



## **Juvenile Justice Challenges: Strategies to address Violence against Children in Contact with the Justice System**

**March 2009**

*Report of a side-event of the Interagency Panel on Juvenile Justice organized in parallel to the 10<sup>th</sup> session of the Human Rights Council, Tuesday 10<sup>th</sup> March 2009, Palais des Nations, Geneva, Switzerland*

The Interagency Panel on Juvenile Justice (IPJJ) is a group mandated by United Nations Economic and Social Council (ECOSOC) resolution 1997/30 to coordinate “technical advice and assistance in juvenile justice”.<sup>1</sup> The Panel’s main objective is to facilitate and enhance country and global level coordination in juvenile justice in accordance with the Convention on the Rights of the Child and other relevant international norms and standards. The Panel also aspires to increase its role as a platform for exchange of information and expertise on juvenile justice at the national, regional and international level.<sup>2</sup>

This is a report of a Panel side-event on “Juvenile Justice Challenges: Strategies to address Violence against Children in Contact with the Justice System” organized in parallel to the 10<sup>th</sup> session of the Human Rights Council (2-27 March 2009) by the Panel Secretariat in collaboration with six Panel members; the Office of the United Nations High Commissioner for Human Rights (OHCHR); the United Nations Children’s Fund (UNICEF); Defence for Children International (DCI); Penal Reform International (PRI); Save the Children UK and Terre des hommes Foundation.

The side-event aimed to provide government representatives, advocates and other actors participating in the Human Rights Council with concrete examples of strategies adopted by members of the Panel to address situations of violence experienced by children in contact with the justice system, whether these children are in conflict with the law or child victims and witnesses of crimes. It is part of a series of events organized by the Panel<sup>3</sup> as follow-up to the recommendations of the Independent

---

<sup>1</sup> Since July 2008, the Panel is composed of fourteen United Nations bodies and non-governmental organisations: the Committee on the Rights of the Child, the United Nations Department of Peacekeeping Operations (DPKO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), the United Nations Interregional Crime and Justice Institute (UNICRI), Defence for Children International (DCI), the International Association of Youth and Family Judges and Magistrates (IAYFJM), the International Juvenile Justice Observatory (IJJO), Penal Reform International (PRI), Save the Children UK, Terre des hommes – child relief and the World Organization Against Torture (OMCT).

<sup>2</sup> For further information, please see the Panel website: <http://www.juvenilejusticepanel.org/>

<sup>3</sup> The Panel organized a side-event on “Strategies to address Violence against Children in Conflict with the Law” at the 17<sup>th</sup> Session of the Commission on Crime Prevention and Criminal Justice, 17 April 2008, Vienna, Austria. [http://www.juvenilejusticepanel.org/resources/?act=res&cat=&nod=\\_root\\_&id=IPJJSideeventViolenceCICLApril08&start=41](http://www.juvenilejusticepanel.org/resources/?act=res&cat=&nod=_root_&id=IPJJSideeventViolenceCICLApril08&start=41)  
The Panel also organized a workshop on “Best practices in diversion and alternatives to deprivation of liberty” as part of the Defence for Children International (DCI) international conference “Ending Violence against Children in Juvenile Justice Systems: From Words to Action”, 2 October 2008, Brussels, Belgium.

Expert for the United Nation Secretary General’s Study on Violence against Children (UN Study on Violence against Children).<sup>4</sup>

This side-event was chaired by His Excellency Ambassador Christian Strohal, Permanent Representative of Austria to the United Nations Office and Specialized Institutions in Geneva.

The event was attended by over seventy participants, including representatives of governments, civil society and United Nations agencies.

This report provides a summary of the presentations given by the five panellists. It is followed by a brief outline of the questions from the floor, answers provided by the panellists and concluding remarks.

**1. Examples of Panel member strategies to address violence against children in contact with justice systems, including children in conflict with the law and child victims and witnesses of crimes**

- *Ugo Cedrangolo, Human Rights Officer, Office of the United Nations High Commissioner for Human Rights (OHCHR)*

Mr. Cedrangolo provided an overview of the issues, legal norms and standards. He began by explaining that violence can affect all children who come into contact with the justice system. Violence is defined in the UN Study on Violence against Children as “*all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*”.<sup>5</sup> This violence may affect both “children in conflict with the law” and “child victims and witnesses of crimes”. He explained that “children in conflict with the law” refers to children<sup>6</sup> alleged as, accused of, or recognized as having infringed the penal law. “Child victims and witnesses of crimes” are defined as children and adolescents who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders. Although there is a difference in terms of legal status between these two categories of children, he stressed that it is important to note that child-friendly and child sensitive procedures apply to all children, without discrimination.

He then went on to analyse three aspects of the violence inflicted against children in contact with the justice system: violence related to the deprivation of liberty of children; violence linked to their treatment and conditions while in detention; and violence experienced by child victims and/or witnesses of crime.

a) Violence related to the deprivation of liberty:

He explained that violence against children occurs frequently at the moment of their arrest/ apprehension or during police custody. This period of time is considered by many human rights monitoring bodies, such as the Committee Against Torture (CAT)

---

<sup>4</sup> United Nations General Assembly, *Report of the independent expert for the United Nations study on violence against children* (A/61/299), 29 August 2006.

<sup>5</sup> In accordance with the prohibition in article 19, Convention on the Rights of the Child (CRC)

<sup>6</sup> The word “child” is defined as every human being below the age of eighteen, unless, under the law applicable to the child, majority is attained earlier. See article 1, CRC.

and the Committee on the Prevention of Torture of the Council of Europe (CPT), as a moment where there is an increased risk of being subjected to violence, including ill-treatment or torture. For these reasons, he stressed that it is important that international standards concerning deprivation of liberty are fully incorporated into national law and respected in practice as a way to prevent such violence from happening.

He then went on to explain the relevant international standards relating to children. Article 37 (b) of the Convention on the Rights of the Child (CRC) contains the leading principles and states that deprivation of liberty must be: lawful and not arbitrary; used only as a measure of last resort and for the shortest appropriate period of time. Furthermore, article 37 (d) CRC establishes that every child deprived of his/her liberty has the right to: prompt access to legal and other appropriate assistance; challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority; and to a prompt decision on any such action. The Committee on the Rights of the Child (the Committee) clarified the meaning of a “prompt decision” in its General Comment No. 10 on “Children’s rights in juvenile justice” (2007). Such a decision must be rendered as soon as possible, e.g. within or no later than two weeks after the challenge is made. He explained that the Committee has also recommended that every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (or the continuation of) this deprivation of liberty within 24 hours.

#### *Pre-trial detention*

Mr. Cedrangolo explained that another major concern of the Committee is the issue of pre-trial detention. Many children are held in pre-trial detention for months or even years, contrary to article 37 (b) CRC. He explained that the duration of pre-trial detention should be limited by law; the conditions should be clearly delimited and subject to regular review.

#### *Vulnerable groups and status offences*

He also emphasized the need to respect the principle of non-discrimination in the justice system. In this respect, particular attention must be paid to *de facto* discrimination affecting vulnerable groups such as: street children; children belonging to racial, ethnic, religious or linguistic minorities; children with mental disabilities and indigenous children. He explained that the Committee is increasingly witnessing how migrant children, especially unaccompanied minors, are often deprived of their liberty and subjected to human rights violations. Also, children are often subjects of “status offences”, which are acts that would not be considered offences if they were committed by an adult, such as vagrancy, truancy, or being a runaway. The Committee has recommended that State parties abolish status offences in accordance with article 56 of the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

- b) Violence related to the treatment and conditions of detention:

### *Treatment of children in detention*

He explained that article 37 (a) CRC reaffirms the internationally accepted standard that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age, regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.<sup>7</sup> Furthermore, the same provision also establishes that no child who was under the age of 18 at the time he/she committed an offence should be sentenced to life without the possibility of release or parole, being that this is incompatible with the aims of juvenile justice contained in article 40 (1) CRC.

He also stressed that the Committee emphasized in General Comment No. 10 that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child. A strictly punitive approach, including corporal punishment and solitary confinement, is therefore not in accordance with the leading principles spelled out in article 37 and 40 (1) of CRC and in rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

### *Conditions of detention*

He explained that according to article 37 (c) CRC every child deprived of liberty shall be treated with humanity and dignity. This includes separation from adults, as there is abundant evidence that children in adult prisons are more exposed to the risk of physical or sexual violence, abuse and self-harm. He stressed that article 37 (c) of CRC that permits an exception if “it is considered in the child’s best interests” must be interpreted narrowly.

He also explained that the Committee, in General Comment No. 10, identified further principles relating to the conditions of deprivation of liberty for children, including, amongst others: a physical environment and accommodation keeping with rehabilitative aims; access to education suitable to his/her needs; access to medical-care; restraint or force can only be used when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted, it cannot be a form of punishment; disciplinary measures must uphold the dignity of the child, corporal punishment, solitary confinement and other measures contrary to article 37 are strictly forbidden; every child has a right to access complaint mechanisms; and independent inspectors should be empowered to inspect the facilities.

#### c) Violence suffered by child victims and witnesses of crime

Mr. Cedrangolo explained that child victims and witnesses of crimes may also experience violence when they enter into contact with the justice system. Relevant international standards for the protection of these children throughout all the phases of the criminal justice process are contained in the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime<sup>8</sup>; he also mentioned important provisions in this respect contained in the Optional Protocol to the CRC on

---

<sup>7</sup> See, for example, article 6 (5) of the International Covenant on Civil and Political Rights (ICCPR).

<sup>8</sup> See the United Nations Economic and Social Council (ECOSOC) Resolution 2005/20.

the sale of children, child prostitution and child pornography (OPSC)<sup>9</sup> and emphasized that there is a specific article contained in the Statute of the International Criminal Court aimed at protecting victims and witnesses and regulating their participation in the proceeding before the ICC<sup>10</sup>. With reference to the OPSC, he explained that States parties are required, taking in to account the principles of child participation and the best interests of the child, to take measures that recognize both the special vulnerability of children who have been exposed to crimes and their special needs as victims/witnesses. Protective measures may include child-sensitive procedures such as: interview rooms designed for children; ensuring that trials take place as soon as possible; seeking to avoid direct contact between child victims and witnesses and alleged perpetrators; ensuring protection of the child's privacy and identity; and protection from intimidation and retaliation.

Finally, he emphasized the need to ensure that child victims and witnesses of crimes, such as child victims of trafficking or prostitution, must be treated as victims and not criminalized or penalized. He stressed the need to ensure that measures should be also taken to avoid stigmatisation and social marginalisation.

- *Bernard Boëton, Child Rights, Terre des hommes Foundation*

Mr. Boëton focused on the issue of prevention of violence, including mistreatment and sexual abuse, in institutions dealing with children that have come into contact with the justice system. Terre des hommes Foundation has carried out trainings on the prevention of violence against children in institutions in Albania, Bangladesh and Romania. Mr. Boëton emphasized that no institution is exempt from problems of violence and that it is necessary for institutions to prevent violence by implementing a comprehensive child protection policy. In a juvenile justice system the institutions concerned may include, amongst others: the police; institutions where children are deprived of their liberty, including pre-trial detention; and institutions that carry out alternatives to deprivation of liberty, including educational, rehabilitation and reintegration measures.

He explained that child protection policies should have a three-fold aim: to protect children from harm; to prevent staff from finding themselves in situations of violence or mistreatment; and to prevent situations of violence from occurring. They should also address the following issues: recruitment procedures; management systems; support and training; and complaint mechanisms. In order to prevent the recruitment of staff that may be at risk of harming children, appropriate child protection recruitment procedures must be developed and implemented. He stressed the need for managers to develop a culture within the institution whereby staff, other actors and children can raise concerns relating to violence and be confident that they will be addressed. He also emphasized the need to ensure adequate training of staff in the implementation of the child protection policy or code of conduct. He also underlined the need for the creation of procedures, including meetings and debriefings, to ensure the supervision of the implementation of the child protection policy. Finally, he

---

<sup>9</sup> See article 8 of the Optional Protocol to the CRC on the Sale of Children.

<sup>10</sup> See art. 68 of the Statute of the International Criminal Court (ICC).

emphasized the need to develop complaint mechanisms to ensure that the child and/or any person coming into contact with the child can report concerns relating to the welfare of the child.

- *Jean-Claude Legrand, Senior Regional Advisor Child Protection, UNICEF Regional Office for the CEE/CIS*

Mr. Legrand provided an overview of UNICEF's approach to juvenile justice system reform in Eastern Europe and Central Asia. He explained that reporting to the Committee on the Rights of the Child revealed that there were alarming conditions and rates of deprivation of liberty for children in the region and the need for comprehensive reform of juvenile justice systems in line with international standards. UNICEF's recent analysis of key juvenile justice indicators in the region, published in the report "Lost in the Justice System" in 2008<sup>11</sup>, highlighted the main issues to be addressed: there is a grave lack of data on juvenile justice; the period between arrest and conviction is a "twilight zone" with information lacking and children's rights ignored; deprivation of liberty is still the norm; the placement of children in "protective custody" is a failure of the care system; while awareness is growing of the need for prevention and rehabilitation, action is limited; the approach is to give children the same types of sentences as adults, but shorter, without taking into account the best interests of the child; and child offenders below the minimum age of criminal responsibility (MACR) are generally not provided with adequate responses.

Despite these common problems, he explained that there was a window of opportunity for juvenile justice reform in the region. This is exemplified by the fact that legal reform is underway in most countries of the region; there is some improvement in the conditions of deprivation of liberty; a number of pilot projects have been developed to encourage diversion, alternatives to deprivation of liberty and restorative justice; and the specialisation of professionals is under way. UNICEF has chosen to support the development of comprehensive juvenile justice systems in 23 countries in the region. This has included sharing information on good practices and lessons learned in juvenile justice reform, such as experiences of victim-offender mediation in Serbia, specialisation of the police force in Turkey, alternatives to deprivation of liberty in Albania and restorative justice programmes based on local traditions in Tajikistan.

He explained that comprehensive juvenile justice system reform should address: the police and prosecutors responsible for investigating and prosecuting offences committed by children; the courts and administrative bodies that deal with children in conflict with the law; the residential institutions for deprivation of liberty and rehabilitation; the development of diversion, alternatives to deprivation of liberty and restorative justice measures; the authorities that assist offenders in rehabilitation and reintegration into the community. It should also address legal frameworks, policies and budgets for children; strengthen systems and ensure decentralized planning; include sufficient monitoring and quality assurances of services for children. Finally,

---

<sup>11</sup> UNICEF Regional Office for the CEE/CIS, "Lost in the Justice System. Children in conflict with the law in Eastern Europe and Central Asia", May 2008 (revised edition).  
<http://www.juvenilejusticepanel.org/resources/?act=res&cat=&nod=root &id=UNICEFCEECISLJusticeSystem08&start=1>



reform plans should be based on a solid situational analysis and involve a national coordination mechanism including all key stakeholders.

UNICEF Regional Office for the CEE/CIS, in collaboration with governments, experts and NGO partners in the region has identified key priorities and outputs for the region: due process and tailored non-custodial responses for children in conflict with the law below the minimum age of criminal responsibility (MACR); strengthening of diversion law practice and procedures; scaling and diversification of pilot programmes of alternatives to deprivation of liberty; budgeting for juvenile justice reform; and building wider support for juvenile justice reform.

- *Rait Kuuse, Regional Director, PRI Regional Office for the Caucasus*

Mr. Kuuse spoke about rehabilitation and reintegration programmes as a way to prevent re-offending. He began by explaining that one of the aims of Penal Reform International (PRI) in the South Caucasus is to improve the treatment of juveniles by the criminal justice system, in compliance with the Convention on the Rights of the Child (CRC) and other international human rights norms and standards. In 2007, PRI undertook an in-depth analysis of the situation of juvenile justice in Georgia and concluded that: children were often treated as adults by the criminal justice system; children were deprived of their liberty for non-serious offences; children experienced long terms of incarceration, including in pre-trial detention; children deprived of liberty lacked access to education, psycho-social support and other activities; lack of social workers to deal with children in conflict with the law and a weak probation system.

After undertaking this analysis, PRI, in collaboration with UNICEF, the Embassy of the Kingdom of the Netherlands, the Children's Legal Centre, UK, the Ministry of Justice of Georgia, the National Probation Service and local NGOs, established a pilot rehabilitative schemes for juvenile offenders. The scheme, running for the period April 2008 – May 2010, aims to: strengthen conditional sentences through an effective community rehabilitation project; reduce custodial sentences; ensure collaboration between State and non-state actors in juvenile justice reform; demonstrate the benefits of rehabilitating children within their own communities. Pilot projects were established in Batumi, Rustavi and Kuitaisi. A Local Coordination Council was established in each area to evaluate and monitor the progress of the project. These councils bring together judges, prosecutors, local authorities and schools. Social rehabilitation centres were established, comprising teams of social workers and trained staff. Referrals to the centres are made by the Probation Service.

By January 2009, 31 children on probation have had access to these services, including psychological support, support in reintegrating school, vocational training, legal support, access to housing, access to health services and extracurricular activities. The creation of Local Coordination Councils has strengthened coordination between juvenile justice actors. The project has also helped influence developments in juvenile justice reform. However, challenges faced so far have included limited amount of beneficiaries and resistance in extending the system to other groups of

children. Moreover, as social work is in its infancy in Georgia, it has been difficult to find staff with adequate skills. PRI is using preliminary lessons learned from this pilot scheme to replicate the project throughout Georgia and widen the scope to other target groups of children. Emphasis will be put on training stakeholders in diversion and alternative measures to deprivation of liberty.

- *Nikhil Roy, Head of Rights and Economic Justice, Save the Children UK*

Mr. Roy spoke about advocacy strategies to address violence against children in contact with the justice system. He began by providing examples of testimonies of children that have experienced violence at the hands of the police in the streets, in custody or in institutions where they were deprived of liberty.

He then went on to provide examples of recent studies, campaigns and projects aimed at putting an end to violence against children in contact with the justice system. In Bangladesh, he explained that recent studies by both Save the Children UK and ActionAid Bangladesh have revealed the scale of the problem at different levels, from violence on the streets through to violence in pre-trial detention and in prisons where children are deprived of liberty with adults. In Afghanistan, a study entitled “Justice for Children: The situation of children in conflict with the law in Afghanistan” published by the Afghanistan independent Human Rights Commission and supported by UNICEF revealed that 48% of children in contact with the justice system reported being beaten and 8% reported verbal abuse. 55% of boys and 11% of girls reported being beaten during arrest. In the United Kingdom, the Child Rights Alliance of England (CRAE) and other NGOs are campaigning to stop the use of restraints on children in secure training centres (STCs). In China, Save the Children UK is working on prevention of children coming into conflict with the law and has begun a community-based multi-departmental youth justice project in the Panlong District of the Yunnan Province.

He then provided a list of ten possible strategies to end violence against children in justice systems:

1. Evidence gathering
2. Alliance building
3. Building the capacity of all relevant stakeholders
4. Working with the government to end violence in the justice system
5. Encouraging the media to report on the issue
6. Using international human rights instruments to address the issues: bringing evidence, briefing relevant human rights bodies, using the Concluding Observations in advocacy work, working with the different UN agencies
7. Influencing donors
8. Using the judiciary through legal challenges
9. Lobbying the legislators, including Parliament, etc.
10. Promoting good practice through documentation, information exchange, visits, etc.

Finally, he explained that “naming and shaming” and league tables can have an impact on advocacy. For example, a UNICEF study putting the United Kingdom at the bottom of the league table of European Union Member States’ implementation of



children's rights has proven to be an invaluable advocacy tool at the national level. He encouraged the publication of further studies and reports on violence against children in justice systems and encouraged advocates and other actors to use them to support reform efforts.

## **2. Questions and Answers (Q & A)**

A participant wished to know more about rates of offending in the CEE/CIS region outlined in UNICEF's report "Lost in the Justice System". Mr. Legrand, UNICEF Regional Office for CEE/CIS, replied that in most countries in the region rates of offending have decreased without there necessarily being an impact on the rate of imprisonment. The main problem remains that with insufficient data on pre-trial detention it is difficult to make assertions regarding juvenile justice statistics.

Another question related to the draft United Nations Guidelines on Children in Alternative Care and the fact that these guidelines explicitly exclude children in conflict with the law. Mr. Legrand said that it was important to be careful about the issue of institutional responses to children in conflict with the law and that the priority was to identify alternatives.

Another participant raised concerns regarding the fact that a number of countries have recently reduced the minimum age of criminal responsibility (MACR) and the age at which children can be deprived of liberty. Mr. Boëton, Terre des hommes Foundation, stressed that MACR and the age of deprivation of liberty are two separate things. The Committee on the Rights of the Child in General Comment No. 10 set the MACR at 12 years and expressly stated that States with a higher age limit should not reduce the age. Even if children below the MACR that come into conflict with the law may not be subjected to the criminal justice system, they should still benefit from all the relevant safeguards and child-sensitive procedures, in accordance with the CRC and other international norms and standards.

A final question related to the death penalty and life imprisonment without parole. Mr. Boëton said that some of the NGOs that are members of the Panel had participated in a press conference denouncing the execution of minors in the Islamic Republic of Iran in July 2008.

## **3. Concluding remarks**

- *Veronica Birga, Human Rights Officer, OHCHR*

Ms. Birga concluding the discussions by stating that many of the panellists confirmed the findings of the UN Study on Violence against Children relating to the nature and extent of the problem, the reasons why children come in conflict with the law - which are often related to poverty and lack of adequate care and protection systems - and the sources of violence in police custody, during deprivation of liberty and in other institutions. She also said that there was general agreement on the need to promote

respect for the CRC and other relevant international norms and standards relevant to the prevention of violence against children in contact with the justice system.

She stressed that a child-focused juvenile justice system, with rehabilitation and reintegration as paramount aims, is particularly important. She also underlined that justice systems need to be sensitive to the needs of children and their families. Laws and policies should also prevent institutionalisation, by applying the principle of last resort and by prioritising alternatives, such as diversion programmes. She also said that panellists had emphasized the need to ensure protection from violence in institutions through child protection policies and measures such as training, criminal records checks for staff, adequate monitoring and reporting, and ensuring accountability. Finally, she stressed the importance of raising awareness, and changing societal attitudes by combating negative stereotypes of certain groups of children as an essential step to end violence.

She explained that the Interagency Panel on Juvenile Justice and its member in their different capacities would continue to work on all of these issues. She also said that the Panel was looking forward to working closely with the soon to be appointed Special Representative of the Secretary General on Violence against Children to promote follow-up to the recommendations of the Study.

*Report written by Davinia Ovet Bondi, Secretariat Coordinator,  
Interagency Panel on Juvenile Justice (IPJJ)  
March 2009*