

# 50<sup>th</sup> session of the UN Committee on the Rights of the Child

## Informational Notes on Juvenile Justice related issues

Defence for Children International  
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DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI  
DEFENSE DES ENFANTS INTERNATIONALE DEI  
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## FOREWORD

The Committee on the Rights of the Child is the UN body responsible for monitoring the implementation, by States Parties, of the Convention on the Rights of the Child, as well as its two optional protocols, namely: the optional protocol on the involvement of children in armed conflict and the optional protocol on the sale of children, child prostitution and child pornography.

Every year, the Committee on the Rights of the Child holds three sessions in January, May-June and September.

States Parties are expected to submit reports to the Committee on the implementation of the Convention. The reporting cycle is as follows: 2 years after ratification, a State Party has to submit an initial report. After this initial report, additional reports are due every five years.

After reviewing the reports submitted by States Parties, the members of the Committee on the Rights of the Child address their concerns and recommendations in the form of concluding observations.

The 50<sup>th</sup> session was held in Geneva from 12 to 30 January 2009. During the three-week session, the Committee on the Rights of the Child considered reports on how the Convention on the Rights of the Child is being implemented in each of the following States Parties: Democratic People's Republic of Korea, Democratic Republic of the Congo, Malawi, Netherlands and Republic of Chad, Republic of Moldova. Under the optional protocol on the sale of children, child prostitution and child pornography, members of the Committee reviewed the reports of Maldives and Netherlands. Under the optional protocol on the involvement of children in armed conflict, the Committee on the Rights of the Child considered the reports of Maldives, Republic of Moldova and Tunisia.

As on previous occasions, the International Secretariat of Defence for Children International attended the session of the Committee on the Rights of the Child in order to follow the presentation of country reports from Democratic People's Republic of Korea, Democratic Republic of the Congo, Malawi, Netherlands and Republic of Chad, Republic of Moldova.

Defence for Children International is happy to present the following information notes on issues concerning juvenile justice. These notes are intended to provide the reader with relevant information on the state of juvenile justice in the countries under review, in a concise manner.

Geneva, February 2009



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## INFORMATION NOTE

**Combined 3<sup>rd</sup> and 4<sup>th</sup> periodic reports of the Democratic People's Republic of Korea during the 50<sup>th</sup> session of the United Nations Committee on the Rights of the Child**

**Summary of juvenile justice related issues**

**Ratification of the Convention on the Rights of the Child by the Democratic People's Republic of Korea: 21 September 1990**

Previous report presented in: June 2004 (36<sup>th</sup> session of the CRC).

### 1. COUNTRY PROFILE

**General information on the Democratic People's Republic of Korea (DPRK) :**

The Democratic People's Republic of Korea, or North Korea, is a small socialist state located between the Republic of Korea, or South Korea, and the People's Republic of China. The DPRK has a population of approximately 23 million persons and a per capita national income of \$914 as of 2004. The state's economy has struggled since the early 1990s, and the August 2007 floods and other recent crises have only compounded its problems.

The status of human rights in the DPRK has long been a topic of international controversy and concern. The state has traditionally maintained a rigid and stagnant sociopolitical hierarchy that prevents equitable allocation of resources and discriminates against the non-elite. The government has absolute control over the media and other forms of expression, and has been criticized as being overly-involved in many aspects of public and private life. While military expenses officially constituted only 15.6% of the national expenditure budget in 2004, many experts believe that the real amount is much higher, incorporating portions of resources allocated to "the people's economy" as per the DPRK's "military first" policy of economic militarization. Critics argue that such war expenses, coupled with factors such as social divisions and the denial of civil and political rights, have hampered the DPRK's economic recovery and slowed progress in the realm of human rights.

In fairness to the DPRK, state representatives have emphasized that their country is still developing and exists in the shadow of great powers like China and South Korea. The state has recently cooperated in multilateral talks concerning its nuclear program, and the government has made legislative changes in an effort to better address human rights. Economic, social, and political challenges, however, remain important factors in the implementation of a fair juvenile justice system and the protection of human rights in the DPRK.



## **The situation of juvenile justice in the DPRK (overview):**

The Committee was pleased to learn that the DPRK now prohibits the sentence of capital punishment for those less than 18 years of age at the time of the crime. Minors less than 14 years of age are not criminally accountable, and minors between 14 and 17 years of age can only receive a sentence of “public education”. During the criminal investigation, a period lasting no longer than a month, the accused child stays with his or her family and is not subjected to pre-trial detention. If the child is sentenced to public education, he or she continues normal schooling and lives with his or her family. The reformatory process is monitored by a local authority organization (i.e. a school) and the child’s parents, and public education ends when they determine it has met its objectives. This system ensures that imprisonment or hard labor is never assigned to juvenile delinquents.

## **2. JUVENILE JUSTICE KEY ISSUES IN THE DPRK**

### **ISSUE BY ISSUE:**

#### **I) Legislation:**

##### Current Situation/Achievements:

The DPRK Criminal Law was reformed and expanded in April 2004 and provides for the protection of child rights, including protection against the death penalty. The Family Law was altered in December 2004 to afford special status to women and children in family matters.

##### Challenges:

Laws concerning the rights of the child remain scattered among many pieces of legislation, and the Committee advised the DPRK to look into drafting comprehensive child rights legislation. The Committee also expressed concern at the lack of quality statistics on the social problems for which many laws have been passed.

#### **II) Minimum age of criminal responsibility:**

##### Current Situation/Achievements:

The minimum age of criminal responsibility in the DPRK is 14 years. Children 14 years of age and under are not held criminally accountable.

##### Challenges:

While the minimum age of criminal responsibility is relatively uncontroversial, the age of maturity in the DPRK (17 years) is one year less than is advised in the Convention on the Rights of the Child.

#### **III) Number of children and length of detention:**

##### Current Situation/Achievements:

The DPRK representatives insisted that children are never imprisoned in their country.



#### Challenges:

One Committee member questioned whether public education was essentially house arrest, but never received a straight answer. There was a lot of concern throughout the Committee that the DPRK was unclear as to the exact intentions and conditions involved in public education sentences.

#### **IV) Trial conditions:**

##### Current Situation/Achievements:

The Committee asked the DPRK representatives if juvenile cases involved specialized judges or institutions. Their answers were unclear, and it seems that the mandatory public education sentence for 14-17 year olds acts as a substitute for a formal, separate juvenile justice system. Juvenile delinquents do not even go to trial for their crimes (see paragraph 238 of the state report).

##### Challenges:

In its concluding observations, the Committee noted its disappointment that the DPRK has not developed a “full-fledged juvenile justice system in compliance with the Convention and other relevant United Nations standards” (paragraph 70).

#### **V) Detention conditions**

##### Current Situation/Achievements:

The DPRK representatives had little to say regarding this topic of concern, repeating their insistence that children are never imprisoned in the first place. The DPRK thus has no problems with pre-trial detention, separation of children and adults in prison, or other common issues related to imprisonment.

##### Challenges:

Certain Committee members raised questions about reports that refugee children have been tortured or mistreated at police stations, but the DPRK representatives never directly addressed these claims. The representatives also denied that children are ever involved in forced labour, such as on state-controlled opium farms. They acknowledged that the DPRK had reformatories for juvenile delinquents up until the 1960s, but insisted that Korean society had progressed and such institutions exist today only for adult criminals.

#### **VI) Alternative measures:**

##### Current Situation/Achievements:

Absent a formal juvenile justice system, the DPRK seems to apply public education as a blanket solution to all cases concerning minors.

##### Challenges:

The Committee suggested in its concluding observations that the DPRK develop a more holistic juvenile justice approach that incorporates alternative measures such as diversion, probation, counselling, or community service. It also recommended that



juvenile offenders be given legal assistance and be tried by officials specially trained in juvenile justice and child rights.

#### VII) Re-adaptation / reinsertion of children:

##### Current Situation/Achievements:

Paragraph 240 of the DPRK state report insists that “The issue of social reintegration does not arise, as the imposition of public education measures does not involve any form of separation of the child from the community”.

##### Challenges:

Committee members expressed concerns that children may be treated differently based on their political class or their parents’ standing with the government. The DPRK representatives responded by noting that all countries have different social groups based on occupations, but in the DPRK this is not a cause for discrimination. The country is mostly homogeneous, and children of the country’s Chinese minority can either attend separate schooling (there are six primary schools and four secondary schools devoted to this minority group) or access normal Korean education and health care. Children are never separated from the community except in cases of orphans with no extended family to take them in. Such children are kept in well-supplied institutions at the expense of the state; one doctor/nurse cares for about thirty children. Re-insertion into society of children from the juvenile justice system, however, is apparently not an issue.

#### VIII) Training of professionals:

##### Current Situation/Achievements: -

##### Challenges:

As previously mentioned, the Committee challenged the DPRK to create a more institutionalized juvenile justice system with trained officials instead of filtering children through a seemingly vague public education process.

### 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (regarding Juvenile Justice):

- The Committee desires more information on the DPRK’s unique public education system; as one Committee member noted, it sounds almost “too good to be true”. Specifically the Committee wants to know more about how the sentence is decided on (any trial proceedings), how the sentence is monitored consistently, how long the sentence lasts, etc.
- The Committee recommends that the DPRK form a separate justice system for minors complete with trained juvenile judges, guaranteed legal assistance, alternate disciplinary measures, an independent complaints procedure, and other characteristics of a child-sensitive system.
- The Committee advises the DPRK to seek assistance from UNICEF and the UN Interagency Panel on Juvenile Justice.
- The DPRK should take steps to prevent the abuse of street children (*khojetbis*) or



children that have illegally crossed the national border.

- In general, the Committee hopes that the DPRK considers opening itself up more to international organizations and provides improved statistics so that child rights in the country can be addressed in a more constructive and productive manner. It specifically asks for more information from civil society organizations and NGOs that are independent from the government.

#### Sources:

- United Nations Convention on the Rights of the Child.
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of the Democratic People's Republic of Korea.
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup> / 3<sup>rd</sup> periodic reports of the Democratic People's Republic of Korea (State reports).
- The Democratic People's Republic of Korea NGOs' Working Group 'on Protection of Children Rights', (Alternative report).
- Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, 15 February 2008,  
<http://daccessdds.un.org/doc/UNDOC/GEN/G08/106/15/PDF/G0810615.pdf?OpenElement> (accessed 10 February 2009)

#### 4. ANNEX:

##### 4.1 CRC members present

Ms. Aidoo; Ms. Al-Thani; Ms. Aluoch; Mr. Citarella; Mr. Filali; Ms. Herczog; Ms. Khattab; Mr. Kotrane; Mr. Krappmann; Ms. Lee; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith; Ms. Vucjovic-Sahovic; Mr. Zermatten.

##### 4.2 Composition of country delegation

H.E. Mr. Ri Tcheul - Ambassador and Permanent Representative, DPRK Mission in Geneva; Head of Delegation

Mr. Kang Yun Sok - Director-General of the Department of Legislation, DPRK Supreme People's Assembly; Chairman, National Coordination Committee for the implementation of the Convention on the Rights of the Child (NCCRC)

Mr. Kye Chun Yong - Deputy Permanent Representative, DPRK Mission in Geneva

Mr. Kim Myong Chol - Section Chief of the Department of Legislation, DPRK Supreme People's Assembly; Member of the NCCRC

Mr. Jang Il Hun - Section Chief, Ministry of Foreign Affairs; Member of the NCCRC

Mr. Kim Song Chol - Senior Official, Ministry of Foreign Affairs; Member of the NCCRC

Mrs. Han Chae Sun - Bureau chief of the Research Institute, Ministry of Public Health; Member of the NCCRC

Mrs. Kim Sun Hwa - Official, Department of Legislation, DPRK Supreme People's Assembly; Member of the NCCRC



## INFORMATION NOTE

**2<sup>nd</sup> periodic report of the Democratic Republic of the Congo during the 50<sup>th</sup> session of the United Nations Committee on the Rights of the Child**

### **Summary of juvenile justice related issues**

**Ratification of the Convention on the Rights of the Child by the Democratic Republic of the Congo: 27 September 1990**

Previous report presented on: May 2001 (27<sup>th</sup> session of the CRC).

## 1. COUNTRY PROFILE

The Democratic Republic of the Congo (DRC) is a central African country of 2 345 409 square kilometres. Its population was of 61 487 300 inhabitants in 2006 divided into over 450 tribes. The country became independent on 30 June 1960 and despite important natural resources, it remains a poor country. It suffers from political instability and wars especially in the north-east of the country (North Kivu region) over which the government has no control. Between 1998 and 2004, over 5.4 million Congolese died because of the war.

With regard to children's rights since the submission of DRC's initial report in 2001, it looks like the country has tried to take into account the remarks of the Committee on the Rights of the Child, but a lot remains to be done. The budget of the country increased from 3 million dollars in 2008 to 5 million dollars in 2009. In addition, in 2001 the minimum salary was 2 dollars per month and increased to 70 dollars per month. The Delegation presenting the national report insisted on the fact that the situation could be much better but as long as the war persisted, the government would have difficulties improving the situation of children's rights.

The Committee on the Rights of the Child was satisfied with the recent adoption of the new Child Protection Code but expressed repeated concern about the real possibility to enforce this new law in a reasonable time.

## 2. JUVENILE JUSTICE KEY ISSUES IN THE DEMOCRATIC REPUBLIC OF THE CONGO

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

##### Current Situation/Achievements:

In 2003 a transitional constitution was adopted which created a National Human Rights Monitoring Centre, but it disappeared with the new constitution of 2006.

The actual Constitution was adopted on 18 February 2006.

The Act no 06/019 of 20 July 2006 amended the Decree-Law of 6 August 1959, enacting the Code of Criminal Procedure.



Regarding laws and decisions specifically focussing on children's rights, the Ministry on the Status of Women and the Family created a National Council for Children in 1998. This Council was decentralized in 2003 by the creation of local Councils for the promotion and protection of children's rights (decision No.MIN.AFF.SOC/CABMIN/004/2003 of 8 April 2003). Finally on 10 January 2009 the Code of Child Protection was adopted.

#### Challenges:

The role of the National Council for Children seems to be marginal compared to some ministries such as the Ministry of Gender, Family and Children. The Committee on the Rights of the Child would like to know more about the resources given to that Council and what the reforms would bring.

Regarding the law that was adopted on 10 January 2009, there is a big challenge to apply it and to provide resources so that it can be enforced.

### **II) Minimum age of criminal responsibility:**

#### Current Situation/Achievements:

There was a conflict of law regarding the **age of majority**. The Constitution set the majority to 18 years of age, but there was a 1978 law which set the majority to 16 years of age and judges would usually apply that law rather than the constitution. The new law from 2009, however, explicitly mentions 18 as the age of majority and 14 as the age of penal responsibility.

### **III) Number of children and length of detention:**

#### Challenges:

Because of the difficulty collecting data, it is very difficult to know how many children are in detention. As an example, it seems that one quarter of children in detention in police stations are not registered.

The number of children in detention can also vary a lot from one month to another depending of the intervention of organisations such as the Child Protection of the MONUC.

### **IV) Trial conditions:**

#### Current Situation/Achievements:

It was decided in the new law to create tribunals for children and the assembly that voted the law gave 2 years to the government to create those tribunals. For the moment, the government is keeping the existing "Peace tribunals" until the creation of tribunals for children.

If there is no court in some areas of the country, judges can travel to these places to deal out justice.

#### Challenges:

The biggest challenge will be to find sufficient resources to enforce the new law. There are not enough magistrates so the state has to recruit and train new ones.



## V) Detention conditions

### a) In general (condition in detention centres):

#### Current Situation/Achievements:

There are no social assistants in detention centres and there aren't enough units dedicated to child detention. Most of those centres have been either destroyed or abandoned due to the political instability and successive wars.

Some efforts have been made, however, particularly in cooperation with organisations such as Save the Children and the Bureau International Catholique de l'Enfance.

### b) Pre-trial detention:

#### Current Situation/Achievements:

The situation is very different among the regions of the DRC. In some regions children are immediately transferred to judges and in others they can spend weeks or even months in cells with adults before being transferred to the judge.

### c) Separation from adults:

#### Challenges:

Due to the destruction of many facilities, many children are still imprisoned with adults.

## VI) Alternative measures:

#### Challenges:

A lot of hope is based on the new Code of Child Protection adopted in January 2009. As an example, this new law should create a mechanism of mediation but the enforcement of that disposition will depend of financial resources.

## VII) Re-adaptation / reinsertion of children:

#### Current Situation/Achievements: -

#### Challenges: -

## VIII) Training of professionals:

#### Challenges:

Some judges and police officers have been trained especially by international organisations but the challenge is still very serious.

## IX) Other relevant areas:

-



## 2.2. TRANSVERSAL ISSUES / PROBLEMS / OBSTACLES:

- The country report insisted on the fact that as long as the war continues in one part of the country, it will be very difficult for the government to fulfil its obligations towards the Convention on the Rights of the Child because the government is putting a lot of energy and money into the war and because it has no control over North Kivu.
- There are still thousands of child soldiers. The members of the delegation present explained that the national army took measures to demobilize child soldiers. However, the Committee noticed that overall, more than 11 000 children escaped the different armed forces without proper demobilization. More specifically, 12% of the demobilized children were girls while they represent 40% of the child soldiers.

## 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (regarding juvenile justice):

(para. 88-94)

- Ensure the swift establishment of the juvenile court system, which, once established, must be provided with adequate human and financial resources.
- Ensure that all the professionals working with children in conflict with the law receive appropriate training on children's rights.
- Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.
- Ensure that the Child Protection Code is speedily and fully implemented and that the State party considers abolishing the 1978 Ordinance so that the age for full criminal responsibility is set in accordance with the international accepted juvenile justice standards. In this regard, the State party is encouraged to take into account the Committee's General Comment No. 10 on Children's Rights in Juvenile Justice.
- Strengthen the policy of alternative sanctions for juvenile offenders to ensure that children are held in detention only as a measure of last resort and for the shortest period of time.
- Ensure that when detention is carried out, it is done in compliance with the law and respects the rights of the child as set out under the Convention and that children are held separately from adults both in pre-trial detention and after being sentenced.
- Ensure that children are not ill-treated in detention, that conditions in detention facilities are not contrary to the child's development and that their rights, including visitation rights, are not violated, and that cases involving juveniles are brought to trial as quickly as possible.

Through adequate legal provisions and regulations, ensure that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, sale and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, taking fully



into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

#### Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Second report of the Democratic Republic of the Congo
- United Nations Committee on the Rights of the Child. 2<sup>nd</sup> periodic reports of the Democratic Republic of the Congo (State report) and Written Answers.
- UNDP National Report on Human Development 2008, Restauration de la paix et reconstruction, République Démocratique du Congo
- MONUC, Division Droits de l'Homme Section Protection de l'Enfant, *Arrestations et Détentions dans les prisons et cachots de la RDC, Partie II, La détention des enfants et la justice pour mineurs*, mars 2006

#### 4. ANNEX:

##### 4.1 CRC members present

Ms. Aidoo; Mr. Citarella; Mr. Filali; Ms. Khattab (Rapporteur); Mr. Kotrane; Mr. Krappmann; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith; Ms. Vucjovic-Sahovic;

##### 4.2 Composition of country delegation

S.E.M Upio Kakura Wapol, Mister of human Rights (head of delegation), S.E.Mme Lukiana Mufwankolo, Marie-Ange, Minister of Gender, Family and Child; S:E:M. Mindua Kesia-Mbe Abtiubem Ambassador and Permanent representative, Mission DRC/Geneva; Mr Mutomb Mujing Sébastien, Council Minister, Mission DRC/Geneva; Mr Bahati Yuma Christian, Expert, Huamn Rights Ministry, Mr Kisumbule Muteba Jean, Expert, Huamn Rights Ministry; Mme Tika Nelly, Expert Human Rights Ministry; Mr Luyela Loyel Gauthier, Expert, Ministry of Gender, Family and Child; Mme Inzun Okomba Angélique, Expert, Ministry of Gender, Family and Child; Mme Chikwaka Betukumesu Véronique, Expert, Ministry of Gender, Family and Child; Mme Nkusu Ntemo Isabelle, Expert, Ministry of Gender, Family and Child; Mme Masela Maseka Irène, Expert, Ministry of Gender, Family and Child; Mr Kashama Ngoie Serge, Expert, Ministry of Justice; Mme Kenge Ngomba Tshilombayi, Expert, Ministry of Justice



## INFORMATION NOTE

### 2<sup>nd</sup> periodic report of Malawi during the 50<sup>th</sup> session of the United Nations Committee on the Rights of the Child

#### Summary of juvenile justice related issues

**Ratification of the Convention on the Rights of the Child by Malawi: 2 January 1991**

**Previous report presented on: 24 January 2002 (29<sup>th</sup> session of the CRC).**

## 1. COUNTRY PROFILE

Malawi has a population of 12.3 million. A large proportion of it is under 20 years of age. The country's economy is characterized by severe and widespread poverty, with more than half of the population (52%) living on less than a dollar per day and more than 20% living in extreme poverty.

With regard to children's rights, since the submission of Malawi's initial report in 2002, various legislative reforms aimed at harmonizing existing legislation and customary laws with the CRC have been initiated, mainly by the Government. However, due to a political impasse in the country, several of the legislative reforms have been laid in Parliament, but the bills have yet to be introduced in Parliament as Government bills. According to the delegation in Geneva, the situation should improve in 2009 as elections are to take place in May.

## 2. JUVENILE JUSTICE KEY ISSUES IN MALAWI

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

##### Current Situation/Achievements:

In a quest to develop a comprehensive code on children which will reflect the general principles of the CRC, the Children and Young Person's Act has been reviewed. In 2001, the Law Commission embarked upon a review of this Act in response to two submissions. The review process was finalized in 2005 and culminated in a report of the Law Commission's findings and recommendations and a proposed bill entitled the Child (Care, Protection and Justice) Bill. This bill is a comprehensive attempt to domesticate the CRC as it extends beyond issues of child justice to include matters pertaining to: duties and responsibilities of parents towards their children; determination of children in need of care and protection; guardianship; fosterage; residential placements; powers and duties of child justice courts in care and protection matters; duties and functions of local authorities relating to child justice and protection; and protection of children from undesirable practices. The Report of the Law Commission has been laid in Parliament and presented to Cabinet.



With the exception of this proposed bill, the constitutional and legal position on the administration of juvenile justice remains as it was in the Initial State Party Report. According to the State Report, the proposed bill will, however, greatly improve the administration of juvenile justice through:

- improved procedures for bringing children in conflict with the law to court, including the introduction of preliminary inquiries for children;
- Provisions on the age of criminal responsibility and ways of determining the age of a child;
- Legal recognition of diversion and provision of established diversion options;
- Express recognition of the right to legal representation for children;
- Specific provisions relating to jury trials for children;
- Prohibiting the imprisonment of children;
- Comprehensive provisions that emphasize the principles of best interests of the child.

Moreover, the CRC will be part of the Juvenile Justice system in its entirety.

#### Challenges:

The bill still has to be adopted by Parliament. During the oral review, the Committee raised concerns about the slowness of this process and about the fact that there have not been any real improvements in the administration of juvenile justice since the last review in 2002, when the Committee had pointed out severe weaknesses regarding these issues. Also, the Committee regretted that the section on the Administration of Justice in the State Report was very short.

#### *Child victims and witnesses:*

In 2004, the Law Commission reviewed the Criminal Procedure and Evidence Code and developed, among other matters, new provisions on the protection of child witnesses. The Law Commission Report was laid in Parliament and presented to Cabinet in the same year.

### **II) Minimum age of criminal responsibility:**

#### Challenges:

The current minimum age of criminal responsibility is 7 years. The proposed bill recommends raising it to 10 years. The Committee said that 10 is still too low.

### **III) Number of children and length of detention:**

#### Current Situation/Achievements:

*Length of detention:* During the oral review, the delegation said that Malawi's detention system is very strict. For instance, pre-trial detention cannot last more than 48 hours for children and also for adults.

### **IV) Trial conditions:**

#### Current Situation/Achievements:

*Child friendly courts:* There are 4 child-friendly courts in Malawi. Professionals working there receive specific trainings. The courts have also been furnished with cameras to ensure that children are given privacy. During the oral review, the



Committee asked to receive more information about the functioning of these courts. The delegation did not really respond, but explained that those courts are now completely functional thanks to the support of UNICEF.

Challenges:

The Committee raised questions and concerns regarding the so-called “At the pleasure of the president” orders taken by the court, which put children in detention for undetermined period of times and which do not conform to any legal standards. The delegation responded that, as Malawi is under common law, it is not possible to convict children. Therefore, the courts make an order called “at the pleasure of the President”, that the child should be sent to a reformatory school. The Board of Visitors will make regular visits to decide whether the child has been reformed and can be reintegrated into society (except in cases of homicides, when the Board can only make recommendations).

**V) Detention conditions**

**a) In general (conditions in detention centres):**

Current Situation/Achievements:

*Board of visitors:* The Board of Visitors started to work in 2008. The Board’s task is to ensure that juveniles in remand centres and reformatory schools have their imprisonments regularly reviewed. The Board makes monthly regular meetings and visits prisons twice a year to inspect conditions in the juvenile detention centres. The Board has also been regularly conducting camp court for juveniles who have been on remand for long periods or whose sentences have not been reviewed. During the oral review, the Committee asked to receive more information about the composition of the Board (e.g. are NGOs represented?), and wanted to know whether the reports are made public and if there are direct talks with detainees and with ex-detainees. The delegation responded that the Board meets once a month, that the reports are not made public and are only given to the visited institutions.

Challenges:

During the oral review, the Committee asked if any studies were made to prove that the conditions of detention have improved over the last years and asked whether centres are monitored by NGOs and whether other bodies can visit them.

**b) Pre-trial detention:**

Current Situation/Achievements: -

Challenges: -

**c) Separation from adults:**

Current Situation/Achievements:

During the oral review, the delegation explained that juveniles can either be kept in remand in juvenile wings of prisons or in reformatory schools. Sometimes children are kept with adults. This is prohibited, however, and as soon as a case is known the child is removed and put in a facility for juveniles.



## VI) Alternative measures:

### Current Situation/Achievements:

*Diversion programs:* In their written answers, the Government indicated that in April 2008 diversion programmes started to be implemented in four districts where there are child-friendly courts. Police have been trained to divert children before they are remanded. These programs are implemented in partnership with 4 selected non-governmental organizations and children are taught vocational and other skills. 35 children were diverted between April and December 2008. During the oral review, the Committee asked to receive more details regarding the diversion programs (content, evaluation, intention to extend them to other districts?). The delegation said that the programs include counselling, vocational training, and group discussion. The children also can choose how they want to deal with the victim.

*Reformatory institutions:* According to the State Report, there are two reformatory institutions for juveniles in Malawi where children in conflict with the law or in need of care and attention are sent for institutional care. The current Children and Young Persons Act passed in 1969 formalized the institutional framework and juvenile justice functions of these institutions. Prior to 1973, these institutions functioned as part of the Prisons Department. In 1973, they were handed over to the then Ministry of Community Development and Social Welfare, currently the Ministry of Women and Child Development. The main effect of the change was to shift the focus of punishment to reform through behaviour change and acquisition of skills. The two institutions therefore follow a defined programme which includes counselling, academics (primary school), vocational training and recreational activities.

### Challenges:

The State Report revealed that these institutions have problems related to sporadic funding, inadequately trained staff, and insufficient training materials.

## VII) Re-adaptation / reinsertion of children:

### Current Situation/Achievements: -

### Challenges: -

## VIII) Training of professionals:

### Current Situation/Achievements:

The written answers to the Committee indicate that police have been trained to divert children before they are remanded. Juvenile justice professionals, namely officers, magistrates, juvenile justice prosecutors, and social welfare officers, have also been specifically trained and appear in the juvenile courts. During the oral review, the delegation specified that trainings are held at police schools and an evaluation is organized once they have taken place.



## IX. Other relevant areas:

Current Situation/Achievements: -

Challenges: -

### 2.2. TRANSVERSAL ISSUES / PROBLEMS / OBSTACLES:

- **Increase of juvenile delinquency:** In their written answers, the Government points out that authorities have to deal with an increasing rate of crime perpetrated by juveniles. During the review, the Committee asked if the reason of this increase is known. The delegation said that, according to studies, delinquency is mainly due to poverty and does not seem to be linked to the abuse of drugs.
- **Programmes and policies:** Malawi has established a **National Juvenile Justice Forum (NJJF)** whose mandate is to establish and provide a fair and human juvenile justice system which is based on the principles of restorative justice. The NJJF seeks to make the best interests of the child a first priority and custody and institutionalization a sanction of the last resort for the shortest period of time while taking into account the interest of the victim. While pursuing its mandate, the NJJF considers the four main stages involved in the delivery of juvenile justice, namely Prevention, Pre-trial, Trial and Post-trial so as to ensure that the best interests of the child are paramount at every stage of the child's encounter with the justice system and after.

### 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (regarding Juvenile Justice): *para.75-77*

- As a matter of urgency, raise the age of criminal responsibility in accordance with General Comment No. 10, notably paragraphs 32 and 33;
- Implement alternative measures to deprivation of liberty such as mediation, probation and community service orders and extend diversion to the whole country;
- Make sure that children in need of care are not treated as children in conflict with the law;
- Ensure that cases involving children in conflict with the law are brought to trial as soon as possible;
- Ensure that all children in conflict with the law have access to free legal assistance and to an independent and effective complaints mechanism;
- Train all professionals working in the Juvenile Justice system on the Convention and other international standards;
- Ensure that deprivation of liberty is used as a sentence of last resort and for the shortest period possible;
- When a child is deprived of liberty (in pre-trial detention or after being sentenced), take all necessary measures to carry out this sentence in



compliance with the Convention, respecting in particular the following obligations: separation from adults, prohibition of ill-treatment, visitation rights, and access to independent complaint mechanisms;

- Review the procedure of detaining children “at the pleasure of the President” with the goal of eliminating it and ensure that children are protected in accordance with the Convention; and
- Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

77. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, taking fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

#### Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Second report of Malawi.
- United Nations Committee on the Rights of the Child. 2<sup>nd</sup> periodic reports of Malawi (State report) and Written Answers.

#### 4. ANNEX:

##### 4.1. CRC members present

Ms. Aidoo (Country Rapporteur); Ms. Al-Thani; Ms. Aluoch; Mr. Citarella; Mr. Filali; Ms. Herczog; Ms. Khattab; Mr. Kotrane; Mr. Krappmann; Ms. Lee; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith (Co-Rapporteur); Ms. Vucjovic-Sahovic; Mr. Zermatten.

##### 4.2. Composition of country delegation

Honourable Anna Andrew Narnathanga Kachikho, Minister of Women and Child Development (Head of Delegation); Mr. Anthony Kamanga, SC, Solitor-General and Secretary for Justice; Mrs Hyacinth Kishindo Kulemeka, Director of Women and Child Development; Mr. Augustine Kamlongera, Director of Education Planning; Ms. Zion Ntaba, Assistant Legal Counsel; Mr. Laurent Kansinjiro, Child Development Officer; Mr. Steven Kayuni, Senior State Advocate.



## INFORMATION NOTE

**2<sup>nd</sup> and 3<sup>rd</sup> periodic report of the Republic of Moldova during the 50<sup>th</sup> session of the United Nations Committee on the Rights of the Child**

### **Summary of juvenile justice related issues**

**Ratification of the Convention on the Rights of the Child by the Republic of Moldova: 25 February 1993**

Previous report presented in: September 2002 (31<sup>st</sup> session of the CRC).

## 1. COUNTRY PROFILE

The Republic of Moldova is situated in southeastern Europe, between Romania and Ukraine. It has an area of approximately 34 000 km<sup>2</sup> for a population of 4 million. The capital is Chisinau. 25% of the population lives under the poverty line and the unemployment rate is about 6.5% (2006).

Moldova is a young state. For decades it was part of the Soviet Union until its dissolution. It became an independent republic on 27 August 1991. However, in an eastern area called the Transnitrian region, a secessionist regime was illegally established in the mid-1990s.

In 2002-2003, the Government of Moldova underwent an administrative reform which led to the creation of the Ministry of Social Protection, Family and Child on 18 January 2007. In a Government decision of 16 June 2003, a National Strategy on Child and Family Protection was approved. One of its objectives was to develop/harmonize the legal framework on child and family protection and ensure the implementation of the Convention and other national and international legislation on child and family rights.

During the reporting period, the Government implemented a number of projects following the recommendations of the Committee on the Rights of the Child (2 October 2002). These projects concern the following areas: the prevention of institutionalization, the improvement of social assistance for vulnerable families with children at risk and the reintegration of children into families and communities. In 2006, 24 technical assistance projects were implemented amounting to US\$ 22.1 millions.



## 2. JUVENILE JUSTICE KEY ISSUES IN THE REPUBLIC OF MOLDOVA

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

##### Current Situation/Achievements:

The law on the Rights of the Child dates from 15 December 1994. This law is fundamental because it states the protection of rights and interests of the child.

The Centre for Human Rights controls the application of legislative texts related to the Rights of the Child in Moldova. In case of a violation of his or her civil rights, a child can refer to the Institute of Parliamentary Advocates (Ombudsman), established in 1997. Its aim is to ensure the observance of all constitutional rights and liberties of the citizens of the Republic of Moldova. An NGO, the National Council for Child Rights, founded in 1998, is in charge of monitoring and ensuring the observance of the Convention on the Rights of the Child and coordinates the implementation of policies in child rights protection.

In its written answers to the CRC, the Government indicated that an amendment to the Family Code was introduced on 29 May 2008. The following points were established:

- The right of the child to be protected not only against abuse but also against corporal punishment
- The possibility to reduce the minimum age for marriage for men from 18 to 16 if there are strong reasons (on the basis of the request of the minor and the consent of the parents); article 14 establishes the matrimonial age at 18 for men and 16 for women
- The priority of family protection forms is established. It is stated against the current provisions when the children are rather placed in state residential institutions

According to the State Report, a range of amendments to the Criminal Code and Criminal Procedures Code was introduced.

During the reporting period, the administration of juvenile justice was considerably improved. The Code of Criminal Procedure, in force since 12 June 2003, contains a special chapter regulating the procedure regarding children in conflict with the law. A special court procedure for children has been established.

According to paragraph (6) of article 166, a person suspected of committing a crime cannot be detained for more than 24 hours from the moment of his/her deprivation of liberty without formal charges.

##### Challenges:

During the oral review, the Committee asked if efforts have been made to measure the results of the 1994 law and wanted to know the relation between the National Council and the Government. Moreover, it enjoined the Delegation that Legislation and judicial procedure make explicit reference to the “best interest of the child”. The Delegation replied that judges based their decisions on the “best interest of the child” principle and aimed to solve the problems by encouraging the participation of children, as well as reforming the protection system of



children. The Committee wondered if there is an NGOs consultation procedure through the legislative process. The Committee would have preferred that the Government had raised the minimum age for marriage for women from 16 to 18 instead of permitting the one for men to be lowered to 16 for strong reasons.

## II) Minimum age of criminal responsibility:

Current Situation/Achievements: -

Challenges: -

## III) Number of children and length of detention:

Current Situation/Achievements:

When determining punishment, if only one crime was committed and the defendant was less than 18 years old at the time, the term established for the maximum punishment is reduced by half. Furthermore, the term of imprisonment cannot be longer than 12 years and 6 months for minors who committed one crime and cannot be longer than 15 years if more than one crime was committed (articles 84, 85 of the Criminal Code). Article 91 stipulates that convicted juveniles are released on probation if they meet all legal requirements and they have served: at least one third of the punishment term for a minor or less serious offence; at least half of the punishment term for a serious offence; at least two-thirds of the punishment term for a very serious or extremely serious offence. Capital punishment is not practised in the Republic of Moldova. There were 124 children in detention in 2007, 143 in 2008 and 24 so far in 2009.

Challenges:

The Committee found excessive the maximum term of imprisonment for one crime for a juvenile (12 years and 6 months). It proposed that in the case of 2 crimes committed, the juvenile could be given the maximum sentence of one of those 2 crimes instead of the stipulated term of imprisonment (15 years) for several crimes. In addition, the Committee asked what happened to repeat offenders. The Delegation answered that repeat offences isn't considered an aggravating circumstance for juveniles.

## IV) Trial conditions:

Current Situation/Achievements:

Since 2004, judges for trials involving juveniles have been appointed in each court in the country. Criminal prosecution of cases involving children in conflict with the law is exclusively attributed to the prosecutor. Prosecutors in charge of cases involving children are appointed in each Prosecutor's Office. The criminal investigation and trial are conducted without delay when minors are involved.

The accused is kept under arrest from the day the case is received by the court until the day the sentence is pronounced. There are two maximum lengths: 6 months if the person is accused of committing a crime for which the law stipulates a maximum punishment of 15 years in prison; 12 months if the person is accused of committing a crime for which the law stipulates a maximum punishment of 25 years or life imprisonment. The time for examining the case,



during which the accused is kept under arrest, can be prolonged only in exceptional cases at the prosecutor's request. Each extension cannot exceed 30 days during the criminal investigation and 90 days during the court case.

Challenges: -

## V) Detention conditions

### a) In general (condition in detention centres):

Current Situation/Achievements: -

Challenges:

-

### b) Pre-trial detention:

Current Situation/Achievements:

Since 2003, children can be detained for no more than 24 hours instead of 75 hours. The Code of Criminal Procedure stipulates guarantees for both children in conflict with the law and other children involved in trials. The presence of a legal representative, a teacher, or a psychologist is compulsory in cases in which minors are involved.

The arrest and detention of a minor can take place only in exceptional cases: when serious violent crimes or especially serious crimes have been committed. In case of the detention of a minor, the person conducting the criminal prosecution is obliged to immediately communicate with the prosecutor and the parents or guardians of the minor. The arrest or detention of the minor and the immediate notification of his/her parents or legal representatives is registered in the detention report. In this respect, the law (Criminal Procedures Code, art. 173) stipulates that the person who draws up the report is obliged to let the person arrested inform a close relative or other person about his/her place of detention within six hours.

A person can be initially arrested for 30 days. A child can be arrested during a criminal investigation for a maximum of four months. In 2006, there were 112 children in pre-trial detention.

Challenges:

During the oral review, the Committee noticed that the length of pre-trial detention seems excessive for a child.

### c) Separation from adults:

Current Situation/Achievements:

There is only one penitentiary specially equipped for children: Penitentiary No. 2 at Lipcani. It is dedicated to boys. Therefore, convicted girls are not separated from women and are confined in the Penitentiary for Women (No. 7) in Rusca. Children incarcerated in an institution for adults are escorted, received and detained separately from adults and benefit from daily walks of at least two



hours.

On 1 July 2006, there were 119 children under 18 years of age and 57 young people aged 18 to 21 in Penitentiary No. 2. On the same date, 25 children were detained in penal institutions not intended for children (Penitentiary No. 7).

Challenges: -

#### **VI) Alternative measures:**

##### Current Situation/Achievements:

According to the State Report, article 93 of the Criminal Code advocates the release from punishment for juveniles convicted of committing a minor, less serious or serious offence on the following condition: the court finds that the objectives of the punishment can be accomplished through placement in a specialized correctional institution or a medical correctional institution, or through the application of measures of educational nature. In 2007, 1'500 children were placed in institutions.

In addition, amendments were introduced to article 109 of the Criminal Code to avoid criminal punishment of juveniles. They stipulate that reconciliation releases a person from criminal liability for a minor offence or a less serious crime. In the case of juveniles, this applies to serious crimes as well.

Challenges:

The Committee asked if there were cases where rights had been withdrawn to children without any legal process.

#### **VII) Re-adaptation / reinsertion of children:**

##### Current Situation/Achievements:

According to the State Report, there are three programmes which prepare children for recovery and rehabilitation before their release from prison: one called "PROSOCIAL", the preparation programme for the release of persons convicted of theft and robbery and the preparation programme for release on probation before term. From now on, the penitentiaries dispose of social assistants. Their role is to help prepare children for release and to inform the local public administration about the release in order to provide subsequent support. At the same time, they cooperate with community justice centres regarding social reintegration.

Challenges:

The Committee wondered what happened with the criminal record when a juvenile had been released in order to encourage his or her reinsertion.

#### **VIII) Training of professionals:**

##### Current Situation/Achievements:

In order to ensure the observance of children's rights, the specialists working for and with children (lawyers, judges, employees of legal bodies, teachers, doctors,



social assistants, and representatives of NGOs) are systematically trained in human rights.

Three types of training in juvenile justice were planned by the National Institute of Justice: an initial training programme for newly appointed judges; in-service training with a more extensive curriculum; and training for trainers.

The employees of legal bodies, the employees of the penitentiary system, specialized judges and other categories of personnel from the judiciary system, the employees of the juveniles and morals service of the police were involved in many training sessions related to human rights and the protection of child rights.

Challenges: -

#### **IX. Other relevant areas:**

Current Situation/Achievements: -

Challenges: -

#### **2.2. TRANSVERSAL PROBLEMS / OBSTACLES:**

-

#### **3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (related to Juvenile Justice): (para.73)**

- Consider the establishment of juvenile courts and the appointment of trained juvenile judges in all regions of the State party
- Ensure that all professionals involved with the system of juvenile justice are trained on relevant international standards
- Consider introducing alternatives to the deprivation of liberty, such as diversion, reconciliation and mediation
- Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time
- Protect the rights of children deprived of their liberty and monitor their conditions of detention
- Ensure that children remain in regular contact with their families while in the juvenile justice system
- Ensure that a review of detention is made on a regular basis with the aim of reducing it
- Take the holistic approach to addressing the problem of juvenile crime (e.g. by addressing underlying social factors) advocated in the Convention
- Provide children with basic services (such as schooling and healthcare) as well as legal and other assistance at an early stage of the legal proceedings
- Establish an independent, child-sensitive and accessible system for the reception and processing of complaints by children and investigate, prosecute and punish cases of violations committed by law-enforcement personnel and



prison guards

- Request further technical assistance in the area of juvenile justice and police training from the UN Interagency Panel on Juvenile Justice.

**Sources:**

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of the Republic of Moldova.
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup> / 3<sup>rd</sup> periodic reports of the Republic of Moldova (State reports).
- <http://www.moldova.md/en/start/> accessed on 18 February 2009

**4. ANNEXE:**

4.1 CRC members present

Ms. Aidoo; Mr. Citarella; Mr. Filali; Ms. Khattab (Rapporteur); Mr. Kotrane; Mr. Krappmann; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith; Ms. Vucjovic-Sahovic

4.2 Composition of country delegation

Mrs. Galina Balmos, Minister of Social Protection, Family and Child

Mr. Igor Malai, Deputy Minister of Defence

Mrs. Tatiana Lopicus, Ambassador, Permanent Representative of the Republic of Moldova to the UN Office in Geneva

Mr. Eugen Rusu, Prosecutor, Chief of the Human Rights Protection Division  
General Prosecutor Office

Mrs. Maria Tarus, Director, Women and Child Health Division, Ministry of Health

Mrs. Vasilisa Iluta, Director, General Education Directorate, Ministry of Education and Youth

Mrs Corina Calugaru, First Secretary, Permanent Mission of the Republic of Moldova to the UN Office in Geneva



## INFORMATION NOTE

### 3<sup>rd</sup> periodic report of The Netherlands during the 50<sup>th</sup> Session of the United Nations Committee on the Rights of the Child

#### Summary of juvenile justice related issues

*\*This report also contains specific information about the Netherlands Antilles and Aruba*

**Ratification of the Convention on the Rights of the Child by Netherlands: 7 March 1995**

Previous report presented in: January 2004

## 1. COUNTRY PROFILE

The Kingdom of the Netherlands, composed of 12 provinces, is a small country of Western Europe (41.526 sq km) bordering the North Sea between Belgium and Germany. It has a population of approximately 16 700 000 inhabitants and a median age of 40 years. The Netherlands has a prosperous and open economy based on foreign trade, a stable industry, and moderate unemployment and inflation.

## 2. JUVENILE JUSTICE KEY ISSUES IN NETHERLANDS / ANTILLES / ARUBA

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

The Minister explained that the Netherlands has a comprehensive national action plan for children. A new Children's Ombudsman will also be established.

The principles and objectives of the strategy for tackling youth crime are set out in the youth justice programme 2003-2006. The measures in the programme promote "early intervention, expedite and improve the disposal of cases, enhance the effectiveness of sanctions, provide immediate after-care and offer an approach tailored to each young person's situation".

The Youth Care Act entered into force on 1 January 2005, asserting that "young people up to the age of 18 with serious developmental and behavioural difficulties who cannot be assisted through general channels such as the education system, youth health care services or social work have a statutory right to care". Young people with severe behavioural problems may be placed in "secure youth care" in a treatment institution even though they have not been convicted of a crime. However, the idea of housing those with no criminal record with those who do have a criminal record is becoming undesirable in the Netherlands.

The Optional Protocol on the Sale of Children and the Optional Protocol on Children in Armed Conflict will be ratified in the next few months.



In Aruba, a new code will modernize juvenile criminal law. There will be a counselling and reporting centre on child abuse.

The new criminal code for Aruba is not yet in parliament. They are still getting advice on the legislation and it is expected for this coming year. The code will include a new sanctions system.

## II) Minimum age of criminal responsibility:

### Current Situation/Achievements:

The current minimum age of criminal responsibility is 12 years old.

Challenges: -

## III) Number of children and length of detention:

### Current Situation/Achievements: -

### Challenges:

Recent years have shown a rise in the number of youth being remanded by the criminal courts to young offenders' institutions. This table shows the capacity available for young people placed in young offenders' institutions under both criminal and civil law.

| Date       | Places | Treatment places | Habitual offenders | Total |
|------------|--------|------------------|--------------------|-------|
| 1 Jan 2002 | 992    | 1142             | -                  | 2134  |
| 1 Jan 2003 | 1050   | 1274             | -                  | 2324  |
| 1 Jan 2004 | 1115   | 1332             | -                  | 2447  |
| 1 Jan 2005 | 1170   | 1419             | -                  | 2589  |
| 1 Jan 2006 | 1107   | 1445             | 44                 | 2596  |

The Committee asked if the current legislation meant that a child between 16 and 18 years old could be tried as an adult and receive life imprisonment. The Antilles said yes but that this will be abolished.

## IV) Trial conditions:

### Current Situation/Achievements:

### Challenges:

The Committee expressed concern that 16 to 17 year olds can be tried and detained as adults. In such cases, there is no right for the child's parents to attend the proceedings. The Committee questioned and expressed concern again about the government's response that not providing legal representation would speed up the trial process.

The Committee expressed concern about reservations to article 40 of the Convention and asked the government to explain. The reservation states that a child may not be provided council for minor offences. The government explained



that the child would still have the right to legal assistance if they wished, but the purpose of not providing it automatically was to promote a speedy trial.

The Committee asked what procedural guarantees were given to young people and was concerned about the issue of legal counsel being provided. The Committee also asked if a lawyer could be present during the interrogation. The government of the Netherlands responded that legal assistance is guaranteed to children but that this guarantee does not extend to during the process of police interrogation. However, the interrogation may be videotaped for the defence to view a later time. Regarding case consultation, a meeting with the prosecutor, the child protection board and the police typically takes place. Information is compiled to decide which reaction would be the best. On this same question, the Antilles responded that a minor has the right to assistance from a lawyer right away, but the parents and the lawyer cannot be present during the interrogation. In court, the lawyer and the parents can be present.

In Aruba, there is a juvenile justice meeting once a month between different bodies to discuss cases in the pre-trial phase. The group discusses options for the cases and the best interests of the children in question. The prosecution of juveniles is decided. They look at alternatives and the possibility of diverting the children from the justice system. Children have access to a lawyer and lawyers can talk with the children before the interrogation with the police. Parents are invited to the court hearing.

The Committee also asked if a lawyer could be present during any diversionary processes but this question was not answered. The Antilles responded that when the matter is settled outside of court, no lawyer is present.

The Committee asked the Netherlands to remove its reservations to article 37 c) of the Convention and to provide an explanation for them. The government responded that reservations to article 37 (that children cannot be sentenced to life imprisonment) were in place to allow youth between the ages of 16 and 18 who had committed serious crimes to be sentenced as adults. This happens in only 1% of cases. Otherwise, all other juveniles are sentenced under the juvenile law. The government argued that the judge needed this form of discretion. Under juvenile law, a youth can be sentenced to a maximum of 2 years in prison. If the youth is charged with adults, then the group may be tried together.

The Committee was concerned about the restriction of protection provided to children between the ages of 16 and 18. Although the government says that this is only 1% of children, that could still be 100 children not protected. The Committee wanted to know what criteria were used to determine if children would be tried as adults. The government of the Netherlands and the Antilles both responded that 3 criteria were used to determine if a child should be tried as an adult: 1) the nature of the crime; 2) the circumstances of the case; 3) the personality of the offender. Thus, the government argued that the decision was not at the discretion of the judge or public prosecutor, but rather based on these criteria. If a child is tried as an adult, it is because it has been determined that it he/she could have a detrimental effect on other children. In Aruba, the judge decides upon the same criteria as indicated in Antilles and the Netherlands.



## V) Detention conditions

### a) In general (condition in detention centres):

#### Current Situation / Achievements:

The government said that it would increase its budget for youth care facilities. One of the aims here would be to prevent having to move children from one prison or institution to another.

#### Challenges:

The Committee was concerned that there was an increase in the number of children in closed environments and a number of repeat offenders. The Committee wanted to know if this was a policy problem.

The Committee asked how the government dealt with minors in detention whose age was unknown. They stressed that age verification should happen before detention. The government of the Netherlands responded that they avoid detaining asylum-seeking children whose ages are unknown. If they are detained, this is really a measure of last resort.

The government noted in its report that it had experienced cutbacks in young offenders' institutions which had resulted in bigger group sizes. A pilot of cell-sharing was tried, but it was found that a number of incidents occurred, so it was stopped.

### b) Pre-trial detention:

#### Current Situation/Achievements:

In Aruba, education methods and mechanisms are proposed to prevent or shorten pre-trial detention.

#### Challenges: -

### c) Separation from adults:

#### Current Situation/Achievements:

Children are separated from adults, unless they are tried and sentenced as adults (only applicable to those between 16 and 18 years of age).

#### Challenges:

Referring to another of the government's reservations, the Committee asked the government to clarify why they could not guarantee separation from adults. They recalled that children must be separated from adults and be allowed contact with their families. The Committee urged the government to remove these reservations because they are in a position to do so as a developed country.

The Committee asked if adults and children were detained in the same facilities in the Netherlands Antilles and if there was a problem of drugs in these facilities.



## **VI) Alternative measures:**

### Current Situation/Achievements:

The Netherlands has alternative measures in place. The government stated in its report that its motto on detention is “alternative sanction, unless”. The HALT programme is one such alternative measure, which makes young people aware of their behaviour and gives them the opportunity to repair any damage. HALT sanctions are intended for young people between 12 and 18 who have committed minor offences. They may avoid a criminal record through a referral to the HALT office.

In Aruba, HALT will be incorporated into the new criminal code and it will take the research findings on the study into account.

### Challenges:

The government says that alternatives to detention will continue to be improved. There is still a need for more alternatives to detention and for current options to be expanded. They hope to have a greater capacity for providing alternatives by 2010.

The government is investigating improvements to the HALT programme and trying to understand which crimes the programme is most effective in addressing. The government stated that the HALT programme had not been as effective as envisioned in stopping re-offending or reducing the severity of the crime. The Committee asked what the programme’s future would be and asked why the government had found the programme to be ineffective.

The Committee was concerned that in Netherlands Antilles, residential facilities for children were not being used as a last resort.

The Committee asked how the government ensured that detention was only used as a last resort. The government responded that it always looks for alternatives to detention and that in the case of asylum-seekers, freedom may be restricted but not taken away. They try not to detain these children for more than 14 days.

## **VII) Re-adaptation / reinsertion of children:**

### Current Situation/Achievements:

The government stated that rehabilitation or re-education is the key focus of interventions. In Aruba, sanctioning is always viewed from an educational point of view.

All detention institutions are equipped with educational facilities where training is provided for return to society.

The government recognises that often not just the young offender needs attention, but also his or her family and social network. Pilot projects have been launched involving the use of multi-system therapy and family first therapy. Guidance and supervision are provided by young offenders institutions to facilitate re-entry to society.

The Minister of Justice proposed a number of improvements, including smaller groups, better-trained staff and more psychiatrists. Another consecutive and



compulsory treatment will be introduced for those young offenders who are deemed to still pose a risk to society after the completion of their time in the institution.

Challenges:

The government has focused its attention on repeat offenders. Here the focus is not the seriousness of the crime but the habitual nature of the offences. The government has a policy to prosecute habitual offenders and provide targeting programmes in institutions for 3 to 6 months to prevent the youth from “descending into a life of crime”.

**VIII) Training of professionals:**

Current Situation/Achievements:

The government noted that the judiciary and police are trained in child development and the best interests of the child.

Challenges:

The Committee asked if there was systematic training of professionals about the Convention.

**IX. Other relevant areas:**

Current Situation/Achievements: -

Challenges:

- The Committee indicated the need to gather better statistical data and referred back to its previous recommendation in this regard. The Committee also referred back to its previous recommendation to develop an independent institution to monitor children’s rights. The government responded that a new system for data collection should be in place by 2010 and that a new child rights ombudsman will be instated.
- The Committee expressed concern about the collection of DNA data of minors who are suspected or convicted of an offence. The government of the Netherlands responded that DNA was stored as a balance of rights and obligations. The process relates to the seriousness of the offence and type of crime rather than the age of the offender. The government argued that it is done with the public interest in mind and for help in fact finding in future cases. The government of Aruba stated that there is no hidden motive in storing this DNA information other than to thoroughly investigate the cases. The decision to store information was based on the seriousness of the case.
- The Committee asked about the support provided to children in alternative care and asked if poverty was a reason for children to be brought into alternative care.
- The Committee asked about youth centres for children who show sexual aggression and asked what had been introduced to deal with these situations.



- The Committee asked why very young children could be institutionalised in Aruba. The government responded that these measures are used only when really necessary and no family alternatives are available. This decision is never taken due to poverty; it is due to behavioural issues and circumstances.

## 2.2. TRANSVERSAL PROBLEMS / OBSTACLES:

- Undocumented children: the Committee asked if undocumented children in the Netherlands and the Antilles were admitted to school. The government representatives responded that it was mandatory.
- Asylum-seekers: The Committee asked about housing rights for children of failed asylum-seekers. They expressed concern about article 12 of their legislation which only refers to youth participation rather than child participation. The Committee asked if the child would have the right to be heard in cases of asylum and if this would be alone without their parents.
- The Committee also asked about the processes of return for unaccompanied minors and asylum seekers.
- Regarding children without parental care, the Committee asked if the child was involved in developing his/her own “plan of care” in the institution or home.  
The government of Antilles responded that education is obligatory even for undocumented children as a means of prevention from the justice system.

## 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (regarding Juvenile Justice): (para.78)

- Limit the use of pre-trial detention;
- Ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in the light of General Comment no. 10 on children’s rights in juvenile justice (CRC/C/GC/10);
- Consider reviewing its legislation with the aim to eliminate the possibility of trying children as adults;
- Eliminate the life imprisonment sentence for children;
- Ensure that the deprivation of liberty of juvenile offenders is used only as a measure of last resort and for the shortest appropriate period of time.



#### Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of The Netherlands.
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup> /3<sup>rd</sup> periodic reports of The Netherlands (State reports).
- CIA, the World Fact book, <https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html> (accessed 10 February 2009)

#### 4. DCI perspective/response (Recommendations by DCI sections)

Defence for Children Netherlands agrees with these recommendations. In addition, they ask:

- to remove the reservation under art. 40, thus allowing legal council for minor offences by juveniles too.
- to discontinue the practice of DNA storage in the case of juvenile offenders
- to make greater efforts finding alternatives to detention for juvenile offenders
- to give priority to prevention of juvenile delinquency

#### 5. ANNEX:

##### 5.1 CRC members present

Ms. Aidoo (Country Rapporteur); Ms. Al-Thani; Ms. Aluoch; Mr. Citarella; Mr. Filali; Ms. Herczog; Ms. Khattab; Mr. Kotrane; Mr. Krappmann; Ms. Lee; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith (Co-Rapporteur); Ms. Vucjovic-Sahovic; Mr. Zermatten.

##### 5.2 Composition of country delegation

Mr. André Rouvoet - Minister of Youth and Family and Deputy Prime Minister of the Netherlands (Head of the Delegation)

Ms Omayra Leeflang - Minister of Education, Culture, Youth, and Sports, Netherlands Antilles (Head of Delegation)

Ms. Angelique Peterson - Senior Legal Advisor, Department of Foreign Affairs, Aruba (Head of Delegation)



## INFORMATION NOTE

### 2<sup>nd</sup> periodic report of Chad during the 50<sup>th</sup> session of the United Nations Committee on the Rights of the Child

#### Summary of juvenile justice related issues

Ratification of the Convention on the Rights of the Child by Chad: 2 October 1990

Previous report presented in: May 1999 (21<sup>st</sup> session of the CRC).

## 1. COUNTRY PROFILE

Situated in the northern part of Africa, Chad counted approximately 10 million inhabitants in 2008. Despite important natural resources, this country remains one of the poorest in the world. This is mainly due to internal tensions (constant threat of political coups) and the instability of surrounding countries such as Sudan, where the conflict in Darfur has had spillover effects on Chad.

The country has to deal with over 250 000 refugees, many of who are children coming from Darfur. Some efforts have been made for their protection and safety especially with the support of the United Nations.

Chad seems to be overwhelmed by the situation in the country and the report transmitted to the Committee on the Rights of the Child acknowledges numerous situations in contradiction with the human rights conventions ratified by the country.

## 2. JUVENILE JUSTICE KEY ISSUES IN CHAD

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

##### Current Situation/Achievements:

A new Penal Code was adopted in 2003.

##### Challenges:

Five years after its adoption, the Penal Code is not enforced. The members of the delegation also mentioned the project to create a new code for the protection of children.

#### II) Minimum age of criminal responsibility:

##### Current Situation/Achievements:

The Committee did not raise this issue. Article 254 (page 49) of the report



mentions 13 years old as the minimum age of criminal responsibility.

Challenges: -

### III) Number of children and length of detention:

Current Situation/Achievements:

According to the report, there were 74 children in detention at the time the national report was written. The maximum length of detention is 10 years which the Committee found to be too long.

Challenges:

Chad has to work on reducing the maximum length of detention.

### IV) Trial conditions:

Current Situation/Achievements:

Chad explained that Act No 04/PR/98 established the creation of children divisions in the courts of first instance. The Committee asked if since 1999 this had also been established in the courts of appeal. A member of the Committee explained that it was in the law so it must exist. However, the Minister of Chad acknowledged the fact that this is not yet the case and that this needs to be implemented.

Challenges:

Chad has to give children the opportunity to appeal in front of a court dedicated to children in conflict with the law.

### V) Detention conditions

#### a) In general (condition in detention centres):

Current Situation/Achievements:

Detention centres are overcrowded.

Challenges: -

#### b) Pre-trial detention:

Current Situation/Achievements:

According to the national report, children can be held in pre-trial detention for a maximum of 10 hours. The Committee was wondering if the maximum length of 10 hours was controlled by the prosecutor or another officer.

The representatives of Chad replied that the prosecutor has that power and uses it. He can visit a police station several times a day and there are effectively many controls.

Challenges:

The government of Chad should improve its control over pre-trial detention.



**c) Separation from adults:**

Current Situation/Achievements:

The National Report acknowledges the fact that children are not separated from adults despite Act No07/PR/99. According to the Minister of Social Action and Family, however, the 2009 budget dedicates money to this problem.

Challenges: -

**VI) Alternative measures:**

Current Situation/Achievements: -

Challenges: -

**VII) Re-adaptation / reinsertion of children:**

Current Situation/Achievements: -

Challenges: -

**VIII) Training of professionals:**

Current Situation/Achievements:

There have been trainings for magistrates in 2006 (39 magistrates were trained) and 2007 (50). Sometimes police officers have been included, but not too often.

Challenges:

Training of professionals has to be improved.

**IX. Other relevant areas:**

Current Situation/Achievements: -

Challenges: -

**2.2. TRANSVERSAL PROBLEMS / OBSTACLES:**

Chad is facing an ongoing war and generalized violence. It is one of the poorest countries in the world and has to take care of hundreds of thousands of refugees from Sudan and internally displaced people suffering from hunger and diseases.

**3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE (regarding Juvenile Justice):**

(para.86)

- Take all necessary measures, including strengthening the policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible.
- Take all necessary measures to ensure that when detention is carried out, it



is done so in compliance with the law and respects the rights of the child as set out under the Convention, that the ten-hour time limit for custody and the general conditions of pre-trial detention are respected and that children are held separately from adults both in pre-trial detention and after being sentenced.

- Take all necessary measures to ensure that children are not ill-treated in detention, that conditions in detention facilities are not contrary to the child's development and meet international minimum standards, and that cases involving juveniles are brought to trial as quickly as possible.
- Take the necessary steps to ensure that persons working with children in the justice system, juvenile judges, etc. receive appropriate training.
- Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

#### Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of Chad.
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup>/3<sup>rd</sup> periodic reports of Chad (State reports).

## 4. ANNEX:

### 4.1 CRC members present

Ms. Aidoo (Country Rapporteur); Ms. Al-Thani; Ms. Aluoch; Mr. Citarella; Mr. Filali; Ms. Herczog; Ms. Khattab; Mr. Kotrane; Mr. Krappmann; Ms. Lee; Ms. Ortiz; Mr. Parfitt; Mr. Pollar; Mr. Puras; Mr. Siddiqui; Ms. Smith (Co-Rapporteur); Ms. Vucjovic-Sahovic; Mr. Zermatten.

### 4.2 Composition of country delegation

- NGARBATINA ODJIMBEYE SOUAKTE (Minister of Social Action and Family)
- DJONGA ARRAFI (General Inspector from the Human Rights' Ministry)
- DJIDINGAR BASSA (General Director of basic teaching)
- MADNANGAR MBAISSANBE (Deputy Director of Child Protection)
- BLAGUE ADOUM LAURENT (Childhood Director, Ministry of Social Action and Family)
- HINFIENNE FRANCOIS PATEZIARI (Focal Point Child Protection)
- NOUHOU AHMADOU (Coordinator of the Health, Nutrition Programme at the Ministry of Public Health)