

Ten-Point Plan for Fair and Effective Criminal Justice for Children



Introduction

The majority of children – defined as those under 18¹ – in conflict with the law come from deprived and marginalised communities and their exposure to crime often reflects the failure of the state to protect or provide for them.² In many countries there is a blurring of the boundaries between children who commit offences, and children who are in need of protection such as those living on the street, those with mental illnesses and child sex workers. The result is that children in need of support from child protection and welfare agencies can find that their conduct is instead criminalised. Furthermore, there is often a public fear of crime committed by the young, frequently fuelled by the media, which is disproportionate to the reality. In many countries the under-18 population exceeds 50% and yet offending by children is usually relatively low and it is adults who are responsible for the greatest proportion of crime.³

Accusations of being ‘soft’ on crime can encourage states to disregard the increasing body of evidence that harsh treatment of children in conflict with the law is counter-productive and does not reduce offending.⁴ The stigma of association with the criminal justice system can damage a child’s long term prospects.⁵ Depriving children of their liberty can lead to long term and costly psychological and physical damage, whilst overcrowding and poor detention conditions threaten their development, health and well-being.⁶ Girls are particularly at risk of sexual abuse and likely to suffer mental health problems as a consequence of detention. The removal of children from their family and community networks as well as from educational or vocational opportunities at critical and formative periods in their lives, can compound social and economic disadvantage and marginalisation.

Yet in many countries, children are arrested for relatively minor offences, detained for long periods before trial, receive long custodial sentences and are treated as adults within criminal justice systems.

UNICEF estimates that there are over one million under-18s deprived of their liberty worldwide, many of whom are detained alongside adults.⁷

Penal Reform International (PRI) and members of the Interagency Panel on Juvenile Justice (IPJJ) believe that a fair and effective criminal justice system for children should be in conformity with international standards, promote the well-being of the child and react proportionately to the nature of the offence taking into account the individual characteristics of the child. It should aim to prevent crime, take decisions which are in a child’s best interests, treat children fairly and in a manner which is appropriate to their development, address the root causes of offending and rehabilitate and reintegrate children so they can play a constructive role in society in future. As far as possible it should deal with children outside of the formal criminal justice system.

The following Ten-Point Plan focuses on ways that law and policy makers and criminal justice practitioners can respond effectively and positively to children in conflict with the law by focussing on: prevention, diverting children from the adult justice system, rehabilitation and promoting alternative sanctions to imprisonment. It is based on relevant international instruments including the United Nations (UN) Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency, the UN Standard Minimum Rules for Non-custodial Measures, the Guidelines for Action on Children in the Criminal Justice System, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders which include specific standards for girls.

PRI and IPJJ, August 2012

See overleaf for the full Ten-Point Plan

Ten-Point Plan for Fair and Effective Criminal Justice for Children

1. Develop and implement a crime prevention strategy for children

The importance of preventing children from coming into conflict with the law cannot be over-emphasised.⁸ A child protection system which includes a focus on crime prevention through addressing the root causes of social problems such as poverty and inequality, and through emphasising inclusion and access to basic services, can be very important for children. However, policies should also specifically target children at risk of coming into conflict with the law as a particular group. They should encourage children to be socialised and integrated through their families, community, peer group, schools, voluntary organisations and vocational training and work. They should include support for particularly vulnerable families and promote the teaching of human rights in schools and through the media. It is particularly important to ensure that such interventions reach those children most at risk of being involved in offending such as marginalised children from lower income families and those in the care system.

2. Collect accurate evidence and data on the administration of criminal justice for children and use this to inform policy reform

It is vital that states understand what works in their context to prevent children from offending and to ensure that they do not re-offend. It is therefore important that states collect accurate, disaggregated data on the practice and administration of criminal justice for children. At a minimum it is necessary to record and make strategic use of data and information such as: caseload data for children (number of incidents reported to police; number of children charged; number of children detained and in which category of facilities etc); case characteristics data (types of offences; age of offenders; gender; magnitude of sentences given; education levels etc) and resource data (the costs of administering the system for children). This helps states to identify offending trends and measure the effectiveness of measures and programmes. The '15 Juvenile Justice Indicators' compiled by UNICEF/UNODC (2006)⁹ provide a basic framework for measuring and collecting specific information in order to adequately present and assess the situation of children in conflict with the law. Regular monitoring and evaluation of measures and programmes ensures that states are targeting resources efficiently and constantly

improving interventions. States should address widespread public misconceptions about children in conflict with the law by responsible dissemination of relevant data and information about crime as well as about programmes and initiatives that have worked to reduce child offending. The media should be encouraged to rely on accurate data and evidence when portraying children who offend.

3. Increase the age of criminal responsibility

States should set as high a minimum age of criminal responsibility as possible bearing in mind the emotional, mental and intellectual maturity of children; the Committee on the Rights of the Child have stated that it should be no lower than 12 and preferably higher.¹⁰ Children below the age of criminal responsibility should not be taken through the criminal justice system in any circumstances. Some countries retain the use of *doli incapax*, where it must be proved that children within a certain age bracket above the minimum age of criminal responsibility have the required maturity to be deemed criminal responsible. Given widespread misuse of the legal principle of *doli incapax*, states should revoke this principle in favour of a fixed minimum age of criminal responsibility no lower than 12.

4. Set up a separate criminal justice system for children with trained staff

In many countries, children in conflict with the law are dealt with within an adult criminal justice system which makes little or no allowances for their age, vulnerability and right to special protection.¹¹ A separate system for all those over the age of criminal responsibility and under the age of 18 should be set up and this should be engaged from the moment of first contact until all involvement with the system is concluded. It should apply regardless of the nature of the offence and, taking resources into account, should consist of separate and specialist authorities and institutions, including separate units within police stations and separate courts, which are furnished and arranged in a child-friendly manner and staffed by specialised judges. All those working in the criminal justice system for children—including lawyers, judges, the police, the probation service, prison service and social services—should receive regular, ongoing specialised training.

5. Abolish status offences

Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco. Such conduct would not be a criminal offence if committed by an adult but a child can be arrested and detained simply on the basis of their age. Status offences focus disproportionately on regulating the actions of girls, as well as girls and boys who are poor, disadvantaged or who work or live on the streets and therefore spend much of their time outside of the home. These offences should be abolished and the related conduct should be addressed instead through multi-agency child protection mechanisms that include referral systems and prevention measures.¹²

6. Ensure that children have the right to be heard

Article 12 of the Convention assures to all children who are capable of forming a view the right to express that view freely in all matters affecting him or her; and these views must be given due weight in accordance with the age and maturity of the child. Children should in particular be given the opportunity to be heard in any judicial or administrative proceeding affecting them. The criminal justice system as a whole can be daunting and intimidating for children in conflict with the law and they will require help to exercise their right to be heard. This is particularly the case for children who face obstacles such as having a disability or needing an interpreter. Children should receive legal or other assistance to ensure they can express themselves at all stages of proceedings. To this end, police, prosecutors, defence lawyers, guardians, social welfare officers, probation officers and judges should be trained to engage with children.

7. Invest in diverting children from the formal criminal justice system

When children admit offences and freely volunteer to participate in diversion measures, then diversion away from the formal criminal justice system can have many positive benefits: it can reduce rates of re-offending; avoid the labelling of children; encourage reparation to communities; and is often much cheaper than court procedures and detention. Diversion should not be confined to first time offenders or to minor offences but should be widely used with children. The police, prosecutors and judges should have the power to divert children immediately after the first contact and up to the first court hearing. These powers should be regulated and reviewed to ensure that discretion is being applied in the child's best interests. Diversion measures should be community-based and, where appropriate, make use of restorative processes. Diversion should be gender-sensitive in line with the Bangkok Rules.

8. Use detention as a last resort

The vast majority of children deprived of their liberty are detained pre-trial. This kind of detention should only be used in exceptional circumstances (where it is necessary to ensure the child's appearance at the court proceedings or where the child is an immediate danger to himself/herself or others) and only for limited periods of time. Bail and other forms of conditional release should be accompanied by measures to support and supervise the child during this period. Detention following conviction must also only be used as a last resort and for the shortest possible time in situations where a child is convicted of a violent offence or has been involved in persistent serious offending and there is no other appropriate response. Children should never be sentenced to life imprisonment without the possibility of release or the death penalty. Where these sentences are available in law, steps should be taken towards their abolition. The particular vulnerability of the girl child should also be taken into account during sentencing.

While children may be unable to commit crimes whilst in detention, there is little evidence to suggest that detention actually reduces re-offending or acts as a deterrent to future offending. The judges' sentencing code of conduct or practice guidance should require that consideration always be given to the use of non-custodial alternatives before making an order for a custodial sentence. All children must be held in separate facilities from adults, and girls must be separated from boys. Detention facilities where they are held must be inspected and monitored by independent bodies which are not under the same administrative authority as the prison system and children should have proper access to grievance mechanisms.

9. Develop and implement reintegration and rehabilitation programmes

Where it is appropriate to detain children, institutions should have their rehabilitation and reintegration as the main objective of all policies and processes from the moment the child arrives. Rehabilitation will work most effectively in settings which are small enough for individual treatment to be provided, where children feel safe and secure, where adequate medical care is provided and where it is easy for children to be integrated into the social and cultural life of the community where the facility is located. Institutions should encourage contact with family and other social networks to support children; it should provide them with opportunities to obtain life skills through educational, vocational, cultural and recreational activities; and it should promote services to help with their transition back into society. The individual needs of children should be addressed such as mental health issues, substance abuse, job placement and family counselling.

10. Prohibit and prevent all forms of violence against children in conflict with the law

It is well documented that children who are arrested and held in detention are vulnerable to violence, abuse, neglect and exploitation at the hands of police, fellow detainees and staff in detention facilities.¹³ There are a number of contributing factors to such violence including the fact that abuse frequently goes unreported and remains invisible; perpetrators are not held accountable; the issue is rarely a priority for policy-makers; professionals are not properly qualified; and there is a lack of effective oversight and inspections systems in detention facilities.

Proven measures for preventing, identifying and remedying violence against children in detention include¹⁴: mandatory attendance of parents and/or appropriate adults and access to lawyers whilst in police detention; reducing the numbers of children committed to detention; separation of children from adults in all detention settings; provision of adequate healthcare; having properly trained, qualified and remunerated employees working in detention facilities; prohibition of corporal punishment as a disciplinary measure for children deprived of their liberty; systematic recording of instances of violence against children; access to child friendly complaints mechanisms; monitoring places of detention through inspection visits; and providing compensation and social reintegration services to children who have experienced violence.

References

- 1 UN Convention on the Rights of the Child, Article 1
- 2 Research from a large number of different jurisdictions bears this out; see, amongst others, evidence from *The Right Not to Lose Hope: Children in Conflict with the Law – A policy analysis and examples of good practice* (Save the Children: 2005) at p 18. Amongst other examples, this cites a study of children in conflict with the law in three districts in Uganda which found that 70 per cent of children had given the need to meet their own needs, including food, as the main motivation for stealing. See also evidence from *Blind Alley: Juvenile Justice in India* (Haq: 2010) p16 which cites statistics from the National Crime Records Bureau which establish that children in conflict with the law in India are overwhelmingly from poor backgrounds. See also *Punishing Disadvantage: a profile of children in custody* (Prison Reform Trust: 2010) p viii which finds that children in conflict with the law in the UK 'experience multiple layers of different types of complex disadvantage.'
- 3 *The Right Not to Lose Hope: Children in Conflict with the Law – A policy analysis and examples of good practice* (Save the Children: 2005) at p. 11. In a study in Europe, it was estimated that less than 15% of crime had been committed by children under 18
- 4 Studies demonstrate that the rate of reconviction for children who have previously been in detention is not much different or is higher than the rate for those children who have received non-custodial sentences. See for example, *Juvenile reconviction: results from the 2003 cohort* (Home Office Report: 2005)
- 5 The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) state in para 5 (f) that 'in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.'
- 6 The UN study on violence contains extensive evidence of the sort of damaging impact detention can have upon on children's rights—Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, (2006)
- 7 This figures comes originally from Defence for Children *International Kids Behind Bars: A child rights perspective—Conference Report* (DCI/Kids Behind Bars: 2005) at p.7
- 8 For extensive guidance on prevention see the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), General Assembly resolution 45/112 of 14 December 1990; see also UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, paras 15–21
- 9 See the Manual for the Measurement of Juvenile Justice Indicators, UNICEF/UNODC (2006)
- 10 See UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, paras 30–35
- 11 See UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, paras 90–95
- 12 For more information on holistic child protection systems see UNICEF Child Protection Strategy. E/ICEF/2008/5/Rev.1. (2008)
- 13 See, passim, Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, (2006). See also *Sexual Violence in Institutions, including in detention facilities*, Statement by Manfred Nowak, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (2010)
- 14 For a detailed exploration of measures to address violence against children in detention see *Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system*, A/HRC/21/25 (2012)

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