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**Pursued by the law:
The victimisation of children who offend**

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The vulnerabilities of children are manifold. When faced with rapid social and economic change, political upheaval, armed conflict and natural or man-made disasters, their vulnerabilities reach a peak. In these conditions, as development agencies know, children often become essential supporters of their family unit. Other children lose connection with their family and are faced with having to fend for themselves, commonly forming their own groups and networks. These social groups tend to be given the pejorative label 'gangs', although they provide important social/emotional support and personal safety. In either case, however, the children's survival, their response to family pressures, or their youthful needs and impulses may sometimes involve breaking the law under which they live.

Children's offences occupy the full range: stealing food or property, damage to property, squatting on public or private land, having under-age sex, not attending school, carrying weapons, assault, murder, using and/or trafficking drugs, illegal selling of goods, and prostitution. Sometimes the offence is just hanging about where they are not wanted, especially in public business areas and public facilities like railway stations. In Pakistan, children have been imprisoned for watching banned videos, for violating traffic laws while street trading, or for vagrancy (Radda Barnen 1994). In the Philippines, a 1997 situation analysis by UNICEF shows the commonest crimes to be theft (385 cases) and robbery (253), followed by murder (103) and drug-related offences (95).

Information on juvenile offences and sentencing in many developing countries is extremely difficult to obtain, and must be interpreted with caution. Statistics can fluctuate violently, indicating changes in collection methods, rather than real trends.

Many of the children who come into conflict with the law belong to the same struggling communities that development agencies try to help through a variety of poverty alleviation and economic development programmes. A strong link can be seen between juvenile delinquency and other severe problems in the Third World such as poverty, homelessness, labour exploitation and breakdown of social cohesion. The need for the development of humane juvenile justice systems is closely aligned with the need for programmes dealing with poverty, family support, education, exploitative child labour, child sexual exploitation and child soldiers.

This paper describes the pattern of children's rights violations which occur when children come in conflict with the law. Serious deficiencies can be seen throughout the whole juvenile justice system of many developing countries. Development agencies are urged to devote resources to the establishment of better systems for the legal and social defence of children.

Outdated punitive laws

Everywhere, children who are in conflict with the law are vulnerable to extreme violations of their rights. Children of post-colonial rule countries are especially vulnerable because of the excessively punitive laws that these countries have inherited. Many of these laws reflect outdated attitudes to youth crime and allow severe punishments to be handed out to children and young people. Many laws still treat children as young as seven as adults in relation to criminal responsibility and sentencing. Many laws discriminate against girls because they rely on puberty as the benchmark for maturity and girls generally reach puberty earlier than boys.

Capital punishment, life imprisonment and flogging are still handed down to children in countries such as Pakistan and Bangladesh. Records are simply not available to show how many children are actually executed, how many are serving life sentences, or how many receive degrading and injurious physical punishments. However, individual cases indicate a horrifying picture. In Nigeria recently, a group of 14–17 year olds were sentenced to death for robbery, but their sentence was later commuted to life imprisonment. In January 1997, in Cameroon, there were four children awaiting execution.¹

Even when laws do make provision for the separate treatment of juveniles, or give guarantees of legal representation or bail, these provisions are not well known, are ignored or simply not resourced.

Policing and police custody

Police round-ups of street children before major events such as the Olympics and Miss World Contests have earned worldwide notoriety. The same treatment meted out to children on a daily basis is regarded as normal. Children who are arrested and held in police custody are particularly vulnerable to mistreatment. In countries where police can act with impunity, reports of police violence against children, including rape and torture, are commonplace. Children may be held without charges being laid, without legal advice or advocacy for long periods, before appearing in court.²

A study conducted in 1992 in Lahore, Pakistan, reported that only 16 of 50 children interviewed had appeared before a court within the required 24 hours. Many had been detained by police for more than the maximum remand period of 15 days. Thirty-nine of these children reported having been subjected to harsh treatment or torture by the police (Radda Barnen 1995). In Bangladesh, two boys aged 13 and 14 being held on charges of possessing illegal arms were held in police

lock-up together with adults for five days and beaten until they admitted guilt (Radda Barnen 1995).

Even if the law requires that bail be offered, this is often ignored for children. A child who has no immediate family, or whose family is very poor, is unlikely to be able to obtain the money required for bail.

In many poor countries, the policing and justice system is severely under-resourced and inadequately trained. While this may mean that some child offenders are not apprehended, it also means that the system fails to apply the law to protect children and fails to protect children who come up against the law.

Prison conditions

It is normal for adult prisons in the cities of the developing world to be grossly overcrowded. Even if they have separate cells for children and teenagers, they too are overcrowded, poorly supervised and violent. Other children will be detained in crowded adult cells, where they are exposed to violence and sexual assault by adult prisoners and by prison staff.

Imprisoned children may have no access to education and health care, may lose contact with their family and community, even lose their identity, and have in many cases remained in prison for years after their formal sentence has been served.

Traditional punishments

In rural areas, where there is little policing or access to courts and legal services, traditional forms of punishment of children may cause physical injury and have a long term effect on the child's physical and emotional health.³ The most widespread traditional forms of punishment of children are of course beating, whipping, burning, stoning, rape, deliberate physical injury, being tied down or locked up and being subjected to degrading or humiliating treatment.

On the other hand, traditional approaches for giving guidance and direction to children can be a positive framework for avoiding the criminalisation of children's behaviour. Traditional punishments can also be used to keep children out of detention, as long as the methods do not themselves breach the child's right to be treated with human dignity and protected from cruel, inhuman and degrading punishment. Even if the child's offences are seen as outside the judicial system, it is essential to guarantee their rights.

Lack of specialised children's legal services

Without legal representation or advocacy, children in conflict with the law are in deep trouble. Where they receive no defence in court, they may be wrongfully convicted and have no opportunity to appeal. Since the courts frequently have no information about the child's circumstances, and either do not question the child or do not believe what the child says, the accused child is likely to receive a punitive prison sentence rather than referral to rehabilitation or support services. While

this is also true of poor and illiterate adults, children are particularly vulnerable to wrongful arrest because they are blamed or scapegoated by adults or older children.

The lack of specialised services also keeps the problems invisible and elusive. No special attention is paid specifically to children in relation to law reform or the development of alternative rehabilitative services. Most importantly, it makes prevention strategies impossible to design.

Priorities for action

Such contexts are explosive environments for children's rights violations. There is an urgent need not only for law reform and specialised children's courts and detention centres, but for training of police, magistrates, legal officers, prison personnel and youth workers, for the provision of independent children's social and legal defence centres, and for the establishment of rehabilitation and reintegration programmes for children who have been released.

There is also an urgent need for improved record-keeping, data collection and research into trends, causes and prevention. In every country, records must be developed to show how many children are serving sentences in adult jails, the length of sentences and why they are there. Records of each child's identity, family and community of origin must also be maintained.

It is also essential to sensitise community attitudes to juvenile offenders to reduce stigmatisation and punitive thinking, and increase understanding of the child's problems and need for social support and reintegration. Juvenile offending may simply be a necessity for survival, or it may be an expression of the need for attention, of hopelessness about the future or the struggle for opportunity. What offending children need most is to be supported and safe so they do not need to offend in order to survive, to be given appropriate educational and work opportunities and to be reintegrated with their family and community wherever possible. Social and economic development programmes which meet these needs of children are effective means of preventing children from coming into conflict with the law.

International standards in juvenile justice

Juvenile justice appears to be the last tragic field for the attention of development aid and human rights organisations. Unfortunately child offenders tend to be the subject of public fear and derision, rather than sympathy, and this detracts from the fund-raising potential of juvenile justice programmes. They are simply hard to sell to donors who have plenty of other options to give to the deserving, law-abiding poor, rather than to 'delinquent gangs' or 'feral kids'.

Nevertheless, considerable work has been done at the international level to develop fundamental guarantees and guidelines.⁴ Article 40 of the UN Convention on the Rights of the Child sets forth the following rights:

... every child alleged as, accused of, or recognised as having infringed the penal law (is) to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes account of the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The same article requires that children must be presumed innocent, be informed promptly of charges, not be compelled to give testimony or confess guilt and have access to legal assistance.

In addition to the Convention on the Rights of the Child, there are three major instruments which provide a framework of standards, rules and guidelines for the protection of children in conflict with the law:

UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985)

These rules deal with the provision of separate and specialised systems of juvenile justice. They are expressly referred to in the Preamble to the UN Convention on the Rights of the Child (1989) and stand alongside the UN Standard Minimum Rules for the Treatment of Prisoners (1955).

They require that:

- children should receive fair and humane treatment with the aim of promoting well-being and a proportionate reaction to the nature of the offender as well as the offence;
- detention should be a measure of last resort, for the most serious offences only and for the shortest possible time;
- children should be able to express themselves freely and to participate in proceedings against them;
- a social report should be available to the court;
- alternatives to detention should be considered first and various alternatives to detention are proposed;
- capital and corporal punishment should be abolished;
- while in detention children should receive care and education to assist their return to society and should be released at the earliest possible opportunity;
- the authorities should be able to exercise discretion in the best interests of the child at all stages and should be trained and accountable to do so; and
- research should be organised as a basis for effective planning, policy formation and reform.

UN Guidelines for the Protection of Juveniles deprived of their Liberty (1990)

These guidelines apply to all institutions which deprive persons under the age of 18 of their liberty. This includes institutions for health and welfare purposes as well as juvenile justice. The guidelines provide that:

- deprivation of liberty should be limited to exceptional cases, as a measure of last resort and for the minimum time;
- facilities should guarantee meaningful activities and programmes which promote the health, self respect and sense of responsibility of juveniles;
- small open facilities which are accessible to family and integrated in the community are encouraged;
- the children should be helped to understand their rights and the goals of their care, and should be assisted to return to society; and
- juvenile justice personnel should be trained in welfare and human rights.

UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, 1990)

These guidelines deal with almost every area of social life: family, school, community, media, social policy, legislation and the juvenile justice system. They emphasise the need for comprehensive prevention plans which are integrated with broad policies for all children and young people, and implemented at every level of government. They embed the notion of social defence against crime within the broader context of realising social potential and upgrading overall social well-being.

They require:

- formal agencies of social control should be utilised as a last resort;
- mass media should ensure that children have access to information and portray the positive contributions of young people to society;
- teaching of respect for basic values and human rights and fundamental freedoms as well as the social values and traditions of the child's own and different communities;
- specific laws and procedures to promote, protect and uphold children's rights, including an independent ombudsman or similar organ;
- particular attention and special assistance should be provided to children at risk such as homeless children, street children, student drop-outs and abused children;
- children should have an active role within society and be accepted as full and equal partners in socialisation processes; and
- children should be involved in the formulation and implementation of prevention programmes and be represented in policy formulation and decision making about discipline and other aspects of school life.

The application of international standards

Like all UN standards, the above rules and guidelines should be applied impartially, without distinction of race, colour, gender, political or religious belief, social group or other status.

They are 'soft law', that is they are recommendatory and non-binding. Nevertheless their connection with the Convention on the Rights of the Child means that they carry a real obligation that is more than a moral imperative.

It is relevant to note therefore that 191 out of 193 UN member states have become state parties to the Convention and are bound to report regularly to the UN Committee on the Rights of the Child about their progress in implementing international standards in juvenile justice. Only the USA and Somalia are still to ratify the Convention.

At its theme day on Juvenile Justice in November 1995 (DCI 1995:6-7), the Committee on the Rights of the Child expressed concern that many countries have not implemented these rules and guidelines. It also drew attention to the failure of many state reports to cover adequately the development of a juvenile justice system which treats children as human beings with legal rights. The Committee has pointed to the vast range of laws and practices which are incompatible with the Convention on the Rights of the Child. It has also commented on the low status given to children who live or work on the street, and how police officials discriminate against and abuse these children with impunity.

In response to the Committee's comments, some Third World countries have requested technical assistance to undertake law reform, training and programme proposals.

These concerns and challenges have, in turn, prompted Defence for Children International (DCI) to establish an International Network for Juvenile Justice (INJJ). The Network was launched in Dakar, Senegal, in January 1997 at an African seminar on Children in Conflict with the Law, in the presence of some 130 participants from 44 countries and international NGOs. The report of the seminar and collected papers will soon be available from DCI.

The INJJ facilitates the exchange of information, helps co-ordinate initiatives, prepares and delivers training programmes and provides technical assistance teams. It has grown rapidly to comprise over 60 individual experts, inter-governmental agencies and NGOs which work in the field.⁵ The initial focus of the network is on children who have been accused or convicted of an offence and on the prevention of juvenile delinquency.

An example of the network's work is the technical assistance recently provided to Rwanda (August 1997) to guarantee fair trials to children accused of genocide or crimes against humanity. Working closely with UNICEF, the DCI and INJJ mission advised on how to meet the useful and necessary conditions for guaranteeing fair trials and for enabling these trials to start as soon as possible. The mission also advised on law reform to establish a juvenile justice system in Rwanda which would meet international standards.

The international network is open to Australian NGOs and individual experts, but the Australian section of Defence for Children International (DCI-Australia) has also initiated an Australian network which will link domestic children's legal centres with the international network. This network will be principally concerned with domestic juvenile justice issues, where serious breaches of international standards can also be found: mandatory sentencing laws in Northern Territory and Western Australia, the failure to separate children and young people from adult offenders in police custody, tragically high rates of indigenous juvenile detention and many reports of police brutality to children (Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission 1997). The Australian network may also be able to offer technical assistance to juvenile justice projects in the Asia-Pacific region.⁶

Conclusion

Development work in this field has barely started. Relevant international standards and guidelines are available but remain poorly applied by many nations. Hundreds of thousands of children suffer daily as a result of outdated law, absence of children's legal advocacy services, lack of children's courts and detention centres, poorly trained and resourced policing and inadequate prevention and reintegration programmes. Overseas aid programmes must place these needs within their basket of priorities.

It is not, however, simply a matter of law reform and infrastructure. Most basic of all is the urgent need to change community attitudes towards children so that they can urgently receive the social support and reintegration they need in order to enjoy their fundamental human right to live out their childhood protected by the law rather than victimised by it.

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Endnotes

- 1 Reported at an African seminar on 'Children in Conflict with the Law – Challenges from the Children's Rights Perspective', DCI, Senegal, 1997.
- 2 Chapters on children in conflict with the law in the 1993, 1994, 1995 and 1996 editions of the *International Yearbook of Children's Rights* record many examples in many countries. The *Yearbook* is published annually by DCI.
- 3 Reported at African seminar, DCI, Senegal, 1997.
- 4 Copies of the DCI Kit of international standards concerning the rights of the child can be ordered from DCI-Australia, GPO Box 313, Canberra ACT 2601. Phone 02 6257 6422, fax 02 6257 6722, or e-mail dci-australia@netinfo.com.au
- 5 Participants in the network include the UN Crime Prevention and Criminal Justice Division and the UN High Commission for Human Rights, Penal Reform International, International Prison Watch, Terre des Hommes (Lausanne), International Catholic Child Bureau, International Association of Juvenile and Family Court Magistrates, Radda Barnen, SOS Torture, Human Rights Watch Children's Rights Project and Childwatch International.
- 6 Further information about the International and Australian Juvenile Justice Networks can be obtained from DCI-Australia, as above.

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- Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission 1997, *Seen and heard: Priority for children in the legal process*, Study No. ALRC84, Australian Law Reform Commission, Sydney.
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