rehabilitation and reintegration of a child shall be carried out in an environment which fosters the health, respect and dignity of the child. In a similar vein, the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) demand that the deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of children.¹⁴³ Moreover, children must not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled to under national or international law.¹⁴⁴

Design of detention facilities

To reach such standards, the design of detention facilities for children and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.¹⁴⁵ Commenting on the design of youth detention facilities, the European Committee for the Prevention of Torture (CPT) stated in its 9th Annual Report that in its view:

[...] all juveniles deprived of their liberty because they are accused or convicted of criminal offences ought to be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young.

Moreover, the care of juveniles in custody requires special efforts to reduce the risk of long-term social maladjustment. This calls for a multidisciplinary approach, drawing upon the skills of a range of

*professionals (including teachers, trainers and psychologists), in order to respond to the individual needs of juveniles within a secure and socio-therapeutic environment.*¹⁴⁶

The European Rules lay down a number of general principles regarding the institutional structure for children detention facilities. These include the following:

- a) institutions should provide a range of facilities to meet the individual needs of children held there and the specific purpose of their committal;
- b) such institutions should provide conditions with the least restrictive security and control arrangements necessary to protect children from harming themselves, staff, others or the wider community;
- c) life in an institution should approximate as closely as possible the positive aspects of life in the community;
- d) the number of children in the institution should be small enough to enable individualised care;
- e) institutions should be organised into small living units;
- f) children detention facilities should be located in places that are easy to access and facilitate contact between children and their families; and
- g) such institutions should be established and integrated into the social, economic and cultural environment of the community.¹⁴⁷

Bearing in mind local standards, sleeping accommodation should consist of small group dormitories or individual bedrooms¹⁴⁸ and, in order to comply with the private physical needs of children in a clean and private manner, sanitary installations should be of a sufficient standard throughout the detention facility.¹⁴⁹ Preferably, children should have their own private bathroom facilities within their bedroom.

¹⁴² Article 37 (c) of the UN Convention on the Rights of the Child (CRC).

¹⁴³ Rule 12 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).

¹⁴⁴ Rule 13, Havana Rules.

¹⁴⁵ Rule 32, Havana Rules.

¹⁴⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1999) 9th General Report on the CPT's activities, covering the period 1 January to 31 December 1998. Strasbourg: Council of Europe.

¹⁴⁷ See section E2 (Rules 53.1 to 53.5), European Rules.

¹⁴⁸ Rule 33, Havana Rules.

¹⁴⁹ Rule 34, Havana Rules.

In line with international standards, the CPT has stated that places where children are deprived of their liberty should provide a positive and personalised environment. In addition to being of adequate size, well-lit and ventilated, residents' sleeping and living areas should be properly furnished, well-decorated and offer a stimulating and therapeutic environment.¹⁵⁰ Furthermore, unless there are compelling security reasons, the CPT maintains that residents should be allowed to keep a reasonable amount of personal belongings.

The European Rules also set a number of standards in relation to the quality of accommodation. The document states that any accommodation provided for detention of children, and in particular all sleeping accommodation, has to respect human dignity and, as far as possible, privacy. It should meet the requirements of health and hygiene, with due regard paid to climatic conditions and especially floor space, cubic content of air, lighting, heating and ventilation.¹⁵¹ The European Rules also state that specific minimum requirements in respect of the standards of accommodation should be set in national law.

Personal belongings

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the child. Children in detention have a right to possess personal effects and have adequate storage facilities for them.¹⁵²

Clothing and hygiene

While in detention, children have a right to facilities and services that meet all the requirements of health and human dignity¹⁵³ and to the extent possible, children should have the right to wear their own clothing. In cases where the child does not have appropriate

clothing, this should be provided by the institution.¹⁵⁴ Detention facilities should ensure that each child has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating.¹⁵⁵ The facilities provided for children should be clean and properly maintained and ensure that they have access to sanitary facilities that are hygienic and respect their right to privacy.¹⁵⁶ Children in detention should be able to take a bath or shower every day.¹⁵⁷ In the 9th *General Report* mentioned above, the CPT also stressed that specific needs of girls in detention should not be overlooked, and that ready access to sanitary and washing facilities as well as provision of hygiene items, such as sanitary towels, is of particular importance.¹⁵⁸

Individualised treatment

Finally, the number of children detained in closed facilities should be small enough to enable individualised treatment. The Havana Rules stipulate that detention facilities should be decentralised and of such a size as to facilitate the access and contact between children and their families.¹⁵⁹ Contact with family and friends is of great importance to children in custody and all efforts should be made to ensure contact is actively maintained while in detention.

Examples of Good Practice

Housing/bedrooms

- a) In the Barby Home for Young Persons in Sweden, residents live in a positive and personalised environment.¹⁶⁰ Children are accommodated in good sized (8-15m²), adequately furnished, personalised

¹⁵⁰ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, p.45 (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

¹⁵¹ Rule 63.1, European Rules.

¹⁵² Rule 35, Havana Rules.

¹⁵³ Rule 31, Havana Rules.

¹⁵⁴ Rule 66.2, European Rules.

¹⁵⁵ Rule 36, Havana Rules and Rule 66.3, European Rules.

¹⁵⁶ Rule 65.2, European Rules.

¹⁵⁷ Rule 65.3, European Rules.

¹⁵⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1999) *9th General Report on the CPT's activities, covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

¹⁵⁹ Rule 30, Havana Rules.

¹⁶⁰ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

rooms with good access to natural light and ventilation.

- b) Similarly, facilities in Norway have received very positive remarks from the CPT regarding the treatment of children in detention. In 1999, the CPT visited three establishments in Norway and all three had a very high standard of material conditions of detention.¹⁶¹ The BUS Acute Institution has eight 9m² single rooms which are clean and well equipped and decorated with personal items even though the facility caters for short term custody only.
- c) Fossum Collective in Norway is located in a rural setting and comprises a farmhouse and auxiliary buildings. The Collective, which is operated by a private foundation, provides accommodation for most of the staff members as well as the children in the institution. The CPT found that the single occupancy rooms and the sanitary facilities were of a very high standard.
- d) The Øvsttun Centre located on the outskirts of Bergen comprises a main building housing two accommodation units for different categories of residents (assessment and long term placement) and an auxiliary building with an indoor sports hall and facilities for various activities. The bedrooms are single occupancy.¹⁶²
- e) St. Mary's Kenmure Secure Accommodation Service in North Glasgow, Scotland received very positive reports from the CPT in 2003.¹⁶³ Children in St. Mary's are accommodated in spacious (approx. 11m²), well-lit (natural and artificial light) and ventilated bedrooms. The rooms, mostly grouped in 6-room units, were suitably furnished with a bed, desk, chair and shelves and pleasantly decorated.

The CPT held that the conditions of detention at St. Mary's Kenmure are fully satisfactory and with little visible indication of the closed nature of the facility.

- f) The Woodlands JJC in Bangor, Northern Ireland, comprises six residential units with eight single bedrooms in each unit. The Criminal Justice Inspection Northern Ireland noted in their report in 2008 on conditions in the Woodland JJC that bedrooms were found to have "satisfactory levels of cleanliness and hygiene".¹⁶⁴ The inspection team remarked that the open plan living areas with small kitchens in each of the units were bright and comfortable and provided access to recreation area and the courtyard/garden.¹⁶⁵ Generally, the inspection team found that many positive features have been incorporated into the new JJC that considerably enhance the management and care of children. Comprehensive safety precautions were found to be "sympathetically integrated with robust security arrangements to provide a pleasant living and working environment."¹⁶⁶

Sanitation and hygiene

- a) In the Barby Home in Sweden some rooms include a sanitary annexe with a lavatory, sink and shower. Those that do not have en-suite facilities have ready access to communal sanitary facilities, which were deemed to be quite satisfactory at the time of viewing. All premises were clean and in a good state of repair, and efforts were being made to provide a homely atmosphere.¹⁶⁷
- b) Each room in St. Mary's Kenmure has a fully equipped sanitary annexe (washbasin, lavatory and shower). All facilities were clean and in a good state of repair at the time of the report.¹⁶⁸

¹⁶¹ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 [available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>].

¹⁶² *Ibid.*

¹⁶³ *Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003)*, Council of Europe Document CPT/Inf (2005) 1, pp.50-55 [available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>].

¹⁶⁴ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

¹⁶⁵ *Ibid.*, p. 17.

¹⁶⁶ *Ibid.*, p. vii.

¹⁶⁷ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, [available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>].

¹⁶⁸ *Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003)*, Council of Europe Document CPT/Inf (2005) 1, pp.50-55 [available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>].

Communal areas

The Havana Rules stress the importance of opportunities for association with peers.¹⁶⁹ Several examples from children detention facilities provide an indication of good practices in this area:

- a) Each unit in the Barby Home has a homely and comfortable television room, smaller association rooms and a kitchen/dining area.¹⁷⁰
 - b) The Fossum Collective in Norway “offers an exceptionally positive, tranquil and home-like atmosphere” centred around the farmhouse, which contains the main association area/library and the spacious kitchen and dining area. The main association area features a fireplace, plants and some household objects such as candles and a spinning wheel.
 - c) The communal area in the Øvsttun Centre consists of a large sitting room and dining room together with a kitchen.
 - d) Within St. Mary’s Kenmure, there is a comfortable association room that is well furnished with colourful educational murals and notice boards and equipped with television sets and video games, as well as radio and CD players. A quiet room, a kitchen and a room for visits and private telephone calls are also available.¹⁷¹
2. The building should have a positive and personalised environment. Bedrooms should be of adequate size, well-lit, suitably furnished and decorated.
 3. All rooms should have private sanitary facilities.
 4. Along with the sleeping areas, an association room, sitting/television room, dining room and quiet room should be included. Efforts should be made to arrange that staff and residents eat together.
 5. In relation to the geography of detention facilities, detention facilities should be decentralised and of such a size and location to facilitate access and contact between children and their families.
 6. All facilities should provide residents with the opportunity to wear and select their own clothing.

Recommendations: Physical Environment

1. Extreme care should be taken in planning the layout and structure of new facilities. The design should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.

¹⁶⁹ Rule 32, Havana Rules.

¹⁷⁰ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, [available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>].

¹⁷¹ *Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003)*, Council of Europe Document CPT/Inf (2005) 1, pp.50-55 [available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>].



Chapter 6: Personal and Social Development

International standards

According to the CPT, the lack of purposeful activity while in detention is particularly detrimental for children, who have “a particular need for physical activity and intellectual stimulation”.¹⁷² In this context, the CPT has stated that:

*Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme.*¹⁷³

More specifically, international law recognises that all children, including those in detention, have a right to education.¹⁷⁴ Children in detention have a right to education that is suited to their needs and abilities and designed to prepare them for return to society.¹⁷⁵ The CPT has also highlighted that boys and girls in detention should enjoy equal access to educational and recreational facilities, and that activities offered in places of detention should avoid stereotyping gender roles by provision of ‘traditional’ training (for instance, sewing for girls only and woodworking for boys only).

The European Rules outline detailed requirements in relation to the regime activities that should be provided in youth detention facilities. The Rules state that regime activities in such institutions should aim at education, personal and social development, vocational training, rehabilitation and preparation for release. As such, activities in detention facilities for children may include:

- a) schooling;
- b) vocational training;
- c) work and occupational therapy;
- d) citizenship training;
- e) social skills and competence training;

- f) aggression management;
- g) addictions therapy;
- h) individual and group therapy;
- i) physical education and sport;
- j) tertiary or further education;
- k) debt regulation;
- l) programmes of restorative justice and making reparation for the offence;
- m) creative leisure time activities and hobbies;
- n) activities outside the institution in the community, day leave and other forms of leave; and
- o) preparation for release and aftercare.¹⁷⁶

The majority of children in detention in Ireland are from a poor educational background, have low basic skills and have been out of the school system as a result of behavioural difficulties or other problems.¹⁷⁷ However, this does not mean that children in conflict with the law are not capable of succeeding in the educational system and achieving accreditation for their achievements. Nowhere is this more important than in respect of those under school leaving age who are in detention.¹⁷⁸ The standard provisions laid down in the Havana Rules regarding education and training need to be met by all juvenile justice systems to ensure the best interests of the child are met and to assist children in conflict with the law to fulfil their potential.

Education should be provided outside the detention facility wherever possible, and where this is not possible, education within the facility should be carried out by qualified teachers through programmes integrated with the formal or state education system so that, after release, children may continue their

¹⁷² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1999) *9th General Report on the CPT's activities, covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

¹⁷³ *Ibid*, p. 14.

¹⁷⁴ Article 28 of the CRC.

¹⁷⁵ Rule 38, Havana Rules.

¹⁷⁶ Rule 77, European Rules.

¹⁷⁷ McPhillips, S., *Dublin Children Court: A pilot research project*, Dublin: Irish Association for the Study of Delinquency. (available at: <http://www.iasd.ie>).

¹⁷⁸ The Howard League for penal Reform (2001), *Missing the Grade: Education for Children in Prison* London: The Howard League for Penal Reform, p.5.

education without difficulty.¹⁷⁹ In this context, diplomas or educational certificates awarded to children while in detention should not indicate in any way that the child has been detained. Every detention facility should provide access to a well stocked library.¹⁸⁰

In addition to education, children in detention have the right to receive vocational training in occupations likely to prepare them for future employment.¹⁸¹ Children should be able to choose the type of work they wish to perform as far as possible¹⁸² and every child who does perform work should have the right to equitable remuneration for that work.¹⁸³ However, the interests of the children and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party.¹⁸⁴ Instead, the type of work should be such as provide appropriate training that will be of benefit to the child following release. Finally, the organisation and methods of work offered should resemble as closely as possible those of similar work in the community, again, to prepare children for the conditions of normal occupational work.¹⁸⁵

Recreation and Leisure

Article 31 of the UN Convention on the Rights of the Child recognises that children have the right to rest and enjoy leisure and recreational activities. Similarly, the Havana Rules require that children detained in facilities are guaranteed the benefit of meaningful activities and programmes;¹⁸⁶ they should have the right to a suitable amount of time for daily exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should be provided.¹⁸⁷ Adequate space, installations and equipment should be provided for this purpose.¹⁸⁸ The detention facility should ensure that each child is physically able to participate in the available

programmes of physical activity and remedial education and therapy should be offered to those who need it.

Examples of Good Practice

General education

In general, the best practice approaches identified here feature classrooms of high standard in terms of design and available facilities and small class numbers.

- a) In St. Mary's Kenmure the classrooms, sports facilities and other premises for the children's education and activities are reported to be of a very high standard. The children within the secure facility are required to attend classes designed to cater for their individual needs during normal school hours and in small groups. The classes include English, maths, biology, science, music, computer skills, home economics and cooking.¹⁸⁹
- b) In Northern Ireland, the new Woodlands JJC's Education and Learning Centre (ELC) has been welcomed by inspectors as a very positive development.¹⁹⁰ Inspectors noted that the Centre provides for children with often highly disrupted education history and attainment, but recorded significant improvements in levels of literacy and numeracy for children who have attended the ELC. Children are able to avail of courses in essential skills as well as standard curricula, and teaching staff enjoy good working relationships with children. The ELC also provides educational assessment and the inspectors noted that the assessment:

[...] was a central element of the work of the ELC which provided an important baseline to programme planning. The initial assessments and analysis of

¹⁷⁹ *Ibid*, see also Rules 78.2 and 78.3 of the European Rules.

¹⁸⁰ Rules 40 and 41, Havana Rules.

¹⁸¹ Rule 42, Havana Rules.

¹⁸² Rule 43, Havana Rules.

¹⁸³ Rule 46, Havana Rules.

¹⁸⁴ Rule 46, Havana Rules.

¹⁸⁵ Rule 45, Havana Rules.

¹⁸⁶ Rule 12, Havana Rules.

¹⁸⁷ See also: Rules 80.1, 80.2 and 81, European Rules.

¹⁸⁸ Rule 47, Havana Rules.

¹⁸⁹ *Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003)*, Council of Europe Document CPT/Inf (2005) 1, pp.50-55 [available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>].

¹⁹⁰ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 27.

children's progress before discharge held much potential to enable the ELC to analyse its data and record the value added by the ELC on children's learning, levels of motivation and social engagement, wellbeing and accreditation. ¹⁹¹

The inspectors also noted in their report that assessment so structured informs better planning of individual educational programmes, and stronger emphasis on practical and vocational skills leads to greater achievement by children across the essential skills.

- c) Jongerenopvangcentrum (JOC) in the Netherlands is a closed youth reception centre in Amsterdam. There is a school at the JOC organised by an external educational organisation. During the week, a day programme is carried out whereby the boys attend lessons in very small groups of five to six persons. Normal school activities are available as well as computer lessons, woodcraft and more technical crafts. The day programme is compulsory. ¹⁹²
- d) In 2003, the CPT reported that the Barby Home for Young Persons in Sweden offers residents a developed and individualised programme of activities. ¹⁹³ The children are required to attend classes such as Swedish, maths and English in small groups and the facilities available for activities, i.e. classrooms, workshops etc. were found to be of a very high standard. ¹⁹⁴

Education in the community

From the *Report to the Norwegian Government on the visit carried out by the CPT*, ¹⁹⁵ educational and vocational programmes appear to be well-developed and involve a high degree of involvement in activities beyond the confines of the institutions; all programmes are co-educational. ¹⁹⁶

The Fossum Collective in Norway has its own small school with an adequate supply of teaching materials, computers and video equipment. Children are also able to attend classes outside the detention facility. In addition to school, sports and domestic tasks, activities such as drama classes take place in preparation for the plays staged in the community or secondary school. ¹⁹⁷

For those in long term placement in the Øvsttun Centre, individualised educational programmes are set up and led by tutors within the centre or by a teacher in an outside school. ¹⁹⁸

Programmes to address offending behaviour

The 2007 inspection of Woodlands JJC in Northern Ireland found that while due to the nature of the population in the Centre (a high number of children on remand, and significant daily fluctuation of residents) it was difficult to provide tailored programmes for all residents, care was taken that all children undertake at least an hour of programme every weekday. There were three core programmes delivered at the time of inspection: offending behaviour, substance misuse and lifestyle choices. ¹⁹⁹ Programmes are delivered on both individual and group session basis, in an age-appropriate manner and the "programme manager had a good selection of resources which enabled facilitators

¹⁹¹ *Ibid*, at page 28.

¹⁹² Defence for Children International (2003) *Kids Behind Bars: A Study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam: Defence for Children International, p.81.

¹⁹³ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

¹⁹⁴ *Ibid*, p.46.

¹⁹⁵ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

¹⁹⁶ *Ibid*, p.32.

¹⁹⁷ *Ibid*.

¹⁹⁸ *Ibid*.

¹⁹⁹ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 25.

to deliver programmes in a creative and interesting way.”²⁰⁰ Several of the programmes delivered in the Centre are linked to awards, and ceremonies are held to recognise the children’s achievements.

Activities in the community

The Norwegian facilities – Bus Acute, Fossum Collective and Øvsttun Centre – offer a wide range of recreational activities. In Bus Acute, the communal areas provide an inviting space for association, with board games, reading and television, and the small courtyard outside is fitted with a net for volleyball. Children are also offered a bi-weekly trip to a nearby sports hall for basketball and football, etc. as well as frequent trips to the cinema, shopping, bowling, swimming, rock-climbing, hiking and skiing. In Øvsttun, regular camping trips to nearby mountains are organised.²⁰¹

Variety

- a) The Barby Home for Young Persons has facilities available for jewellery making, painting and photography, a sports hall, gymnasium, climbing wall and a sauna²⁰² and they are all of a very high standard.
- b) St. Mary’s in Scotland offers children a “panoply of evening and weekend activities, with particular emphasis on physical education and sport.”²⁰³ The sports facilities, including a football pitch, gymnasium and swimming pool, are equipped to a very high standard.
- c) Children in the Norwegian Øvsttun Centre are provided with a programme of activities such as pottery, painting and photography.²⁰⁴

Recommendations: Personal and Social Development

Education

1. All efforts should be made to encourage children to further their education while in custody.
2. To achieve this, it is essential that measures should be put in place to ensure that information regarding the child’s educational background is forwarded to the centre from their school and that a representative from the school be present at the assessment.
3. Special educational programmes should be incorporated.
4. Education should focus on re-connecting the child with mainstream education following release. Education should be provided outside the detention facility wherever possible, and otherwise, education within the facility should be carried out by qualified teachers through programmes integrated with the state education system so that, after release, children may continue their education without difficulty or stigma.
5. While in custody it is vital that children receive accreditation for their educational achievements but such diplomas or educational certificates should not indicate in any way that the child has been held in an institution.
6. Efforts should be made to present these awards at award ceremonies.
7. All measures should be taken to ensure that teaching personnel are suitably qualified. Prior to commencing, teaching staff should complete

²⁰⁰ *Ibid*, p. 26.

²⁰¹ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

²⁰² *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

²⁰³ *Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003)*, Council of Europe Document CPT/Inf (2005) 1, pp.50-55 (available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>).

²⁰⁴ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

an induction programme to ensure they are familiar with the rules, policies and ethos of the detention facility. During employment, staff should receive ongoing training on how to handle difficult situations.

Vocational training

8. The right to vocational training must be recognised. Efforts should be made to provide a choice of vocational training in areas that are likely to interest children and prepare them for future employment.
9. Adequate resources must be made available to ensure that a meaningful educational and vocational service, appropriate to a child's age and ability, is available to all children in detention. Considerable effort must be made in providing library services, choice within subjects, and the development of all teaching methods and facilities. Teaching methods should strive to be innovative and creative. Individuals and groups should be invited to places of detention to talk to children about careers, education and further employment.

Recreation and leisure

10. Children need and have a right to enjoy leisure and recreational activities. All detention facilities should develop clear policies with regard to ensuring that physical education, health, fitness and leisure becomes a central feature of daily life within the facility.
11. Children should be offered a choice of activities in suitable sport and leisure facilities and have access to open air on a daily basis.
12. For those not interested in sport, other activities should be provided.

Chapter 7: Health Care

International standards

Article 27 of the UN Convention on the Rights of the Child guarantees children a standard of living adequate for the child's physical, mental, spiritual, moral and social development. This demands the highest attainable standard of health care. The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) are more specific, requiring that children in detention should "receive adequate medical care, both preventative and remedial, including dental, ophthalmologic and mental health care, as well as pharmaceutical products and special diets as medically indicated."²⁰⁵ The European Rules state that particular attention should also be paid to dealing with hazards linked to deprivation of liberty. Special policies should therefore be developed and implemented to prevent self-harm and suicide among children in detention, with particular attention paid to the initial stages of detention, periods of segregation and other recognised high risk periods.²⁰⁶ The European Rules also require that particular attention should be paid to children with specific needs, including:

- a) younger children;
- b) pregnant girls and mothers with infant children;
- c) children addicted to drugs and/or alcohol;
- d) children with physical and mental health problems;
- e) children who are deprived of their liberty for long periods of time;
- f) children who have experienced physical, mental or sexual abuse;
- g) socially isolated children; and
- h) other particularly vulnerable groups.

The importance of good health care for children in detention cannot be underestimated. Children serving a custodial sentence often suffer poor physical and

mental health, have emotional and behavioural problems, or suffer from substance abuse problems. Frequently, it is the first and only opportunity such children have for their health needs to be addressed and identified. Furthermore, their health problems are often linked to the children's offending behaviour in a way that makes resolution of the problems essential to their successful integration into society upon release.²⁰⁷

It is for this reason that suitable health care while in detention is crucial and why the Havana Rules specifically require that "every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical and mental condition requiring medical attention." The European Rules further require that in order to provide integrated health care support for children, without prejudice to professional confidentiality and the role of each profession, the work of doctors and nurses with children in detention should be closely co-ordinated with the work of social workers, psychologists, teachers, other professionals and staff in the detention facility who have regular contact with children.²⁰⁸

International standards further state that every detention facility for children should have:

- immediate access to adequate medical facilities;
- equipment appropriate to the number and requirements of its residents; and
- staff trained in preventative health care and handling of medical emergencies.²⁰⁹

While in custody every child who is ill, who complains of illness or who demonstrates symptoms of physical and mental difficulties should be examined promptly by a medical officer.²¹⁰

In order to prevent stigmatisation of the child and promote self-respect and reintegration into the community, international standards provide that medical

²⁰⁵ Rule 49, Havana Rules.

²⁰⁶ Rules 70.1 and 70.2, European Rules.

²⁰⁷ Kilkelly, U. et.al (2002) *In Our Care: Promoting the Rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p.108 (available at: <http://www.nihrc.org>).

²⁰⁸ Rule 74.2, European Rules.

²⁰⁹ Rule 51, Havana Rules.

²¹⁰ Rule 52, Havana Rules.

care should, where possible, be provided to detained children through the appropriate health facilities and services of the community in which the detention facility is located.²¹¹

The administration of any drug should always be authorised and carried out by qualified personnel.²¹²

Substance abuse is a major problem in many children detention facilities. Specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel must therefore be adopted in all detention facilities. Such programmes should be adapted to the age, gender and other requirements of the children concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent children.²¹³

In keeping with the ethos and theme of the international standards and rules, the CPT has stressed that in detention facilities for children it is particularly important that the health care service offered to them constitutes an integrated part of a multidisciplinary (medico-psycho-social) programme of care. The goal should be to ensure that the health care delivered to children deprived of their liberty forms part of a seamless course of support and therapy.²¹⁴ The CPT has also stressed that all children deprived of their liberty should be able to access a doctor at any time on a confidential basis, regardless of the regime to which they may be subjected (for instance, while in disciplinary confinement).²¹⁵ The Committee has also stressed the importance of health education while in custody to prevent risk-taking behaviour such as drug use.²¹⁶

While the general level of health care within detention facilities for children appears to be below par in many countries, there are some positive experiences.

Examples of Good Practice

Examination on arrival

- a) The information gathered by the CPT during their visit to Norway in 1999 indicated on the whole that a multidisciplinary (medico-psycho-social) programme of care was being followed in the three establishments visited. Newly arrived children in Fossum Collective and Øvsttun Centre were medically screened on their arrival.²¹⁷
- b) In the Justizvollzugsanstalt in Sieberg; Nordrhein-Westfalen in Germany each child is medically screened on arrival. The screening consists of an examination for physical and mental health. In cases where a child is suspected to suffer from diseases such as hepatitis or AIDS, they receive special medical care.
- c) In the Woodlands JJC in Northern Ireland, children receive a healthcare examination at the point of admission or within 24 hours of arrival at the facility.²¹⁸ The examination encompasses both physical and mental health assessments to minimise the risk of self-harm or suicide. The results of the initial assessment are immediately shared with health staff and teachers in the JJC, and information regarding healthcare needs are incorporated in the child's care plan.²¹⁹ The inspection also observed that good systems were in place to share information about self-harm and suicide risks including through daily staff meetings.

Healthcare facilities

- a) During the CPT visit to Germany in 2001, Halle Juvenile Prison was found to have health care facilities of a very high standard including an operating theatre and a medical laboratory.

211 Rule 49, Havana Rules.

212 Rule 55, Havana Rules.

213 Rule 54, Havana Rules.

214 *Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 15 December 2000*, Council of Europe Document CPT/Inf (2003) 20, p. 41 (available at: <http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf>).

215 European Committee for the Prevention of Torture (CPT) (1999) *9th General Report on the CPT's activities covering the period 1 January to 31 December 1998*, Strasbourg: Council of Europe, p. 16.

216 *Ibid.*

217 *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

218 Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

219 *Ibid.*, p. 31.

- b) In Barby Home a nurse is present once a week for six hours. At other times, the nurse and a doctor can be contacted if needed and a child psychiatrist visits for one day every two weeks.²²⁰
- c) The health care facilities at St. Mary's in Scotland are reported to be of an extremely high standard.²²¹ A General Practitioner attends the unit for two hours every week and can be called on at other times. The nurse, who works on a full time basis, systematically screens all children upon admission; the children are then subsequently examined by a doctor. Within a few weeks of admission, an optician examines each child and the unit is visited on regular occasions by a dentist and a chiropodist. In the case of specialist care and emergency, the children can be taken to the local hospital.

Mental Health – protecting children from self harm

In recent years it has become increasingly clear that children in conflict with the law frequently have unmet mental health needs. In the last few years, the Youth Justice Board in England and Wales has published some comprehensive findings, though there are still many unanswered questions.²²²

There are no separate facilities for children with mental health problems in Ireland and they continue to be treated in adult psychiatric hospitals. The lack of integrated mental health services for all children in Ireland has been the subject of much criticism, including from the UN

Committee on the Rights of the Child,²²³ the Council of Europe Commissioner for Human Rights,²²⁴ and domestically from the Ombudsman for Children.²²⁵

For children in detention who are suffering from mental health difficulties, there are virtually no facilities available. This is totally inappropriate; Ireland needs to take giant steps in terms of securing permanent treatment for children with psychiatric problems both in the community and in custody.

Children in custody are “invariably those who have been scarred by multiple and inter-locking forms of disadvantage and misery”²²⁶ and as a direct result often suffer from psychiatric problems. Self-harm is a well known phenomenon in all prison systems including children detention facilities. Without adequate health care and mental health care, and with a lack of recreational facilities and poor physical conditions within many of the institutions, mental health issues for children are exacerbated. A survey conducted in Australia in 2003 suggested that as many as 60% of incarcerated children are at risk of significant mental health problems.²²⁷ Evidence from the joint inspectors’ report on safeguarding children in England and Wales in 2002 showed that 45% of 10-17 year olds on Youth Offending Team caseloads had been recognised as having emotional or mental health problems.²²⁸ The Office of National Statistics in London found, in their sample of children and young people in prison, that 96% had experienced at least one stressful life event and two-fifths had experienced five or more such stressful events.²²⁹

²²⁰ Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

²²¹ Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003), Council of Europe Document CPT/Inf (2005) 1, pp.50-55 (available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>).

²²² Harrington, R. and Bailey, S. (2005) *Mental Health needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board (available at: <http://www.yjb.gov.uk>).

²²³ Committee on the Rights of the Child, Forty-third session (2006) *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention on the Rights of the Child*. Concluding Observations: Ireland, Unedited version, CRC/C/IRL/CO/2 (available at: <http://www.childrensrights.ie/files/IRLCONCOBS.pdf>).

²²⁴ The Commissioner on Human Rights (2008) *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ireland 26-30 November 2007*, Strasbourg: Council of Europe (Strasbourg, 30 April 2008 CommDH(2008)9).

²²⁵ Ombudsman for Children (2008) *Oireachtas Joint Committee on Health and Children Consultation on Primary Medical Care in the Community: Submission of the Ombudsman for Children, November 2008* (available at: <http://www.oco.ie/whatsNew/submissions.aspx>).

²²⁶ Goldson, B. (2002) *Vulnerable Inside: Children in Secure and Penal Settings*, London: The Children’s Society, p.127.

²²⁷ Lennings, C. (2003) *Assessment of Mental Health Issues with Young Offenders. A paper presented at the Juvenile Justice: From Lessons of the Past to a Road for the Future Conference convened by the Australian Institute of Criminology in conjunction with the NSW Department of Juvenile Justice* (available at: <http://www.aic.gov.au>).

²²⁸ *Safeguarding Children: A Joint Chief Inspectors’ Report on Arrangements to Safeguard Children (2002)*, London: The Department of Health (available at: http://www.justice.gov.uk/inspectorates/hmi-probation/docs/safeguard_rep-rps.pdf).

²²⁹ The Howard League for Penal Reform (2006) *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes*, London: The Howard League of Penal Reform, p.46.

In Ireland, a study by Hayes and O'Reilly found in 2007 that many children in Children Detention Schools experience very high levels of substance dependence and psychiatric disorders.²³⁰ The report authors found that in the sample of children in Detention Schools, 82.7% met diagnostic criteria for at least one psychological disorder.

To reiterate, Article 27 of the UN Convention on the Rights of the Child demands that every child has the right to a standard of living adequate for the child's physical, *mental*, spiritual, moral and social development. Therefore, any medical officer who has reason to believe that the physical or mental health of a child has been or will be injuriously affected by continued detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the child.²³¹

Where a child is suffering from mental health difficulties, they should be treated in a specialised institution under independent medical management and steps should be taken by arrangement with appropriate agencies to ensure the continuation of mental health care after release.²³²

Recommendations: Health

1. Upon admission, every child should receive a full medical examination for the purpose of recording any evidence of prior ill-treatment and identifying any physical and mental condition(s) requiring attention.
2. A comprehensive and computerised system of health records should be put in place in each facility.
3. In terms of basic health care, each children detention facility should ensure that food is suitably prepared and presented at normal meal times and is of a quality and quantity to satisfy the standards of dietetics, hygiene and health. Clean drinking water should be available at all times. The bed linen provided should be clean and sufficient and cleaned regularly as should the entire facility. To ensure the health care and dignity of all residents and staff the facility should be kept clean and in a good state of repair.
4. Where possible, medical health care should be provided through the health services and facilities of the community in which the detention facility is located.
5. Medical facilities and equipment should be appropriate to the number and requirements of its residents, as should the health care staff ratio.
6. Children should receive adequate medical health care, both preventative and remedial, including dental, ophthalmologic and mental health care, as well as pharmaceutical products and special diets as medically indicated. To achieve these standards, provisions should be made to guarantee that trained personnel are working in the facility whether full time or part time or on a call basis.
7. All staff within the facility should be provided with First Aid Training which should be followed up with refresher courses on an annual basis.

²³⁰ Hayes, J.M., O'Reilly, G. (2007) *Emotional intelligence, mental health and juvenile delinquency*, Cork: Juvenile Mental Health Matters.

²³¹ Rule 52, Havana Rules.

²³² Rule 53, Havana Rules.

Treatment for substance abuse

8. A dedicated drugs programme should be put in place. These programmes, carried out by trained personnel, should take a preventative approach, incorporating an awareness raising programme as well as a strong rehabilitative element.
9. Such programmes should develop links within the community so that following release the child will have a support mechanism in the community.
10. Incorporating drug and alcohol abuse, a health education policy should be put in place in all detention facilities. Residential and medical staff, together with outside agencies should be involved in raising awareness among children about the dangers of alcohol and drug addiction, smoking and the importance of maintaining good health and fitness.

Mental health

11. Psychologist(s), and where necessary psychiatrists, must be assigned to each detention facility and be involved in developing the programmes, policies and training within the centre.
12. Provision should be made for out-of-hours services and all staff should be provided with the necessary skills to handle a 'crisis' at early stages.
13. For those at risk of self-harm, an emergency care unit should be incorporated into the medical wing, where they can be monitored in appropriate surroundings.

Chapter 8: Protecting Children from Harm

International standards

Children in custody have the right to protection from harm, whether inflicted by staff and/or other children.²³³ This fundamental right is enshrined in the UN Convention on the Rights of the Child (CRC) whereby children are guaranteed the protection and care that is necessary for his or her well being.²³⁴ Article 19 of the CRC requires that States take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment and, as appropriate, for judicial involvement.

Children in detention have an absolute right to be protected from all forms of ill-treatment guaranteed by Article 3 of the ECHR (the right to be free from torture, inhuman or degrading treatment or punishment), now also incorporated into Irish law under the European Convention on Human Rights Act 2003. As mentioned in Part I of this report, all public bodies are now legally obliged by the 2003 Act to act in compliance with the provisions of the ECHR, therefore all places of detention for children are bound by its requirements, as outlined in the judgment of the European Court of Human Rights in *Z v UK* (2001):

[...] Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on High Contracting Parties under Article 1 of the Convention, taken together with Article 3, requires States to take

*measures designed to ensure that individuals within their jurisdiction are not subjected to torture, inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which authorities had or ought to have had knowledge.*²³⁵

Being subjected to treatment which raises issues of protection (such as bullying and harassment) also impacts on the child's right to private life, as guaranteed by Article 8 of the ECHR, and States are under a positive duty to take reasonable and appropriate measures to secure children's rights under this provision.²³⁶ This includes taking steps to regulate the relationships between the child and staff, as well as between different children in detention. Detention should take place under conditions which ensure protection from harmful influences and risk situations.²³⁷

The current situation in Children Detention Schools in Ireland

The *Standards and Criteria for the Children Detention Schools (the Standards)*,²³⁸ set the minimum requirement in relation to child protection in the following way:

*Young people in the school shall be protected from abuse and there are systems in place to ensure such protection. In particular, staff members are aware of and implement practices, which are designed to safeguard young people in their care.*²³⁹

The *Standards* then enumerate a number of detailed requirements in relation to practice, among those the requirement that a child protection procedure used in the School should be known to all staff, children, their parents and other professionals and that all staff should be subject to supervision and have training in child protection policies, including *Child Protection Document: Policy, Procedures and Protocol* (a document agreed in

²³³ Rule 87 (a) and (d), Havana Rules.

²³⁴ Article 3 of the CRC.

²³⁵ *Z v UK* (2001), 34 EHRR 97 at para. 73. See also: Kilkelly, U. (2008) *Children's Rights in Ireland: Law, Policy and Practice*, London: Tottel Publishing, pp. 243-320.

²³⁶ See for example: *Lopes-Ostra v Spain* (1994) 20 EHRR 277 at para. 51.

²³⁷ Rule 28, Havana Rules.

²³⁸ *Standards and Criteria for the Children Detention Schools* Department of Education and Science, 2002 and 2004 (available at: <https://www.education.ie>).

²³⁹ *Ibid*, p. 7.

2002 for all Children Detention Schools) and *Children First: National Guidelines for the Protection and Welfare of Children* (published in 1999 by the Department of Health and Children).

The *Standards* also require that Schools have safeguarding practices for keeping children safe and to protect them from self-harm and abuse from staff, family, visitors and other residents. Every School should have a designated Child Protection Officer whose role should be clearly stated in children's information packs in an age-appropriate way.

It is of concern that all of the most recent inspection reports on the conditions in Children Detention Schools in Ireland noted that the standard on child protection has only been partly met.²⁴⁰ The difficulties identified during the inspections include:

- a) delays in response to child protection concerns;
- b) the fact that some procedures were not in line with *Children First: National Guidelines for the Protection and Welfare of Children*;
- c) the fact that protocols for notification of child protection concerns between some of the Schools and the Irish Youth Justice Service and the Health Services Executive (HSE) are underdeveloped;
- d) that there was confusion in some of the Schools (among both children and staff) as to what procedures are to be used for notification of child protection concerns and which for notification of grievances of another nature.

In addition to those concerns, the inspection reports also noted serious inadequacies of vetting procedures in all Children Detention Schools, with a considerable

number of staff working without checks and references or having those instituted after they took up employment.²⁴¹ This is a serious omission, and should be rectified immediately, with all new staff vetted prior to the offer of employment.

A common recommendation coming from the inspections related to the need for protocols to be developed between the Schools, the Irish Youth Justice Service and the HSE for the notification of child protection concerns. The Health Information and Quality Authority inspectors also stated that such protocols should ensure that the "primary role of the HSE in child protection is embedded in the school's procedures".²⁴² IPRT strongly supports this recommendation but recommends in addition that the application of the Child Care Act 1991, and its specific statutory duty to identify children at risk, is formally extended to children in detention.

Examples of Good Practice

Child protection policies

The 2007 inspection of Woodlands JJC in Northern Ireland found that child protection issues were taken very seriously by the Centre staff, not only in relation to any harm suffered while in the Centre, but also in relation to any abuse or allegations of abuse prior to being admitted to custody.²⁴³ The Centre refers allegations of abuse prior to admission to appropriate external agencies (such as Social Services, or the Office of the Police Ombudsman in relation to allegations of assault by the police) and follows up on any referrals, although to a varied degree of success.²⁴⁴

²⁴⁰ Health Information and Quality Authority (2009) *Finglas Child and Adolescent Centre: Children Detention School. Inspection Report ID Number: 281*, Dublin: Health Information and Quality Authority (pp. 12-13); Health Information and Quality Authority (2009) *Trinity House Children Detention School. Inspection Report ID Number: 270*, Dublin: Health Information and Quality Authority (p. 14); Health Information and Quality Authority (2009) *Oberstown Boys' Detention School. Inspection Report ID Number: 269*, Dublin: Health Information and Quality Authority (pp. 12-13); Health Information and Quality Authority (2009) *Oberstown Girls' Detention School. Inspection Report ID Number: 282*, Dublin: Health Information and Quality Authority (pp. 12).

²⁴¹ The inadequacy of vetting procedures in general has been raised with the UN Committee on the Rights of the Child in 2006 by the Children's Rights Alliance in their submission to the Committee prior to the examination of Ireland's Second Periodic Report under the UN Convention on the Rights of the Child. See: Children's Rights Alliance (2006) *From Rhetoric to Rights: Second Shadow Report to the United Nations Committee on the Rights of the Child*, Dublin: Children's Rights Alliance, p. 35.

²⁴² See for example: Health Information and Quality Authority (2009) *Finglas Child and Adolescent Centre: Children Detention School. Inspection Report ID Number: 281*, Dublin: Health Information and Quality Authority, p. 13.

²⁴³ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 18.

²⁴⁴ *Ibid.*

Recommendations:**Protecting children from harm**

1. Children in custody have a right to protection from harm. Children in custody should enjoy the same rights as other children in the area of child protection. The Child Care Act 1991 and the Children First guidelines should therefore apply without exceptions to children in detention, and necessary changes to legislation should be introduced to recognise the application of the Child Care Act 1991 to children in detention.
2. All staff working with children in custody should undergo Garda clearance prior to an offer of employment to ensure their suitability to work with children. Staff recruitment procedures should also include a requirement to provide professional references prior to a conditional offer of employment.
3. All detention facilities should have up-to-date child protection policies and procedures in place, made available to staff, children and their parents or guardians. There must be a child friendly version made available to all children on admission. Children with limited literacy, or other difficulties limiting their understanding of written material, should be offered alternative formats of all necessary information suitable to their specific needs.
4. Proper records of all incidents, including any records of medical assessment, should be kept securely in the School.
5. Training in the area of child protection should be provided for all staff on a continuous basis. All staff should also be provided with regular supervision to ensure that they are able to express their concerns, as well as notify their training needs, to the management of the School.

Chapter 9: Disciplinary Measures

International standards

The European Convention on Human Rights (ECHR) provides that no one shall be subjected to inhuman or degrading treatment or punishment²⁴⁵ and the CRC specifically states in Article 37 that every child deprived of their liberty shall be treated with respect for their humanity and respect for their dignity.

International standards stress that the need for a disciplinary regime must strike the appropriate balance between respecting the rights of children and securing the safety of others, including staff.²⁴⁶ In particular, disciplinary measures should be “consistent with the upholding of the inherent dignity of the child and the fundamental objective of institutional care, namely the instilling of a sense of justice, self-respect and respect for the basic rights of every person”.²⁴⁷

Standards further stipulate that no child should be sanctioned for disciplinary reasons except in strict accordance with the terms of law and regulations in force, and without being informed of the alleged infraction in a manner appropriate to his/her full understanding, having a proper opportunity to present his/her defence, including the right to appeal to a competent authority.²⁴⁸ The European Rules state in this respect that disciplinary measures should be a mechanism of last resort, and restorative conflict resolution and educational interaction should be given priority over formal disciplinary proceedings and punishments.²⁴⁹ Additionally, the European Rules require that disciplinary offences are specified and defined in national law which should also provide for procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment, and the appeals process.

The UN Rules for the Protection of Juveniles deprived

of their Liberty (Havana Rules) prohibit the use of measures that constitute cruel, inhuman and degrading treatment, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child.²⁵⁰ Similarly, the European Rules state that solitary confinement is not to be used to discipline children in detention. The Rules also include the prohibition of collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment.²⁵¹ In its 9th General Report, the CPT highlighted its concern about the placement of children in conditions “resembling solitary confinement, a measure that can compromise their physical and/or mental integrity”.²⁵² The Committee went on to state that such measures must be regarded as highly exceptional, and where children must be kept separate from others, such separation should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material, and offered at least one hour of outdoor exercise every day.²⁵³ The CPT also stresses that:

*All disciplinary procedures applied to juveniles should be accompanied by formal safeguards and be properly recorded. In particular, juveniles should have the right to be heard on the subject of the offence which they are alleged to have committed, and to appeal before a higher authority against any sanctions imposed; full details of all such sanctions should be recorded in a register kept in each establishment where juveniles are deprived of their liberty.*²⁵⁴

Instruments of force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation.²⁵⁵ The European Rules provide a more detailed set of principles and require that:

²⁴⁵ Article 3 of the European Convention on Human Rights (ECHR): “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

²⁴⁶ Kilkelly, U. et.al. (2002) *In Our Care: Promoting the Rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p. 96.

²⁴⁷ Rule 66, Havana Rules.

²⁴⁸ Rule 70, Havana Rules.

²⁴⁹ Rule 94.1, European Rules.

²⁵⁰ Rule 67, Havana Rules.

²⁵¹ Rule 95.2, European Rules.

²⁵² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1999) 9th General Report on the CPT’s activities, covering the period 1 January to 31 December 1998. Strasbourg: Council of Europe.

²⁵³ *Ibid.*, p. 15; see also Rule 95.4, European Rules.

²⁵⁴ *Ibid.*, p. 15.

²⁵⁵ Rule 64, Havana Rules.

- a) no force should be used against a child in detention except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property;
- b) the amount of force used should be the minimum necessary and applied for the shortest necessary time;
- c) staff who deal directly with children should be trained in techniques that enable the minimal use of force in the restraint of aggressive behaviour;
- d) detailed procedures should be in place in any place of detention and should include rules on:
 - i. the various types of force that may be used;
 - ii. the circumstances in which each type of force may be used;
 - iii. the members of staff who are entitled to use different types of force;
 - iv. the level of authority required before the force is used;
 - v. the reports that must be completed following any use of force; and
 - vi. the process of reviewing such reports.²⁵⁶

Laying out the principles governing the use of separation for security and safety reasons, the European Rules state that if in very exceptional circumstances a particular child needs to be separated on those grounds, the decision to separate him or her should be taken by a competent authority on the basis of procedure laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed.²⁵⁷ Any separation for security or safety reasons has to be subject to regular review, and may be subject to challenge by the child who is

entitled to complain about an aspect of such separation in accordance with complaints procedures.²⁵⁸

Despite such definitive international guidelines and standards, physical restraint and solitary confinement is a reality in most children detention facilities, as is violence and bullying. In an independent inquiry by Lord Carlile of Berriew QC into the use of physical restraint, solitary confinement and forcible strip searching in British prisons, many establishments were seen to be antipathetic to normal teenage development in using physical restraint to secure conformity.²⁵⁹ The inquiry was launched in the wake of the death of Gareth Myatt – a 15-year-old boy who weighed just seven stone – while being restrained by officers in Rainsbrook Secure Training Centre. Indeed, it is well recognised that children held in custody exhibit very challenging behaviour and have complex health and social needs; the level of forcible strip searching, isolation and physical restraint is a cause of great concern.²⁶⁰ The inquiry held that overly punitive and constricting policies, a spartan and impoverished regime, and poor behaviour by staff can give rise to much of the conflict and violence within children detention centres.²⁶¹

Examples of Good Practice

Examples of good practice in the area of discipline are not easily found. The methods of discipline are predominantly similar in all children detention centres, and include deprivation of outdoor activity, deprivation of reading material, TV, radio etc., out of group placement, temporary separation and physical restraint. Some such methods – such as single separation – were found to have been overused in Ireland for the purpose of behaviour management, as evidenced by the HIQA inspection reports referred to earlier in this report.

Such measures need to be stringently monitored and greater efforts made to resolve conflict and reduce violence through restorative principles and practices. The issue of discipline in a children detention centre

²⁵⁶ Rules 90.1, 90.2, 90.3 and 90.4, European Rules.

²⁵⁷ Rule 93.1, European Rules.

²⁵⁸ Rule 93.2, European Rules.

²⁵⁹ The Howard League for Penal Reform (2006) *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, London: The Howard League for Penal Reform, p.29.

²⁶⁰ *Ibid*, p.9.

²⁶¹ *Ibid*, p.30.

is dependent on many factors and not only on the incident that requires disciplinary action. If institutions are smaller, there are less people to manage; if staff are given more training in child welfare, they will find it easier to resolve incidents without having to resort to force; and if children are given more opportunities in the line of education, training and recreation, for example, they might not resort to violence out of sheer frustration. For Lord Carlile of Berriew QC, it is the culture of the institution that sets the parameters for policies and practice, and the responsibility for engendering and maintaining a culture of respect lies with the managers and staff.²⁶²

In the report of the inspection of Woodlands JJC, the inspectors noted that all staff in the Centre received initial training in Therapeutic Crisis Intervention (TCI) and Physical Control in Care (PCC)²⁶³ and that such training, combined with individual planning for each child, represented a major shift in the philosophy and approach to managing the children in detention.²⁶⁴ Having such training was assessed by staff as contributing to their confidence in understanding and addressing challenging behaviour. Staff also stated that they preferred to use relationships with children to manage their behaviour rather than resort to physical restraint.²⁶⁵ Regular refresher training in this area was prioritised by the Centre.

Recommendations: Discipline

1. The disciplinary regime must strike an appropriate balance between respecting the rights of children and securing the safety of others. On admission, children should be made aware of policies and procedures in the area of discipline and control. This material should be presented in an accessible form.
2. A code of conduct for staff should be developed and established in each centre. Consideration should be given to consultation with staff and children to develop a suitable code of conduct. Again, this material should be made available to all children in a format that they can understand.
3. Physical restraint and separation should be used as a measure of last resort.
4. Management of all detention facilities should ensure that staff receive regular training on the latest ways of preventing the escalation of disputes to the point where restraint is necessary.
5. One certified physical intervention technique that is safe for all children should be developed and introduced.
6. After each incident involving physical restraint there should be a dispute resolution conference where all participants, including the child accompanied by an appropriate advocate, can discuss the incident.
7. Where separation is used, it should be governed by clear guidance. In particular, there should be a strict time limit on separation.
8. During separation, the child should be monitored at all times.
9. In all forms of disciplinary procedures it is crucial that a comprehensive record keeping and monitoring system is in place.
10. Management of all detention facilities should ensure that the imposition of punishment should not infringe the child's right to contact with his/her family; right to education; outdoor exercise; and the child's entitlement to personalise his/her bedroom.

²⁶² The Howard League for Penal Reform (2006) *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, London: The Howard League for Penal Reform.

²⁶³ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

²⁶⁴ *Ibid.*, p. 19.

²⁶⁵ *Ibid.*

Chapter 10: Inspection and Complaints Systems

International standards

To ensure international standards and rules are being met in children detention facilities, the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) stipulate that qualified independent inspectors should be empowered to conduct unannounced inspections on a regular basis on their own initiative, and should enjoy full guarantee of independence in the exercise of this function.²⁶⁶ The European Rules further state that conditions in children detention facilities and the treatment of children should be monitored by independent bodies to which detainees should have confidential access and whose findings should be made public.²⁶⁷

The Havana Rules also require that, during an inspection, inspectors should have unrestricted access to all persons employed by or working in any facility where children are or may be deprived of their liberty, to all children, and to all records of such facilities.²⁶⁸ Independent inspectors should pay particular attention to the use of force and restraint in the institution, disciplinary punishments and other particularly restrictive forms of treatment.²⁶⁹ International standards also require that all instances of death or serious injury to a child in detention should be investigated promptly, vigorously and independently.²⁷⁰

Qualified medical officers attached to the inspecting authority or the public health service should participate fully in the inspections of children detention facilities to evaluate compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of children in the facility.²⁷¹

Following completion of the inspection, the inspector should submit a report on the findings to the relevant

authorities, including an evaluation of the compliance of the detention facility with the UN Rules for the Protection of Juveniles deprived of their Liberty, relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them.²⁷² In addition to independent inspection mechanisms, children detention facilities should also be regularly inspected by a governmental agency in order to assess whether they are operating in accordance with the requirements of national and international law.²⁷³

Furthermore, international standards stipulate that while a child is being held in detention they should have the opportunity to make requests or complaints, without censorship, to the director of the detention facility, his or her authorised representative, to the central authority, the judicial authority or other appropriate authorities through approved channels, and to be informed of the response without delay.²⁷⁴ The European Rules require that any child, as well as their parents or legal guardians, should have ample opportunity to make requests or complaints to the authority responsible for the particular institution.²⁷⁵ The Rules also state that procedures for making such requests or complaints should be simple and effective, and decisions should be made promptly.²⁷⁶ In cases where a request is denied or a complaint rejected, the child concerned, as well as his or her parents or legal guardians should be informed of the reasons for the particular decision, and also provided with an opportunity to lodge an appeal to an independent and impartial authority.²⁷⁷

To make a complaint, every child has the right to seek assistance from family members, legal counsellors and support groups. Children who have difficulties reading or writing should be provided with assistance to make a complaint should they require it.²⁷⁸

The Committee for the Prevention of Torture (CPT) considers that effective complaints procedures are basic

²⁶⁶ Rule 72, Havana Rules.

²⁶⁷ Rule 126.1, European Rules.

²⁶⁸ Rule 72, Havana Rules.

²⁶⁹ Rule 126.2, European Rules.

²⁷⁰ Rule 126.3, European Rules.

²⁷¹ Rule 73, Havana Rules.

²⁷² Rule 74, Havana Rules.

²⁷³ Rule 125, European Rules.

²⁷⁴ Rule 75 and 76, Havana Rules.

²⁷⁵ Rule 121, European Rules.

²⁷⁶ Rule 122.1, European Rules.

²⁷⁷ Rule 122.3, European Rules.

²⁷⁸ Rule 78, Havana Rules.

safeguards against ill-treatment in institutions where children are deprived of their liberty. Residents in such institutions should have avenues of complaint open to them, both within the establishment's system and to outside bodies, and should be able to have confidential access to an appropriate authority. Such avenues should be clear and simple, and suitable for use by children.²⁷⁹

Finally, children detention facilities should provide an appropriate means for children to exercise their right to express their views freely in all matters affecting them.²⁸⁰ While the majority of children detention centres in Ireland have complaints systems in place, children often find this is a difficult exercise, and the mechanism inaccessible and often fruitless. The forms and mechanisms of complaint are often 'text heavy' and for children with poor educational backgrounds this makes the structure obsolete. As is true with adult detention, children may also be afraid to make a complaint internally out of fear of negative consequences of complaining against staff with whom they are in contact daily.

This aspect of the organisation of the youth justice system in Ireland is of particular importance, as while the Ombudsman for Children has the right to receive complaints from children in Children Detention Schools, there are no independent complaints mechanisms available to those detained in St. Patrick's Institution.²⁸¹ This situation goes against the established international standards and best practice in this area, and should be remedied urgently.

Examples of Good Practice

Local inspections and complaints structure

a) In Northern Ireland, the Woodlands JJC is inspected by the Criminal Justice Inspection Northern Ireland (CJINI) which can conduct both announced and

unannounced inspections to places of detention in the jurisdiction. While not formally an inspection body, access to children detention facilities was also granted to the Northern Ireland Human Rights Commission, who produced two independent reports about the conditions in detention centres and their compliance with international human rights standards.²⁸² Children in detention can also lodge a complaint with the Northern Ireland Commissioner for Children and Young People (NICCY).

The 2007 inspection of the Woodlands JJC also noted that in relation to complaints raised by children while in detention:

*Good practice included monthly analysis of complaints by the senior management team. In addition to the formal complaints process a variety of other events – such as residents meetings – were used to distinguish between 'complaints' and 'matters for clarification'. These were minuted, showing which staff and children attended, issues raised and outcomes achieved. This was an effective method to enable children to raise issues when it was not necessary to resort to a formal complaint.*²⁸³

The inspectors also noted that children were aware of complaints procedures and felt comfortable raising issues of concern with staff in the Centre. Complaint forms "were always signed off by the child to confirm the issue had been addressed, and [...] in appropriate instances staff had apologised or acknowledged if an error had been made".²⁸⁴

b) In Norway, the control and inspection of establishments where children are held is carried out by a Supervisory Committee from the relevant County Governor's Office. During a visit to the Øvsttun Centre by the Committee for the Prevention of Torture (CPT),²⁸⁵ the delegation was informed that

²⁷⁹ Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, Council of Europe Document CPT/Inf (2004) 32, [available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>].

²⁸⁰ Article 12 of the CRC.

²⁸¹ While the Inspector of Prisons' remit includes announced and unannounced inspections of St. Patrick's Institution, he is specifically precluded by the provisions of *Prisons Act 2007* from receiving individual complaints from children (as well as adults) held there.

²⁸² Kilkelly, U. et.al. (2002) *In Our Care: Promoting the Rights of children in custody*, Belfast: Northern Ireland Human Rights Commission; Convery, U. and Moore, L. (2006) *Still in Our Care: Protecting Children's Rights in Custody in Northern Ireland*, Belfast: Northern Ireland Human Rights Commission (both available at: <http://www.nihrc.org>).

²⁸³ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 21.

²⁸⁴ *Ibid.*

such inspections take place on a regular basis.

- c) In the Barby Home, residents can lodge complaints with the National Board for Institutional Care as well as with the police and the Ombudsman.²⁸⁶

Recommendations: Inspection and Complaints

1. Every child in detention should have the opportunity to make requests or complaints, without censorship, to the director of the facility, his or her authorised representative, the Ombudsman for Children, the Youth Justice Service and other appropriate channels, and be informed of the response without delay. Children should be given accessible information on how to make complaints on admission.
2. The remit of the Office of the Ombudsman for Children should be extended to allow for consideration of individual complaints from children held in St. Patrick's Institution.
3. To make complaints, children have the right to seek assistance from family members, legal counsellors and other groups.
4. Children with low literacy levels or linguistic difficulties should be provided with assistance to make a complaint should they wish to do so.
5. Children should be included in the process of developing policies and procedures for inspection and complaints.

285 *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

286 *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).



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Chapter 11: Suitable and Qualified Personnel

International standards

The staff caring and looking after children in detention should be carefully selected in accordance with their professional qualifications and skills. In particular, according to the CPT, staff should be committed to working with children, and be capable of guiding and motivating the children in their charge.²⁸⁷ Furthermore, all staff should receive professional training, both during induction and on an ongoing basis, in particular training in child psychology, child welfare and the international standards and norms of human rights and the rights of the child.²⁸⁸

The recommendations of the CPT are reflective of international standards which stipulate that administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with children, as well as personal suitability for the work.²⁸⁹ According to Barry, “one of the key components of effective practice in the vast majority of professions, not just in criminal justice, is the relationship between worker and client, because only through that relationship can meaningful dialogue and action be sustained”.²⁹⁰ Children in particular need the ‘sounding board’ element that a good relationship can enable, so as to encourage appropriate development, positive learning experiences and meaningful interaction with others.²⁹¹

Accordingly, the European Rules require that a comprehensive policy concerning the staff responsible for the care of children in detention should be laid down in a formal document covering recruitment, selection, training, status, management responsibilities and conditions of work.²⁹² Such policy should also specify ethical standards to be adopted by the staff, and provide

for an effective mechanism to deal with violations of ethical and professional standards.²⁹³

To meet international standards, personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other staff should normally be employed on a permanent basis but this does not preclude part-time or volunteer workers when the level of training they can provide is appropriate and beneficial.²⁹⁴

Personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men.²⁹⁵ Staff recruitment policies should also take into account the need to employ men and women with the skills necessary to deal with the language and cultural diversities of the children they are responsible for.²⁹⁶

It is imperative that the personnel of children detention facilities fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner and conduct themselves at all times in such a way as to deserve and gain the respect of children and to provide them with a positive role model and perspective.²⁹⁷ All staff should be given adequate initial training, dealing with theoretical and practical aspects of their work, and be given guidance that enables them to have a realistic understanding of their particular field of activity, their duties and the ethical requirements of their work.²⁹⁸

The European Rules also stress the importance of continuing professional development of staff through in-service training, supervision and performance reviews and appraisals. In accordance with the European Rules, such training should focus on:

- a) ethics and basic values of the profession concerned;

²⁸⁷ Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

²⁸⁸ Rule 85, Havana Rules.

²⁸⁹ Rule 82, Havana Rules.

²⁹⁰ Barry, M. (2006) “Dispensing [with?] Justice: Young People’s Views of the Criminal Justice System”, p.179 in Gorman, K. et. Al. (2006), *Constructive Work with Offenders*, London: Jessica Kingsley Publishers.

²⁹¹ *Ibid.*

²⁹² Rule 127.1, European Rules.

²⁹³ Rule 127.2, European Rules.

²⁹⁴ Rule 81, Havana Rules. See also Rule 130, European Rules.

²⁹⁵ Rule 83, Havana Rules.

²⁹⁶ Rule 128.3, European Rules.

²⁹⁷ Rule 83, Havana Rules.

²⁹⁸ Rule 129.1, European Rules.

- b) national safeguards and international instruments on children's rights and protection of children in detention against unacceptable treatment;
- c) children and family law, psychology of development, social and educational work with children;
- d) instruction of staff on how to guide and motivate children, to gain their respect, and to provide them with positive role models and perspectives;
- e) the establishment and maintenance of professional relationships with children and their families;
- f) proven methods of intervention and good practices;
- g) methods of dealing with the diversity among the children concerned; and
- h) ways of co-operating in multi-disciplinary teams as well as with other institutions involved in the treatment of the individual child.²⁹⁹

Finally, all personnel should seek to minimise any differences between life inside and outside the detention facility; these differences tend to lessen through respect for the dignity of children as human beings.³⁰⁰

Examples of Good Practice

Special training

- a) In Bus Acute, Fossum Collective and Øvstun in Norway, the CPT found that there was no separate group of 'custodial' staff; instead any security issues were addressed by the 'child welfare educators' who were responsible for the guidance, treatment and care of children. The educators received specialised training in a three year higher education programme (including 5 months' mandatory practice/internship) as well as ongoing training during their tenure. At the Fossum Collective, most staff members also

had special training in dealing with persons with substance abuse problems. In each establishment, management stressed that, apart from appropriate training, a stable personality, an ability to communicate and a high degree of personal motivation for working with children were the most important selection criteria in recruitment of staff.³⁰¹

During their visit to the Norwegian establishments, the CPT found that the staffing situation in all three was very positive, both in terms of the ratio of staff to children accommodated and in the staff's dedication to their task. Having an adequate number of staff allows for individual attention to each child. Another factor in the positive atmosphere of the Norwegian establishments was that the majority of staff are relatively young. This contributes greatly to relaxed relations with children to such an extent that the children themselves expressed a uniformly high opinion of the staff and asserted that their relationship was marked by mutual respect.

Staff ratio

- a) Similar to the situation in Norway, staff in the Barby Home for Young Persons in Sweden are sufficient in number (including some 80 supervision staff/care workers, 7 social workers and 8 teachers) and motivated. Each resident is appointed two to three key workers who are responsible for a treatment plan for each resident. The plan is reviewed on a regular basis. Some of the support provided to children includes individual and group psychotherapy, counselling, drug therapy and aggression replacement training.³⁰²
- b) In the JOC in the Netherlands, there is a total of 120 staff (105 on a full time basis) for a maximum of 79 children. The majority of staff have vocational training for social work, and they do not consider themselves as guards but as social workers with a pedagogical task.³⁰³

²⁹⁹ Rules 129.2 and 129.3, European Rules.

³⁰⁰ Rule 87, Havana Rules.

³⁰¹ *Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999*, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

³⁰² *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

³⁰³ Defence for Children International (2003) *Kids Behind Bars: A Study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam: Defence for Children International, p.80.

**Recommendations:
Qualified and Suitable Personnel**

1. Working with children in custody is a particularly challenging and difficult task. All staff caring and looking after children in custody should be carefully selected. Personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all children, whereby:
 - a) no member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstances whatsoever;
 - b) all personnel should rigorously oppose corruption, reporting it without delay;
 - c) all personnel should ensure the full protection of the physical and mental health of children, including protection from physical, sexual and emotional abuse and exploitation;
 - d) all personnel should respect the right of the child to privacy, and, in particular, should safeguard all confidential matters concerning children or their families learned as a result of their professional capacity.
2. For those without child welfare backgrounds, training in child welfare should be provided and continued on an ongoing basis.
3. The staff ratio should be sufficient and consistent in all facilities.
4. Staff should not wear a uniform.

Chapter 12: Contact with the Outside World

International standards

All children in detention have the right to family life, as guaranteed by Article 8 of the ECHR. Ensuring that children remain in contact with their families and friends during the period of detention is of immense importance to their well-being, and to the development and improvement of their social skills. Contact with the outside world should not, however, be limited to those relationships only – children in detention should, for instance, be able to access information about the outside world through a variety of media to keep up-to-date with current events. Such information is important to prevent the feeling of isolation during the time in custody, and for their reintegration upon release.

For anyone deprived of their liberty contact with the outside world is important. For children, however, it is crucial. Article 37 of the UN Convention on the Rights of the Child demands that every child deprived of their liberty has the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

According to international standards, communication with the outside world is an integral part of the right to fair and humane treatment and is essential to the preparation of children for their return to society.³⁰⁴

Every child should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the child for privacy, contact and unrestricted communication with family and his or her defence counsel.³⁰⁵

The right to communicate in writing or by telephone at least twice a week should also be guaranteed and every child should have the right to receive correspondence.³⁰⁶

In addition, children should be allowed to leave the facility for educational, vocational or other important reasons when necessary.³⁰⁷

The Havana Rules also specify that children in detention should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes, cinema, and through visits from representatives of lawful clubs and organisations.³⁰⁸

The CPT attaches particular importance to the maintenance of good contact with the outside world, and also stresses that children's outside contacts should never be restricted or denied as a disciplinary measure.³⁰⁹

Examples of Good Practice

Structures to encourage visiting

- a) The inspection report on Woodlands JJC in Northern Ireland found that the Centre's policies and procedures emphasised the important role of families, carers and significant others in providing support for children in custody, and children themselves confirmed to the inspectors that they were encouraged by staff to keep in contact with family and friends on a regular basis.³¹⁰
- a) In the Barby Home in Sweden, visitors are also offered practical assistance such as accommodation and local transport where necessary.³¹¹

³⁰⁴ Rule 59, Havana Rules.

³⁰⁵ Rule 60, Havana Rules.

³⁰⁶ Rule 61, Havana Rules.

³⁰⁷ Rule 59, Havana Rules.

³⁰⁸ Rule 62, Havana Rules.

³⁰⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (1999) *9th General Report on the CPT's activities covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

³¹⁰ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p. 20.

³¹¹ *Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003*, Council of Europe Document CPT/Inf (2004) 32, (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

Recommendations:

Contact with the outside world

1. Communication with the outside world is an integral part of the right to fair and humane treatment and is an essential part of preparing children for their return to society. All efforts should be made to ensure that children can keep in contact with their family and friends.
2. Provision should be made to assist parents and relatives to visit the detention centre. Ways of assisting contact should include provision of accommodation and transport to the detention facility. Other ways of supporting contact with families and friends should be developed according to the needs identified in a particular facility.



No
smoking

Chapter 13: Rehabilitation and Reintegration into the Community

International standards

The importance of educational, vocational and recreational activities cannot be underestimated but along with such activities, programmes in children detention facilities should be developed to address offending behaviour, drug abuse, anger behaviour and prepare them for release into the community. Such programmes should operate simultaneously with education, vocational training, recreation and health care and be an integral part of the children detention facility.

International standards require that the entire youth justice system be based on the principles of re-education, development of a sense of responsibility and respect for others, and reintegration of the child into the community. The standards emphasise the need to prevent offending, divert children from the formal court system and develop rehabilitative work in the community. Detention is seen as a last resort.³¹² For children who are detained it is imperative that they benefit from meaningful activities and programmes which will serve to promote and sustain their health and self-respect, foster the sense of responsibility and encourage those attitudes and skills³¹³ that will assist them to assume socially constructive and productive roles in society.³¹⁴

All children should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release.³¹⁵

Examples of Good Practice

Temporary release and other off-site activities

In Woodlands JJC sentenced children are eligible to be considered for off-site activities, as well as home leave. Inspectors have also observed instances where children are encouraged to keep links with the community they will live in upon release, for instance staff organise a pre-release visit to the children's home that the child will go to from the Centre.³¹⁶

Recommendations:

Rehabilitation and social reintegration

1. While in detention, all children have a right to meaningful activities and programmes which will serve to promote and sustain their health and self respect, foster their sense of responsibility and encourage those attitudes and skills.
2. A particular emphasis should be placed on rehabilitation and reintegration and the objectives of such programmes should be explained to children on admission.
3. Individualised programmes on offending behaviour should be incorporated in all places of detention.

³¹² Article 37 of the CRC.

³¹³ Rule 12, Havana Rules.

³¹⁴ Rule 26.1, UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

³¹⁵ Rule 79, Havana Rules.

³¹⁶ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI, p.20.



Part III

Conclusions and recommendations

Chapter 14: Conclusions and Recommendations

International standards provide the benchmark for developing a common strategy and approach to the treatment of children in all places of detention and best practice here and abroad clearly identifies how this can be achieved in reality.

The system of children detention in Ireland has in the last few years gone through and continues to go through a major change in terms of organisational structure, the legal and policy framework that governs it, and the possibility of being equipped with new, modern facilities. This time of change presents an opportunity to design a practice of the detention of children that will be firmly based on the principle of its use as a last resort and firmly grounded in the international standards in this area. This final Chapter makes a number of recommendations that can assist in the achievement of this goal.

Temporary Measures to Reform St. Patrick's Institution

As of the 4th of August 2009, it is not clear when St. Patrick's Institution will be closed and the new National Children Detention Facility provided to effect the move of 16 – 17 year old boys. Considering Ireland's obligations under the UN Convention on the Rights of the Child, the urgent need for the full implementation of the provisions of Children Act 2001 (as amended) and the nature of criticisms meted out at St. Patrick's Institution by national and international monitoring bodies, it is imperative that the institution be replaced and that the process of removing 16 and 17 year olds from St. Patrick's be expedited. The recommendations below are intended to inform how the new detention centre should be organised and operated so as to guarantee that the rights of children detained there are fully protected. In the interim, however, steps can also be taken to improve the regime in St. Patrick's Institution:

1. Key staff with social work training should be appointed to work with the boys in St. Patrick's on an individual basis. Individualised plans should be drawn up for each child on admission with a view to ensuring that their health and educational needs are met while in detention.
2. In addition to the four new workshops opened in September 2006, resources need to be allocated to further vocational training and education.
3. Every effort should be made to ensure that all children in St. Patrick's enjoy adequate time for leisure and exercise with reduced lock-up time.

4. The new security measures, including the wider use of screened visits, should be reviewed from the perspective of the negative impact they have on contact with families.
5. The Ombudsman for Children Act 2002 should be amended to ensure that the complaints remit of the office extends to children detained in St. Patrick's.

Necessary Elements of a Model Children Detention System

Overarching recommendation

In accordance with the provisions of Article 12 of the Convention on the Rights of the Child, it is recommended that children are involved in the process of designing the new National Children Detention Facility. Children should also be involved in a meaningful way at all stages in the development of policies and practices that will govern the new National Children Detention Facility.

Other recommendations

As regards the new detention estate, the following recommendations summarise the international standards and methods of best practice which should inform the design and operation of the new system within which all children below 18 years of age are to be detained:

Admission

1. On admission, the child should be assessed in terms of their specific health, education and behavioural needs and a medical (including psychological) and social report prepared identifying any factors relevant to the specific type and level of care and programme required by the child while in detention. A trained member of staff should prepare a written, individualised treatment plan, specifying treatment objectives and the timeframe within which this should be achieved.
2. All children should be given a detailed booklet of information outlining the rules, policies and procedures and complaints process of the place of detention. This information should be presented in a manner that is child friendly and easily understood. For those with low levels of literacy, appropriate steps should be taken to insure the information is understood by the child.

3. To secure an effective assessment and monitoring process, a modern, comprehensive system of recording, storing and communicating information is necessary. A report on each individual should include information on identity, the fact and reasons for commitment, details regarding admission, transfer and release, and family contacts. These reports should be kept in a confidential individual file.

Physical Environment

4. Extreme care should be taken in planning the layout and structure of new facilities. The design should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.
5. The building should have a positive and personalised environment. Bedrooms should be of adequate size, well-lit, suitably furnished and decorated.
6. All rooms should have private sanitary facilities.
7. Along with the sleeping areas, an association room, sitting/television room, dining room and quiet room should be included. Efforts should be made to arrange that staff and residents eat together.
8. In relation to the geography of detention facilities, detention facilities should be decentralised and of such a size and location to facilitate access and contact between children and their families.
9. All facilities should provide residents with the opportunity to wear and select their own clothing.

Personal and Social Development

Education

10. All efforts should be made to encourage children to further their education while in custody.
11. To achieve this, it is essential that measures should be put in place to ensure that information regarding the child's educational background is forwarded to the centre from their school and that a representative from the school be present at the assessment.
12. Special educational programmes should be

incorporated.

13. Education should focus on re-connecting the child with mainstream education following release. Education should be provided outside the detention facility wherever possible, and otherwise, education within the facility should be carried out by qualified teachers through programmes integrated with the state education system so that, after release, children may continue their education without difficulty or stigma.
14. While in custody it is vital that children receive accreditation for their educational achievements but such diplomas or educational certificates should not indicate in any way that the child has been held in an institution.
15. Efforts should be made to present these awards at award ceremonies.
16. All measures should be taken to ensure that teaching personnel are suitably qualified. Prior to commencing, teaching staff should complete an induction programme to ensure they are familiar with the rules, policies and ethos of the detention facility. During employment, staff should receive ongoing training on how to handle difficult situations.

Vocational Training

17. The right to vocational training must be recognised. Efforts should be made to provide a choice of vocational training in areas that are likely to interest children and prepare them for future employment.
18. Adequate resources must be made available to ensure that a meaningful educational and vocational service, appropriate to a child's age and ability, is available to all children in detention. Considerable effort must be made in providing library services, choice within subjects, and the development of all teaching methods and facilities. Teaching methods should strive to be innovative and creative. Individuals and groups should be invited to places of detention to talk to children about careers, education and further employment.

Recreation and Leisure

19. Children need and have a right to enjoy leisure and

recreational activities. All detention facilities should develop clear policies with regard to ensuring that physical education, health, fitness and leisure becomes a central feature of daily life within the facility.

20. Children should be offered a choice of activities in suitable sport and leisure facilities and have access to open air on a daily basis.
21. For those not interested in sport, other activities should be provided.

Health

22. Upon admission, every child should receive a full medical examination for the purpose of recording any evidence of prior ill-treatment and identifying any physical and mental condition(s) requiring attention.
23. A comprehensive and computerised system of health records should be put in place in each facility.
24. In terms of basic health care, each children detention facility should ensure that food is suitably prepared and presented at normal meal times and is of a quality and quantity to satisfy the standards of dietetics, hygiene and health. Clean drinking water should be available at all times. The bed linen provided should be clean and sufficient and cleaned regularly as should the entire facility. To ensure the health care and dignity of all residents and staff the facility should be kept clean and in a good state of repair.
25. Where possible, medical health care should be provided through the health services and facilities of the community in which the detention facility is located.
26. Medical facilities and equipment should be appropriate to the number and requirements of its residents, as should the health care staff ratio.
27. Children should receive adequate medical health care, both preventative and remedial, including dental, ophthalmologic and mental health care, as well as pharmaceutical products and special diets as medically indicated. To achieve these standards, provisions should be made to guarantee that trained

personnel are working in the facility whether full time or part time or on a call basis.

28. All staff within the facility should be provided with First Aid Training which should be followed up with refresher courses on an annual basis.

Treatment for Substance Abuse

29. A dedicated drugs programme should be put in place. These programmes, carried out by trained personnel, should take a preventative approach, incorporating an awareness raising programme as well as a strong rehabilitative element.
30. Such programmes should develop links within the community so that following release the child will have a support mechanism in the community.
31. Incorporating drug and alcohol abuse, a health education policy should be put in place in all detention facilities. Residential and medical staff, together with outside agencies should be involved in raising awareness among children about the dangers of alcohol and drug addiction, smoking and the importance of maintaining good health and fitness.

Mental health

32. Psychologist(s), and where necessary psychiatrists, must be assigned to each detention facility and be involved in developing the programmes, policies and training within the centre.
33. Provision should be made for out-of-hours services and all staff should be provided with the necessary skills to handle a 'crisis' at early stages.
34. For those at risk of self-harm, an emergency care unit should be incorporated into the medical wing, where they can be monitored in appropriate surroundings.

Protecting children from harm

35. Children in custody have a right to protection from harm. Children in custody should enjoy the same rights as other children in the area of child protection. The Child Care Act 1991 and the Children First guidelines should therefore apply without

exception to children in detention, and necessary changes to legislation should be introduced to recognise the application of the Child Care Act 1991 to children in detention.

36. All staff working with children in custody should undergo Garda clearance prior to an offer of employment to ensure their suitability to work with children. Staff recruitment procedures should also include a requirement to provide professional references prior to a conditional offer of employment.
37. All detention facilities should have up-to-date child protection policies and procedures in place, made available to staff, children and their parents or guardians. There must be a child friendly version made available to all children on admission. Children with limited literacy, or other difficulties limiting their understanding of written material, should be offered alternative formats of all necessary information suitable to their specific needs.
38. Proper records of all incidents, including any records of medical assessment, should be kept securely in the School.
39. Training in the area of child protection should be provided for all staff on a continuous basis. All staff should also be provided with regular supervision to ensure that they are able to express their concerns, as well as notify their training needs, to the management of the School.

Discipline

40. The disciplinary regime must strike an appropriate balance between respecting the rights of children and securing the safety of others. On admission, children should be made aware of policies and procedures in the area of discipline and control. This material should be presented in an accessible form.
41. A code of conduct for staff should be developed and established in each centre. Consideration should be given to consultation with staff and children to develop a suitable code of conduct. Again, this material should be made available to all children in a format that can be easily understood.

42. Physical restraint and separation should be used as a measure of last resort.

43. Management of all detention facilities should ensure that staff receive regular training on the latest ways of preventing the escalation of disputes to the point where restraint is necessary.

44. One certified physical intervention technique that is safe for all children should be developed and introduced.

45. After each incident involving physical restraint there should be a dispute resolution conference where all participants including the child accompanied by an appropriate advocate can discuss the incident.

46. Where separation is used, it should be governed by clear guidance. In particular, there should be a strict time limit on separation.

47. During separation, the child should be monitored at all times.

48. In all forms of disciplinary procedures it is crucial that a comprehensive record keeping and monitoring system is in place.

49. Management of all detention facilities should ensure that the imposition of punishment should not infringe the child's right to contact with his/her family; right to education; outdoor exercise; and the child's entitlement to personalise his/her bedroom.

Inspection and Complaints Systems

50. Every child in detention should have the opportunity to make requests or complaints, without censorship, to the director of the facility, his or her authorised representative, the Ombudsman for Children, the Youth Justice Service and other appropriate channels, and be informed of the response without delay. Children should be given accessible information on how to make complaints on admission.

51. The remit of the Office of the Ombudsman for Children should be extended to allow for consideration of individual complaints from children held in St. Patrick's Institution.

52. To make complaints, children have the right to seek

assistance from family members, legal counsellors and other groups.

53. Children with low literacy levels or linguistic difficulties should be provided with assistance to make a complaint should they wish to do so.
54. Children should be included in the process of developing policies and procedures for inspection and complaints.

Qualified and Suitable Personnel

55. Working with children in custody is a particularly challenging and difficult task. All staff caring and looking after children in custody should be carefully selected. Personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all children, whereby:
 - a) no member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstances whatsoever;
 - b) all personnel should rigorously oppose corruption, reporting it without delay;
 - c) all personnel should ensure the full protection of the physical and mental health of children, including protection from physical, sexual and emotional abuse and exploitation;
 - d) all personnel should respect the right of the child to privacy, and, in particular, should safeguard all confidential matters concerning children or their families learned as a result of their professional capacity.
56. For those without child welfare backgrounds, training in child welfare should be provided and continued on an ongoing basis.
57. The staff ratio should be sufficient and consistent in all facilities.
58. Staff should not wear a uniform.

Contact with the Outside World

59. Communication with the outside world is an integral part of the right to fair and humane treatment and is an essential part of preparing children for their return to society. All efforts should be made to ensure that children can keep in contact with their family and friends.
60. Provision should be made to assist parents and relatives to visit the detention centre. Ways of assisting contact should include provision of accommodation and transport to the detention facility. Other ways of supporting contact with families and friends should be developed according to the needs identified in a particular facility.

Rehabilitation and Social Reintegration

61. While in detention, all children have a right to meaningful activities and programmes which will serve to promote and sustain their health and self respect, foster their sense of responsibility and encourage those attitudes and skills.
62. A particular emphasis should be placed on rehabilitation and reintegration and the objectives of such programmes should be explained to children on admission.
63. Individualised programmes on offending behaviour should be incorporated in all places of detention.

Bibliography

Bala, N. et. al. (2002) *Juvenile Justice Systems: An international comparison of problems and solutions*, Toronto: Thompson Educational Publishing.

Barry, M. (2006) “Dispensing [with?] Justice: Young People’s Views of the Criminal Justice System”, p.179 in Gorman, K. et. Al. (2006), *Constructive Work with Offenders*, London: Jessica Kingsley Publishers.

Buist, M. and Asquith, S. “Juvenile Crime and Justice in Scotland” in Bala, N. et. al. (Eds) (2002) *Juvenile Justice Systems: An International Comparison of problems and solutions*, Toronto: Thompson Educational Publishing.

Carroll, J., Meehan, E. (2007) *The Children Court: A National Study*, Dublin: Association for Criminal Justice Research and Development.

Child Care Act 1991

Children Act 2001 (Commencement) Order 2007, S.I. No 064 of 2007.

Department of Health and Children (2006) *Children First: National Guidelines for the Protection and Welfare of Children*

Children’s Rights Alliance (2006) *From Rhetoric to Rights: Second Shadow Report to the United Nations Committee on the Rights of the Child*, Dublin: Children’s Rights Alliance.

Commissioner for Human Rights (2009) *Children and Juvenile Justice: Proposals for Improvements*, Strasbourg: Council of Europe.

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

Committee on the Rights of the Child, Forty-third session (2006) *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention on the Rights of the Child. Concluding Observations: Ireland*, Unedited version, CRC/C/IRL/CO/2 (available at: <http://www.childrensrights.ie/files/IRLCONCOBS.pdf>).

Criminal Justice Act 2006.

Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, Belfast: CJINI.

Defence for Children International (2003) *Kids Behind Bars: A Study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam: Defence for Children International.

Department of Justice, Equality and Law Reform (2006) *Report on the Youth Justice Review* (available at: <http://www.justice.ie/en/JELR/YouthJustice%20Review.pdf/Files/YouthJustice%20Review.pdf>).

Dünkel, F. (2004) *Juvenile Justice in Germany*, www.uni-greifswald.de/~ls3 [accessed 31 October 06].

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (1999) *9th General Report on the CPT’s activities covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1999) *9th General Report on the CPT’s activities, covering the period 1 January to 31 December 1998*. Strasbourg: Council of Europe.

Expert Group Report Children Detention Schools, *Final Report 14th December 2007*
(available at: <http://www.iyjs.ie/en/IYJS/Expert%20Group%20Report.pdf/Files/Expert%20Group%20Report.pdf>).

Goldson, B. (2002) *Vulnerable Inside: Children in Secure and Penal Settings*, London: The Children's Society.

Hamilton, C. and Harvey, R. (2004) "The Role of Statistics and Public Opinion in the Implementation of International Juvenile Justice Standards" in *The International Journal of Children's Rights*, Volume 11, Number 4, 2004 , pp. 369-390(22).

Harrington, R. and Bailey, S. (2005) *Mental Health needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board (available at: <http://www.yjb.gov.uk>).

Hayes, Dr.J.M. and O'Reilly, Dr G. (2007) *Emotional Intelligence, Mental Health and Juvenile Delinquency*, Cork: Juvenile Mental Health Matters.

Health Information and Quality Authority (2009) *Finglas Child and Adolescent Centre: Children Detention School. Inspection Report ID Number: 281*, Dublin: Health Information and Quality Authority.

Health Information and Quality Authority (2009) *Oberstown Boys' Detention School: Inspection Report ID Number: 269*, Dublin: Health Information and Quality Authority.

Health Information and Quality Authority (2009) *Oberstown Girls' Detention School: Inspection Report ID Number: 282*, Dublin: Health Information and Quality Authority.

Health Information and Quality Authority (2009) *Trinity House Children Detention School. Inspection Report ID Number: 270*, Dublin: Health Information and Quality Authority.

McPhillips, S., (2005), *Dublin Children Court: A pilot research project*, Dublin: Irish Association for the Study of Delinquency (available at: <http://www.iasd.ie>).

Irish Human Rights Commission, *Observations on Proposals for Amendments to the Criminal Justice Bill 2004 (Youth Justice)* 30 March 2006, (available at: www.ihrc.ie).

Irish Prison Service (2008) *Annual Report 2007*
(available at: http://www.irishprisons.ie/documents/IPS_AR_2007.pdf).

Irish Prison Service (2009) *Annual Report 2008*
(available at: <http://www.irishprisons.ie/documents/IPSannualreport2008e.pdf>).

Irish Youth Justice Service (2009) *IYJS News: Newsletter of the Irish Youth Justice Service*, Issue 2, Spring 2009.

Irish Youth Justice Service (2009) *Report of the Working Group on the future of the Finglas Child and Adolescent Centre*
(available at: <http://www.iyjs.ie/en/IYJS/Finglas%20Report.pdf/Files/Finglas%20Report.pdf>).

Kilbrandon, L. (1964) *Children and young persons, Scotland*. Cm 2306. Edinburgh: Scottish Home and Health Department.

Kilkelly, U. (2006) *Youth Justice in Ireland: Tough Lives, Rough Justice*, Dublin: Irish Academic Press: Dublin.

Kilkelly, U. et.al. (2002) *In Our Care: Promoting the rights of children in custody*, Belfast: Northern Ireland Human Rights Commission. Lennings, C. (2003) *Assessment of Mental Health Issues with Young Offenders*. A paper presented at the Juvenile Justice: From Lessons of the Past to a Road for the Future Conference convened by the Australian Institute of Criminology in conjunction with the NSW Department of Juvenile Justice (available at <http://www.aic.gov.au>).

McVerry SJ, P. (2006) "Rehabilitation – Are we for Real?" *Working Notes*, Issue 53, October 2006.

Muncie, J. and Goldson, B., (Eds) (2006) *Comparative Youth Justice*, London: Sage Publications.

Ombudsman for Children (2008) *Oireachtas Joint Committee on Health and Children Consultation on Primary Medical Care in the Community: Submission of the Ombudsman for Children, November 2008* (available at: <http://www.oco.ie/whatsNew/submissions.aspx>).

Prison Brief for United Kingdom: Scotland

(available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=171).

Prison Brief: Netherlands

(available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=157).

Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions and measures (available at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>).

Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons and Places of Detention, November 2004.

Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 15 December 2000, Council of Europe Document CPT/Inf (2003) 20. (available at: <http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf>).

Report to the Government of United Kingdom on the visit to United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 23 May (2003), Council of Europe Document CPT/Inf (2005) 1 (available at: <http://www.cpt.coe.int/documents/gbr/2005-01-inf-eng.pdf>).

Report to the Norwegian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999, Council of Europe Document CPT/Inf (2000) 15 (available at: <http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf>).

Report to the Swedish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 January to 5 February 2003, Council of Europe Document CPT/Inf (2004) 32 (available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf>).

Response of the Government of Ireland to the Report of the European Committee for the Prevention of Torture or Inhumane or Degrading Treatment or Punishment (CPT) on its visit to Ireland from 2 to 13 October 2006 (available at: <http://www.cpt.coe.int/documents/irl/2007-41-inf-eng.pdf>).

Sarnecki, J. and Estrada, F. (2004) *Juvenile crime in Sweden: A trend report on criminal policy, the development of juvenile delinquency and the juvenile justice system*, Stockholm University: Department of Criminology.

St. Patrick's Institution Prison Visiting Committee Annual Report for year ending 31st December 2006
(available at: http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation).

St. Patrick's Institution Prison Visiting Committee Annual Report for year ending 31st December 2007
(available at: http://www.justice.ie/en/JELR/Pages/Publications_prisons_and_probation).

Standards and Criteria for the Children Detention Schools, Department of Education and Science, 2002 and 2004
(available at: <https://www.education.ie>).

The Commissioner on Human Rights (2008) *Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ireland 26-30 November 2007*, Strasbourg: Council of Europe 30 April 2008 CommDH(2008)9.

The Howard League for Penal Reform (2006) *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, London: The Howard League of Penal Reform.

The Probation Service (2007) *A Century of Change, Challenge and Service: Annual Report 2007*, Dublin: The Probation Service (available at: <http://www.probation.ie/pws/websitepublishing.nsf/Content/Publications+-+General+Information~Annual+Reports%2C+Reviews+and+Statistics>).

The Report of the Committee of Inquiry into the Penal System (1985) Dublin: Stationery Office in Walsh, D. (2005) *Juvenile Justice*, Dublin: Thomson Round Hall.

UN Convention on the Rights of the Child (CRC).

UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Havana Rules).

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

UNICEF in Bala, N. et. al. (2002) *Juvenile Justice Systems: An international comparison of problems and solutions*, Toronto: Thompson Educational Publishing.

Working Group on Children's Rights Standards for the National Children Detention Service at Oberstown, Lusk, Co. Dublin
(report available at: <http://www.ijjs.ie/en/IYJS/Report%20on%20Standards%20Working%20Group.pdf/Files/Report%20on%20Standards%20Working%20Group.pdf>).

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