“From Legislation to Action? Trends in Juvenile Justice Systems Across 15 Countries”

A preliminary mapping of the implementation of relevant international standards on juvenile justice in Albania, Argentina, Belgium, Bolivia, Canada, Chile, Costa Rica, France, Ghana, Italy, The Netherlands, Niger, Palestine, Sierra Leone and Uganda in 2007

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EXECUTIVE SUMMARY

Since the adoption of the UN Convention on the Rights of the Child (CRC) in 1989, the global progress made in terms of juvenile justice has been very uneven.

In the General Comment No.10 on Children’s Rights in Juvenile Justice (2007), the Committee on the Rights of the Child acknowledges that “many State parties still have a long way to go in achieving full compliance with the CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation on liberty only as a measure of last resort.”

With growing concern the global movement of Defence for Children International (DCI) has developed research, monitoring, advocacy, and awareness raising activities at national and international level to respond to these problems. This publication, developed in collaboration with 15 of DCI’s national sections across Africa, Europe, Latin America, the Middle East and North America, provides a preliminary mapping of trends in juvenile justice in 2007.

In order to draw attention to the continued shortcomings, and to effectively update and sharpen its advocacy and research objectives, and those of other key stakeholders, DCI saw the necessity of identifying the latest global trends in the implementation and/or neglect of international standards on juvenile justice.

The organisation and analysis of information in this study are guided by the Committee on the Rights of the Child’s General Comment No.10 on Children’s Rights in Juvenile Justice. DCI national sections were asked to gather quantitative and qualitative data on several aspects of the juvenile justice system that were highlighted in the General Comment.

Each chapter opens with a short introduction to the topic, followed by an overview of the information collected by DCI’s national sections, and a short analysis of the findings. Where possible, individual case studies are highlighted, together with examples of DCI’s programme activities and staff experiences in particular countries.

Chapter I provides an Introduction to the report, including its background and objectives, and the methodology used to gather information.

Chapter II examines the Administration of Juvenile Justice in each participating country. In particular it considers whether the appropriate legal provisions, procedures and institutions are in place for an effective and fair juvenile justice system, and whether these are in compliance with international standards.

Chapter III considers the issue of Minimum Age of Criminal Responsibility (MACR), particularly the trends in the increase and decrease of MACR in certain countries.

Chapter IV explores the policies and programmes in place for the Prevention of Juvenile Delinquency. In particular, it looks at whether the participating countries have concrete prevention programmes in place, and who the target groups of these programmes are.

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

2 The Committee on the Rights of the Child is the body monitoring the implementation of the CRC by its States Parties. The Committee regularly adopts General Comments expanding and offering recommendations on specific items in the CRC.
Chapters V and VI explore the situation once children are sentenced: deprivation of liberty, and alternative measures to the deprivation of liberty. In particular, it explores the conditions of detention for children in conflict with the law, with special attention to their vulnerability to sexual, physical and other forms of abuse.
Defence for Children International (DCI) is an independent non-governmental organisation that has been promoting and protecting children’s rights on a global, regional, national and local level for over 25 years.

DCI is represented in over 40 countries worldwide through its national sections and associated members, across Africa, Asia and Pacific, Latin America and Europe. Located in Geneva, DCI’s International Secretariat is the focal point of the movement at the international level, developing programmes and projects which promote child rights globally and support the activities and growth of its members.

Defence for Children International (DCI) develops and implements programmes addressing a number of pressing child rights issues including:

- Juvenile Justice
- Violence Against Children
- Child Labour
- Child Trafficking
- Child Soldiers
- Education
- Migration
- Health
- Sexual Abuse/Exploitation

Since 1996, DCI has operated in the field of juvenile justice on both the global and national level, responding to problems with advocacy, research and lobby actions, as well as direct interventions to assist children in conflict with the law. DCI has thus accumulated wide-ranging experience and solid expertise around issues of juvenile justice at national, regional and international levels. At present, over 65% of DCI’s national sections work in the field of juvenile justice.
I. INTRODUCTION

a) Background and Objectives

Juvenile justice has been referred to as “the unwanted child of State responsibilities” meaning that children in conflict with the law are not high on government agendas, and many countries are failing to implement international standards for upholding the rights of children in juvenile justice systems. This is still the case in 2007, with many of the Committee on the Rights of the Child’s concluding observations revealing stark failures in upholding the rights of children in conflict with the law.

While eighteen years have passed since the adoption of the United Nations Convention on the Rights of the Child (CRC), the global progress made in terms of guaranteeing the rights of children in juvenile justice systems has been very uneven. Not all States Parties have child-centered, specialised juvenile justice systems for all children up to the age of 18, which are comprehensive and separate from adult criminal justice systems, and have rehabilitation and social reintegration as their primary aims, in accordance with their obligations under the CRC.

Children should be diverted away from judicial proceedings whenever possible and redirected to community support services; and, detention of children should always be a measure of last resort and for the shortest period of time. However, in both developed and under-developed countries, the reality is that the majority of children in conflict with the law end up in the formal criminal justice system.

DCI deepened its investigation of this issue in 2003 with its groundbreaking study, “Kids Behind Bars - A Study on Children in Conflict with the Law”. The results of this study highlighted a number of child rights violations existing in current juvenile justice systems. In many countries around the world for example, a significant number of children are housed in adult penitentiaries. Children housed with adults are five times more likely to be sexually assaulted, twice as likely to be beaten, and 50% more likely to be attacked with a weapon than children housed in juvenile facilities.

The majority of children who are deprived of their liberty have not actually been convicted of an offence and only a few have committed serious crimes. Most children have simply been apprehended or are on pre-trial detention or remand (the detention of children who have been accused of a crime but are awaiting trial), which still continues to be the norm in the majority of countries, irrespective of relevant international standards.

Despite the existence of international standards on juvenile justice, there remains a lack of data to explain what is actually happening on the ground in juvenile justice systems around the world. As a worldwide movement for children’s rights with expertise in juvenile justice and national sections located in over 40 countries in the world, DCI felt it was well-placed to shed light on the realities of the world’s juvenile justice systems.

The following paper is the first in a series of three publications on juvenile justice systems in the regions of Africa, Europe, Latin America, the Middle East and North America. The report offers a preliminary mapping of juvenile justice systems across 15 countries with the aim of exposing gaps and assessing the implementation of international standards in juvenile justice, identifying key areas for more focused research in the following two reports. Drawing from the field experience and research of DCI national sections in these countries, this paper explores some key themes in the administration of juvenile justice,
highlighting regional where applicable, identifying successes and challenges, and offering recommendations for future research and action.

While the *Kids Behind Bars* study focused predominantly on children deprived of their liberty, the current study has aimed to examine existing juvenile justice systems on a broader scale - examining the justice structures and mechanisms currently in place, as well as the cycle of prevention, sentencing, conditions of detention and alternatives. As such, DCI worked with a smaller number of sections than in the previous study, but ones who are presently actively engaged with and experienced in the issue of juvenile justice.

The specific objectives of this paper are as follows:

1) To survey the countries in question, assessing the consistency of their juvenile justice systems (in both theory and practice) with international standards;

2) To identify trends in juvenile justice systems, exploring successes and challenges in implementation and proposing recommendations for action;

3) To use these findings as a tool for supporting and strengthening NGO lobby and advocacy initiatives on juvenile justice;

4) To use these findings to sharpen the focus of future research and refine ongoing strategies for the implementation of children’s rights in juvenile justice

The overarching goal linking each of these objectives is thus to improve juvenile justice systems, and in turn, the situation of children in conflict with the law.

The organisation and analysis of this report is guided by the Committee on the Rights of the Child’s "General Comment No.10 on the Rights of Children In Juvenile Justice" which calls for the improved implementation of children’s rights in juvenile justice. Whilst there are several international instruments which refer to the rights of children in conflict with the law the General Comment No. 10 provides the most wide-reaching recommendations to States on implementation. DCI has thus structured this report around several “core elements” listed in the General Comment No. 10 as essential to a comprehensive juvenile justice system: the prevention of juvenile delinquency; the minimum age of criminal responsibility; deprivation of liberty; and, alternative measures. Further rationale behind the selection of these themes will be explored more closely in the introduction to each chapter.

b) DCI-National Section Participants

Over 65% of DCI’s members are currently working in the field of juvenile justice. The 15 national sections who participated in this mapping brought a range of experience and expertise to this process, with some staff members being trained as lawyers, juvenile court judges, social workers and child rights activists. DCI national sections also consulted with the children they worked with daily when gathering information for this report.

At present, there are a number of practically based juvenile justice programmes and interventions taking place in the countries in question. For example, DCI-Sierra Leone regularly monitors remand homes and detention centres, representing and advising children and intervening in cases where children are arbitrarily deprived of their liberty. Similarly, DCI-Ghana provides legal defence and representation for children in conflict with
the law for bail, hearing, release, discharge or probation and reintegration. As part of its many interventions, DCI-Palestine monitors the conditions of detention centres, reporting on abuses and the number of children being arbitrarily deprived of their liberty and defending the rights of children in court. Further details on DCI programmes for juvenile justice can be found in Appendix.

In addition to possessing expertise in juvenile justice, these 15 DCI national sections were selected to reflect country diversity in terms of geography, level of development and political landscape. This range of different contexts provides room for reflection about the variations in juvenile justice systems across vastly different regions, while at the same time acknowledging that gaps and absences in the implementation of international standards have been consistently noted in both developed and developing countries.

c) Scope and Approach

After a process of consultation with national sections, and taking into account the need for geographical diversity and sufficient institutional capacity to effectively contribute to the study, DCI selected 15 national partners: Albania, Argentina, Belgium, Bolivia, Canada, Chile, Costa Rica, France, Ghana, Italy, The Netherlands, Niger, Palestine, Sierra Leone and Uganda.

Each DCI national section designated a staff member to be responsible for coordinating data collection and compiling research.

DCI national sections were asked a series of questions relating to the themes of the administration of juvenile justice; the prevention of juvenile delinquency; the minimum age of criminal responsibility; the deprivation of liberty; and, the use of alternative measures. After identifying these key themes, national sections were provided with a list of questions to further direct their research and data collection on the topic - these are explored in more detail in the introductions to each chapter.

DCI national sections were encouraged to contact relevant counterparts, including ministries, police departments, juvenile courts and juvenile detention centers in order to collect the necessary information. They were also encouraged to draw from the experiences of their juvenile justice programmes and the information gathered among beneficiaries. In order to compliment and corroborate this information, background desk research was also undertaken by the International Secretariat.

The report includes a number of references to DCI case studies, first-hand accounts and details of DCI programmes and experiences. DCI felt that these accounts were crucial in ‘painting a picture’ of the challenges faced by States in implementing children’s rights in juvenile justice. Moreover, these examples are intended to serve as a resource for practitioners in the field of juvenile justice, encouraging further dialogue between DCI and other partners at the national and international level.

DCI entered this study with a clear understanding of the challenges in collecting data on juvenile justice. As the Committee on the Rights of the Child has continually noted, many States need to improve their reporting and statistical data collection on the treatment of children in conflict with the law. For this reason, DCI encouraged its national sections to gather both quantitative and qualitative data as a means of painting the most accurate picture of juvenile justice in each country. While quantitative data and statistics on juvenile justice have proved difficult to find or non-existent in some countries, conducting qualitative research was fruitful in allowing DCI national sections to offer information from
their unique perspectives on the ground. Further, in gathering qualitative examples from their countries, DCI national sections could remain flexible in their research, gathering information from a variety of sources - rather than simply relying on government issued statistics which are often incomplete and out of date. What’s more, it allowed DCI national sections to tell stories and offer real-life examples of what juvenile justice actually looks like in the countries in question.

To further address the challenges in reporting, DCI looked to other sources of information such as the State Party and alternative reports to the Committee on the Rights of the Child. Learning from the experiences of national sections in this preliminary study, DCI will be better equipped to engage its national and international advocacy work and identify appropriate avenues for further study.

CHAPTER I: ENDNOTES:

2 The Committee on the Rights of the Child is the body monitoring the implementation of the CRC by its States Parties
3 UN Convention on the Rights of the Child 1989 (article 37)
4 DCI-The Netherlands, Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards, 2003
5 The Committee on the Rights of the Child is the body monitoring the implementation of the CRC by its States Parties. The Committee regularly adopts General Comments expanding and offering recommendations on specific items in the CRC
6 Given the gravity of the situation, and the fact that many states are struggling to comply with international standards, the Committee invited DCI to conduct a separate follow-up action plan in response to the recommendations in the General Comment No.10
8 The Committee’s General Comments are an important tool in understanding the Convention. They constitute an authoritative interpretation of the obligations of States Parties under the Convention and give practical insight into the kinds of implementation measures that should be taken.
9 DCI-The Netherlands, Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards, 2003
10 DCI-The Netherlands, Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards, 2003
II. THE ADMINISTRATION OF JUVENILE JUSTICE

The level of competence of a State’s juvenile justice system stems from its core foundation: the national legislation and legal instruments in place. While all participating countries in this survey have some form of legislation in place, they experience varying degrees of implementation which are specific to each national context.

As one of the most comprehensive sets of guidelines on juvenile justice, the General Comment No.10 (GC 10) sets forth recommendations for improving the organisation and administration of juvenile justice systems based on the provisions of the Convention on the Rights of the Child (CRC). Above all, the Committee on the Rights of the Child calls on States Parties to establish “laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law” as indicated in article 40 of the CRC. Further, they emphasise the importance of establishing specialised courts, or at the very least specialised judges, to deal with children and young people. A comprehensive system is also seen to include police units, prosecutor’s office and defenders or representatives who provide specialised legal assistance to the child as well as focused counselling, probation or supervisory facilities (V;30).

With these standards in mind, the purpose of this chapter is to survey the foundations in place in the various countries surveyed, exploring the scope of national legislations and evaluating their agreement with international standards such as the General Comment No.10. An understanding of the existing legislation in each country is essential in determining if the gaps and problems discussed in the coming chapters are due to the absence of appropriate legislation; or rather, if the challenges stem from a lack of implementation.

DCI national sections were asked to provide information on the existing legislation for juvenile justice in their respective countries; evaluate whether or not these were in line with international standards; and, comment on gaps or offer commentary and suggestions on national frameworks and implementation.

This chapter is structured according to region with the intent of framing national justice systems within their broader national and regional-specific contexts. Descriptions of each region begin with a table listing the names of existing national laws on juvenile justice and are followed by descriptions of the type of system, compatibility with international standards and regional trends in the administration of juvenile justice.

a) Africa

Figure 1. Africa: Table of National Legislation on Juvenile Justice

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>LEGISLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Criminal Code Amendment (Act 554, 1998)</td>
</tr>
<tr>
<td></td>
<td>Ghana’s Children’s Act 560 (1998)</td>
</tr>
<tr>
<td></td>
<td>Ghanaian 1992 Constitution</td>
</tr>
</tbody>
</table>
Niger

Ordinance² No. 2006-023/PRN/MJ - the modalities for the implementation of community work, as decided by juvenile jurisdictions

Sierra Leone

Child Rights Act 2007
Children and Young Person’s Act 1945

Uganda

Children’s Act 2000

**Type of system**

In each of the 4 African countries, there exists specific legislation relating to the administration of juvenile justice. Following each country’s ratification of the CRC and the recommendations of the Committee on the Rights of the Child, there has been a general move towards amending national legislation and adopting new laws to comply with international standards on juvenile justice.

Each African country has some support mechanisms in place in the juvenile justice system. The Child Rights Act (2007) and the Children and Young Person’s Act (1945) govern the issue of juvenile justice in Sierra Leone; provisions concerning detention however, are only covered in the latter legislation. A national Child Justice Strategy was developed in 2006, which is more detailed than these pieces of legislation, and sets forth recommendations for the implementation of these laws. This Strategy has proved successful in supporting the enactment of the Child Rights Act, promoting rehabilitation in children’s detention centres and calling for the construction of a Family Support Unit at police stations.

This Family Support Unit has been established with the Sierra Leone police and is in the process of becoming the specialised child protection unit and has been given the mandate to handle all cases involving children. The unit is jointly operated by police officers and social workers of the Ministry of Social Welfare, Gender and Children’s Affairs.

In Ghana, the Department of Social Welfare and Women (DSW) and a Juvenile Unit of the Police Service is in place to support young people in conflict with the law. The DSW conducts investigations into the family, school and environment in which the young person lives. If a young person is released on probation, an officer of the DSW will supervise them. The DSW also houses correction centres and remand homes for children pending trial. Further, they can place delinquent children who are truant or school drops-outs (deemed at-risk) upon the request of their families. DSW officers may also sit as panel members in juvenile courts to ensure that tried juveniles receive appropriate and fair treatment.

Despite the existence of these bodies, DCI national sections suggest that the professionals lack adequate training and resources to put their knowledge into action. DCI-Ghana suggests that the ineffectiveness of the DSW is largely due to its lack of financial resources. Further, they suggest that magistrates, lawyers, social workers, probation officers and police officers are all in need of further training on the rights of children in juvenile justice.

In terms of training, DCI-Niger has noted the satisfactory training of professionals which has included: two meetings a year of the “Educative, Preventative, Judicial Service”
two meetings per year for judges and minors; one national seminar for local committees; two meetings per year of youth judges and SEJUP; and, various field missions of the Juvenile Judiciary Programme. However, the Committee on the Rights of the Child and DCI-Niger have continued to express concern over the absence of juvenile courts and the limited number of judges, social workers and other specialists in the rights of children in juvenile justice.

In Uganda “local councils” have been given a central role in juvenile justice legislation as it is believed that local communities would have the capacity to handle children’s issues more quickly, without recourse to formal legal systems. While being a positive initiative, these local councils have again been constrained by their lack of training on the law and on juvenile justice issues in particular - a gap which is being addressed by NGOs, including DCI-Uganda. Police officers, probation officers, social workers and lawyers in Sierra Leone have been offered trainings by the Ministry and by DCI; however, as noted by the Committee in 2006, there remains much work to be done in training and equipping professionals.

Compatibility with International Standards

Many of the African countries surveyed have amended aspects of their legislation in response to or in preparation for examination by the Committee on the Rights of the Child.

For example, Sierra Leone’s recent adoption of the Child Rights Act (2007) has introduced many progressive changes for children in conflict with the law, including raising the minimum age of criminal responsibility, repealing corporal punishment as a sanction against juvenile offenders, and offering a wider range of alternative measures to institutionalisation including community based non-judicial mediation mechanisms. In Ghana, the new Juvenile Justice Act (2003) aims to protect the rights of juveniles and ensure appropriate and individual responses to the problem.

In Niger, recent amendments have provided for the creation of special jurisdictions for minors in court houses and judges are now required to ask for a medical-psychological exam of the child or conduct a social investigation when a child is implicated in an offence, reflecting some progressive changes in the best interests of the child. Despite this advancement however, the Committee has expressed concern over the overuse of pre-trial detention and poor conditions of detention (discussed further in Chapter 4)

While recent years have seen several progressive developments in the African countries surveyed, there certainly remain many inconsistencies which do not reflect international standards on juvenile justice. In Ghana, the harsh sentences that can be allotted for child offenders contradict the CRC and other international standards. Moreover, while many countries had very positive practices in theory, they all appeared to have significant problems in implementing some important provisions - for example, the child’s right not to be detained with adults (CRC article 37c) - a point which is explored further in Chapter 4. Moreover, lack of financial and human resources was a reoccurring issue in the African countries surveyed.

Regional Trends

The administration of juvenile justice in Africa is embedded within broader socio and economic conditions. All four of the countries surveyed have a gross national income per capita of less than 5 000 US dollars and widespread poverty and limited resources pose a constant challenge to the effective administration of juvenile justice. In Sierra Leone for
example, a specialised juvenile court sits once a week; however, there is a lack of resources to meet the demand of the many children awaiting trial, thus creating a backlog in the system, and resulting in many children ‘breaking out’ of the remand home. Similarly, in both Uganda and Sierra Leone, young people have difficulty attending their court sessions due to transportation issues in reaching the court.

Whilst all four countries have in theory committed to the principles of a comprehensive juvenile justice system, there remain many problems in effective implementation which will be discussed in the coming chapters.

b) Americas

Figure 2. Americas: Table of National Legislation on Juvenile Justice

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>LEGISLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Law 22.278</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Code VII on Children and Adolescents - Protection, Responsibility and Jurisdiction, Law 10 for Criminal Sentencing and Supervision</td>
</tr>
<tr>
<td>Canada</td>
<td>Youth Criminal Justice Act 2002</td>
</tr>
<tr>
<td>Chile</td>
<td>Law 11 on Juvenile Criminal Responsibility</td>
</tr>
</tbody>
</table>

Type of system

There has been a dramatic reform of the juvenile justice systems in Latin America since the 1990s, reflecting political shifts and the continent’s process of democratisation. All five countries under study have now adjusted their internal legislation to translate the provisions of the UN Convention on the Rights of the Child in a unified normative text dealing with children’s rights; however, not all of them have developed specific norms for the administration of juvenile justice.

Discourses linking young people with violence pervade all Latin American countries surveyed. These perceptions have had direct impacts on legislation for young offenders; for example, Costa Rica has specialised laws and systems to deal with young offenders which were designed in direct response to these concerns. Similarly, Chile’s new law on Juvenile Criminal Responsibility, which now distinguishes between minors in need of care and those in conflict with the law, was met with criticism for being too lenient in promoting socio-educative measures.

The application of Bolivian law is differentiated into two age groups: The first group comprises adolescents of 12 to 15, whose processing is governed by the Code for Children and Adolescents, and is headed by the Judges of Children and Adolescents. Criminal acts of young people from the ages of 16 to 18 are governed by the criminal laws.
for adults (Penal Code and the Criminal Procedure Code) and are the responsibility of judges and courts for adults.

Canada has a specialised juvenile justice legislation called the “Youth Criminal Justice Act”, which was created in response to the country’s extremely high youth incarceration rate which failed to target the most serious interventions to the most serious crimes. There were a number of problems with the former “Young Offenders Act”, with youth being transferred to adult courts based on accusations alone, rather than after a conviction. In this former system, children as young as 14 could be sentenced as adults and could be required to serve time in adult prisons upon discretion of the judge. The new act aims to provide more guidance to decision-makers in the system, prioritising the most pressing issues, and providing better alternatives to the deprivation of liberty.

**Consistency with International Standards**

Amendments to juvenile justice legislation have been both progressive and regressive, with many countries adopting alternatives to detention for minor crimes while instituting ever harsher sentences for serious offences. For example, while Argentina’s legislation is progressive in recognising children as “rights bearers” it is problematic in leaving judicial decisions to the discretion of the judge, allowing room for contradiction and harsh sentencing.

Similarly, the new Chilean law entered into force in 2007, was a progressive first step; however, it still allows for harsh sentences to be applied to children - up to 5 years imprisonment for juvenile offenders aged 14 to 16 and up to 10 years imprisonment for juvenile offenders aged 16 to 18. Similar trends exist in Bolivia.

Costa Rica’s new law on juvenile justice was designed to address persistent calls for increased security but was also intended to reflect international standards upon the country’s ratification of the UN Convention on the Rights of the Child. However, the very fact that the law was designed to address concerns over crime, rather than the rights of the child, has had an effect on its implementation in practice, and has made the law somewhat contradictory. On one hand, the legislation reflects certain provisions of articles 37 and 40 of the CRC, while on the other hand, it allows for harsh sentences of deprivation of liberty for juvenile offenders: up to 10 years imprisonment for juveniles aged 12 to 15 and up to 15 years for juveniles aged 15 to 18 - which are not in line with international standards.

Despite the existence of a special law on youth criminal justice in Bolivia, there is a lack of corresponding institutions specialising in the issue. Rather, juvenile justice tends to be governed by operating units for childhood in general. The system is plagued by low rates of compliance, minimum use of non-custodial measures and poor training of actors in the juvenile justice system. Social inequality, exclusion and marginalisation, unemployment, lack of access to health and education are all challenges to ensuring the rights of children in conflict with the law.

The situation in Canada also reflects similar themes of progression and regression. The new “Youth Criminal Justice Act” has amended some previous concerns, and now provides that all children under the age of 18 must be sentenced by specialised youth courts and that diversion should be promoted wherever possible. That being said however, the new Act is still problematic in allowing children older than 14 to be sentenced as adults for serious crimes. DCI-Canada notes concern with a provision in the YCJA for a “reverse-onus” wherein the onus is on the young person to show that an adult sentence is not necessary
(in the case of serious crimes including murder). However, two Canadian appeal courts have found this provision to be unconstitutional, and the Supreme Court of Canada will soon issue a final decision on the matter.

Further troubling is that while a cornerstone of Canada’s youth justice policy is the non-publication of details which could identify the youth, those who are sentenced to adult sentences are exempt and their personal details may be published\(^6\), violating their right to privacy and jeopardising their potential for rehabilitation and reintegration.

While these concerns are pressing, notable progress has been observed in the countries that now have specific juvenile justice legislations. As an example, a wide range of alternative measures exist to provide judges with an appropriate solution to deal with juvenile offenders (discussed further in Chapter VI). Children who have committed minor offences are now better rehabilitated and legislation in all countries has prohibited the practice of detaining children in adult prisons - although in practice this is sometimes contradicted.

**Regional Trends**

The general trend in both Latin America and North America has been towards tightening juvenile justice legislation and “cracking down” on youth crime and juvenile delinquency. At the same time however, each of the countries surveyed was working to bring some aspects (such as the development of alternatives to detention for example) towards international standards.

There are high rates of incarceration in the Americas, with attempts to address the problem being met with negative public reaction against juvenile offenders and calls for tougher responses to juvenile delinquency\(^7\). In Chile for example, a new law adopted to encourage alternative measures to detention was publicly criticised for being overly permissive and lax on juvenile delinquency. Similarly in Costa Rica, public reaction to crimes and violence tends to be met with calls for more police, bigger prisons and harsher penalties.

Public discourse in many of the countries surveyed tends to position youth crime within the backdrop of concerns over ‘public safety’ and ‘security’. According to DCI-Bolivia for example, this has resulted in the stigmatisation of certain groups, the “criminalisation of adolescence” and an overall turn to more authoritarian measures to “fighting crime”. In fact, the mere fact of being poor and being a teenager can be reason enough to be assigned responsibility for concerns over urban insecurity and criminal violence. There have also been some reports of the lynching of juveniles suspected of committing crimes, with complete impunity for the perpetrators. DCI-Costa Rica also noted the public discourse of ‘security’, suggesting possible links with broader, repressive American measures to fight terrorism.

In Latin America, as in other regions of the world, it is generally children from the poorest neighbourhoods and urban centres who are hardest hit by penal systems. While DCI national sections note that poverty is the greatest factor inciting children to come into conflict with the law, they agree that youth from indigenous communities (which are themselves often marginalised or excluded) may experience this more acutely. DCI-Canada notes that the over-representation of Aboriginal peoples in custody is striking and has been a long-standing problem in both youth and adult criminal justice systems. In the Canadian example however, this has resulted from the historical and continued marginalisation and discrimination against Native populations coupled with poverty and exclusion.
c) Europe

Figure 3. Europe: Table of National Legislation on Juvenile Justice

<table>
<thead>
<tr>
<th>EUROPE</th>
<th>LEGISLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>No all-encompassing code (series of laws, codes and articles)</td>
</tr>
<tr>
<td>Belgium</td>
<td>Youth Protection Act, April 8 (1965) (modified May 15th 2006) Law of June 13th 2006 amending the legislation relating to the protection of youth and takes charge of minors who have committed an act qualified as an offence</td>
</tr>
<tr>
<td>France</td>
<td>Ordinance of February 2nd 1945 (subjected to 34 amendments)</td>
</tr>
<tr>
<td>Italy</td>
<td>Code of Penal Procedure DPR 448/1988</td>
</tr>
</tbody>
</table>

Type of system

All European countries surveyed have specialised juvenile justice legislation in place, with the exceptions of Albania and Italy.

Rather than a specialised system, Albanian laws for youth appear in a rather fragmented manner, with legal dispositions regarding juveniles being spread across different codes, laws and articles in the absence of a single all-encompassing legislation on juvenile justice.

In Italy, a reform of the juvenile justice system is pending; however, at the moment there is no specialised legislation or act for young people. The Penitentiary Act (Law n.354 of 26th July 1975) is directed towards adults, with article 79 of the legislation providing for temporary application to minors. The most significant legislation that has affected juvenile justice has been the proliferation of a new Code of Penal Procedure. While there is no specific juvenile justice law, courts are specialised for young people and are the first point of contact for all criminal, civil and administrative matters concerning minors. There are twenty-nine juvenile courts and a corresponding number of prosecution offices.

The legislation in France is based on the three principles of primacy of education responses over penalties, specialised jurisdiction and an understanding of criminal responsibility as linked with age. The law has been amended a number of times over the years with one of the most recent changes being the introduction of educational sanctions for children aged
ten years and older. The law distinguishes between serious crimes and minor offences, with a direct link to the severity of the penalty imposed.

In Belgium, there are a number of legal documents which are relevant to juvenile justice; however, the Youth Protection Act specifically allows a youth judge to take custody or educational measures. A new reform to the law in 2006 emphasises the use of educational measures, while at the same time providing for a new prison for 16 and 17 year olds who have committed serious offences.

Special provisions relating to the treatment of juveniles under criminal law have been inserted into the Dutch code of criminal law and the code of criminal procedure, with the notion of education and reform being critical. In the Netherlands, there are a number of specialised agencies to tackle the issue of juvenile justice. The Dutch Ministry of Justice has a full department focusing on youth called the National Agency of Correctional institutions. The country also has a scientific and research documentation centre on the issue and there are specialised judges and youth courts to deal with minors. Moreover, the Council for the Administration of Criminal Justice and Protection of Juveniles acts as an independent advisory, supervisory and judiciary board to the Dutch Minister of Justice, while the Council for Child Welfare serves a supervisory role in the system of youth justice. Lastly, the Youth Probation Service guides young people through the pre-trial process and after their examination by judge.

Many DCI national sections had particular concerns around the training of relevant professionals in juvenile justice. While Belgium’s federal government is responsible for determining the measures applicable to youth, for example, there is no specific department to ensure a permanent follow-up. In contrast, DCI-Italy noted the presence of training in the country provided by the Department of Juvenile Justice, including preparing new personnel and providing continuous upgrading to staff. That being said however, the implementation of this training in practice was often constrained by the lack of financial and human resources. The Committee on the Rights of the Child noted this concern in its review of Albania in its 38th session, citing the lack of specialised professionals such as judges, prosecutors, police officers, lawyers, social workers who usually deal with children in conflict with the law. DCI-Netherlands also noted the lack of capacity and need for more attention and funding allotted to training.

**Consistency with International Standards**

While many of the countries surveyed have taken steps to bring their national legislation in line with international standards (including France and Belgium for example), there has also been a clear effort to ‘toughen’ juvenile justice legislation, such that some continue to have regulations which contradict the CRC and other international provisions.

For example, a new piece of legislation in France allows children between the ages of 16-18 who have twice or more re-offended to be sentenced as adults and faced with harsh prison sentences. These have also been moves to create new facilities for the detention of children with the tendency being towards stricter and more severe penalties.

A similar situation exists in the Netherlands. While the country has amended a law to reinforce the use of alternatives to institutionalisation, they have at the same time tightened other provisions including the maximum period of imprisonment (raised from one to two years). The issue of “youth criminality” is high on list of public concerns, and the resulting interventions have increasingly become more and more coercive, especially for serious and violent offences. DCI-Netherlands and other NGOs have been particularly
concerned about the lack of a “teaching” approach to focus on redress with victims and an over-emphasis on punitive measures.

Despite little change in Italy in the number of offences committed by minors, there has been growing public concern over the issue and calls for stronger punishments for youth crimes. This is likely linked with an increase in the violent nature of offences, (a trend also noted in the Netherlands) and increased media reporting on the issue. In spite of public perception, some alternatives measures have been in place in Italy since the 1990s, including mediation and restorative justice (explored further in the final chapter). There are still contradictions between Italian legislation and the CRC however; in particular, with respect to discrimination against children of foreign origin, the lack of independent structures to monitor the conditions of detention, and the inadequate training of personnel in the juvenile justice system.

Echoing concerns in other countries, the Belgian media also tend to place emphasis on the most serious cases of youth crime. The consequence of this reporting has been that the public now views young offenders and young people in general with more scepticism than in the past. While there is nothing to suggest that crimes by youth in Belgium have increased, the often dramatic media attention accorded to juvenile delinquency is incontestably on the rise. The 1999 “Law on Administrative Sanctions in Communes” had the double objective of reacting more quickly to minor crimes while freeing up courts in order to concentrate more on serious cases. However, the law has thus far not had the desired effect, and a bill was tabled in 2003 to further expand the scope of the act, allowing for stricter sanctions be imposed on minors.

Regional Trends

This mapping of some of DCI’s European sections reveals a common trend existing towards toughening legislation and introducing more coercive measures for juvenile offenders. While many countries have attempted to “free-up” the judicial system for the most serious of offences, the sentences for those who are incarcerated have often been increased.

Public concerns about youth criminality in Europe are embedded in broader social structures and public debates - one of which is immigration. In particular, the region has experienced public backlash over the perceived threat of immigration, resulting in crackdowns on ‘illegal’ immigrants and political discourse around juvenile delinquency. Of particular concern in Belgium and France is that legislation allows the innocent children of asylum-seeking parents to be detained in closed detention centres - a practice which has recently come under much public scrutiny. In Italy, children of foreign origin in conflict with the law face further discrimination and are often lumped into the more general debates around immigration reform and increased security. DCI-Italy notes that immigration concerns are heightened by negative media representations and the absence of a credible cultural integration model. DCI-Albania also noted the existence of stereotyping and racism against Roma children as juvenile delinquents.

The links between these trends in the administration of juvenile justice and its implementation in practice will be explored in the coming chapters.

d) Middle East

Figure 4. Middle East: Table of National Legislation on Juvenile Justice

<table>
<thead>
<tr>
<th>MIDDLE EAST</th>
<th>LEGISLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupied Palestinian Territories (OPT)</td>
<td>Palestinian Child Law 2004</td>
</tr>
</tbody>
</table>
A number of smaller regulations and military codes (see explanation below)

Type of system

The administration of juvenile justice in Palestine is embedded within the politics and political regime of the region and specifically, the current military occupation of Palestine.

In the Occupied Palestinian Territories (OPT), no juvenile justice system and no specific legislation exist due to both the historical context and current political and territorial configuration. Crimes by Palestinian children deemed to be committed against Israelis are viewed as political crimes, defined under Israeli military orders, and children are consequently arrested and dealt with as political prisoners in military courts and Israeli prisons.

A key problem in the administration of juvenile justice in the OPT is the law itself, which is an amalgamation of Ottoman Codes, British amendments thereto, mandatory and emergency regulations, Jordanian laws and constitutional principles, and Israeli military orders. As each colonial, administrative or military power retreated, it left behind an entire legal system or set of administrative orders, which operated with the force of law. It is estimated that the Israeli military authority alone has issued more than 1,500 military orders in the West Bank and 1,100 in Gaza.

Because the West Bank and the Gaza Strip are geographically separate and have historically been administered by different powers, they also have inherited different penal codes. The result is that there are substantial discrepancies between the laws applicable in Gaza and those applicable in the West Bank, even though the two areas are to be considered in reference to the Oslo Accords, as “a single territorial unit”. With regard to penal legislation as it applies to children, there are a number of major discrepancies, such as age brackets, sentencing options, trial procedures, conditions of detention, the role of the Probation Service and regulations relating to reform schools. A striking example is that while Israeli youth are considered children until the age of 18 by law, Palestinian youth are only considered children until the age of 16 (under military order 132) resulting in a striking double standard in violation of international guidelines. Furthermore, no piece of legislation provides for the legal representation of children who come into conflict with the law, or for the hearing of their cases by a specialised panel; and, no legislation treats children as rights-holders.

Juvenile courts, comprised of a specialised panel, do not exist at present. When a juvenile is brought to court, this court simply transforms itself into a juvenile court, which is asked to sit at a different time from the adult court, and apply “special procedures”. Insofar as legislation acknowledges the special needs of children, it is with regard to matters such as their separation from adults during detention, the notification of parents upon arrest and the requirement of privacy during court appearances. Research on juvenile justice, conducted by DCI-Palestine, reflects a very low awareness, among lawyers, judges, prosecutors, police, and other professionals, of the needs and legal rights of children.

In 2004, the Palestinian Child Law was introduced by the Palestinian Authority, which encapsulates the rights of the child as articulated in the CRC and governs issues of child protection. The goals of this legislation are to improve childhood in Palestine; socialise children and empower them by nurturing their national identity; prepare children to be active members of civil society; raise community awareness about their rights; encourage
children’s participation in community life; and educate and socialise children in certain community standards, morals and values.

A draft law on juvenile justice in Palestine has been drafted by several NGOs (including DCI-Palestine) in partnership with the Palestinian Ministry of Justice which would comply with international standards; however, the Palestinian Legislative Council is currently paralyzed at the time of writing since Hamas was elected.

Consistency with international standards

Israel, as the occupying power in the OPT, bears the main responsibility for the protection of children in its jurisdiction. Despite having ratified the UN Convention on the Rights of the Child (CRC) in November 1991, Israel failed to submit its report to the Committee on the Rights of the Child for a period of 7 years. When it finally did submit a report in 2000, it made no mention of the rights of Palestinian children living in the OPT.

In its concluding observations of Israel, the Committee states its concern regarding the rights of Palestinian children, and in particular, about the practice of arrest and interrogation of children in the OPT. The Committee urged the Israeli government to integrate international juvenile justice standards more fully into their national laws ensuring that deprivation of liberty is used only as a last resort, that children have access to independent legal aid and complaints mechanisms, and that professionals are trained in the area of rehabilitation and recovery. They also called on Israel to rescind all provisions in the military orders against children which violate international standards on the administration of juvenile justice. According to DCI-Palestine however, there continues to be a stark absence in measures taken towards ensuring that the CRC rights are translated to the lives of Palestinian children.

Regional Trends

Palestine was the only state examined in this mapping, and thus it is not possible to explore trends with other countries in the region. As noted earlier, Palestine constitutes a quite specific example due to the current occupation and complicated political history. It is worth noting that the Gaza strip has the highest population density in the world; almost 4000 people per km2 - 56% of whom are children.

Conclusion

From a geopolitical point of view, the countries in this mapping span across different geographical areas and have diverse political regimes. The situation of these countries is also very different when examining the existing different levels of political in/stability and the presence or absence of conflict and violence. Whilst some are well established democracies with peaceful environments as in the case of most European states, some are emerging from a situation of armed conflict, like Sierra Leone, and others are still experiencing on-going situations of political turmoil and conflict, as in the case of the Palestinian Occupied Territories.

Despite the variance in specific issues across regions, some general comments can be made about the administration of juvenile justice. While the majority of the countries have committed in principle to a comprehensive juvenile justice system, with many having specific legislation for young offenders, there remains a lack of full implementation in practice.
Insights from DCI national sections suggest that this absence is due to a number of factors including: a lack of trained professionals, lack of government resources and political will, lack of education on the rights of the child, and public fears resulting in pressure to institute punitive measures to combat juvenile delinquency, among others.

The following section examines more closely the issue of juvenile delinquency, asking what specific actions have been taken by the countries in question towards prevention.

CHAPTER II ENDNOTES:

1 Ordonnance No 99.11 du 14 mai 1999, portant création, composition, organisation et attributions de juridictions de mineurs
3 Although the Child Rights Act was enacted into law in parliament in 2007, it is not yet ‘enforceable’ at the time of writing, as the President of Sierra Leone has not yet signed the official commencement date
4 Services éducatifs judiciaires préventifs (SEJUP)
5 Progarmme Judiciale Juvénile
8 Regimen Penal de Menores No 22.278, 1980 (Argentina)
9 Código del Niño, Niña y Adolescente: Libro Tercero: Protección Jurídica, de la responsabilidad, de la jurisdicción y de los procedimientos, 1999 (Bolivia)
10 Ley de Ejecución Penal y Supervisión, Ley 2298, 2001(Bolivia)
11 Ley de Responsabilidad Penal Juvenil, 2007 (Chile)
12 Ley No. 7576, Ley de Justicia Penal Juvenil, 1996 (Costa Rica)
13LEY N° 8460, Ley de Ejecución de las Sanciones Penales Juvenil, 2005 (Costa Rica)
17 Dr June Kane, Violence against Children: Regional Consultation Latin America, ATAR Roto-Presse SA, Geneva, 2005
18 Loi du 15 mai 2006 modifiant la loi du 8 avril 1965 relative à la protection de la jeunesse
19 Loi du 13 juin 2006 modifiant la législation relative à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié d’infraction, M.B. du 19 juillet 2006
20 Ordonnance no 45-174 du 2 février 1945, relative à l’enfance délinquante
21 Loi du 8 avril 1965 relative à la protection de la jeunesse, M.B. 15 avril 1065
22 Dienst Justitiele Instellingen/DJI
24 ISTAT-Dipartimento di Giustizia Minorile, Analisi
25 Loi du 13 mai 1999 relative aux sanctions administratives dans les communes
26 Signature of the “Oslo Agreements” on 13th September 1993 between the State of Israel and the Palestinian government in exile, the PLO, led by Yassar Arafat.
27 Figures provided by DCI-Palestine
III. MINIMUM AGE OF CRIMINAL RESPONSIBILITY

The minimum age of criminal responsibility (minimum age) refers to the minimum age below which children shall be presumed not to have the capacity to infringe the penal law (CRC article 40). The establishment of such a minimum means that if a child below that age breaks the law, he or she shall not be held criminally responsible.

Article 40 of the Convention on the Rights of the Child (CRC) requires that all State Parties establish a minimum age; however, it leaves the specific age to be decided by the individual State. That being said however, the Committee on the Rights of the Child indicates guidelines for the establishment of the minimum age, stating in its General Comment No 10 (GC 10) that anything below the age of 12 is considered unacceptable by international standards.

At present, there is a wide spectrum of minimum ages of criminal responsibility existing in national legislations across the world - from as young as 7 years up to age 18\(^1\). The CRC stresses the importance for States to set a minimum age while GC 10 more specifically urges States to raise their minimum age as high as possible, taking into account the developmental differences and decision-making capabilities of children and young people.

General Comment No 10 also encourages States to also adopt an *upper-age* limit (the age of eighteen, according to the CRC), meaning that all children aged eighteen and below at the time an offence has been committed should be dealt with under the youth criminal justice system. States are also encouraged to make this limit higher (up to age 21 for example) whenever possible and appropriate.

International and domestic inconsistencies and individual discretion on child maturity make it essential for States to determine an appropriate age of criminal responsibility. With this in mind, the following section outlines the minimum age of criminal responsibility in each of the countries surveyed. DCI national sections were asked to provide national data on the age of criminal responsibility, details surrounding its implementation, as well as recent changes in the legislation and its consequences for children in conflict with the law.

The results of these questions are explored through the themes of: examples in national legislation; lowering the minimum age and adult sentencing; children below the minimum age; and the use of two minimum ages.

*Figure 5. illustrates the minimum ages of criminal responsibility in the countries surveyed:*

<table>
<thead>
<tr>
<th>MINIMUM AGES OF CRIMINAL RESPONSIBILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AFRICA</strong></td>
</tr>
<tr>
<td>Ghana</td>
</tr>
<tr>
<td>Niger</td>
</tr>
<tr>
<td>Sierra Leone</td>
</tr>
<tr>
<td>Uganda</td>
</tr>
<tr>
<td><strong>AMERICAS</strong></td>
</tr>
<tr>
<td>Argentina</td>
</tr>
<tr>
<td>Bolivia</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Canada</td>
</tr>
<tr>
<td>Chile</td>
</tr>
<tr>
<td>Costa Rica</td>
</tr>
</tbody>
</table>
### Table: Ages of Criminal Responsibility

<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Age of Criminal Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUROPE</td>
<td>Albania</td>
<td>14 (for criminal offences(^4))</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16 (for petty crimes)</td>
</tr>
<tr>
<td></td>
<td>Belgium</td>
<td>18 (see further description)</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>No specified age - 7/8 in practice</td>
</tr>
<tr>
<td></td>
<td>Italy</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>The Netherlands</td>
<td>12</td>
</tr>
<tr>
<td>MIDDLE-EAST</td>
<td>Palestine</td>
<td>12 (under military order 132)</td>
</tr>
</tbody>
</table>

### a) National Examples

The reports provided by DCI national sections reveal the existence of a wide umbrella of minimum ages of criminal responsibility, ranging from 8 to 18 years. Most national legislations appear to meet the international standard of twelve years of age with the exception of France which remains below standard in its failure to set a standard minimum age in its legislation.

French national legislation gives the judge the mandate to assess the child’s ability to discern between right and wrong and such children with this capacity are deemed criminally responsible. In practice, children tend to be deemed criminally responsible around the age of 7 or 8. The Committee on the Rights of the Child has expressed concern about the practice of allowing judges to discern an appropriate age of criminal responsibility and has called on France to establish a set minimum age\(^3\).

The situation in France contrasts sharply with that of Belgium wherein children below the age of 18 are not considered criminally responsible. That being said, children over the age of 16 who are accused of serious offences may be transferred to be tried in adult criminal court, with approximately 3% of cases being transferred each year (mainly in the Brussels region). Despite the high age of criminal responsibility, the Youth Protection Act still responds to the situation, usually by allotting educational measures rather than penal sentences.

It is significant to note that many of the countries surveyed have only recently amended their legislation to bring it in line with international norms, particularly following the review and recommendations of the UN Committee on the Rights of the Child. This was the case of Ghana, Sierra Leone and Uganda, which had previously set their age of accountability at seven, ten and seven respectively - significantly below international standards.

#### Spotlight on Sierra Leone

At the end of the 23\(^{rd}\) session in January 2000, The Committee on the Rights of the Child was concerned with Sierra Leone’s extremely low age of criminal responsibility - set at 10 years by domestic legislation. The Committee recommended that the government review its relevant legislation and raise its minimum age accordingly.

After much national lobbying, including substantive efforts by DCI-Sierra Leone, the new Child Rights Act of Sierra Leone was approved by parliament in 2007. A key achievement of the Act was the raising of the minimum age from 10 to 14 - bringing it in line with international norms and standards.
b) Lowering the Minimum Age / Adult Sentencing

The Committee has often expressed concern over the trend in some States towards lowering the minimum age. In particular, there are ongoing debates in several countries about tightening the punitive measures taken against juvenile offenders and especially those involved in serious crimes. Many countries, including France and the Netherlands for instance, face constant pressure to lower or maintain their currently low minimum ages of criminal responsibility. In response to sensational media attention in Italy, significant debate is currently taking place at both the public and political level on reducing the age of criminal responsibility.

Some countries have conceded to these pressures and lowered their minimum age of criminal responsibility accordingly. As an example, the minimum age of criminal responsibility in Chile has been lowered from sixteen to fourteen in response to public concerns over youth crime and juvenile delinquency.

While the majority of countries surveyed have minimum ages which reflect international standards, the sentencing procedures in certain countries are often contradictory and allow for exceptions to the rule. The Committee on the Rights of the Child has expressed concern over systems which allow children to either be tried or sentenced as adults for serious offences. This is currently the case under the legislations of Bolivia, the Netherlands, Canada, and Belgium for example.

In France, child offenders are dealt with by juvenile courts; however, since amendments to the country’s juvenile justice Ordinance in 2007, young offenders may be sentenced to heavy prison sentences as adults after the age of sixteen if they have re-offended twice or more. In practice, it is happening more and more frequently that young people are sentenced as adults.

A similar legislation exists in Canada, wherein youth who are convicted of serious and violent crimes such as murder, attempted murder, manslaughter and aggravated sexual assault, or who are recidivists, may be sentenced as adults. The criteria for the administration of an adult sentence are narrowly circumscribed in the Youth Criminal Justice Act:

- The prosecutor must have given notice before trial that he/she intends to seek an adult sentence and the child may invoke his/her right to a trial by jury if he/she chooses;
- The child must have been found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years;
- The young person must be over the age of fourteen when the crime was committed;
- The court must be satisfied that a youth sentence “would not have sufficient length to hold the young person accountable for his or her offending behaviour”. The onus is on the prosecutor to determine these criteria.

The Netherlands also allows children to be sentenced as adults, and it is typical to see sixteen to eighteen year old youth being sentenced by adult criminal law for committing serious crimes. In Belgium, a judge can estimate that the care measures, preservation and education that can be given to a young person after sixteen years of age for his crimes are inadequate, and can give the dossier to adult court.
c) Measures for children Below the Minimum Age

Through its General Comment No 10, the Committee on the Rights of the Child recommends that measures also be put in place to respond to the criminal acts of children below the minimum age of criminal responsibility. The Netherlands’ “STOP-reaction” makes it possible to react to criminal offences committed by children below twelve years of age - an issue which has been of growing concern in the country. This is not criminal but rather civil law where the focus is partly on the parents, taking part is voluntary and conferences or learning assignments are used. This process is offered voluntarily to parents and supports them in taking a didactic approach to responding to their child’s behaviour. If the child commits a second offence, the case is usually referred to the Child Protection Board (or in future, the Youth Care office) which may result in a civil law response in the form of a family supervision order.

d) Use of Two Minimum Ages

In General Comment No 10, the Committee expresses concern over the confusion caused in States which have two minimum ages (for example, as evidenced in Albania and Bolivia). In Bolivia’s case for example, different levels of ‘responsibility’ are delineated according to age. From age twelve to age fifteen, the actions of children in conflict with the law fall under the Code for Children and Adolescents, headed by the Judges of Children and Adolescents. Youth between the ages of sixteen to eighteen are governed by the criminal laws for adults (Penal Code and Criminal Procedure Code) are the responsibility of adult courts and judges. The term ‘social responsibility’ which refers to the actions of the young group is generally understood to be “compassionate semantics” as described by DCI-Bolivia, since they are still considered criminal offences and still punished under this Code.

Conclusion

DCI considers the minimum age of criminal responsibility to be an important indicator of the state of a given country’s juvenile justice system. However in evaluating the minimum age of criminal responsibility in a given country, it is also useful to assess other factors surrounding detention: such as the age at which children may be sentenced to detention as well as the types of programmes in place for children in conflict with the law. Moreover, the average lengths of detention both in law and in practice provide a worthwhile glimpse of the reality facing young people in conflict with the law - an issue which is addressed in the following chapter.

CHAPTER III ENDNOTES

1 For example, India has a minimum age of 7, while Spain has a minimum age of 16, and Belgium 18.
2 These two types of responsibility are described further at the end of this Chapter
5 Ordonnance no 45-174 du 2 février 1945, relative à l’enfance délinquante
6 Youth Criminal Justice Act (2003) section 72(1)(b)
7 There have been some exceptions to this rule - see chapter 2 on the administration of juvenile justice
IV. THE PREVENTION OF JUVENILE DELINQUENCY

The term *juvenile delinquency* refers to the behaviour of a child or adolescent in actual or perceived conflict with the law, or engaged in ‘anti-social’\(^1\) behaviour.

In many countries efforts have been made to trace the root causes of juvenile delinquency, and to profile those most at risk of offending. In their opinion paper on *The Prevention of Juvenile Delinquency*\(^2\) the European Economic and Social Committee lists some of the most widely recognised causes in the European context including: a broken home; socioeconomic marginalization or poverty; truancy and academic failure; unemployment; broadcasting of violent images and attitudes; abuse of drugs and toxic substances; and shortcomings in the teaching and passing on of social and civic values. In the African region delinquency tends to be attributed to hunger, poverty, malnutrition and unemployment; whilst in Latin America the economic debt crisis and resulting levels of unemployment are thought to be a primary cause\(^3\).

Preventing juvenile delinquency refers to the process of discouraging situations which cause children to come into conflict with the law. Rather than focusing only on children who have infringed the law, a comprehensive prevention strategy addresses broader social and economic injustices including poverty and discrimination. This may involve providing resources and assistance to children and families, especially those who are experiencing socio-economic difficulties. Early intervention programmes which promote early education, poverty reduction, skills and job development and involve families and communities may be used to tackle juvenile delinquency in innovative ways.

When considering State Party reports on the implementation of the CRC, the Committee on the Rights of the Child has repeatedly drawn attention to the need for strong programmes to reduce the risk of children coming into conflict with the law. This is particularly the case with France in 2004 at the Committee’s 36\(^{th}\) session\(^4\), and with Albania in 2005 at its 38\(^{th}\) session\(^5\). Ensuring that children do not come into conflict with the law is a desirable end in itself, but is also a means of ensuring the full and harmonious development of a child’s personality, talents and mental and physical abilities. A child cannot freely exercise his/her rights as recognized in the CRC if he/she grows up in circumstances that may risk involvement with criminal activities\(^6\).

General Comment No.10 recalls the core principles of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)\(^7\) and recommends that emphasis be placed on prevention policies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations\(^8\).

DCI was interested to know which of the countries involved in our study have prevention programmes in place, which national body is responsible for their implementation, and the target groups of these programmes.

In the countries under survey, prevention programmes fell into two broad categories: a) programmes designed with the specific goal of reducing juvenile delinquency; b) National security programmes that include measures to reduce crime, including juvenile delinquency. In a small group of countries, including Ghana, Sierra Leone and Palestine, there were no prevention programmes of any kind.
Interestingly, all five European DCI sections provided examples of specific programmes for the prevention of juvenile delinquency. Whilst in Latin America, most actions that contribute to the reduction of juvenile delinquency are part of broader programmes to address citizen security and high levels of violence. In Africa, there are few programmes that contribute directly or indirectly to the prevention of juvenile delinquency.

In Europe, the prevalence of programmes may be attributed to the fact that in recent years, juvenile delinquency has become the subject of growing concern and scrutiny at European level. Stories about “juvenile delinquents” and “youth gangs” are frequently headline news. In 2006 and 2007 European institutions have been reacting to public fears and growing media frenzy by exploring opportunities for a Pan-European strategy. In the area of crime prevention and crime policy, the Council of Europe lists the prevention of juvenile delinquency and juvenile justice as its priority for cooperation. Moreover, in June 2007, the European Parliament adopted a resolution based on the own-initiative report drafted by Katerina Batzeli MEP on juvenile delinquency, the role of women, the family and society. It stated that juvenile delinquency is becoming a matter for concern on account of the huge scale it has now assumed, owing to the fact that delinquency is starting at a younger age, the number of offences committed by children under the age of 13 is increasing and that the acts committed by young people are becoming increasingly brutal.

In Central and Latin America, anxiety over high levels of violence and insecurity dominate the political and policy agendas. According to a recent UNODC report on crime and development in Central America, due to its geographic location and a range of domestic factors...including social and economic pressures, lack of law enforcement capacity, and a history of conflict or authoritarian rule, the region is highly exposed to exogenous organised crime. According to the report, stark wealth disparities, which characterise this region and South America, provide criminals with both a justification (addressing social injustice) and an opportunity (wealth to steal) for their activities, as well as generating “expressive violence.” Government response in this region has thus been a series of citizen security programmes. In April 2007 for example, the Inter-American Development Bank (IDB) sponsored an Inter-American Forum on Citizen Security and Violence Prevention, held in Lima, Peru. Mr Marco Ferroni of the IDB noted that “The IDB has been supporting governments and cities’ initiatives in this area during the last decade and will keep focusing efforts to overcome this persistent problem in Latin America and the Caribbean.”

a) Targeted Programmes for the Prevention of Juvenile Delinquency

In the Netherlands, Belgium, Albania, Italy, and France, DCI national sections listed examples of programmes designed specifically to prevent juvenile delinquency.

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In the Netherlands, HALT organisations across the country undertake activities to help prevent juvenile delinquency. 1) They regularly provide information to 10-14 year olds on topics such as peer pressure and breaking the law. This information dissemination can be done in collaboration with the police and/or other partners; 2) HALT is often involved in specific prevention projects such as the improvement of safety in and around schools or quality of life in neighbourhood; 3) HALT also advises communities, shopkeepers and Sports organisations about the trends in juvenile crime and how to respond, and also contributes to local youth and safety policy.

Multiple sectors are involved in the provision of prevention programmes in Belgium, including for example Social Service Schools, Socio-Professional Integration Services and the Youth and Permanent Education Department (youth centres and centres for creative expression). Initiatives designed to prevent juvenile delinquency include promoting the participation of young people in local council meetings. The objective is to hear what young people expect from the work done by the local council.

In France, the coordination of the prevention of delinquency falls under the mandate of the Mayor of each commune (this is the lowest level of administrative division in France; as of March 1st 2007 there were 36,780 communes in France). Since 2002, any Commune with over 10000 inhabitants should create a local council for “security and the prevention of delinquency”. These are made up of elected members of the commune including police, representatives of the justice and education systems and local organisations of social workers. The most recent law on the prevention of juvenile delinquency further increases the power of Mayors, so that they are able to set up councils for the rights and duties of families, who can give support to families in difficulty.

In 2000 the Italian Parliamentary Commission on Childhood pledged to introduce a series of preventative initiatives including: the prioritisation of sport, socialisation and integration activities in schools, provision of counselling services in schools, establishment of observatories on children, with particular attention to certain at-risk geographical areas, and the guaranteeing of psychosocial services for children and adolescents. However, the changes in government in 2001 and 2006 resulted in insufficient funds being accorded to this initiative and to the Law 285/97 which provided guidelines for local action to fight poverty, social exclusion and violence. This has resulted in a fragmented and unbalanced approach to prevention in Italy.

b) Citizen Security Programmes

In Chile, the Ministry of Interior has established programmes for citizen security (“Programas de Seguridad Ciudadana”), which are run at the local municipal level. These programmes include a wide range of actions including the installation of security lighting and the prevention of delinquency by addressing socioeconomic insecurity. According to DCI-Chile however, these programmes have had little impact on the prevention of juvenile delinquency; the actions focus more on support to infrastructure, and tightened control, as opposed to community work. There have been ad hoc attempts by the Ministry of Education to tackle the problem of school drop outs, but these have not been sufficient to establish an efficient and effective programme.

Similarly, in Argentina, the Ministry of Justice has developed a National Plan of Action to combat crime. This initiative is designed to build safer cities with an emphasis on prevention. It is a joint initiative between national government, local government and the community. Its main goals are to prevent street crime and diminish the feeling of insecurity of inhabitants. It focuses on a preventative approach that involves the whole community because over the years punitive measures have been shown to be highly ineffective. As in Chile, actions include improved street lighting and monitoring of public areas, but also community based activities. There is no data indicating the impact of these programmes on levels of juvenile delinquency.

The National Plan for the Treatment of Violence and Criminality in Costa Rica includes actions such as reducing school dropouts, controlling alcohol consumption, preventing intra-family violence, improving parks and sports grounds, and training of 400 new police officers. Other actions include a national network for the prevention of violence.
According to DCI’s national section however, as in Argentina and Chile, these efforts have had uncoordinated and dispersed results, and without sufficient resources to follow them through.

In Bolivia, the quality of programmes to prevent juvenile delinquency varies depending on the department (Bolivia is divided into 9 departments, DCI-Bolivia gathered information from 4 of these departments).

In the Cochabamba department, citizen security measures such as municipal orders for the prohibition of the sale of alcohol to minors, and prohibition of public alcohol consumption, can also have an impact on the levels of juvenile delinquency - but are not designed specifically for this purpose. Interestingly, in Cochabamba, there are a small number of activities specifically designed to address juvenile delinquency. For example, the representative for Youth and Childhood in the department frequently holds talk in school settings on juvenile delinquency. In the department of, there are training workshops on social integration which child offenders can benefit from. This compliments more vocational training workshops as preparation for entry into society.

In the departments of Santa Clara, La Paz, and Oruro there are no governmental programmes aimed specifically at the prevention of juvenile delinquency. Nevertheless, in Oruro there are training programmes on social integration that children can benefit from. Civil society actors in La Paz also try to engage in indirect preventative activities such as health, educational and vocational training programmes aimed at street children. According to DCI-Bolivia, in general the theme of prevention in Bolivia is addressed in an isolated way, and not with a concerted approach which suggests a lack of interest and political will to address this problem by authorities and other institutions.

c) No programmes for the prevention of juvenile delinquency

In both Sierra Leone and Ghana, there are no specific programmes for the prevention of juvenile delinquency.

In both countries however, there have been programmes for street children, which aim to provide employment and vocational opportunities to vulnerable children, in order to bring them off the streets, thus preventing them from becoming associated with adult criminals. DCI-Sierra Leone reported that these programmes had little impact on crime prevention among juveniles. It would be more effective to target crime prone communities where prevention programmes are absent.

Having said this, the situation in Sierra Leone looks set to improve since the government recently developed and adopted the ‘National Child Justice Strategy 2006’. This policy document outlines specific activities that the government should undertake to address the prevention of juvenile delinquency. The activities include: mapping out high risk communities in each district of the country; establishing community policing programmes in neighbourhood and communities identified as high risk; supporting Child Welfare Committees, Youth Groups, and Community Based Organizations to develop and manage community safety and crime prevention programmes; training of trainers in sex education, peer mediation, substance abuse, social skills, reconciliation and conflict management for community leaders and guidance counsellors. Due to a lack of government funding, the actual implementation of this strategy has been delayed until now.

The case of Palestine is exceptional, in that there are neither governmental nor non-governmental programmes that contribute to the prevention of juvenile delinquency. DCI
Palestine noted that no work is being done towards identifying and working with “at risk” children, and professionals working with children have inadequate knowledge on how to identify indicators of children becoming at risk. It should also be noted that in the Palestinian context the criminal acts for which children are arrested, charged and detained are predominantly acts of political resistance, rather than delinquent acts.

Conclusion

The information gathered by DCI national sections suggests that there are clear regional trends in the implementation of strategies for the prevention of juvenile delinquency. In the Europe region growing public attention to the issue of juvenile delinquency has prompted investment in the implementation of specific prevention programmes. These programmes are managed by multiple sectors including social services, education departments and local authorities, and target at-risk areas and families in difficulty.

Strategies for citizen security in the Americas region include preventative actions such as monitoring public areas and controlling alcohol consumption, but these measures are not directed exclusively at young people, and according to DCI national sections have very little impact on levels of juvenile delinquency. Furthermore, contrary to the recommendations in General Comment No.10, these strategies do not emphasise the successful socialisation or reintegration of children.

In the African countries under review, there exist no specific programmes for the prevention of juvenile delinquency. DCI national sections attribute this to a lack of resources, and stress that any successful prevention programmes must target high-risk communities.

CHAPTER IV ENDNOTES:

1 The definition of anti-social behaviour under the UK Crime and Disorder Act 1998 is ‘behaviour likely to cause alarm, harassment or distress to members of the public not of the same household as the perpetrator’.


9 ibid

11 Loi n° 2007-297 du 5 mars 2007 relative à la prévention de la délinquance
12 Law 285/9, 1997 (Italy)
V. CHILDREN DEPRIVED OF THEIR LIBERTY

“The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority” (United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); II; 11b).

Current estimates suggest that there are more than 1 million children deprived of their liberty worldwide – although the true figure is undoubtedly much higher. Statistics on the number of children in detention have been notoriously difficult to obtain as children behind bars remain invisible from the public eye and low on the public agenda. The Committee on the Rights of the Child has consistently noted this problem when examining States Parties, and called for the need for better monitoring and data collection on the number of children in detention as a key component of its General Comment No. 10 on the Rights of Children in Juvenile Justice Systems (VII: 98).

The vast majority of children deprived of their liberty are in pre-trial detention. These figures contrast sharply with the reality that the most children commit non-violent offences and the majority of them are acquitted after trial.

Across the myriad of international standards on juvenile justice, one recommendation has been repeatedly made clear: that detention must be used as a measure of last resort and for the shortest appropriate period of time (CRC; GC 10; Havana Rules; Beijing Rules). States are consistently encouraged to use alternative measures to detention which promote the child’s rehabilitation and reintegration into society - a point which will be discussed more closely in the final chapter. Despite the consistency in these guidelines however, the vast majority of countries in the world continue to use deprivation of liberty as their first sentencing option.

Children can be deprived of their liberty because they are accused of or because they have committed an offence. However, many children also end up behind bars because they are in a vulnerable situation; because they have been abandoned by their parents, or their parents cannot take care of them; because they have disabilities; because they are living on the streets; or because their family is attempting to migrate or seek asylum in a new country.

The issue of deprivation of liberty was examined at length in DCI’s 2003 study of 22 countries titled “Kids Behind Bars” whose major finding was that children continue to be deprived of their liberty in record numbers across the world and that pre-trial detention in particular was overused. This Chapter recalls the results of this study and aims to determine whether there have been any changes in this regard. As such, DCI national sections were asked to provide figures on the number of children deprived of their liberty (where available) and to identify the most pressing issues with respect to children in detention in their countries.

This Chapter thus explores the various aspects of deprivation of liberty as reported by DCI’s national sections in this study and is divided under three overarching themes including: length of detention; conditions of detention; and violence and abuses.

a) Length of Detention

Typical lengths of detention vary widely across the countries in this study. Relevant
legislations, statistics and other related information available in every country on children held in detention (either awaiting trial or after conviction) reveal that the principles of “last resort” and “for the shortest appropriate period of time” and other relevant international juvenile justice standards are frequently undermined.

The time children spend behind bars has a harmful impact upon them, jeopardising their right to development and often to an education. The effects of being deprived of one’s liberty are much more acute for adolescents as they are in a process of growth and development. Lengthy prison sentences for children undermine their basic rights and deny them the full opportunity for rehabilitation and reintegration to their societies. Perception of time is also different for children and adolescents. As DCI-Costa Rica so aptly noted, “a fifteen year prison sentence for a teenager, is in context, equal to a lifetime behind bars”.

Due to the lack of national statistics on lengths of detention and barriers to accessing information, DCI national sections looked to national government records as well as their own research and experience in collecting information on this issue.

The following section is broken down regionally and illustrates trends in the length of detention including maximum sentences and the duration of average sentences.

i) Africa

While the legislation in all 4 African countries surveyed states that children should not be held longer than 3 years, in practice the situation is often very different.

According to DCI national sections, these laws are often not respected, with children sometimes remaining much longer in detention and at times being detained for petty offences and “status offences” (ie: behaviours such as loitering or vagrancy that are not considered crimes when committed by adults). While this problem still occurs in Sierra Leone, it has become less frequent since the adoption of the Child Rights Act 2007, which now calls for such children to be referred to Child Panels or Child Welfare Committees rather than police stations and courts.

According to the Juvenile Justice Act (2003) of Ghana, children can be deprived of their liberty for periods of between three and twenty four months upon conviction. This may vary in response to the age of the child and the circumstances of the case. When a serious offence has been committed however, a child may be detained for up to three years. While on remand, the maximum period should not exceed seven days and should not be renewed without a hearing. The total period of remand (including renewals) should not exceed a period of three months except in the case of serious offences which shall not exceed a period of six months. DCI-Ghana notes that on average, children are deprived of their liberty for a period of fifteen months.

The law in Niger differentiates between the lengths of detention for a crime and for an offence. Children who have committed an offence tend to be deprived of their liberty for an average of six months and this may be renewed once. Children who have committed crimes may be deprived of their liberty for a period of one year, renewable one time.

In contrast, the Children’s Act of Uganda usually sets detention at a period of six months for children who have committed petty offences while those charged with capital offences can be convicted and detained for a maximum of three years. In practice the six months provision is sometimes not adhered to because of delays in court proceedings.
Sierra Leone’s Children and Young Person’s Act states that imprisonment should only take place at the Approved School and should not exceed a period of three years. The time may be further extended upon the recommendation of the Approved School manager and with the approval of the Governor (Head of State during the colonial period). Imprisonment as a sentence should only apply to children between the ages of 14-17. Upon calculating the periods of detention for all children in Sierra Leone’s “Approved School”, DCI’s national section suggested that children are deprived of liberty on average between six months and one year.

Both DCI national sections and the Committee on the Rights of the Child have expressed concern that deprivation was not being used as a last resort for children in conflict with the law. At the end of its 41st session in January 2006, the Committee asked Ghana to ensure that deprivation of liberty was only used as a last resort. Moreover, in its review of Sierra Leone in 2000, the Committee expressed concern about the absence of precise data on the numbers and situation of children in detention or serving prison sentences in Sierra Leone.

Overall, a common concern of DCI national sections in the African region was the overuse of pre-trial detention. Sierra Leone for example noted that children often languish in pre-trial detention for months waiting for their case to be heard due to a lack of resources including judges to hear the case. This is particularly troubling given that some of the worst forms of abuse against children occur during pre-trial detention, which is often monitored less closely.

ii) Americas

In the Americas, several practices have been documented in the countries under review which clearly violate the rights of the child. Extreme sentences may be applied to juveniles in conflict with the law in Bolivia, Costa Rica and Chile, where children may be deprived of their liberty for periods ranging from 3 to 15 years in some cases. Further troubling in Argentina, is the open discretionary power of judges, who can impose indeterminate sentences on minors. Despite having a newly reviewed youth justice system, Canadian courts have the power to impose adult sentences on juvenile offenders in serious cases.

It is difficult to determine the average lengths of sentencing in many countries due to the lack of government data collection and retention. In Bolivia for example, no specific data is available on this question. Bolivian law itself however states that detention sentences adolescents between fourteen and sixteen should not last more than five years and adolescents between twelve and fourteen should not be deprived of their liberty for more than three years. Adolescents over sixteen are subject to the Adult Criminal Code in accordance with the crime committed but are to be placed in prisons separate from adults.

The law and average lengths of detention are similarly difficult to establish in Argentina as there is no clear limitation on detention and judges hold discretionary power to sentence children in conflict with the law to prison terms, with no need to specify their length.

While alternative measures to the deprivation of liberty have been instituted in most countries, many continue to impose lengthy prison sentences, especially for what are considered to be more serious crimes. In Costa Rica, children between the ages of twelve and fifteen can be sentenced to a maximum of ten years imprisonment while children between the ages of fifteen to eighteen can be sentenced to a maximum of fifteen years imprisonment. These limits are harsh and do not meet international standards on using
deprivation of liberty for the “shortest appropriate period of time”.

In Chile, children between the ages of fourteen and sixteen may be sentenced to up to five years imprisonment whereas children between the ages of sixteen to eighteen may be sentenced to up to ten years. In all countries in this region, the trend has been towards lengthier sentences, especially for serious crimes, such as homicide.

The Committee on the Rights of the Child has expressed concern over this trend towards lengthy detention periods. For example, the end of the 39th session in May 2005, the Committee encouraged Costa Rica to continue to take all necessary measures to ensure that persons below the age of 18 benefit from alternatives to detention and, when needed, are only deprived of liberty as a last resort and for the shortest period of time. Similarly, at the end of the 38th session held in January 2005, members of the Committee called upon Bolivia to develop and implement alternatives to pre-trial and other forms of detention in order to ensure that deprivation of liberty was really rendered a measure of last resort.

The Youth Criminal Justice Act (YCJA) oversees the deprivation of liberty in Canada, setting forth “Custody and Supervision Orders” so named because, as a general rule, the first two-thirds of the order are served in custody, while the remaining one-third takes place under supervision in the community. The maximum lengths for deprivation of liberty correspond to the crime committed. Crimes of first degree murder carry a maximum sentence of ten years (of which six years are spent in custody) while second degree murder carries a sentence of seven years (with a maximum of four years spent in custody). For all other offences to which an adult would face a maximum of a life sentence, the child may be sentenced to two years (of which two-thirds is spent in custody). All other criminal offences carry a maximum of two years (with two-thirds being spent in custody).

A Custody and Supervision Order is the most severe sentence included under Canada’s legislation (other than an adult sentence - discussed in chapter 2) and there is a very high threshold for imposing such an order. Since the adoption of the new YCJA, there has been a considerable drop in the number of children deprived of their liberty in Canada - specifically, Canada’s incarceration rate for children in now around half of what it was a decade ago.

iii) Europe

The average lengths of detention in the European countries surveyed was quite varied, with the laws in many States not reflecting international standards and guidelines.

In Albania, the Criminal Procedure Code provides clear rules on how long a criminal investigation can continue and determines that it is mandatory to collect information on the environment of the child, his/her family circumstances in order to assess his/responsibility and determine appropriate punitive measures. According to the Criminal Code (article 51), the imprisonment period of a juvenile may not exceed half of the sentence normally applicable to adult offenders.

In Italian law, the preference is to seek educative solutions where possible rather than imposing detention. Belgian, French and Dutch laws follow a similar pattern. Italy in particular has seen a decrease in the use of detention since the introduction of the new code of penal procedure in 1988. Deprivation of liberty in Italy is rarely ever longer than a period of three years; however, when considered in combination with the period of pre-trial detention, the true duration may be longer.

The maximum length of detention for children in the Netherlands was raised from one to
two years as the result of a new amendment to the criminal justice law for minors made in
1995. In particular, twelve months tends to be the maximum for twelve to fifteen year
olds while two years is generally the maximum for sixteen to seventeen year olds.
According to DCI-Netherlands, the average length of sentences of deprivation of liberty in
practice is three months.

In the French-speaking region of Belgium, children may be imprisoned for various periods
depending on the circumstances and the center in which they are placed. While children
under the age of eighteen are understood as not criminally responsible, they may be dealt
with through either educational measures or the placement of those over twelve in a
public youth protection institution\(^7\). Within these institutions, children may sometimes be
deprived of their liberty in the pre-trial phase for indefinite periods. At the Everberg
Center\(^8\), the detention phase can last a maximum of two months and five days and is
reserved for youth who have committed serious crimes (those for which an adult would
serve a sentence of 5-10 years).

As in the other regions, the use of pre-trial detention was also a concern of DCI’s national
sections. Of the most concerning practices involves the imprisonment of children for
indefinite periods of time. This was particularly a problem noted by DCI-Belgium, who
lamented that within the Law on the Protection of Youth\(^9\), the length of pre-trial
detention has no time limitations. Children may be placed in a closed detention centre for
a period of three months, which can be renewed for another three months, and then again
on a monthly basis if deemed necessary. Similarly, when reviewing France in 2004, the
Committee on the Rights of the Child expressed concern about the use of pre-trial
detention. Despite this fact however, DCI-France suggests that not much has changed in
this regard: in fact, 2/3 of the children in prison are in pre-trial detention.

The Committee on the Rights of the Child echoed these concerns. During the concluding
observations of its 38\(^{th}\) session in 2005, they highlighted the need for Albania to take
stronger measures to reduce the use of pre-trial detention and to make their lengths of
detention as short as possible. Despite these recommendations however, DCI-Albania was
still quite concerned with detention during the pre-trial phase. The same
recommendations were offered to France during the Committee’s last review in June 2004,
however DCI-France notes that there has still not been much progress made in this area.

While many European states have instituted alternatives to detention, or attempted to
avoid the use of detention, there seems to be a parallel trend towards instituting strict
sentences for those youth who have committed serious crimes or have re-offended. This
was particularly noted in France, where juveniles may be handed lengthy adult sentences
in response to serious crimes or recidivism.
iv) Middle-East

In Palestine, children in conflict with the law face diverse detention periods, ranging from less than 6 months to a maximum of 3 years imprisonment. Moreover, the use of pre-trial detention is overused and not in line with international standards.

According to DCI-Palestine’s data for the year 2006, 28.2% children had been sentenced to less than 6 months imprisonment, 16.4% to sentences between 6 months and 1 year, 47.9% to sentences between 1 and 3 years and 7.5% to 3 years or more.

The information provided by DCI-Palestine illustrates an increase in the lengths of detention in 2006. This is a result of complex circumstances in the Occupied Palestinian Territory (OPT) including a new military prosecutor at one of the courts who advocated harsher sentences for Palestinian children, and an increasingly volatile political situation more generally.

The problems of lengthy pre-trial detention, abuse during interrogation, delayed access to legal counsel and the institutionalised practice of plea-bargaining between the prosecution and defence violate the most basic civil and political rights of Palestinian children.

Conclusion

The use of deprivation of liberty as a “last resort and for the shortest appropriate period of time” is consistent and has remained a cornerstone standard across international standards on juvenile justice. As such, the lengths of detention in a given country and frequency with which detention is used, are windows into a State’s treatment of children in conflict with the law.

The extended periods of time that some children spend in pre-trial detention and/or serving a sentence of deprivation of liberty undermine the best interests of the child, the most basic principle enshrined in article 3 of the UN Convention on the Rights of the Child. However, the detention periods which may be imposed on juvenile offenders in many of the countries surveyed goes beyond minimum acceptable standards and suggests that in many times detention is not used as a measure of last resort. Clear examples can be evidenced in Ghana, Uganda, Chile, Costa Rica, the Netherlands and Palestine.

Many countries in this mapping define detention periods in accordance with age and the circumstances around the alleged crime. At the same time, there have been disturbing trends towards allowing exceptions wherein young people may be sentenced as adults - something which General Committee No 10 explicitly discourages.

An overarching concern visible across all regions was the overuse of pre-trial detention. While governments often rationalise its use as a concern for public safely, pre-trial detention is essentially a means of depriving children (who have not yet been convicted of a crime) of one of their most fundamental liberties.

Gathering data for this section was a daunting task for DCI national sections, with ‘official figures’ often remaining difficult or impossible to obtain, or at times entirely non-existent. The collection of statistical data was a challenging endeavor for many reasons: frequently the figures are missing due to poor or inexistent book keeping systems. Many times the information available was limited in duration and does not cover the entire country,
focusing rather on the capital and/or the main cities, effectively leaving rural areas absent from the picture. It was also common that authorities were not willing to cooperate and reveal this kind of information, as it would underscore the gaps in their system and their overuse of the deprivation of liberty.

While detention or institutionalisation is often the ‘easiest’ solution for States, measures which deprive children of their liberty do not facilitate, but rather hamper, the child’s future social reintegration and rehabilitation. These risks are compounded by the troubling conditions of detention which have been noted by DCI national sections as well as the Committee on the Rights of the Child, and will be discussed further in the following section.

b) Conditions of Detention

As evidenced in the first part of this chapter, children can be held in detention facilities for long periods of time, and often before they have even been formally convicted of an offence. The following international instruments provide standards for the conditions of detention for children: UN CRC, the UN Rules for the Protection of Children Deprived of their Liberty (1990) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985).

According to these standards children deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity (Havana Rules article D.31). In particular, detention facilities should ensure that every child receives food that is suitably prepared and presented at meal times (Havana Rules article D.37). Sanitary installations should be so located and of a sufficient standard to enable every child to meet their physical needs in privacy and in a clean and decent manner (Havana Rules article D.34). The design of detention facilities for children and the physical environment should be in keeping with the rehabilitative aim of residential treatment with due regard to the need of the child for privacy, sensory stimuli, physical exercise and leisure-time activities (Havana Rules article D.32). Furthermore, children in institutions should receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require due to their age, sex, and personality (Beijing Rules article 26.2). Every child deprived of liberty should be separated from adults unless it is considered in the child’s best interest not to do so and should have the right to maintain contact with his or her family through correspondence and visits (UN CRC article 37 (c)).

DCI was interested to know whether these international standards were being respected in the countries in this study and whether the situation had changed since the study undertaken by DCI-Netherlands in 2003 on the situation of children in prison. DCI-Netherlands gathered data from 22 countries worldwide in collaboration with DCI national sections across Africa, Asia and Latin America. At this time, the following general trends were observed:

- Overcrowded prisons are a common phenomenon in many developing countries. In many countries adults were still detained with minors;
- With regard to food, in most developing countries there was a lack of variety and nutritional value, but in the Western countries such as Netherlands and Canada the food was good and sufficient;
- Health care was provided in all countries, but this was usually insufficient, and poor conditions in hygiene and housing often resulted in more sickness and disease;
- In most Western countries, education, possibilities to learn working skills and recreation are well provided, however in other countries such as Albania, Kenya and Palestine opportunities for education were very limited.

For the purposes of this study it should be noted that most DCI sections were able to make on-site visits to the detention centres, others provided information based on the personal testimonies of ex-detainees and on investigations undertaken by other independent organisations.

i) Quality and Quantity of Food

DCI national sections in Sierra Leone, Bolivia, Ghana, Albania and Palestine expressed concern about the quality and quantity of food in detention centres.

The problem is particularly acute in Palestine where food provided to the prisoners is poor in both quality and quantity and is often inedible.

A common problem in Palestine is that food served to children in detention has either passed its expiration date or has been left unattended for long periods of time. As a result, children are exposed to food poisoning. Similarly, in Albania, DCI researchers found that in many instances food was stored in inappropriate places. In Albania food is usually prepared by adult prisoners who may not be qualified as cooks. Food provided by families therefore remains one of the greatest supplies of food.

In Sierra Leone, riots and breakouts happen on a regular basis when the food is insufficient or not good. At the time of writing, a major food crisis is taking place within juvenile detention centers in Sierra Leone. Because the centres do not have sufficient staff to deal with the situation, many of the children break out. Staff of DCI’s International Secretariat met with a former child detainee from Sierra Leone in July 2007, who stated that: “children in prison were starved as there was always a shortage of food: sometimes there was only one meal in an entire day. When food was available, it was all thrown into one bowl, causing everyone to fight for each scrap. The adults, being larger and stronger, always beat out the younger boys for the food, sometimes leaving them with nothing at all”.

The situation in Costa Rica seems to be exceptional in that at the Zurquí juvenile center, children receive three meals per day as well as a snack. A survey undertaken by DCI-Costa Rica in 2004 in the framework of a regional diagnosis on the conditions of detention of adolescents in the prisons of Central America reveals that 34.1% of children considered that the food was good, 46.3% average and 14.6% bad. With regards to variety, 41.5% of the children were actually satisfied; a further 31.7% thought that there was room for improvement.
ii) Hygiene and Privacy

National sections from all regions involved in the study reported that hygiene and privacy were not accorded to all children in detention centres, particularly in Sierra Leone, Albania, France, Uganda, Italy, Niger, Chile, Palestine and Ghana.

In Albania for example, DCI researchers reported that in most pre-trial detention rooms, the walls were cracked, the beds un-covered, and the rooms damp. Lights are kept on at all times making it difficult for children to sleep. Toilets are shared, and can only be used in line with a particular schedule. According to DCI-Albania, the situation is markedly better in prisons where toilets are located in the rooms and can be used by children at any time.

The inadequacy or absence of sanitary facilities was also documented by DCI sections in Chile, Niger and Palestine. Children frequently share overpopulated cells and have limited access to toilets and showers. When they do use the facilities, they are denied any form of privacy as no separations exist in the showers and toilets.

Overcrowding is also listed as a problem in Uganda, Ghana and Italy. In Uganda for example, the Naguru Remand Home in Kampala was built for 45 inmates but currently houses approximately 140. In Italy, although the situation varies between institutions, in the penitentiary institution for children of Santa Bona, called Treviso, cells are narrow and hold up to 4 people, and hygiene levels are extremely low.

In France, where most juvenile offenders are housed in separate wings within adult prisons, the Ombudsperson for children pointed to the fact that “challenges for equipment are great. Important reforms are needed, as juveniles are housed in decrepit, filthy, cramped facilities.” It is however expected in France, that the planned construction of several new penitentiary establishments especially for children (EPM) will significantly improve the situation; several of the more neglected centres will be closed.

In Belgium, the situation is strikingly better. At the Everberg centre, children have obligatory showers every day. According to a report based on a fact-finding mission undertaken by the European Committee for the prevention of torture and cruel, inhuman and degrading treatment, in the Everberg Center in Belgium, housing conditions are good. The visit revealed that “every minor had his own room, with satisfactory dimensions (11 to 15 square meters), adequate furniture (a bed with clean mattress and linen, a closet, a table and a chair). The rooms were equipped with a shower, a sink (with hot water), toilets and an intercom system”.

A study on girls detention facilities in Western Canada (not produced by DCI-Canada) noted that the lack of privacy was concerning for many of the young women. As noted explicitly in the study, cells “are monitored by camera 24 hours a day by whomever happens to be on duty, so when she uses the toilet a young woman has no way of knowing how many guards/police she is being watched by or whether they are male or female. The same is true when she changes her underwear or clothes, if she is given an opportunity to do so.”

iii) Education and Leisure / Recreation

As observed by DCI in 2003, there is a clear difference in the level of educational opportunities in countries in Western Europe on the one hand, and those in the Latin American, Eastern Europe, Middle East and Africa regions.
In Albania for example, education is denied to all children in pre-trial detention. From time to time, NGOs try to organize classes for children, but these are informal initiatives, not recognized by the government. Although in some prisons such as Vaqar, all boys receive primary education, there are no possibilities for children to follow secondary or university education whilst serving their sentences. With regard to recreation and entertainment, in pre-trial detention centres there are no possibilities for entertainment. Children have just one hour during the day when they can leave their cells to get fresh air, but due to overpopulation this is often limited to just 30 minutes.

DCI-Argentina also remarked inadequacies in the provision of education to children deprived of their liberty. Although in several of the detention centres children are given some opportunities to receive an education, often they cannot fully enjoy this right because of the infrastructure of the prison; there are limited teaching materials and staff. Not all institutions in Argentina have recreational areas, and even those that do, may not always use the space for sports and recreation.

Only one out of the 5 prisons detaining Palestinian child political prisoners provides education - and even in this case, children receive just three hours per week of classes.

By contrast, in Belgium, in the IPJJs\(^1\), and other detention facilities such as the Karibu centre, different types of education are offered, sometimes offered internally, or in collaboration with local schools. In some places like Everberg (where children can only be held up to 2 months and 5 days), full training programmes are not possible - but there are workshops on particular skills like cookery, gardening, sculpture. Children spend most of their time outside their rooms, and do have the opportunity for leisure activities.

Similarly, in the Netherlands, according to the Penal Code for Juvenile Custodial Institutions, all children must receive an education. This is often organized by an educational organization outside the facility.

In Italy, in both pre-trial and custodial sentencing, an educational plan is developed - including teaching for primary and secondary school diplomas, vocational training, sports, cultural and religious activities. In some cases children can participate in their choice of activities.

DCI-France noted that although the current quality of education provided to detained children is quite low, this is due to improve with the construction of new EPM\(^1\)s, which have a strong educational aim.

\(^{iv)}\) Medical Assistance

DCI national sections in Albania and Argentina were able to provide firsthand information on the quality of medical services within detention centres and prisons.

In Argentina, whilst the majority of facilities are equipped with an infirmary, in general they are only able to provide very basic healthcare, and the availability of medical supplies and medical professionals are very low, ill-equipped to meet the demands of detainees. In Albania, children in pre-trial detention centres complained that there were significant delays in receiving medical assistance and when they finally did receive care, it was usually of poor quality. Often children were just given a painkiller, regardless of the ailment. In prisons in Albania, there were fewer complaints about medical assistance, but children did remark that medications were often on the verge of expiry, and medicines frequently had to be provided by their parents.
DCI sections did not provide information relating to the care for the psychological health of children.

v) Separation of Children from Adults

DCI national sections in Albania, Bolivia, Chile, France, Niger, Palestine, Sierra Leone and Uganda reported that non-separation of children from adult detainees was a serious problem.

In Albania pre-trial detention centres are managed by either the Ministry of Internal Affairs or the Ministry of Justice depending on the centre. There are no separate quarters for juveniles in the pre-trial detention facilities under the Ministry of Internal Affairs. According to DCI-Albania, Directors of police stations do try to separate juveniles from adults but this is not possible due to overpopulation. Juveniles often live and sleep in the same quarters as adults, increasing their vulnerability to physical and sexual abuse by adults. This is explored in more detail in section 4.4 of the report.

In Palestine, there are three types of interrogation and detention centres. 1) those under supervision of the Israeli army, 2) those under the authority of the Israel prison service, 3) those run by the Israeli police. Irrespective of the supervising authority, in all detention and interrogation facilities, children are detained with adults. Similarly, in 3 of the 5 Israeli prisons holding Palestinian children, there is no special section for children, and Palestinian children are held with adult prisoners. There is some internal debate however as to whether child political prisoners being held in Israeli facilities are in fact safer when detained with adults in this particular context, as they may be better protected against abuses by authorities. This would still be inline with the CRC in that children must be held separately from adults unless it is in their best interest not to be.

vi) Situation of female child detainees

Several of the DCI sections involved in this study expressed concern that the standard of “separation of children from adults” is implemented more consistently in the case of boys than with girls. This was notably the case in Sierra Leone, France and in Albania.

DCI-Albania notes that in one of the pretrial detention institutions (313) supervised by the Ministry of Justice there is a special quarter for boys. Young girls are however kept in the same quarters as adult females. Similarly, in Sierra Leone, at police stations, girls may be separated from boys, but they are still detained with adult women.

DCI-Albania also expressed concern about the general treatment of girls in detention. In Prison 325, girl prisoners have no possibilities for elementary education; although some NGOs do provide the women and girls with tailoring, computer and language courses.

vii) Maintenance of contact with families

In Albania, children, like adult detainees have the right to meet their families three times a month for up to 30 minutes. However in practice, these times are sometimes shorter. Meeting rooms often have separated compartments with walls or bars - which are intimidating for children. At the Vaqar prison, children are limited to 4 phone calls per month only. DCI-Albania found that children often fail to report cases of violence and other problems to their lawyers for example, because they would rather save their phone calls to keep contact with their families.
In Argentina, the problem is that institutions are usually in very remote areas. This means that due to work commitments, and the cost, many families cannot make the visits. This also results in an increasing incentive for children to try to escape.

Conclusion

There are a range of concerns when it comes to the conditions of detention in the countries surveyed.

With very few exceptions, the food served in detention facilities is of poor quality and quantity. Access to primary and secondary education is limited in most countries, although the situation in Western Europe is markedly better.

The detention of children with adults continues to be a concern for the vast majority of countries surveyed, particularly during pre-trial detention. Of particular interest, is the gendered dimension when considering child and adult separation: while it is often understood that boys should be separated from adults (even if they are not in practice), many institutions willingly and without concern, detain girls with adult women. The consequences of this cohabitation, including whether or not it differs from that of boys, has not been adequately assessed and would be an interesting point of further details.

The conditions in pre-trial detention were generally reported as worse overall than those prisons where children serve custodial sentences. This is often due to a lack of resources and the assumption that children will not remain long there - though in practice, they often do.

c) Physical and sexual abuse, torture and other degrading treatment or punishment

“No violence against children in justifiable; all violence against children is preventable”19

This is the key message of the United Nations Secretary-General’s Study on Violence against Children, submitted to the General Assembly in October 2006. The study reports on the scale of violence against children in five settings: home and family, schools, care and justice systems, the workplace and the community. According to the Study, institutionalised children, including those in prisons and juvenile detention facilities are often subjected to violence from staff and officials responsible for their well being, as well as from other prisoners in the case of police stations and detention centres for example. This violence can take the form of isolation, torture, beatings, harassment, rape, and humiliation, each one a violation of the basic human rights of the child, as enshrined in the CRC and other relevant human rights instruments.

Both the CRC and the International Covenant on Civil and Political Rights, call for no child to be subjected to torture or other cruel, inhuman or degrading treatment whilst in detention. The UN Rules for the Protection of Juveniles Deprived of their Liberty specify that this includes placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The CRC also specifies that every child deprived of liberty should be separated from adults, unless considered in the child’s best interest not to do so. This helps safeguard against abuse at the hands of adult inmates.
Although the UN Study on Violence against Children identifies sources of violence against children in detention including: violence by staff in detention institutions, violence whilst in custody of police and security forces, violence as a sentence, and violence by adult detainees and other children, DCI was interested to know which types of violence were most prominent, and what factors increased children’s vulnerability to these abuses.

All DCI sections were thus asked to provide information on the incidence of sexual, physical and other forms of abuse experienced by children in detention. Given the quantity of information collected and the seemingly pervasive nature of this problem, it was deemed necessary to dedicate a separate chapter to exploring this question in more detail. The various forms of abuse experienced by children across the countries surveyed are explored under the overarching categories of a) abuse by other detainees; and b) abuse by authorities.

i) Physical and sexual abuse by other detainees

Adult detainees

Although national legislation in most countries requires separate facilities for children in conflict with the law, there remain many countries in which children are still detained with adults. In total, 8 of 16 national sections expressed concern that children were not separated from adults in detention centres. In Niger for example, only 3 of the country’s prisons have separate wings for children, namely in Niamey, Agadez and Tillabery. As a result children often live and sleep in the same quarters as adults thus increasing their vulnerability to physical and sexual abuses. In other prisons, although there is a separate wing for children, it is not completely sealed off, and adults and children still come into contact in shared quarters such as the toilets, shower and recreational spaces.

Studies show that children housed with adults are 5 times more likely to be sexually assaulted, twice as likely to be beaten, and 50% more likely to be attacked with a weapon than children housed in juvenile facilities\(^20\).

Testimonial of a Child Detainee - Albania

“...two other guys A.SH and G.M were raped in my presence. I remember that we had these two new guys in the cell, one 20 and the other 27. We were nine people in the cell. One night they got both boys, took their clothes off and had sex with them. Although both of them were crying no one came to their help. The older guys asked me whether I wanted to have sex with them, but I never did. All the other guys (6 adults) in the cell had sex with them. This story continued for some two or three months. The police officers knew about this, but they did nothing. Only when a new Head of Police Station came here, the police changed the cells for A. SH and G.M\(^21\).”

In Chile, whilst children are usually separated from adults in detention facilities, during the transfer from detention to court, they frequently travel with adult detainees.
**Peer-violence**

As highlighted in the UN Study on Violence, children can also be at risk of violence from other detained children. This is particularly the case where conditions and staff supervision are poor. According to the UN Study, lack of privacy, frustration, over-crowding and failure to segregate detainees according to their age and the gravity of their offence, can exacerbate peer violence. DCI national sections cited examples of peer violence in Argentina, Bolivia, Chile and France. DCI-Argentina highlighted the fact that in many cases peer violence is a survival strategy for child detainees, particularly when conditions are poor, and there is scarcity in food and water for example. A similar phenomenon was recognized in France, where it is not uncommon for detainees to form gangs within juvenile detention centres, who will resort to bullying, extortion and other forms of abuse against other child detainees.

In particular, children can be at risk of sexual abuse from other child detainees. The sexual lives of children in conflict with the law remain a taboo both for juveniles but also the professionals working with them. According to information provided by DCI-Albania, few prisons speak about or organize classes on sexual education. This leads to fear and curiosity among children and can lead to sexual abuse of children by elder child detainees.

ii) Physical and sexual abuse, torture and other degrading treatment, by state authorities and staff members

**Ill-treatment during arrest and interrogation phase**

Many times, ill-treatment begins when children first enter into the juvenile justice system. Children can be subjected to harsh interrogation methods including physical and psychological torture. Concrete examples were documented by DCI national sections during their investigation:

**Testimonial of a Child Detainee in Belgium**

In Sambreville, Belgium, a juvenile offender aged 17 was allegedly taken into police custody for questioning. During the interrogation process, he was reportedly forced to stand on his knees for 2 hours amidst beatings from police officers, who also covered his head with his shirt.  

DCI-Ghana reported that beatings and intimidation of children whilst in police custody are commonplace. DCI-Bolivia also drew attention to this phenomenon. In Sierra Leone, police officers, particularly those who conduct raids and patrol at night are in the habit of giving corporal punishment to children they meet loitering during the late hours of the night. However, corporal punishment and other forms of torture do not happen as much in the detention centres and police stations because of the growing number of human rights monitors including DCI-Sierra Leone who visit police stations and detention centres.

In Albania, nearly all the youths interviewed by DCI staff as part of their study, indicated that they had been subject to violence or inhumane treatment during their apprehension by the police.

**Child Detainees in Palestine**

Large numbers of armed Israeli soldiers surround the child’s home and force the child’s family into the street. The family home is violently searched and the child frequently subjected to physical abuse. Once in Israeli custody, he/she is almost always blindfolded and handcuffed and transported to an interrogation center, frequently being subjected to...
beatings. A number of different interrogation methods exist, designed to coerce Palestinian children into confessing to the charges against them. The following is a list of some techniques employed by Israeli soldiers: blindfolding, handcuffing, beatings, sleep deprivation, yelling and cursing as well as threats.

Strip searches by female guards and ‘pat downs’ by male guards are practiced at detention centres for girls in Western Canada. Many girls report these practices as disconcerting or inappropriate. This practice is perhaps particularly troubling given that 63% of women who enter custody have a history of sexual abuse.

DCI-Bolivia also drew specific attention to the fact that physical abuse, particularly torture, is not only rife in the arrest and interrogation phase, but also in cases of illegal or arbitrary detention in police stations and other detention facilities. According to the Working Group on Arbitrary Detention, these are cases of deprivation of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights and other relevant international standards. This includes situations where it is impossible to invoke any legal basis justifying the deprivation of liberty, and where norms regarding the guarantee to a fair trial have not been respected. In the Santa Cruz department of Bolivia, members of the police force recognised that they frequently detained adolescents illegally, and these cases were usually resolved through the reconciliation of the involved parties.

iii) Extreme disciplinary measures in detention centers

Severe isolation methods are frequently part of the internal rules of juvenile detention centres, including placement in solitary confinement and in punishment cells. The existence of such methods was reported by several DCI sections including Bolivia, Chile, Palestine, France and Argentina.

The Committee on the Rights of the Child has also expressed specific concern about the situation in France and Argentina. At the end of the 36th session of the Committee, while considering the Report submitted by France, the Committee expressed concern at the lack of information in the State party’s report relating to article 37 (a) and its previous recommendation (CRC/C/15/Add.20, para. 26) concerning children deprived of their liberty and allegations of acts of ill-treatment by public officials and detention conditions that may amount to ill-treatment.

Similarly, at the end of its 31st session, members of the Committee voiced their concern at institutional violence and specific reports of torture and ill-treatment of children held at police stations in Argentina which, in some cases, had resulted in death. The Committee also noted that according to the Supreme Court of Justice of the Province of Buenos Aires, several of the children who died had previously reported pressures and torture by the provincial police and that the majority of the cases were not adequately investigated and the perpetrators not brought to justice. In light of this, the State Party was asked to undertake a study on these issues to assess their extent, scope and nature and to investigate, in an effective way and within a reasonable time, reported cases of killings, torture and ill-treatment of children.

Similarly, in a study undertaken by DCI-Costa Rica in 2004, 41.5% of the adolescents interviewed, noted that they had been maltreated, especially by security guards. On 25th February 2007, a case was brought to the attention of DCI-Costa Rica, in which a prison guard in the centre for young adults asked “special forces” to enter the prison in order to
discipline misbehaving detainees. These special forces punched several of the detainees, leaving one child with serious injuries to his eye from the punching.

According to a report on the situation of human rights in Chile in 2006\(^{27}\), undertaken by Diego Portales University, the conditions of detention for children have changed little since the last study in 2002. Torture and maltreatment persist, including the use of punishment cells and sexual abuse. These punishment cells have only the minimum infrastructure.

In Palestine, punishments include solitary confinement, deprivation of family visits and recreation time. Israeli authorities also continue to impose financial penalties upon Palestinian child political prisoners as a form of punishment. Around 50 children were fined in 2006, for amounts ranging between NIS 200 - 400 (37 - 74 EUROS).

Conclusion

In the vast majority of cases, children deprived of their liberty are abused by professionals charged with their care, and by other detainees, with total impunity. However, information from our national sections suggests that there is an increasing culture of “responsibility” and “accountability” where these practices are denounced and disciplinary action is taken against the perpetrators of these acts. In Costa Rica for example, following a complaint lodged by an adolescent in 2004, who had allegedly been sexually molested and raped by three security guards at the Zurqui Juvenile Center, severe punishment was ruled by the judge. Similarly, in the Netherlands, in 2006, at a juvenile remand centre in Harreveld, a social worker was dismissed on allegation of abuse of the child detainees.

Violence at the hands of adult detainees is also a common phenomenon resulting from the fact that in many countries children are still detained with adults, particularly in pre-trial detention. Problems such as over-crowding, and scarcity in food and water are important triggers for peer violence which exacerbate already stressful situations.

A lack of sexual education among child detainees can also result in cases of peer sexual abuse as children become curious and afraid to speak out. DCI-Uganda has worked to address this issue through sexual education and HIV/AIDS training programs conducted in the remand home in Kampala.

Gathering data on this issue was a difficult task. DCI was aware from the outset that because detention facilities are often “unregulated and closed to outside scrutiny, especially those run by private agencies, faith-based organisations and NGOs, or … situated in isolated areas”\(^{28}\), violence can go unnoticed and unreported. DCI-Italy for example mentioned the difficulties in gathering information on physical and sexual abuse, due the lack of possibilities for impartial and independent bodies to visit detention centres. DCI-Netherlands expressed similar concerns about the lack of available information on this issue.

For those DCI national sections and other civil society organizations who are granted access, routine monitoring visits are an important method for documenting the practice of torture and other related treatment within police stations and detention centers. These fact-finding missions, that frequently act as a deterrent and prevent the perpetration of further abuses, are regularly undertaken in Albania, Argentina, Bolivia, Chile, France, Niger, The Netherlands, The Palestinian Territories, and Sierra Leone among others.
**CHAPTER V ENDNOTES:**

1. UNICEF, 2008
2. DCI-The Netherlands, *Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, 2003
3. Ibid
5. DCI-The Netherlands, *Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, 2003
6. Ibid
7. Institute Publique pour la Protection de la Jeunesse.
8. The Everberg Center hosts boys aged 14 and above, who are in pre-trial detention because they are alleged as, accused of, or recognized as having infringed penal law. They shall stay in the center until a place is vacant in one of the Public Institutes for the Protection of Youth (IPPJ).
9. Law of June 13th 2006 on the protection of youth, the penal procedure code, the penal code, the civil code, the new communal law
10. DCI-The Netherlands, *Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, 2003
11. Zurqui juvenile center (“Centro de formación penal Zurqui”). This center hosts juveniles aged 12 to 18 who are deprived of their liberty, either in pre-trial detention or after conviction
13. Déclaration de la Défenseure des Enfants en 2001
14. Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants, CPT/Inf, 2006, p. 15
15. The Everberg Center hosts boys aged 14 and above, who are in pre-trial detention after having committed an offence.
17. Institut Publique de Protection Jeunesse
18. Penitentiary establishments for children
20. DCI-The Netherlands, *Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, 2003
23. Threats include: the threat of being beaten or having family members beaten; being imprisoned for a long time; being sexually abused; being attacked by a dog; being tortured with electric shocks or subjected to other forms of physical torture; having home demolished.
27. Universidad Diego Portales, *Informe Anual sobre Derechos Humanos en Chile, 2006*
28. Ibid
VI. ALTERNATIVE MEASURES

As illustrated in Chapter 4, children who enter the justice system and particularly those deprived of their liberty are subject to grave human rights violations, and conditions that seriously hamper their social, educational and physical development. Alternative measures that prioritise the rehabilitation and reintegration of the child should be favoured over more punitive measures.

In this study, the term Alternative Measures refers to: a) alternatives to judicial proceedings, also known as diversion; and b) alternatives to the deprivation of liberty.

a) Alternatives to judicial proceedings (diversion)

“...a child is diverted where he or she is in conflict with the law but has their case resolved through alternatives, without recourse to the usual formal hearing before the relevant competent authority. To benefit from diversion, the child and/or his or her parents or guardian must consent to the diversion of the child’s case. Diversion may involve measures based on the principles of restorative justice. Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.

General Comment No.10 recalls Article 40 (3) of the Convention on the Rights of the Child, calling on States Parties to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings. Genera Comment No.10 also stresses that given that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal justice processing and referral to alternative (social) services (i.e. diversion) should be used in most cases. Steering children away from the formal justice system reduces the stigma faced by children who have been in conflict with the law and hinders the negative effect of subsequent proceedings. In many cases non-intervention is the optimal response, especially where the family, school, or another party has already intervened or reacted to the behaviour.

b) Alternatives to the deprivation of liberty

If a child is dealt with via judicial proceedings and convicted of an offense, he/she could be sentenced to the deprivation of liberty or to an alternative such as community service, or release with probation for example.

For the purposes of this Study, we asked DCI national sections to focus their research on alternative measures to the deprivation of liberty rather than alternatives to judicial proceedings; however these programmes often overlap and some sections were therefore also able to provide details on the latter. DCI was interested to know whether or not the countries involved in the study had provisions for the use of alternative measures in their national legal frameworks, and whether in practice alternative measures were regularly applied.

On several occasions, the Committee on the Rights of the Child has made recommendations for State Parties to strengthen and make use of alternative measures - notably to Sierra Leone in January 2000 during its 23rd session, Niger during its 30th session in June 2002, Bolivia during its 38th session in February 2005, Canada during its 34 session in October 2003, Albania during its 38th session in January 2005, and France at its 36th session in June 2004.
a) Use of Alternatives to Judicial Proceedings (Diversion)

In Ghana, according to the Children’s Act 1998, all District Assemblies should create Panels able to intervene in criminal and civil matters affecting children, in order to divert children away from the formal justice system. These panels can intervene by facilitating mediation, reconciliation, and imposing compensation for the offended person. According to DCI’s national section, few districts have actually established these Panels. The Kumasi Metropolitan Assembly did establish panels in the communities of Moshie, Zongo, Ohwim and Emena in 2006 for example, but these have now disappeared. DCI-Ghana attributes this to a lack of resources; although Save the Children was able to assist in the establishment of the panels and the training of members, the Assembly was not able to sustain the panels. They were unable to pay an allowance to the panelists or provide the necessary logistics.

Diversion is a relatively new phenomenon in Sierra Leone, and at the time of writing, was only being facilitated by non-governmental organizations such as DCI. However, the new Child Rights Act (2007) includes the establishment of community based structures similar to the child panels in Ghana that could mediate in criminal and civil matters involving children. Section 75 (5) of the Act states that “A Child Panel may, in the course of mediation, propose an apology, restitution to the offended person, or service by the child to the offended person.” These structures would also have the mandate to find community based solutions to the problems of children in need of care and protection. Specifically, the Child Rights Act insists that children found loitering in the street, who would in the past be arrested, detained and even charged in court, should now be referred to the Child Panels, also known as Child Welfare Committees.

DCI national sections in Costa Rica, Albania, Belgium and France, also gave examples of alternatives to judicial proceedings. In Costa Rica, alternatives to judicial proceedings include conciliation (which can involve reparation or community service), and orientation and supervision orders (including recommendations for the child to change their behavior). In Albania, Law no.9090 (2003), for negotiating and resolving disputes, contains provisions for the use of restorative justice for children who commit acts against personal well being such as verbal abuse, fighting, minor injury and more severe unintended injury. DCI-Albania was not however to able to access statistics on how often restorative justice is applied to children in Albania.

In Belgium, the Public Prosecutor can for example decide not to proceed to trial if the child agrees to a diversionary measure such as reparation of the damage or a voluntary job in the community. Similarly, in France, the public prosecutor is able to impose alternatives to judicial proceedings. In fact more and more, cases of juvenile delinquency are dealt with by the prosecutor without going to the juvenile judge. The public prosecutor is speeding up the juvenile justice process either by calling for immediate appearance in front of the judge or through pre trial diversion.

b) Use of Alternatives to the Deprivation of Liberty

In the Africa region, national sections in Ghana, Niger, Sierra Leone and Uganda, reported that alternative measures were provided for in their national legislations. In Ghana alternatives include compensation for victims; in Niger community service is the main alternative to the deprivation of liberty; and in Uganda conditional release with supervision is most common. However, it was difficult for national sections to access information on the extent to which these alternatives are applied by judges. In Sierra
Leone, the existence of alternatives to detention is relatively new. The new Child Rights Law, passed in June 2007, includes a wide range of alternative measures such as verbal warnings, conditional release, fines, expropriation and compensation orders, suspended sentencing, probation and supervision orders, referrals and community service orders. It is still too early to evaluate the effectiveness of such measures, and to what extent they will be applied in practice.

In the Americas region, national sections in Argentina, Bolivia, Costa Rica, Chile and Canada provided examples of alternatives to the deprivation of liberty.

In Canada, according to the Youth Criminal Justice Act, custody is to be reserved primarily for violent offenders and serious repeat offenders. A specific set of criteria must be met before the committal to custody of a young person. Before imposing a custodial sentence, the court must also have considered all reasonable alternatives to custody. Alternatives include: 1) Reprimand - a reprimand is expected to be essentially a stern lecture or warning from the judge in minor cases; 2) Intensive support and supervision order - this sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing his or her behaviour; 3) Attendance order - this order requires the young person to attend a program at specified times and on conditions set by the judge. It can be crafted to address the particular circumstances of the young person. For example, it might be focussed on specific times and days when a young person is unsupervised and tends to violate the law; 4) Deferred custody and supervision order - this sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent into custody; 5) Intensive rehabilitative custody and supervision order - this order is a special sentence for serious violent offenders. It is not however clear to what extent these alternative sentencing measures are applied to children.

The Bolivian Code on Children and Adolescents also sets out a diverse range of alternative measures that can be applied by juvenile judges. These include: 1) Sanctions - including reprimand, conditional release, community service and; 2) Orientation orders - these are designed to regulate the style of life of the child and include ordering the child to relocate, avoid visits to certain bars and night clubs, enroll in educational institutions and stop using alcoholic beverages and illicit substances.

Similar measures exist in Costa Rica, where alternatives include: conditional release, socio-educational programmes and orientation orders. However according to data collected by the Director of the Programme for Alternative Sanctions (PSA),and the Ministry of Justice, in reality only conditional release and orientation orders are actually applied to children. In Chile, similar programmes are being piloted since the recent entry into force of the Law on Criminal Justice Responsibility. However, according to DCI-Chile, since these initiatives are fairly recent, it is yet too early to draw any conclusions with regards to their efficiency.

In Argentina, UNICEF has undertaken a study on the use of alternatives to deprivation of liberty. According to their data, there exist at least 195 programmes for alternatives to deprivation of liberty across 17 of the provinces in Argentina. Other provinces did not respond to the request for information, so this figure may be higher. It appears that the wide majority of alternative measures to deprivation of liberty are implemented in the province of Buenos Aires, accounting for 71,2 % of the total at national level. The most common measures include: conditional release, probation, supervised visits, and employment programmes. It is however important to note that these programmes are not exclusively for children in conflict with the law. They are also designed for children in the
care system, in non-criminal situations. In fact just 8.7% of these programmes are for child offenders and 76.9% for children in non-criminal situations.

In the Europe region, DCI national sections in Albania, Belgium, France, Italy and the Netherlands provided information on alternatives to the deprivation of liberty. It is interesting to note that in this region, 3 sections identified the lack of resources and infrastructure as a limit to the application of alternative measures. This is the case in Albania, Belgium and France.

In Albania, alternative measures include: 1) Dismissal of the sentence of deprivation of liberty - the child will undergo a probationary period of 18 months to 5 years, during this period he/she must not violate the law; 2) Dismissal of the sentence of deprivation of liberty and obligation to perform community service - the implementation of such a measure depends on the background of the offender, the circumstances of the offence, and is limited to sentences of up to one year imprisonment. Community service consists of 40h to 240h work by the child, who will receive no remuneration for this work. Once this community service has been done, it is considered that the sentence has been done; 3) Fragmentation of the sentence of deprivation of liberty - for sentences up to one year, this measure can be applied under exceptional circumstances including family, medical and professional reasons. According to this scheme, the sentence is to be served in fragments of no less than 2 days for a period of not more than 3 years; 4) Early conditional release. According to DCI-Albania, in spite of the existence of this wide range of alternative measures which are enshrined in the penal code, the lack of necessary resources and infrastructure for their implementation, results in very low application of these alternatives. There is rarely a structure in place to supervise their application.

DCI-France identified a similar problem. In France, alternative measures are provided for in the Act of February 2\textsuperscript{nd} 1945. Traditionally, socio economic alternative measures are favoured by judges but there is currently a lack of resources to implement these measures which are often implemented months after the judge’s decision. These measures can include probation and also accommodation in a juvenile centre.

According to DCI-Belgium, although alternative measures were established in the 1965 Law on the Protection of Youth, their implementation only began at the end of the 1980s due to inadequate infrastructure.

In the Flemish region, four alternative measures exist, namely: 1)“Herstelbemiddeling” - mediation for juveniles; 2) “Leerprojecten” - this initiative consists in a short-term training for the child which will help improve his/her social aptitudes and moral resistance as well as his/her capacity to face difficulties; 2) “Gemeenschapsdiensten” - community service; and 4) “Herstelgericht groepoverleg” - this measure involves a discussion between the juvenile offender and his/her relatives as well as the victim. Once all parties have expressed themselves, a concrete solution is drafted, which could include apologies, compensation to the victim and community service. In the French speaking region, alternative measures may be implemented within the family environment or can include community service and participation in group activities and mediation.

The amended Law on the Protection of Youth also foresees a set of new alternative measures to deprivation of liberty, namely: written cautions, referral to the law (where the prosecutor will call a meeting with the child and his legal representatives to remind him of the law and the risks he is running. It’s an invitation for the child and parents to become responsible), mediation as well as restorative consultation in a group - wherein the accused child, their family and the victim, with the help of a mediator discuss together the
real consequences of the crime, and come up with concrete solutions to resolve the conflict.

The Penitentiary Act (Law N° 354 of July 26th 1975) introduced several forms of alternative measures to deprivation of liberty in Italy. The application of such measures is subject to compliance by the offender and the good behavior of offenders during the time they are held in pre-trial detention. These measures include: 1) Semi-custody (“semi-detenzione”) - only the night is spent in prison; 2) Release under control (“liberta controllata”) - a number of restrictions are imposed, such as not to leave town or daily check-ins at the local police station; 3) Pecuniary sanctions/fines (“pena pecuniaria”).

The Netherlands is perhaps a unique case in that there is a significant amount of information and data on the real application of alternative measures to the deprivation of liberty. One of the most well-known initiatives is the “HALT Programme”. Rather than being sentenced to the deprivation of liberty, children can be referred to a HALT bureau in order to carry out an alternative sentence; this is usually community service for up to 20 hours per week. In order for a child to be considered for the HALT programme, certain conditions must be met: the child must have already confessed, and must have been below the age of 18 when the offence was committed. Children cannot participate in more than two HALT programmes.

Once the child has carried out his/her sentence, the police conduct a review with the HALT Team and subsequently decide whether further charges should be dropped. If the outcome of the HALT arrangement is positive, the police informs in writing both the child and the state prosecution service about the result. By doing so, further criminal proceedings are dropped. If the results of the HALT arrangement are negative, a file for the instigation of preliminary proceedings is opened and passed on to the state prosecution service. Of the approximately 50000 children arrested per year by police, about 20000 go to one of the 62 halt bureaus.

Conclusion

All countries involved in this survey have some form of legal provision in place for the application of alternative measures to the deprivation of liberty, in line with the recommendations of the CRC and other relevant international standards. However, there is sometimes limited data showing to what extent these alternatives are applied by judges.

Data and examples on the use of diversion are most difficult to assess and less information was provided on its application in the countries in question. In some cases, this is because diversion is a relatively newer phenomenon in the country and thus it is perhaps still too early to evaluate its use and effectiveness. Where data is available, it suggests that use of these alternatives is limited.

In general, limiting factors which prevent States from using diversion and alternatives to the deprivation of liberty include misuse of financial and human resources as well as poor infrastructure and training.
CHAPTER VI ENDNOTES:

1 UNODC, UNICEF, Manual for the measurement of juvenile justice indicators, Vienna, 2007
3 Datos ofrecidos por el cuadro: Según Condición Jurídica por nivel de atención a 31 de diciembre de 2006. Web Ministerio de Justicia y ponencia de la Directora del Programa en el Seminario sobre Sanciones Alternativas convocado por el proyecto “Vías Alternas”, ILANUD y UCR.
4 UNICEF, Informe situación de ninos, ninas y adolescentes en Argentina - 2005/6
5 HALT bureaus were set up in 1981. Their legal status is enshrined in the Dutch criminal code since 1995.
VI. CONCLUSIONS AND RECOMMENDATIONS

This report has aimed to explore the overall picture of juvenile justice systems across 15 countries, producing a preliminary mapping which will inform DCI’s future research and advocacy activities.

Overall, the topic of most concern in the countries was the (over)use of pre-trial detention. DCI national sections also expressed concern with the conditions of pre-trial detention (including non-segregation of children and adults and poor hygiene for example) as well as lengthy and inappropriate pre-trial detention periods.

In general, there was a lack of government data and specific statistics on the lengths of imprisonment and pre-trial detention. While it was often clear in the law how long a child should be behind bars, many countries lacked mechanisms to track how long children actually remained in practice. While some DCI national sections were granted access to investigate this issue, others were not permitted, creating barriers to data collection. In a similar manner, while alternatives to detention exist in law for all countries, there was limited data to reveal how often these were used in practice. Interestingly, national sections also found significant gaps in the availability of specific data and information regarding the situation of young women and girls, both in detention, and the justice system as a whole.

Violence against children in juvenile justice systems was also a key thematic throughout all countries surveyed, reaffirming the pervasiveness of the issue, as acknowledged by the UN Study on Violence against Children, and highlighting the invisible nature of both the children involved and the practices taking place behind closed doors.

While each country had nationally-specific problems and achievements, many of these were also reflected back at the regional level. As such, there are some key regional trends which emerged when exploring the contexts of these 15 juvenile justice systems which are explored further as follows:

Whilst a lack of resources was a consistent barrier to implementation across all regions, the African region was particularly affected. Although each African country surveyed has expressed in law a firm commitment to upholding children’s rights in juvenile justice, their ability to achieve effective and consistent implementation in practice is constantly challenged.

In Latin America, the rhetoric of ‘citizen security’ measures to combat violence is embedded throughout the policies and practices of all countries surveyed. In particular, initiatives for preventing juvenile delinquency were framed within broader strategies to increase safety among the civilian population and often resulted in stigmatising young people.

In the European region, there is also much concern over juvenile delinquency, resulting in some repressive policies towards young people. In particular, concerns over immigration reoccur as a key theme in all countries, and have an impact on juvenile justice legislation and implementation.

In both Europe and the Americas there is a dual trend of progressive and repressive policies for juvenile justice. This means that whilst countries are moving to adopt alternative measures to the deprivation of liberty and improve their prison conditions to meet international standards, they are at the same time introducing longer and more
severe sentences, especially for serious crimes, and taking a hard stand against recidivists, in ways that sometimes contradict international norms.

Recommendations

**Governments should undertake the following actions:**

- Monitor more closely the conditions and length of pre-trial detention in accordance with international standards;
- Establish effective complaints mechanisms within juvenile justice systems and conduct exit interviews with children to gauge the upholding of the rights of children deprived of their liberty; and commit to investigating and sanctioning those responsible for violations.
- Develop diversionary practices and alternatives to the deprivation of liberty; and, monitor their use and effectiveness;
- Develop programmes for the prevention of juvenile delinquency which do not stigmatise certain groups or children and young people in general;
- Establish a national action plan on juvenile justice if one is not already in place;
- Collaborate with NGOs throughout the development and implementation of all strategies for juvenile justice;
- Collaborate meaningfully with children throughout the development and implementation of all strategies for juvenile justice.

**Civil society should undertake the following actions:**

- Lobby their governments to uphold the rights of children in juvenile justice systems by raising awareness about General Comment No 10;
- Monitor the conditions of detention centres and remand homes and report on abuses where possible; where not possible, create a visible presence and pressure nonetheless;
- Talk with children and young people; record their stories and make their voices heard;
- Educate and inform children of their rights in juvenile justice systems; provide them with a place to turn when their rights are violated;
- Work to change negative public perceptions about children and young people;
- Educate and train prison staff, police officers and judges on violence against children in juvenile justice systems and alternative forms of discipline.
GLOSSARY OF TERMS

Child / Minor / Youth/ Young person / Juvenile

A child is any individual aged 18 and under. The terms above are used interchangeably with the word child throughout this paper

Children in conflict with the law

A child is in conflict with the law when he or she has committed or has been accused of having committed an offence. Depending upon the local context, children may also be in conflict with the law when they are dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.

Convention on the Rights of the Child (CRC)

Is an international convention setting out the civil, political, economic, social and cultural rights of children and States that ratify it are bound by international law. The CRC has been ratified by all nations with the exception of the United States and Somalia. The Committee on the Rights of the Child (referred to as “the Committee”) is the body of independent experts that monitors the implementation of the CRC by its State parties

Deprivation of liberty / Detention

A child is deprived of liberty when he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.

General Comment No.10 (GC 10) - Children’s Rights in Juvenile Justice

The Committee on the Rights of the Child publishes its interpretation of the content of human rights provisions, in the form of General Comments on thematic issues. The GC 10 is the most recent of such publications, and provides further elaboration and recommendations to States for implementing the rights of children in juvenile justice.

Juvenile Justice System

The juvenile justice system consists of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment, specifically applicable to children in conflict with the law.

Non-custodial measure

A non-custodial measure is a measure to which a child may be sentenced by a competent authority that does not include deprivation of liberty.

Probation

Probation is a non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation. Probation may be employed as a measure on its own, or following a custodial sentence. During
probation, the young person must maintain good behaviour, not commit another offence, and meet any other conditions the court may deem appropriate to impose.

Remand

The detention of an individual before trial or sentencing. Also known as pre-trial or pre-sentencing detention.

Restorative Justice Programme

A programme which uses any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

Sentence

A competent authority passes a sentence when - notwithstanding any right of appeal - it makes a final decision about a child’s case and rules that the child shall be subject to certain measures.
BIBLIOGRAPHY

Articles


Websites


Legislation

- Código del Niño, Niña y Adolescente: Libro Tercero: Protección Jurídica, de la responsabilidad, de la jurisdicción y de los procedimientos, 1999 (Bolivia)

- Décret No 2006 - 023/PRN/MJ du 20 janvier 2006, portant modalités d’application du travail d’intérêt général (TIG) dans les juridictions pour mineurs

- Déclaration de la Défenseure des Enfants en 2001

- Law 285/9, 1997 (Italy)

- Law of June 13th 2006 on the protection of youth, the penal procedure code, the penal code, the civil code, the new communal law

- Ley Nacional de Protección Integral para Niñas, Niños y Adolescentes No 26.601

- Ley de Ejecución Penal y Supervisión, Ley 2298, 2001(Bolivia)

- Ley de Responsabilidad Penal Juvenil, 2007 (Chile)

- Ley No. 7576, Ley de Justicia Penal Juvenil, 1996 (Costa Rica)

- Ley Nº 8460, Ley de Ejecución de las Sanciones Penales Juvenil, 2005 (Costa Rica)

- Loi du 15 mai 2006 modifiant la loi du 8 avril 1965 relative à la protection de la jeunesse

- Loi du 13 juin 2006 modifiant la législation relative à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié d’infraction, M.B. du 19 juillet 2006

- Loi du 8 avril 1965 relative à la protection de la jeunesse, M.B. 15 avril 1065

- Loi du 13 mai 1999 relative aux sanctions administratives dans les communes

- Loi n° 2007-297 du 5 mars 2007 relative à la prévention de la délinquance

- Regimen Penal de Menores No 22.278, 1980 (Argentina)

- Ordonnance no 45-174 du 2 février 1945, relative à l’enfance délinquante

- Ordonnance No 99.11 du 14 mai 1999, portant création, composition, organisation et attributions de juridictions de mineurs

- Ordonnance no 45-174 du 2 février 1945, relative à l’enfance délinquante

- Youth Criminal Justice Act (2003) section 72(1)(b)
Reports

- DCI-Canada, Notes on the new legislation for Youth Justice after five years of use, 2007
- DCI-Netherlands, Kids Behind Bars, a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards, 2003
- DCI-Netherlands, Annual Publication on Juvenile Justice, 2007
- DCI-Ghana, Annual Publication on Juvenile Justice, 2007
- DCI-Italy, Annual Publication on Juvenile Justice, 2007
- DCI-Palestine, Annual Publication on Juvenile Justice, 2007
- DCI-Sierra Leone, Juvenile Justice Report 2007
- DCI-Uganda, Socio-Legal Defence Centre, Annual Report 2005/6
- DEI-Belgique, Publication Annuelle sur la justice pour mineurs, 2007
- DEI-France, Publication Annuelle sur la justice pour mineurs, 2007
- DNI-Argentina, Publicacion Annual de DNI sobre Justicia Juvenil, 2007
- DNI-Bolivia, Justicia Penal Juvenil: Informe de Investigacion sobre Bolivia para publicacion annual de DNI, 2007
- DNI-Chile, Publicacion Annual de DNI sobre justicia juvenile, 2007
- Dean, A.R. Locking them up to keep them « safe »: Criminalized girls in British Columbia, A Systemic advocacy project conducted for Justice and Girls, Justice for Girls, 2005
- DNI-Costa Rica, Diagnóstico Regional sobre las condiciones de detención de las personas adolescentes en las cárceles de Centroamérica, Colorgraf S.A, Costa Rica, 2004
- Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants, CPT/Inf, 2006,
- Kane, J. Violence against Children: Regional Consultation Latin America, ATAR Roto-Presse SA, Geneva, 2005


- Universidad Diego Portales, *Informe Anual sobre Derechos Humanos en Chile*, 2006

**UN Documents**


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


- UNICEF, *Informe situacion de ninos, ninas y adolescentes en Argentina - 2005/6*