

53rd session of the UN Committee on the Rights of the Child

Information Notes on Juvenile Justice related issues

Cameroon (English)

Ecuador (español, English)

Israel (English)

Paraguay (español, English)

Defence for Children International
February 2010





DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI
DEFENSE DES ENFANTS INTERNATIONALE DEI
DEFENCE FOR CHILDREN INTERNATIONAL DCI

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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 must 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 53rd session was held in Geneva from 11 to 29 January 2010. 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 by each of the following State Parties: **Burkina Faso, Cameroon, Ecuador, El Salvador, Estonia, Liechtenstein, Mongolia, Norway, Paraguay, Sierra Leone and Tajikistan.**

The International Secretariat of Defence for Children International attended the reviews for Cameroon, Ecuador and Paraguay, and compiled the report for Israel as well, as these are all countries in which DCI has a national section or an associated member.

Defence for Children International is pleased to present the following information notes on issues concerning juvenile justice in **Cameroon, Ecuador, Israel and Paraguay.** These notes are intended to provide the reader with concise, relevant information on the state of juvenile justice in the countries under review.

Geneva, February 2010

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INFORMATION NOTE

2nd periodic report of Cameroon during the 53rd 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 Cameroon: 11
January 1993

Previous report presented in: October 2001 (28th session of the CRC).

1. COUNTRY PROFILE

(Source: State Report)

Referred to by many as “Africa in miniature”, Cameroon is home to a wide diversity of environments and ethnicities. The country is made up of 230 tribes which are subdivided into four sociocultural groups: the Bantu, the Bantoid (or semi-Bantu), the Sudanese and the Pygmies. Forty percent of the population is younger than 15 years old.

Agriculture and husbandry account for more than 21 percent of Cameroon’s GDP and employ 73 per cent of its working population. The industrial sector accounts for a further 34 percent of the GDP and employs 6.3 percent of the population. Unemployment, especially among Cameroon’s younger inhabitants, is high, fluctuating between 17 and 25 percent of the total population and reaching 33 percent in cities. According to the government’s Poverty Reduction Strategy Paper, 4 out of every 10 Cameroonians are living under the poverty line, earning less than \$1 US per day. There are an estimated 15,000 to 20,000 children living or working on the streets in the country’s largest cities.

The State report covers two periods, from 1996 to 2000 and from 2001 to 2005. During this decade the government undertook a major self-reorganization which included several measures affecting to some extent the administration of juvenile justice. Three examples are: Act No. 2005/007 of 27 July 2005 (enacted on 1 January 2007), which established a new Code of Criminal Procedure; Decree No. 2004/320 of 8 December 2004, which set up several ministerial departments responsible for the promotion of the rights of the child; and Circular No. 10/B1 of 13 May 2002 on violence and vandalism in schools.

2. JUVENILE JUSTICE KEY ISSUES IN Cameroon

2.1. ISSUE BY ISSUE:

I) Legislation:

• Current Situation/Achievements:

Recent years have seen many large-scale changes in the legislation governing the Cameroonian justice system in general and its administration of juvenile justice in particular. In 2004 the state undertook a restructuring of its government which included placing the protection and promotion of child rights under the auspices of

nine government ministries. In 2005 the Ministry of Justice took over the administration of the state's prison system as well as a partial share in the administration of human rights. Cameroon's new Code of Criminal Procedure includes several points aimed at improving the administration of juvenile justice, taking into account international standards. The State party expressed that its overriding aim with regards to juvenile justice is reeducation and rehabilitation, with imprisonment as a last resort.

• **Challenges:**

- The Committee expressed concern that new regulations targeting violence and vandalism in schools appear to be more focussed on punishing the youthful perpetrators than they are on addressing the underlying causes of the problems.
- Ms. Mbock, head of the state delegation, noted that there exists an issue of reconciling customary law with civil law, and that the participation of "leaders of opinion" is fundamental. She expressed regret that the State had thus far not been completely successful in this endeavour.

II) Minimum age of criminal responsibility:

• **Current Situation:**

The State party reported that its age of criminal responsibility is 18 years, but this statement is contradicted by actual practice. Article 80 of the Criminal Code affords special treatment to children between the ages of 10 and 18 in the justice system, but children between the ages of 10 and 14 can be put on trial and they may be subject to « special measures of protection » if found guilty. These measures include placement in the custody of parents or guardians, probation, or placement in a care facility or other institution. Between the ages of 14 and 18, children found guilty in the justice system are given alternative measures to detention, such as placement in protective custody. In the case of misdemeanours, the judge is asked to reprimand and issue a warning, draw attention to what was done and ask for a change in behaviour.

• **Challenges:** The Committee noted that the age of criminal responsibility in Cameroon at the moment is in fact 10 years old, not 18. Concern was expressed regarding this matter, and the State party was asked whether there will be plans to increase it.

III) Number of children and length of detention:

• **Current Situation:** The Prison Administration Directorate notes that 1,200 minors were being held in State prisons as of 2009.

Detention of minors is seen as an exceptional measure in that it is only established for the most serious crimes, for example, murder. Section 221 of the Criminal Code refers to children and limits their provisional detention to 6 months. This can be extended by another 6 to 12 months depending on the particularities of a case.

• **Challenges:** *None discussed*

IV) Trial conditions:

- **Current Situation/Achievements:** Cameroon's court of first instance has jurisdiction over cases involving minors without accomplices. The court sits as a bench, with two non-presiding judges sitting alongside the presiding judge. The non-presiding judges are selected based on their interest and expertise in child-related issues; they are permitted to assist the presiding judge in the proceedings, and to vote on penalties and other measures. Minors are appointed counsel, and child rights advocates are allowed to attend the court proceedings, though public access is restricted. Proceedings must also be videotaped, and decisions made in proceedings that are not recorded are voided.

- **Challenges:** Currently there is no government body specializing wholly in juvenile justice; instead, there is "functional specialization" within its system, Ms. Mbock noted. The Committee, while recognising the progress made, expressed concern over the lack of a separate justice system for juveniles.

V) Detention conditions

a) In general (condition in detention centres):

- **Current Situation/Achievements:** *None discussed*

- **Challenges:** *None discussed*

b) Pre-trial detention:

- **Current Situation/Achievements:** The Criminal Code states that a child between the ages of 12 and 14 may be placed in pretrial detention only in cases of violent crime leading to death (e.g., murder, manslaughter). Deprivation of liberty is viewed as a last resort; preference is given to placement with parents or guardians, or other custody arrangements.

Many children face a long pretrial waiting period, in some cases in detention facilities. To remedy this, the government has taken steps to recruit 540 judges and to provide training to other individuals in the juvenile justice system, including police and social workers. The Committee recognised the efforts made and wondered how much of the initiatives were operational.

- **Challenges:** *None discussed*

c) Separation from adults:

- **Current Situation/Achievements:** The government is making efforts to separate minors from adults and establish new facilities or convert facilities within the program. New facilities for juveniles are being built in Yaoundé, Douala and Bafoussam.

- **Challenges:** The Committee expressed considerable concerns over the separation of minors in detention facilities. In the new prison in Douala, there is currently no section for young people. In 2009 there was a decree for detention centres for minors; thus there are efforts underway but the Committee wondered what has been achieved already as there are not enough judges and centres for the children currently in the system.

VI) Alternative measures:

- **Current Situation/Achievements:** The Criminal Code gives priority to alternative measures, such as protective custody in the family home.
- **Challenges:** *None discussed*

VII) Re-adaptation / reinsertion of children:

- **Current Situation/Achievements:** Plans are underway to convert the Bétamba detention centre into a rehabilitation centre. With the forthcoming reeducation and rehabilitation centre, the main objective will be to facilitate reeducation and reintegration within a non-prison environment.
- **Challenges:** *None discussed*

VIII) Training of professionals:

- **Current Situation/Achievements:** In a joint program with UNICEF, Cameroon is putting emphasis on special training in juvenile justice issues for justice system officials. In 2009, 52 judges were trained in juvenile justice, in addition to 8 social workers, 8 judicial police officers and several prison officers.
- **Challenges:** *None discussed*

IX. Other relevant areas:

- **Current Situation/Achievements:** *None discussed*
- **Challenges:** *None discussed*

2.2. TRANSVERSAL PROBLEMS / OBSTACLES:

None discussed

3. MAIN CONCLUSIONS AND RECOMMANDATIONS BY THE COMMITTEE:

The Right to Be Heard

The Committee expressed its regret over the paucity of information provided by the State party on child participation in judicial and administrative proceedings. It therefore recommended that the State party:

- (a) In accordance with Article 12 of the CRC, strengthen efforts to guarantee the right of the child to be heard in judicial and administrative proceedings affecting the child;
- (b) Take into account General Comment No. 12 on the right of the child to be heard; and
- (c) Encourage child participation in judicial and administrative proceedings.

Sexual exploitation and abuse

The Committee recommended that the State party take appropriate measures to ensure that child victims of sexual exploitation are not criminalised or penalised.

Administration of Juvenile Justice

The Committee welcomes the State Party's Penal Procedure Code, put into force in 2007, as well as its February 2009 Decree calling for the establishment in Douala of (1) an alternative detention centre for minors and (2) the completion of the minors' quarters at the New Bell Prison.

Nevertheless, the Committee expressed grave concern that:

- (a) Children and adults are not separated in prisons, despite Penal Code provisions calling for this;
- (b) There is an inadequate number of judges and courts;
- (c) Children face long periods of pre-trial detention, as well as inadequate and insufficient health care services in prisons;
- (d) The minimum age of criminal responsibility is 10 years;
- (e) Social services and counselling for children in courts is limited, in particular in cases of rape or abuse; and
- (f) Court social workers are insufficiently trained.

The Committee urged the State party to establish juvenile courts, appoint trained juvenile judges and ensure that the juvenile justice system fully integrates and implements international juvenile justice standards, namely CRC Articles 37 (b), 40 and 39; the Beijing Rules; the Riyadh Guidelines; the Havana Rules; and General Comment No. 10.

The Committee recommends as well that the State party:

- (a) Raise the minimum age of criminal responsibility to at least 12 years;
- (b) Take preventive measures toward eliminating the factors which lead children to come into contact with the justice system;
- (c) Provide an adequate number of specialised courts, judges and juvenile justice officials in all regions, and in particular ensure sufficient numbers of specialists who deal with child victims of exploitation, rape and other abuses;
- (d) Develop alternatives to deprivation of liberty whenever possible;
- (e) Ensure that child offenders have a rapid access to juvenile justice procedures while in pre-trial detention;
- (f) Provide adequate and sufficient health care services to children deprived of liberty;
- (g) Ensure separation between children and adults in all detention facilities, including police station cells;
- (h) Allocate alternative detention mechanisms with the necessary human, technical and financial resources; and CRC/C/CMR/CO/2 23
- (i) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice

Protection of witnesses and victims of crimes

The Committee recommended that the State party provide adequate legal provisions and regulations to ensure that all child victims and/or witnesses of crimes are provided with the protection required by the Convention, and furthermore take 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 Initial report of Cameroon.

- United Nations Committee on the Rights of the Child. Initial report and 2nd periodic reports of Cameroon (State reports).

- Cameroon NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

5. ANNEX:**5.1. CRC members present**

Ms. Agnes Akosua Aidoo, Mr. Hatem Kotrane, Mr. Peter Guran, Mr. Luigi Citarella, Ms. Rosa Maria Ortiz, Mr. Dainius Paras, Ms. Susanna Villaran de la Puente, Ms. Yanghee Lee (chair).

5.2. Composition of country delegation

Head of delegation: S.E. Ms. Catherine Bakang Mbock, Minister of Social Affairs
Delegation : S.E.M. Anatole Fabien Marie Nkou, Ms. Moussa Lassome, Bertin Bidima, Ms. Clémence Epoh Adang, Mr. Guy Georges Nleme, Mr. Désiré Aroga, Hermine Gasting Takam Kembo,

NOTA INFORMATIVA

4° Informe periódico de Ecuador durante la 53° sesión del Comité de los Derechos del Niño Sumario de asuntos sobre justicia juvenil

Ratificación de la Convención sobre los Derechos del Niño en Ecuador: Marzo 1990.

Informe previo presentado en Mayo de 2005 (39. sesión del Comité de los Derechos del Niño)

1. PERFIL del PAIS

(Fuente: Reporte del Estado)

Ecuador es el primer país de América Latina que ratificó la Convención sobre los Derechos del Niño (CDN). Desde ese momento la implementación de la misma fue una prioridad para el Estado parte.

Desde 1996 hasta 2006 Ecuador sufrió inestabilidad política con la sucesión de siete gobiernos diferentes. La calidad de vida de los ecuatorianos se vio particularmente afectada por la deuda externa acumulada desde los años 80. De hecho, desde la segunda mitad de la década de 1990, hubo un incremento en la pobreza y la extrema pobreza en Ecuador (39% en 1995 a 52 % en 1999). Los recursos invertidos en bienestar social eran muy bajos.

Sin embargo, durante la primera mitad de la década comenzada en el año 2000, Ecuador ha experimentado una reducción en la tasa de pobreza (38% en 2006). Esta leve reducción de la pobreza fue ocasionada principalmente por la recuperación de la economía ecuatoriana luego de la crisis bancaria, una mayor inversión en petróleo y el aumento del precio internacional del petróleo, y las mejoras en los salarios reales. Asimismo, Ecuador desarrolló la protección de niños y adolescentes a través de la entrada en vigor del nuevo Código de la Niñez y Adolescencia (Julio 2003) y el desarrollo y aprobación del Plan nacional decenal de protección integral a la niñez y adolescencia (Octubre 2004).

La elección de Rafael Correa Delgado en 2006 también marcó un giro en Ecuador ya que fue el primer Presidente de la República del Ecuador en obtener un gran apoyo social y adoptar objetivos políticos estratégicos al establecer la Asamblea Nacional Constituyente para fundar una nueva democracia.

La adopción de la CDN permitió la mejora de la calidad de vida de niños y adolescentes. En 1990, 15% de ellos asistían a la escuela mientras que en 2010 trepó a 92%. Por lo tanto, 810.000 niños de menos de 12 años asisten a la escuela. Además, la inversión pública en desarrollo social creció de U\$S 600 millones en 2000 a US\$ 1,8 mil millones en 2010.

2.1 TEMA POR TEMA:

I) Legislación

- **Situación Actual / Logros:**

El informe afirma (§522) que Ecuador prohíbe la pena de muerte y la cadena perpetua para niños y adolescentes. Además, la Constitución del Ecuador dispone en su artículo 23 incisos 1 y 2 algunas salvaguardias para el ejercicio de los derechos fundamentales de los niños tales como el no uso de la pena de muerte y la tortura. El artículo 370 del Código de la Niñez y Adolescencia establece que la privación de libertad en adolescentes no debe exceder los cuatro años. En relación a las detenciones que excedan los dos años, el Código determina que el adolescente puede beneficiarse con una reducción de la condena por buen comportamiento.

- **Desafíos:**

El Comité de la CDN marca que los niños y adolescentes deben ser tenidos en cuenta cuando se desarrolla una nueva legislación. Aunque el Comité está conforme con los cambios hechos por Ecuador con la adopción de una nueva Constitución en 2008, las implementaciones prácticas de esos cambios pueden revelar algunas dificultades. Por ejemplo para implementar correctamente la nueva Constitución, Ecuador necesita la ayuda de los pueblos que tienen niños con específicos antecedentes en cuanto a sus derechos.

Ecuador explica que la Comisión de Derechos Humanos tendrá una sección especial para niños y abogados especializados en menores serán contratados. La Constitución de 2008 también planea implementar un sistema especializado, con jueces especializados, para adolescentes que tiene problemas con la ley.

II) Edad mínima para tener responsabilidad penal:

- **Situación Actual / Logros:**

La actual edad de responsabilidad penal es 12 años. Por lo tanto las personas menores de 12 años estas exentas de las condenas y no serán procesadas.

El informe manifiesta (§499) que el artículo 330 del Código de la Niñez y Adolescencia establece que para los adolescentes que no cumplieron 14 años, la detención debe llevarse a cabo solo en casos de asesinato, homicidio, violación, plagio de personas y robo seguido de muerte. Aquellos que tienen 14 años deben ser procesados por delitos punibles con arreglo al derecho ordinario con una pena de prisión.

- **Desafíos:**

Durante la revisión oral, los miembros del Comité expresó su preocupación por la actual edad de responsabilidad. Ecuador especificó que la edad de responsabilidad penal debería elevarse a 14 años.

III) Número de niños y duración de detención.

- **Situación Actual / Logros:**

El informe afirma (§493) que el número total general de personas menores de 18 años detenidas por la policía por problemas con la ley para 2006 y 2007 fue 8.182.

IV) Condiciones de los juicios:

- **Situación Actual / Logros:**

El informe afirma (§503) que existen 45 jueces de la niñez y adolescencia, en el sistema judicial para adolescentes infractores, quienes solicitan medidas cautelares y internamiento. El sistema también tiene 30 fiscales para tratar con adolescentes infractores a lo largo del país.

El reporte también subraya (§504) que en 2003, el sistema judicial para Niñez y Adolescencia comenzó a funcionar con 33 tribunales en todo el país. Para 2007, se agregaron tribunales adicionales. Sin embargo esto resulta insuficiente para el volumen de casos que tratan. Además, los jueces de los antiguos Tribunales de Menores ocuparon los nuevos tribunales, situación que ha creado una carga porque los nuevos procedimientos no se han elaborado en consonancia con los principios de protección integral y el interés superior a favor del niño. Por lo tanto, los jueces han continuado utilizando viejas prácticas y operando de una manera destructiva en relación con el Código.

- **Desafíos:**

El reporte afirma (§ 507) que el sistema judicial debe establecer ámbitos especializados de administración, y no dejar a los jueces que asuman cualquier tipo de casos indistintamente. Lo apropiado sería tener por lo menos tres tipos de juzgados de niñez y adolescencia: de protección de derechos de niños y adolescentes; de asuntos de familia; c) de adolescentes infractores.

V) Condiciones de detención

a) **En general (condiciones en centro de detención):**

- **Situación Actual / Logros:**

El reporte afirma (§508) que 7.087 adolescentes, sin especificar el sexo, han sido arrestados por delitos y contravenciones (datos de la Policía Especializada en Niñez y Adolescencia).

Ecuador tiene 20 centros para jóvenes infractores, localizados en 12 provincias.

El reporte también asevera (§514) que no hay datos disponibles sobre abusos contra adolescentes durante su arresto, detención o encarcelamiento por miembros de la Policía Nacional.

- **Desafíos:**

El Comité de la CDN recalca que la detención debe ser absolutamente el último recurso y que Ecuador debe invertir en prevención, para evitar que los niños tengan problemas con la ley.

b) **Detención preventiva:**

Este tema no fue incluido en el informe y el Comité no realizó preguntas al respecto.

c) **Separación de adultos.**

- **Situación Actual / Logros:**

En las respuestas por escrito del Gobierno del Ecuador a la lista de asuntos preparada por el Comité de la CDN, Ecuador establece (§78) que la Constitución garantiza que los jóvenes infractores estarán en lugares de detención separados de adultos.

VI) Medidas alternativas

- **Situación Actual / Logros:**

El reporte afirma (§500) que el nuevo Código de la Niñez y Adolescencia incluye medidas socio-educacionales de cuidado y alternativas al encarcelamiento. La privación de la libertad es excepcional, solo para las infracciones de extrema gravedad.

VII) Readaptación / reinserción de niños:

Este tema no fue incluido en el informe y el Comité no realizó preguntas al respecto.

VIII) Capacitación de profesionales:

- **Situación Actual / Logros:**

Como los jueces de los antiguos Tribunales de Menores ocupan las nuevos Tribunales, se estableció un acuerdo para su capacitación por el Consejo Nacional de la Niñez y Adolescencia y el Consejo Nacional de la Judicatura.

Durante la evaluación oral, Ecuador recalcó que hoy en día los jueces de Tribunales de Menos así como la policía especializada en niñez y adolescencia debe cumplir con capacitaciones y seminarios. Además, nueve jueces para Tribunales de Menores próximamente deberán ser nominados. Ecuador agregó que la Constitución de 2008 sugiere que cada provincia tenga un juez de menores y un fiscal.

3. RECOMENDACIÓN FINAL RESPECTO A LA ADMINISTRACIÓN DE JUSTICIA

El Comité acoge con satisfacción que la Constitución de 2008 establezca un nuevo sistema especializado de justicia para niños en problemas con la ley (artículo 341), que indica expresamente que la privación de la libertad será usada excepcionalmente y los niños serán detenidos separados de los adultos. También aprecia positivamente que el proyecto de Código de Garantías Penales mantiene cuatro años como pena máxima para la privación de la libertad. Sin embargo, al Comité le preocupa:

- a) El proyecto de Código de Garantías Penales se aleja del sistema judicial especializado para niños;
- b) Las normas especiales de justicia juvenil no han sido analizadas y armonizadas, no son de un estándar apropiado, y no tienen mecanismos y regulaciones correspondientes;
- c) Un apropiado sistema judicial juvenil aun no ha sido puesto en práctica, faltan jueces especializados en juventud y existen informes de niños que han sido detenidos con adultos en celdas políticas y centros de detención preventiva;
- d) La falta de estadísticas de niños en custodia y la duración de su estadía; y
- e) La insuficiente información provista sobre el tratamiento de niños menos de 12 años (actual edad mínima de responsabilidad penal) en problemas con la ley o la existencia de algún sistema para la resolución de conflictos con la ley fuera del sistema judicial, según el artículo 40 de la CDN.

El Comité insta al Estado parte a asegurar que los estándares de la justicia juvenil serán completamente implementados, en particular los artículos 37 (b), 40 y 39 de la Convención, así como las Reglas mínimas de las Naciones Unidas para la administración de la justicia de menores. (Reglas de Beijing), Directrices de las

Naciones Unidas para la Prevención de la Delincuencia Juvenil (Directrices de Riyadh) y las Reglas de las Naciones Unidas para la Protección de Menores Privados de Libertad (Reglas de La Habana). En particular, el Comité insta al Estado parte a tomar en cuenta el Comentario General del Comité Número 10 (2007) sobre la administración de la justicia juvenil. Al mismo tiempo recomienda al Estado parte:

- a) Asegurar que el nuevo Código de Garantías Penales es armonizado con el plan de 10 años llamado “Plan nacional decenal de atención integral a la infancia y la adolescencia 2004-2014” consagrado en la Constitución y establece un sistema especializado de justicia juvenil integrado dentro del Sistema Nacional Descentralizado de Protección Integral de la Niñez y Adolescencia;
- b) Asegurar que el sistema especializado de justicia juvenil es separado del sistema penal para los adultos en términos de normas de procedimiento, condenas, ejecución de sentencias y asegurar que los niños estarán siempre separados de los adultos en todos los centros de detención, incluidos celdas en comisarías;
- c) Considerar elevar la actual edad mínima de responsabilidad penal;
- d) Desarrollar alternativas no judiciales para la privación de la libertad, como la probación, servicios comunitarios o condena en suspenso, cuando sea posible;
- e) Crear suficientes tribunales especializados en todas las regiones, con jueces y empleados especialmente capacitados, incluyendo fiscales, abogados, agentes y trabajadores sociales;
- f) Tomar medidas preventivas para ayudar a eliminar las condiciones sociales que llevan a los niños a entrar en contacto con el sistema judicial penal;
- g) Asegurar que todo niño que no tiene la edad de responsabilidad penal pero está en conflicto con la ley sea tratado por autoridades civiles o administrativas de acuerdo con la Convención y los estándares internacionales; en particular, asegurar que tengan acceso a las medidas socio-educacionales que son alternativas a cualquier forma de privación de la libertad y/o institucionalización; y
- h) Buscar asistencia técnica y cooperación del Grupo Interinstitucional sobre Justicia Juvenil, que incluye la Oficina de las Naciones Unidas contra la Droga y el Delito (ONUDD), la Oficina del Alto Comisionado para los derechos humanos (OACDH), UNICEF y otras ONGs.

Fuentes:

- Convención sobre los Derechos del Niño de las Naciones Unidas.
- Comité de los Derechos del Niño de las Naciones Unidas. Observaciones finales y recomendaciones al Informe Inicial del Ecuador
- Comité de los Derechos del Niño de las Naciones Unidas. Informe inicial y segundo y tercer informes periódicos del Ecuador.
- Grupo de trabajo de ONGs de Ecuador para la protección de los derechos del niño

5. Anexo:

5.1. Miembros presentes del Comité de los Derechos del Niño

Kamel FILALI, Maria HERCZOG, Moushira KHATTAB, Sanphasit KOOMPRAHANT, Lothar Freidrich KRAPPMANN, Marta MAURAS PEREZ, Awich POLLAR, Kamla Devi VARMAH

5.2. Composición de la delegación nacional.

Embajador Mauricio Montalvo, Fernando Sánchez Cobo, Cecilia Vaca Jones, Nathaly Sevilla Rueda, María de los Ángeles Páez, Doris Melo Jácome, Javier Dáiz, Carlos Santos, Luís Vayas, María del Carmen Vivar Aguirre, Jorge Thullen

INFORMATION NOTE

4th periodic report of Ecuador during the 53rd 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 Ecuador: March 1990

Previous report presented in: May 2005 (39th session of the CRC)

1. COUNTRY PROFILE

(source: State Report)

Ecuador was the first country in Latin America to ratify the Convention on the Rights of the Child (CRC). Since then the implementation of the CRC has become one of the priorities of the State.

From 1996 to 2006 Ecuador suffered from political instabilities as seven different governments succeeded each other. Quality of life among Ecuadorians was particularly affected by exterior debts accumulated during the 1980s. From the second half of the 1990s, there was an increase in poverty and extreme poverty in Ecuador (39 percent in 1995 to 52 percent in 1999). The amount of resources invested in social welfare was also extremely low.

During the first half of the 2000s, Ecuador experienced a reduction in its poverty rate (down to 38 percent in 2006). This slight reduction of poverty was mainly due to the recovery of the Ecuadorian economy after the banking crisis, an increase in oil investment and rising international oil prices and improvements in real wages.

The election of Rafael Correa Delgado in 2006 also marked a national turning point. Correa was the first President of the Republic of Ecuador to gain broad social support and to adopt a political strategy aimed at the establishment of a National Constituent Assembly with the ability to lay the foundations for a new democracy.

The adoption of the CRC brought improvements to the quality of life among children. In 1990, 15% of Ecuadorian children younger than 12 years attended school; by 2010 that number had climbed to 92% (810,000 children). In addition, public investment in social development increased from \$600 million in 2000 to \$1.8 billion in 2010. Moreover Ecuador advanced the protection of children and adolescents through the implementation of the new Adolescence Code (July 2003) and the development and approval of the National Plan for the Comprehensive Protection of Children and Adolescents (October 2004).

2. JUVENILE JUSTICE KEY ISSUES IN ECUADOR

2.1. ISSUE BY ISSUE:

I) Legislation:

- **Current Situation/Achievements:**

The report states (§522) that Ecuador prohibits capital punishment and life imprisonment for children and adolescents. Moreover the Constitution of Ecuador sets out in Article 23 §1 and §2 certain safeguards for the exercise of fundamental child rights such as safety from the death penalty and torture. Article 370 of the Childhood and Adolescence Code establishes that the institutional confinement of adolescents cannot exceed four years. Concerning detention exceeding 24 months, the Code underlines that the adolescent is eligible for a sentence reduction for good behaviour.

- **Challenges:**

The Committee underlined that children and adolescents must be taken into account when developing new legislation. Although the Committee was pleased about the changes Ecuador has undertaken with the adoption of its new Constitution in 2008, the practical implementation of such changes might reveal some difficulties. For example, in order to effectively implement the new Constitution, Ecuador needs the help of people with specific backgrounds in child rights.

Ecuador explained that its Human Rights Commission will have a department especially for children and that lawyers specialised in children and adolescents will be hired. The 2008 Constitution also calls for the implementation of a system with specialised judges for adolescents who are in conflict with the law.

II) Minimum age of criminal responsibility:

- **Current Situation/Achievements:**

The current age of criminal responsibility is 12 years old. Therefore persons under 12 years of age are absolutely immune from prosecution and sentencing.

The report states (§499) that Article 330 of the Childhood and Adolescence Code provides that, for adolescents younger than 14, detention may be applied only in cases of murder, manslaughter, rape, human trafficking, and robbery resulting in death. Those who have reached the age of 14 may be prosecuted for offences punishable under ordinary criminal law and are subject to imprisonment.

- **Challenges:**

During the oral review, Committee members raised concerns about the current age of criminal responsibility. Ecuador specified that the age of criminal responsibility would soon be raised to 14 years old.

III) Number of children and length of detention:

- **Current Situation/Achievements:**

The report states (§493) that the total number of persons under age 18 detained by police between 2006 and 2007 because of an alleged conflict with the law was 8,182.

IV) Trial conditions:

- **Current Situation/Achievements:**

The reports states (§503) that there are 45 judges for children and adolescents in the judicial system who apply for injunctive measures and imprisonment. The system also has 30 prosecutors to deal with adolescent offenders nationwide.

The report (§504) underlines that in 2003, the judicial system for children and adolescents counted 33 courts throughout the country. By 2007, 12 additional courts had been added; however, this remains insufficient for the volume of cases they handle. Moreover, the judges from the older Juvenile Courts occupied the new courts, which has created a burden because new procedures have not been devised that are in keeping with the principles of comprehensive protection and the best interests of the child. Therefore the judges from the old system have continued to use old practices and operate in a manner contrary to the Code.

- **Challenges:**

The report states (§ 507) that the judicial system must establish specialised areas of administration and not allow judges to exchange cases with other judges. It would be appropriate to have at least three types of courts for children and adolescents dealing with protection of the rights of children and adolescents, family issues and adolescent offenders.

V) Detention conditions

a) In general (condition in detention centres):

- **Current Situation/Achievements:**

The report states (§508) that 7,087 adolescents (no sex specified) were arrested in 2008 for crimes and misdemeanours (data from the Child Welfare Police).

Ecuador has 20 centres for young offenders, located in 12 provinces.

The report states (§514) that there are no available data on abuse against adolescents by members of the National Police during arrest, detention or imprisonment.

- **Challenges:**

The Committee underlined that detention must absolutely be a measure of last resort and that Ecuador must invest in prevention to keep children from coming into conflict with the law.

b) Pre-trial detention:

This issue is not addressed in the report and no questions were asked by the Committee.

c) Separation from adults:

- **Current Situation/Achievements**

In the written replies by the Government of Ecuador to the list of issues prepared by the Committee, Ecuador states (§78) that the Constitution guarantees that young offenders will be held in places of detention separate from adults.

VI) Alternative measures:

• Current Situation/Achievements:

The report states (\$500) that the new Childhood and Adolescence Code lays down socio-educational measures of care and alternatives to imprisonment. Deprivation of liberty is an exceptional measure used only for extremely serious offences.

VII) Re-adaptation / reinsertion of children:

This issue is not addressed in the report and no questions were asked by the Committee.

VIII) Training of professionals:

• Current Situation/Achievements:

Since the judges from the older Juvenile Courts now occupy the new Courts, an agreement for their training has been established by the National Council for Childhood and Adolescence and the National Judicial Council.

During the oral review, Ecuador noted that presently the judges of children's courts as well as police specialised in childhood and adolescence must follow trainings and seminars. Moreover nine new judges for juvenile justice will soon be nominated. Ecuador also stated that the 2008 Constitution mandates that every province has one judge for minors as well as one prosecutor.

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 Ecuador.
- United Nations Committee on the Rights of the Child. Initial report and 2nd / 3rd periodic reports of Ecuador (State reports).
- Ecuador NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

5. ANNEX:

5.3. CRC members present

Mr. Kamel FILALI, Ms. Maria HERCZOG, Ms Moushira KHATTAB, Mr. Sanphasit KOOMPAPHANT, Mr. Lothar Freidrich KRAPPMANN, Ms. Marta MAURAS PEREZ, Mr. Awich POLLAR, Ms. Kamla Devi VARMAH

5.4. Composition of country delegation

Ambassador Mauricio Montalvo, Mr. Fernando Sánchez Cobo, Ms. Cecilia Vaca Jones, Ms. Nathaly Sevilla Rueda, Ms. María de los Ángeles Páez, Ms. Doris Melo Jácome, Mr. Javier Dáiz, Mr. Carlos Santos, Mr. Luís Vayas, Ms. María del Carmen Vivar Aguirre, Mr. Jorge Thullen

INFORMATION NOTE

Report of Israel on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict during the 53rd session of the United Nations Committee on the Rights of the Child

Summary of juvenile justice related issues

Ratification of the Optional Protocol: 18 July 2005

1. COUNTRY PROFILE

(Sources: State report; Israeli Central Bureau of Statistics - 2006 estimates; CIA World Factbook - 2009 estimates unless otherwise indicated)

The State of Israel declared independence from the British Mandate of Palestine in 1948. Starting the day after this declaration, Israel has fought a number of wars with neighbouring Arab states, in addition to ongoing hostilities with the Palestinian population. An estimated 711,000 Arabs fled or were expelled from Israel during the 1948 Arab-Israeli war; their fate continues to fuel the Israeli-Palestinian conflict today.

Today Israel counts a population of about 7.5 million, which includes about 187,000 Israeli settlers in the West Bank, 20,000 in the Golan Heights and 177,000 in East Jerusalem. Most of the country's residents—more than 90%—live in urban areas, and about a third are children. Israel's poverty line is set at 7.30 USD per person per day; 23.6% of the population falls below this threshold. The total literacy rate among Israel's population is 97.1%, with the average school life expectancy (primary to tertiary education) at 15 years old (15 for boys, 16 for girls).

Israel signed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on 14 November 2001. The Optional Protocol was ratified on 18 July 2005 and, in accordance with Article 10, paragraph 2, was entered into force on 18 August 2005. It is Israel's position that the Convention on the Rights of the Child is inapplicable beyond its territory (i.e., Palestinian territory).

2. JUVENILE JUSTICE KEY ISSUES IN ISRAEL

2.1. ISSUE BY ISSUE:

II) Legislation:

• Current Situation/Achievements:

The State report put forth that each modification to its laws undertaken in recent years regarding the treatment of children in conflict with the law is designed to minimize possible harm which might be caused by the experience of arrest, interrogation, trial and detention.

The Minister of Justice appointed a committee in 1997 to develop recommendations on the rights spelled out in the Convention on the Rights of the Child. In 2003 the committee presented the recommendations of its six sub-committee reports. One of the reports addressed Children in Criminal

Proceedings, and put forth a comprehensive amendment to laws regarding children in conflict with the law. Certain reforms have been implemented, including an amendment to the “Youth Law 5731-1971” (Trial, Punishment and Modes of Treatment Law). This was issued on 21 July 2008 and entered into force in July 2009. Its provisions can be found in detail in the State report. The primary changes to the law, according to the State report, are “conceptual” rather than “technical”: *“Notably, the primary guiding principles are the best interests of the child and viewing the child as a separate human being. This is evident in the separate representation of the child, the involvement of the child in the decision-making process, and the notification to parents of an investigation, yet their removal if the child objects or the officer thinks it is harmful for the child’s wellbeing”*.

- **Challenges:** The Committee expressed serious concern over the insufficient information in the State report regarding laws and procedures involving Palestinian children in conflict with the Israeli judicial system.

II) Minimum age of criminal responsibility:

- **Current Situation:** The State delegation indicated that the minimum age of criminal responsibility in Israel and the West Bank is 12 years old. In the West Bank, this age had been raised from 9 to 12 when Israel took control of this territory.

- **Challenges:** *None discussed*

III) Number of children and length of detention:

- **Current Situation:** The State report expressed that detention is only used as a measure of last resort, and only for the shortest period of time possible, when the detainee in question is a child.

- **Challenges:** The Committee was highly concerned that, according to reports, more than 2,000 Palestinian children were reportedly charged with security offenses between 2005 and 2009. Some of these children were as young as 12 years old and were held without charge for as many as 8 days before facing prosecution in military court. Furthermore, these children were subjected to prolonged periods of solitary confinement, abuse, and inhumane conditions while in detention. They did not receive adequate legal representation and interpretation assistance, nor did they receive visits from family members (since their relatives are denied access to Israel). There are also indications that Palestinian children have been subjected to detention orders for renewable periods of up to six months.

IV) Trial Conditions:

- **Current Situation/Achievements:** According to State legal provisions, a minor has a right to private consultation with an attorney as well as a right to be represented by a defence attorney in court: *“Section 18(a) to the Youth Law empowers the Juvenile Court to appoint counsel for minors in legal proceedings on the grounds of the best interests of the child. The court holds this power all through the criminal proceedings including during the investigation stage. Moreover, the minor is entitled to any right valid under the Public Defenders Office Law.”*

Once an indictment has been filed, an Israeli court may authorise a minor’s

detention until the end of his or her trial; a Juvenile Court is also authorised to assign a probation officer to a juvenile for temporary supervision. Section 21 of the Criminal Procedure Law stipulates that the court must set the earliest trial date possible. Section 14 of the Youth Law further puts forth that, *“save with the consent of the Attorney General, a minor will not be brought to trial for an offense if a year has passed since its commission”*. The State report notes that *“Trials are held in the relevant Israeli court of law according to Section 6 of the Criminal Procedure Law [Consolidated Version] 5742-1982, which stipulates that a defendant shall be brought before a court of law based either on the location where the offence was committed, in full or in part, or the defendant’s residence.”*

The State party noted that there exist certain sentencing restrictions concerning children in the West Bank: Children under 12 are not liable for criminal charges; children between 12 and 14 years old cannot be given sentences of longer than 6 months, and children between 14 and 16 for no longer than one year. These provisions are not applicable to children living outside of the West Bank.

A Military Juvenile Court was recently opened in the West Bank in response to what the State party reports is a large number of minors involved in violent activities (e.g., weapons transport, serving as lookouts during terrorist attacks). The State report noted that *“There are no aggregated statistics regarding indictments filed against minors in security related offences.* The court will be in operation for a one-year trial period.

- **Challenges:** The Committee expressed concern that Military Orders no. 378 and 1591 violate international juvenile justice administration standards and the right to a fair trial. The Committee also noted with concern information on attempts to incorporate juvenile justice standards within military courts.

V) Detention conditions

a) In general (condition in detention centres):

- **Current Situation/Achievements:**

The State party reported that administrative detention was rarely used for minors, and that there are currently no minors in administrative detention facilities. The Supreme Court reviews all cases in which a minor is placed in administrative detention. Arrest of a minor must be directly approved by a judge-advocate of a rank of Lieutenant-Colonel or higher. The delegation further noted that minors 16 years old and younger could not be detained in military facilities and had to instead be detained in civil facilities.

Section 25(d) of the Youth Law stipulates that *“a court may not impose a prison sentence on a minor who is under the age of 14 at the time of sentencing. When an offense has been committed by a person who was a minor on the day he/she committed the offense, the death penalty may not be imposed. Even though other directives under the law allow for imprisonment in similar circumstances, namely if imprisonment is so prescribed by the law for the offenses that the minor is convicted of having committed, it is not obligatory to impose a life prison sentence, a mandatory prison sentence or a minimum penalty on a minor. In any case, the death penalty is not imposed in Israel, even on adults.”*

- **Challenges:** The Committee expressed concern over the detention of Palestinian children under military orders, and noted that most of the acts which

concern the Optional Protocol were committed in the Occupied Palestinian Territories. More than 2,000 Palestinian children, some as young as twelve, allegedly continue to be detained under military orders and prosecuted in military courts. The Committee asked State delegation to provide more information on the military orders that allow for the arrest and detention of Palestinian children. The Committee was furthermore concerned that children were charged with security offences which lacked a clear definition and proportional sentencing. It was also concerned that children charged with security offences were subjected to prolonged periods of solitary confinement and abuse in inhumane and degrading conditions and that family visits were not possible.

b) Pre-trial detention:

- **Current Situation/Achievements:** According to State judicial provisions, children under 14 years of age may be detained without a court order for 12 hours; this period may be extended by another 12 hours in special circumstances as assessed by the on-duty officer at the police station (sufficient cause for an extension is defined in Section 29 of the Criminal Procedure). The State report further notes the stipulation in Section 17 of the Criminal Procedure that *“prior to indictment, a Juvenile Court is authorized to order the detention of a minor for a period that is not to exceed 10 days (15 days for an adult). A suspect minor may not be detained continuously for a period in excess of 20 days (30 days for an adult). A petition to extend detention may be filed subject to the approval of the Attorney General... When there is no verdict, a minor is not to be detained for a period in excess of 6 months (9 months for an adult). The Amendment also stipulates that the maximum period of detention for an accused minor is 45 days instead of the 90 days permitted with respect to an adult (Section 62 to the Criminal Procedure (Arrests) Law).”*

- **Challenges:** The Committee once more noted with concern the status of Palestinian children in pretrial detention, which was not addressed in the State report.

c) Separation from adults:

- **Current Situation/Achievements:** Section 13 of the Youth Law requires the separation of minors and adult detainees, and Amendment No. 14 stipulates that a minor must be held in a separate detention facility for minors or in a separate section for minors within a regular detention facility.

Female minors, however, may be held in a detention cell with an adult female detainee. The report states that this is *“subject to the minor's agreement and the following conditions: holding the minor alone is not in her favor; holding the minor with an adult detainee is in her best interests (or there is no possibility of holding the minor with another minor) and such holding does not risk the physical or mental health of the minor. Such holding is to be approved by a court within 24 hours.”*

- **Challenges:** *None discussed.*

VI) Alternative measures:

- **Current Situation/Achievements:**

The State report noted that a minor suspected of committing a crime is not

detained if there is a satisfactory alternative. Children are instead placed in closed and open educational residences provided that they are closely monitored and receive treatment.

Closed residences, as defined in the Youth Law, as noted in the report, “serve as an out-of-home-placement or the locus of custody for a minor referred by the Supervisor of Residences. A minor may be placed at a closed residence as a penalty or as a treatment alternative to a penalty. Also, a minor who is under the age of criminal liability, and a minor who is a danger to him/herself and/or others and who has been declared a minor in need may be placed at a closed residence. The prohibition against leaving a place of residence (on condition of bail) by a minor (according to Section 48(a) (9) to the Criminal Procedure (Arrests) Law) is for a maximum period of 9 months. Nevertheless, the court may issue an order to extend the period for a period not to exceed 90 days. When issuing such an order that prohibits a minor from leaving his/her place of residence for over 16 hours a day, the court shall re-examine the instruction once every 3 months during that time.”

The report further stated that “Release on condition of bail (according to Section 48(a) (9) of the Criminal Procedure (Arrests) Law) is not to exceed 9 months. Nevertheless, the court may issue an order to extend leave on bail for an additional period, not to exceed 90 days each time. If the court has issued an order on condition of bail for house arrest of more than 16 hours per day, it shall order a hearing once every 3 months throughout that time.”

- **Challenges:** *None discussed*

VII) Re-adaptation / reinsertion of children:

- **Current Situation/Achievements:** *None discussed.*
- **Challenges:** *None discussed*

VIII) Training of professionals:

- **Current Situation/Achievements:** The State report stated that “The education and training regarding children's rights among Israel's Police force is implemented through the center of the Investigations and Intelligence Department, by a representative of the NGO Israel National Council of the Child. Moreover, additional training is conducted for youth investigators, by a representative of the Youth Department.” The report further noted that “During 2010, approximately 800 policemen are intended to participate in (a) workshop during their basic training course along with approximately 50 police officers of the Police Training Center”.

- **Challenges:** The Committee expressed concerned that there is not adequate training on the provisions of the Optional Protocol provided to individuals in relevant professional categories, in particular members of the military, the police and those working with the administration of justice.

IX. Other relevant areas:

• Current Situation/Achievements:

Protective detention: The State report notes that Section 10(3) of the Youth Law provides that “*the judge before whom a minor is brought is authorized to order his/her detention if this is required to ensure the minor’s personal safety or to remove him/her from the company of an undesirable individual.*” A police officer may order such detention for 12 hours, or 24 hours in special circumstances, until the minor is brought before a judge.

• **Challenges:** The Committee expressed serious concern that Israel had not to date complied with 2002 recommendations regarding the arrest and interrogation of children in the occupied Palestinian territory (CRC/C/15/Add. 195, paras. 62 and 63).

2.2. TRANSVERSAL PROBLEMS / OBSTACLES: *None discussed*

3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

Professional training:

The Committee recommends that the State party develop awareness-raising, education and training programmes on the provisions of the Optional Protocol for relevant professional groups working with children, including prosecutors, lawyers, judges, law enforcement officers and social workers.

Prosecution of children on terrorist charges

The Committee expressed grave concern over the State party’s failure to comply with the recommendations issued in 2002 (CRC/C/15/Add.195, paras. 62 and 63) regarding the arrest and interrogation of children in the Occupied Palestinian Territories. The Committee was further concerned that provisions in Military Orders (specifically no. 378 and 1591) continue to be in violation of international standards on the administration of juvenile justice and the right to a fair trial. The Committee also notes with concern reports of attempts to incorporate juvenile justice standards within military courts. In its Concluding Observations, the Committee as well noted with concern reports that more than 2,000 children, some as young as twelve, have been charged with security offenses between 2005 and 2009, held without charge for up to 8 days and prosecuted by military courts. Finally, the Committee regrets that the State party provided insufficient information regarding the above concerns.

The Committee urges the State party to:

- (a) Rescind the Military Orders 378 and 1591, as previously recommended in 2002;
- (b) Never hold criminal proceedings against children in military courts and not subject children to administrative detention;
- (c) Guarantee that juvenile justice standards are applied to all children within its jurisdiction and any trials should be conducted in a prompt and impartial manner, in accordance with minimum fair trial standards;
- (d) Ensure that any definition of terrorist crimes is brought in line with international standards and norms, as recommended by the Special Rapporteur on CRC/C/OPAC/ISR/CO/17 the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/6/17/Add.4, paragraph 55);

The Committee furthermore recommends the State party to:

- (a) Ensure that children are only detained as a measure of last resort and for the shortest possible time period. If in doubt regarding the age, young persons should be presumed to be children;
- (b) Guarantee that children, if accused of having committed security offenses, are detained in adequate conditions in accordance with their age and vulnerability;
- (c) Inform parents or close relatives where the child is detained and allow contact;
- (d) Provide adequate free and independent legal advisory assistance for all children;
- (e) Guarantee children a periodic and impartial review of their detention;
- (f) Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated promptly in an impartial manner;
- (g) Afford educational programmes and recreational activities, as well as, measures for all detained children's social reintegration;
- (h) Provide all professionals working in the juvenile justice system with training on the Convention, the Optional Protocols and other relevant international standards and the Committee's general comment no. 10 on the administration of juvenile justice (CRC/C/GC/10, 2007).

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 Cameroon.
- United Nations Committee on the Rights of the Child. Initial report and 2nd periodic reports of Cameroon (State reports).
- Cameroon NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

5. ANNEX:

5.5. CRC Members present

Ms. Agnes Akosua AIDOO, Ms. Hadeel AL-ASMAR, Mr. Luigi CITARELLA, Mr. Kamel FILALI, Mr. Peter GURAN, Ms. Maria HERCZOG, Ms. Moushira KHATTAB, Mr. Sanphasit KOOMPRAHANT, Mr. Hatem KOTRANE, Mr. Lothar Friedrich KRAPPMANN, Ms. Yanghee LEE (Chairperson), Ms. Rosa Maria ORTIZ, Ms. Marta MAURAS PEREZ, Mr. Awich POLLAR, Mr. Dainius PURAS, Ms. Kamla Devi VARMAH, Ms. Susana VILLARAN DE LA PUENTE, Mr. Jean ZERMATTEN

5.6. Composition of country delegation

Head of delegation: Mr. Daniel TAUB, Senior Deputy Legal Advisor, Ministry of Foreign Affairs, Jerusalem

Delegation : Mrs. Simona HALPERIN, Mrs. Hila Gilad TENNE, Mr. Harel WEINBERG, Mr. Walid ABU-HAYA, Ms. Amanda GRUDINSKAS

INFORMATION NOTE

3rd periodic report of Paraguay during the 53rd 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 Paraguay: September 1990

Previous report presented in: September 2001 (28th session of the CRC)

1. COUNTRY PROFILE

(Source: State Report)

After living under an authoritarian regime for many years, Paraguay is now aiming at strengthening its democracy. However, UNDP's 2003 Human Development Report shows that growing inequalities between rich and poor families are still a preoccupying issue.

The national poverty rate increased between 1997 and 2002 from 32.1% to 46.8%, and then fell to 38.2% in 2005, reflecting the government's involvement in reducing poverty throughout the country.

For the first time, after seven years of deficit, Paraguay's economy made a profit of USD 100 million in 2004. The balance continued in the positive for 3 consecutive years, and the GDP has risen by 14.8% over the last 4 years. In parallel, corruption - which has always been very preoccupying in Paraguay - began reducing significantly in 2006.

Paraguay has approximately 58 million inhabitants, 43% of whom are under the age of 18 and 42% of whom live in rural areas. With its population increasing at a rate of 2.2% per year, Paraguay has one of the highest population growth rates in Latin America.

At present, Paraguay is giving higher priority to social investment; 50% of its 2008 budget was allocated to that sector. The National System for the Comprehensive Protection and Advancement of the Rights of Children and Adolescents (SNNPI) is one project that was implemented in order to promote and improve human rights with a particular focus on children and young people. The National Poverty Reduction Strategy is another central social plan that the government is currently implementing.

2. JUVENILE JUSTICE KEY ISSUES IN PARAGUAY

2.1. ISSUE BY ISSUE:

I) Legislation:

- **Current Situation/Achievements:**

According to Paragraph 637 of the State Report, *“Paraguay has brought its legislation and juvenile justice system into line with the principles of the Convention and the Children’s Code and with the comprehensive protection doctrine. This system provides for special treatment of juvenile offenders under criminal law that guarantees an approach in keeping with their right.”*

This statement was reiterated during the oral review when the question was asked as to whether the Convention on the Rights of the Child was used as a legal basis when taking a judiciary decision involving a child in conflict with the law.

Paragraphs 641 and 642 bring up some changes that recently appeared in the administration of juvenile justice:

“641. The move to update Paraguayan legislation has resulted in the establishment of a catalogue of measures which are imposed for a specified time, the most severe being imprisonment. These measures range from a warning or caution to open prison regimes or detention in a specialized institution. Deprivation of liberty is an exceptional measure applied for the shortest requisite period as punishment for the commission of a serious offence.

“642. Under Resolution No. 394/01 the Ministry of Justice and Labour set up the Adolescent Offenders Welfare Service within the ministry, as the entity responsible for formulating and applying public policies on juvenile crime prevention and on the treatment and social reintegration of juvenile delinquents or young persons in conflict with the law. One of the purposes for which the service was created was to explore crime prevention methods and to promote the realization of schemes to help adolescents to reintegrate into society and return to their families when they leave educational centres, once they have served the custodial sentence handed down by the court.”

These paragraphs focus on the necessity of implementing a juvenile justice system which includes methods and procedures giving priority to the social reintegration of children and adolescents in conflict with the law, which was clearly reiterated during the oral review. The Paraguayan delegation noted that the Children’s Code aims in particular at a real and constructive reintegration of juvenile delinquents.

- **Challenges:**

Detention is still improperly used in a certain number of cases and to the detriment of rehabilitation. One reason might be that there is a lack of financial and human resources allocated to alternative measures. (See Transversal Problems.)

II) Minimum age of criminal responsibility:

- **Current Situation/Achievements:**

According to the Children's Code, a person is criminally responsible from the age of 14. This issue was briefly brought up during the oral review but there was no discussion of it.

- **Challenges:** *None discussed*

III) Number of children and length of detention:

- **Current Situation/Achievements:** *None discussed*

- **Challenges:** *None discussed*

IV) Trial conditions:

- **Current Situation/Achievements:**

The Committee pointed out that one cannot find juvenile courts in all districts, as indicated in Paragraph 640 of the State Report: *"It has not proven possible to appoint specialised judges in all areas and although interdisciplinary teams have been set up to assist judges, it has not been possible to attach them to all courts throughout the country"*. The Committee therefore asked how cases are handled in such situations. The answer given was that there is a network of judges who are able to cover a wide range of issues and to deal with delinquency as well as child labour.

Another serious weakness of the Paraguayan court system that was brought up by the delegation is the following: Whereas there are specialisations for judges, there are no such specialisations for prosecutors, and as far as it can be seen, nothing is being implemented to resolve this issue.

- **Challenges:**

Even though the specialisation of judges and prosecutors is a legal obligation according to the Code of Children and Adolescents, its application is not efficient enough. This is mostly due to a lack of resources that should be at least partly resolved, as the budget allocated to juvenile justice is supposed to increase.

V) Detention conditions

a) In general (condition in detention centres):

- **Current Situation/Achievements:**

During the oral review, the experts were interested in knowing if there were any ongoing inquiries about detention conditions. The State party answered that an interinstitutional commission is currently visiting detention centres across the country in order to evaluate living conditions (health, food, education, leisure, etc.) Paragraph 645 of the State Report notes: *"One very important step forward*

was the setting up of an interinstitutional commission to visit and monitor detention centres in Paraguay in order to check whether they comply with the Standard Minimum Rules for the Administration of Juvenile Justice. The commission members are drawn from government organizations, NGOs and international cooperation partners.”

- **Challenges:**

According to the State Report, Paragraph 648 (c), the study carried out by the interinstitutional commission reveals ill-treatment towards children and adolescents during their detention. Another problem is that only 3 out of the 9 centres visited had a specific regime for minors, which isn't in conformity with international legislation. The non-specialised centres are being adapted at the moment. Paragraph 649 states that the government has decided to increase resources in order to overcome this issue, which includes training security staff. Finally, it is mentioned in Paragraph 650 that *“the infrastructure and the type of work done in these centres have been improved, but the challenge is to establish such centres in other departments”*. In other words, efforts still need to be made regarding the compliance of detention centres with the specific status of the child in conflict with the law.

b) Pre-trial detention:

- **Current Situation/Achievements:**

Nothing specific appears in the report, but the delegation pointed out, while discussing alternative measures to detention, that alternative sentences to pre-trial detention also exist. No further information was given.

- **Challenges:** *None discussed*

c) Separation from adults:

- **Current Situation/Achievements:**

Nothing in the State Report refers to this topic. During the review, however, the Committee asked if there was an actual separation between adults and children in detention centres. The answer was that the government is currently collaborating with UNICEF in order to create an establishment where there is this separation.

- **Challenges:**

It was noted that separation between adults and children should be the norm in all detention centres.

VI) Alternative measures:

- **Current Situation/Achievements:**

The State Report in Paragraph 641 states that *“deprivation of liberty is an exceptional measure”* and in Paragraph 651 that *“socio-educational measures are applied in preference to detention”*.

The delegation also insisted on the fact that these alternative measures to

imprisonment were the only efficient way of achieving social rehabilitation for the child afterwards.

According to the State Report, Paragraphs 653-660, educational detention centres for adolescents are being implemented and/or upgraded in different regions. They are more or less open, but all of them aim at gradually reintegrating these young people into society by getting them in touch with the surrounding communities and by establishing a climate of human respect.

One of these centres, Virgen de Fátima, is for female adolescents only. (See Paragraph 658.)

- **Challenges:**

Educational centres should replace detention centres all over the country. Of course these kinds of establishments require multidisciplinary teams of specialized psychologists, social workers, teachers, etc. At the moment, only 3 institutions benefit from such teams as part of specific programmes, according to the delegation.

VII) Re-adaptation / reinsertion of children:

- **Current Situation/Achievements:**

Paragraph 642 of the State Report states that the Ministry of Justice set up the Adolescent Offenders Welfare Service as an organ responsible for both policies on juvenile crime prevention and social reintegration of minors in conflict with the law.

The rehabilitation of the offender once s/he has served the custodial sentence is taken very seriously by the Paraguayan government. Paragraph 652 points out new, different methods that have been developed in detention centres in order to improve the chances of rehabilitation of juvenile delinquents. These methods include guiding and counselling young prisoners and promoting different processes of gradual integration into family life, into educational or work activities and into community life.

- **Challenges:**

According to the delegation, the first objective of the juvenile justice system is to help the child offender reintegrate into society in a constructive way. As mentioned in the previous section (Alternative Measures), an efficient social rehabilitation of minors in conflict with the law can be reached by giving priority to socio-educational measures instead of imprisonment. This aspect still needs to be improved.

VIII) Training of professionals:

- **Challenges:**

As mentioned in the section Trial Conditions, even though there are specialised and trained judges (especially in listening to children), their number remains

insufficient. This is a major concern for the members of the CRC. According to Paragraph 640 of the State Report, another problem is *“the rotation of personnel that sometimes prevents qualified staff from remaining in their posts”*. Regarding professionals working with children in educational centres (psychologists, social workers, teachers, etc.), there is also a need for more specialisation.

State Report Paragraph 661 states that *“the training of officials working at different levels of the justice system, including those in charge of rehabilitation centres, is extremely important”*. The delegation added that there is a calendar covering the year 2010 that plans a training programme directed to all magistrates dealing with children and adolescents in conflict with the law. This programme will be evaluated in the middle of next year.

IX. Other relevant areas:

Police violence towards street children

During the session, one expert was concerned about police violence towards street children. He wondered if there were measures to resolve this problem.

For now, children who are being ill treated by police cannot officially complain, and the delegation stated that this situation much change in order to ensure their protection and with the Convention on the Rights of the Child.

Child Participation

The delegation declared that child participation is a huge challenge that requires that the system stop being “adult-centred”. Child participation is directly related to the ability of judges and other magistrates to listen to children and to take their point of view into consideration at any stage of a procedure.

2.2. TRANSVERSAL PROBLEMS / OBSTACLES:

Lack of human and financial resources

According to the State Report, Paragraph 639, *“one of the weaknesses of the juvenile justice system is shared with the judicial system in general, namely a shortage of human resources”*. This mostly results in a lack of specialised professionals.

The lack of financial resources also has a negative impact on the efficiency of the Paraguayan juvenile justice system, especially regarding alternative measures to imprisonment and training of professionals. However the delegation insisted on the fact that the budget allocated to juvenile justice is definitely going to increase.

3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

The Committee welcomes the efforts carried out by the State party to improve its system of juvenile justice, such as Law No. 1680/2001, which establishes a system of specialised justice for issues concerning children in conflict with the law. However, the Committee is concerned by the lack of information provided by the State party

with regard to the professionals of the justice system (e.g., judges and public defenders) who are specialised in children. The Committee is further concerned by the wide use of preventive detention for children between 16 and 18 years, as well as the precarious conditions in which adolescents serve sentences. Finally, the Committee expressed concern over the lack of an effective policy to implement socio-educational measures directed towards children in conflict with the law.

The Committee urges the State party to ensure that juvenile justice standards are fully implemented, namely CRC Articles 37 (b), 39 and 40; the Beijing Rules; the Riyadh Guidelines; and the Havana Rules. In particular, the Committee urges the State party to take into account the Committee's General Comment No. 10.

It also recommends that the State party:

- (a) Undertake efforts to implement juvenile justice policy;
- (b) Introduce specialised judges for children in all regions and ensure that these judges receive appropriate education and training;
- (c) Ensure that all stakeholders involved with the juvenile justice system, including police officers and prosecutors, are trained to effectively implement justice;
- (d) Wherever possible develop alternatives to deprivation of liberty, such as probation, mediation, community service orders, or suspended sentences;
- (e) Ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time, and is reviewed on a regular basis; ensure as well that children are separated from adults during detention;
- (f) Seek technical assistance and other cooperation from the Interagency Panel on Juvenile Justice.

Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. 3rd periodic reports of Paraguay (State reports).

5. ANNEX:

5.7. CRC members present:

Mr. Kamel Filali, Ms. Maria Herczog, Ms. Moushira Khattab, Mr. Sanphasit Koompraphant, Mr. Lothar Friedrich Krappmann, Ms. Marta Murras Perez, Mr. Awich Pollar, Ms. Kamla Devi Varmah, Mr. Jean Zermatten (Rapporteur)

5.8. Composition of country delegation

Head of delegation: Ms. Liz Cristina Torres, National Secretariat for Children and Adolescents

Delegation: Mr. Federico González, Mr. Ricardo González, Ms. Martha Moreno, Ms. Inés Martínez, Ms. Ingrid Yambay, Ms. Raquel Escobar, Ms. Nury Montiel, Mr. Raúl Martínez.

NOTA INFORMATIVA

4° Informe periódico de Paraguay durante la 53° sesión del Comité de los Derechos del Niño Sumario de asuntos sobre justicia juvenil

Por desgracia la traducción en español de la nota informativa del 4° Informe periódico de Paraguay no ha sido ejecutada. Si se necesita una traducción especial, por favor contacte con el Secretariado Internacional del DNI. Ver abajo la traducción de las conclusiones del Comité de los Derechos del Niño (CRC) sobre la administración de justicia.

Conclusiones del Comité de los Derechos del Niño (CRC) sobre la Administración de Justicia.

El Comité acoge con satisfacción los esfuerzos realizados por el Estado parte para mejorar el sistema de justicia juvenil, como la Ley 1680/2001, que establece un sistema de justicia especializado para el tratamiento de asuntos relacionados con niños en problemas con la ley. Sin embargo, está preocupado por la falta de información proporcionada por el Estado parte a los profesionales del sistema judicial, como jueces y defensores públicos, especializados en niños; como también por el uso generalizado de la detención preventiva de adolescentes entre 16 y 18 años, y las condiciones precarias en donde ellos cumplen condenas. Además, el Comité se encuentra preocupado por la falta de una política efectiva para implementar medidas socio-educacionales dirigidas a los niños en problemas con la ley.

El Comité insta al Estado parte a asegurar que los estándares de justicia juvenil serán plenamente implementados, en particular los artículos 37 (b), 39 y 40 de la Convención, así como las Reglas mínimas de las Naciones Unidas para la administración de la justicia de menores. (Reglas de Beijing), Directrices de las Naciones Unidas para la Prevención de la Delincuencia Juvenil (Directrices de Riyadh) y las Reglas de las Naciones Unidas para la Protección de Menores Privados de Libertad (Reglas de La Habana). En particular, el Comité insta al Estado parte a tomar en cuenta el Comentario General del Comité Número 10 (2007) sobre la administración de la justicia juvenil.

Al mismo tiempo recomienda al Estado parte:

- a) Empezar esfuerzos para implementar la política de justicia juvenil;
- b) Crear instituciones jueces especializados en niños en todas las regiones y asegurar que esos jueces especializados reciban una apropiada educación y entrenamiento;
- c) Asegurar que todos los involucrados en este sistema de justicia juvenil estén efectivamente entrenados para implementar justicia, incluyendo policía y fiscales;
- d) Desarrollar alternativas a la privación de la libertad, como la probación, la mediación, trabajos comunitarios, o condena en suspenso, cuando sea posible;
- e) Asegurar que la privación de la libertad es solamente usada como un último recurso y por el período de tiempo más corto posible, es revisada de manera regular y que los niños son separados de los adultos en tal privación;
- f) Buscar asistencia técnica y cooperación del Grupo Interinstitucional sobre Justicia Juvenil, que incluye la Oficina de las Naciones Unidas contra la Droga y el Delito (ONUDD), la Oficina del Alto Comisionado para los derechos humanos (OACDH), UNICEF y otras ONGs.