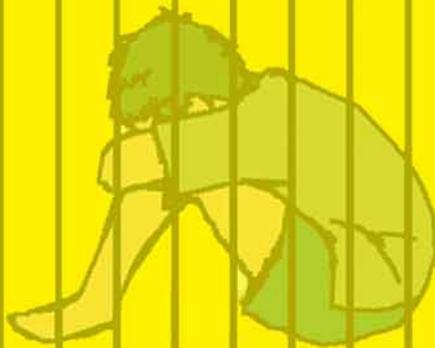


Improving the Protection of Children in Conflict with the Law in South Asia



Improving the Protection of Children in Conflict with the Law in South Asia

A regional parliamentary guide
on juvenile justice

Foreword

As parties to the Convention on the Rights of the Child and other international instruments, States are bound by the provisions enshrined in those treaties. Despite the States' commitments and obligations, children experience arbitrary arrest, torture and ill-treatment while in custody in South Asia¹. Still too often, they are deprived of liberty for minor offences, non-violent offences or even without committing any offence. Separate systems to deal with the special needs of children in conflict with the law are lacking, and precise data are missing since records of the number of children detained or imprisoned are hardly maintained.

Many countries in the region have taken initiatives in an effort to safeguard children's rights, eradicate abuse and take into account their special needs. Their commitment is the first step towards improving the protection of children in conflict with the law, laying the ground for necessary reform. As highlighted by the Child Protection Handbook for Parliamentarians produced jointly by the Inter-Parliamentary Union and UNICEF, parliamentarians have a key role to play in child rights, child protection and in the field of juvenile justice. They can help fashion policy, adopt the requisite national legislation, vote for the necessary budgets, oversee the actions of their governments and raise awareness of these issues.

The themes selected in the ensuing sections cannot be regarded as an exhaustive examination of every issue falling within the scope of the juvenile justice system. They have been selected for their relevance to the South Asian context based on the report 'Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law' (UNICEF ROSA, 2006²).

This handbook is a shortened version of that report suitable for use by parliamentarians and persons concerned with juvenile justice issues. It highlights innovative local practices that, with consideration for contextual issues, could be replicated in other countries. It also outlines measures that parliamentarians can take to improve the situation of children in conflict with the law. This is especially crucial in light of the juvenile justice reforms currently underway or due to be undertaken in a number of South Asian countries.

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Crucial Advocacy Messages for Parliamentarians to Consider:

Advocating improved juvenile justice systems can be challenging for parliamentarians. Constituents rightly expect their representatives to work towards increasing public safety and reducing crime. When crimes do occur, including the rare violent crime committed by a child or adolescent, these concerns may be seized upon by the media and community leaders and used to call for harsher laws and sentencing, including for juveniles.

In order to advocate good juvenile justice systems, parliamentarians may want to make use of the following messages:

- Most children in prison have not been convicted of any crime: children whose cases are still pending constitute over 50% of those in detention, and often as high as 90%.
- The vast majority of children in prison have not committed a violent crime. Studies around the world show that 90% or more are charged with only petty crimes, and in many cases, children with no other options are being punished for what amount to survival strategies when begging, or for vagrancy.
- Ensuring public safety and reducing the number of repeat offenders are important priorities. Research indicates that imprisoning children for minor crimes decreases their chances to become productive, contributing adults; it also shows that youthful offenders sent to prison have higher rates of recidivism than those given alternative sanctions.
- Removing youths from society through confinement negatively affects their ability to maintain social and family bonds; it also affects their ability to reintegrate into their community and to find employment when released.
- Detention of juveniles should be an exceptional measure, used only for the minority of children who have committed serious and violent crimes.
- For the broad majority of children committing minor crimes, diversion from the justice system and alternative sanctions that promote integration back into the community as well as rehabilitation should be put in place. Alternative sanctions include probation, intensive supervision, restitution, community service/supervision and restorative justice — an approach where the offender, victim and community come together to find ways to repair the damage caused.
- Alternative sanctions are generally far less costly than sanctions involving imprisonment.

Section 1

Introducing juvenile justice

The term 'criminal justice system' describes the legal processes applied to those who commit an offence or fail to comply with the criminal law. 'Juvenile justice' is the term used to describe a criminal justice system developed for children. It covers a vast and complex range of issues from prevention through first contact with the police, judicial process, conditions of detention and social reintegration, and involves a wide range of actors.

The international framework

International standards require countries to promote the establishment of laws, procedures, authorities and institutions that respect the rights of children in conflict with the law and are directed towards their rehabilitation and reintegration into society.

The primary instrument guiding the development of juvenile justice is the United Nations Convention on the Rights of the Child (CRC), of 1989, which has been ratified by every country in South Asia. State parties are obliged to give effect to the Convention by means of laws, policies and practices designed to further its goals.

The CRC is complemented by relevant international standards such as the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines'), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Under these instruments, children should be treated by the justice system in a manner consistent with their rights, their inherent dignity as human beings and which takes into account their needs and targets their reform. The administration of juvenile justice should be directed towards their rehabilitation and reintegration into society and not their punishment.

Torture or other cruel, inhuman or degrading treatment or punishment is prohibited. The death penalty and life imprisonment without possibility of release cannot be imposed for offences committed by persons below 18 years. Deprivation of a child's liberty should never be unlawful or arbitrary and should only be a measure of last resort and for the shortest appropriate period of time.

In any judicial or administrative proceeding affecting them, children have the right to be heard and to have their views taken seriously. Alternatives to court procedures and to detention or institutionalisation are encouraged. When detained, every child should have contact with his or her family and access to prompt legal or other appropriate assistance. Application of the death penalty for those under 18 is unequivocally prohibited.

The implementation of the Convention is overseen by the Committee on the Rights of the Child, a body of 18 international experts chosen to represent a variety of geographical and linguistic communities.

THE COMMITTEE ON THE RIGHTS OF THE CHILD: OBSERVATIONS

The Committee on the Rights of the Child has reviewed the reports of all the countries in the region. While welcoming improvements such as new laws or codes (India), the establishment of juvenile courts or benches (India, Nepal, Pakistan), establishment of a rehabilitation centre (Bhutan) and training programme for law enforcement officials, the Committee has expressed concern over the lack of compatibility of legislation and policies with international juvenile justice standards. It has repeatedly noted that the minimum age of criminal responsibility is too low (Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka), that deprivation of liberty is not used only as a measure of last resort (India, Pakistan, Sri Lanka), that children between 16 and 18 are considered as adults (Maldives, Sri Lanka) and that children under 18 are, in most cases, not separated from adults while in detention and kept in very poor conditions and without access to basic services (Bangladesh, Nepal, Pakistan). The Committee has also expressed concern about reports of persons under 18 years held under specific acts or procedures (India, Nepal).

The Committee has often recommended that the region's States review their legislation and practice to ensure the full implementation of juvenile justice standards, in particular to:

- *Raise the minimum age of criminal responsibility to an internationally acceptable level.*
- *Ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time, and that appropriate conditions are provided.*
- *Consider alternative measures to deprivation of liberty.*
- *Ensure that children are separated from adults in all places of detention and have access to independent and effective complaint mechanisms.*
- *Review, and where necessary amend, all judicial, legal and protection procedures to ensure that children under 18 who are alleged to have broken the law are fully guaranteed the rights to a fair trial and to legal assistance.*
- *Ensure that the imposition of the death penalty, of life imprisonment without possibility of release, and of caning and whipping as sanctions for crimes committed by persons under 18 is prohibited by law.*
- *Provide formal training for judicial professionals, including in the area of rehabilitation and reintegration.*

(Latest CRC Concluding Observations / Comments are available on <http://www.unhcr.ch/tbs/doc.nsf> for the following countries: Bangladesh (2003), Bhutan (2001), India (2004), Maldives (1998), Nepal (2005), Pakistan (2003) and Sri Lanka (2003)

A distinct justice system for children

According to international standards, a juvenile justice system shall aim at encouraging specialisation in child justice practices and developing a distinct system of criminal justice that treats children in a manner appropriate to their age and level of maturity.

Most of the countries in the region have separate legislation governing procedures for children in conflict with the law. It acknowledges the need for special treatment of children and incorporates the basic fundamental aspects of juvenile justice, such as the separation of children from adults, the creation of juvenile courts, the need for rehabilitation and the prohibition of harsh and cruel treatment. However, these provisions often fall short of full compatibility with international instruments and are hardly applied in practice. Many of the concepts of 'modern' justice legislation – clear separation between child offenders and children in need of protection, diversion and restorative justice, preference for community-based rehabilitation and community involvement – are not applied.

No country in the region has yet fully implemented a separate and distinct juvenile justice system to ensure that children in conflict with the law are treated in a manner substantially different from adults. However, there has been significant impetus for reform in recent years as seen in the commitment by the governments of Bhutan, Maldives, Nepal and Sri Lanka.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Parliamentarians should not hesitate to make use of parliamentary procedures and mechanisms to oversee government action and ensure that they meet their child protection commitments and fully implement provisions included in the Convention on the Rights of the Child.

CRC RESERVATIONS OR DECLARATIONS OF UNDERSTANDING

If your government has ratified with reservation(s) or declaration(s) of understanding that limit the CRC's scope, you can:

- *Determine or review the validity of the suggested reservation(s)*
- *Encourage a parliamentary debate on the reservations*
- *Mobilise public opinion to encourage the government to ratify or accede without any reservation(s) or declaration(s) of understanding*

REPORTING OBLIGATIONS

States parties to the Convention on the Rights of the Child have an obligation to present reports on its status of implementation. As the overseer of the government's work, Parliament has an important role to play in ensuring that the State fully complies with its reporting obligation. It is important that the report is submitted on time and presents complete information.

PARLIAMENTARIANS NEED TO ENSURE THAT:

- *An initial report and subsequent periodic reports are submitted in accordance with the periodicity established in the Convention; parliamentarians need to inquire about their country's reporting timetable and ensure that the government respects this.*
- *In cases where reporting is delayed, parliamentarians may request an explanation and, if necessary, use parliamentary procedures both to urge the government to comply with its reporting obligations as soon as possible and to mobilise public opinion.*
- *Parliament (through its relevant committees) is involved in the preparation of the report, provides input in terms of information or is in any case informed about its contents.*
- *Parliament's action is properly included and reflected in the report.*

Parliamentarians should also ensure that proper follow-up to the report and the Committee's recommendations are carried out. To that end, parliamentarians may wish to:

- *Ensure that the concluding observations of the Committee are presented to Parliament and debated*
- *Approach the relevant minister(s) on action taken to implement the Committee's recommendations and, if appropriate, put an oral or written question to them*
- *Organise or participate in public debates on the implementation of the concluding observations in order to raise awareness on the steps that need to be taken to accelerate full implementation of the Convention*

Reports of the States that are parties to the Convention can be found, together with the Committee's concluding comments, recommendations, guidelines and other relevant information, on the UN High Commissioner for Human Rights website (www.unhchr.ch).

Section 2

The scope of the juvenile justice system

States must establish a minimum age below which children, defined as persons under 18 years, are not presumed to have the capacity to commit a crime (CRC, article 40). The age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” (Beijing Rules).

Some of the most important issues concerning juvenile justice relate to the coverage of the juvenile justice system and the ages below which a child cannot be considered responsible for an alleged offence and above which a young person is treated as an adult. In addition, not all children in criminal justice systems are criminals. Rather they are children in need of care and protection, as they have not engaged in criminal behaviour. Or they have been directed to the criminal system because the care system is lacking.

Setting appropriate minimum age of criminal responsibility

In most countries, only those who are old enough to understand the significance of their behaviour can be brought before a juvenile court. Legislation in most countries limits the discretion of the court by establishing a lower age limit (the ‘minimum age of criminal responsibility’), below which it has no competence to hold a child responsible for his or her conduct.

The minimum age of criminal responsibility varies between countries. However, in most South Asian countries the low age of criminal responsibility remains a serious cause for concern. The Committee on the Rights of the Child has concluded that the minimum age of criminal responsibility at below 12 years is not internationally acceptable and has recommended increasing it in its General Comment⁹.

Minimum age of criminal responsibility in South Asia				
7 years	8 years	9 years	10 years	12 years
India Maldives Pakistan ⁴	Sri Lanka	Bangladesh	Bhutan Nepal	Afghanistan

Source: South Asia and The Minimum Age of Criminal Responsibility, UNICEF ROSA, 2005

In several countries (Bangladesh, India, Pakistan, Sri Lanka), the given ages may be altered, depending on the judicial assessment of the child’s capacity to understand the consequences of his or her actions. In Maldives, the minimum age of criminal responsibility of seven years applies to all offences under Sharia law, as well as certain property-related offences, intentional killing and narcotics offences. For all other offences, children become criminally responsible at the age of 14.

Many children in the region face trial even when they are below the age of criminal responsibility because they cannot prove their age. In practice, determining the age of an arrested child might be problematic. It is often difficult to find any formal birth registration. Children whose births have not been registered or those who have never attended school do not possess any valid record of their age. Police reportedly either fail to record the child's age or deliberately note an increased age to avoid having to comply with procedural protections.

Children who commit an illegal act but are too young to be held responsible under the laws on juvenile offenders might be dealt with under other procedures - mostly within the welfare approach. The child can be placed in an institution on welfare grounds without trial and has no possibility of a judicial review or appeal, which means that an independent monitoring system should follow up and review these welfare cases.

Universal application of juvenile laws and protection to all children

The CRC requires all State parties to extend juvenile justice protection to all children under the age of 18. However, in most countries of the region, there are additional restrictions, and special protections do not apply to all children alleged to have committed an offence.

According to legislation in Bangladesh, Nepal and Sri Lanka, children between 16 and 18, or those who are jointly charged with adults, can be tried in an adult court under ordinary procedures. In Bangladesh, children above 16 could be subject to provisions which allow life imprisonment and even the death penalty. Countries with federal systems, like India and Pakistan, have additional restrictions on the equal applicability of juvenile laws. In India, legislation on juvenile justice does not apply in Jammu and Kashmir. In Pakistan, it has not been extended in the Federally Administered Tribal Areas or in Azad Jammu and Kashmir.

Need to differentiate children in conflict with the law and children in need of protection

According to international standards, deprivation of liberty means placement in any kind of establishment - penal, correctional, educational or protective - from which a child cannot leave at will. It affects not only children who have been sentenced after being convicted but also children in need of protection. It is used excessively in pre-trial detention (including in police lock-ups), which may last many months. It is used abusively against vagrants or street children who have committed no criminal offence, and as welfare or re-educational measures on the decision of an administrative body without a judicial decision or review.

In several countries in the region, police officers have broad powers to apprehend children on a variety of grounds, such as for vagrancy, indecent behaviour or prostitution, being a public nuisance, "incorrigible" or exposed to moral danger (Bangladesh, Nepal, Pakistan, Sri Lanka). In many cases, children are held by the

police without being formally charged and without any record of their arrest, and may be detained in so called 'safe custody ' until they can be brought before a court (Bangladesh, Sri Lanka). Street children and child sex workers, in particular girls, are especially vulnerable to arbitrary arrest under these provisions.

Sometimes, the system wrongfully does not differentiate between a child as the perpetrator of a crime and a child as the victim of a crime. There are many cases where child victims of a crime are subject to pre-trial detention in closed facilities, including adult prisons, to safeguard their evidence or to obtain information from them (Bangladesh, Maldives, Sri Lanka). In such cases, the child victim, who may be in need of special care and protection, suffers twice: first in the hands of the perpetrator and then in detention.

BOX 2

SEPARATION OF CHILDREN IN CONFLICT WITH THE LAW AND CHILDREN IN NEED OF PROTECTION IN INDIA

While the Juvenile Justice Care and Protection of Children Act, adopted in 2000, governs both children in conflict with the law and children in need of protection, it has introduced a conceptual distinction between the two categories. This legislation prohibits the detention of neglected and delinquent children in police lock-ups and jails. Neglected children should be sent to juvenile welfare boards and child offenders to juvenile courts. Distinction is made between Observation Homes (for children subject to pre-trial detention), Special Homes (for children convicted of an offence) and Children's Homes (for children in need of protection).

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Law reform

New legislation should be developed, and/or existing legislation should be reviewed to ensure that:

- *A child-centred approach, based on diversion, restorative justice and preference towards community-based rehabilitation, is incorporated as a principle.*
- *All children under 18 in conflict with the law are treated as juveniles.*
- *The minimum age of criminal responsibility is set in accordance with international standards.*
- *Clear distinctions are made between child offenders and children in need of protection, and different approaches are identified.*

Age determination

Ensuring the children's right to be registered helps safeguard against illegal arrest. Requirements that prevent birth registration, such as sanctions for late registration or stipulations that parents present valid documents, should be removed.

Additional measures include:

- *Eliminating all costs of birth registration*
- *Encouraging the use of mobile registration teams in rural areas*
- *Encouraging late registration of older children who were not registered at birth.*

Section 3

Diversion and alternative solutions

States shall seek to promote the establishment of measures for dealing with children in conflict with the law without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected (CRC, Article 40).

The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decisions to refer a case shall be subject to review by a competent authority, upon application (Beijing Rules).

What is diversion?

Diversion means referring cases away from formal criminal justice proceedings towards community support to avoid the negative effects of being implicated in such proceedings. Diversionary measures can come into play at any stage - at the time of the arrest or immediately before the foreseen court hearing - either as a generally applicable procedure or on the decision of the police, prosecutor, court or similar body. The alternative to formal adjudication must be compatible with the rights of the child which preclude measures such as corporal punishment. Diversion may involve a restorative justice component.

Restorative justice is an approach that recognises how crime affects the victim, the community and the offender. Its primary focus is to repair the damage caused by the offence, to make reparation to the community and to the victim, and to return the offender to a productive place in the community. For justice to be truly restorative, the community, the victim and the offender must take active roles.

Diversionsary options in South Asia

Governments in the region have no nation-wide programmes to divert children away from the formal court system, either at the time of the arrest or during the early stages of the court process. However, precedents do exist (see Box 3).

BOX 3

WARNING BY POLICE OFFICERS IN BHUTAN

Bhutan's Civil and Criminal Procedure Code prohibits arbitrary arrest and detention. It requires arrest warrants as a general rule, but also includes a broad list of circumstances under which the police can arrest a person without a warrant. These provisions apply equally to adults and children, and there are no provisions limiting the powers of the police to arrest or search a child.

In practice, however, the Royal Bhutan Police reportedly resolves matters, wherever possible, without arresting the child or taking him/her to the police station. In general, for the first offence, the police will give a warning or counsel to the child. If a second offence is committed, the police will generally warn the child again and discuss the situation with his/her parents. If the child keeps committing offences or commits a serious offence, he/she will be arrested.

A number of methods have become associated with restorative justice because of the processes used to repair the harm caused by a crime. Although they by no means exhaust the possibilities for community involvement in responding to youth delinquency, they do illustrate the different ways the community participates in the sanctioning process (see Box 4 for an example of regional precedents).

BOX 4

MEDIATION BOARDS IN SRI LANKA

Although Sri Lanka does not have a formal procedure for diverting children from the formal court system, in practice many cases can be informally diverted by the police. Under the Mediation Boards Act, specified offences such as assault, mischief and misappropriation of property must be referred first to a mediation board before formal proceedings can be initiated. The board may convene a conference with all the concerned parties to reach an amicable settlement. The systematic use of mediation boards is an effective way of resolving many minor child offences quickly and informally.

Family group conferencing involves the community of people most affected by a crime. The victim, the offender, their families, friends and key supporters of both the sides are involved in finding a resolution to a criminal incident. The affected parties are brought together by a facilitator to discuss how they have been harmed by the offence and how it might be repaired.

BOX 5

FAMILY CONFERENCING IN MALDIVES

Under the country's Strategic Plan for the Reform of the Juvenile Justice System, the police and prosecutors are given discretionary powers to divert majority of the children in conflict with the law from the formal justice system. Formal investigation and court proceedings should only be used for children who commit serious offences (murder, manslaughter, armed robbery or other serious violent crimes) or who are repeat offenders or who do not admit the offence or where previous diversion attempts have been unsuccessful. All other children should be dealt with informally through police cautioning or referral to a Community Conference (family mediation), where the child comes face-to-face with the victim to discuss his/her offending behaviour and to develop an agreed plan for repairing the harm done.

Traditional dispute resolution mechanisms as an alternative solution

Customary and traditional dispute resolution mechanisms continue to play a central role in conflict resolutions, particularly in the rural areas (Afghanistan, Bangladesh, Nepal). They frequently operate alongside a formal judiciary and may be seen as a more accessible way to resolve many disputes. While practices vary considerably, they are essentially a form of family reconciliation, mediated by a group of community elders. However, such systems carry risks as they rest on the power of the judicial authority embodied in the local chieftainship or community elders. There have been concerns over the respect of the rights of children and their protection from physical or degrading punishment by these mechanisms.

BOX 6

CUSTOMARY LAW AND TRADITIONAL JUSTICE IN AFGHANISTAN

Although there is no formal legal framework, the practice of resolving many disputes through the local mechanism called jirga/shura is widely accepted, and continues to be practised, even in areas where formal justice systems are available. Minor juvenile cases are resolved locally, while major crimes such as murder are referred to formal courts. These local mechanisms offer a form of family reconciliation, mediated by a group of community elders, aimed at restoring communal harmony in accordance with established conventional norms. Emphasis is placed on formalised symbols of remorse and payment of compensation in cash, livestock or other goods.

If monitored and adapted for conformity with international human rights standards, these mechanisms can be very useful in dealing with children in conflict with the law because they provide immediate resolutions, and actively involve families and communities in the process.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

PROMOTE DIVERSION AND ALTERNATIVE SOLUTIONS

Mechanisms should be established to resolve minor juvenile offences outside the formal system. These may be facilitated by:

- *Identifying existing informal dispute resolution mechanisms and promising practices, assessing their adaptability, while ensuring respect for children's rights.*
- *Establishing mediation or community conferencing pilot projects.*
- *Reallocating funding to support juvenile justice aims: for example, alternatives to detention rather than the creation of new facilities.*
- *Exposing key justice sector officials and decision-makers to juvenile justice approaches based on diversion and restorative justice.*
- *Supporting NGOs, organisations and agencies providing alternative solutions for resolving child offender cases.*

Section 4

Police, arrest and interrogation

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment shall be used only as a measure of last resort and for the shortest appropriate period of time. Children must not be subject to torture or other cruel, inhuman or degrading treatment or punishment (CRC, article 37).

Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter (Beijing Rules).

Children who come into conflict with the law will inevitably have contact with the police. So police practice must be regarded as an integral part of any juvenile justice system. Contact with the police is often the child's first encounter with the criminal justice system and shapes his or her impression of the process that follows.

Arrest as a measure of last resort

Despite CRC provisions, no country in the region requires that arrest be used only as a measure of last resort, or offers alternatives to formal arrest.

In all the countries of South Asia except Maldives, police officers are required to produce an arrested person before a magistrate within 24 hours of the arrest. Maldives permits police custody of children for up to seven days to facilitate investigation or prevent re-offending. It is up to the magistrate to decide whether to remand the detainees to custody, grant bail or to order their release if there are insufficient grounds for detention.

These systems, however, fail in practice, and children are often held in police custody illegally and arbitrarily for long periods. Police officers often don't follow proper procedures, either due to a lack of familiarity with the law or a deliberate abuse of their power. Not all police stations have facilities to separate children from adults, and the detention of children in overcrowded police lock-ups for days or even weeks is reportedly common (Bangladesh, Nepal, Pakistan). Welfare officials do not regularly visit the police stations or jails to monitor the situation of children, and the police do not consistently inform the welfare officials of the arrests.

Parental notification as a requirement

With the exception of Maldives and Nepal, the police are required to make efforts to locate and inform parents of their child's arrest. In India, Pakistan and Sri Lanka, they must also notify a probation officer. However, no country requires the presence of a parent, support person or legal representative with the child during police questioning. In practice, parental notification poses a significant challenge, particularly in urban areas where children are displaced from their families, and the police often lack time and resources.

In some countries, the police rely increasingly on the support of probation officers, NGOs and child advocates to help them find families (see Box 7 for example).

BOX 7

PROTECTION OF CHILDREN ARRESTED IN PAKISTAN

Under the Juvenile Justice System Ordinance (JJSO), adopted in 2000, no child under 15 shall be arrested under any of the laws dealing with preventive detention or under the provisions of the Criminal Procedure Code (Chapter VII). The use of handcuffs and fetters is prohibited, unless there is sufficient reason to believe that the child may escape custody. The officer in charge of the police station where the child is detained must inform the child's guardian as soon as possible, if he or she can be found, of the child's arrest and the date/time/location of the relevant Juvenile Court. The officer must also inform a probation officer to enable the gathering of information about the juvenile's background and circumstances.

If these provisions are fully enforced and universally applied, they will reinforce the protection of children in line with international instruments, significantly reduce the number of children unnecessarily detained in police lock-ups and limit their abuse.

Prohibiting the use of physical force during the arrest of a child

According to international standards, only minimum force should be used in dealing with children.

No country in South Asia has explicit restrictions on the use of physical force in the arrest of children, and throughout the region there are continued reports of police corruption, illegal arrests and forced confessions. Children are at risk of torture and ill-treatment during arrest or while in police stations. Children working or living on the streets are easy targets of police brutality, and girls are particularly vulnerable to physical and sexual abuse at the hands of the police. Torture has also been reportedly used to intimidate and humiliate, and to extract information or money from children or their families.

However, countries such as India, Maldives and Nepal have established, or are in the process of establishing, specialised juvenile police units. Child-friendly practices are also underway in the region: child-friendly police protocols are being developed (Nepal, Sri Lanka), and in Maldives and most of the Indian states, the police are required to wear plain clothes when dealing with children.

BOX 8

POLICE FAMILY AND CHILD PROTECTION UNIT IN MALDIVES

Since 1999, all cases involving children under 18 are referred to a Police Family and Child Protection Unit (FCPU). Investigation of children in conflict with the law must be carried out by plain-clothed members of the FCPU, who must conduct the investigation with due consideration of their age. All aspects of the investigation shall be considered confidential. In practice, the police reportedly refer all juvenile offenders in the first instance to the FCPU. If the child is between 7 and 14 years, an investigation may only be initiated in relation to an offence prescribed under Islamic law or other specified serious offences. In all other cases, the child is referred to the Unit for the Rights of the Child (URC), under the Ministry of Gender and Family, where social workers provide various counselling and advocacy services. Crimes committed by children between 14 and 18 are investigated only “in cases where such a necessity arises”, and they may be referred to the URC.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Limit arrest and detention

Legislation should be reviewed to ensure that :

- *The arrest of children and the detention of child victims, for ‘status offences’ as well, are restricted.*
- *The use of physical force in the arrest of children is limited.*
- *Parents are notified of an arrest and their presence at questioning is assured.*

Child-friendly police practices and procedures

Consideration should be given to establishing specialised police units and to developing binding protocols and handbooks for the police, prosecutors and judges relating to the arrest and detention of children.

Training for law enforcement officers

All law enforcement personnel involved in children’s cases should receive appropriate training. Juvenile justice training must be included in the existing curricula in police academies.

Monitor police conduct

The establishment of mechanisms for monitoring police conduct and prosecuting violations and abuses should be encouraged.

Section 5

After arrest and in court

Detention shall be used only as a measure of last resort and for the shortest appropriate period of time (CRC article 37). Whenever possible, detention pending trial must be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Children must be kept separate from adults.

Every child alleged as or accused of having infringed the penal law has the right to: be presumed innocent, be notified of charges, remain silent, assistance of parents or guardians, legal or other appropriate assistance, fair determination of case without delay, not be compelled to give testimony or confess guilt, call witnesses, appeal, an interpreter, privacy (CRC article 40).

Under international standards, children going through the criminal justice system should be tried by a competent authority in an atmosphere of understanding conducive to their best interests. Children should be able to participate in decision-making and have legal and parental assistance. All proceedings should take place within the shortest appropriate period after arrest without unnecessary delays.

In matters involving a child offender, the court should be guided by the principle of the least possible restriction on the child's liberty. Depriving children of their liberty, either while they await trial or as a sentence, should be a measure of last resort and should be restricted to the shortest possible period of time.

Pre-trial detention as a measure of last resort

No country in the region has an explicit requirement that pre-trial detention be used as a measure of last resort. However, India, Nepal and Pakistan have specific limits on the length of pre-trial detention of children. Only Afghanistan has time limits for each stage of the process from arrest to the issuance of the court's decision. Due to limited court resources, these time limits are reportedly not always respected.

The number and condition of children subject to pre-trial detention have received significant attention, leading High Courts in Bangladesh, India and Nepal to issue directives requiring the release of children detained illegally or for lengthy periods of time. NGOs have also been active in providing alternatives to pre-trial detention in order to facilitate their release at an early stage (see Box 9).

BOX 9

ALTERNATIVES TO PRE-TRIAL DETENTION IN BANGLADESH

Aparajeyo, a local child rights NGO, has been promoting alternatives to pre-trial detention in selected districts through its Juvenile Justice Project, which is staffed by a team of legal advisers, social workers and child rights officers. The social workers regularly visit police stations to monitor children and to negotiate their release. The legal advisers represent children in court and advocate their release on bail. Aparajeyo may provide bail bond funding if the child's parents cannot be located or cannot afford to pay. Children released from police custody or granted bail are taken to one of Aparajeyo's 24 safe shelters, where they receive counselling and support for family reunification. The social workers attempt to locate the child's parents and make follow-up visits to check on children after their return. Parents are advised of the child's court date and of the importance of ensuring the child's attendance. Children whose parents cannot be traced or are unwilling to return to their family remain in the care of Aparajeyo, where they get an education and learn skills.

The resources spent tracing families can result in a significant number of children being placed under parental supervision rather than in the more costly remand facilities.

Release on bail

In every country, the court has the authority to release a child on bail or place him/her in parental care or the care of some other person or organisation pending the completion of the case. In a significant number of countries, the bail is favoured. But grounds for refusal are broad, such as that the child, if released, would be exposed to moral danger or have contact with known criminals (India, Pakistan), or that the "truth is not forthcoming from the child" (Maldives), or in the case of children charged with felony (Afghanistan). Monetary bonds continue to be required to guarantee a child's release (Bangladesh, India, Nepal, Pakistan, Sri Lanka) and are often set beyond the means of many families. As a result, street children and those from disadvantaged families are at greater risk of pre-trial detention. Not because of the seriousness of an alleged offence, but because their parents cannot be located, or they cannot afford to pay for their release, or the children have been deemed unfit for release by the courts or probation officers.

BOX 10

REDUCING PRE-TRIAL DETENTION IN PAKISTAN

Under the Juvenile Justice System Ordinance (JJSO), children accused of a “bailable” offence must be released by the Juvenile Court, with or without surety, unless there are reasonable grounds for believing that the release of the child will “bring him into association with a criminal or expose the child to danger.” For children under 15, the definition of a “bailable” offence has been extended to include all offences punishable with imprisonment for less than 10 years. If children charged with bailable offences are not released on bail, they must be placed under the custody of a probation officer or a suitable person or institution, but not under any circumstances in a police station or jail. If a child’s parents are not present, the court must direct that they be traced, and once located, the child can be immediately released on bail. Provisions also limit the length of time a child may spend in pre-trial detention, or while waiting for the trial to be completed, depending on the seriousness of the charge.

If liberally interpreted and applied to all children, these provisions have the potential to significantly reduce the number of children on pre-trial detention and the length of time they spend there.

In Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka, NGOs have been active in providing free legal assistance and/or bail money to facilitate the release of children in pre-trial detention. This has been a very successful means of facilitating the release of children detained illegally or unnecessarily.

Special court proceedings for children

Legislation in all countries except Bhutan, where there is no separate legislation for children in conflict with the law, requires that fully separate juvenile courts be established or provide the option of separate courts or specialised children’s magistrates/prosecutors. In India and Nepal, children’s cases are heard by a panel that includes a magistrate and social workers.

BOX 11

THE JUVENILE BENCH IN NEPAL

The 1992 Children’s Act calls for the creation of specialised Juvenile Courts, or the designation of a Juvenile Bench in each district, to hear all cases involving children. The Juvenile Bench is composed of a judge, a social worker and a child specialist or child psychologist. Proceedings are closed to the public and must follow special procedures. The court cannot proceed with or decide a juvenile case unless there is a legal practitioner to defend the child. The child’s name and address cannot be disclosed to the public.

If the Juvenile Court system is made fully operational, it will enable a child-friendly system promoting minimum use of detention and pre-and post-trial. The implementation of the Code of Conduct developed by Nepal Journalists Association and Nepal Press Council prohibiting the media from revealing the names of child offenders would ensure the respect of the rights of the child offender.

In all countries, legislation includes some provision to reduce the formality and intimidation of the courtroom and requires child and adult cases to be scheduled separately. Proceedings are closed to the public, and the publication of the child's name or photograph is prohibited.

Countries have been slow to introduce differentiated court proceedings for children. Cases are not systematically separated and scheduled differently from those involving adults, with little to differentiate them from regular court proceedings. Even where separate juvenile courts have been established, they tend to replicate the same formalities as the normal courts.

However, there have been some innovative precedents (see Box 12).

BOX 12

SPECIALISED JUVENILE COURTS IN BANGLADESH

Under the 'Children Act', specialised Juvenile Courts and courts at all levels must follow special juvenile court procedures when hearing cases involving an alleged offender under the age of 16. The court must be closed to the public and sit in a different building or room from the ordinary court sitting, or at a different time. The media is prohibited from disclosing the child's identity. Proceedings must be conducted in a simple manner. When being brought before the court, children should be permitted to sit with a relative or probation officer. The child's parents or guardian have the right to be present and may be required by the court to attend. To date, only two separate Juvenile Courts have been established. Meanwhile, lawyers and magistrates are reportedly becoming more aware about the Children Act, and are becoming more sensitive to children's issues. There have been significant efforts by the courts to hold proceedings in chambers and to encourage the separation of children from adults as they are brought to court.

Many countries lack the infrastructure to administer juvenile justice properly: courts often fail to sit regularly and to request reports on the child; police, prosecutors and judges do not prioritise cases involving children; children are not guaranteed the right to attend proceedings and seek legal assistance, or to express their views during the proceedings.

Parents are entitled to attend proceedings and can be required by the court to be present (Afghanistan, Bangladesh, India, Maldives, Sri Lanka). However, no country explicitly recognises the children's right to express their views in the proceedings, and legal provisions in Afghanistan, Bangladesh, India and Pakistan that permit the court to dispense with children's attendance violate the right of participation and due process. In Bhutan, guilty pleas are entered by the child's parent rather than the child.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Limit pre-trial detention

Legislation should be reviewed to ensure that:

- *The 'last resort' and 'shortest appropriate time' principles concerning the pre-trial detention of children are incorporated.*
- *The authority to impose detention and to make determination against children is limited to judicial authorities.*
- *Reviews of detention orders at set intervals are imposed.*

Encourage children's release

Legislation should encourage children's release on bail, and offer alternatives to children's bail when children and their families are not able to afford monetary bonds.

Establish specialised courts and child- friendly procedures

Consideration should be given to establishing specialised courts for cases involving child offenders or to expanding existing specialised court systems across the country. Court procedures should be adapted in order to ensure:

- *The imposition of binding time limits for reviewing children's cases*
- *The recognition of the right of the child to attend proceedings and to express his/her views*

Secure adequate training

Prosecutors and judges should receive interdisciplinary training on the rights of the child, child psychology and related areas.

Ensuring budget allocations

Parliamentarians should ensure that sufficient funding is allocated in the national budget for the establishment and good functioning of specialised courts and child-friendly procedures

Section 6
Sentencing

The sentence imposed should be proportionate not only to the gravity of the offence, but also to the circumstances and the needs of the juvenile. A variety of sentencing options, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programme and other alternatives to institutional care shall be available (Beijing Rules).

Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18 (CRC, articles 37 and 40).

Any steps taken with regards to child offenders shall aim at promoting his/her rehabilitation and reintegration into society. Fundamental principles are that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the child, and that it must present an alternative to custodial sentencing, in particular imprisonment.

Proportionate sentencing and deprivation of liberty

Only Afghanistan and Maldives have adopted the principles of the deprivation of liberty as a last resort and for the shortest appropriate period and of proportionality. Institutionalisation, both in law and in practice, is the primary tool used to rehabilitate children in conflict with the law, regardless of the seriousness of the offence committed. Even where alternatives exist in the law, children are routinely subject to detention.

In a significant number of countries (Afghanistan, Bhutan, Maldives⁵, Nepal), children's sentences are a fixed percentage of the adult penalty for specific crimes. In others, legislation stipulates a specific term that is applied to all children subject to a custody order (Bangladesh, Sri Lanka) or imposes a presumption in favour of institutionalisation until the child reaches 18 (India, Pakistan). When applied to minor crimes, these terms are harsher than an adult's sentence for the same crime. For example, while petty theft would rarely result in a prison term for an adult in India, a seven-year-old who commits theft can be subject to deprivation of liberty for 11 years.

All countries require that a child's background and circumstances be taken into consideration when deciding a penalty. In all countries except Afghanistan, Bhutan and Nepal, probation officers assist the courts by providing background reports on the child. However, courts do not consistently request these reports, and probation officers throughout the region generally lack the skills and resources to conduct comprehensive assessments. Delays in the preparation of social reports contribute significantly to children's extended pre-trial detention. Reportedly, the number of probation officers in many countries is barely adequate.

Strict prohibition of death penalty, life imprisonment and corporal punishment

The CRC states that neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18.

In Nepal and Pakistan, all children between 16 and 18 or those who are convicted under anti-terrorism laws are subject to adult penalties including the death penalty or life imprisonment. Children may also be subject to adult terms of detention if they are found to be “unruly or depraved” (Bangladesh), if they commit stipulated serious offences (Sri Lanka), or if they are 16 years or older and commit a serious offence (India). Under special provisions, children as young as nine in Bangladesh and eight in Sri Lanka are subject to life imprisonment. Sri Lanka also permits court-imposed corporal punishment against boys. In Pakistan and Maldives, children who have reached puberty are subject to corporal punishment for certain offences under Islamic law. This is in contravention of the provisions in the CRC. The death penalty as well as life imprisonment for children should be prohibited. Strict regulations should be in place to ensure that children are not subject to corporal punishment, solitary confinement or other cruel and inhuman punishments.

Promotion of non-custodial options

Once formal proceedings have been initiated against a child, there is no scope for diversion from the system, and all cases proceed to a determination of whether he or she is guilty or innocent and a disposition order from the court. However, the court may opt for non-custodial dispositions for child offenders. The most common is to release the child under the supervision of a parent, a probation officer or another person, though some countries include provision for counselling orders (India), community service (Afghanistan, India, Sri Lanka), home confinement (Afghanistan, Maldives) or referral to a non-residential social institution (Afghanistan, India). Throughout the region, however, these options are underutilised due to a systemic bias in favour of institutional rehabilitation and a limited commitment to establishing the necessary infrastructure.

BOX 13

THE COMMUNITY-BASED CORRECTIONS SYSTEM IN SRI LANKA

The Community-Based Corrections System, introduced in 1999, is currently operating in 64 districts through a network of Community-Based Corrections Centres. Community-based correction orders can include a broad range of conditions aimed at holding offenders accountable for their actions and requiring their participation in programmes that address the factors contributing to the offending behaviour. This may include performing community service work, participating in educational, vocational training and personal development programmes, or undergoing treatment for drug or alcohol addiction. However, the programme is not currently available for children under the age of 16.

WHAT CAN BE DONE BY PARLIAMENTARIANS ?

Limit the use of institutionalisation

Legislation should be reviewed to:

- *Promote the development of community-based sentencing options.*
- *Limit institutionalisation of children who have committed serious acts of violence, or persist in committing other serious offences, with a stipulated maximum term.*
- *Prohibit imprisonment for non-payment of fines.*
- *Prohibit life imprisonment without possibility of release and the death penalty.*

Build partnership with civil society

Partnership-building with NGOs, community groups and volunteers is key to the development of sustainable community-based alternatives.

Ensuring budget allocations

Parliamentarians should ensure that sufficient funding is allocated to developing alternative measures of institutionalisation

Section 7

Conditions in detention

Every child deprived of liberty must be treated with humanity and in a manner which takes into account the needs of persons of his or her age. Children deprived of liberty must be separated from adults (CRC, Article 37).

The use of corporal punishment and other forms of punishment that may compromise the physical or mental health of the young person and all cruel, inhuman and degrading punishment as disciplinary measures are prohibited. Children in detention must be afforded the same right to basic education as others. Emphasis is placed on promoting community contact (JDLs).

The placement of a child in custody shall always be made a last resort and for the minimum necessary period. Due to their vulnerability in prison, children are entitled to all the human rights granted to adults and to additional services and protection.

Avoiding imprisonment with adults

Most countries have introduced special legislation or procedures taking into account the specific needs of children in custody. Laws and/or prison rules require that children are separated from adults in prisons and other detention facilities, or that they are sent to special children's remand homes or specialised juvenile rehabilitation centres.

These systems, however, break down in practice. Many children are denied special procedures to uphold their rights in custody, and they are also often denied basic rights. Breaches of the law and failings in the juvenile justice system see children lost in the custodial system, sometimes for years, without judicial supervision or trial. Lack of protection puts them at serious risk of torture, ill-treatment and other forms of abuse.

In all countries, the number of separate facilities for children is quite limited, and the poor geographical distribution of children's institutions means that they are either transferred a long distance away from their families, or detained in adult jails. This is of particular concern to girls, since most countries either do not ensure their separation from adults or have no, or fewer, separate facilities (Afghanistan, Bangladesh, Nepal, Maldives, Pakistan, Sri Lanka).

BOX 14

PARTNERING WITH NGOS IN INDIA TO IMPROVE INSTITUTIONAL CONDITIONS AND SERVICES

India has introduced an innovative partnership approach for the management of children's institutions. State governments must establish special children's

homes on their own, or under agreement with voluntary organisations. This partnership approach, encouraged by the central government, has shown considerable success. NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. One state has put into practice a scheme, under which each children's institution will be co-managed by a key NGO. Elsewhere, state governments have certified institutions that are fully operated and managed by NGOs, with state funding support.

The use of corporal punishment and other degrading punishment is common throughout the region. Only Nepal and Pakistan have special restrictions on the type of punishment that may be imposed, prohibiting solitary confinement or corporal punishment, handcuffs and labour.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Set standards for conditions of detention

Legislation should be reviewed to ensure that :

- *The detention of children with adults is prohibited.*
- *Torture, all forms of abuse, corporal punishment in institutions and prisons are prohibited.*
- *The situation of children is reviewed on a regular basis.*

Change practices in detention facilities

Policies and practices should be reviewed to ensure that:

- *Staff receive appropriate training.*
- *Independent investigation of complaints is made accessible to children, and perpetrators of abuse, torture or corporal punishment are prosecuted.*

Raise awareness

An open dialogue between parliamentarians, the media and civil society helps to:

- *Spread messages about the situation of children in custody, and raise possible alternative solutions.*
- *Promote community sensitisation to new approaches to juvenile justice.*
- *Support organisations and agencies that provide alternative measures to detention or imprisonment.*

Improve detention facilities monitoring

Parliamentarians and civil society should monitor detention facilities on a regular basis.

Improve data collection

The capacity of a national office or any other competent agency should be enhanced to enable it to collect relevant data on children detained or imprisoned.

Ensuring budget allocations

Parliamentarians should ensure that sufficient funding is allocated in the national budget to carry out effective monitoring of the situation of children in detention, including the development of comprehensive data collection.

Section 8

Rehabilitation and reintegration into society

Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance in order to facilitate the rehabilitative process. Volunteers, local organisations and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit (Beijing Rules).

Although deterring children from entering the juvenile justice system through prevention activities is always preferable, some children will be sentenced to out-of-home placement. These children should be prepared for their eventual release into the community. Thus, their rehabilitation and reintegration can be best achieved by establishing the necessary collaborative arrangements with the community to ensure the delivery of prescribed services, probation and supervision.

Under the persisting concept of rehabilitation in South Asia, children are placed in institutions other than prisons, with emphasis on secure containment by restricting their movement. In fact, each country has established one or more special juvenile rehabilitation centres. With the exception of Afghanistan, the preference appears to be for large-scale institutions, rather than a home-like environment, which impose a strict regime. Most lack adequate facilities for education, vocational training, counselling and reintegration.

BOX 15

THE SEMI-OPEN JUVENILE REHABILITATION CENTRE IN AFGHANISTAN

For children who have been formally processed through juvenile proceedings, the court has a range of non-custodial sentencing options. Despite progress in putting the necessary services in place to support these options, they are not yet available throughout the country.

One promising initiative is the establishment in 2003 of a non-residential Juvenile Rehabilitation Centre (JRC) in Kabul. This open centre provides daytime education and vocational training for children in conflict with the law as a means of pre-trial supervision and as an alternative sentencing option. Children might return to their families at night, but spend the day at the centre where they receive supervision and support services.

Improving conditions in institutions

Conditions in institutions in all countries of the region have raised serious concerns as reports of physical abuse of children persist. The main function of these institutions

is containment, and most lack the necessary staff and resources to effectively promote rehabilitation and reintegration. Basic facilities are often poor and in disrepair; few institutions provide education; and family visits are restricted. Due to prolonged periods of institutionalisation and limited community contact, many children lack basic living skills and the support needed for their reintegration into the community.

Probation

Probation services have been in operation for many years, but they lack staff and resources. Where they exist, support for children on probation tends to focus on monthly visits and reporting, rather than individual case planning and referral. In addition, there are limited systems in place to ensure that children on probation are referred to appropriate programmes and services in the community.

However, some countries (Bhutan, Bangladesh, India, Sri Lanka) have made progress in improving probation and other community-based alternatives to imprisonment, mostly through partnerships with local NGO communities.

BOX 16

COMMUNITY-BASED REHABILITATION IN BHUTAN

A number of innovative programmes are used to support community-based rehabilitation of children in conflict with the law through a diversion scheme, or as part of a probation order.

Children who commit minor offences can be referred by the police or probation officers to:

- *Youth activities and peer programmes under the Scouts Programme;*
- *Counselling and support through school-based Youth Guidance and Counselling Services;*
- *Training and life-skills programmes through a Youth Centre;*
- *'Youth in action groups', career guidance, counselling and basic skills learning programmes sponsored by the Youth Development Fund;*
- *The Youth Development and Rehabilitation Centre, which provides reformatory and rehabilitative training and basic education, vocational training and counselling. Children continue to live at home.*

These programmes build children's basic social competencies, involving them with pro-social peers and positive adult role models, and filling their free time with constructive activities.

WHAT CAN BE DONE BY PARLIAMENTARIANS?

Encourage rehabilitation and reintegration of children in conflict with the law

Consideration should be given to the development of standards, procedures and services permitting the referral of children to community-based mechanisms or non-residential programme.

To maximise the chances of successful reintegration, policies and practices should be reviewed to ensure:

- *Contact between children in institutions, their communities and families.*
- *Regular reviews of a child's situation.*
- *Appropriate staff training.*
- *Independent mechanisms to monitor conditions in institutions and children's access to complaint mechanisms.*

Build the capacity of probation officers and social workers

Trained and resourceful probation officers and social workers are essential to the implementation of community-based rehabilitation. Allocating resources at this level generally leads to the reduction in expenditures at a more costly level, such as the courts and institutions.

Develop prevention policy

A comprehensive policy regarding delinquency prevention should be expanded in consultation with the civil society, community members, police, social workers, teachers and children.

Ensuring budget allocations

Parliamentarians should ensure that sufficient funding is adopted for adequate capacity building of concerned agencies and organisations working for the rehabilitation and reintegration of children in conflict with the law.

Annex 1

Selected international models and promising practices

1. Coordination and Strategic Reform

South Africa One Stop Child Justice Centre

South Africa has introduced an innovative multi-disciplinary team approach to juvenile justice all under one roof. The "One-Stop" model is a juvenile justice centre with specialised police, court and probation officers (social workers) all in the same location. Juveniles who are arrested are taken to the centre to be processed by the police and assessed by a social worker. The centre has special separate cells for juveniles who are detained during the investigation, as well as a specialised juvenile court. The model has helped improve coordination between the agencies, ensure that juveniles are kept separate and apart from adult offenders, and has allowed for more appropriate and timely resolution of juvenile cases.

2. Legislative Reform

Philippines Study on the Age of Discernment of Out-of-School Children

As in other contexts, raising the age of criminal responsibility had been a contentious issue in the Philippines. In order to support the proposed increase in the age of criminal responsibility from 9 to 12, the Philippine Action for Youth Offenders (PAYO) conducted a Study on Age of Discernment of Out-of-School Children. Researchers interviewed 300 out-of-school children aged between 7 and 18, most of whom were street children. The study, which followed up on a similar study conducted with school children, concluded that out-of-school youth have a lower ability to make positive choices in life and were generally at a very low level of discernment. At the age of 18, the out-of-school children tested were at a level of discernment comparable to a seven-year-old. This dispelled the common myth that street children "grow up faster" than school-going children, and the fact demonstrated that the contrary was true. While street children had become "street smarts", their moral reasoning and cognitive development were impaired by the surroundings in which they were living.

3. Juveniles and the Police

NZ Police Youth Aid Programme

New Zealand has instituted a Police Youth Aid programme throughout the country. Police Youth Aid Officers deal with majority of the young people who have been apprehended or are considered "at risk of offending". The Youth Aid Officers are not present at the time of incident but receive reports regarding youth offences from the arresting officer. The police also run youth education and youth development programmes, which have been successful in reducing offences by young people.

The Youth Aid Officers are fully qualified police officers who have chosen to specialise in dealing with young people and their families. It is his/her responsibility to manage matters pertaining to children and young people, including: implementing alternative methods of dealing with young offenders, other than through criminal proceedings; representing the police at the Family Group Conference; liaising with schools,

government agencies and organisations; providing guidance and assistance to parents; and prosecuting or supporting prosecutors in Youth Courts (police in New Zealand prosecute in the court except in serious cases, or when the matter is being deliberated before a jury).

The Youth Aid Officers play a key role in the youth justice process, including seeking appropriate solutions through warnings, diversion and other methods of dealing with the offenders (including those committing serious offences) without resort to the youth court or Family Group Conference. The law does not preclude any offence from being dealt with in this way. The Youth Aid Officer decides if there is an alternative way of handling the case, taking into consideration the attitude of the juvenile and of the family toward the offender. Majority of the offences dealt with through this process are property offences such as shoplifting, property damage, offences involving motor vehicles, burglary and driving offences. When the offence involves more than minor violence, the Youth Aid Officer will refer the juvenile to a Family Group Conference. The Youth Aid Officers have been the key actors in making diversion options successful.

4. Diversion and Restorative Justice

Lao PDR Village Mediation Units

In Lao People's Democratic Republic (Lao PDR), villages have long had Village Mediation Units to resolve adult civil and some criminal disputes. As part of a larger Children's Justice Project to promote diversion, Save the Children Fund UK and the Ministry of Justice supported the establishment of Children's Mediation Units to operate at the village level. They mediate in children's cases primarily brought by the victims, local police and parents. Mediation will not take place if children do not admit the offence. If the offence is too serious (murder, rape, extreme violence), it will be referred to the police.

A Central Management Team comprising officials of the Ministry of Justice oversees the project on behalf of the Minister. At the provincial level, there is a Provincial Monitoring Committee and a Provincial Operations and Training Team; at the district level, it is the District Implementation and Monitoring Committee. Apart from the Central Management Team, these bodies are made up of a cross-section of senior members of the criminal justice system, e.g. the judiciary, police, prosecutors' office, mass organisations of the Lao Women's Union and the Lao Youth Union and other relevant ministries.

Child Justice Committees and FREELAVA Diversion Programme, Philippines

The Children's Justice Committee (CJC) was formed in 2002 as a community-based structure within the Barangay (village or smallest government unit) Council for the Protection of Children (BCPC) to promote community level prevention, diversion and mediation measures for juveniles in conflict with the law. The NGO, FREELAVA, provides assistance to the CJC members through guidance to implement the project in their own localities.

When a case is referred to the CJC by the community or the police, the Committee members convene to verify the facts of the complaint. Community volunteers immediately inform the parents of the child and explain the mechanisms of the diversion programme to the victim.

The CJC members summon both parties to discuss possible settlement/mediation of the case and to schedule subsequent meetings. If all the parties agree to the mediation, the offender is asked to present his/her written or oral apologies to the victim and/or verbal reasons explaining why he/she committed the crime(s). Mediation must be heard in a private room, usually in one of the rooms of the CJC's Centre. In case no settlement is reached, a formal case is filed.

Where settlement is reached, CJC members recommend steps for further psycho-social intervention for the juvenile through a centre-based or family-based approach. Community volunteers continue to monitor the child in conflict with the law through centre/family visits. The secretariat of the CJC keeps track of the records through a system of data collection and monitoring.

FREELAVA offers a number of programmes to support juveniles who have been diverted through this process.

5. Alternatives to Pre-trial Detention

Many countries have struggled to find alternatives to detention for juveniles who are street children, or who come from troubled families that cannot provide appropriate supervision. The following are some promising practices that are used to provide supervision to juveniles during the investigation/pre-trial stage as an alternative to holding them in detention.

Family responsibility: Family members are encouraged to take greater responsibility by taking part, together with the juvenile, in the process of developing a supervision plan for the juvenile. Parents and the juvenile meet with the police and participate in deciding what conditions should be imposed on the juvenile. This ensures that they are fully aware of their obligations, and also allows parents to suggest conditions that they think will help them to have better control over their child.

Mentor or Community Supervisor: Under this model, a volunteer mentor or community supervisor is assigned to the juvenile to supplement the parent's supervision. The mentors are usually members of the juvenile's community or live in the same neighbourhood.

Day or Reporting Centres: The reporting centre model is designed to provide intensive supervision for juveniles who are not in school or who spend time on the streets. Under the reporting centre model, juveniles are placed under the supervision of their parents, but are required to attend a reporting centre for a certain number of hours per day.

Youth Shelters/Open Custody: Shelters provide an alternative for juveniles who require a residential placement because they are homeless and do not have a parent or other relative to provide supervision. Instead of being sent to a detention centre, the juveniles are placed in home-like centres located in regular residential areas. The centres generally house between 10-15 youth and are staffed by workers who have been specially trained to deal with troubled adolescents.

6. Child-Friendly Juvenile Courts

Australia's Aboriginal Juvenile Court

In 2004, the Australian state of Victoria created a new Children's Koori Court. With this new initiative, the government is attempting to create a less formal, more culturally relevant justice experience for young aboriginal offenders, their families and the community.

The court is to conduct procedures with "as little formality and technicality" as possible. This includes taking steps to ensure that the proceedings are comprehensible to the juvenile, family members of the offender and any member of the aboriginal community present in the court.

In these courts, the physical setting is changed to create a more informal and culturally relevant environment. The magistrate does not wear the garb associated with his office and sits at eye level with the offender. Aboriginal community elders or respected persons sit beside the magistrate and offer insight on the particular case. The process includes all relevant voices to the case, including aboriginal justice offices, community members and the victims in developing a sentencing plan that will support recovery and reintegration.

Court-appointed Special Advocates in the Philippines

This volunteer programme provides a mechanism for skilled and trained child advocates to provide the needed services to juveniles in conflict with the law. Under the programme, volunteer "special advocates/guardians" receive training and are appointed by the court to represent and support juvenile offenders. These volunteers may present written reports to the court, recommending what they believe is best for the juvenile and providing the judge with information that will help the court make an informed decision. They also provide support and assistance to juveniles and their families throughout the proceedings and, when appropriate, may speak in the courtroom on behalf of the juvenile. Because they are specifically appointed to advocate the interests of the juvenile in the court, the volunteers are regarded as one of the most important forms of assistance to children and their families. The volunteers have become a powerful voice for juveniles and have significantly helped judges in handling juvenile cases.

7. Non-Custodial Sentencing Alternatives

8% Early Intervention Programme, Orange County, USA

The 8% Early Intervention Programme was developed by the Juvenile Systems Task Force to target young, high-risk juvenile offenders and their families. It was found that a small percentage (8%) of chronic offenders accounted for more than half of all juvenile arrests in Orange County. These chronic juvenile offenders were usually aged 15 or younger at the time of their first violation and had at least two of the following characteristics: poor school behaviour or performance problems, family problems, substance abuse problems and delinquency patterns. The programme employs experienced probation officers, with caseloads of no more than 15 clients each, to work intensively with the juveniles and their families. First, the staff tries to control the offender's behaviour, ensure that he or she complies with the probation terms and conditions, and stabilise the juvenile's home environment through counselling, parent aides and respite care. Then the probation officer helps the juvenile develop the necessary skills to avoid a life of crime and trains parents on ways to supervise and support their children. Volunteers assist by mentoring young people and developing jobs and literacy programmes.

8. Innovative Detention Centres

Open Prison, Ankara Reformatory, Turkey

The Ankara Reformatory is based on the philosophy of integration rather than isolation, and more than half the children leave prison every day, unaccompanied, to attend local schools or work in the local businesses. There is nothing to stop the children escaping, should they choose to do so: there are no perimeter fences or guards. Yet very few run away as the conditions and opportunities available in the open prison are so preferable to those in closed prisons (where they would immediately be sent if recaptured) and, in many cases, to life outside. Conditions are described as "simple but very pleasant". Primary level classes are held on site, whilst secondary standard children attend regular school.

According to a Turkish law passed in 1971, any business with over 50 employees is required to ensure that 3% of the workforce are ex-offenders. So boys over the age of 15 (official school leaving age) find placements in the local factories, depending on their skills, or are trained in a craft at the reformatory. Anything they make during their classes (such as clocks, ceramics and stained glass) is sold to the community through regular craft fairs with the profits returned directly to the boy who made the item. Those with jobs get to continue their employment on release and to move into shared group accommodation. The reformatory also arranges regular trips to football matches, the theatre, TV studios, cinema and museums.

Despite the serious nature of most of the offences (more than half are serving sentences of over five years for murder or serious sex offences), the local community does not object to the institution. Instead it actively supports it through voluntary classes, sports and crafts skills. The overall impact is that these boys are not isolated from society and are provided support to integrate into the local community.

References for further reading

CRC Concluding Observations /Comments (<http://www.unhchr.ch/tbs/doc.nsf>)

CRC (2007) General Comments on Children's Rights in Juvenile Justice (<http://www.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment10-02feb07.pdf>)

IPU and UNICEF (2004) Child Protection: A Handbook for Parliamentarians (<http://www.ipu.org/english/handbks.htm#child-prot>)

UNICEF (1998) Innocenti Digest: Juvenile Justice (<http://www.unicef-icdc.org/publications/pdf/digest3e.pdf>)

UNICEF (2005) South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights ([http://www.unicef.org/rosa/Criminal_Responsibility_08July_05\(final_copy\).pdf](http://www.unicef.org/rosa/Criminal_Responsibility_08July_05(final_copy).pdf))

UNICEF (2006) Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law (http://www.unicef.org/rosa/Juvenile_Justice_in_South_Asia.pdf)

End Note

- 1 South Asia includes Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
- 2 This report is based on a desk review of existing documents, direct and phone interviews, including questionnaire response from UNICEF country offices and related agencies in the region (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka). The review was conducted in 2005, and the report was published in 2006.

The full report, "*Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*", is available on http://www.unicef.org/rosa/Juvenile_Justice_in_South_Asia.pdf

- 3 General Comment No.10 (2007) Children's Rights in Juvenile Justice by Committee of the Rights of the Child
<http://www.unhcr.ch/tbs/doc.nsf>
- 4 The 1979 Hudood Ordinances hold all Pakistanis criminally responsible - regardless of age - for offenses such as rape, adultery, the use of alcohol and drugs, theft, armed robbery and slander.
- 5 The primary disposition used in juvenile cases is house arrest though children who commit serious crimes are subject to two-thirds of the lightest punishment prescribed for the offence with the exception of offences against Islamic law.

The United Nations Children's Fund (UNICEF)

UNICEF, the United Nations Children's Fund, is a global champion for children's rights which makes a lasting difference by working with communities and influencing governments.

The UN Convention on the Rights of the Child which sets out the right of all children to reach their full potential is the foundation of all its work. UNICEF's 7000 staff work in 157 countries and territories to fulfill children's rights to health and nutrition; education; emergency relief; protection; and water and sanitation.

By working in partnership with others, from governments and teachers to youth groups and mothers, UNICEF is a driving force for people throughout the world working to ensure a better future for children.

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