



Save the Children



The Right Not to Lose Hope

Children in conflict with the law – a policy analysis and examples of good practice

A contribution to the **UN Study on Violence against Children** from The International Save the Children Alliance



Save the Children

MICHAEL AMENDOLANETWORK PHOTOGRAPHERS

The Right Not to Lose Hope

**Children in conflict with the law – a policy analysis
and examples of good practice**

The Right Not to Lose Hope addresses the issues facing children who are in conflict with the law. Part I analyses the experiences and situation of these marginalised children. Rather than focusing solely on children in the justice system, it looks at the broader context of these children's lives – in particular, the failure of care and protection systems and criminalisation of children's coping strategies.

The second part of the report looks at eight projects around the world that are working to support children in conflict with the law. It contains detailed case studies of community-based responses in Honduras, Laos, the Philippines, Kenya, Ethiopia, China, Uganda, and Bosnia and Herzegovina.

This report was written as a contribution to the UN Study on Violence Against Children. Its recommendations to governments and other agencies look at the broad context of issues affecting children in conflict with the law, covering prevention, decriminalisation, diversion, the justice system, and reintegration and rehabilitation.

ISBN | 84187 106 0

£11.95

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Children in conflict with the law – a policy analysis and examples of good practice

Florence Martin and John Parry-Williams

**A contribution to the UN Study on Violence against Children
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Save the Children

The International Save the Children Alliance is the world's leading independent children's rights organisation, with members in 27 countries and operational programmes in more than 100. We fight for children's rights and deliver lasting improvements to children's lives worldwide.

Vision

Save the Children works for a world:

- that respects and values each child
- that listens to children and learns
- where all children have hope and opportunity.

Mission

Save the Children fights for children's rights.

We deliver immediate and lasting improvements to children's lives worldwide.

Produced on behalf of the
International Save the Children Alliance by
Save the Children UK
1 St John's Lane
London EC1M 4AR
UK

First published 2005

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Registered Company No. 178159

ISBN 1 84187 106 0

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The names of all the children in this report have been changed.

The title of this report comes from a child in conflict with the law in Davao, the Philippines, who said, "It is my right not to lose hope."

Typeset by Grasshopper Design Company
Printed by Page Bros (Norwich) Ltd, UK



**Jonatan Josue Arita Isaula
(1983–2005)**

Jonatan had been working with the reintegration programme for ex-gang members in San Pedro Sula, Honduras, since 2003. He was not only a young working person who wanted to start a new life, but also a responsible father who had decided to leave the gang he had been involved with, after the birth of his son. When he joined the rehabilitation programme, Jonatan demonstrated great responsibility and developed strong working relationships with others in the group. He belonged to Generation X, an organisation started by ex-gang members in 2002. On 2 April 2005, when leaving the metal workshop where he worked and heading for his home, Jonatan was shot seven times, including a shot to the head, and died.¹

This report is dedicated to the memory of Jonatan and to the other children and young people of San Pedro Sula who find the courage daily to try to rebuild their lives in the face of violence, poverty and exclusion.

¹ For Jonatan's full story see p.112.

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Acknowledgements

We are very grateful to all Save the Children colleagues working in the programmes from which the case studies and models in this report have been taken, who have generously shared with us their extensive knowledge, experiences and learning.

In particular, we would like to thank:

Alemtsehay Mulat, Joyce Mwangi, Robyn Braverman, Tomas Andino, Jenny Vaughan, U.M. Habiba Nessa, Kolakot Venvankham, Barbara Keller Shuey, Lynne

Benson, Rowena Cordero, Eva Maria Cayanan, Jaime Enriquez, Richard Talagwa, P.T. Kakama, Diane Swales, Branka Ivanovic, Shon Campbell, Aleksandra Radic, Shirley Johnson, Jiang Ming, Andy West, Ruslan Ziganshin, Laura Brownlees, Clare Fox, Natalia Streuli, Bill Bell, Ravi Wickremasinghe and all the members of the International Save the Children Alliance Reference Group on Children in Conflict with the Law.

Abbreviations

ANPPCAN-Kenya	African Network for Prevention and Protection against Child Abuse and Neglect
ASBO	Anti-Social Behaviour Order
BCPC	Barangay Council for the Protection of Children
BiH	Bosnia and Herzegovina
CBCP	Community-based correction programme
CBO	Community-based organisation
CICL	Children in conflict with the law
CJC	Children's Justice Committee
CPU	Child Protection Unit
CSW	Centre for Social Work
FREELAVA	Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc.
FSCE	Forum on Street Children – Ethiopia
JDL	Juveniles deprived of their liberty
JHA-JA	Jovenes Hondureños Adelante – Juntos Avancemos (Forward Honduran Youth – United We Advance)
JJP	Juvenile justice programme
OMCT	Organisation Mondiale Contre la Torture
PAO	Public Attorney's Office
VMU	Village Mediation Unit

Case study I: Boboy's story (the Philippines)

"Criminality runs in the family." Boboy was often subjected to this unfair remark from neighbours and even from police authorities. At 14, he had to constantly watch his back wherever he went after two of his teenage brothers were killed in alleged drug- or gang-related incidents.

Early exposure to a harsh life

Boboy came from a large family of eight siblings, the eldest was 23 years old and the youngest was five. Boboy's parents married at an early age and raised their children on an unstable income from their work at the public market. When Boboy's youngest brother was a year old, Boboy's father left his wife, Rita, for another woman and Rita became the breadwinner of the family. She learned to carry heavy loads at the market to provide her children with three square meals a day.

Often tagging along with playmates, Boboy was already hooked on arcade games at the age of seven and was frequently absent from school. He was then enrolled in a public elementary school as a first grader. He was re-enrolled the following year but he dropped out again, preferring daily life with his friends at the market place.

At an early age, Boboy frequented the Bangkerohan Public Market, tagging along with his mother or with friends. He worked as a market vendor and a conductor for public utility jeepneys. As an adolescent, he spent most of his time with his friends. He learned to smoke and was exposed to other risk-taking behaviours.

Blood brothers

The year 2001 was a very unhappy time for Rita and her family. Her two young sons, Richard and Christopher, were killed by unidentified assailants, believed to be members of a vigilante group in Davao City. Richard was stabbed to death in July, Christopher in October.

To keep the other children away from danger, Rita arranged for the custody of her three younger children with an alternative shelter for children and youth. "My children are now in good hands and continuing their respective classes in school. We will just visit them occasionally," Rita said.

Rumour was rife within their community that Boboy was in danger of becoming the next target. Both brothers had reportedly been killed because of their alleged involvement in petty crimes and illegal drugs.

Boboy was provided with temporary shelter at the Kabataan Centre. Apart from providing legal support and individual and family therapy sessions, the Kabataan Centre also explored alternative home arrangements for Boboy to try to prevent him meeting a violent death, as the fear of summary execution intensified.

Boboy, however, opted to go back to his own community with his family, under the custody of his mother. He resumed his usual routine – occasionally working as a market labourer and hanging out with friends day and night. Rita said that Boboy now heeded her advice. Nevertheless, the fear of the unknown continued.

On 12 March 2002, Boboy was arrested by the police for allegedly snatching a woman's necklace. After being held at the police station for a day, he was released through legal support from the Kabataan Centre.

After a month, on 10 April, he was arrested again for illegal possession of a deadly weapon. He was again detained in the same police station until 9 June 2002, a lengthy two months of waiting for case filing and the court's subsequent order of commitment.

Worried about the security of her son, Boboy's mother, Rita, formally requested the San Pedro Police Station to transfer Boboy to the Regional

continued overleaf

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Rehabilitation Centre for Youth (RRCY). Boboy stayed at the RRCY until the morning of 13 June 2002. The next day, the RRCY formally turned Boboy over to Rita's custody. The Department of Social Welfare and Development assessed that Rita was able and had the capacity to take care of her son.

Victim and survivor

Boboy was both a victim and a survivor of poverty and of the breakdown of family support. He learned how to make some sort of living in the public market by becoming a young market hauler and by doing other odd jobs. As a child, he witnessed different forms of violence in his family and his community. Worse, he witnessed the successive violent deaths of his two brothers.

As a child in conflict with the law, Boboy learned how justice was dispensed to young people like him. Rather than threaten him, this challenged him to move on and strengthened his capacity to deal with the harsh realities of being under constant surveillance by the authorities. He drew strength from his mother's own ability to cope and survive and so wanted to be always near her. When circumstances forced him to leave his mother temporarily and seek safety

at the Kabataan Centre, he suffered separation anxiety. He returned to his family, not only to be with his mother but also to confront his situation and live with it, hoping that there would be changes in the justice system. His personal security was indeed at stake, but his growing awareness of the plight of children like him and the presence of many non-governmental organisations (NGOs) that provided support and services gave him the courage to cope and even to take part in action for promoting children's rights and ensuring children's protection.

Boboy was stabbed to death on 2 November 2002 in the same brutal manner as his two elder brothers, six days before his fifteenth birthday. In 16 months, Rita lost three sons. Their deaths, and those of other children and young people who find themselves in conflict with the law, attest to a justice system that allows 'vigilante justice' to prevail in the many instances when it fails. Their deaths reflect society's indifference to the plight of many young people who become the victims of structural violence. Rita has vowed to continue to seek justice for her sons and to advocate for a comprehensive juvenile justice system, to try to prevent more sons and daughters meeting the same fate as her Richard, Christopher and Boboy.²

² Case study taken from Ancheta-Templa (2004)

Introduction

Boboy's life story is both unique, a reflection of his own particular circumstances and of the person he was, and at the same time tragically familiar to anyone who has worked with children in conflict with the law, whatever the country or the context. The circumstances may not always be so extreme and the outcomes not always so tragic, but, as this report demonstrates, the same patterns can be found throughout the world in the lives of children who end up in conflict with the law, whether in Honduras, the Philippines, Uganda or China. More often than not there is a background of poverty, marginalisation or exclusion; a pattern of violence or neglect in the family or community; a failure in the child's care and protection support mechanisms; a lack of opportunities and a loss of hope. Often, these factors are compounded by the children's sense of alienation, of powerlessness, of being on the margins of societies where they do not belong, where adults make the rules and where children's spaces and place are restricted and defined on the basis that they are not part of the adult world.

To recognise the reality of these children's³ lives and experiences is not to see these children as hopeless victims of circumstances, as simply passive recipients of society's ills. These children are very much actors in their own life stories and will often have made active choices, faced up to responsibilities, and determined the course of their lives and sometimes even deaths. But children are no more divorced from the context and environment in which they live, grow up and develop than the adults who are supposed to care for them, protect them and guide them.

Most of the children who come into conflict with the law – whether they are children trying to survive, petty offenders or serious offenders – are children who are facing challenges in their care and protection and in their relationships with their families, communities and society. Their lives, choices and opportunities

are affected to a great extent by the social, economic and political realities in which they live. These include communities increasingly fragmented through urbanisation, chronic poverty, social and inter-personal violence, and increased pressure from commercialisation and materialism. Yet, somehow we expect children to remain outside of all this and be better. We construct childhood as a time of innocence, of purity and lack of responsibility. When children do not live up to these expectations, our societies respond with particular vindictiveness, as if in shock that the image we created, the childhood we want to believe in, does not exist. Media frenzy and political opportunists can take over and every child can be tainted with the same brush: children are demonised for not being 'what they used to be' and for being 'capable of the worst things'.⁴

Beyond the periodic hysteria about youth offending lie some stark facts:

- The overwhelming majority of children in conflict with the law – over 90 per cent of them – are petty offenders, who mainly commit offences against property.
- Four out of five children who commit an offence only commit one in their lifetime. This is not only true of the Philippines, of Laos, of Kenya or Ethiopia; this is also true of industrialised countries and even countries facing major levels of social and community violence.
- The majority of children who end up in the criminal justice system are from particularly deprived communities and families, often from discriminated minorities.
- In some countries, the great majority of children coming into conflict with the law are children who are criminalised for simply trying to survive.

Yet we treat that overwhelming majority of children as if they were all committing serious and violent offences. We portray them as such and we respond to

their offending by putting them through a criminal justice system that is devised to deal with those who actually do pose a real and serious risk to public safety. To make things worse, by responding to their offending in this way, we expose them to situations and environments that are inherently violent, and that take them away from the social and familial environment that is supposed to 'socialise' them. We incarcerate them and remove their opportunity to learn to be respectful and respected members of societies and communities. We expect them to learn responsibility by exposing them to the totally artificial environment of detention, where choices are made for them, imposed rules define their everyday living and decide their every move, and where all the challenges they faced in the real world are temporarily removed but not dealt with. And then, when the sentence is over, we plunge them back into the same context and environment that led to their offending in the first place, hoping that they have learnt their 'lessons'.

This report will show that violence is a recurring theme in the lives of these children and not only after they come into conflict with the law. Violence is a major root cause of children coming into conflict with the law in the first place. It is also a major consequence of inappropriate criminal justice responses to children's coping strategies and behaviours. Finally, it is often a routine factor in the way children are treated once they enter the criminal justice system. There are already many reports testifying to the brutality of treatment these children face at the hands of law enforcement agents, prison authorities, and within their communities at the hands of their peers, self-appointed vigilantes and members of drug and crime gangs who use these children for their trade. Yet, it is less often shown how inappropriate responses that criminalise children unnecessarily and do not address the challenges that led them to come into conflict with the law in the first place can lead to further vulnerability for children and increased exposure to violence and marginalisation.

Part I of this report explores the way violence is intricately linked to the lives and experiences of these children and combines with other key factors such as poverty, marginalisation and inappropriate

responses to limit the opportunities for children to make different and better choices for their lives.

Part II of the report responds to the call of the United Nations (UN) Study on Violence against Children to go beyond identifying the problems and focuses on what can be done. We share eight examples of good practice that have been developed with partners and children themselves to provide a child-centred justice system that responds to the issues faced by children in conflict with the law in an effective and appropriate way: that recognises the diversity of their experiences and the root causes of their offending, and aims to avoid their further exposure to violence, stigmatisation and exclusion.

International law has long recognised that the formal criminal justice system should only deal with the small minority of children who have committed serious and violent crimes and who pose a real security risk to others. In addition, it has stated clearly and firmly that detention should always be a measure of last resort. Yet children continue to be criminalised inappropriately and exposed to a system that is often violent and frequently arbitrary. Children all over the world continue to be detained as a matter of course and often in appalling conditions where they are at further risk of being abused. While international law continues to promote alternatives to the formal justice system, at a national level, reliance on this system and on detention remains overwhelming. New and bigger prisons are being built all the time, even in countries where youth offending rates are actually decreasing. Alternatives to criminalisation and detention are rare and when they do exist, they tend to be isolated good practices and under-resourced, even where they have shown a demonstrable impact on the lives of children and on their offending.

Many would consider a 'child-friendly' justice system to be one where police officers do not torture, beat or sexually abuse children nor extort money, arrest them with no cause and detain them for indeterminate periods of time. Compared with the reality that most children in conflict with the law face every day, such a system would already be a major achievement. But even a child-friendly and child-respectful justice

system is not necessarily a system that respects children's rights and provides them with real justice.

The fact is that most criminal justice systems are based on concepts of justice that are punitive, and focused on addressing the immediate result of offending. They place children in constant 'double jeopardy', where they are criminalised and punished for attempting to survive, for re-enacting the violent power relations that they are brought up within and for tiptoeing on the margins of societies that in turn exclude them and demonise them for being 'anti-social'.

To demand justice for children is not just to require that they are not abused at the hands of those who are meant to enforce the law. It is to require that society recognises and addresses the reality of children's lives and the root causes of their offending and seeks to put in place real, long-term solutions that children themselves have identified and can recognise as their

own. These solutions must be based on a conscious shift by these societies and communities to see all children as part of them, as a reflection of them and as key stakeholders in their own future. The examples of good practice in this report do not pretend to be solutions to every problem nor applicable in every context, but they demonstrate that this shift is possible and that when it is supported and sustained, it can provide a real reason for these children to continue to hope.

Notes

³ A child is defined under Article 1 of the UN Convention on the Rights of the Child as "every human being below the age of 18".

⁴ "Phil Cohen (1997) has argued that young people have to carry a peculiar burden of representation. Their condition is increasingly seen as being symptomatic of the health of the nation, or the future of the race, the welfare of the family, or the state of civilization as we know it." (Muncie, 2004, pp 10–11)

Part I

**Violence in the lives
of children in conflict
with the law**

I Challenging the myths

“Probably no other area of domestic policy has been abandoned more thoroughly to misinformation, hyperbole, and pandering to public prejudices. The results, frequently, have been ill-thought strategies that actually increase crime, damage young people, and waste taxpayers’ dollars.”⁵

Facts about children and offending

Articles 37 and 40 of the UN Convention on the Rights of the Child (UNCRC) and international standards on the Administration of Juvenile Justice require states to establish a child-centred, specialised justice system whose overarching aim is children’s social reintegration, and which should guarantee that their rights are respected.⁶ In recognition of the particular nature of youth offending and the overall goal of “promoting the child’s reintegration and the child’s assuming a constructive role in society”,⁷ international law also emphasises the need to divert children away from judicial proceedings whenever possible and to “redirect [them] to community support services”.⁸ The formal justice system should only deal with the small minority of children who have committed very serious crimes and represent a threat to their society, and the detention of children should always be a measure of last resort.

The reality for children all over the world, however, is quite different.

A majority of children in conflict with the law end up in the formal criminal justice system

It is estimated that there are over one million children worldwide in detention.⁹ The detention of children who have been accused of a crime but are awaiting trial (remand) continues to be the norm in a majority of countries and in some cases this accounts for over 90 per cent of children being held in detention.¹⁰

Examples from Chapter 4 in this report illustrate this starkly. In six jails in Cebu, in the Philippines, 74.4 per cent of children in jail between 1999 and 2001 were being detained pending trial. In Ethiopia, data compiled by the Addis Police Commission and Forum on Street Children Ethiopia for the years 1998–2001 reported that 98 per cent of child offenders reported to all police stations in Addis Ababa were detained.¹¹ In Uganda, at the capital’s main adult prison, 60 children were remanded there during a given month in 2004, while the number of convicted children held there over the previous six months was only six, making the proportion of remanded children at least 90 per cent.

In addition to those being detained pending trial, the majority of children who are incarcerated have not committed a violent crime and do not pose a serious security risk to their communities. In the USA, only 25 per cent of incarcerated youth have been found guilty of a violent crime, leaving 75 per cent in detention who should not be there.¹² In the UK, “the number of children in prison has more than doubled since 1993 despite a decline in the number of children convicted or cautioned for offences. The UK now locks up more children than anyone else in Europe.”¹³ In Kenya, as shown in Chapter 4, research found that 80–85 per cent of children in police custody or correctional facilities were children in need of care and protection who had actually committed no criminal offence.

Establishing the facts about children in conflict with the law is no easy matter, however. It is notoriously difficult to obtain official statistics on children who come into conflict with the law. The lack of appropriate data collection systems, particularly providing disaggregated data by age, is compounded by the failure to use standardised concepts in relation to the definition of a child. Despite the UN Convention on the Rights of the Child’s almost

universal ratification and its definition of children as being under 18 years of age, member states continue to use widely varying terms in relation to children in conflict with the law. In UK statistics for example, *children* are classified as those aged between 10 and 13 years, *juveniles* are children aged between 10 and 17 years, *young persons* are between the ages of 14 and 17 years, *young adults* are aged between 18 and 20, and *adults* are 21 years old and above.¹⁴ The lack of proper and standardised data collection systems also ensures that data on youth crime remain highly politicised and are easily manipulated by those who want to be seen as ‘tough on crime’, but also that public policy on crime remains too often divorced from the actual crime situation. In addition, different definitions from country to country as to what constitutes a ‘serious crime’ or a ‘petty crime’ mean that it is often difficult to compare patterns of offending by children.¹⁵

The vast majority of offences by children are petty and non-violent offences

What is clear from the available data and from the work of Save the Children¹⁶ and other organisations working in this field is that over 90 per cent of children who come into conflict with the law have committed petty offences. Despite popular misconceptions about children who break the law and regular ‘moral panics’ about a world where children are not as they ‘used to be’, patterns of offending by children remain strikingly similar all over the world. The percentage of children who commit serious violent offences remains small even when it is at its highest, in countries with high levels of social violence, acute breakdown of law and order and street violence. Despite a steep increase in youth offending in the USA in the 1980s and early 1990s, only nine per cent of juveniles who were arrested had committed a violent offence in 1992.¹⁷ Five years later, in 1997, arrests of juveniles for violent crimes in the USA accounted for only 4.3 per cent of all juvenile arrests.¹⁸ Property crimes, however, accounted for a major portion of all juvenile crimes, with a range of status- and substance abuse-related offences accounting for the rest.¹⁹ In Honduras, despite public misconceptions, crimes committed by children constitute only a very small percentage of all crimes. Further, although the

homicide rate is much higher there than the world average (40.7 per 100,000 compared to 5 per 100,000), the majority of crimes committed by children continue to be property crimes.²⁰ Research in Central and Eastern Europe and the Commonwealth of Independent States has confirmed that, as elsewhere, “property crimes still account for more than two-thirds of juvenile crimes” despite steep increases in crime rates overall (including violent crimes) in transition countries, particularly linked to an increase in drug-related crime.²¹

Theft and other property crimes top the list of crimes committed by children, often followed by substance abuse and so-called ‘status offences’. In The Philippines, for example, a study in Davao City found that the top three offences totalling 82 per cent of all offences were theft (35 per cent), substance abuse (28 per cent) and curfew violations (19 per cent), while violence against the person amounted to only 7.1 per cent of crimes committed by children. According to police records in Cebu, another major city in the Philippines, nearly three-quarters of children arrested were alleged to have committed offences against property (71 per cent).²² In Bosnia and Herzegovina, it is estimated that 92 per cent of crimes committed by children were property offences. In Nairobi Central Police Station, 70 per cent of arrests were for vagrancy.²³

Children as ‘one-off’ offenders

The great majority of children who come into conflict with the law are first-time offenders and rarely go on to become career criminals. In Laos and the Philippines, for example, it was found that over 90 per cent of children in detention were there for a first offence. Conversely, in the UK it was found that a “small minority of the most prolific offenders were responsible for the vast majority of offences. Just two per cent of the whole sample accounted for 82 per cent of all offences measured.”²⁴

The reality is that a majority of children will break the law at least once before they reach 18 years of age, although the nature of their offending is usually so trivial as rarely to warrant intervention by the justice system. There is a well-recognised pattern of youth

offending in more affluent societies, for example, where offending is less often linked to survival, with a peak at around the age of 18 for boys and 15 for girls. This tends to be followed by a sudden drop in offending, understood to reflect the reality of child and teenage development with a period of testing ‘boundaries’ which ends naturally when young people find work, begin a family and take on responsibilities.

“Studies have found that, in industrialised societies, committing offences is most common among older adolescents and young adults. Usually, the acts are not serious, and most first-time young offenders do not end up pursuing a criminal career. For example, government statistics for 1996 in the Netherlands showed that rates of criminal offence peaked at ages 18–19, and a 1993 study in Scotland found the peak age for committing crimes was 18. A 1993 study in the UK based on self-reported offending revealed rates which were much higher among the 18–25 age group than among 14–17-year-olds. Serious and more deliberate offending tends to appear during early adulthood, but, like frequency of offending, it usually decreases among people above age 25.”²⁵

The criminalisation of children’s behaviour

Growing up is a period when children are learning to test boundaries and develop their own sense of right and wrong. Adolescents will adopt ‘risky behaviour’ and they will do so at a time when their lives and behaviour are particularly regulated by their families, schools and society. Crimes by minors account on average for between 5 and 25 per cent of all crime, and this is despite the fact that children and young people are probably the most policed and heavily scrutinised social group in any society. Children’s behaviour in social spaces is particularly controlled through the existence of a range of ‘status offences’ – offences that are only a crime when committed by children, such as truancy, running away from home or being beyond parental control. In addition, children’s behaviour that is deemed ‘anti-social’ has increasingly been criminalised through the use of curfews and other anti-social behaviour measures such as Anti-Social Behaviour Orders (ASBOs)²⁶ in the UK.

At the same time, children growing up in countries and families where chronic poverty or violence have led them to adopt survival strategies including migration onto the street, street work, begging, scavenging, petty thieving or prostitution, find that their very attempts at survival are criminalised and bring them inevitably into conflict with the law. For these children, adopting a ‘risky behaviour’ is not a choice but a part of daily life. Nevertheless, law and order strategies that criminalise children for being ‘out of place’ mean that children who are living or working on the street, including homeless children and children facing care issues, are the most vulnerable groups of children in terms of coming into conflict with the law and exposure to violence. They represent an overwhelming percentage of children found in the criminal justice system.

Criminalisation and gender

Crime all over the world is overwhelmingly a male phenomenon, with about 80–95 per cent of all crimes being committed by males, including crimes committed by children. Yet these figures do not give the full picture of girls and boys coming into conflict with the law and their differing experiences once they do so. While it is acknowledged that girls commit far fewer offences, it is also true that gender roles, the social control of girls and their restricted access to public life in many contexts, as well as the different coping strategies that girls are forced to adopt, result in some cases in less criminalisation and in other cases in more. For example, in a study of street children in Tajikistan, it was found that most street survival strategies were simply not available to girls, who would instead turn mainly to prostitution to survive.²⁷

In many societies where families face economic challenges, the marriage of girls, including young girls, is also used as a way for the family to increase its income or at least reduce the financial burden. Alternatively, girls may simply be forced to marry at a very young age as the only survival strategy open to them. The story of Okello and his sisters in Uganda (overleaf) is a striking illustration of this.

“Both Okello’s parents died in Gulu district leaving behind his two sisters and himself. Unfortunately there was only one surviving relative who was their uncle. He mistreated them and denied them a share in the deceased parents’ property which they had a right to. As a result, the girls were forced into early marriage for survival while Okello became a street child and committed a number of offences of theft. For one such offence he was arrested and detained by the police.”²⁸ (Uganda)

While in some cases girls experience preferential treatment when they come into conflict with the law and judicial personnel may show more willingness to divert them away from the judicial system, in other cases expectations about what is deemed ‘appropriate girls’ behaviour’ mean that they are more likely to be criminalised. In particular, status offences are often used against girls to control their behaviour. In the USA, for example, Amnesty International noted that “the pattern of female offending is quite different to males. A very large proportion of their arrests are for so called ‘status offences’ (such as running away from home), offences which only children can commit, rather than general criminal offences.”²⁹ In addition, girls who have turned to prostitution as a survival strategy or have been prostituted and are victims of trafficking continue to be prosecuted in many cases, instead of the adults who are exploiting them. The criminal justice system is even used in a number of countries for the so-called ‘safe custody’ of girls, a practice that in effect criminalises them and deprives them of their liberty, often with no recourse to due process of any kind, even though they are in many cases the *victims* of crimes, including crimes involving sexual violence.³⁰ The situation of these girls remains one of the most tragic and least reported examples of how children end up in conflict with the law.

Failure of children’s care and protection systems

The experience of violence for children in conflict with the law rarely begins with their first contact with the law. It is often a direct and major cause of their coming into conflict with the law in the first place. It is also a direct consequence of failed care and protection responses by states and communities for children ‘at risk’ if their traditional familial protective environments have broken down. But violence can also be a very real consequence of criminal justice policies that inappropriately criminalise children’s coping strategies and behaviour, and reduce further the options that are available to them, as well as driving them towards more ‘risky behaviour’. It is crucial to understand the complex and intricate relationship between violence and criminalisation in order to respond appropriately to what is happening in the lives of boys and girls who come into conflict with the law. If we do not, we will be left tinkering on the edges of a system that inherently fails to address the real issues faced by these children, their families and their communities. That system will instead continue to compound the problems faced by these children before adding its own measure of violence into their lives.

Abuse, neglect and separation

“I do not want to go back home because my father drinks alcohol and when he beats me, I roll around like a football.”³¹

One of the most common factors that brings children into conflict with the law is the breakdown of their familial and protective environment. Whether this is the result of violence within the family, the death of a parent, divorce, separation in an emergency situation or migration as a result of chronic poverty, its impact is that it exposes the child to a much higher risk of both violence and coming into conflict with the law, the two being inextricably linked. The child’s attempts to fend for him or herself and often to care for other siblings by living or working on the street or in temporary and unstable environments, the lack

of a ‘regularised’ social situation and status and the criminalisation of most livelihood options and coping behaviours, all compound what is already a personal crisis into a situation of potential conflict with the law.

The issue of violence in relation to children in conflict with the law usually raises images of the violence these children often experience at the hands of law enforcement agencies or while in detention. Yet when working and talking with children who have been in conflict with the law, the issue of violence within the home constantly arises as one of the key reasons for the child leaving home in the first place, as an important factor in the family breakdown or as a major deterrent to the child returning home. Violence in the family, including physical, sexual and psychological abuse as well as neglect, abandonment and discrimination, not only has a major impact on the child’s well-being and development, it fundamentally affects a child’s choices and may force her or him into coping strategies that often lead to further victimisation and criminalisation.³²

The use of physical and psychological punishment by parents is often raised by children themselves as a major factor that led directly or indirectly to their situation of conflict with the law.³³

“Our mother does not love us. She shouldn’t have left us if she does. She should have been a responsible parent. She shouldn’t have beaten up my elder brother like what she did. Parents should only reprimand their children, not beat them up!”

(Derick, 14 years old, the Philippines)³⁴

“I got some friends on the street who steal money and I join them. My mother beats me when I have gone with my friends and I have to leave and live on the streets. One day I took some money and a phone and they took me to the police station and later the police started beating us.”

(Boy aged 12, Uganda)³⁵

In a study in Tajikistan when street children were asked *“whether they would like to go back to their*

*parents, most of the children in the group discussion in Khudjand told us that no, they did not want to go back home, because they knew what it would be like: their parents would be drunk and would beat them all the time.”*³⁶

Research carried out on the causes of children migrating to the street indicates that family violence is a major contributing factor. The Consortium on Street Children, for example, points to research conducted in Peru which found that “family violence and child mistreatment was the precipitating factor in 73 per cent of cases of children migrating to the streets.”³⁷ Once on the street, a child’s livelihood options and strategies are likely to result in coming into conflict with the law. The fact that ‘running away from home’ can itself be a crime in the many countries where it amounts to a so-called ‘status offence’ simply ensures the criminalisation of boys and girls, including those that may have left home as a result of abuse, and may well expose them to an even greater risk of violence.³⁸

Abuse within the family, including sexual abuse, has a pervasive impact on the child. It has a direct impact on his or her immediate situation in that, once discovered, he or she is likely to be removed from the home and alternative care sought, often ending in institutionalisation which is in itself traumatic and can lead to further abuse. In many cases, the abuse will be left undetected and the child may have no other alternative than to flee from home and migrate to the streets or to a more temporary and unstable situation.

Abuse in the family also has a profound personal and emotional impact on that child’s sense of identity and self-worth. Having been abused by the very people who are meant to care for him or her, that boy or girl will have a strong sense of not having been worthy of love and of having been betrayed.³⁹ Abuse in the family is in turn likely to have a major impact on a child’s social relationships and their ability to form loving and non-abusive relationships. The links between victimisation and becoming a perpetrator are increasingly being researched and documented. Yet these are rarely, if ever, addressed

in any of the criminal justice responses to youth offending. In a study in the UK, for example, it was found that “91 per cent of all ten-17-year-olds who had committed the most serious offences had experienced abuse or loss in their earlier life.”⁴⁰ Despite increasing concerns about violent behaviours by children, including sexual violence, most criminal justice responses continue to fail to respond to the links between violence experienced and violence committed by children.⁴¹

Although family abuse frequently plays a major part in the life history of children who commit offences, this is not to imply that all children who have been abused will go on to commit an offence. It does mean, however, that unless abuse in the lives of these boys and girls is prevented and addressed appropriately, children will continue to be driven towards responses and behaviours that will increase their likelihood of being further abused and, in many cases, will bring them into conflict with the law.

In addition to violence by parents, violence, abuse and outright rejection at the hands of other carers, particularly in the aftermath of divorce or separation when a child is cared for by a step-parent or within a reconstructed family, are also common factors in the lives of many children who end up in conflict with the law.

Amir is 13 years old. His stepmother drove him out when he was eight years old:

“My father... at the beginning... at Kulyab ... at Moscowsky ... was a well-known man. He and my mother got divorced in the course of the war. Some time later my father came and took me out of her hands, then there was a kind of quarrel... He takes me away... A bit later once my mother comes to my father’s place, she found my father has already been married... Then at the place she gets in ‘scandal’ with his new wife.... Later, as I had become a pupil of the third year, I asked my ‘moma’ [one replacing his direct mother] to take me back to my mother. She was keeping silent. I had again urged her: ‘please, take me to mother!’ Then she told me that my mother had died three days ago. Then my father [...] left me

with my moma [because he left for Russia]. In turn she beat me up and threw me out. She said: ‘You are not my child and you are from another person’. So she threw me out. Then I had to stay, with all these boys, at this Sahovat [market].”

Tajikistan⁴²

Violence experienced by children in the family is not only that which is directed towards them. Domestic violence, where children witness the abuse of one of their parents at the hands of the other, also has a pervasive impact on children’s sense of security. It often results in a feeling of powerlessness and unpredictability as well as a sense of lawlessness and unfairness in the realm of the home where the boundaries of what constitutes ‘acceptable behaviour’ simply do not apply.

Family relationships are clearly crucial to children, not only in terms of the emotional, social and economic stability that they can bring, but also in terms of the parental support and guidance that children need and the process of socialisation that families provide. In discussions with boys and girls who are in conflict with the law, parental love, care and guidance are always mentioned by the children as important factors for preventing children ending up in trouble.⁴³ Parental neglect – including not having time to be with their children, to talk, to take an interest in their lives, either from wilful negligence or due to the pressures of making a living – is a recurring issue for children of all backgrounds. Yet, support for parents, including in parenting skills and good parenting, is rarely, if ever, prioritised or available.

Sixteen-year-old Joy, who is in jail for substance abuse, writes:

“I have always been and still am a hard-headed child. Do you know why children are hard-headed? Because some parents lack love and caring. How come children do not obey their parents? Because they see what their parents do. Why do children come to this? Why are they here inside the jail?”⁴⁴

Children who are unable to reach out to extended adult support through their broader family network

or other key adults in their lives, such as teachers or family friends, will often find themselves particularly isolated and likely to look for alternative and sometimes more risky support networks, such as gangs. The importance of an extensive protection network for a child is particularly obvious when violence or other forms of crisis affect the boy or girl's relationship with his or her parents. Unlike adults who are able to seek support from other adults or services, children are rarely encouraged to go outside the family or school for support. The resulting sense of powerlessness and of having nowhere to turn to are often major factors in the risky strategies adopted by children in conflict with the law.

Q: Is there anyone who could help you?

A: (pause)

Q: Did anyone help you in your life?

A: In my life? No.

Q: No one helped you?

A: No

Q: Do you have any friend so that you could talk to him in an open manner, freely? If you feel upset and you can come and talk to him?

A: No, there is no such a person.

Q: There is no one?

A: (pause)”

(Kolya, aged 14)⁴⁵

Gangs and peer groups may become the crucial influence in such a child's life, with both positive and negative implications. On the positive side, gangs and peer groups may provide an important socialising and protective framework for a child that may otherwise not be present or adequate. On the negative side, the child may be exposed to high levels of peer “violence (to maintain discipline and assert authority within the hierarchy of the gang as well as taking the form of inter-gang violence), introduction to substance abuse and potential for increased criminal behaviour”.⁴⁶

Thus one of the consequences of the breakdown of family protection for a child may be that they are driven towards coping strategies that will in turn expose them to further violence and the increasing risk of coming into conflict with the law.

The revolving doors of care and justice responses to children ‘at risk’

In addition to having the primary care responsibility for children, the family is an important status-giving institution. Children who find themselves excluded from a family may also find themselves without social status or saddled with a negative one, with the label of ‘orphan’ or ‘street child’, for example. They may find themselves ‘out of place’, at the margins of a social environment where a child is either meant to be in a family or in a ‘home’, an institution for their protection. As a result of that loss of parental care, the child becomes an object of protection for the state, which is meant to intervene when the primary carers – the family – are unable or unwilling to care appropriately for their children. In reality, the provision of social care and child protection mechanisms are often completely absent or rely entirely on already overcrowded institutions. As a result, the criminal justice system, particularly the police, becomes the first and often only agency to respond to the child's situation. Children are criminalised through the failure of adequate responses to deal with their care and protection needs and often find themselves sent back and forth between both care and justice systems.

Kenya provides a stark example of what happens when the social welfare system becomes confused with the criminal justice system. With 80–85 per cent of children who face serious care issues ending up on remand, the police and courts act on what they believe is in the children's best interests by removing them from the streets and placing them in the criminal detention system in the absence of alternatives in the care system. Kenya is by no means an exception, as the examples in Chapter 4 demonstrate.⁴⁷ Children who have committed no offence, actual or perceived, but who for one reason or another are without parental care, are routinely detained in the justice system for their ‘own protection’ until some other form of care can be found. In a number of countries, parents are even able to ask the police and prisons to detain children they say they cannot manage, as is the case in Laos and Bangladesh.

*Emon is a boy of 14 years old. His father brought him before the Tongi Juvenile Court because of his 'unruly' behaviour. According to his statement, he has many friends with whom he used to spend more time than his father desired. Sometimes he used to return home a bit late at night. His father's advice was ignored which infuriated him. And this led his father to bring Emon to the correctional institute for 'rectification'. Emon has been given a detention order for six months. Now he knows how to make tattoos. He also knows how to make a dagger and other sharp weapons. He says that when he will be released, he will continue demonstrating his feats because he wants his father to know how well he has been 'corrected' in the correctional institute.*⁴⁸

Under the laws in Honduras, children are deemed to be in a situation of danger “if they exhibit serious behavioural problems or difficulties with social integration, which include truancy from school, running away, belonging to a gang, and persistent disobedience to their family”.⁴⁹ In these cases, children's judges can order the placement of the child in so-called temporary 'welfare institutions', which in reality often mean many months living in poor conditions in overcrowded institutions. In Bangladesh, under 'safe custody' laws, magistrates can pass an order for the detention of boys and girls in 'safe custody' (in jail or a vagrant home) in cases where they have been the victims of rape or sexual assaults, in cases where they have been rescued from brothels or from traffickers and, in the case of girls and women, where they have married someone from another religion or they have married without the consent of their guardians.⁵⁰ The misuse of the criminal justice system for the 'protection' of children is particularly severe in relation to girls in a number of countries. From the continuous criminalisation of girls who are sexually exploited and trafficked to the use of criminal detention for the 'protection' of girls who have been sexually abused, this inappropriate use of the system invariably leads to further exposure to violence and is a flagrant violation of their rights. They represent particularly appalling examples of what happens when the criminal justice system is used to address care and protection issues.⁵¹

Inappropriate care responses do not only affect children when they are deemed capable of committing offences but also when they are below the minimum age of criminal responsibility and commit acts that would be offences if they were above that age. In many cases, these children are referred to the same care institutions and often have even fewer opportunities for accessing due process and ensuring that decisions about them are based on what is in their best interest. As a result, it is crucial to ensure not only that a proper minimum age of criminal responsibility is set but that the care responses to children who 'offend' below that age provide protection and care responses that are community- and family-based.

Even in countries where the care system is functioning appropriately, there is often a revolving door between the care and justice systems. The care system's over-reliance on institutionalisation and the lack of support for family-based care alternatives have a particularly negative impact on children. The inappropriate placement of children in orphanages and other residential institutions puts them in a similar situation to the one they would face in detention, including the very real risk of violence while in care. Alienated from a normal social environment and from both the negative factors but also the support networks that are available through their relatives and communities, children who come out of care are particularly at risk. Few if any of the challenges they faced because of their lack of protective networks, including through their extended family, peers, and neighbours, are going to be resolved through their institutionalisation. Instead, these children have been removed from a normal socialising environment and when they leave care they will be plunged back into a world very different from the rules and regulations of a confined institution. Without appropriate support networks and coping mechanisms, many of these children will end up leaving care only to be picked up by the police.⁵²

In many countries, the care institutions themselves are hardly different from the prison system and children often experience them as such. As a result, children will often choose, whenever they can, to remain on

the streets and will view the authorities' attempts at 'protecting them' as no more than an attempt to restrict their lives and penalise them for the situation in which they find themselves. This in turn may even lead them to adopt even more risky survival strategies, including avoiding all contact with the authorities and with representatives of the authorities (including in the education and health systems), in an attempt to escape the reach of both care and criminal systems.

"The first thing is that we don't want to be in jail or the vagrant home. We have every right to work and live on the streets because we don't have any other option at the moment. Police should not pick up street children without any specific charge against them."

Street children in Bangladesh⁵³

Failures in the care and protection systems, whether familial or state-based, are a major feature in the lives of children in conflict with the law and yet are rarely acknowledged in the formal responses to children's offending. A study of children in detention in the UK by the Government's Social Exclusion Unit found that over 50 per cent of these children had been in care or involved with social services; two out of five girls and one out of four boys reported suffering violence in the home; one in three girls and one in 20 boys reported that they had been sexually abused; and over half of the girls and two-thirds of the boys had had alcohol problems before entering prison.⁵⁴ Instead of 'treating' children as a series of isolated problems (child with family problem, child abused, child in care, child with anti-social behaviour issues, child in conflict with the law), children should be recognised as individuals, who are often facing multiple issues at the same time and are having to make choices according to the limited options they feel are available to them. They should be supported through a continuum of care and protection responses that recognise the range of challenges faced by that particular boy or girl, and provided with the tools and options to address them in a safe and empowering environment. Access to community-based support mechanisms should be prioritised at the earliest stages and not only when a child has already come into conflict with the

law or has already been convicted of an offence and community reintegration suddenly becomes an issue.

There is a terrible irony that a concept of protection that sees children's safety as being threatened on the streets and best supported by a move into a closed environment, a home or an institution, has led to children being moved into what are often equally unsafe environments, such as a return to violent homes, police custody or orphanages. The reality, however, is that the aim of such interventions is less the protection of the child and more the application of concepts of public order, with streets free of vagrant children sleeping or begging and generally disturbing the appearance of 'social order'. As will be discussed further in the next section, while removing the child from the public space may deal with the immediate public order issue, it does not in any way address the causes of that child's homelessness or his or her need for care and protection.

Criminalising children's coping strategies

"Because it was difficult to survive, we had no bread to eat... Then we came here."

"Because we used to live in the village, there was no place to work, we had no shoes to wear, we couldn't buy the needed school uniform, that's why we were not able to go to school..."

"We had hard times at the village. We had not been having any food to eat despite all my tries to get it. I had not been having any good clothes to put on and the other boys laughed at me. So I had to run away from there to the city for this."

Street children in Tajikistan who were asked why they left home⁵⁵

Survival strategies

The break-up of familial protective structures as a result of violence, separation or simply out of economic necessity all lead to children finding themselves 'out of place' in the eyes of society.

Children facing chronic poverty and violence in their families and communities are more likely to leave their homes either permanently – as they migrate to bigger cities in search of work, food and opportunities – or temporarily, as they take on small-scale employment, usually on the streets, or adopt survival strategies which include begging, scavenging or petty thieving.

These children find themselves in ‘double jeopardy’, as their very survival and coping strategies are criminalised by their societies. Begging, vagrancy and street work are still criminalised under the laws of many countries as a result of a public order strategy that wants to see streets cleaner and safer for the majority of citizens and in order to instil confidence in business. In Bangladesh, for example, vagrancy laws and criminal procedures are used to ‘sweep’ the road prior to the visits of dignitaries or prior to every general strike (*Hartals*). Children are rounded up, often beaten and then detained for their ‘safe custody’. “At times the police detain the children for days without producing them to Court as they are pressed [to pay] some sort of ‘unofficial ransom’ (in most cases 200 *Taka* per children).”⁵⁶

*“One day we went to the Shishu Park (children’s park) along with others. Suddenly the police picked us up without explaining anything. When we asked them about the reason, they beat us up. We were afraid to ask again as the police had batons in their hands.”*⁵⁷

As children, their employment opportunities are limited and often exploitative. They are driven towards livelihood options that are usually illegal and the impact is that they are asked to make impossible choices: to eat, sleep and survive, or not to break the law.

In Quezon City in the Philippines, for example, the local ordinance “specifically declares penal certain acts and activities for street children [such as]:

- (a) loitering within the Quezon City streets if the child is below 12 years old
- (b) selling *sampaguita* leis, cigarettes, newspapers, and other products or commercial items in the Quezon City streets

- (c) begging, sniffing *rugby* and other solvent products, pickpocketing, and doing other illegal activities.”⁵⁸

In some countries, children are left with no other alternatives than petty theft to meet their basic needs, including food and clothes. In Uganda, a study of children in conflict with the law in three districts found that 70 per cent of children had given the need to meet their own needs, including food, as the main motivation for stealing.⁵⁹

“I badly needed trousers and yet did not have the money to buy them. So I got them on credit although I did not have anywhere to get money to pay for it. I therefore stole money to pay for the trousers because the time given to me to pay back had passed.”

(boy, Uganda)⁶⁰

“My brother and I went to town and pretended to be mentally retarded, deaf and dumb and begged money from shops and passers-by. That day, we were at least able to raise something to eat.”

(14-year-old girl, Uganda)⁶¹

By criminalising most livelihood choices available to children and targeting their survival behaviours, the law in turn drives them towards more risky and exploitative options. With limited legitimate options for livelihood, children surviving on the street are easy and useful targets for those running the drug and organised crime trades. Substance abuse and trading by the children themselves become both a means for survival and a way to survive. The use of drugs provides these children with a means of temporary escape from the world they live in as well as, in some cases, a hunger suppressant that enables them to get by. Being ‘high’ can be understood as a coping strategy for children as well as a major bonding factor with peers.

“Taking shabu (amphetamines) makes you feel physically alert and awake. It conditions the body and gives you longer stamina.” Jerry kept on giggling as he continued narrating his story.

“You will not feel hungry! Shabu users are thin because they do not like to eat. Their bodies are very

active and stay wide awake even at night.” Jerry further explained that by taking a deck and a half of shabu, he can stay awake for 20 hours. *“That is why I was so thin before.”*

Like any other drug abusers, ‘trip’ is the main motivation. There is nothing much to do in the community except to wander around – spend the whole night hanging around in the neighbourhood watching people stay up late and play video karera, an illegal gambling machine similar to a slot machine in casinos. As shabu inhibits the body metabolism to long for food, I suspected shabu use is also Jerry’s way of escaping from hunger.⁶²

The response to the addiction of these children is invariably criminalisation, unlike responses to similar addiction by children from better-off families. The high percentage of children in the Philippines arrested for amphetamines (*shabu*) or *rugby* consumption is one example. Another is in Brazil, where it was reported in 2001 that “offences involving adolescents with drugs make up about 70 per cent of all offences. Whereas middle class young people who consume drugs are considered in the context of a medical approach, young people from the lower classes who sell drugs are seen purely as criminals. This has led to a huge process of criminalisation of poor young people who overpopulate institutions for adolescent offenders.”⁶³

In view of the fact that substance abuse requires money, it will inevitably push children like Jerry to steal and even trade, bringing them further towards conflict with the law and into the criminal justice system. Research with street children in Tajikistan found that “about 40 per cent of street children regularly smell petrol or glue but there are also others who ‘distract themselves from reality’ by sniffing it from time to time. The children sniffing glue or petrol regularly also seem to steal more than others, and are labelled as ‘thieves’ among the street children.”⁶⁴

The sickness and death of a parent or their migration away can also have a particular major and sudden impact on the life of the child, both emotionally and economically. Children have always played an important and positive role as carers in their families,

including looking after other siblings and sometimes sick or incapacitated parents. This is not only true of children whose families are facing chronic poverty. Yet when a family is already facing serious economic challenges, the loss of a breadwinner and carer will often force children into taking on a more major role in both areas. This often creates enormous personal challenges for boys and girls, as well as resulting in their adopting livelihood strategies that are likely to bring them into conflict with the law.

Eleven-year-old Benben left home because he could no longer take the responsibility of taking care of his younger siblings when their mother died. He felt neglected by his father. On the streets, he felt good bantering with peers. When they sniff *rugby*,⁶⁵ problems seem remote, he said. *“Why would I not leave home? I do all the work at home. It is so hard and tiring! I am still small, yet a child! I still have to take care of my younger siblings, look for food to feed them. My Papa does not care. I miss my Mama.”*⁶⁶

The major impact of the HIV and AIDS pandemic has now added another urgent dimension to the care challenges faced by children. With increasing numbers of child-headed households and children being responsible for the care of a number of other children, the criminalisation of children who are out of ‘traditional care situations’, together with the fact that most of their livelihood options are illegal, will result inevitably in these children increasingly coming into conflict with the law. Without a reconceptualisation not only of children’s social role but also of their legal role and status, children in these situations will find themselves increasingly vulnerable and marginalised. They will be left unable to protect their rights against unscrupulous adults and their views, roles and responsibilities as children and as carers will be left unrecognised and unsupported by laws and bodies used to dealing with children only through the agency of adults.

Okello’s case, described on p.12, illustrates poignantly the impact of lack of protection combined with the impact of stigmatisation that results from criminalisation. Upon the death of both his parents,

his uncle had appropriated the children's property and as a result had driven Okello to the streets and to stealing. After being arrested for theft, Okello was helped by a local community-based organisation and, through the care and support of a 'Fit Person' (see Chapter 4.7), he began to rebuild his life and started a small business.

*"He then vowed to save some money and bring the uncle to justice for the sufferings inflicted on him. When the uncle realised that the boy was serious on the issue, he arranged for a mob to beat him up on the grounds that he was a thief and this led to his death."*⁶⁷

To say that poverty plays a major role in bringing children into conflict with the law is of course not to say that only poor children commit crimes. Children who come from better-off backgrounds, however, are in a far better position to avoid the criminal justice system and incarceration altogether: through their parents being able to settle the matter out of court; through being able to afford better legal representation; or through being able to make bail conditions and get their families to stand as sureties. Equally, children who have some form of extended protective network through families and peers are more likely to cope and identify better and safer options when a crisis strikes and their immediate family structures break down. Once in conflict with the law, they will usually also benefit from more positive outcomes, as the justice system is far more likely to consider diversion and alternatives to incarceration where a family is engaged and willing to supervise and support the child in the community.

The reality of children's lives is that a range of factors are often at play at once, with one risk factor compounding another or one protective factor supporting another. It is by recognising the interplay of these factors and empowering children to build on their own resilience and develop their own ability and capacity to respond to the crises that affect their lives that they can be supported in making better choices and identifying positive solutions,

even in the face of what are too often appalling and limited options.

Peer-bonding as a protection strategy

An important coping strategy for children facing care and protection issues is to join a peer group for support and protection. For all children, this is a natural and important process of socialisation and growing up. For teenagers in particular, such groups are recognised as "the vehicle for the transition" from "the protected life of the family to the independent life of adulthood".⁶⁸ For children who are facing difficult issues in their relationship with their families, schools or immediate communities, peer groups represent a particularly crucial extended support network. Joining a group or a gang provides them with a surrogate or extended family and a social environment that is otherwise lacking. For many children living or working on the streets, joining a gang is rarely just a matter of choice but of basic survival. Violence on the streets, whether at the hands of other youths, the police and vigilantes or other adults involved in crime, means that being a member of a group is a crucial strategy for protection and survival. It empowers the child through peer support, provides him or her with a new social status and identity that have otherwise been lost, and in many cases enables the child to reclaim both social and physical space on the streets.

*"Seventeen-year-old Gino recounts how he took care of himself on the streets since he left home when he was seven. Mostly, he took on all sorts of menial tasks in exchange for food or loose change. Hunger, however, would often push him to stealing. To survive the harsh street life, he joined a gang. He said he always had a knife or some weapon with him for protection. 'We only carry them around to defend ourselves. We do not want to be caught unprepared, particularly myself. I am a vagrant! I do not have money for hospitalisation. I cannot afford medicines. I will simply die helpless.'"*⁶⁹

The increased criminalisation in recent years of gangs and children and young people who are part of them, whether or not they have committed a crime, has

had far-reaching negative consequences for both the children and their societies. It is part of a public order strategy that wants to demonstrate that politicians are ‘tough on crime’ and is generally popular with the media, who find crime stories commercially attractive. Yet it not only fails to address the real issues behind the levels of gang-related violence, including the role of the drug trade and organised crime, it also marks these young people as targets for stigmatisation, further exclusion from opportunities and in many cases results in their death. It makes it virtually impossible for them to make different choices and seek a different life, whether through employment, education or other positive involvement in their communities.

The case of Honduras (see chapter 4) provides a striking example of the way the criminalisation approach can simply reduce even further the options open to these young people and expose them and their communities to an even greater level of violence.⁷⁰ Children who are thought to be members of gangs are targeted for extra-judicial executions by vigilante groups and death squads linked to the security forces. They are faced with death and violence at the hands of their own gangs if they attempt to leave them. The police, who do not differentiate between ex-gang members and active gang members, continuously harass them on the streets. They are almost totally excluded from the work force and educational or vocational opportunities through stigmatisation that sees them first and foremost as a public security threat and rarely as the individuals they are, hoping for a better life. Their “tattoos act as a highly visible barrier to reintegration with society”, leading some of them to desperate measures including resorting to using “battery acid or acid creams to remove their tattoos – leaving scars across their faces and bodies”.⁷¹ Most of these children and young people have simply been made ‘persona non grata’ in societies and communities that make it virtually impossible for them to change and to make different choices. By criminalising them for who they are rather than what they have done, they are collectively condemned to remain imprisoned in the gang and violence culture that is too often their only option for staying alive and surviving as well as

protecting their own families. These children and young people are simply left facing impossible choices.

“We want them – community and local organisations – to help us move forward. We cannot do it alone. We really need a place to work. We’re tattooed so we can’t get work.”

(Honduras)⁷²

Being ‘out of place’: dropping out of school

Children’s loss of place and status does not only occur when they are facing acute survival issues on the streets. Exclusion from their ‘attributed places’ (such as schools) also results in a much greater likelihood of their coming into conflict with the law and being exposed to violence. Children who drop out of school, or who are excluded permanently, find themselves in an in-between zone where vocational alternatives and employment opportunities are few. At the same time, the behavioural issues that may have led to their dropping out in the first place are compounded by their alienation from the very place where much of children’s socialisation, educational and recreational activities are meant to take place: the school playground.

A majority of the children referred to in the case studies in this report have dropped out of school, either to work to support their families or themselves or because their parents were unable to pay the costs of their education. The impact of both fees and hidden costs found behind so many of the ‘free’ education systems cannot be underestimated, not only in terms of these children’s lives but also in terms of the resulting cost to society, financial and social, including the increased likelihood that these children will come into conflict with the law.

In other cases, children drop out because they feel education is irrelevant to their lives or because they are facing particular educational or behavioural problems at school.⁷³ In Kosovo, for example, “the reason most often cited for lack of school attendance is an economic one: many young people work to support their families, and experience has shown many that getting an education will not necessarily improve their

earning potential”.⁷⁴ Either way, the impact of such involuntary or self-imposed exclusion is broader than the loss of education for the child. In a British study on the effect of permanent exclusion from school on youth offending, the authors noted that “permanent exclusion tended to trigger a complex chain of events which served to loosen the young person’s affiliation and commitment to a conventional way of life. This important transition was characterised by: the loss of time structures; a re-casting of identity; a changed relationship with parents and siblings; the erosion of contact with pro-social peers and adults; closer association with similarly situated young people and heightened vulnerability to police surveillance.”⁷⁵

For these children, the lack of appropriate alternatives and meaningful occupation, together with the stigmatisation that comes with being ‘out of school’, result in their displacement to the street and to an environment that brings them increasingly at risk of coming into conflict with the law.⁷⁶ In addition, being ‘out of school’ can itself be a crime as a status offence which remains on the books of many countries that still criminalise truancy. Rather than addressing any of the issues behind the behaviour, which could be simply a child’s response to particular challenges faced, including bullying by peers in school or violence at home, status offences place the problem entirely on the child and on his or her behaviour. The added criminalisation simply confirms the identity of the child as a ‘problem’ to the child himself or herself, to the authorities and to their community, thus reinforcing their marginalisation and narrowing further the options available to him or her. Even where truancy itself is not a crime, the stigmatisation that is associated with being ‘out of school’ will often lead to a much greater risk of criminalisation. In the UK, for example, it was found that “truancy students, once apprehended, are more likely to be formally cautioned for low-level offences than their non-truancy counterparts, more likely to be prosecuted than cautioned for more serious ones, and more likely to be sentenced to custody than a community penalty. This means that their careers in the youth justice system may well accelerate at a faster rate than their criminal careers (Graham, 1988).”⁷⁷

The reality for children who find themselves ‘out of school’ is that the lack of alternative educational or employment opportunities together with the loss of status and stigmatisation attached to being ‘out of place’ all result in increased likelihood of criminalisation and a push towards more risky behaviours. The options for these children to make different choices are simply often not there, compounding the challenges they were facing in the first place and reaffirming their alienation from a society and a community where they feel they do not belong.

Being ‘out of place’: on the streets

What do you normally do around here?

“Sit outside the shops. Have a laugh.”

Why here?

“Because there’s nothing else to do. There’s not much places else to go. There’s nowhere else out...”

Yeah, other places you get moved by the police all the time.”

(14-year-old boy, UK)⁷⁸

Children’s displacement is both a social and a spatial concept. Being ‘out of place’ for a child means being outside of the physical places that are traditionally attributed to childhood, such as homes or schools or defined recreational areas when they exist. Instead, children find themselves operating and even living in areas that are considered ‘public’ but in fact are generally reserved for the adult public. For many of the children who are displaced temporarily or more permanently to the streets by their life circumstances, the streets are increasingly ‘no-go’ zones. The increased reliance on curfews, dispersal orders and anti-social behaviour orders that criminalise children’s use of public places, as well as their behaviour in them when deemed socially ‘inappropriate’, represents yet another form of social exclusion for these children which brings them into direct conflict with the law.

The Barangay Pinyahan in Quezon City in the Philippines provides a particularly striking example of curfew on minors from 10pm until 4am, with the following conditions:

“Except for adults, it shall be unlawful for any person to make a display in public and cause disturbance on the peace of the other person through the following acts:

- (a) Drinking and dancing in a public display without any reason to celebrate such as birthday party, wedding celebration and the like.*
- (b) Prolonged stay outside his or her residential abode.*
- (c) Leisurely walk on the streets of the barangay without valid reason or purpose.”⁷⁹*

Similar examples of curfews or restrictions on young people’s use of public spaces and freedom of movement and association can be found in the UK and the USA and can be even more restrictive.⁸⁰ A recent dispersal order notice in a major residential area of London in the UK, for example, read: “If you are under 16 you are not allowed to be here between the hours of 9pm and 6am unless you are under the effective control of a parent or responsible person over the age of 18. You may be removed to your home or place of safety if more appropriate.”

For children whose lives and work are on the street, curfews are simply a criminalisation of their lifestyles and survival options and expose them further to the arbitrary and often violent criminal justice system. This includes police officers and private security guards wanting to be seen to be doing something or simply using the laws to extort whatever they can from those who have little choice.

But even for other children who may have other options, curfews and other restrictions on their use of public spaces also have negative consequences. The limited spaces available for children to meet and socialise outside of an adult-controlled environment such as homes and schools make the streets of their communities particularly crucial spaces for them. It is where they develop their relationships with the outside world and their identity as members of a community, where they ‘hang out’. The heavy policing and public mistrust of children on the streets and in commercial spaces, including shopping malls, simply confirm to children that they are unwanted

or even ‘outlawed’ from most areas which make up their neighbourhood. They are to be contained within smaller and well-defined environments ruled primarily by adults. Again, this is particularly problematic for young people who are facing challenges in their familial or school environment because it leaves them with nowhere to go to escape and seek support and advice from others. In addition, for “less affluent children, the street offers the main social forum, especially as a large proportion cannot afford to participate in other leisure and recreational opportunities, or they choose not to do so”.⁸¹

This social and spatial exclusion is problematic on many counts. It drives many into adopting even more risky behaviours by looking for more ‘out of reach’ places away from a constant adult gaze. It confirms their relationship with their communities, and with those who enforce the rules of their communities, as one of confrontation, mistrust and sometimes even fear. They are not accepted as legitimate members because they are children and this confirms a sense of ‘not belonging’ and of unfairness that the world around them is defined by adults and that they are powerless in the face of rules that are defined for them but not with them.

“I am not asking anyone for help; no one wants to listen. Why would I ask my parents if they would beat me up?”

(primary school pupil, Bosnia and Herzegovina)⁸³

It compounds for many children the already natural process of wanting to be seen as ‘different’ and to test and break the rules. It increases enormously the likelihood that they will come into conflict with the law. As a result, many children and young people are entering the criminal justice system and find themselves criminalised for what began as minor adolescent misbehaviour.⁸²

On the one hand, the media and advertising aimed at children encourage them to believe in the importance of materialism and the need to consume, to see ownership of things as being a defining criteria for gaining status in life and society.⁸⁴ On the other hand,

children are banned or restricted from entering shopping malls and viewed with suspicion when they do, unless they obviously have money and are able to consume. These conflicting discourses are bound to send powerful messages to children, particularly those who do not have money to buy goods or to pay to enter recreational spaces that are the only truly defined spaces offered to children outside of their schools and homes. These messages speak of exclusion unless they can afford inclusion, of being status-less unless they already belong, and of disempowerment unless they can impose power. Yet, these discourses are rarely challenged, but instead the choices that children make within the restricted space that we allow them are constantly questioned.

It is striking that children's social and anti-social behaviours are so heavily watched and policed when at the same time they are barely recognised as social actors outside of the family or the school environment. Their lack of participation and control over their lives, over decisions that are made for them and on their behalf and over their environment mean that, on the one hand, children are treated as irresponsible and incapable human beings, 'adults in waiting' or 'non-adults', while on the other hand their every move, their location, and their behaviours are closely watched and ruled by communities that want them to abide by their rules and behave as responsible citizens. As Matthews points out, "the non-involvement of children, according to their maturing levels of interest and skill, creates citizens with little competence, who have learnt since childhood that society comprises those who have responsibility, and those who do not".⁸⁵

By being disenfranchised from their communities and provided with few incentives to participate, children are given few if any opportunities to exercise their citizenship skills and develop their sense of communal responsibility and belonging. Instead, they are acutely aware that they live in a world ruled by adults where their views, ideas and solutions are not valued and where the choices they make on a daily basis are not recognised. Through exclusion and criminalisation we reinforce their feeling of powerlessness and reduce

further their capacity to recognise options and exercise judgement. They feel that they have "little control in their lives and that their options are narrow. This feeds into the mentality of 'no choice' and 'I had to' presented by many young offenders as a reason for their behaviour."⁸⁶ It also reinforces their sense of unfairness and alienation in the 'adult world' which can, in turn, drive them even further into adopting risky and 'anti-social' behaviours.

By restricting children's social and spatial involvement in their communities and in their lives and by not recognising and supporting their capacity to consider options we are, in effect, undermining their ability to respond to the situations and problems they face by making better choices. We discourage them from seeking solutions, including solutions to the violence and abuse they face or they perpetrate. We alienate them from their communities and yet we demand that they feel part of them and abide by their rules. We remove their opportunity to take responsibility for themselves and yet we are quick to attribute responsibility to them when they do make what we consider are the 'wrong choices' such as break the law or behave inappropriately. The reality is that children do make choices, often in circumstances where the only choices available to them are bleak and sometimes even dangerous.

The recognition of children's role as social actors when they come into conflict with the law must be mirrored by recognition of their role as members of their societies. Instead of relying on inappropriate criminal justice responses that narrow even further the options available to them, we need to engage children in seeking their own solutions and determining the boundaries of their own behaviour towards others. This is precisely what socialisation is about. Children need the opportunity to be recognised not just as victims or as perpetrators but as individuals who are members of families, communities and societies; individuals who are facing multiple challenges and who need to be empowered to respond to these challenges and to make better choices for themselves and their communities.

Notes

⁵ Advocasey (2003) p.2

⁶ There is a comprehensive and far-reaching body of international law which regulates juvenile justice, in particular Articles 37 and 40 of the UN Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs), the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines)

⁷ Article 40(1) of the Convention on the Rights of the Child

⁸ Minimum Rule 11. Diversion. Commentary. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

⁹ There is currently no accurate figure for the number of children in detention. States continue to fail to collect proper data in relation to children who are deprived of their liberty or collect only partial data. For example, in some cases they collect data only in relation to those detained post-conviction or only in relation to children detained in formal penal institutions without accounting for those detained in other state institutions including reformatory schools, re-education centres, 'approved schools', vagrant homes etc. See Meuwese (2003)

¹⁰ See Etemadi *et al* (2004): Table A 18.4 p.338; Parry Williams (2005); Save the Children Sweden (2005)

¹¹ According to a survey carried out in February 2005 by Save the Children Denmark and Prison Fellowship (Dayster Consult International) on 20 prisons located in the six big regional states of Ethiopia, only 36 per cent of the children in the 20 prisons were convicted of an offence

¹² Advocasey (2003) p.29

¹³ <http://www.crimeinfo.org.uk/> Go to Youth People in Prison Fact sheet. The Howard League's weekly prison figures for July 2005 recorded that there were 11,018 under-21-year-olds detained at that time in the UK. <http://www.howardleague.org/weeklyupdates/2005updates/July05.htm>. As a result of England's more punitive approach adopted in the aftermath of the high profile murder case of a two-year-old by two children in 1993 (the Bulger case), there has been "an 800 per cent increase over ten years in the number of children aged 12–14 in custody in England and Wales. This is within an overall 100 per cent rise in

the same period in the number of young people aged under 18 in custody, which includes a 400 per cent increase in girls. [...] The Home Office's own research shows that the main factors in this dramatic increase in juveniles in custody are the increasing imposition of custodial sentences by the courts and the extended length of the sentences. It was not the case that more young offenders were appearing before the courts during this period." NCH Scotland (2003) p.11

¹⁴ Muncie (2004) p.15. The WHO report on Violence and Health, for example, uses the concept of youth to include all those under 29 years old. As a result, its chapter on youth violence which points out that the majority of violent acts are committed by youths, does not differentiate between the very different picture of violence committed by children under 18 years and violence by young adults in their early twenties

¹⁵ A good example of this problem is in Uganda where the crime of 'defilement' is defined as a capital offence and constitutes a very high percentage of crimes committed by children in that country. Defilement, though, includes all sexual activities between children under 18 years old, whether consensual or not, and is seen to be used, in many cases, by families to extort money as 'reparation' even where the two young people involved are in a consensual relationship as boyfriend and girlfriend. (See Uganda Good practice model in Chapter 4 of this report.)

¹⁶ The good practice examples in this report relate to Laos, Ethiopia, Kenya, Uganda, Bosnia and Herzegovina, the Philippines, Honduras and China. Save the Children also works on this issue in Afghanistan, Bangladesh, Cambodia, DRC, Liberia, Pakistan, Montenegro, Mozambique, Nepal, Sri Lanka, Syria, the occupied Palestinian Territories (oPT), Tajikistan, Vietnam, UK and Yemen

¹⁷ 'How severe is America's Juvenile Crime Problem?: Juvenile crime rates did soar in the late 1980s and early 1990s, but even at the peak only a tiny fraction of youth were involved in serious violence.' <http://www.aypf.org/lesscost/pages/fact02.html>. In the UK, violence against the person, both serious and minor, account for less than 14 per cent of indictable offences and theft and handling stolen goods account for just under half of all youth crime. Muncie (2004) p.15

¹⁸ This was confirmed in 1999 with only 4.35 per cent of all arrests of young people being for violent crimes. See United States Department of Health and Human Services (2001) *Youth Violence: A Report of the Surgeon General*

¹⁹ In 1997, status offences such as Curfew and Loitering law violations (182,700), Runaways (196,100), Disorderly conduct (215,100), Drunkenness (24,100), Vandalism (136,500), Vagrancy (3,100), Gambling (2,600) and Drug abuse violations (220,700) accounted for 34.5 per cent of all juvenile arrests (total 980,900 out of 2,838,300). See Office of Juvenile Justice and Delinquency Prevention (1999) *Juvenile Offenders and Victims: 1999 National Report*. National Center for Juvenile Justice. US Department of Justice, p.116

²⁰ “Contrary to public opinion, the posturing of politicians, and media reports the rate of juvenile offending in comparison to offending by adults remains relatively low, especially considering that under-18s make up more than 50 per cent of the population. Between January 1996 and May 1999 only 5.5 per cent of the 42,000 denunciations made were against young people. [...] The majority of crimes committed by children are against property, such as robbery and theft, followed by offences such as murder, sexual crimes and crimes against security, specifically the crime of illicit association for being a member of a gang.” (Harvey, 2004)

²¹ World Bank (2004) p.22

²² Save the Children UK (2004a) p.27

²³ Dunn (2000) quoting from *Children in the Dock: A Situation Analysis of the Juvenile Justice System in Kenya* by ANPPCAN (African Network for Prevention and Protection against Child Abuse and Neglect)

²⁴ Home Office (2003) <http://www.homeoffice.gov.uk/rds/pdfs05/r244.pdf>

²⁵ UNICEF (2000) p.89: See also Muncie (2004) p.15

²⁶ Anti-Social Behaviour Orders (ASBOs) were created in the UK under the Crime and Disorder Act 1998. They can be served against any person over the age of ten and since their introduction in 1999, nearly half of ASBOs served have been served on under-18 year-olds. (Fox, 2005)

²⁷ “Most of the jobs street children do are typical boy’s jobs. Besides selling things at stalls and helping in restaurants and cafes (jobs usually done by children living in families) there only seems to be the option of begging and prostitution left for street girls to earn money.” (From Munsch *et al*, 2004, p.37)

²⁸ From an interview by the Research Team in Gulu during the compilation of information for the ‘Comparative Study & Evaluation of the Impact of the Children’s Act in relation to CICL in 8 districts of Uganda’, 2005 (Case Study 13)

²⁹ Amnesty International (1998) p.57. The Report points out that of children arrested throughout the USA in 1996, girls accounted for 57 per cent of the arrests for running away from home, 29 per cent of the arrests for breaching curfews and 52 per cent of the arrests for prostitution

³⁰ See, for example, the use of safe custody in Bangladesh where magistrates can pass an order for the detention of boys and girls in ‘safe custody’ (in jail or vagrant home) in cases where they were the victims of rape or sexual assaults, in cases where they were rescued from brothels, or from traffickers and, in the cases of girls and women, where they have married someone from another religion, they have married without the consent of their guardians, they have been thrown out of their family or abandoned by their parents. (See Khan, 2000, p.14)

³¹ Munsch *et al* (2004) p.12

³² On the impact of violence against children in the family, see also the other two International Save the Children Alliance contributions to the UN Study on Violence against Children: Save the Children/International Save the Children Alliance (2005a and 2005b)

³³ The impact of physical and humiliating punishment on children’s behaviour is clearly acknowledged in the Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) which state that “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any institutions.” No.54 (1990)

³⁴ Save the Children UK (2005) *Back on Track* p.71

³⁵ Johnson and Nurick (2005)

³⁶ Munsch (2004) p.12

³⁷ Wernham (2004) p.49

³⁸ Status offences are used to penalise and regulate children’s behaviours that are perceived as inappropriate or “dangerous” by adults, such as truancy or running away from home and which would not be a crime if the same act was committed by an adult. International law requires the abolition of status offences to “prevent further stigmatization, victimization and criminalization of young persons”. See Art. 56 of the UN Guidelines for the Prevention of Juvenile Delinquency. (The Riyadh Guidelines)

³⁹ “Sexual abuse in the family can confirm the young perpetrator’s internal self-image of being an unwanted child, a wicked child who can’t be trusted, who isn’t worthy of love and affection, who

doesn't deserve to be happy, who doesn't belong." (Nyman, Risberg and Svensson, 2001, p.40)

⁴⁰ Muncie (2004), p.30 quoting Boswell (1995). See also Smith (2004)

⁴¹ The links between children being sexually abused and becoming sex offenders in turn are more complex. Children who have been sexually abused do not, by and large, go on to commit sexual offences but research has shown that about one-third of these children do. In addition, research with young sex offenders has shown that approximately half "have either been physically abused, neglected by their parents or witnessed violence in their own family". Långström (2000) quoted in Nyman, Risberg and Svensson (2001). See also 'Cycle of Child Sexual Abuse: links between being a victim and becoming a perpetrator' *British Journal of Psychiatry*, Dec 2001;179:482–94

⁴² Munsch *et al* (2004) pp.6–7

⁴³ See, for example, the recommendations of children in conflict with the law in Johnson and Nurick (2005) and in Etemadi (2004) pp.78–123

⁴⁴ Ancheta-Templa (2004) pp.27–28

⁴⁵ Munsch *et al* (2004) p.8

⁴⁶ Wernham (2004) p.59

⁴⁷ In Nigeria, for example, research in March–April 2003 by the NGO Human Development Initiatives found that "60 per cent of children detained in the Boys' Remand Home, Oregun, Lagos were non-criminal cases (of which 55 per cent were boys 'beyond parental control', 30 per cent were care and protection cases ('found' children) and 15 per cent were children who had been rounded up in Task Force street raids). Likewise, 80 per cent of girls detained in the Girls' Remand Home Idi-Araba were non criminal cases, ie, 'beyond parental control', 'care and protection' and civil disputes cases." (quoted in Wernham (2004) p.122)

⁴⁸ Save the Children UK (2003b) p.29

⁴⁹ Harvey (2005) p.59

⁵⁰ Khan (2000) p.14 and see also *Report of the Special Rapporteur on Violence against Women* on: E/CN.4/1998/54, <http://www.hri.ca/fortherecord1998/vol3/bangladesh.htm>

⁵¹ The detention of girls who have been sexually abused for their protection is particularly acute in countries where 'honour killings' are practised, as in Pakistan and Jordan, for example. (See Marcus,

1993) and Moussa (2005) *Report about the Sexual Assault and Children Exploitation in Syria*, p.25: "Most often, when cases [get] to the police and thus to the courts according to the legal and judicial system in Syria, any assaulted child will be put into a reform institute for delinquent juveniles and is not handed over to their parents, for fear of harsh parental punishment as is the case with raped girls who might be killed because of honour crimes, or who might be obliged to marry their rapist."

⁵² See UNICEF (2000) 'Leaving institutional care: an anxious time for vulnerable young people' p.93

⁵³ Save the Children UK (2000) Shoshur Bari, *Street Children in Conflict with the Law* p.35

⁵⁴ See Social Exclusion Unit (2002)

⁵⁵ Munsch *et al* (2004) p.7

⁵⁶ Khan (2000), p.19

⁵⁷ Khan (2000), p.19. Similarly in Egypt, Human Rights Watch reported that "the categories 'vulnerable to delinquency' and 'vulnerable to danger', set forth in Egypt's Child Law ostensibly to protect vulnerable children, have become a pretext for mass arrest campaigns to clear the streets of children, to obtain information from children about crimes, to force children to move on to different neighbourhoods, and to bring children in for questioning in the absence of evidence of criminal wrongdoing. The number of such arrests has sharply increased since 2000. There were more than 11,000 arrests of children on these charges in 2001 alone, accounting for one-quarter of all arrests of children in Egypt that year." (Human Rights Watch, 2003)

⁵⁸ The *sampaguita* are small white fragrant flowers found throughout South-East Asia. *Shabu* is a white crystalline substance known as metamphetamine hydrochloride and is a common illegal drug. *Rugby* is a popular word for a type of commercial adhesive considered as a dangerous habit-forming drug and often inhaled by children in the streets. (From Ateneo Human Rights Center, 2004, p.57)

⁵⁹ Kakama (2002) p.19

⁶⁰ *ibid*

⁶¹ *ibid* p.14

⁶² Save the Children UK (2005): *Back on Track* Case Study 6.3

⁶³ Wernham (2004), p.54

⁶⁴ Munsch *et al* (2004), p.30

⁶⁵ See footnote 58

⁶⁶ Ancheta-Templa (2004) p.28

⁶⁷ See footnote 28.

⁶⁸ Bee (1992) pp.436–37

⁶⁹ Ancheta-Templa (2004) p.28

⁷⁰ For in-depth analysis of children's and youth involvement in gangs and organised armed violence see Asociacion Cristiana de Jovenes de Honduras (ACJ)/Save the Children UK (2002); Downey (2003); Downey (2005)

⁷¹ Nurick, R (2005) Trip Report to Honduras for Voices project. Save the Children UK

⁷² Johnson and Nurick (2005)

⁷³ In the UK, a study of children in detention found that nearly half of the children had “literacy and numeracy levels below those of an average 11-year-old”; more than one-quarter had “literacy and numeracy levels of seven years old [...] 87 per cent had missed significant periods – often years – of education; 41 per cent had been previously excluded from school, with 37 per cent non-attendees. None was a regular attendee.” (Social Exclusion Unit, 2002, p.157). For an important insight into children's, parents' and teachers' perspectives on truancy in Bosnia and Herzegovina, see also Save the Children UK (2003a)

⁷⁴ Richardson, J ‘Youth in Kosova/Kosovo: A situation analysis’, quoted in World Bank (2004) p.26

⁷⁵ Berridge *et al* (2001) p.vi

⁷⁶ It is important to note that whatever the circumstances of their exclusion from education, children who have been in conflict with the law invariably view education as totally central to their hopes and to their future. In a consultation with children in the ‘Correction Centre’ (Tongi Kishore Unnayan Kendra KUK) in Dhaka-Bangladesh, for example, three out of eight recommendations by children related to the need for education such as: provide effective and relevant education for all children; mainstream the education system; provide certificate from KUK vocational training to search for jobs (10 January 2005). See also Johnson and Nurick (2005)

⁷⁷ Berridge *et al* (2001) p.23

⁷⁸ Matthews (2001) p.61

⁷⁹ Ateneo Human Rights Center (2004) p.59

⁸⁰ In the USA it was estimated that over 1,000 localities had imposed night-time curfew orders and that 76 cities had even imposed daytime curfews (Matthews, 2001). In the UK, Section 30 of the Anti-Social Behaviour Act 2003 introduced ‘dispersal orders’, in effect giving the police and local authorities the power to declare certain zones ‘no-go areas’ for children under the age of 16 between the hours of 9pm and 6am, whether they have committed any ‘anti-social behaviour’ or not. While no criminal offence is required for dispersal orders to be used against children, the breach of the order by the child is a criminal offence which exposes him or her to a fine or even a term of imprisonment up to three months. These collective restrictions have been recently challenged in the UK courts in the case of a 14-year-old who pointed out that these measures, in effect, penalise all children and would imply that they all are potential sources of anti-social behaviours. Case of W [2005] ECWA Civ 1586. It is interesting to note that the legislation uses provisions relating to child protection to authorise the removal of a child from the streets without any of the required determination that the child is indeed facing any risk. The Court found that the police were not authorised to use force to remove a child or return a child home when found in the dispersal area within the curfew period

⁸¹ Matthews (2001) p.61

⁸² See Howard League (5 April 2005) Abolish ASBOs for Children <http://www.howardleague.org/press/2005/050405.htm>

⁸³ Save the Children UK (2003a) p.15

⁸⁴ “...if a child's role model is some tycoon who made his money yesterday, we really have to think about this. Subconsciously, children understand that nothing that is done in a straight manner can give results in this system.” Mother of a primary school student quoted in Save the Children UK (2003a)

⁸⁵ Matthews (2001) p.50

⁸⁶ Hine (2004) p.40

Case study 2: Lufta's story (Bangladesh)

Lufta (15 years old) is the second of four children. Her mother died when she was young. Her father used to work as a brick-crusher and her eldest sister worked as a hired help in a household. As her father was absent during most of the day, Lufta also worked occasionally as a casual servant in nearby households. There was no love lost between Lufta and her father, who used to beat her up frequently, although he did not harm his other children. He used to stop her from playing or from watching TV in the neighbours' houses. He frequently asked her to leave home and said that she was not his child.

Once she secretly went to watch TV at her neighbours'. Her father found out and beat her, tying her hands with her scarf. She lost consciousness as a result of this severe beating. When she regained consciousness she found that her father had left her and taken his other children with him. A woman from a nearby house then kept her as a maid servant, paying her no wages. After she had worked there for almost two years, the woman became angry with her one day and gave her 130 taka and threw her out of the house. Lufta was helpless and decided that she would go to Dhaka. She was ten years old.

When she arrived at Sylhet Railway Station she met two other girls. Some boys started to tease her, and these girls called for help from two policemen. One policeman said, "There must be something bad about this girl," and took her to a nearby room. When the two girls asked the police to let her go, they forced them to leave.

The room had a bed in it. The two policemen raped her in that room. When Lufta tried to stop them, one of her hands was broken by the policemen. Later they abandoned her at the station. After half an hour, two other people took her to a hospital. (Later she found out that they too were policemen.) She was treated there for a few days. She told her rescuers and the

doctors about her predicament. After she had recovered, she was taken to a red building by her rescuers, where her particulars were noted down, and she was then sent to jail (according to her descriptions of the place).

Lufta was kept in a room with three other girls who were pickpockets. After three months she was taken to the court *hajat* (court lock-up) where she was kept with other male prisoners. Some of the boys cut her with blades at the court *hajat* and when she complained she was sent back to jail. After two more weeks she was presented to the court and a government solicitor pleaded her case. But before she spoke to the magistrate the offending policemen threatened to kill her if she told the truth. Lufta didn't have the courage to identify the policemen to the magistrate, although they were just in front of her.

While coming back from the court, some women prisoners managed to escape from the police van on the pretext of going to the bathroom. They took Lufta with them and abandoned her near the rail station. She came to Dhaka during the night and slept among other homeless women at the station.

She was once again teased by young boys the next day but was rescued by the ticket collector who gave her some food and asked her to wait in his office. It was here that she met two girls from an NGO (*Aparajeyo Bangladesh*) that worked with street children. She was later brought to the women's hostel of the NGO. At present she works in a garments factory.

Lufta is still traumatised by her experience and her hands still shake when she thinks about those people who violated her when they were supposed to protect her.⁸⁷

⁸⁷ Case study taken from Khan (2000) p. 28

2 Children’s experiences in the justice system

“I was severely beaten by the prison men – it’s when I realised that prison is like death.”

(boy, aged 17, caught for being idle and disorderly, Uganda)

Numerous reports published from virtually every country in the world highlight the violence faced by children once they come into conflict with the law.⁸⁸ While the scale of these abuses varies greatly from individual incidents to systemic violence, there can be no doubt that once a child comes into conflict with the law, he or she is exposed to a much higher risk of facing violence.

The very nature of the justice system, providing extensive powers to some individuals over the lives of other individuals under a state mandate, the reliance on coercion, control and institutionalisation, the retributive nature of the system, the gathering under one roof of individuals who often have violent and troubled backgrounds, the isolation away from the support network of families and communities, all provide an environment that, if not constantly and closely regulated and monitored, can lead to egregious human rights violations and abuses, not only by state agents but also by other prisoners.

First contact: violence and law enforcement

Children’s experiences of coming into conflict with the law tend to begin with their first encounters with police or local security officers, and these are often brutal. As was described by Mae Fe Ancheta-Templa in her study of children who come into conflict with the law in Davao in the Philippines, “The moment children are arrested, they become particularly

vulnerable in the hands of authorities who have power over them. The research found that most violations of children’s rights happen during arrests and detention at police stations. Violations range from ignoring standard operating procedures covering children’s rights, to verbal, physical and sexual abuse and exploitation of children.”⁸⁹

One of the striking and disturbing findings in our work with these children is the level of fear and distrust that children experience in relation to the law enforcement agencies, the very bodies that are meant to protect them.

“Q: When you live in the street what are you afraid of? Most of all?”

A: Mainly of police.

Q: Only of police?”

A: Yes... They take us into custody, beat us, torture us.

Q: Do they take you into custody lots of times?”

A: E-he, if you could only come and see us there.

Q: And he would take money to set you free?”

A: Yes. In that children’s custody we were beaten so much...

A: OK, if we steal something they confine us, if we wash the cars, they confine us. What shall we do?... [crying]

A: Whatever, it is a DIA or a custody, children were brought, tortured and made clean the toilets. That child didn’t steal anything, he washes the car, that poor child comes from somewhere in hope of earning some two somoni, but you treat them in this way. You better go and see that place.”

(Soubhon, 16, Tajikistan)⁹⁰

“There is an interview before one is sent inside the cell. When your offence is theft, you are beaten up

but when it is only curfew violation, you are just sent straight to the jail cell.

The boys are beaten up and their cheeks are marked with Xs. They command the other prisoners in the cell, then I was beaten up again. The police just laughed.”

(Boy, the Philippines)⁹¹

From immediate violence upon arrest, attempted extortion in exchange for promises of release, torture to extract a confession, regular beatings and further violence, including sexual abuse, when in police custody, the continuum of violence that many children experience at the hands of law enforcement agencies means that the agencies are ‘all powerful’ as far as these children are concerned. Usually isolated from the protection of families, who in some cases even view the use of violence by the police as part of ‘teaching a lesson’ to the child, often with no other adults to intervene on their behalf, these children are particularly vulnerable to violent and corrupt police officers.

In addition to violence, rampant corruption within some police forces, often compounded by low levels of salaries, leaves children at the mercy of unscrupulous officers who use the round-ups, curfews and other restrictions on children’s use of public spaces as an easy means of supplementing their meagre incomes. In Tajikistan, for example, researchers found that the leaders of street children’s gangs collected “about 70–75 per cent of the money earned by the children. With this money they pay the bigger leader and the police to ensure that they do not bother the group. In this way, the street children’s gangs are part of a bigger system of paid-for ‘protection’ or corruption.”⁹²

At one extreme, the police may even become actively involved in the elimination of ‘undesirables’, often children and young people accused of being gang members or deemed to be ‘bad for business’ because they live and work on the streets. The following cases of extra-judicial killings of children and young people by death squads and vigilantes in Davao in the Philippines and Honduras are by no means exceptions nor even restricted to those two countries.⁹³

Children and young people killed in Davao, the Philippines

“From January 1999 to December 2002, at least 29 people aged 18 and below who had been involved in petty crimes and illegal drugs were reported killed in Davao City. All were either stabbed or gunned down in busy streets by unidentified men, usually riding motorcycles, with some cases happening in broad daylight in the full view of bystanders. The number of young people aged between 18 and 25 who suffered the same fate was 62, as monitored by the Kabataan Consortium and the Tambayan Center for the Care of Abused Children, Inc. Many of the victims had either been detained by the police many times when they were still children or had just been released from jail at the time they were killed.

Many who witnessed the killings were afraid to testify. Fifteen-year-old Biboy reports how he witnessed an execution:

“We were just sitting there at _____ (a populated area). We were already high.

I was with my older brother and some friends. _____ (A friend, the victim) passed by. He told us to stay put. He said we might be dragged into trouble. He seemed to know what was coming. He just sat down. Then a police officer on a motorcycle passed by. I even recognised his motorcycle. I used to wash it for a fee.

When he passed by, pak! The policeman had his head covered. I was sure it was a policeman – heavily built. I knew his motorcycle. He was not in uniform, just civilian clothes. He just pointed his gun, pak! He just went by, pak! Bull’s eye! Blood even splattered on my face! Then, our friend looked back at the assassin and that was when he was shot in the head, dead.

Police officers around just looked on instead of helping us. ‘Boss, help us! Our friend is shot!’ They did not move. ‘Just bring him to the morgue,’ they said. Then, they just left. That is why we think maybe they knew about it and that maybe they were part of the operation. They just disappeared. They told us, ‘Just go home!’ We did. The next day, a police officer

told me, 'I knew who the assassin was last night, a co-worker. Just keep quiet. Do not say a word. Nothing will happen to you.'"

The accusing finger has been pointed at the Davao Death Squad (DDS), a vigilante group formed in the 1980s that aims to rid Davao of criminal elements through extra-legal means. Several accounts even link police authorities and elective officials to the group, given their perceived inaction on the killings. While authorities deny the involvements of vigilantes, they do not discount the existence of 'hired guns'.⁹⁴

Children killed in Honduras

Irvin Agustín Mejía Torres

Irvin was born on 28 September 1985 and was the son of Maria Elena Torres and Jose Agustín Mejía.

He started primary school in the Minerva Rural School in the village of Dos Caminos, Villanueva, Cortes. When his father died, Doña Elena decided to migrate to the Colonia Sinai, Sector Rivera Hernández, with her four children.

When Hurricane Mitch hit Honduras, the young people involved in gangs in the Sector Rivera Hernández joined in with the rescue operations together with their neighbours. Irvin was 12 years old when he volunteered and this is how he became a member of the gang known as the Barrio 11 based in the Colonia Sinai. The other gang members gave him the nickname of 'Mitch', saying that it was the hurricane that had brought him into the gang.

As a result of the work of the Committee for the Rescue of Maras (COMREMA), a community-based support group, in the sector, the Barrio 11 group disintegrated. Irvin found himself alone, as his mother had to work. He was recruited by the Barrio Pobre gang. The first thing he did was put a tattoo on his right leg.

After a time, COMREMA made contact with the Barrio Pobre gang and they offered alternative opportunities to the members. COMREMA worked

with the technical support of a local NGO, Jovenes Hondureños Adelante-Juntos Avancemos (JHA-JA) and had set up a silkscreen workshop. Irvin joined the workshop and, in a short period of time, he decided to leave the gang. He was by then 13 years old.

Once he was involved in this process of recuperation, what he most wanted was to finish his primary school level studies. So he applied for a scholarship as soon as he was able to get his birth certificate. He was eventually successful and was able to enroll in the Maria Amparo Ramirez School. He was in his final year of studies when he was murdered.

Irvin also wanted to help his friends who were still members of the gang, but he had a lot of difficulties in doing so. He also found it very hard to find a job, so in the end he signed up as a volunteer in the Paramedic Emergencies Squad for the Metropolitan Area of San Pedro Sula, where he continued to work until the day of his death.

Despite all his efforts, he was permanently harassed. One day the police captured him and put a turtle in his mouth, which bit his lips and, for a long time, he walked around with swollen lips. Members of his ex-gang who attacked him and issued death threats also permanently pursued him. So did members of other gangs and adults linked to community security groups.

He was at home when a young woman named Suyapa, with whom Irvin had been going out, called round and invited him to come to her mother's house. It was about 9am. He agreed and went with her, only to be murdered in a place called the 'Cucarachas Curve'. He received two bullets to the head.

Marcos

On 29 June 2005, Marcos was riding his bike in Rivera Hernandez when a white Izuzu double-cabin pick-up truck with polarised windows and no license plate, identified by community members to be a vehicle used by the local law enforcers, intercepted him. He was asked for his identification and the bicycle registration documents. Marcos casually

gave his documents to the official, but the official demanded that he show him his tattoos, and then ordered him to get into the pick-up and placed his bicycle in the back of the truck.

In the truck there were three police officers, dressed in camouflage – uniforms that the Cobra forces usually wear. The driver was wearing a ski mask. From the instant that he was forced into the car, Marcos was forced to keep his head down so that he would not see where they were taking him. They arrived at a neighbourhood called Cerrito Lindo, where other bodies had been dumped in the past, and they forced Marcos to get out. Only one of the soldiers got out and pushed Marcos into a ditch. Marcos rolled into the ditch and as he rolled he heard shots being fired at him. He ran to the neighbourhood known as La Planeta, but no one would help him because he was tattooed. Finally a bus driver gave him a ride to Rivera Hernandez where he sought help from the board of directors of FUNDESERH (a local NGO) who helped him file a formal complaint.

German

On 4 July 2005, German was riding his bike towards his work in Rivera Hernandez when a group of police driving a white Izuzu double-cabin pick-up truck with polarised windows and no license plate intercepted him and shot him. He died instantly.⁹⁵

In the system: violence and detention

While the period of arrest and interrogation is often one of the most dangerous for children, detention brings its own set of added dangers. Conditions in detention are usually overcrowded, often inhumane and always traumatising.

“There is acute crisis of space to sleep. I have got a seat, as I am relatively older in the jail. The earlier pahara (guard) gave me a ‘file’ (symbolic name for a place where one can sleep sideways), I gave him 100 taka, in exchange he kept me in seat (where

one can sleep) for six days. Then I was pushed to a file again. As I complained, I was beaten. When I complained to the deputy, he changed the pahara. The new entrants in the jail have to stay in the bathroom files. If we do not give cigarette to the pahara, they beat us. There is no fan in our ward. We are 75/80 children in one ward. Severely hot, I cannot sleep at night. There is an acute crisis of water. We (children) do not get the space to take a bath. Sometimes there are clashes over taking a bath.”
(Alim, aged 13)⁹⁶

Violations of international standards in relation to the detention of children are rife, with fundamental principles such as the total separation of minors from adults continuing to be violated in a majority of countries, despite overwhelming evidence that this invariably exposes children to violence, including sexual abuse by adults. Even where the conditions of incarceration are in accordance with international law, and children are segregated from adults and provided with educational and recreational facilities, detention as a last resort and for the shortest appropriate time is rarely practised anywhere in the world. That such a high percentage of children in detention are awaiting trial and that the overwhelming majority of children in jail are accused of non-serious and non-violent offences points to a fundamental flaw in the way juvenile justice is administered. The screening process and the required determination that a particular child is a genuine risk to the security of others or seriously at risk of flight while awaiting trial are usually totally non-existent or flawed, resulting in detention on remand being the rule rather than the exception.

In Davao, for example, the research noted that “All the 67 cases of children detained at the Juvenile Welfare Unit as of February 2003 were being handled by PAO (Public Attorney’s Office) lawyers; almost all cases (53 out of 67 cases) are actuallyailable. Almost all (60 out of 67) are still undergoing trial, while only a little more than ten per cent have been convicted or are waiting for transfer to serve their suspended sentences. Many have not been convicted, yet they already consider themselves convicts since they are already in jail.”⁹⁷

As a result of the failure to enforce the principle that detention should be a last resort, huge numbers of children accused of crimes are exposed to a prison environment where violence by prison officers or by other inmates is a very real possibility.

Violence in the prison system is not only an issue in countries where the system is under-resourced or over-stretched beyond its capacity, even though more extreme and systemic forms of violence can often be found in these institutions. It is a recurrent feature of all penal systems, no matter how well resourced, as information on the UK penal system demonstrates: “Young offender institutions experience the highest levels of assaults among prisoners, staff and others of all prisons in England and Wales [...] the worst being Ashfield” with an assault rate of 74 per cent. “Control and restraint (the use of pain-reliant system of physical restraint by staff) was used 3,615 times on children in prison between April 2000 and January 2002, resulting in recorded injuries to 296 juveniles, five of whom required hospital treatment for fractures or suspected fractures.”⁹⁸

Beyond their exposure to violence, children who are detained are further removed from any support mechanisms that they may have had and further isolated from the socialising influence of their communities. Instead, they are de-socialised and learn to survive only by the rules of coercion and power that are evident in the prison environment. Any socialisation that does take place is often at the hands of other more experienced inmates, which only serves to ensure the further criminalisation of the child.

Alarming levels of self-harm among children who are detained point to the pervasive impact of isolation and incarceration on the well-being of children who are, in most cases, also dealing with the results of abuse and neglect. In the USA, 110 youth suicides are reported to have occurred nationwide in juvenile facilities from 1995 to 1999 alone.⁹⁹ In the UK, the Howard League reports that there were 17 suicides of children in prison between 1995 and 2004¹⁰⁰ and 28 deaths of children in penal custody in total since 1990.¹⁰¹

Thus violence against children in the justice system is not only the result of violent acts by agents of the system but also the result of their omissions, which lead to the inappropriate use of detention against children.¹⁰²

The punitive nature of criminal justice systems can also result in direct violence against children through their sentencing provisions. Some criminal justice systems continue to legally condone forms of violence against children as sentences of the court, such as the use of capital punishment, physical punishment including flogging and caning, and the use of life imprisonment without the possibility of release, despite these being completely prohibited as far as children are concerned under international law.¹⁰³ Others condemn children to prohibitive incarceration measures that have been shown to be both ineffective and damaging to children’s ability to rehabilitate and regain their place as important members of their communities and societies. The use of community-based sentencing remains the exception rather than the rule, and is rarely available in systems that continue to promote incarceration, particularly in a context where it has become ‘big business’ with the increased privatisation of the security sector. As a result, the financing of ever bigger institutions for children is prioritised, even in a context where it cannot be justified by increasing youth offending patterns and where community-based alternatives have been proved to be not only more effective but also much cheaper.¹⁰⁴ In many parts of the world, prison populations are growing.¹⁰⁵

In the UK, the number of children in prison has more than doubled since 1993, despite a decline in the number of children convicted or cautioned for offences. In the USA, between 1993 and 1999, there was a 43 per cent increase in the number of children being confined in residential correction institutions, while for the same period there was a 33 per cent decline in the juvenile arrest rate for violent offences.¹⁰⁶ This is despite the fact that incarceration of young people has been shown to result in the worst rates of reoffending. “Rates of reoffending among juvenile

offenders are cause for concern for those involved in criminal justice agencies around the world. In North America, for example, the recidivism rate for young people leaving custody has been reported to be as high as 96 per cent (Lewis *et al*, 1994). In another study, 88 per cent of British males between 14 and 16 years reoffended within two years of release from custody (Hagell, 2002).¹⁰⁷

The majority of juvenile justice funding continues to go towards financing incarceration despite evidence that it does not work, that it is far more costly than community-based alternatives in the long term in terms of personal, social and economic costs, and that it exposes children to unacceptable risks of violence and alienation. In Maryland, USA, for example, it was noted that “only \$36 million of the state’s \$136 million budget for juvenile justice in 1999 (27 per cent) went to supervising or serving the 90 per cent of youthful offenders not sentenced to an out-of-home placement.”¹⁰⁸ In Kenya, as the example in Chapter 4 shows, two-thirds of the Department of Children’s Services’ budget is spent on managing ten remand homes, 12 ‘approved schools’ and one children’s home, reflecting the strong bias towards financing the institutionalisation of children.

It is time for a determined shift in policy and funding in relation to children’s justice that prioritises decriminalisation, community-level diversion and alternatives to detention. The continued priority given to a system of justice that is based on serious offending patterns while the majority of crimes committed by children are of a non-serious nature will simply not yield results, either for children or for their communities.

The urgent need for such a shift is increasingly recognised by policy-makers in a number of countries, even those in economic transition where rising crime is a cause for concern, as in Eastern Europe and Central Asia: “[...] among the 27 million youth under age 18 in the region, there are about a half-million new cases of adolescents in conflict with the law every year. That only a few thousand young people commit major violent crimes shows clearly

that the reform of juvenile justice systems in the vast area of the less serious offences would offer broad benefits.”¹⁰⁹

Unless determined efforts are made to turn to a system that will provide real and effective justice to children in conflict with the law, Mae Fe Ancheta-Templa’s reflection in her research in the Philippines that “ironically, the fate of children deemed in conflict with the law is either brutal ‘civilian (in)justice’ or subjection to the harsh adult criminal justice system”, will sadly continue to be true for generations of these children.¹¹⁰

Notes

⁸⁸ For examples see: Amnesty International (2004) *Pakistan: Death penalty for juveniles reintroduced*, AI Index: ASA 33/025/2004; Amnesty International (2000) *Brazil: A waste of lives – FEBEM Juvenile Detention Centres, Sao Paulo*, AI Index: AMR 19/014/2000; Amnesty International, (2000) *Pakistan: Denial of basic rights for child prisoners*, AI Index: ASA 33/011/2003; Human Rights Watch (2004) “*Real Dungeons*”: *Juvenile detention in the State of Rio de Janeiro*; Human Rights Watch (2003) *Charged with Being Children: Egyptian police abuse of children in need of protection*; Human Rights Watch (1999) “*Nobody’s Children*”: *Jamaican children in police detention and government institutions*; Human Rights Watch (1996) *Police Abuse and Killings of Street Children in India*; Human Rights Watch (1996) *Children of Bulgaria: Police violence and arbitrary confinement*; OMCT (2004) *Children Deprived of their Liberty in Uruguay: With or without rights?*; OMCT (2001) *The Treatment of Detained Palestinian Children by the Israeli Authorities*

⁸⁹ Ancheta-Templa (2004) p.43

⁹⁰ Munsch *et al* (2004) p.20

⁹¹ Ancheta-Templa (2004) p.44

⁹² Munsch *et al* (2004) p.23

⁹³ For other examples see: Human Rights Watch (1994) *Generation Under Fire: Children and violence in Colombia*; Human Rights Watch (1996) *Police Abuse and Killings of Street Children in India*; Jubilee Action (2004) *Report on the Killing of Street Children in Brazil*; and see also <http://www.stopkillingchildren.com/index.htm>

⁹⁴ Taken from Ancheta-Templa (2004) pp.68–70

⁹⁵ Case studies from JHA–JA, Save the Children UK, Honduras, 2005

⁹⁶ Save the Children UK (2001) p.19

⁹⁷ Ancheta-Templa (2004) p.54

⁹⁸ UK Parliament – Joint Committee on Human Rights. Tenth Report. (2003) para. 50

⁹⁹ Advocasey (2003) p.36

¹⁰⁰ The figures when including young people under 21 years old are even starker. In 2003, 13 young people killed themselves in prison, in 2002 16 killed themselves, in 2001 there were 15 suicides, and in 2000 there were 18. “Between January 1998 and January 2002, there were 1,111 reported incidents of self-harm by children in young offender institutions.” Joint Committee on Human Rights – Tenth Report (2003), UK Parliament, para 47

¹⁰¹ <http://www.howardleague.org/press/2005/050705.pdf>. See also <http://www.crimeinfo.org.uk> Fact Sheet: Young people in prison

¹⁰² In addition to the routine use of deprivation of liberty, many systems continue to condone tacitly the arbitrary detention of children without warrant or after their warrant has expired and often for prolonged periods of time. For a particularly appalling example of this, see the case of Nazrul Islam in Bangladesh, who spent 12 years in jail from the age of nine, even though his sentence was seven years. (Save the Children UK, 2001, p.1)

¹⁰³ See in particular Article 37 of the UNCRC which prohibits the use of torture or other cruel, inhuman or degrading treatment or punishment, the imposition of capital punishment or life imprisonment without possibility of release for offences committed by persons under 18 years of age; See Article 6(5) of the International Covenant on Civil and Political Rights, UN Rules of the Protection of Juveniles Deprived of their Liberty

(JDL) Rules 63–71

¹⁰⁴ For good examples of cost analysis and private sector involvement in the building of prison facilities, see Advocasey Volume 5, number 1, Spring 2003. Hip-Hop vs Lock-up: youth join the battle to slow California’s juggernaut of juvenile jail building

¹⁰⁵ The World Prison Population List shows that total prison populations have risen in 73 per cent of these countries (in 64 per cent of countries in Africa, 79 per cent in the Americas, 88 per cent in Asia, 69 per cent in Europe and 69 per cent in Oceania). <http://www.kcl.ac.uk/depsta/rel/icps/world-prison-population-list-2005.pdf> (Sixth Edition) See also Walmsley and Tkachuk (2001)

¹⁰⁶ *Juvenile Justice at a crossroads*. Advocasey (2003)

¹⁰⁷ *Current trends in the rehabilitation of juvenile offenders*. No.284. The Australian Institute of Criminology. <http://www.aic.gov.au/publications/tandi2/tandi284t.html>. Statistics from seven juvenile corrections facilities in the USA published in Advocasey (2003) showed recidivism rates ranging from 42 per cent to 63 per cent. See also <http://www.crimeinfo.org.uk> Fact Sheet: Young people in prison; “Reoffending rates for children leaving custody in England and Wales stand at 72 per cent on average and as high as 90 per cent in some areas.” ‘Where’s Kilbrandon Now?’(2003): NCH Scotland p.12. www.nch.org.uk/kilbrandonnow

¹⁰⁸ How serious is America...? <http://www.csdp.org/research/r234.pdf> – See also: <http://www.rethinking.org.uk/facts/rethink/cost.html>. In the UK it is reported that “the Home Office spent roughly £2.3 billion on prisons in 2001–2002, compared to some £900 million on ‘probation and criminal policy’. The average annual unit cost of a prison place is more than 12 times as much as the cost of a probation or community service order”

¹⁰⁹ UNICEF (2000) p.102

¹¹⁰ Ancheta-Templa (2004) p.2

Case study 3: Leo's story (Mozambique)

Leo is a 14-year-old boy. He was arrested for vagrancy and was interviewed in Nampula Provincial Prison.

I come from Erati, Alua Locality. I lived there with my parents. My parents are unemployed. When I was in Erati, I used to help my mother on the farm, and then I went to school; afterwards I used to play with my friends. In 2002 I went to live in Namialo with my aunt.

Well,... I was in Namialo. One day, I went to the farm. When I came back from the farm I went to eat lunch; later, after dinnertime, I went to watch video. When I left to go home they captured me. Since I didn't know that it was the authorities, I answered, 'I am coming home from watching the video'. From there, they took me to the command. Then, after spending ten days at the command, they transferred me to Meconta and from there to Nampula prison. I was arrested because I didn't have my Identity Card. That was on 14 October 2002. It is already four months ago.

I didn't have any documents at that time, but I had my birth certificate at home. I was arrested at night. We were three people; the others are there in the cell. This is the first time that I have been arrested... I was arrested because my friends were already known to the authorities.

When I was arrested I wasn't going to school. I left school in 2001. I didn't know that I was committing a crime. Because I was leaving the video place with my friends, I didn't know that they were thieves. I don't know if I am guilty. But there at the court, I heard the Judge complimenting the police officer because they captured us while we were going home. I am not sorry, because I don't know what I have done.

The life here in prison is very difficult. It is hard, because it is not easy for a person to live. We who are new here suffer a lot. We sleep badly. Usually, you don't sleep – you fall asleep sitting down until the morning. Because the prison is overcrowded. We eat badly. We are suffering, we're beaten with a belt, the boss of the discipline beats us a lot. They sleep with us. The cell bosses force us to sleep with them (to have sexual intercourse), they order us to remove the shorts and they put their sex

in the anus. When we refuse, they punish us, they beat us. Life here is very difficult. I think a lot about home.

The situation here in prison gets worse because of the suffering, of the beating, of sleeping badly.

Yes, here in prison there are children, in Cell Five and in Cell Four there are children. I know that there are children because I see them every day. Yes. Two friends. They were arrested on the same day as me, we were walking together that night.

For me, my friends are to blame, because I didn't know that they were thieves. Because if I knew, I would have taken another road alone.

I met them the same day that I was arrested, because we were leaving the same video place and were captured together and were transferred to Meconta and here together. I have four friends outside who have never been arrested; they used to play with me. I don't know if one day they will be arrested.

I will be released on 14 March, because I came on 14 October. I have already been tried and convicted. They gave me a six-month sentence. Some people who are arrested are guilty; other people are not guilty. Those who watch videos and walk at night are captured by the police. But those who steal go to jail, leave prison, steal again and return to prison. For the police they are guilty, because they steal because they want to.

I am afraid of prison, yes; because I saw the suffering here in prison. Those bosses take advantage of us who are children. Here in prison if a person has money, it is taken from him in the cell, he is beaten up. They don't want to see us cheerful. We get food, we have to eat there and then. We cannot go drink water we just stay there (quiet). If you leave you are beaten up. Then when you go to sleep, you cannot sleep with your shirt or shorts, only with underwear or naked. Then they take advantage (rape), you cannot scream.

My family cannot come visit me, because here where I am is very far, they don't have money. Before I was

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arrested, they used to tell me to be careful, not to walk with thieves, to be careful not to walk at night because one day I would be captured. When I am released, they will be happy, because I will be outside jail and away from the suffering. Yes they worry about me, because they used to visit me there in Meconta. Only here, they don't visit me because it is very far. My friend used to come visit me.

Those (friends) who did me wrong, I won't play with them again. The others who didn't do anything wrong to me, I will continue playing with them. Yes, (the neighbours) like me, because they played with me every day. And my mother helped them and they also helped my mother. Here in prison, I don't like anything. If I went home, yes I would like that, because here in prison I don't see anything that I can like. There at home, I liked to play with my friends and also help my mother and walk in the neighbourhood. What I didn't like was to do bad things, to go about uncontrolled.

I would like to go to school, to play with my friends, to help my mother on the farm, go watch soccer. I want to look for a job, to work, to get my money and buy my own things. The life that I would like to lead is not this prison life. I would like to be home to play with my parents, my mother, my sisters and my brothers. We are six siblings. The best moment for me was when I was home, when I lived with my aunt. The worst moment of my life is this here of being in prison. I am afraid of dying here.

No... I don't know if a child can be arrested, who knows that is the government.

The only problem that I have is being in prison. My parents are farmers but we are united, we are happy.

I think that there should be ways of solving this problem of lack of documents, walking at night. The problem that I have is not a problem that should take me to prison because I didn't steal, I didn't kill anybody.¹¹¹

¹¹¹ Case study taken from Save the Children Norway (2003) Mozambique Report.

Part II

Community-based responses

3 Ensuring justice for children

*“Rights violations remain commonplace in juvenile courts and corrections systems today. Effective legal representation is scarce. Conditions inside juvenile corrections facilities are often substandard – and occasionally barbaric. And at every level of the juvenile justice system, ethnic and racial minorities are treated more harshly than white youth.”*¹¹²

It might be assumed that the issues faced by children in conflict with the law identified in this report mainly occur in developing countries that are struggling to set up effective and well-resourced justice systems. The above analysis of the USA juvenile justice system by the Annie E. Casey foundation, together with the raft of reports on the failures of the justice systems in the USA, the UK and many other well-developed and resourced countries, point firmly to the contrary.¹¹³

The reality is that criminal justice systems all over the world are failing children. The routine use of detention pending trial even for petty non-violent offenders, the incidence of violence at the hands of police and prison officials as well as at the hands of other inmates, appalling detention conditions, and the increasing reliance on adult courts and systems to prosecute young people who offend, as is the current practice in the USA and the UK, are unfortunately current in both developed and developing countries. This is true, moreover, despite the evidence of the risk of exposure to serious levels of violence against children within those systems, as well as evidence that they are singularly failing not only the individual boy or girl, but also their communities, as the incidence of children’s recidivism upon confinement is demonstrated to be much higher. In addition, there is increasing evidence that these systems are also failing the taxpayer, as this reliance on custodial

options has been shown in many instances to be far more expensive in the longer term than the community-based options.¹¹⁴

A focus on prevention, community-based diversion and alternatives to detention is equally crucial in countries where the administration of justice is flawed and in countries where the system is functioning. Indeed, it can even be argued that developing an effective diversionary juvenile justice system is an important step towards ensuring a fully functioning and effective criminal justice system. It can free the system and its resources from a backlog of petty offending by children that is only made worse by the use of incarceration, as this is shown to usually lead to more serious offending by young people. Instead, the formal criminal system could focus on serious criminal offences.

There is a worrying tendency at the forefront of many juvenile justice discussions to think that if the system itself could only be made more child-friendly, (“paint the prisons pink”), this would in turn make it better for children. This is an understandable response to the violent and appalling conditions faced by the majority of children in conflict with the law. Yet, the reality is that while a fully functioning and child-friendly criminal justice system would be a measurable achievement in terms of justice for children, it would still fail to address the root causes of offending, it would still stigmatise and result in inappropriate criminalisation and it would rarely provide the support and follow-up within the community that children require in order to move away from offending and become fully participating and engaged citizens. Instead, to develop a child-centred justice system we must develop a specialised system that recognises the

reality of children's experiences and the challenges they face in their development and in their relationships. It must aim to address the reasons behind a child's offending behaviour, while at the same time focusing on supporting that child within his or her community and family and providing him or her with the tools for making different and better choices.

This vision of justice for children is not new. International standards on juvenile justice and the UN Convention on the Rights of the Child have long recognised what practitioners have known from experience: that children should, as far as possible, be kept out of the formal justice system, that diversion away from judicial proceedings should be sought whenever possible,¹¹⁵ and that a specialised and separate child-centred justice system should be established with the overall aim of the child's reintegration into his or her community where they will be empowered to "assume a constructive role in society".¹¹⁶

The Convention has set clear restrictions on the deprivation of liberty of children, which should be not only in accordance with the law but used "as a measure of last resort and for the shortest appropriate period of time".¹¹⁷ It has demanded not only that children who are in conflict with the law be treated with full respect for their human rights but that the way they are treated is "consistent with the promotion of the child's sense of dignity and worth".¹¹⁸ One other forgotten aspect of international principles about the administration of juvenile justice is that a child in conflict with the law should be treated in a manner "which reinforces the child's respect for the human rights and fundamental freedoms of others".¹¹⁹ Behind this important principle lies the reality that the way a child is treated will have a far-reaching impact on their understanding about the importance of their rights and responsibilities towards others. In view of the widespread use of violence against children in the justice system, it is difficult to see how any of these children could take with them anything other than a realisation that they not

only have no rights but that responsibility is also a relative concept.

The reality of how children are treated when they come into conflict with the law is, as we have seen, a long way from the vision enshrined in the UN Convention on the Rights of the Child. Even though prevention and diversion strategies have been developed in a number of countries and can be seen to be working, most children in conflict with the law remain within the formal criminal justice system. Diversionary measures are seen as the 'icing on the cake', isolated initiatives developed usually through the goodwill of some justice practitioners who are fed up with seeing justice failing children. They remain appended, like an after-thought, on a badly functioning system that continues to deal with the majority of cases. There is a growing body of knowledge about what works in prevention, diversion and reintegration and these models and strategies should be shared, tested, adapted and scaled up when shown to work. They should be adopted as national policies, enshrined in laws and provided with sustained and appropriate funding. They should be at the forefront of establishing a child-centred justice system.

Chapter 4 of this report offers examples of such models developed with partners to ensure that children in conflict with the law not only receive justice but are also better protected and supported to make better choices for themselves. They represent pragmatic and often creative responses to put into practice the principles of international law on juvenile justice, often in contexts where the justice and social systems are under huge pressures in terms of resources and capacity. They are not presented as solutions to everything and for every context. Challenges as well as successes have been included. Learning what works and what does not is key to developing appropriate and effective responses to children coming into conflict with the law. Primarily, they are good illustrations of an approach to justice

for children that is focused on the individual boy or girl, not in isolation but as a member of a family, a community and a society. They recognise that justice will only succeed when a genuine change takes place, not only within the child but in that child's relationships and opportunities within his or her world. "It is quite normal to expect that if resocialisation and reintegration are the objectives of the system then the process of resocialisation and reintegration itself has to be based within the structure in which the offender is to be reintegrated. Therefore it logically follows that it is the community's primary responsibility to carry out these functions."¹²⁰

Supporting children who offend in the community through diversion or community sentencing is neither the 'easy option' nor the 'soft option' that it is sometimes portrayed as, either for the children themselves or their communities. It requires from children a much more complicated process of introspection and facing up to the real and personal consequences of their offences. It involves an acknowledgement of responsibility that is much more personal than a formal admission of guilt in a courtroom full of people, the majority of whom they do not know and are unlikely to meet again. Some children, particularly those who have offended repeatedly, may find it easier in the detached and formal context of the courtroom where the proceedings unfold like a TV drama and where they are a minor bit player, rather than face to face with their accuser, parents and neighbours.

From the communities, it requires a much greater level of commitment and involvement at an individual level and it is generally more intensive, particularly in relation to people's time, including parents, community workers and leaders, police officers, social and community workers. Because it seeks to understand the causes of the problem and initiate real change, including behavioural change and a change in the relationships of the child with his or her environment, family and peers, it demands from them particular skills and competencies. All of this

requires sustained and significant resources and capacity-building, without which it will fail. It can be easily discredited as a more 'risky' option than using the relatively well recognised and better resourced path of incarceration. In addition, because it takes place in communities that are not neutral places but reflect the local power dynamics and local culture and socio-economic contexts, these alternatives require a strong framework and understanding of rights under which they must operate, not only the rights of children, but of principles of due process and non-discrimination. To succeed, they require a major shift of approach and of policy in relation to children's justice.

The overarching aims of this approach to children's justice are:

- **to prevent children coming into conflict with the law in the first place**, including by preventing unnecessary criminalisation
- **to divert the majority of petty offenders away from the formal justice system** through community-based diversion mechanisms
- **to ensure child-centred and appropriate responses by the justice system within a specialised system** that focuses primarily on addressing the causes behind the offending behaviour and supporting the child's rehabilitation and reintegration within his or her community and family
- **to ensure that community-based alternatives to detention** are available and used by the justice system as the principal and primary response including, whenever possible, cases where children have committed serious offences
- **to support children at risk of being in conflict with the law and those who already are by enabling them to develop the tools they need to make better choices**, away from offending behaviour, including through education, livelihood opportunities and participation in their communities.

This approach not only provides a better, more effective way of addressing the challenges faced by

Community-based responses to serious offending by children

While the overwhelming majority of children who come into conflict with the law commit petty non-violent offences, a small percentage of children do commit serious and violent crimes. Considering the context of violence and neglect in the lives of many of these children, this is not surprising, but it does mean that these children can pose a risk to their communities and often to themselves. Yet, the evidence concerning these children is also overwhelming: incarceration and a criminal justice response that is focused solely on punishment and deprivation of their liberty simply does not work. On the other hand, justice responses that are child-focused and provide intensive community-based support, addressing the root causes of their offending, do work. The number of these initiatives is growing all over the world yet, despite real evidence of their effectiveness, they remain ad hoc, small scale, under-funded and under-resourced initiatives. Meanwhile, reliance on long-term incarceration continues to be the norm despite overwhelming evidence that it is ineffective and can actually make the offending worse. While the good practice examples in this report focus mainly on petty offenders, community-based responses can and should be developed to deal with children who commit serious offences.

Important examples of such programmes include the work developed by the Boys' Clinic, part of Save the Children Sweden's Crisis Centre for Children and Young People in Sweden. The clinic established intensive individualised treatment programmes with children (average age just over 14 years) who were serious sexual offenders, including those who had committed rape and sexual molestations. The work at the clinic demonstrated that "a compassionate yet firm approach to the work can be successful and can support young people who are destined for a life of destruction and imprisonment to find a different route for themselves". (For a description of the work and case studies, see Nyman, Risberg and Svensson, 2001.)

Other examples of effective community-based responses to children and young people who have committed serious violent offences, including alternatives to incarceration, are highlighted by the Annie E. Casey Foundation in the USA:

"Since 1996, Delbert Elliott, director of the Centre for the Study and Prevention of Violence in Colorado, has led the national 'blueprints for violence prevention' project – identifying and supporting the replication of program models with proven success in preventing youth crime. Thus far, Elliott has found three models that work successfully with serious youth offenders.

All three focus on the family, and none involves incarceration – even for youth with lengthy offending histories. Two of the models – Functional Family Therapy and Multisystemic Therapy – involve intensive counselling to help youth and their families to identify and reverse the dynamics that propel the young person toward crime. The third model, Multidimensional Treatment Foster Care, combines short-term, therapeutic foster care for the youth with intensive counselling for the natural family, followed by rapid reunification and ongoing support.

All three models have been evaluated in multiple scientific trials, and youth in all three have demonstrated far lower re-offending rates than comparable youth assigned to conventional juvenile justice or mental health services. Because they reduce the costs of future incarceration and cost less to operate than traditional programs, all three are also highly cost-effective. A cost-benefit analysis by the Washington State Institute for Public Policy found that the three models ultimately save taxpayers \$6.85, \$8.38, and \$14.07, respectively, for every dollar spent to deliver services."

(Advocasey, 2003, p.17)

these children. It also offers important and timely strategies to prevent boys and girls in conflict with the law from being exposed to the risk of further violence and criminalisation as well as victimisation within the justice system. The examples of good practice that follow illustrate interventions at the different stages of the process when children come into conflict with the law where they can have an impact on the outcomes of that particular boy or girl's encounter with the justice system.

They are presented here to demonstrate that the shift towards a justice for children that is child-centred and community-based is not only possible but should become the norm, and that reliance on formal justice systems that are punitive and based on incarceration is not only harming children, but also their societies and communities in the long term.

Notes

¹¹² Advocasey (2003) p.14

¹¹³ Amnesty International (2002); Human Rights Watch (1999); OMCT (2002)

¹¹⁴ See Advocasey (2003) pp.9-11. See also <http://www.rethinking.org.uk/facts/rethink/cost.html>: 'What does it all cost?'

¹¹⁵ UNCRC Article 40(3); Minimum Rule 11 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985

¹¹⁶ UNCRC Article 40(1) and (3)

¹¹⁷ UNCRC Article 37(b)

¹¹⁸ UNCRC Article 40(1)

¹¹⁹ UNCRC Article 40(1)

¹²⁰ Findlay and Zvekić (1988) p.289

Case study 4: Manuel's story (the Philippines)

At age 15 in 2001, Manuel dropped out of first year at the Don Carlos A. Go Thong Memorial High School, a public high school in Barangay Duljo-Fatima in Cebu City. His family was then in a very tight situation and his parents could no longer afford to finance his studies.

His mother said they tried their best to send him to school but Manuel often dropped out of school. Eventually, his father did not want to send him to school anymore. Manuel is disheartened by his parents' inability to provide money for his expenses in school. Manuel explained that without money, he could not comply with the required school projects. A school project usually costs around Php200 (US\$3.66) and not having this meant failing a subject. Even if the Don Carlos Go Thong Memorial High School is a public high school, there are still some fees that parents have to pay for the enrolment of their children.

Family conditions

Born on 4 December 1986, Manuel is the third of five children, two of whom are married and one eloped. Three of the children remained with the couple but two of them actually do not sleep in their parents' house.

Manuel's family survives on his father's meagre income of Php100 (US\$1.83) a day from selling spices at the Carbon Market. Manuel's father consigns (*angkat*) goods from various traders and sells these to customers. At other times, he does carpentry jobs in the neighbourhood and earns a maximum of Php200 (US\$3.66) a day. Gigi is a stay-at-home wife – she attends to the children and does all the housework such as cooking, cleaning and washing the laundry.

Stretching a minimal budget is a very difficult task. Manuel's mother explained that her husband's income is good only for basic subsistence. His additional income from his carpentry jobs could barely last for a week. If he gets lucky and earns big during

the week, the money is usually used to pay off the family's loans. This means always cutting down on the budget for food. As carpentry jobs are irregular, the family goes hungry most of the time. Manuel's mother admitted that food is very scarce in the family. "*Tagsa ra mi mokaon sa usa ka adlaw* (We eat only once a day)." Without any savings, the couple often resorts to asking for help from relatively stable relatives whenever one of the family members gets sick.

Fire hit Barangay Ermita for the second time on 28 April 2002. The family's home at the second floor of a two-storey house that is owned by a relative was burned down during that incident. At the moment, Manuel's family is staying with his father's brother in Ermita Proper because the couple has no resources to construct a new one. Manuel's parents built a makeshift room beside the house of Manuel's uncle. His mother laments that the room is so small it could not accommodate all her children at one time. Hence, Manuel and his younger sister have to sleep in their grandmother's house, which is quite a distance from their makeshift abode, while the youngest sleeps with the couple. The two practically live away from their parents and so they could not check on them especially at night. Manuel and his sister are free to merrily wander around the streets till early dawn with their respective peers.

Street life and peer pressure

Manuel started going out with friends at age eight and considered it play. At 14, he began hanging out with peers and eventually engaged in *rugby*-sniffing and other acts of misconduct. The first time he was invited to sniff *rugby*, he refused but on the second time, he tried it out of curiosity. Manuel liked it and was eventually hooked on it.

After quitting school, Manuel started to wander around a lot. Together with his peers who are also out of school, Manuel delights in wandering at night sniffing

rugby or taking *shabu* when finances allow. Manuel admits to *rugby*-sniffing but says this is not frequent. Peer pressure is the main reason why he is into it. He said he was tempted by his peers.

His mother recounts that Manuel used to be meek. He became different when he started hanging out with bad company. They come to the house and invite him to go out. She said she nags at them but Manuel is so hooked with his peers and their vices that he no longer listens to his parents. His father often gets angry with him and even beat him up once.

When asked what he gets from being with his peers, Manuel became momentarily silent then he smiled and laughed. What motivates these young people to sniff *rugby* is the "trip" or the high they get. "'Trip-trip' sad ba (just curious)," Manuel quipped. "Trip" is an old drug addict jargon which means "to travel" mentally as an effect of hallucinogens, stimulants or sedatives. The word has now evolved to mean liking, gimmick, revelry or anything pleasurable, especially for the group. Often, such sessions are done along the seaside area of Barangay Ermita.

"There is 'power' in *rugby*-sniffing," Manuel said, explaining that power is anything that comes into the mind. The chemicals contained in *rugby* release toxic vapours or fumes, which when sniffed or inhaled could induce various conditions ranging from slight stimulation or excitement to loss of consciousness, intoxication and eventually harming the central nervous system. The immediate effects of these chemicals are distortion of perception of time and distance, aggressive behaviour or violence, confusion or disorientation, nausea and vomiting, hallucination and illusions (Rilloma 2003:29). Aggressive behaviour, distortion of perception and hallucination more likely constitute the *rugby*-abusers' concept of the 'power' they experience.

Manuel and his peers indulge in at least one *rugby*-sniffing session a day and to complete one session, they need many doses. In Barangay Ermita, *rugby* is sold in 12" x 7" plastic bags with approximately one tablespoonful of the substance

for Php1 (US\$0.02). According to Manuel, they need at least two to three plastic bags of *rugby* to acquire good 'power'.

The evils of *rugby*, however, do not end there. Manuel said that he and his peers sniff *rugby* before going out to steal. During the day, Manuel and his peers spend most of their time wandering inside the Carbon Market. Often, they strike at the *ukay-ukay* (second-hand clothing) shops or at the fruit stands. "*Morag kabuang lang god!* (It is just for fun)," Manuel claimed. One of them poses as a dummy customer who pays for whatever he gets, while the other one shoplifts. Another trick is to pay less than the price of the item taken. Stealing is their way of maintaining their vice but Manuel never admitted to having stolen anything by himself, despite the probing.

Manuel's peer group is composed of ten members, which includes a boy named Diego who was shot by an enemy in retaliation for their mauling of a young person in a disco. Manuel claimed his group split up since then and other members moved to Lapu-Lapu City.

Offending, apprehension and detention

In 2001, when Manuel was 15, he and his peers were apprehended by the Barangay Tanods for violating PD 1619 or the illegal use of volatile substances. There were 20 of them who were caught in a *rugby* session. Though they were mediated by the Children's Justice Committee (CJC), they were locked in the barangay hall detention cell for five days. It was Manuel's first offence and according to him, he wept inside the cell. They were not given food and had to beg the Barangay Tanod to release them. Yet, weeks after their release, his peers returned to their vice. Manuel boasted that he no longer got caught afterwards.

Other factors that drove Manuel to a life of misconduct were boredom and idleness. Without recreational facilities in the community, young people are easily tempted to engage in vices and mischief.

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Since Manuel's family does not own a television, he goes to the next door neighbour to watch the television. Most of his time is spent by simply hanging around. Sometimes, Manuel spends time singing at the videoke or gambling. At other times, he washes his clothes.

Enjoying the night with his peers, Manuel's group deliberately annoys the roving Barangay Tanods by shouting at them, "*Barangay Tanod pisot!*" *Pisot* is the local term for uncircumcised, which is also used to mean cowardly. Manuel said they love to hang around at night, talking to each other. They purposely wait for the curfew hour to strike and when it does they shout at the roving Tanods, infuriate the poor fellows and make them run after them. To the group, this is fun. Whenever they are caught, they resist and push the Tanods away.

One night in 2003, Manuel, together with four other peers, was again caught by the Tanods for violating the city curfew ordinance. Barangay Ermita strongly enforces the city curfew ordinance because of the rampant drug trade. Curfew hours start at 10pm and end at 5am the following day. They were locked and detained for the night inside the barangay's detention cell. This was Manuel's second offence.

The apprehension was friendly and humane. As soon as they were caught, Manuel and his peers were held by the hand. No one resisted. They were transported by the Tanod's mobile car to the barangay hall. Immediately, their cases were recorded in the blotter. They forced the Tanods to release them but the latter held them tighter. Manuel said the group remained calm and no one cried.

They were detained in the cell like packed sardines. Manuel said that it was so hot inside the cell they could not sleep. Manuel's mother was looking for him that night when he did not show up at home. When she found out that he was detained in the barangay hall, she brought him food. She was angry with her son but was happy about his imprisonment, saying it was time to teach him a lesson.

Diversion and remorse

The following morning, Manuel and his friends were released for mediation by the CJC. During the mediation process, they promised not to reoffend while the CJC warned them not to commit another offence lest they be detained again. In response, they promised to stay away from committing other offences and from reoffending. Manuel signed the covenant form formalising his promises. He asserted that his signing was an honest and faithful act. He was proud that he was no longer detained after this.

Manuel continues to hang out with peers but no longer mocks the barangay Tanods. He is now aware that such an act is embarrassing. He realised that mocking persons in authority would not do him any good. He said he no longer sniffs *rugby* following his diversion but when probed further, he admitted to doing so at most once a month.

Manuel argued that the mediation/diversion process helped him. During the mediation, he was counselled by the CJC not to commit the same offence and was pardoned. Manuel's case was so slight he was not even made to do community service. Nobody from among the CJC though was able to check on him or visit him after the diversion process. Manuel showed remorse for what he has done but he is faced again with his old problem – idleness.

Plans, dreams and ambitions

At 17, Manuel is now planning to apply for work. He thinks he can now be hired in a dried mango factory like the one in Lapu-Lapu City for a daily wage of Php 160 (US\$2.93). He is also thinking of going back to school if he finds financial support. "*Kung paeskwelahon ko, moeskwela ko* (If I'm sent to school, I will go to school)." Otherwise, he will go on working.

He was reminded of CJC Member Marichu Matas' offer for educational assistance under the Back-to-School Program of FREELAVA. He actually wanted to know at the time of the interview if the offer still stands. His mother supports his intention of

re-enrolling so he can stay away from his peers. Manuel has already participated in FREELAVA activities because he is being groomed to become a peer educator/facilitator. He was recently invited to a children's summit, which he gladly accepted. According to him, several children in conflict with the law shared stories about their struggle with vices. They had drama sessions as well as lectures. Manuel said he enjoyed the activity because many children came to participate. He said the activity helped him cope with his boredom.

Manuel's only dream is for his family to eat well, at least more often than their usual once-a-day meal. He said he would be content even with a lowly job like being a bagger in a department store just to earn. After his diversion, Manuel worked as an errand boy for a neighbour in Barangay Ermita. He now earns Php100 to Php150 (US\$1.83–2.74) but not on a regular basis.

Lessons, realisations and challenges

Manuel learned many valuable lessons in life but the change in him did not come easy. He seldom goes out with his peers now. He is now aware of the effects of *rugby-sniffing* to his brain. Manuel is proud to say that now he could say "No" to his friends. Whenever his friends indulge in *rugby-sniffing*, he just watches them and waits.

More importantly, Manuel admitted his guilt about offending. Based on the interview, he has realised that his actions were wrong and unjust. He has seen his parents struggle to earn a living so they could eat while he revels in vices. He realised that it was wrong to spend what his parents gave him on *rugby*.

Shame also manifested in Manuel's words. When told that with the first two siblings in the family getting married, he is now the eldest among the three remaining siblings and should therefore be the most responsible, Manuel said such realisation is also the reason he now longs for a regular job. At the same time, he is hopeful about the offer for educational

assistance from FREELAVA. Manuel knows that by going to school, a better future awaits him.

Manuel recognises the benefits of the diversion process. Without it, he could have been detained in BBRC or in Operation Second Chance. Manuel now wants to change. He has been good to the Tanods and has been observing curfew hours. He realised that there is always uncertainty in the life of a child offender. "*Ambot lang kung unsa na kahay nahitabo kung wala na* (I have no idea what would have become of me without the diversion process)." The challenge Manuel currently faces is taking on the process of healing and eradicating the community's stigma on CICL. While he did not hear adversarial stories about the diversion process around the neighbourhood, the fact remains that he has been labelled as a child offender who experienced detention. "*Ay napriso na bataa* (That kid has been detained)!"

Wanting to effect change in his life, Manuel also faces the challenge of helping his 15-year-old younger sister to reform. His sister hangs out with male peers, drinks alcohol and is also into *rugby-sniffing*. Their father frequently beats her up because of her vices. Manuel once punched his younger sister after she refused to go to bed one evening as it was already past bedtime. She has no record of offences yet in the barangay hall.¹²¹

¹²¹ Source: Save the Children UK. (2005) *Back on Track: Making community-based diversion work for children in conflict with the law. A documentation of FREELAVA's experience in Cebu City, Philippines*, pp 129–135.

4 Good practice examples of community-based responses

“The vision of justice isn’t about saving money or averting prison construction – and it is certainly not about being soft on crime. It is about making things right instead of lamenting what’s wrong, cultivating strength rather than perpetuating failure.”¹²²

I Honduras

A community-based model for the prevention of violence by supporting gang members’ reintegration and rehabilitation in San Pedro Sula

Summary

This community-based model of intervention to support gang members who want to withdraw from their gangs in San Pedro Sula, Honduras, represents a community-wide attempt to support young people who have been members of gangs to reintegrate themselves back into the community in a positive way. The model seeks to address the extreme levels of violence prevalent in the community involving both the gangs and the police in a context of acute security breakdown. This is a context where firearms are widely available and adult criminal organisations struggle for turf and supremacy and recruit young people for their illicit activities. The recent reform to Article 332 of the Honduran Penal Code makes membership of a gang a crime, whether or not the young person has engaged in any criminal activity. This has reinforced the stigmatisation of all young people who have been gang members as any young person with a gang tattoo is treated as a possible suspect, whether or not they

have been involved in a crime. This factor, together with the extra-judicial killings of children and young people by vigilantes and death squads that have been linked in a number of cases to police officials and the “code of honour” of the gangs themselves, have all made it extremely difficult for children and young people to break away from gang culture and build a new life for themselves in communities that support their efforts. The model described here combines the creation of livelihood and educational opportunities with the development of social and physical spaces for these young people to identify the challenges they face and participate in developing their own solutions to them. The model has brought together key stakeholders in the community, including the young people, by supporting them in their own organisation. Community leaders, including small business owners, the churches, and the community police, all work together to support the reintegration of gang members who want to leave their gangs and support other children and young people at risk.

Background

During the 1970s and 1980s, Nicaragua, El Salvador and Guatemala were torn apart by bitter civil wars. Although Honduras did not experience the same internal conflict, it was used as the military base for the US-backed anti-Sandinista forces, or “contras”. The Honduran Armed Forces grew in size and resources as a bulwark against the expansion of communism and the number of arms in the country increased significantly. The whole region and the children born in it during this period were immersed in an environment of violent conflict. By the mid-1990s a certain fragile political peace had returned to the region, with the change of government in Nicaragua and the Peace Accords in El Salvador and Guatemala. However, the new context also brought mass demobilisation, and the uncontrolled increase in the circulation of arms in these countries. A decline in aid budgets coincided with the implementation of structural adjustment policies that negatively affected social spending and led to a steep rise in unemployment, which particularly affected school leavers and young people. The impact of Hurricane Mitch worsened the situation for the poor and the marginalised even further. Increasing poverty in the rural areas led to significant rural–urban internal migration to the major towns as well as international migration from Honduras to the United States. The lack of economic opportunities meant that family livelihoods were precarious and mainly supported by involvement in the informal sector, while migration also brought in its wake family disintegration and the breakdown of traditional support structures. During the 1990s, the US also began to deport Hondurans back to their country, many of whom had criminal records and links into gangs in the US. As a result of these and other factors, the crime rate increased. Robberies went up tenfold in Honduras between 1996 and 2001.

The law and juvenile offending

Since 1906, Honduras has had laws in place that limit children’s criminal responsibility and require reduced sentences for those aged under 21. The constitution enshrines the principle that children should be dealt with differently from adults. Currently the age of criminal responsibility is 12 years, and for those aged between 12 and 18 there are special courts and some specialist children’s judges. The Children and Adolescents Code (1996) in many ways puts the UN Convention on the Rights of the Child into law. In addition, in 2001 the out-going Liberal Party Government passed the Law for the Prevention, Rehabilitation and Social Reintegration of Young People in Gangs. However, the new National Party Government took a far harder line and gave limited support to the law that has negatively affected its implementation. Far greater emphasis has been given to punitive approaches, with an emphasis on zero tolerance of crime and a war against delinquency. The government has identified gangs as a major cause of insecurity, violence and crime.

As a result, in August 2003 the reform of Article 332 of the Honduran Penal Code came into force. This increased the minimum and maximum sentences on gang leaders from between three and six years to between nine and twelve years, while for ordinary gang members it was increased to between six and nine years. Membership of a gang in itself gives the police the right to arrest any member, even when not involved in a crime, if another member has already been arrested. This law has resulted in mass arrests. The bearing of a gang tattoo seems often to have been sufficient evidence of complicity for the police, even when the young person has an identity card stating they are on a rehabilitation programme. This effectively removes the right of association, a right contained in the constitution and the UN Convention on the Rights of the Child, and thus all gang members are automatically regarded as being in breach of the law. Under-18s made up about 30 per cent of all arrests made under Article 332 in the first nine months after its reform (Harvey, 2005).

Crime has increased in Honduras over the last ten years for some of the reasons given above and there has been an increase in crime rates for those aged under 18. The percentage overall is relatively low, however, especially in view of the fact that this group represents about 50 per cent of the total population. Between January 1996 and May 1999, only 5.5 per cent of 42,000 denunciations were against young people. In 1998, only 16 per cent of the 5,000 people caught in the act of committing a crime were under 18 years. However, “The line between organised crime and juvenile gangs is becoming increasingly blurred recently. Frequently juvenile gangs are being recruited by criminal organisations to carry out illicit activities such as trafficking in drugs and arms.” (Harvey, 2005)

Honduran juvenile gangs

It was estimated in the 1990s that 1 in 25 Central American adolescents was a gang member or sympathiser. Gangs are not new to Honduras, but prior to the mid-1990s adolescent gangs were seen as being a relatively legitimate expression of adolescent interests; they upheld some traditional values and were localised. After 1995 these gangs started to change, with the deportation of undocumented Honduran migrants from the USA, especially California. Many had come under the influence of Los Angeles gangs, which were often linked with drug mafias and used gangster methods of selected killings, production of firearms and drug-trafficking. These gangs were not about defending their home turf but were expansionist and had little respect for any community values.

Estimates of the numbers of gang members in Honduras vary significantly. At its highest, it is estimated that there may be as many as 489 gangs with about 30,000 adult and child members and 60,000 sympathisers. There are two main gangs: Mara Salvatrucha (MS) and 18, as well as a range of smaller gangs. In a study carried out by the Young Christian Association and Save the Children UK in 2002, it was found that 77 per cent of gang members joined before they were 15 years old and that 12–17-year-olds make up 65 per cent of all gang members, the remaining 35 per cent being 18–45-year-olds. The gangs and the process of joining them is, however, dynamic and recently the indications are that the membership of the major gangs is increasingly made up of adults, albeit with histories of juvenile crime. Although it is predominantly boys who join gangs, girls do also and are sometimes involved in extreme violence. Gang life is violent and under-18s are known to commit serious crimes, including murder. Juvenile gangs are often recruited to commit crimes by adult criminal organisations.

“There are diverse reasons why children and young people decide to join the gangs: the search for identity; companionship; hedonism; for feelings of power; to obtain protection and support by being part of a group that other people fear; to obtain access to drugs; to make money easily; the lack of other opportunities; and as a substitute for an often disintegrating family unit.”

(Harvey, 2005)

There is an alarming rate of extra-judicial killings of children in Honduras. Research by Covenant House and Honduran Ombudsman Research give the

Extra-judicial killings of children and young people in Honduras

Category	Covenant House Research (12–23-year-olds) 1998–May 2002	Honduran Ombudsman Research (12–25-year-olds) 1998–Sept 2001
Total deaths	1,211	1,137
Deaths under 18 years	715 (59%)	455 (40%)

figures for under-18-year-olds killed between 1998 and May 2002 and between 1998 and September 2001 as 715 and 455 respectively (see table). This represents 59 per cent and 40 per cent of all deaths by extra-judicial killings.

Although about 55 per cent of the perpetrators have not been identified, of those known to the police about 23 per cent were ‘ordinary people’, 14 per cent were gang members themselves and four per cent were law enforcement officials. Some of the killings are thought to be by vigilante groups and death squads acting in liaison with the police. A study by the National Commission of Human Rights found that only 34 per cent of those children killed had belonged to a gang, and that of those, many had left, having gone through or been in the process of rehabilitation.

A community-based model to support gang members who have decided to leave their gang in San Pedro Sula (the largest municipality in Honduras)

The development of a new ‘community governance’ approach to assist and support gang members who wish to leave the violent gang culture became necessary because of the failure of either detention or its alternatives to address effectively the phenomenon of the new violent gang sub-culture based on exclusive loyalty to the gang and hierarchy. The systems set up by the Children and Adolescents Code were “not designed to deal with groups that have completely broken with the prevailing social values system, that behave like a small regular army, are extremely violent, highly ideologised and disciplined to their own hierarchy and for whom the place of internment is a battle ground and whose stay there is a badge of ‘honour’. In addition, experience has shown that you cannot prevent or rehabilitate gang members in captivity.”¹²³

Together with its partner organisations, Save the Children UK set out to address the lack of understanding and mechanisms to promote a positive

community response to the gang phenomenon, to support gang members who want to withdraw from their gangs, to raise awareness among decision-makers and the public of the repression, criminalisation and murder of gang and ex-gang members, and to stop the killing of young people. It aimed to set up a permanent coalition of civil society organisations to interface with government agencies in order to achieve this. Establishing a positive community response has involved many players; the main ones in this intervention are:

- A local NGO, Jovenes Hondureños Adelante – Juntos Avancemos (Forward Honduran Youth – United We Advance), (JHA–JA), which has specialised in in-depth analysis of juvenile gangs and is the intellectual author of the model. JHA–JA directly supports education, vocational training, employment opportunities and social and psychosocial support programmes for gang members. It facilitates the development of young people’s organisations and their integration with other community-based organisations, with the aim of both enabling the young people to reintegrate into society and rebuilding unity in the community. It engages in municipal, national and international advocacy and research and provides training for the community police. It provides technical support in the rehabilitation of ex-gang members in their own organisation called Generation X.
- Another major actor is FUNDESERH, which grew out of the local community Pro-Development Committee. It is a foundation set up by small business owners that works with NGOs, community leaders and young people in liaison with the community police for the prevention of violence in the community. They have contributed funds to the community police to help them function more effectively, but have also assisted JHA–JA with premises for a metal workshop and tortilla factory and, with funds from Save the Children UK, has equipped them and provided a full-time technician to help guide the development of production and sales.
- The community police is a relatively new department of the Honduran Preventive Police. Their role is to build positive relationships with

the local community and to prevent – as distinct from investigate – criminal activity. Their role is crucial in providing a secure environment in the community and without their support the other components of the model would be at considerable risk of failing to make any impact.

- Generation X is a youth-led organisation of over 60 ex-gang members. It provides the friendship and support network that the members once found in the gangs and which was a key factor in their involvement in them. It is the body through which assistance is channelled to gang members who wish to withdraw from their gang and abstain from violence, other criminal activity and drug abuse. It provides them with a range of skills so that they can reintegrate themselves socially and economically back into society. The way in which JHA–JA and the other players work together to provide an enabling and empowering environment for Generation X is described below. Livelihood support is given to Generation X members through a metal workshop for males and a tortilla factory for females.
- The Catholic Church in the diocese has played a key role in building public awareness at a national level of the importance of prevention, rehabilitation and reintegration, and both Catholic and Protestant churches give their support to the project. Other key players include other neighbourhood associations, health centres, and soccer league organisers.

The positive interaction of all these players in a network of ‘community governance’ is crucial to ensure the success of the model.

JHA–JA does not have one blueprint to achieve gang members’ reintegration. The situation of the young people and the communities they live in define what is feasible. JHA–JA encourages a participative approach in which ex-gang members decide to work together to change their lives. In Rivera Hernandez, for example, the young people prioritised metal working, tortilla making and sporting activities and JHA–JA has built its intervention in response to their proposals. Members of Generation X have received leadership

training and this, in turn, motivated them to open another office in Rivera Hernandez as well as in downtown Sula.

There are five main stages that JHA–JA goes through in assisting gang members to change their lifestyle:

1. Investigative and networking action

JHA–JA sets out to understand the situation of the young gang member(s) who want to change, particularly by establishing a relationship with the gang through a trusted contact. If this is in a new geographical area, then relationships will need to be established with the community leaders, police and non-governmental and governmental organisations. It is essential for the success of the whole programme that the community police are supportive. In order to achieve this, JHA–JA has established good relations with the community police hierarchy, has regular weekly or fortnightly meetings in project areas with the community police, civil society organisations and Generation X members, and has provided police training on the treatment of ex-gang members. As a result of this interaction, the community police have agreed to recognise a form of identification given to Generation X members by JHA–JA so they are less likely to be harassed.

2. Engagement with the leaders of gangs and reconciliation of gang-related conflict

Engagement takes place with gang leaders to persuade them that the programme does not constitute a threat against them but an opportunity for integration. When the threat of violence comes from rival groups, the integration of members of both groups is negotiated. Different kinds of participation in the programme are offered to each gang but with the hope that eventually they will feel it would be beneficial to work together. This negotiation with gang leaders is an important step due to the code of honour that exists among gang members: that if you leave or desert without authorisation you face death. For those who do not have permission to leave the gang, their situation can be very perilous and they may have to move away entirely.

3. Involvement in individualised and group programmes

It is very difficult to break down the lack of trust and make a young person reflect about the impact of their association with the gang. Initial talks may take some time, as it is necessary to discuss the young person's life, the positive options the programme represents and the conditions of their involvement. The main condition is to abstain from violent activity and drug abuse. It is also explained to them that help will be provided, for example, through referral to a drug rehabilitation centre. A young person is given time to reflect on whether they wish to join the programme. JHA–JA still keeps in touch periodically with those who do not.

Joining the programme does not necessarily mean that the gang member has to abandon the gang. The aim is to open communication with the gang and to keep the support of its leaders. The most successful process is when the young people stimulate other young people and leaders to engage in the programme. This has led to the self-dissolution of five young people's gangs.

Once trust has been gained and the young person has made a decision to join the programme, they are invited to participate in different group programmes, including:

- recreational therapy
- the setting up and managing of vocational or skill centres
- the setting up and managing of small local neighbourhood businesses
- gang reconciliation (between distinct gangs as a means of violence prevention)
- leadership and advocacy training
- the development of an autonomous organisation, eg, Generation X.

Once integrated in the programme, they are invited to participate in individualised programmes, including:

- psychosocial counselling
- support in the search for employment
- reintegration into their family
- health support

- detox from drugs – this is done by placing them in existing programmes.

They go through a trial period of two months or more, until it is clear that they have left violent and criminal activities. If they face threats of violence, JHA–JA works with them and the other actors in the programme to identify protective measures.

4. Follow-up with families

Family reintegration is an option that helps the young person reintegrate into society but is not an end in itself. In some cases family reintegration is not possible, due in part to the fact that mutual rejection is very strong. In the case where family reintegration is not viable, the family is visited by 'social promoters' who hope to get them involved in activities that will help them to understand the difficulties their son or daughter faces in their reintegration and the positive role they can play.

5. Social reintegration

The preferred method of integration is through job placement. At first, the programme attempted to do this through local placements with the help of friendly businessmen. But the stigmatisation against young people who are tattooed is so strong that it failed. As an alternative, JHA–JA decided to create its own employment scheme, through the development of co-operative businesses in skills defined by the young people themselves so they would be able to generate an income while learning the skill. The young people were trained in work skills, small business administration and marketing.

In Rivera Hernandez, there are two 'social promoters' from JHA–JA, a young man who advises the boys in metal working and a young woman who advises the girls at the tortilla factory. They were chosen because of their confidence and understanding attitude to young people and their familiarity with the culture, behaviour and problems faced by gang members trying to change their lifestyle. They both received specialised training on working with ex-gang members from the director of JHA–JA.

Impact of the model

On children

- Through their involvement in participative leadership and work training, over 60 ex-gang members have been assisted to leave their gang and reintegrate themselves back into their home communities.
- Some members of Generation X have become active participants in their communities and have demonstrated active leadership in various lobbying efforts and meetings with high-level members of the donor community and government. For example, some have become leaders of the Sula Valley Youth Forum, which lobbies the National Congress, the President of the Republic and the Congressional Representatives, seeking their approval of laws that benefit young people.
- Members of Generation X are represented on the board of directors of FUNDESERH and are aware of what that commitment entails. The programme's setting up of forums for gang members and ex-gang members to express themselves and educate the public about their thoughts and the issues affecting them has had a ground-breaking effect in Honduras. This outreach to gangs is also supported by the Catholic auxiliary bishop of the Sula diocese.
- More young people of both sexes have become involved in the livelihood opportunities provided by the metal work and tortilla businesses, particularly since larger premises were acquired and experienced personnel were recruited to provide technical skills training and assistance in selling completed products.

On the community and institutions

- According to the police registers for 2000–04, an 85 per cent reduction in the amount of crime in the Sector Rivera Hernandez was recorded. The number of violent killings prior to the programme beginning in Rivera Hernandez had increased from 10 to 17 per month from 2000 to 2002 and there were eight business burglaries per month and one or two cases of inter-family violence per day. After the setting up of the programme in September

2003 to March 2004, there was a reduction to one death per month and then to one every 45 days, with no business burglaries and only five cases of family violence in three months. The gangs were also not as visible as before in the sector from September 2003 to March 2004 and five gangs were dismantled. As a result of this, there was less tension and suspicion between the community, police and ex-gang members. However, as explained below, this huge improvement was recently threatened.

- Better co-ordination with the community police was established after their training by JHA–JA and the investment in police posts by FUNDESERH (who also are supporting ex-gang members) have helped establish a better relationship between the police, Generation X members and JHA–JA. Generation X and JHA–JA have organised football tournaments between community police, community teams and the ex-gang members, which have also improved relationships with the local community and police.
- The community police have become increasingly supportive of the workshops for ex-gang members at the local level.
- The majority of the positive leaders in the community support the young people and the project. But the general community is also able to demonstrate its support for the young people in their new employment, as the community is the principal source of work for the metal workshop.
- From a population of 120,000, businessmen and volunteers in Rivera Hernandez have contributed \$2,652 per month to the programme.

Lessons learned and challenges

The commitment and leadership of the community police in Rivera Hernandez is a key factor in improving the relationship with the community and providing a secure and positive environment for the implementation of the programme. However, these achievements can be quickly threatened if, for example, new senior officers are appointed without this commitment and expertise. This, unfortunately,

is what happened in July 2004 after the heads of the community police for both Rivera Hernandez and Sula were transferred and the community police as an active force almost disappeared. There were strong community protests and the community has continued to be a powerful voice for the restoration of the original ideal of community policing. Evidence shows that when the community police fail to play this role, then there is a dramatic resumption of insecurity and related killings.

Members of Generation X are seriously vulnerable to attacks in Rivera Hernandez. There have been moments of resurgence of organised criminal gangs taking advantage of the decline in the active presence of community police. Of the ex-gang members attending the metal workshop two, aged 22 and 24, were killed in separate incidents, each with seven bullets to the head in early April 2005, including Jonatan, whose story is told on p.112 of this report, while a further young person remains in hospital in a critical condition. On 29 June there was an attempted murder of a 23-year-old and on 4 July a young person aged 25 was killed. The metal workshop co-ordinator, aged 24, has received death threats. Despite these killings, the members of Generation X have shown great and admirable courage and have not reverted to violence in revenge, but it is difficult to know how long this can be sustained in a context of acute security breakdown.

The active participation, advocacy and negotiation by civil society networks led by the local actors in the programme with senior police officers and officers of the justice system is essential to restore and maintain the positive changes of the last few years. Recognition of the importance of such a programme at all levels and institutionalised support by relevant government and state officials at the highest level, especially in the police and local municipal administration, as well as continued support in civil society, are important preconditions to the effectiveness of a community-based approach.

The role and responsibility of the media must be addressed, as they often portray under-18s in a sensationalist way as being responsible for violent

crimes in the community, undermining efforts to win public and community support for these preventative models.

The crime prevention policy of the community police needs to be coupled with proactive protection for ex-gang members who are trying to break away from the gangs and rehabilitate themselves, which up to now has not been a key component of the community police agenda.

Gender issues need to be addressed carefully. It is estimated that 20 per cent of juvenile gang members are female and are often young mothers with small children. The question of specific support for these girls and young women, eg, improving self-esteem and confidence as well as provision of daycare centres and other facilities, must be addressed.

Although the zero tolerance policy has “contributed to a significant drop in gang activities and improved security in many communities... there has been a corresponding cost in terms of rights and the long-term fight against gangs” (Harvey, 2005). Ex-gang members’ efforts to reform and support themselves are made almost impossible by the negative attitudes of educational institutions and employers, eg, through discrimination against those with gang tattoos and by continuous harassment and the threat of violence from law enforcement services and vigilante groups. This makes the decision by any gang member to leave extremely risky, especially as their old gang protection is removed and they are also liable to violent punishment from gang members.

The exclusion of children and young people from public and social life has to be fought on many fronts, by ex-gang members rehabilitating themselves through training for employment and establishing their own organisations based on co-operative values and through others explaining and supporting their efforts to reintegrate and contribute positively to society. This is crucial to ensure they are not further marginalised but gain a recognised stake in their communities that restores their rights and responsibilities as citizens and social actors.

Key elements of this good practice

- The model represents a **child-friendly, rehabilitative, integrated and holistic approach** to assisting children and young people to leave the gangs and become active citizens through the engagement of different social actors. As such, it begins to address the complicated range of causes that push children and young people into gang crime.
- **Sustained local and national advocacy** has built the interest and support of donors, the US embassy, civil society bodies, and some local government departments for this holistic model as an effective approach. This has also been an important contribution to addressing the wider legal and institutional framework that determines national policy and practice.
- Constant nurturing of **engagement and support with the community police, civil society and community leaders** through training, relationship building, advocacy, networking and involvement with the programme's success has created an environment of support for ex-gang members and those working with them.
- Employment workshops, leadership training, **encouraging young people to run their own co-operative, to take a lead role in explaining their problems to the public and to do outreach to other young people** in need of guidance and support has given ex-gang members the opportunity to change their lives and to **take a positive role** in integrating themselves back into society.

- **Engagement with the media** has begun to positively influence the previously sensational media coverage resulting in a more considered analysis of the situation and the communication of constructive alternatives.

Notes

¹²² *Minneapolis Star Tribune* editorial, 11 July 1993, quoted in Save the Children (2004) p.1

¹²³ Andino (2002b) *Why we Work on the Issue of Gangs and their Prevention in Central America*, paper, Save the Children UK

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2 Laos

Community mediation: diversion of children in conflict with the law away from judicial proceedings

Summary

The Children's Village Mediation Unit in Laos represents a good example in a rural context of diversion at the earliest possible stage and away from judicial proceedings. It provides for a localised and community-based intervention, which ensures that children remain within their own communities and families rather than being 'uprooted' to a justice system that is located far away. It also avoids an over-formal approach to children's petty offending, empowering the community and the child with the opportunity to resolve the problem and address its root causes. It also represents an important example of how existing and well-entrenched conflict resolution mechanisms can be built on and developed to become more child-focused and aware of child rights. It does not underestimate the challenges of making traditional conflict resolution mechanisms rights-based, but it recognises that these can be adapted with time and support to operate within a rights framework.

Background

In the 1980s and 1990s, with the development of a more open economy in Laos, an increase in child offending was reported. The UN Committee on the Rights of the Child recommended in its observations on Laos's 1996 report submission, the implementation of a system of children's justice in line with international instruments. It called on the Government of Laos to "explore alternatives to institutional care as well as traditional methods of reconciliation". These were major influences in the development of a children's justice initiative by the Ministry of Justice with technical assistance from Save the Children UK.

The principal mechanism available for reconciling wrongs outside any judicial system in Laos is the Village Mediation Unit. This body brings the complainant and accused together to make an amicable settlement through negotiation. It is not a court and has no power to force a settlement against the will of the parties involved. Decisions are guided by the mediators, who usually consist of the head and other respected members of the village or town wards, but any settlement depends on the agreement of the parties involved. If dissatisfied, the complainant can take the matter to the police. Until 2000, however, the Mediation Unit only dealt with adult civil and criminal resolutions.

Development of the diversion project

The Children's Justice Project, set up in 2000, was underpinned by children's rights and a set of children's justice principles, which were the basis for its advocacy and training with all the different departments in the justice system and with civil society. The first two of the project's eight basic principles were:

- “1. In giving justice to children their rights should be respected.
2. Children should be kept out of the criminal justice system whenever possible (for example by 'diverting' them from the court system by using mediation and village-based re-education).”

The initiative by the Ministry of Justice provided the country with the opportunity to set up a diversionary system that would involve the overwhelming majority of child offenders (98 per cent) whose offences were not serious and so avoid dragging them through the

stigmatising processes linked to police arrest, pre-trial detention and attendance at court.

A study by the Office of the Public Prosecutor and Ministry of Public Security in 2003 interviewed 152 children detained in prison in seven provinces. It confirmed that only about two per cent of those in custody were serious offenders and that alternative measures should have been found for the other 98 per cent. Of the offences for which the 152 children were detained: 68 per cent (104) were drug-related and 22 per cent (33) were property offences. The two per cent of serious crimes consisted of one case each of murder, manslaughter and rape (there was also a case of causing death by dangerous driving). Illegal and inappropriate placements in detention were understood to be a major problem and it reaffirmed the need for appropriate diversionary measures to be available.

The Village Mediation Unit's traditional role with adults had been recognised and legitimised in 1997 by the Ministry of Justice in Decision 304, which set out its role, structure, rights and responsibilities. However, no mention had been made in this Decision of the Unit having any jurisdiction with regard to children. The Children's Justice Project staff recognised that some variation on the Village Mediation Unit could provide the mechanism for children's diversion that was needed if the majority of children's cases were to be resolved at a community level. In 2002, the Ministry of Justice decided that a research study should be undertaken to see if an adaptation of the Village Mediation Unit would be acceptable to adults and children "to bring settlements between children in conflict with the law and their victims outside the court system". The research concluded that the Mediation Unit, with some modification, would be an efficient system to resolve child offending in the community and that this was already happening in the areas where the Children's Justice Project was being piloted. It also emphasised that it would need to provide a flexible and acceptable local, non-custodial, solution for children in conflict with the law (CICL) and that it should aim to promote education, vocational and social training and preparation for a productive life.

There are several community mediation options currently in use: inter-family meetings, unit meetings (for clusters of around ten households) and Village Mediation Unit meetings. They are usually systematic in terms of process and documentation, and generally all are chaired by the village head or his designate. Only cases that cannot be successfully settled at lower levels are referred to the Children's Village Mediation Unit. The Children's Village Mediation Unit is set up with the agreement of the Ministry of Justice under their Juvenile Justice Project. It is planned that it should become national, but as yet they have no formal standing by way of regulation. The Children's Village Mediation Unit differs from the Village Mediation Unit for adults in that its mediators understand the rights of the child and encourage children to participate fully in the mediation process.

Children's mediators are often already imbued with strong traditional restorative justice principles that have long guided the Village Mediation Unit's work with adults. The Children's Village Mediation Unit membership generally reflects the political structure of the village, ie, village chief, respected members from the three main mass organisations who are also supportive of children (Lao Women's Union, Lao Youth Union and the National Front for Reconstruction – the most senior elders), and occasionally a member of the local security unit. This is based on the composition set out in Decision 604. It is rare to find teachers or religious leaders as children's mediators, although in some villages they are called in to assist in specific cases.

There is general consensus in children's cases, as with adults, that the aim of mediation is generally restorative and concerned with rehabilitation and reconciliation (through the drawing up of an agreement between the parties), not punishment. The Mediation Units stress the importance of community reconciliation without involving the police if possible. Children's Mediation Units deal with petty thefts, trespassing, drug use, fighting and motorbike offences.

Mediators try to keep the proceedings of the Children's Village Mediation Unit private and try not to broadcast any agreement outside the meeting.

Agreements are most often about compensation and the mediators try to ensure they are reasonable. There are also examples now of community work being agreed, especially where there is no immediate victim, as in drug cases. An overriding wish is that the community finds its own solutions to its problems and does not suffer a loss of face. One of the mediators usually undertakes the follow-up with the child and family to check that the child is making satisfactory progress and the agreement is being fulfilled.

Where Children's Village Mediation Units are likely to be active within project areas, one or two village-selected mediators – including in particular the village head – receives training from the project's district training committee and they in turn are expected to pass on what they have learnt to those others who will sit on the Children's Mediation Unit. An important aspect of such training is encouraging mediators to involve the child so that he or she can express his/her views and take an active part in reaching a consensual written agreement, including making an apology to the victim. The offender is expected to attend with at least one parent and the victim is expected to be there to repeat the complaint and be party to the agreement. Mediation will not take place if the child offender does not accept responsibility for his/her involvement in the offence. If no agreement can be reached, then it is up to the complainant as to what to do next.

Impact of the model

On children

- Of the total number of children coming to the attention of the criminal justice system (police and prosecutors) and Children's Village Mediation Units in the eight provinces where the Children's Justice Project was implemented in 2002 and 2003, 90 per cent were diverted from coming to court, of whom the majority were diverted by the police using cautions and re-education.
- The numbers of children diverted by the Children's Village Mediation Units rose from 462 in 2002 to 1,157 in 2003, which was an increase from 25 per

cent to 41 per cent of all those diverted, although this rise is also likely to be the result of better reporting. It is also probably a considerable underestimate of diversions by Children's Village Mediation Units, as there were units that were active but did not report.

- Some mediators have reported that children who come to the Village Mediation Units may dissuade other children from offending by what they say to them afterwards.
- Those children and parents consulted all seem relatively satisfied that mediation has helped settle their difficulties, particularly as everything is kept local (they know better what to expect and so feel more able to take part, there is less expense) and there is a 'softer approach' (which saves face and is less stigmatising of the child and the family).

On institutions

- In 2002 and 2003 the first attempts were made to collect data concerning what happened to children in conflict with the law in the eight provinces where the Children's Justice Project was being implemented. The great majority of districts in those provinces were covered, but only a fraction of the villages within the districts. Yet from this very partial data it is clear that Children's Village Mediation Units were already having an impact in resolving children's cases and thereby diverting children from the courts.
- The Ministry of Justice has been supportive of the Children's Justice Project and keen to ensure that it becomes a national programme in all the provinces of the country. It has run and provided staff and accommodation for the Central Management Team, called national juvenile justice meetings, and set up a juvenile justice data collection system with data collators in the Ministry.

Lessons learned and challenges

In 2005 a study was completed on 'Mediation as a diversion measure for Children's Justice' (Shuey, 2005) which looked at lessons learnt and good practice. From this and previous studies of diversion by

Children's Village Mediation Units, the following learning can be drawn from the Lao experience.

Mediation at a local level is increasingly the preferred option in cases of children in conflict with the law. The relative success of mediation for all the parties involved largely depends on the persuasiveness and negotiation skills of the chair, usually the village chief, and the other mediators. However, some parents and authorities feel that mediation is too soft to successfully change certain types of behaviour, mainly drug use and repeat offending – and still favour detention.

Traditional ways of resolution, based on restorative justice, common sense and local knowledge, are key ingredients in successful mediation. However, to improve on the ways in which children are engaged in the mediation process, continuous training on child rights and on ensuring that the child's best interests are kept paramount is essential, especially in assisting the child to express his or her views and to participate in the mediation process.

Although the 2002 mediation study advocated the establishment of a totally separate 'Children's Mediation Unit' organisation at village level, this has proved to be impractical for most communities. Local authorities either use the Village Mediation Unit for both adult and CICL cases, or the Village Mediation Unit chair designates a group of unit mediators, who have received training or have a special concern for children, to specialise in CICL cases. The latter approach is the option the project prefers.

Children who commit offences away from their village or in larger cities and towns are more likely to be taken into police custody, at least until their cases can be investigated and their parents located. However, there is good evidence now that police and prosecutors are deferring minor CICL cases back to the village level as quickly as possible. An example of this is in motorbike offences where, in addition to warning some bikers, the police have referred them back to the Children's Village Mediation Units for follow-up. Yet there are still many examples of the police failing to

use the mediation offered by the Children's Mediation Units and detaining children instead, despite the request of children's mediators and parents.

Children's mediators are positive about the value of their mediation work and they have growing confidence in their ability to handle CICL cases, including those where there are no victims, as in drug abuse. But without written guidelines – such as those available for the Adult Mediation Units – their intervention lacks the official recognition they would like. A regulation is required establishing the legality of the Children's Village Mediation Unit and its role, with clear general guidelines as to how it should conduct its affairs based on national and international instruments.

Preventative interventions by the Children's Mediation Units are still rare, even though their earlier involvement in care and protection cases or where children are seen to be 'at risk' would help prevent children from becoming alienated and driven towards more risky behaviours, including offending. These units could have a preventative and educative role with parents, schools, health clinics, for example.

One of the major challenges to the effectiveness of Village Mediation Units is the turnover of membership, particularly in the case of those who have child rights and children's justice training. There has been insufficient emphasis on the importance of information-sharing and dissemination to all Mediation Unit members by those who have been formally trained. Documents issued to trainees on mediation and guidelines on working with children in conflict with the law, in the form of Participant's Handbooks, are not always available for all members.

Another challenge is parents insisting that the police detain their children who are 'beyond their control' and who have substance abuse problems. Support services for parents and children should be provided, in particular, rehabilitation facilities for children taking drugs, which should be managed outside the criminal justice process, for example, by the Ministry of Labour and Social Welfare.

Despite the increase in the use of diversion, the number of children who reached the district courts in those eight provinces (if data from 2002 and 2003 is compared), continued to rise from about 150 to 250 and the number of children sent to custody or to a rehabilitation centre for drug abuse also rose from 83 to 119.

Key elements of this good practice

- **Maintaining a range of mediation options.** The preference observed in many communities to solve CICL issues as close to home as possible is good common sense. It ensures the child is not removed from his/her community context and solutions are reached within the community. Using family and household-level meetings as a first step is to be encouraged to ensure the availability of a range of
- diversionary options that will be appropriate to the different situations in which children find themselves.
- **Building on the traditional community system.** Mediation is a long-standing method of dispute resolution in Laos. The Children's Mediation Units have benefited greatly from the traditional community emphasis on reconciliation and resolving problems within the community, and the many village mediators who already have skills in patient listening, negotiation and restoring harmony in dispute situations.
- **Children are being diverted away from the district police and the courts** by the use of mediation in the community, particularly by the Children's Village Mediation Units.
- In most cases, **all parties are left feeling that a fair solution has been reached.** The impression from discussions with the mediators is that while

Ban Hopakeo, Phonthong District, Champassak

A 14-year-old boy went to a shop in his village. Finding no one there, he decided to take two packs of cigarettes. He thought that whenever adults asked him to get them cigarettes, he could sell them. He had never done anything like this before and did not know where the idea came from. A neighbour saw him, held him, and called for the owner and his parents. Parents and village authorities came and arranged a mediation meeting for the following day. He was then sent home.

The meeting was held at the shop owner's house. In attendance were the boy, his father, two or three Village Mediation Unit members, and the shop owner. He admitted his offence and agreed to re-education by the Village Mediation Unit and to pay for the items stolen. He felt embarrassed and scared. He thought the *naiban* would send him to the police, so he was surprised with the mediation meeting. He did not know about mediation before and so he listened to the adults and agreed not to do such things again. They still visit him when they see him in the village and ask him if he is behaving well.

His father was satisfied with the mediation process. The authorities talked carefully to the boy, but they were serious and helped him understand how to behave.

The shop owner was satisfied with both the process and the outcome. This was her first experience with mediation, and she was impressed with the way the members conducted the session. She received payment for the goods and is confident that the boy will not do this again. She did not want him to suffer at the hands of police as this was a minor case and there was no damage.

Ban Hatsady Neua, Chantabouly District, Vientiane Capital – mediation as prevention

The research team met five young boys between the ages of 14 and 17. All had initially been called by the village head and then by the Children's Village Mediation Unit at various times over the previous year, as they had been observed coming home late on a regular basis and making too much noise with motorbikes. In this urban Vientiane village, this is considered delinquent behaviour. In each case the boy reported that he was warned that being out late at night can be dangerous – they might meet bad people who encourage them to do bad things – and that it also makes them lazy during the day. They have each agreed that this was not a good idea and that they should come home earlier. Their parents report that since these meetings, the boys are coming home earlier and behaving better.

The background to this action by the village head and then by the Children's Village Mediation Unit is the fact that in previous years, there was a lot of trouble among young people in the village and when the new village head was elected, he decided that addressing this should be a priority. Four of the five boys interviewed had dropped out of school. Staying out late had often made them late for school and too tired to work in school, thus increasing problems between themselves and teachers. They did not like being in trouble at school, so just decided to leave. None of their parents seemed to feel there was any other choice, but having them idle at home was also causing problems as they wanted money to go out with friends. This created tension between the boys and their parents.

As part of the Children's Village Mediation Unit intervention, each boy who was out of school was asked what he would like to do. Most wanted jobs locally, three in auto and motorbike repair. The village head talked to local businesses and found them places. He also contacted an urban programme to look into training possibilities. He has succeeded in getting one place in this programme.

this may not always be achieved, this is always the intention. As a result, a level of harmony is restored and the offender has the opportunity to take responsibility to put things right with the victim and make a fresh start with more support in the community.

- **A small number of Children's Mediation Unit members present (four or five), carefully selected and trained to assist CICL cases, is more effective than a large number.** The roles for teachers and religious leaders could also be considered. Choosing individuals who are committed and trustworthy is essential. An example observed in Ban Pangkham, Luang Prabang, was of an active group of three children's mediators, each quite

clear and confident of what they were bringing to mediation. They also assist in family and household mediation as well as at the Children's Mediation Unit.

- **Raising community awareness.** Many Children's Mediation Unit members are representing community organisations, eg, Youth Union, Women's Union and National Front for Reconstruction. In several communities, these members are also taking messages about child rights and children's justice to their village meetings. For example, mediators from the Children's Mediation Unit in Ban Pangkham used general meetings in their village to discuss these issues and to explore possible prevention

and support measures. This helps to raise the awareness of everyone in the community of what is seen as being in the best interests of children, and fosters a positive attitude by parents and adults to what the Children's Mediation Unit is doing.

- **Parental support.** Raising children's rights and children's justice issues in local, informal gatherings can also provide an opportunity for parents to discuss problems and seek advice. One Women's Union member – who is also on the Children's Mediation Unit – is facilitating discussions about CICL problems in her community and exploring solutions and ideas for prevention with other mothers. The mothers also discuss difficulties they are having with their children.
- The Children's Village Mediation Units can **play an effective role in prevention and rehabilitation.** The counselling and job creation approach used by Ban Hatsady Neua in the box on p.64 is an example. Obviously this requires a proactive unit and a local economy that has realistic livelihood opportunities.

- **Children are beginning to be asked their views** by mediators when attending the Children's Village Mediation Unit. This is a change, as in Lao society children are not customarily expected or encouraged to speak out. The Juvenile Justice Project has stressed the importance of hearing the child's opinion and this is beginning to be accepted.

Sources

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3 The Philippines

Urban community-based diversion model: the Children's Justice Committee of the barangays

Summary

The Philippines Barangay Children's Justice Committee also provides a model of early diversion through mediation for children who have committed petty or first offences, but this time in an urban environment. Supported by community volunteers and peer educators, the committees provide an opportunity for the child, his or her family, the victim and the community to address the real issues behind the child's offending through a restorative approach. Importantly, it prevents the child entering a violent and arbitrary formal justice system where outcomes for the child are very poor. Linked to existing community resolution mechanisms at the local authority level, it also provides an important focus for the co-ordination of support services that can be brought in to support the child, his or her family, the victim and the community.

Background

There is considerable violence used against children in the Philippines, both at a family level and in the criminal justice system. Once children are brought to court they are usually detained and few receive a non-custodial sentence. In 2001 in the Family Courts in Cebu – one of the country's major cities – 91 per cent of children in conflict with the law were sentenced to some form of imprisonment and only one per cent received a community sentence, despite the fact that about 90 per cent of these children were first-time offenders.

The economic downturn in the late 1990s in the Philippines led to more children trying to make their living on the street, while at the same time the enactment of curfews and other restrictions meant

that more children were arrested by the police. During that time an estimated 20,000 children were in detention and in appalling conditions. From research in the capital Manila, Cebu and Davao, the three major offences committed by children were against property (this came top in all three cities: in Manila the prime target was mobile phones, in Cebu shoplifting); the second most common offences were drug-related; and the third were sexual offences. A study of 700 street children in Manila showed that 70 per cent of arrests were in connection with vagrancy or in police raids. Local regulations which imposed curfews on children brought many children into conflict with the law. Despite Davao's enlightened local legislation, it has become known for its vigilante groups, allegedly supported by the police and town authorities, which have killed 18 children between 1999 and 2003.

Over the last 30 years, the government has instituted policies and laws to address the welfare of children at the lowest political and administrative unit (the barangay) through: the Child and Youth Welfare Code (1974) which mandates the establishing of the Barangay Council for the Protection of Children (BCPC) within the Barangay Council; the Supreme Court ruling supporting Barangay conciliation for petty offences; the National Plan of Action for Children; and local ordinances. Yet little has happened in terms of implementation. The barangays are composed on average of about 1,000 households but in some places have many more and are the primary implementing unit of government policies in the community. They are made up of both elected and appointed members.

The functions of the Barangay Council for the Protection of Children are set out in the box opposite.

Barangay Council for the Protection of Children functions

- Foster education of every child in the barangay.
- Encourage proper performance of duties of parents, and provide learning opportunities for adequate rearing of children on positive parent-child relationship.
- Protect and assist abandoned, maltreated and abused children and monitor cases filed against child abusers and report the same.
- Take steps to prevent juvenile delinquency and assist parents and children with behavioural problems so that they can get expert advice.
- Adopt health measures for the health and nutrition status of children.
- Promote the opening and maintenance of playgrounds, daycare centres and other facilities that are necessary for child and youth welfare.
- Co-ordinate the activities of organisations devoted to the welfare of children and secure their co-operation.
- Promote wholesome entertainment in the community, especially in movie houses.
- Assist parents whenever necessary in securing expert guidance counselling from proper government/private welfare agencies.
- Advocate passage of barangay, city/municipal and provincial ordinances regarding child-related issues and concerns.
- Prepare barangay plans of action for children which address the needs of children in the community and ensure their integration into the Barangay Development Plan and implementation by the barangay.
- Submit quarterly barangay accomplishment reports on the implementation of the Plan to the City/Municipal Council for the Welfare of Children (C/MCWC).

(Source: Council for the Welfare of Children (CWC), Department of Interior and Local Government (DILG), Department of Social Welfare and Development (DSWD) and United Nations Children's Fund (UNICEF), 2001. *Manual on Organizing Local Councils for the Protection of Children*, Council for the Welfare of Children and Department of Social Welfare and Development, Manila.)

Development of the diversion project

Save the Children UK's programme in the Philippines has focused on enhancing the protection of children from abuse and exploitation. A major strand since 2001 was to improve justice given to children in conflict with the law (CICL). One aspect of this, as well as working with the police and a university in providing child rights and CICL training,

was to support a local NGO, FREELAVA (Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc.) as a partner to see whether children could be diverted from the courts by working with the barangay councils in Cebu. The long-term aim was to try and establish a model of diversion at the community level that could be replicated nationwide. With its ongoing activities of promoting legal aid, crime prevention, and providing a 'halfway house' for children released

early from prison, FREELAVA was in a good position to explore the possibilities for diversion, especially as during its 20 years in Cebu it had become well respected at the community level.

From 2002 to 2004, FREELAVA has liaised closely with 12 barangays in Cebu City known for their high levels of poverty and migrant population. FREELAVA works particularly in those barangays with the BCPC, which is a discrete body for children within the Barangay Council. Its task, as shown in the box on p.67, is to look after the survival, security, protection, development and empowerment of every child in the barangay.

To undertake the diversion of children, FREELAVA encouraged the setting up of pilot Children's Justice Committees within 12 existing BCPCs. The chair and co-chair of the Children's Justice Committees, who are the main mediators, are appointed from the Lupon (the Barangay Justice Committee for adults). There are usually nine other mediators including a gender and development officer, a barangay senior police officer, a school guidance councillor, a representative of the community volunteers, an NGO (usually one of FREELAVA's outreach workers) and a youth committee member, some of whom are elected. The Children's Justice Committees are not courts but mediation bodies. Their main task is to mediate in minor offences or first offences between the victim and offender. By law, cases that can be heard must not be liable for a maximum penalty of over one year in detention or a fine of Php 5,000 (\$89) and should be between parties living in the same barangay.

There are six key stages by which children should come to the attention and go through the Children's Justice Committee (CJC) process:¹²⁴

Stage 1 – CICL come to the attention of the CJC

Arrests may be made by the barangay police or state police. In the former case the child is handed over to the CJC the same day or, if taken at night, returned to their parents and told to report to the CJC the next

day. Children arrested by the state police are handed over to the Women and Children's Desk who, in turn, hand them over to the CJC. If an adult makes a complaint, then the CJC invites the child and parents (like a summons) to attend the CJC via the barangay police or a community volunteer. The CJC may also request the 'handing-over' for diversion of a child who is being held in a temporary shelter because of an offence.

Stage 2 – Interview and case filing

The child is asked for basic information about his or her personal circumstances, the nature of the offence, etc. The interviewer, usually a CJC member, documents the facts on a CJC 'Intake Sheet'. These interviews take place in private and are confidential. The Intake Sheet is then handed on to the CJC mediator. Parents are seldom present during this interview.

Stage 3 – Explanation about the diversion programme

It is usually the CJC chair who explains to the parents and the child the process of mediation and the benefits of diversion and asks for the consent of the child to undergo diversion. Another CJC member talks to the complainant about the process, about the benefits of diversion and the consequent accountability of the child offender. This is the procedure for securing the informed consent of the complainant. These activities are required procedures before the mediation itself takes place.

Stage 4 – Mediation

Mediation by the CJC is key to the diversion process. It is intended to resolve the conflict or settle the harm done by the child offender to the victim and the community. The mediation which involves a child offender can occur in cases when an offence has been committed against a person, such as theft, assault and threats, or when an offence has been committed against the community, for example, when it concerns the use of prohibited drugs or the breach of curfew

ordinances. By law, it is the chair or co-chair of the CJC from the Lupon (adults' Barangay Justice Committee) who should undertake the mediation process. However, this is often delegated. This may be to the gender and development project officer or the barangay captain.

Generally during the mediation process, the CJC chair or co-chair asks the child about the circumstances of the crime – the motive for the offence, the factors that led the child to commit it – and his/her personal circumstances, relations with parents, his/her schooling, his/her peers, etc. The CJC chair ensures that the child understands his/her accountability, is sorry for his/her actions and takes on the responsibility of repairing the harm done in lieu of filing a formal case in the court. The key to a successful mediation is when the offending child asks for forgiveness or signifies remorse for his/her action and agrees to make reparation to the victim for the offence. All this takes place in the presence of the complainant (if applicable) who sits in the mediation conference together with the offender, his/her parents and one or two other CJC members.

Once the child expresses remorse, the CJC mediator negotiates with the complainant with the aim of persuading him or her to settle the matter at the community level. The mediator also assures the complainant that the CJC will assume the responsibility of reforming and monitoring the child through various diversion and reparative activities. In this diversion programme the mediation process can only succeed when there is a remorseful child and parent, and a forgiving and amenable victim.

In cases where the complainant is not amenable to settling the case, a 15-day cooling-off period is provided for, but is seldom used. In cases where the child offender has committed offences beyond the powers of the CJC to divert or has committed an offence for the third time, the case is usually automatically forwarded to the police for court filing.

Stage 5 – Preparation of the settlement agreement (the Covenant)

The CJC mediator facilitates the conditions of the settlement agreement and diversion programme for the CIKL in consultation with the child, the parents and the complainant. The settlement agreement is then firmed up in the Covenant Form, which sets out what the child, parent, complainant and arresting officer will do and then includes a statement saying that they will co-operate together in honouring the Covenant. It is signed by the complainant/arresting officer, child, parent/guardian, two CJC members and the CJC chair/co-chair.

Stage 6 – Rehabilitation and reintegration

This is the last stage of the community-based diversion programme. However, it is not considered the termination of community diversion work but rather as the beginning of a much bigger and broader process of restoring the life and self-worth of an offending child. Rehabilitation is the process whereby the child's negative behaviour and attitudes are addressed with the aim of assisting the child to adopt more positive and acceptable behaviour and so be accepted back by his/her community. Rehabilitation is integral to the process of reintegration. Reintegration is the process that promotes and facilitates the child's acceptance back into the community, including through providing restoration to the victim and the community. The creating of a culture of social acceptance and inclusion by the community for diverted CIKL is a major task for barangay officials and those working for the CJC.

FREELAVA has trained CJC mediators, also relevant police officers, community volunteers and peer educators in order both to give a rights-based approach to how CIKL are treated and assisted and to promote the development of a more accepting culture among families and community to CIKL.

The community volunteer is the local liaison person with the CIKL once the Covenant between the child

and victim has been signed. Their task may initially involve bringing the CICL from the police, doing the initial interview and being on the CJC, but it is primarily about supporting the rehabilitation and reintegration of CICL so that they do not reoffend and to ensure that the agreement is met. They also have other roles, providing community education about child rights and diversion and working with peer educators, who they help train and then support in carrying out their tasks. Most community volunteers have been volunteers in other programmes, eg, on AIDS education and action against prostitution. The great majority are women (105 of 120) and most come from barangay workers, followed by housewives, street vendors and the barangay police.

Peer educators are children who have usually themselves been in conflict with the law but who, with training in leadership and other skills, are seen to have adopted positive attitudes and to be good potential mentors for diverted children. They support CICL through sports activities and by drawing on their own experience to explain to children diverted from the justice system why they should stay out of trouble. Apart from being able to relate well to recently diverted children and direct them away from offending, peer educators also benefit personally in their own rehabilitation, as it gives them a role and status in the community. Many peer educators as well as CICL and children at risk of offending have been assisted by FREELAVA to return to education through various forms of funding.

Impact of the model

On children

- In less than three years, 600 children have been diverted from custody. In seven of the pilot barangays where there is data of diverted cases of children for the last two years, four barangays show a fall in cases of 97 per cent, 79 per cent, 56 per cent and 37 per cent respectively. The overall decrease would have been much higher if two areas had not had a major increase in cases,

possibly because the drug trade and drug abuse are rampant in these two areas (Save the Children UK (2005) *Back on Track*). Certainly in four barangays there seems to be a reduction in minor offending.

- Five children interviewed in depth for the *Back on Track* study about their history and the diversion process related in detail how important the mediation experience was for them, including the signing of the Covenant and the caring way they were spoken to and treated by the CJC mediators. Most spoke of the importance of reconciliation, especially from their own family.
- Other CICL speak of better treatment by people in authority, especially the police, in that they are less likely to be handcuffed or abused. Some parents and community members are less antagonistic towards them because of their greater awareness about children's best interests, eg, through community education by community volunteers.
- In the school year 2003–04, 124 out-of-school diverted CICL were enrolled in education and assisted by FREELAVA.
- In interviews, peer educators expressed the empowerment they felt at being involved in the justice process and being looked upon as confidantes by CICL. They felt more self-confident, much more accepted by their communities and proud of being seen as role models for CICL. This in turn made them act more responsibly and avoid getting into trouble.

On the community

- All 12 pilot barangays have active CJsCs. All these barangays have passed resolutions creating the CJC as a permanent committee of the BCPC.
- FREELAVA has participated in the Cebu City Commission for the Welfare and Protection of Children and other task groups, and this has helped to foster greater collaboration between some of the pillars of justice. The Cebu City Government has amended its Local Codes for Children to incorporate the principles of the UN Convention on the Rights of the Child, restorative justice and diversion as part of its provisions.

Quotes from three children in conflict with the law about the mediation process

Manuel said, *"I do not know what would have become of me without the diversion process"*.

Jerry explained, *"I have changed now since the mediation. I have no more record with the barangay police and people in the barangay hall now believe me. I do not have to brag about it. What is important is that I have changed for the better."*

In a third case, the same CJC mediator was involved with one boy, Ramon, on three different occasions. After an offence of shoplifting there were two others of threatening behaviour; the last of which was a threat to kill his father because of his substance abuse. After the third mediation the boy was very thankful to the CJC. *"If not for Ate Perlita (the CJC mediator), I wonder where I could have been now? Without this mediation process, perhaps, you would have seen me in jail today... I am very thankful to the Lupon (CJC chair). They find ways and means to reconcile us and make peace with each other. That's what they do. I am very thankful because they forgave me despite the fact that I was brought here three times now."*

After the mediation, Ramon declared he is now at peace with his father. *"I am now able to get over my frustrations with my father. I have drawn closer to him."*

(Cases taken from Save the Children UK (2005) *Back on Track*)

- Most complainants are also reported to be satisfied with the results of mediation.
- Some CJC mediators have shown great insight and patience with CIKL and exerted considerable mediation skills in obtaining the complainant's agreement for diversion to take place.
- 1,100 police have been trained in child rights and restorative justice principles; 150 duty bearers and 150 community volunteers have received training on diversion and at least 88 peer educators have received training on leadership. This training has raised the profile of child rights in those barangays and the need for a more understanding approach to children with problems rather than treating them like adults.

Lessons learned and challenges

A progressively favourable environment towards children's rights, restorative justice and diversion

has developed as the result of a wide range of forces nationally and locally, stressing the importance of protecting CIKL and treating them humanely. These include the Supreme Court, the police (including the Women and Children's Desks and local police), city officials, NGOs working in child protection and their networks, human rights bodies, the Department of Social Welfare, barangay officials and communities.

The range of community participants who have been mobilised to play an active role in the project has been a major strength. This has included barangay officials, community volunteers, peer educators, parents/guardians of children, local police and the Women and Children's Desks and school councillors. Some community volunteers have been elected onto the Barangay Council because of their work. (However, the giving of honoraria to community volunteers who are government officials has upset those who are not.)

Currently there is almost total reliance on FREELAVA for funding, which undermines the sustainability of the project. The model is threatened by the lack of funding at many levels. Money should be allocated to ensure that rehabilitation in the form of educational support and vocational training is available at the barangay level to give CICL the opportunity to improve their lives. All community volunteers should receive some basic remuneration, not only those who are barangay officials. Funding is also essential for regular training, meetings and to cover transport costs. With the passing of the Cebu's Local Codes for Children, barangays can pass ordinances setting up the CJs more formally and this should also make it easier to access funds.

The CJs are the strongest element in the 12 BCPCs, which are otherwise generally weak and elsewhere often non-existent. Attaching the CJs to the Justice Committees of the main Barangay Council, whose members take the lead roles in the CJC, might make it easier to establish them elsewhere and to access funds.

A one-off training session is insufficient to change attitudes; there needs to be regular upgrading and development of skills to keep the volunteers and mediators motivated. Training is also necessary to maintain or boost staff numbers; only 66 per cent of the original 120 community volunteers remain and 59 of the original 88 peer educators. Already, community volunteers have an average of six diverted children to support (80 community volunteers to 442 diverted children), who may not be easily accessible, so visits are often not made. There is also often a change in the mediators in the CJC after elections, especially of the chair and co-chair, as the newly elected Barangay Captain appoints them.

Better monitoring and support in practice is required of all personnel in the CJC process to overcome the variable standards in how children are treated during apprehension, mediation and follow-up.

There is also insufficient co-ordination with the trained city social workers who can assist where there are serious problems, eg, in drug abuse cases.

There needs to be more research on the long-term effectiveness of the diversion model. Follow-up standards are required which can be monitored to include at the end of six months: visits made, child's and parents' final views of its usefulness, child's occupation (school or work) and any reoffending.

Key elements of this good practice

- The development of a model that builds on the existing adult Barangay Justice Committee's mechanisms and skills but also attempts to link with other parts of the child protection system so as to provide a better service.
- The involvement and training given to **selected community volunteers**, which has led to high levels of commitment in their role as mentors of CICL.
- The innovative use of trained and **selected peer educators**, who were former CICL, to assist recently diverted CICL on a monthly basis (one peer educator ran 20 sessions a month).
- Community recognition of the role peer educators play in assisting diverted CICL has raised their self-esteem and encouraged them to stick to the more positive social attitudes they have adopted.
- By 2003, **all programme actors had had two or three training sessions** in all the pilot barangays.
- The provision of **educational support to CICL**, peer educators and children at risk of offending has given these children a better chance of avoiding offending.
- **Mediation has often been carried out appropriately** (eg, in private with a protocol as to how mediation should be done), effectively and in the shortest possible time by the CJC mediators, and many diverted CICL have been supported.

- **Different tools for community diversion** have been used, including reporting and community service, written apologies, reparations and literacy assignments.
- A **template CJC ‘Intake Sheet’** has been used for taking particulars of the CIKL before mediation and a **‘Covenant Form’** sets out the rights and responsibilities of the CIKL under the diversion programme, and is signed by all parties. These are important reference documents. Also separate registers have been used for CIKL by the Women and Children’s Desks in most pilot areas.
- **CIKL have come together to give their views** as to how they were treated at each stage of the justice process and **have given their recommendations for change**, which, in one instance, were listened to by an audience that included the mayor, judge, prosecutor, police, detention and NGO representatives, who then responded.
- Advocacy has led to **diversion being promoted by Cebu City Council** in their Local Codes for Children.

Note

¹²⁴ This summary of the stages is a revised and shortened version of those in Save the Children UK (2005) *Back on Track*

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4 Kenya

Police action to divert children in need of care and protection from court and detention

Summary

The Kenya Diversion Project addresses the crucial role and impact that the police have on children as the point of contact once a child is deemed to be in conflict with the law. Crucially, it recognises not only that the police need specialised training to deal with those cases but also provides a support framework for the police to call on other services to deal with each individual case. This ensures not only more appropriate and co-ordinated responses, but also better use of existing resources and better outcomes for children through appropriate case management. It builds on the police's discretionary powers to avoid unnecessary criminalisation and supports them in using these powers in a positive way that recognises children's circumstances and that is more in line with children's rights.

Background

The annual reports of the Kenyan Department of Children's Services in 1997 and 1998 estimated that 80 per cent of children in the juvenile justice system were cases of protection and only 20 per cent had actually committed offences, of which only a few were serious. It became clear that the majority of children in the remand homes in Kenya were not those who had committed offences (the age of criminal responsibility is ten years), but those who had fallen foul of laws concerning their care and protection. The new Children Act 2001, like its predecessor, states that children are deemed to need care and protection if they would not receive it unless the court took action. These laws can be applied where children are parentless, homeless, found begging, or scavenging. They are often used to control poor urban working children visible on the streets, engaged in survival

behaviour by working or asking for money. Such children are arrested by the police and detained in police cells while arrangements are made for a children's officer to prosecute them. Because of delays, these children are often sent to remand homes.

Children can only be admitted to a remand home on a court order by a magistrate before or after a report has been received from a children's officer. Frequently, the sentence recommended to the court by these officers is to send these children for approved school training, where they may stay for up to eight years or until they are 18 years old. Approved schools are intended under the law for serious offenders who require a long period of rehabilitation in order to reform. Yet children in need of care and protection are sent there and are criminalised and marginalised because they are poor and because the care and protection systems have failed them.

The Department of Children's Services manages the ten remand homes, 12 approved schools and one children's home, which together take up two-thirds of its budget. This reflects a strong bias towards the institutionalisation of children, often in conditions that fall well below satisfactory standards and for prolonged periods of time, as in the approved schools. Interestingly, it is reported that most children go home when allowed to, undermining the impression that they are without parents or guardians.

Development of the diversion project

To keep children out of the justice system, especially the care and protection cases, the Department of Children's Services and Save the Children UK started

a pilot diversion project in 2001 to divert children away from the courts in Nairobi, Nakuru and Kisumu. The overall objective is: “To implement a pilot diversion project for children in conflict with the law in three project areas in order to protect children from inappropriate institutionalisation and demonstrate a viable alternative to custodial care and in this way influence the practices and policies of key government and non-governmental agencies at regional and national levels.”¹²⁵

The aim is to divert children, especially those in need of care and protection, away from the justice system at their earliest point of contact – namely with the police – and to ensure that police officers are trained and competent to refer children to other agencies instead of detaining them. In order to do this, specialised units, Child Protection Units (CPUs), were set up in four major police stations in Kisumu, Nakuru and in Nairobi (Kilimani and Kamukunji). The 17 CPU police officers were trained in child rights and the diversion process.

The CPUs are supported by a diversion framework. Its aim is to progress the overall project objective in the districts and communities where the four CPUs operate and to influence national policy and advocacy. The main structures within the framework are the strategic alliance, the national diversion core team, the district diversion core teams and community-based support systems for children. This support framework currently involves 13 government departments, 22 NGOs, three legal networks, 19 community-based organisations and four police stations involved in the three pilot project areas (Nairobi, Kisumu and Nakuru).

The main components of the framework are as follows:

Strategic alliance

It is the project link to policy level. Its members collaborate and lobby on issues of juvenile justice. It has four subcommittees and diversion falls under one of these.

These subcommittees are:

- Diversion and decongestion of correctional facilities
- Development of standardised procedures and practices
- Research and information management
- Lobby group on child protection policies

National diversion core team

Members:

- Department of Children’s Services: co-ordinates diversion project activities at national level
- Police Department: police headquarters co-ordinates all activities of Child Protection Units at police stations
- Save the Children Sweden: provides technical support, is responsible for project monitoring and evaluation, submitting project proposals to donors for funding, and overseeing that project activities meet the project objectives
- Children’s Legal Action Network: Legal adviser at national level

District diversion core teams (a subcommittee of the Area Advisory Council)

Members:

- Department of Children’s Services: co-ordinates all diversion project activities at district level.
- Police Department: co-ordinates all activities of Child Protection Units at project police stations
- ANPPCAN – Kenya: provides legal support and rescue to children targeted by project
- Children’s Legal Action Network: provides legal support to children targeted by project
- Child Welfare Society of Kenya: provides temporary places of shelter and counselling
- Goal – Kenya: provides temporary places of shelter, offers counselling and reintegrates children

Community-based support systems for children

Members:

- Undugu Society of Kenya (Kisumu and Nairobi): offers skills training, counselling, repatriation and follow-up of the children in the project

- Mwangaza Street Children Programme & Street Children Programme of Nakuru (SCANN): offers skills training, counselling for parents and children, non-formal education and follow-up in Nakuru
- Pandipieri Street Children Programme (Kisumu): offers non-formal education, counselling for parents and children, follow-up
- Local Authority: supports through community-based halls (Nakuru and Kisumu) that provide toys, books, television, space, community social workers
- Goal Reception Centre (Nairobi): provides temporary shelter, offers counselling and repatriates children
- Lions Club: furnishing CPU in Kisumu

Training on child rights and diversion has been a major component of the project in the three pilot project areas. From 2001–04 the following groups of people received training: 290 police, 206 stakeholders including children’s officers, probation officers and magistrates, 268 community members and 1,407 children. Seven specially designed training sessions also took place for the district diversion core teams at which an average of ten agencies attended. The publication of *Guidelines for Implementation of Children and Young People’s Diversion Strategy* was part of the advocacy used to influence the police, parliamentarians, networks and NGOs.

Impact of the model

On children

- The project has had strong impacts on children’s lives across the four project sites over its first four years (2001–04). A total of 2,800 children have been diverted from the courts with the assistance of the Child Protection Units and the co-ordinated work of the district diversion core teams and the Area Advisory Councils. Of these, around 70 per cent were reintegrated with their families, 20 per cent were taken to temporary rescue centres while work to reintegrate or place them elsewhere continued, and ten per cent were orphans sent to children’s or remand homes pending further

investigation. By diverting these children from court the project prevents them becoming stigmatised and being exposed to criminalisation, violence and abuse while in detention.

- The district diversion core teams have reported a 90 per cent drop in the number of children being referred to the children’s courts in the four sites of the project.
- Two-thirds of the children dealt with by the project are boys. However, Kamukunji CPU received mainly girls (aged between 8 and 16) who had served as house girls and then ran away from their employers because of mistreatment. Of the first 640 children received there, 559 were reintegrated back in their home communities.
- In practice there is generally perceived to be a better relationship between children and the police in the CPUs than in other police stations. In the four CPUs, police officers treat children more humanely, pay more respect to their rights and opinions and provide better separate facilities for boys and girls. CPU officers wear civilian clothes, use friendly language, are more child-focused and do not assume children are criminals.
- Decisions by the CPU officers and the district diversion core teams as to how to assist children are now much quicker, with some children being resettled straight from the police station. Many now stay in police custody for less than 24 hours and as a result, police stations are less congested. The number of children in Nairobi Children’s Remand Home has been reduced by half. In general, children are spending only days in remand homes rather than weeks or months.

On communities

- Within the project areas there has been good collaboration with civil society and communities (principally through Area Advisory Committees and district diversion core teams). A wide range of groups dealing with children (children’s homes, NGOs working with children, community leaders) have been empowered to take a greater role in protecting children through the project. Six community-based organisations are assisting diverted children in their community reintegration.

- Local children's homes are taking in some of the children who are not immediately repatriated and these provide better conditions than the remand homes. There are signs that the community is supporting the project, eg, the municipal councils in Nakuru and Kisumu have donated the use of their community halls, which the project is using as centres where non-formal education, skills training and counselling are conducted by the Department of Children's Services; the Lions Club is furnishing the Kisumu CPU; and the municipal council is providing milk for children under police protection.

On institutions

- The police, Department of Children's Services, probation service and NGOs are working together for the first time in new collaborative structures. Training has led to better practice by key stakeholders and child rights have been incorporated into the police training curriculum. The work of the CPUs in their districts is becoming well known and children are being referred to them from other stations; there are also examples of trained police officers starting diversion projects in other areas, eg, Naivasha.
- A Memorandum of Understanding recognising the diversion project is awaiting signature between the Department of Children's Services, the police and Save the Children. The Police Department have taken up the issue of strengthening and expanding CPUs as part of police work with their own model CPU and a quota of trained officers.
- The pilot project has been recognised as a success at the national policy level, with the Ministry of Finance agreeing a budget line within the Department of Children's Services on 'diversion' of US\$5,000. The Kenyan Government and UNICEF are planning to replicate the model in two other areas in 2005, and Save the Children and the Department of Children's Services have plans in another five areas. The establishment of the strategic alliance and the national district core team are in themselves major achievements and they have raised the importance of child rights and diversion with national stakeholders.¹²⁶

Lessons learned and challenges

Effective reintegration and resettlement depends on a close collaboration being fostered by the district diversion core teams between the police, the Department of Children's Services, probation and after-care services, NGOs and other civil society organisations and communities. Considerable progress has been made but there needs to be a greater sense of ownership by the Department of Children's Services and police for the project to develop nationally. Historically, co-operation between government and NGOs has been weak, so more work is required to build up trust and respect between them as so much depends on their partnership. The diverse and distant locations to which children have been resettled have required links with many national and district NGOs and agencies. Lack of knowledge about them has often hampered effective support to reintegrated children.

Diversion is helping to strengthen the community-based lobby and to emphasise institutionalisation as a last resort. However, there is no mention of diversion in the Children Act 2001 and there is a lack of strong community-based support structures to assist diverted children. There are no standards for community-based care and those for institutions are inadequate and seldom monitored and enforced.

Although there are figures for children who have been reintegrated, follow-up is lacking, and as a result there is insufficient data and understanding on which to gauge their progress and to identify how many have not come into conflict with the law again.

CPU police staff, after training and liaison with district diversion core teams, have shown a commitment to respecting the rights of children. However, it is not uncommon for them to be transferred and to be replaced by untrained officers, so the need for ongoing training is critical if the standards set by the CPUs are to be maintained.

Although the numbers of children in Nairobi Children's Remand Home have been halved, the population of the remand homes at Nakuru and

Kisumu in November 2004 continued to contain a majority of children in need of care and protection. Practical and policy/legislative changes are still required. Closer co-operation with children's homes is necessary to reduce the numbers in remand homes. More data is also required to determine the time children are spending in remand homes and if any are being sent to approved schools.

Key elements of this good practice

- **Effective co-ordination and networking for referral** has been established. The CPU desks and the district diversion core teams are working together and linking up with government agencies, NGOs, legal networks, the business community, community-based organisations and local leaders. This has become an effective combination to reintegrate care and protection cases more quickly without going through the drawn out and stigmatising process of the courts and with less and shorter use of police cells and remand homes.
- **Separate systems of data management** have been established in the CPUs. This includes the recording of each care and protection case in the CPU diversion register, the introduction of diversion social enquiry forms and diversion referral forms.
- The national diversion core team and the strategic alliance are **fostering links between the districts and the central government**, raising the profile of diversion among key government stakeholders and promoting this model both in practice and at a policy level.
- The Ministry of Finance has created a **budget line on 'diversion' and their funding of the Department of Children's Services** shows that

the concept of diversion has reached an important level of recognition and commitment within government.

- **More humane individual treatment** is given to children by CPU staff and these units provide better facilities. The accommodation is separate from adults and the 24-hour rule for keeping children in custody is respected.

Notes

¹²⁵ Save the Children UK Kenya Programme (2004) *Narrative and Financial Report to Oak Foundation*, April 2003–March 2004

¹²⁶ Information in this section is from Starling and Murungi (2005)

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5 Ethiopia

Diversion by police of children in conflict with the law to community-based correction programme centres

Summary

The community-based correction programme in Ethiopia supports diversion by the police of cases where a child aged 9–15 years has committed a first offence or petty offence. The programme brings together police and community workers with families, the child and other key individuals (including teachers) to provide intensive and individualised support for the child in community centres. Support includes help with studies, vocational opportunities, and support to parents in good parenting skills as well as recreational opportunities. The programme is specifically devised to prevent children being criminalised and entering the formal justice system, where violence against children is common.

Background

The law concerning children in conflict with the law in Ethiopia is set out in the Ethiopian Penal Code 1957. The minimum age of criminal responsibility is nine years. Those aged 9–15 years are considered as children, while those aged 16–17 years are treated as adults, although there are provisions for mitigation by the judge; these children cannot receive life imprisonment or the death penalty. The code emphasises that cases involving children should be processed ‘immediately’, although no specific time is stated. After arrest by the police, all stages in the administration of justice, including investigation and prosecution, are carried out solely by the judiciary.

Improvements made prior to the 1974 revolution were soon reversed afterwards. The widespread involvement of children in political activities led to many being held in adult prisons and exposed to torture to extract information about their ‘anti-revolutionary activities’

up until 1991 when the revolutionary regime was overthrown. As a result of the UN Committee on the Rights of the Child’s Concluding Observations (2001), the 1957 code was revised. The Revised Penal Code that is soon to come into force will not change the minimum age of criminal responsibility but will prohibit corporal punishment, and lays down the conditions required if children are detained, emphasising that children should be kept in separate facilities. Currently, it is not uncommon for children to be detained with adults.

In Addis Ababa, during the three years from 1999 to 2001, an average of 4,529 children came into conflict with the law per year. Of these children, 99 per cent were males and 14 per cent were between 9 and 14 years. Among these children, 81 per cent were recorded as living with their parents, and 45 per cent as having dropped out of school.

Development of the diversion project

In 1997, Save the Children Sweden initiated a pilot Child Protection Programme with its partner Forum on Street Children-Ethiopia (FSCE). The Child Protection Programme is headed by a police officer who works with FSCE social workers. The overall objective of the programme is to improve the situation of children who are abused or at risk, including children who come into conflict with the law (CICL). Its focus addresses prime issues concerning children’s justice including the protection, prevention and diversion of CICL and the improvement of the administration of justice, namely:

- prevention of child abuse and exploitation
- establishing Child Protection Units (CPUs) in police stations

- advocacy for an improved administration of juvenile justice in Ethiopia to be in accordance with the UNCRC
- abolition of the use of corporal punishment by the police and the judiciary
- strengthening local capacity to respond to the protection rights of children
- developing innovative community-based pilot projects to divert CICL from going through the formal legal system.

The CPUs set up in ten police stations in Addis Ababa in 1998 are the driving force behind improving the way CICL are treated, especially with regard to diverting children away from the courts, speeding up the decision-making process, ensuring the separation of children from adults in custody and community supervision of CICL while in the care of their parents.

The CPUs are run jointly by the police and FSCE, with the latter providing counterpart social work staff to give training, technical and funding support. In 1999, as a result of work with the Federal Supreme Court to set up child-friendly courts, four Juvenile Benches were set up in Addis. Much of the success in working with the police and judiciary came from the integration of child rights in police training and the exposure of government officials to study tours to learn from other countries' experiences in working with CICL. The Child Protection Unit model has been replicated in regional towns through collaboration of the police and NGOs.

As a result of the establishment of the CPUs, children were being handled better and their cases were being dealt with more promptly and appropriately. However, no support system existed that would lead the police to feel confident in using diversion rather than going through the formal justice system. The lack of clear provisions in the Penal Code for the diversion of cases to an informal system of rehabilitation and correction was also an issue. The poor conditions in the remand home, the length of pre-trial detentions, brutality by police and negative attitudes by the public towards street children and the lack of follow-up when CICL

were released or given community sentences all pointed to the need for supportive facilities to be established.

To respond to this need, in 1998 the Community-Based Correction Programme (CBCP) was set up in Addis Ababa for children in conflict with the law aged 9 to 15 years who were first-time and petty offenders. When children are brought to the Child Protection Unit having been accused of committing an offence, their parents are contacted, their case is investigated and a report compiled. The child's case is then assessed by a police officer and community worker from FSCE and a decision is taken to:

- release the child under the responsibility of parents/guardians; or
- refer the child to the Community-Based Correction Programme; or
- present the child to a juvenile court.

Children might also be referred to the CBCP centres by their parents as being unruly or truanting and the centres may accept them if they feel they are at serious risk.

Geographically, the project covers the city of Addis Ababa, which comprises ten sub-cities known locally as Kifle Ketemas. In each Kifle Ketema there are a number of Kebeles, which are the smallest administrative units in Addis Ababa. All Kebeles have meeting halls, where the residents meet for different functions. The CBCPs are located in these halls, usually with a small room annexed to the hall serving as an office for the volunteer and a place to store books, teaching aids and recreational materials. The offices are also used to hold discussions with parents and to conduct counselling sessions.

The volunteer who runs each centre on a daily basis is supervised by a FSCE community worker and team leader. The volunteers are mainly young males who have at least completed their high school education. They only receive transportation allowances. High unemployment and the opportunity this work opens up for future jobs make these posts popular. Criteria

for recruitment of volunteers focus on the ability of the volunteer to communicate with children, especially adolescents, and the personal characteristics of the volunteer. The latter is important in that the volunteers are expected to be good role models for the children in the centres. The training provided on the job includes:

- communicating with children
- child protection
- ensuring child participation
- working manual of the CPU
- record keeping
- guidance and counselling
- the UN Convention on the Rights of the Child

Their tasks include ensuring that children come to the scheduled programmes, attend school, and work to improve their relationship with their family and community. The volunteers are also responsible for keeping records and reporting on the progress of the children to counsellors, community workers and ultimately to FSCE team leaders.

The working methods in the CBCP centre consist of the following:

- After referral by the Child Protection Unit, the child and his or her parents meet with the community worker to check that they all consent to come to the centre.
- A treatment plan is made and its content, the times the child will attend and the parents' monthly attendance to talk about the child's progress is agreed by the child, parent and community worker and signed by them. A copy is kept at the CBCP centre.
- The length of time that the child spends in the programme is determined by the community worker on a case by case basis. On average, children are enrolled for about three hours per day on weekdays. They stay at the centre from between six months and two and a half years.
- A typical day organised and led by the volunteer involves studying, tutorial classes, watching recreational films, playing indoor games and learning skills, eg, playing musical instruments.

- There are periodic meetings of the child with community workers, teachers and police. These people discuss with the child the causes of his/her offending behaviour and the expectations of his/her family and community. Children also discuss with volunteers the reasons for their offending.
- Periodic assessments are conducted on the situation of the children by collecting information from parents, teachers and volunteers. The assessment of the rehabilitation is based on such factors as the child's school attendance, educational performance, relationship with people in the child's immediate environment, the child's attendance and participation at the centre, personal care and attitude. The decision to discharge a child is influenced by these assessments.
- Children who are of good behaviour and attend regularly are also rewarded by visits to the theatre, football, etc.
- There are some links with NGOs for tutorials and with businesses who provide apprenticeships.
- The process of discharge takes place in a formal meeting in the presence of parents, community representatives, police and social workers. Before the process of discharge, a simple discharge form is filled in, with the purpose of handing over the care of the child to the parents. This also enables the staff to compile contact information on discharged children.

Impact of the model

On children

- Ten Kebeles (smallest administrative unit) out of the 100 that exist in Addis have CBCPs, although they also serve one or two neighbouring Kebeles. Since 1998, 1,510 CICL have been referred to the CBCP centres; of these, 1,035 (68 per cent) have successfully completed their correction programme, while 475 (31 per cent) have dropped out. On average, 30–40 children attend the programme at each of the ten centres at any one time.
- Only about one per cent of CICL reoffend while still on the programme. More than 75 per cent of

Case study: Elias

Elias is a 14-year-old boy who dropped out of school. He had very little supervision from his mother as she spends a lot of time in the small market where she sells firewood. He was reported to the police by his mother after repeatedly stealing small amounts of money from her.

The police officer who interviewed Elias recommended that the boy be referred to the Community-Based Correction Programme, which is located near his home. At the centre, his mother signed a treatment plan and agreement that Elias should report to the centre five times a week to participate in the programmes. In the centre, he received counselling and tutorial support, after which he was enrolled in a formal school. As per the agreement in the treatment plan, his mother went to the centre to follow up on his developments and to report on his behaviour at home. The centre provided school fees and educational materials and the volunteer established close contact with Elias's teacher at the school.

By the end of the first year, Elias showed a great deal of improvement in his behaviour, academic performance and his self-esteem. The staff at the centre decided that Elias might still need additional support and supervision, thus it was agreed that he should continue to go to the centre but on a less regular basis. The volunteer at the centre arranged for Elias to be transferred to a government school where education was given for free. It was also arranged for Elias to volunteer to work in a leather workshop. Although he was not paid for his services in the workshop, he was able to learn skills in leather work.

Four years after his first enrolment in the centre, Elias was discharged from the Programme, and still continues to excel in his school work. As part of his discharge, the centre provided him with leather work equipment, with the agreement that Elias continues to earn some money to support himself to continue his education.

In an interview by a journalist researching on a model youth programme, Elias expressed his wish that the government encourage young people such as himself to be engaged in productive activities.

the children go back to school after the completion of their correction period. This is due to the fact that almost all the CICL are between 9 and 15. Diversion to the centres helps most CICL to continue with their education.

- The time a child spends at the CBCP is usually between six and nine months. If behavioural change is noticeable within this period, the child will be discharged. If there is insufficient progress, another correction period will be given to the child with the approval of the Child Protection Unit

co-ordinator. However, in most cases children show a remarkable behavioural change within the six to nine months.

- By being diverted to the centres, children in conflict with the law are not exposed to the harsh treatment and incarceration they might otherwise receive.

On parents

- Parents are involved in their child's attendance at the centre and in drawing up the treatment plan.

The parents agree to report to the centre on the behavioural and educational progress of their children at least once a month.

- The social workers/community workers help the parents understand the causes for their child's offending and identify the support needed from the parents. Based on this, the parents contribute to the rehabilitation of the child by encouraging the child to go to school and to the centre regularly, by keeping a closer eye on the child when at home, giving more love and attention, especially by setting aside time to talk and listen to the child, and guiding him/her appropriately.

On institutions

- Although legal provisions do not explicitly allow for diversion by the police, almost 99 per cent of the cases come from them.
- The police run the Child Protection Programme, under which the Community-Based Correction Programme falls. They have taken on board partnerships with FSCE and other NGOs in the running of CPUs in police stations. By 2004, the CPUs evolved from being an NGO-led initiative to being part of the formal structure of the Police Commission.
- The police benefit from diversion as it saves them both time and money by not taking the children to court.

Lessons learned and challenges

Informal settlements are the socio-cultural norm in Ethiopia, with neighbourhood elders active in this work. This way of operating in the community therefore resonates with traditional practice. The arrangement by which community elders advised CICAL proved useful but it has stopped because of restructuring in the sub-cities. It is hoped that it will be re-activated.

Multi-level advocacy with duty bearers has led to the idea of diversion being accepted by many. But the

Ministry of Labour and Social Affairs, which is mandated to work with CICAL, has not become seriously involved, nor has the judiciary.

The project has tried to involve the Addis Ababa Social Affairs Office, where the project is located, to institutionalise the diversion programme in its formal structure but the process is very slow with no concrete results so far. There is a plan to organise a national workshop based on the document *Diversion as Good Practice* to lobby for the legalising and implementing of diversion.

The use of the Kabele halls as centres provides legitimacy to the diversion process as well as authority, despite the fact that the process is not yet provided for under the law.

The centres strive to establish closer relationships between parents and their children and this is seen as a key element in the programme.

The lack of follow-up after the children leave the centre means that there is insufficient knowledge about how they are progressing longer term and if they have kept out of trouble. There is also no follow-up for those who drop out, so that there is little known about the reasons for dropping out of the programme.

Key elements of this good practice

- The police have become committed to the establishment and replication of well-trained Child Protection Units, within an appropriately well-organised police linked to other agencies and to the Community-Based Correction Programme centres to promote diversion.
- By starting with the younger offenders (9–15-year-olds) who have committed petty or first-time offences, the diversion programme has been able to **enlist the police and public support**.
- The development of the Community-Based Correction Programme centres is based on a

six to nine month intensive period of involvement. This includes: reaching an agreement for the child's rehabilitation with the child and his/her parents; support to the child in achieving this by the volunteer workers and others, with the **integral assistance of parents and the emphasis on returning to school.**

- Despite there being no formal mandate for **diversion by the police, they are actively promoting it** as a result of effective training, liaison and support, and no doubt in part because of its success.
- The NGO working with the programme has set up **a well co-ordinated support system at the Child Protection Units** for the assessment of CICL, and later when they are at the Community-Based

Correction Programme centres (rehabilitation agreement and its implementation, periodic assessment and formal discharge exercise) as well as supervising the volunteers at the centres.

- The **training of the police and volunteers has had practical objectives**, which they can see are relevant to their work.

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6 China

The Appropriate Adult scheme: supporting diversion and reintegration in an urban community

Summary

The Appropriate Adult scheme in Panlong District, China, provides for full-time and trained adults to intervene as child advocates during the interview stages by the police and the initial determination of the case. The Appropriate Adults are not only there to ensure that a child's rights are respected at this crucial stage but also to provide a social assessment of the child, link children to their families, support them there and work with the police, the judicial bureau and the Committee for the Protection of Minors to support possible diversion opportunities and non-custodial measures for children pending the determination of their case. The Appropriate Adults scheme represents an important example of a model, originally from the UK, being adapted to support the justice and social welfare system of another country, as well as community workers, in ensuring children's rights are respected and children diverted whenever possible.

Background

The minimum age of criminal responsibility in China is 14 years but children who do offend under this age are liable to administrative penalties. The Criminal Law of the People's Republic of China (Article XVII, iii) states that the "punishment of offenders between 14 and 18 should be mitigated". According to Save the Children UK, most crimes committed by children relate to stealing, including theft from stores and from the person (without violence). The next most common is violence against the person, often against another child, and also attacks to rob someone of their mobile phone. There are very few offences in other categories, but there are some concerning drug possession and supplying.¹²⁷

A Chinese newspaper report stated, "According to relevant statistics, more juvenile offenders are being arrested every year. They represented 9.1 per cent of all criminal suspects across China in 2003. However, an independent juvenile justice system is yet to be established for the 360,000,000 juveniles of China."¹²⁸ Government data on this issue is not made public and therefore it is impossible to assess trends in juvenile offending. At present, there is no national system of separate juvenile courts for children except in a few places under a local arrangement, eg, Beijing and Shanghai.

The Law on the Protection of Minors (1991) looks at various aspects of protection, including judicial protection (Chapter 5), and how children who come into conflict with the law should be treated. As a form of correction, education is emphasised before punishment, as are "persuasion and redemption". Other treatment methods mentioned are disciplining by parents, the setting up of "special organs or designate special persons to handle cases", suspended sentences and fixed terms of imprisonment separate from adults.

The Central Youth League and the Beijing Municipal Youth League are currently making proposals for amendments to the Law on the Protection of Minors.

The police and prosecution departments already make use of diversion in practice when deciding respectively not to send a child either to the prosecutor or the court. Both agencies primarily use a system of cautions, re-education back in the child's community and occasionally pre-court mediation. Prosecutors divert many children in conflict with the law (CICL) who are referred to them. There is currently no statutory social service provision that serves CICL in China.

The development of the model

The community-based and multi-departmental Youth Justice Diversion Pilot Project was launched in 2002 in Panlong District of Kunming, the provincial capital of Yunnan Province in south China, by the People's Government of Panlong District and Save the Children UK. The overarching aim of the project, which was revised in 2004, is: "To improve justice for children in China and to ensure the implementation of the Convention on the Rights of the Child especially article 40 – dealing with the administration of justice."

Panlong is one of four districts in Kunming. In 2004 its residential population was 450,000, with about 100,000 floating migrant population. Since then its area of jurisdiction has been increased 20 times to cover rural areas as well. In the six-month period from October 2004 to March 2005, a total of 196 young people (aged from 14 to 18) were arrested in the Panlong district on suspicion of being in violation of the law or of committing a crime.¹²⁹ Of this number, 88 were released without further action being taken, including those who were diverted at the police stage.

The Appropriate Adult scheme in the Panlong district youth justice pilot project is based upon practice in the UK, which stakeholders in the project learnt about while on a study tour there. In the UK, the 1984 Police and Criminal Evidence Act states that whenever a child or young person under the age of 18 years is interviewed by the police, an 'appropriate adult' should be present. This would normally be the parent or guardian of the child. If for any reason the child's parent or guardian is unable or unwilling to attend the police station, the police must ensure that another appropriate adult attends the interview. This person can be a social worker of a local authority social services department, or failing that "some other responsible adult aged 18 or over who is not a police officer or employed by the police".¹³⁰

The partners in the Panlong district youth justice project, Save the Children UK and the Panlong District Government, decided to build upon this

example of good practice, but to adapt and expand the role of the appropriate adult to fit the Chinese context. In China, parents or relatives are rarely called to attend any interviews carried out by the police with children suspected of having committed an offence and often would be unable to attend. At the same time, the lack of social workers or lawyers means that children would generally be interviewed without the presence of another adult party that could ensure that the child's best interest was taken into account.

The project also aims to strengthen and encourage the use of diversion at every stage of the judicial process, namely at the police, prosecutor and court stage. Experience in Panlong has shown that diversion at the police stage tends to be most effective, particularly in preventing a child from being held in a custodial setting and appearing in court.

The Committee for the Protection of Minors, Panlong District, issued an Official Paper (No.1, 2005) which confirmed the use of Appropriate Adults and circulated an appendix manual setting out how the Appropriate Adult scheme should operate.

Under the functions of an Appropriate Adult it stated:

"The Appropriate Adult Scheme refers to a mechanism upon which a group of full-time appropriate adults are engaged to work through an inter-departmental channel to effectively protect a young offender's legal rights and proactively help him or her to be dealt with through alternatives to custody and reintegrate him or her back into the community, as well as cooperate with families, schools and communities to educate, move and save children once in conflict with the law.

The Scheme encompasses three functions as follows:

1. To protect young offenders' legal rights.
2. To engage in judicial diversion for helping young offenders be dealt with through alternatives to custody.
3. To co-operate with relevant authorities to supervise, help and re-educate diverted children through a community-based corrective system."

Appropriate Adults are employed by the Panlong Committee for the Protection of Minors. They must have certain qualifications, namely be over 20 years, a junior college graduate, healthy, keen on work with children and with experience of doing so. Those with social work, teacher, psychology and law training are encouraged to apply but not those working full-time with judicial bodies or police. They work with both children in conflict with the law and children subject to administrative penalties who are below the age of criminal responsibility.

Specifically this amounts to:

- being called to the police station when the police want to interview a child, recording that interview and stopping any misconduct by the police that impairs the legal rights of CICL
- keeping the child informed about his or her litigation rights
- learning about causes of the offence and the child's family background from the child, as well as the views of parties concerned, including the victim, and writing a comprehensive report for advising the relevant authorities on how to treat the young offender
- seeking legal aid service for children who cannot be diverted from the formal criminal justice system
- helping with the child's re-education in co-operation with the police, community and school when the young offender is diverted
- helping with guardianship for the child and keeping a record of his or her behaviour on bail or during probation for the relevant authorities' reference
- respecting and protecting the privacy of children concerned
- meeting weekly to discuss their work and providing a report of what they have done
- being supervised and managed by the Office under the Committee of Protection for Minors, Panlong District.

Before the recruitment of the full-time paid Appropriate Adults, a number of workshops were held for all those interested to give potential applicants

more information about the youth justice project, the role of the Appropriate Adult, and to share experience from an international perspective. About 30 people attended each workshop, including officers from the Street Affairs Committees who do much of the social work in the community.

Following the workshop, formal selection procedures took place, and government partners and Save the Children staff members interviewed candidates. Eight people were appointed to join the two existing full-time Appropriate Adults. The new members of staff started work in early May 2005. An induction programme was arranged, which included visits to the local community and time spent with the Education Department and the Judicial Bureau, which now holds responsibility for children diverted from the justice system at the prosecutor and court stages. The newly appointed Appropriate Adults visited a number of the local police stations within the Panlong district, accompanied by members of the project team.

The work of the Appropriate Adults has been assisted by the establishment of a Community Children's Centre, which will provide a place for Appropriate Adults and others to meet children and for activities, group work and counselling to take place involving CICL. The centre was set up in July 2004 and is open after school on weekdays, at the weekends and during holidays.

Impact of the model

On children

- Until May 2005 there were only two Appropriate Adults; now there are ten. During the six months up to March 2005, of the 84 children arrested for breaching the criminal code, 23 cases had been attended to by Appropriate Adults.
- Of these 23 cases, 8 children were diverted. The cases of three diverted children built up the confidence of the government towards the scheme and received a good press. The details of one of these cases are given overleaf.

How will juvenile offenders return to society?

'Diversion': A New Rehabilitation Mode

Qian Canming, Journalist of *Spring City Evening Paper*,
Kunming 8 September 2004

Sixteen-year-old Liu Ming (alias) is a senior grade two student from a vocational school in Kunming. This semester, he amazed the entire class with his mid-term exam results: a student at the bottom became the top one! Yet he was just expelled from school in March this year for incorrigible fighting, truancy, and disrupting the order of school. In April this year, in order to get money for computer games, he and another two of his companions robbed a cyclist of his mobile phone, bicycle and cash, which valued more than 2,000 yuan in total.

The police caught one of them on the spot. Accompanied by his father, Liu Ming surrendered himself to the police on the next day. His confessions helped the police arrest the third suspect. In view of the fact that it was the first time he committed an offence, the project office (the Donghua Community Children's Centre) suggested to the Public Security Bureau and procurator that Liu Ming should be 'diverted'.

Commenting on the changes on Liu Ming, Mr Wang, Director of the Department of Moral Education of the school, described the changes as unimaginable: it was unimaginable that an offender who'd been expelled from school could come back to school, that he's changed so radically since he returned to school, that he's made such rapid progress, and that he's set an example for his fellow students.

* * *

An extract on the same case reported on 29 June 2004

Community-based Rehabilitation Enables Law-breaking Student to Start Life Anew

Peng Tingting, of *Wen Wei Po*, a Hong Kong & mainland China paper

Not long after he was expelled from school, 16-year-old Liu Ming was arrested for robbery on Valentine's Day of 2004. He beat and robbed his victim during the nationwide campaign to punish robbery and forcible seizure of money or property. Had it not been for the Youth Justice Pilot Project Office, he would have been living behind bars.

Save the Children UK and the government departments of Panlong district set up the Youth Justice Pilot Project Office in order to divert juvenile offenders from the judicial system. Liu Ming was detained for one month but did not end up in prison because of the efforts made by the project staff, local police, and the school authorities. They discussed the whole situation, released him on parole, and let him return to school where he was to be helped and supervised, giving him the opportunity to start life anew.

Before Liu Ming was put to trial, the project office and the Public Security Bureau held a meeting in a family-like atmosphere that gained Liu Ming the sympathy of the victim's families. A compensation agreement was reached as a result. In the end, Liu Ming was sentenced to one-year imprisonment with a one-year suspension of sentence.

On institutions

- In March 2004, the Political and Law Committee of Panlong district officially approved the Appropriate Adult scheme. In June 2004, the Police Sub-Bureau issued a document endorsing the Appropriate Adult scheme and requiring its implementation in every police station in Panlong district. In September 2004, the Judicial Bureau agreed to accept responsibility for diversion cases at the prosecutor and court stages.
- In 2005, the project's Leading Group issued a diversion protocol, and the Minors' Protection Committee issued a working manual for Appropriate Adults. These important developments mean that diversion practice is now formalised within the justice system, and they have made an important contribution to the sustainability of the model. The diversion protocol focuses on bail and states that "non-custodial measures of bail... should be given top priority when dealing with young offenders' cases". It also states that although bail may start with low-risk cases, with experience it may move on to those of medium and high risk.

Lessons learned and challenges

An enormous amount of networking, training and advocacy has gone on in order to persuade government bodies to support the Appropriate Adult scheme. The work on this pilot, launched in 2002, emphasises the importance of a long-term approach to develop confidence, skills and the political will to try what may be deemed a more risky approach than the usual punitive response to youth offending.

Earlier in the project, the Appropriate Adult was seen as being a rather neutral person in relation to the child but now he/she is seen more as a befriender and mentor.

The development of the scheme illustrates the importance of well thought-out study tours to view other countries' experiences of tackling problems, while at the same time allowing for the adaptation

of good practices in the local context to ensure that they are appropriate and relevant to the situation. This 'grafting' process that enables the development of local solutions requires more time but is crucial to its eventual legitimacy and efficiency.

There has been good use of the media in support of what the youth justice diversion project is doing, such that the project has received a good press and that there is better public understanding and awareness of its aims.

The project shows the advantage of responding to concern over juvenile offending and showing how it can be addressed to assist CICL in a way that is not only beneficial to the individual but also cost-effective in the longer term, as opposed to the use of incarceration.

Over the next year, it will be necessary to develop data to demonstrate the cost-effectiveness of the Appropriate Adult scheme so as to ensure that the cost of the system, including the salaries of the full-time staff, is fully integrated into government budgets to ensure longer-term sustainability.

By making these Appropriate Adult posts full-time and paid there is plenty of competition for them, which should guarantee a high quality of person.

Appropriate Adults are an example of the type of statutory social service personnel China needs to employ to ensure that community-based rehabilitation in the best interests of CICL is promoted.

Key elements of this good practice

- The **Appropriate Adult** looks after the **best interests** of the child in conflict with the law at certain **strategic points in the justice process**, ie, at the initial interview with the police, in their report to the court and on return to the community on diversion or after release from custody with reintegration and support.

- The success in obtaining the **multi-departmental backing** of senior district government bodies and the police, and the Judicial Bureau's public endorsement of the use of Appropriate Adults in all the district police stations.
- The development of a **comprehensive Memorandum of Understanding** with the People's Government of Panlong District.
- The **training and careful process** by which Appropriate Adults were selected.
- **The close work and recruitment of members of the Street Affairs offices.**
- The project has fed its objectives, methods and learning into the **national review of justice legislation** for juveniles.
- The production of a **manual for the Appropriate Adults scheme** by the Committee for Protection of Minors.
- The careful **adaptation and piloting of another country's model** has enabled the development of a local solution that is relevant to its context and supported by all the relevant stakeholders.

Notes

¹²⁷ Information from a survey conducted by the Yunnan University Law School, 2003

¹²⁸ *Spring City Evening Paper*, Kunming, 10 July 2004

¹²⁹ The legal framework in China distinguishes between violation of the law in relation to public security, which means breaking administrative regulations, and breaching the criminal code, which is more serious

¹³⁰ 1984 PACE Code C 1.7 (a) (iii) UK

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7 Uganda

The Fit Persons scheme: the involvement of volunteers to support alternatives to incarceration

Summary

The Fit Persons model in Uganda represents an important model of community support for children who have either been diverted, given a community sentence or reintegrated into their families and communities. In a context where social services and probation services are simply not reaching the overwhelming majority of cases, the Fit Persons are trained and respected individuals who will support and follow the child in their reintegration process, including within their families and schools. In cases where families are unable or unwilling to be a guarantor for the child, the Fit Person is able to step in and even provide temporary foster care while searching for longer-term care options with the family. The model is important in that it recognises both that diversion and community-based alternatives are rarely provided to children who are facing care issues, and that addressing care and protection issues is integral to finding solutions for children who have come into conflict with the law.

Background

Uganda ratified the UN Convention on the Rights of the Child in 1990. The need for comprehensive child protection legislation, including children in conflict with the law, was addressed in the Uganda Children Act, which was brought into force in 1997. It set the age of criminal responsibility at 12 years. The act affirms that the guiding principles in making any decision about its implementation should be the rights of the child and the child's welfare.

A major thrust of the act is that children in conflict with the law (CICL) whose offences are not very serious should be dealt with and assisted within their

communities rather than being taken to the courts at the district or sub-county level. These courts are usually remote from where the child lives and more distant from the context the child understands, lead to greater stigmatisation, ignore the opportunities for more informal resolution such as mediation, increase expense, usually lead to some form of detention or incarceration and make reintegration difficult.

The act puts in place a number of checks to limit harm coming to CICL on the grounds that they are children and need to be protected and recognises that they are often pushed towards offending by economic and social factors. Some of these checks are through prevention, as with the role of the Secretary for Children's Affairs, whose task is to look after the welfare of children in the village. Others are through diversion, as with the powers of the police to caution and exercise discretion, the local council courts – especially at village level – to mediate and give community orders, the use of Fit Persons and the restrictions on children being held in detention.

Most offending by children in Uganda is not of a serious criminal nature, although it is sometimes made so by inappropriate legislation. Most offences by children could be resolved by the local council courts and in this way avoid many of the shortcomings in the administration of justice at the district level.

In a study of 1,179 offences in 2000, theft was the most common offence (35 per cent), with defilement the second most common (30 per cent). In a smaller study of 518 offences of CICL recorded by the police in 2004, defilement was 38 per cent of the total and theft/stealing was 34 per cent. Drug-related offences may be the third most common offence. Defilement is when a male unlawfully has sexual intercourse with a girl under 18, for which the penalty is death (Penal

Code 123), though not for children. The offence also applies to boys under 18 having sexual intercourse with girls under 18. Most of the above CICL defilement cases appear to be between children of similar age whose relationship is of a consensual nature. These cases have to be heard in the High Court. Once the plea is taken, the boy is detained and remains incarcerated for one or two years (as there is a backlog for High Court hearings) and then the case frequently collapses as witnesses do not appear. It is well known that there is frequently a financial motive in parents of girls bringing defilement charges.

In eight districts where police records were recently studied, between three and five per cent of all cases concerned children (aged 12 to 18). About nine per cent of these CICL were girls. Adult prisons are still being used to detain children pre-trial, which is illegal. Seventy-seven such children were recently found detained in seven adult prisons.

Local council courts, which come under the Ministry of Local Government and not under the judiciary, are the courts of first instance responsible for dealing with a range of minor offences by children. Fit Persons are trained community members who can assist courts both at village and district level by guiding and supporting CICL who face problems in their reintegration at home, with peers, school or elsewhere in the community.

The development of the Juvenile Justice Programme

In 2000, in response to the findings of a baseline survey in ten districts of Uganda in 1997, comments from the UN Committee on the Rights of the Child to Uganda's report of the same year and a situational analysis of the Juvenile Justice System, Save the Children UK with the Ministry of Gender, Labour and Social Development and the Legal Aid Centre initiated a Juvenile Justice Programme (JJP). The programme covered the three districts of Gulu, Hoima and Masaka and a major part of Kampala, and its

overall goal was to facilitate the implementation of juvenile justice reforms enshrined in the Children Act and in particular to assist pilot districts in identifying, developing and strengthening services and structures essential for this implementation. The Fit Person model quickly became a major pragmatic tool for assisting children at the local level where social service personnel are few.

The Fit Persons model

The Children Act refers to the Fit Persons in Article 91 (9): "Whenever possible, the court (Family and Children's Court) shall consider alternatives to remand such as close supervision or placement with a fit person determined by the court on the recommendation of a probation and social welfare officer."

In Kampala and Gulu, Fit Persons are sworn in by the Chief Magistrate and given ID cards and appointment letters. Being sworn in and taking an oath of allegiance is important, as Fit Persons can: act as surety for a child both at the court level and with the police; be entrusted with a child by the court when there are no appropriate carers available for the child and where otherwise the court might wish to send the child to a remand home; escort a child from the police station to his/her carers; and undertake counselling/mediation between the child and his/her carers and the community.

Fit Persons are identified by and recommended from various sources such as the local councils, District Probation Officer, Community Development Officer or a community-based organisation (CBO). All Fit Persons receive training – this varies from three days in one district to a five-day residential course in Kampala, plus a 'training of trainers' session for a select group so as to carry out cascade training. The clearest picture of the training and appointment of Fit Persons comes from Kampala. There, 225 were trained in 2003. Three people were chosen from each parish and these usually consisted of the Secretary for Children's Affairs and two other community members. Many were already trained

The roles and responsibilities of the Fit Persons include the following:

1. "Take custody of children in need of care and protection and those charged with offences who may need such a service on the request of local councils, probation officer, police, court or any other rightful authority.
2. Stand surety for children charged with offences at police and court in order for them to be granted bond/bail.
3. Care for and support children placed with them including socialisation or re-socialisation of such children through guidance and counselling.
4. Assist in tracing for parents, relatives of abandoned children and those charged with offences for the purpose of resettling and uniting those children with their kin.
5. Support children charged with offences released on bond/bail and their parents/guardians through guidance and counselling so that they report back to police or court as required.
6. Intervene in cases of child abuse and work closely with parents, members of the community and local councils in their areas to promote the rights and welfare of children.
7. Monitor the situation of children in families and provide guidance and counselling to parents/guardians on proper care and protection of children.
8. Co-operate and liaise with other agencies like local councils, probation office, police, court, etc, in working for the promotion of the rights and welfare of children in their localities.
9. Record all cases of children handled and make reports to community-based services officers at sub-county level."

(From Roles and Responsibilities in Care and Protection of Children, Save the Children UK)

mediators. Fit Persons and mediators are volunteers although they do receive some travel money.

In practice, Fit Persons are involved in cases of children facing care and protection issues as much as in cases of children coming into conflict with the law.

In Gulu and Masaka districts, Fit Persons have been involved in most CICL cases brought at the local council court level. In certain police stations, eg, Katwe in Kampala, they also have taken on a major role in checking whether children are being detained and in locating their parents. They have

also provided temporary foster care for children who cannot immediately return home. Their main role, however, has been in offering guidance and support, and mediating between a child and his/her parents and with the school.

In many cases, the family of the child may not be willing or in a position to be guarantor for the child either because of family conflict, shame and fear of retaliation by the community or because the offence took place within the family. In other cases, the child may be separated, abandoned or have no family. It is in those cases that the Fit Person takes on the broader

role of carer and even foster parent for a period or acts as a mediator to support the child's reintegration within the family.

The profile of most Fit Persons is that they are mainly individuals in their fifties and sixties. The major driving force for them to do this work is often a strong religious commitment. Usually they are not particularly wealthy people but committed people in their communities who can at least afford the basics. If they are married and are willing to give temporary foster care, there must be agreement between the spouses to look after a child and the household should have sufficient shelter, food and bedding for an additional child. Investigations as to a prospective Fit Person's suitability to provide care and protection for children is carried out before any appointment.

The Fit Persons are supporting children who have committed a range of offences, including more serious ones. In Gulu, for example, Fit Persons associated with a community-based organisation called WALAA were involved in 96 cases, and over two-thirds of these cases were equally made up of theft and assaults. Fit Persons operating with the support of another CBO, LAPEWA, were supporting children who were accused of more serious offences, including 50 defilement cases, 10 murder and 15 rape, as well 50 for theft.

Impact of the model

On children

- Many local council courts refer CICL to Fit Persons and mediators to try and resolve problems between the offender and victim before they come to the court. In Masaka district, local council members said that 95 per cent of cases are solved in this way and this seems also to be the case in Gulu and Hoima.
- CBOs, like WALAA in Gulu, were involved with 96 children in conflict with the law from 2003–04, while LAPEWA was involved with 189 in 2004.
- The reoffending rates of CICL supported by Fit Persons is low. Of the 42 CICL supported by

Fit Persons in Hoima, only one had reoffended; of 54 supported by Fit Persons in Kampala, 11 had reoffended; while of the many assisted in Gulu there was no record of any of them having committed further offences.

- Fit Persons were also active at some police stations. At Katwe police station in Kampala, Fit Persons made 82 visits to the station in 2004 to check whether children were being detained; that is 1.6 visits per week and 17 children were assisted, usually in the tracing of their parents/guardians.

On institutions

- The police and the courts are more disposed to caution and release a CICL on bail or to mediation or support in the community if they know there is someone trained who is there to assist these children.
- Fit Persons are most active in a context where they are supported or are operating under the auspices of CBOs.
- There is quite a range in the number of children a Fit Person is responsible for. In Kampala, the eight Fit Persons interviewed were supporting an average of seven CICL each, while the three Fit Persons in Hoima had 12 cases of children each and one Fit Person in Gulu was responsible for 52 CICL.

Lessons learned and challenges

If diversion is to address a child's outstanding problems and include rehabilitation, prevention and reintegration, a person committed to giving the time, support and guidance is required. This is particularly crucial where the child's family is unable or unwilling to play this role. The Fit Persons fulfil this role, including at times acting as temporary foster parents, at minimal expense. However, a level of funding is required for training and upgrading, transport and meetings at a minimum. The issue of funding remains one of the biggest challenges to the model. Funding needs to be secured from the central and

local government and whenever possible with the help of NGOs and the private sector, to ensure sustainability.

Fit Persons see their role also as raising awareness among the community about their work, the rights of children and the law. They feel their work is appreciated by most community members as they fulfil an important community role.

The Fit Person model should be scaled up at the national level and national policies and standards should be drawn up. A national system of accreditation for all Fit Persons should be put in place on the lines of that used in Kampala and Gulu. A national policy statement on 'The Roles and Responsibilities of Fit Persons' should be agreed between the relevant ministries (Local Government and Social Development).

A nationally accepted management system needs to be in place to supervise and collate data received from Fit Persons and the Department of Community Services under the Ministry of Gender, Labour and Social Development, which should formally accept its overseeing of the work of Fit Persons through their staff, eg, the community development officers.

CBOs have shown themselves to be effective bodies for the recruitment of Fit Persons and for maintaining their motivation. These CBOs are mainly women's groups but individuals from both sexes and from all backgrounds and status should be encouraged and supported to become Fit Persons.

One challenge has been the misunderstanding among some Fit Persons of the concept of voluntarism, especially in Kampala and other large towns. Despite being told repeatedly that they were volunteering and their signing a form to this effect, it has been hard for some Fit Persons to accept, and co-ordinators have had numerous requests for payment.

Key elements of this good practice

- The Fit Persons provide a **crucial alternative to the use of detention**, particularly in cases where the family is unable or unwilling to stand as guarantor for the child. It is children in those cases who are particularly at risk of detention on remand or post-sentence. Fit Persons also play an important role in supporting successful reintegration and preventing reoffending.
- **Fit Persons network closely with the families, CBOs, schools and local councils, as well as with community development officers and probation officers.** They are an important focal point for working with children at risk of offending and as co-ordinators of a range of community services that can support children in conflict with the law.
- The fact that **Fit Persons are local people** is crucial. They are local to the area where the child lives, probably already know something of the child's own circumstances and so are realistic as to how to help and how best the community can assist.
- As **respected members of the community**, if they seek the support of others for the child their request is likely to be responded to.
- The work of Fit Persons and mediators and the CBOs who promote and foster their work is **increasingly recognised and appreciated** by the local population and sub-county and district administrations. In Gulu, the district authority is already extending financial support to CBOs in recognition of this and other work they are doing.

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8 Bosnia and Herzegovina

Diversion through the courts: community-level supervision at the Chuka Rehabilitative Centre

Summary

The Chuka Rehabilitative Centre in Banja Luka, Bosnia and Herzegovina, supports juvenile judges in making community-based rather than custodial orders. The centre operates as a place where children who have been given intensive supervision orders under parents or under social services are supported through a range of activities, including educational and vocational opportunities, support for parent–child communication and parenting skills. The children participate in the overall running of the centre, including the appointment of the volunteers and staff. Chuka also provides a focal point for the Juvenile Justice Unit of the Centre for Social Work to ensure better case management and follow-up in the reintegration process, as well as enabling it to co-ordinate its work better with other support services available at the community level.

Background

One result of the violent civil war (1992–95) in the former Yugoslavia, with its death toll in Bosnia and Herzegovina of about 250,000, is reported to have been the growth of violent behaviour among young people. This was noted with concern by the Ministry of Social Welfare, together with their lack of services to cope with this trend. Unfortunately there is no national data available to back up this statement. Poverty and high levels of unemployment after the conflict further exacerbated problems in families and reduced the opportunities for young people to obtain work. In 1997, Save the Children UK noted that “in Banja Luka juvenile crime is on the increase and one-third of all crime is committed by 14–18-year-olds. The current system for dealing with this problem is through the court and the Centres for Social Welfare with inadequate capacity and little provision for

diversion”. Although the Criminal Law and Criminal Procedure Law of the Federation of Bosnia and Herzegovina (BiH) (2003) allows for diversionary measures both before court and through community sentences, it is not implemented in practice.

In BiH the age of criminal responsibility is 14 years. Children aged between 16 and 18 who commit serious crimes can be sent to one of the two adult prisons in the country housing juveniles; those aged 14–15 years cannot be sent to those prisons even if they commit such offences, but only to a correctional home. The police do not practise diversion but after arrest hand the case to the prosecutor who decides whether to initiate court proceedings or not. Apart from incarceration, judges can issue a reprimand or place a child under the intensified supervision of their parents or the Centre for Social Work. However, there was until 1998 no rehabilitative centre available to assist parents or social workers and as a result judges were reluctant to use community supervision.

Development of the diversion project

Banja Luka, the main city in Republika Srpska, one of the two entities making up Bosnia and Herzegovina, has a population of 250,000 and had 98 children (14–17 years) who committed offences in 2004. Of these, 26 were reoffenders and 72 per cent were in school. In addition there were 12 children under 14 years but they were not criminally liable.

Save the Children had placed an adviser with the Ministry of Social Welfare in both entities in BiH; the ministry in Banja Luka raised the issue of how it could better cope with child offending. In 1998, the Centre for Social Work (CSW) in Banja Luka (which

comes under the Ministry of Social Welfare) and Save the Children UK, recognising the lack of resources and capacities to respond to the growing issue of children in conflict with the law, decided to set up a pilot project as part of a broader national programme on children's justice.

The pilot would focus on the development of a non-custodial centre for boys in conflict with the law as an innovative model demonstrating a children's rights-based justice system and services for children, to be integrated into state-supported services in Banja Luka by mid-2005. The provision of direct services through the non-residential centre was complemented by training of the serving police and police cadets throughout BiH, prevention and education programmes on juvenile crime and advocacy for policy reform in the juvenile justice and child protection services.

Chuka

Chuka is a non-residential centre for boys primarily aged between 14 and 18, who are in conflict with the law. It was given its name in 1998 by the children attending the centre; in slang it has a number of meanings, including 'heart' and 'streetwise'; Chuka has become accepted as its official title. It focuses on prevention, diversion and reintegration.

The Juvenile Justice Unit of Banja Luka CSW has its office in the Chuka premises and its two social work staff oversee the Chuka programme and its current eight volunteers, who do most of the day-to-day interaction with the children. These volunteers are third and fourth year university students studying psychology and social work. They work in pairs with two groups of children. Two pairs lead on the therapy group work discussing issues raised by the boys or themselves, or doing special workshops such as assertiveness training. The other two volunteer pairs offer tuition support in education to enable children to finish school, and are in contact with the school teacher, co-ordinating the school requirements with the actual tuition work with

children in Chuka, which is a major aspect of Chuka's programme. For those who do not opt for a return to schooling, efforts are made to find them vocational training. All the volunteer pairs run 'free-time activities' including regular sport activities, indoor games, outside visits and links with outside clubs and NGOs, which children attend for football, computer lessons, English, etc.

A boy has to agree to attend Chuka and the staff have to agree to take him. Not all boys are seen as suitable, eg, if they committed a serious offence, need a lot of individual supervision or would be disruptive. Boys attend Chuka for a variety of reasons:

- usually as a voluntary contractual part of a court measure of intensified supervision after a criminal conviction
- for assessment during preparation of a case pending a court appearance
- as part of social welfare supervision for boys under 14 who have committed an offence but are not criminally liable
- as a 'drop-in' for children who have previously attended as part of a measure
- for children who are deemed by social workers to be seriously at risk of offending.

For children aged 14–17 and in conflict with the law, their cases are referred to the CSW after the prosecutor has passed the case to the judge, who will decide whether or not to proceed with the case. If the case is to come to court, the judge invites the CSW to prepare a social case history and to make recommendations. The police have no official role in that process and have no power to refer or divert children from it. If the CSW social worker thinks the boy would benefit from participating in Chuka and the child wishes to attend, the social worker will inform the judge. If an intensified supervision order is made with a verbal recommendation from the judge that the child attends Chuka, then the child and his parents have to be willing to sign a contract with Chuka, which states their rights and responsibilities.

Chuka is open four days a week for boys, with a separate day for staff discussion and meetings with

parents – the latter are seen as of great importance. If a judge learns from the CSW that a child offender has attended Chuka prior to the hearing and has done well, then the judge is more likely to make a community order and support the offender's continuing at Chuka. The juvenile judge and prosecutors in the Banja Luka Court are well informed about Chuka and promote the attendance there of juvenile offenders under intensified supervision orders by parents or the CSW.

In 2005, the CSW will take over sole responsibility for Chuka, which is in line with the aim of strengthening state services for children in conflict with the law.

Impact of the model

On children

Since 1998, 20–30 children per year have been engaged in Chuka activities. In the main the users are boys who have offended and are unemployed, having problems in school (skipping classes, negative marks, behaviour problems), neglected and have been previously failed by social services. Many are petty but repeat offenders. Others are children awaiting court proceedings. Children are able to talk about crime and family issues, re-engage with the education services and also work at improving their relations with their family. Between 2001 and 2003, 11 children on average have attended Chuka annually as part of an intensified supervision order.

“No one forces us to come, I grew up in the streets, Chuka stops me losing nerves with parents!”

(Chuka boy)

“Nowhere else to be, we freeze in the street or wait for a junky to beat us up.”

(Chuka boy)

The reoffending rate of those attending Chuka in 2002/3 was 7 out of 19 regular users. In 2003/4 none of the seven boys who attended Chuka for six months or more reoffended except one, who at the time had been withdrawn from Chuka by his

parents. Three boys who attended for less than six months reoffended.

Among the boys included in the Chuka project between April 2003 and September 2004:

- two who were at risk of being sent to prison were not sent because their good behaviour at the Chuka programme was reported to the judge before their trial
- six who finished their involvement in Chuka have not reoffended
- six who were supported in their school activities by Chuka finished their education (five completed secondary grades and one completed primary grade)
- five were included in a pilot programme *second chance for education*. All of them have finished their course at the school of catering.
- Many boys stay in touch with Chuka for four or five years.

“My boy said to me that who enters Chuka will stay there. After he finishes his programme he will always keep coming to share experiences.”

(a mother)

- Children participate in the overall running of the Chuka centre and staff appointments are discussed with them. They have been on interview panels for hiring volunteers and other staff.

On parents

- Parents are involved with the child in the making of the contract to attend Chuka. Some parents, usually mothers, are involved in the rehabilitation of their children during the court order. For example, ten parents of Chuka-users involved in educational activities participated in support groups aimed at improving parent-school and parent-child communication, parenting skills and parental exchange and support. There were a total of 16 sessions. Some children noticed a difference in the quality of their parents' support, which had previously been poor.

“My mother has more understanding and patience.”

(a Chuka boy)

On institutions

- The aim of the pilot has been to integrate a quality, rights-based way of working with children at risk and in conflict with the law into state systems and structures. The model appears to be broadly promoted by social workers, police and the judiciary.

“Chuka is a new model, a new approach that was unknown before. People from CSW quickly got engaged. It has improved practice through literature, models and books.”

(Director CSW)

“We know that a judge knows if we are in Chuka we want a problem to be resolved and it is good for us that they are all connected.”

(a Chuka member)

- The model of Chuka has been accepted by the Banja Luka Municipality and is part of a city plan for the Development of Social Welfare for 2005–08.

“We discuss Chuka at the Council – the pilot project is now part of daily practice. It is in the financial and narrative plan; part of the budget is allocated to Chuka. The approach of the CSW is now changed and budget lines have been accepted by managers.”

(Director CSW)

- Chuka is a practical example of what can be achieved through providing space and support to children in conflict with the law in the community, and has raised the understanding of diversion as a concept and how it can support the best interests of the child. Links made with local NGOs and youth clubs have complemented Chuka’s work with these children.
- The Juvenile Court has, as a result of young offenders’ success at Chuka, shortened sentences, made a community rather than a custodial sentence and referred children to Chuka to be involved in its educational activities as an alternative to a custodial sentence.

“Chuka is a half-way solution – a disciplinary sentence”, “Chuka is an implementable measure that the court could state.”

(judge responsible for juveniles in Banja Luka)

- Although the police do not currently practise diversion, since receiving training in children’s rights, youth offending, prevention and diversion they are interested in promoting these, particularly through their special units for children.

Lessons learned and challenges

Offenders seem to need at least 6–12 months to receive the maximum benefits from attendance.

Chuka gives children a secure place to stay when not in school, which offers a variety of activities away from pressure on the street, their peers, the police and home.

According to both CSW staff and the boys, having the volunteer third and fourth year university students from relevant disciplines to run the day-to-day events has been very positive because they are not much older and can relate to the CICL. They have built up a good rapport and children have shown a willingness to listen to their advice. It is no doubt easier to be effective when the numbers are small.

“It is good for us but also for the students. It is good for them because they learn, it is good for us because they show us something, they teach us how to behave, new knowledge, conversation, we enrich our vocabulary with them.”

(a Chuka member)

However, the high turnover of volunteers means that training is constantly required.

By being with the children all day, the volunteers are able to give them a relaxed form of supervision, which makes it easier for the children to bring their problems to them. The volunteers also get to know more about

each child's behaviour and what leads to problems, which can then be addressed at an appropriate time.

Although Chuka's programme is largely about assisting in the rehabilitation, reintegration and the reduction in further offending of offenders on supervision, the lack of a correctional centre in Banja Luka means that it has been taken up as an alternative to custody for 14–15-year-olds. There is a risk that if the correctional centre does become operational, this alternative to custody may be ignored.

The greatest challenge is being assured of government funding and the human resources to implement the range of Chuka's activities.

Key elements of this good practice

- Chuka gave CICL who wished to attend some **quality, long-term support in a 'safe place'** where they could reflect on their lifestyle, education and offending, and be assisted in making positive choices for their future.
- Attendance at Chuka is solely **based on the child's consent and commitment to be there** and the staff agreed that this was an important aspect of the process.
- The emphasis on **assisting children to return to full-time education** is very high and various strategies are in place to resolve the problems

children face as a result of state restrictions and children dropping out of school. These are much appreciated by the children and their parents.

- **Children have an important role in deciding** rules, issues for discussion and in the selection of volunteers and staff.
- **Chuka is managed by a government department**, not by an NGO, and so stands a greater chance of sustainability and possible replication.
- Chuka has been a springboard for demonstrating to criminal justice stakeholders a children's rights justice approach and the benefits of diversion. It provides a **community-based alternative** where there was none before and as such empowers the judiciary to be more child-focused and diversionary in their approach.

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Part III

Recommendations

Recommendations

Prevention

We believe it is vital to prevent children coming into conflict with the law in the first place by properly addressing the care and protection challenges they face.

We recommend that:

1. Prevention strategies supporting children within their families, communities and societies should be prioritised and developed, with the participation of children themselves.
2. Early intervention with a holistic, multi-sectoral and community-based approach, involving at the very minimum the education, health and protection sectors, must be undertaken to prevent children coming into conflict with the law.

Decriminalisation

We believe it is vital to decriminalise status offences and survival behaviour (such as truancy, running away from home, begging, loitering, vagrancy), victims of sexual abuse and exploitation, and anti-social behaviour.

We recommend that:

1. Survival behaviour such as begging and vagrancy and status offences such as truancy, running away from home and breaching curfews, for example, should be decriminalised. Children should simply not be criminalised for trying to survive, instead they should be supported.
2. The criminal system should never be used to deal with children who have care issues or are deprived of good parental care for whatever reason. In particular, detention facilities such as remand homes should never be used in such cases.
3. Children who have not committed a criminal offence but whose behaviour is deemed socially unacceptable should never be dealt with through the justice system.
4. Children who are victims of violence should never be criminalised (or deprived of their liberty), including children who are trafficked, children in commercial sexual exploitation, children who have been sexually abused, children fleeing forced marriages or who have married without the consent of their parents and eloped.

Diversion

We believe it is vital that diversion options are seen as the priority and are the first response to children coming into conflict with the law. They should be the rule instead of the exception. We believe the formal justice system should be reserved for serious and violent offenders only.

We recommend that:

1. Children who have committed petty offences, usually first offences and whose behaviour has been criminalised – who represent the overwhelming majority of children in conflict with the law – should be diverted away from the criminal justice system through community-based alternative diversion mechanisms.
2. The formal criminal justice system should only deal with the small minority of children who have committed very serious crimes, usually involving violence, and who represent a threat to themselves and/or their society.
3. Diversion must take place at every given opportunity, including informal diversion mechanisms at the community level and in the justice system. Key actors, including community leaders, members of local authorities as well as officers of the justice system (in particular the police, prosecutors, social workers and judges) should be trained to understand the importance of diversion, their role in it and the alternative mechanisms available.
4. Resources and priorities must be refocused away from an expensive, ineffective and often dangerous criminal justice system to developing a range of sustainable and localised community-based options focused on reintegration, guidance and support.

Justice system

We believe it is vital to establish comprehensive, child-centred, restorative juvenile justice systems that implement international standards and provide real alternatives to detention. We also believe it is vital to hold perpetrators of violence against children accountable through effective and transparent complaints, monitoring, investigation and redress mechanisms.

We recommend that:

1. A specialised child-centred justice system must be established with an overarching aim of social reintegration. This system should always guarantee the rights of children as required by Articles 37 and 40 of the UN Convention on the Rights of the Child and abide strictly by international standards in the administration of juvenile justice.
2. Detention should *always* be a measure of last resort and should be for the shortest appropriate period of time. Specific measures, including proper screening mechanisms, should be in place to ensure that. Detention represents the most dangerous and isolating period for a child coming into conflict with the law and it is often the place where he or she is exposed to the highest risk of violence. Regulating conditions of detention is a fundamental requirement for preventing violence, including ensuring the segregation of children away from adults, the separation of boys from girls and the convicted from those awaiting trial.

3. There should be a strong and independent system of oversight, monitoring and public scrutiny for the justice system and a policy of ‘no tolerance’ for those who violate the rights of children within it. The investigation and prosecution of perpetrators of violence and those who abuse the system, including officials responsible for condoning arbitrary and unlawful detention, should be a priority for governments.
4. All forms of torture and other cruel, inhuman or degrading treatment or punishment should be immediately abolished and perpetrators brought to justice. There should be an immediate repeal of all legislation, policies and practices allowing the use of capital punishment, life imprisonment without the possibility of release, excessive imprisonment, and physical/corporal punishment as a sentence or disciplinary measure within the justice and penal system.
5. There should be a co-ordinated response by all the key agencies in the justice system including police, social services, legal services, the prosecution, the judiciary, the probation services and the community-based organisations and services to ensure a continuum of care and protection for the child in conflict with the law.

Reintegration and rehabilitation

We believe it is vital that reintegration and rehabilitation in the community and society should be clearly stated as the overall aims of all interventions with children in conflict with the law.

We recommend that:

1. The most marginalised children are supported and encouraged to be part of, and play a positive and constructive role in, our societies and communities that will ensure that these children have a stake in abiding by our social rules.
2. Children are key in finding effective solutions to the problems and challenges they face. Children, including those who have already come into conflict with the law, must be involved in preventative strategies to minimise them coming into conflict with the law in the first place, as well as in the reform of the justice system and the development of community-based alternatives.
3. Children need the opportunity to be recognised not just as victims or as perpetrators, but as social actors and members of families, communities and societies. The aim and focus of interventions with children deemed ‘at risk’ should be to empower and support them to respond to these challenges and to make better choices for themselves and their communities.

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Jonatan's story, Honduras

Jonatan Josue Arita Isaula was born into a poor family in the city of San Pedro Sula, Honduras, in 1983. From a young age he knew what family tragedy meant. At the age of seven he lost his mother, and his father left home to live with another woman, leaving Jonatan and his five brothers and sisters totally alone. The children survived thanks to the charity and kindness of local people. Jonatan begged for food at neighbouring houses, as the children had no one to help them meet their basic needs.

The only source of happiness in Jonatan's life was his friends in the neighbourhood, particularly the leaders of the local gang called the Vatos Locos, a local grouping of one of the city's biggest gangs. The gang helped him find food and the affection he could never have at home. He decided to join at the age of 14 and received his 'baptism' and tattoo at the age of 15. From then on, he left his old home to live permanently with the gang, which lived in empty houses in the city. In the gang he learned to rob and he was very disciplined even for the most dangerous missions. He carried out all kinds of illegal activities: not to do so was severely punished by the gang, even with death. In time, Jonatan gained the respect of his companions through his natural goodness, his bravery and his solidarity with his friends. He came to hold a position of leadership and was eventually one of the principal leaders of the gang.

He was arrested on various occasions and being a minor was sent to the El Carmen Rehabilitation Centre, from which he escaped before turning 18, turning himself into a prisoner on the run. In those days Jonatan did not mind what kind of a life he lived because he always believed his destiny was death.

But at the age of 17, he met a young woman called Marina who would change his life. With her he established a family home and had three children. These events changed his way of thinking because he wanted his children never to suffer the way he had. He had promised that he would retire from the gang when he had his first child. When he was 20 he

fulfilled this promise. Without telling anyone, he left the city to escape the gang. The custom in gangs is for desertion to be punished with death. A year and a half later he returned to be with his children and for a time his old companions wanted to kill him for being a traitor, but Jonatan asked them for understanding. Because of the leadership role he had held, they finally accepted that he wanted to work for his family, as long as he did not enter any other gang. Around that time he was contacted by the non-governmental organisation 'Young Hondurans Together Advance' (JHA-JA).

After anti-gang legislation was introduced in Honduras in 2003, through the application of Article 332 of the Criminal Code, the police picked up any young man with a tattoo and they were put in jail for as long as 12 years. Jonatan fled the city before he could be arrested because of his tattoos. When he returned he found the gang in a different state. They had been convinced by JHA-JA to abandon their violent way of life and to seek positive reintegration into society. From then on, Jonatan joined them enthusiastically in their new life. He did not want his children to experience anything like his life with the gang, and sought to have his tattoos removed.

Jonatan inspired the group because of the profundity of the change he underwent and the discipline with which he focused himself on his training in the metallurgy workshop. He was very enthusiastic about setting up his own workshop one day. But his dream was not to be realised. On 2 April 2005, on his daily route home from work, he was assassinated in the Felipe Zelaya neighbourhood by a gang of youths who killed to order for one of the groups of organised crime operating locally. He was 22. Despite the fact that his friends gave the police clear descriptions of his assailants, no one was ever arrested and the police have now abandoned the case.

Jonatan's friends still mourn his death but his example continues to inspire and motivate them. In this, Jonatan continues to be a leader.