



INTERNATIONAL BICE CONGRESS 25-26 JUNE 2013

Juvenile Justice: what socio-educational approach?

Summary of the final declaration

At its International Congress *Juvenile justice: what socio-educational approach?* held from 25 to 26 June 2013 in Paris, the International Catholic Child Bureau (BICE) conducted with public authorities representatives, international experts, practitioners working in the field, and ten partner organizations representatives of his "Childhood without Bars"¹ program, a comparative analysis of the traditional system of juvenile justice, oriented towards law enforcement and the administration of restorative justice² dealing with diversion, alternatives to deprivation of liberty and family, , social and professional reintegration measures. It was found that restorative justice offers more leverage to the rights of children and adolescents in conflict with the law³ and works in a fruitful way, so that the child alleged as, accused of, or recognized as having infringed Criminal law is not reduced to the offense he has committed, which could seriously jeopardize its constructive contribution to society⁴.

Several studies have demonstrated the ineffectiveness of the deprivation of liberty,

¹ Les organisations partenaires travaillent dans cinq pays d'Amérique latine (Pastoral do Menor au Brésil, les Tertiaires Capucins en Colombie et en Equateur, l'Instituto de Estudios Comparados en Ciencias Penales au Guatemala et Compromiso desde la Infancia y Adolescencia et l'Observatorio de Prisiones d'Arequipa au Pérou), et dans quatre pays d'Afrique (Dignité et Droits de l'Enfant en Côte d'Ivoire, Bureau National Catholique de l'Enfance au Mali, en République démocratique du Congo et au Togo).

² L'expression « justice réhabilitative » par rapport à la finalité de cette approche de justice juvénile ou de « justice restaurative » utilisée en référence au terme anglais « restorative ».

³ Par la suite, nous utiliserons le mot « enfant » conformément au sens de l'article 1 de la Convention relative aux droits de l'enfant : « un enfant s'entend de tout être humain âgé de moins de dix-huit ans, sauf si la majorité est atteinte plus tôt en vertu de la législation qui lui est applicable. » Le mot « adolescent » est donc inclus dans le mot « enfant ».

⁴ *Enfance Sans Barreaux*, BICE, Bruxelles, 2012.

especially for children in conflict with the law. There is also evidence that prison does not play in the majority of cases, its educational role and, even worse, it damages more than it fixes⁵. The deprivation of liberty promotes recidivism, reducing children's potential resilience and undermines their chances of socio-professional reintegration. Although deprivation of liberty is provided, under the Convention on the Rights of the Child, as a measure of last resort and for the shortest appropriate period of time, it should be a measure pertains to the exception and not the principle.

Based on the principle of the primacy of the child's best interests, BICE recommends setting up a system in line with this requirement, which revolves around the restorative approach to the administration of juvenile justice:

1. Given that "it is clearly not in the child's best interests to **grow up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities,**"⁶ **government policies, programs and strategies should focus on supporting the most vulnerable families,** schools' participation in the teaching of human rights and taking into account the need to provide **special care and special attention to at-risk youth**⁷. The registration of births, even if it is late, is an essential element in the prevention and enjoyment of their rights by children.

2. **Rights and procedural rules must be guaranteed and applied** to all children in conflict with the law at the time of his arrest, the investigation of the case, decision making, implementation of it, its monitoring and evaluation.

3. Juvenile justice administration requires a specific normative and institutional framework, tailored to the child's and facilitated by trained professionals, and with mechanisms for collection and sharing of data, follow-up, monitoring and of the evaluation system .

4. Diversion through a non-judicial settlement, mediation, conciliation, forgiveness or any other **extrajudicial methods** should be preferred, even when the prosecution / Parquet or juvenile judge has already applied to.

5. The **family**, family members or extended family and **community networks** play a **fundamental role in supporting, monitoring and evaluating the needs and behavior** of the child alleged as, accused of, or recognized as having infringed the law subject to criminal court settlement or a deprivation of liberty. They must be well recognized and incorporated as key players in the juvenile justice system.

6. **Children's social protection Institutions are essential to a system of restorative**

⁵ Doc. ONU, Office des Nations Unies contre la drogue et le crime (ONUDC), *Manuel sur les programmes de justice réparatrice, Série de manuels sur la réforme de la justice pénale*, New York, 2008, p. 86, § 7.3 ; Guide de bonnes pratiques pour la protection des mineurs en conflit avec la loi au Togo, BICE-TOGO, Lomé, 2010 ; *Juvenile Justice Worldwide*, Defence for Children International (DCI), Spring 2000, n°1 et Summer 1999, n°1.

⁶ Doc. ONU, CRC/C/GC/10, § 16.

⁷ Article 1 2 des Règles de Beijing : L'éducation des enfants et le suivi scolaire participent à la création de « conditions qui assurent à l'enfant et à l'adolescent une vie utile dans la communauté, propre à encourager chez lui pendant la période de sa vie où il est le plus exposé à un comportement déviant, un processus d'épanouissement personnel et d'éducation aussi éloigné que possible de tout contact avec la criminalité et la délinquance. Doc. ONU, CRC/C/GC/10, § 16.

justice. They must be mobilized upstream and downstream, in pre-judicial, judicial and post-judicial phases for the implementation of social and educational measures with a view to the child's family, social and professional reintegration.

7. **Legal and judicial assistance is essential** to the enjoyment of the **right to protection** of children in conflict with the law and, therefore, it must be institutionalized. The assignment of a lawyer or counsel must be systematic. For this purpose, a specific legal service can be instituted with the courts for children or sections and rooms entitled to know the children's affairs.

8. The juvenile court should focus on **non-custodial measures.** It uses the deprivation of liberty only as a measure of last resort and for the shortest possible duration⁸. Should it impose a custodial sentence, the decision must be made as a function of the seriousness of the offense and the circumstances of its commission as much as the child's personality and needs. Any custodial disposition must be imperatively accompanied by social and educational measures. Otherwise, it may be appealed by the institutions of social protection via the prosecution / prosecution.

Neither capital punishment nor life imprisonment without possibility of parole should be imposed or pronounced against a child alleged as, accused of, or recognized as having infringed the penal law.

- Each State shall establish a **minimum age** below which children shall be presumed not to have the capacity to infringe the penal law. It should not be set below 12 years. If it is below 12 years of age, it should be gradually raised. **Criminal liability** should be reduced and graduated between the minimum age adopted and the end of minority.

10. Techniques for **determining the physiological age** should not be prejudicial to the child's development and should consider the hazards, disparities and variability in the child's somatic development and the risks of interpretation and transposition of results from one individual to another. In all cases, **any doubt should benefit the child.**

11. The normative system must provide **two levels of jurisdiction** and facilitate appealing against a decision at first instance if the child and his representatives have decided to expedite appeal. Promoting conviction review or commutation of an imprisonment sentence to a non-custodial alternative sentence should be encouraged.

12. **The duration of preventive or provisional detention must necessarily be limited.** Any extension of time must be fully reasoned⁹. The juvenile justice system's information

⁸ La rétention est une mesure privative de liberté mais qui, compte tenu de la terminologie, n'offre pas à l'enfant ou l'adolescent retenu les droits liés à la détention, et l'administration responsable du lieu de rétention ne semble pas devoir octroyer les garanties attachées à une procédure normale de détention. La notion de « rétention » est donc encore moins protectrice.

⁹ La détention préventive ou provisoire est une privation de liberté prononcée à l'encontre des enfants dont les affaires sont en instruction et donc en attente de jugement et ceux qui, ayant été reconnus coupables d'une infraction, attendent le résultat du délibéré ou le prononcé de la peine. Elle ne concerne pas en principe les enfants en attente d'une décision en appel. C'est une mesure de dernier ressort.

sources must properly record the daily data concerning preventive or provisional detention.

13. **Abuse and corporal punishment, torture, cruel, inhuman and degrading treatments** must be strictly prohibited as of the child's arrest, his detention (provisional or preventive), pending a police decision, whether extrajudicial or judicial, and the execution thereof. States must fight against impunity for the prison officers who engage in such practices, with or without a superior's order.

14. **The deprivation of liberty** should be performed in **respectful conditions of safety and hygiene**, including the right to health, education, food, play and recreation, the necessities of life and personality of the child, who shall be separated from adults in detention.

15. **The purpose** of a juvenile justice system is the family, educational, social and professional reintegration of children alleged as, accused of, or recognized as having infringed the penal law. Every effort must be invested in extrajudicial measures, non-custodial measures and socio-educational measures implemented with actors acting in synergy and complementarily to achieve this purpose. Transitional arrangements should avoid abrupt discontinuation of the socio-educational measures for the beneficiary child who has exceeded 18 years of age.

16. The administration of restorative juvenile justice must focus on a **public-private alliance** between the social security institutions of the State, the Executive Magistrate in charge of sentence enforcement and the Parquet / prosecution, international organizations, the private sector, the media, civil society and community organizations, and that mobilizes and connects different actors who bring different and complementary solutions, with a view to the family, educational, social and professional reintegration of the child, whether at the end of the court process or the execution of the court decision.

17. The effectiveness of a restorative justice system is linked to an **active cooperation between the various institutions involved**. Collaboration is needed between the diversion mechanisms and relevant ministries, the institutions for the protection of children, the Execution Magistrate for monitoring the child who received the alternative extrajudicial measure. This collaboration is essential in the implementation of the court decision. It is equally important between child protection institutions and the judicial system (Parquet/prosecution and enforcement of the Executive Magistrate). **Inter-institutional cooperation** helps develop coordination, complementariness and the system evaluation.

18. The government should **report to national, regional and international monitoring mechanisms to be accountable for the implementation of its commitments** and thus the establishment of a reliable and transparent system, by providing disaggregated data, reliable statistics, explanations on progress and its challenges, as well as apply, as appropriate, for technical assistance to improve the juvenile justice system.

19. Beyond the needs, personality and resilience potential of children alleged as, accused of, or recognized as having infringed the penal law, those with **serious medical conditions**,

or **living with a disability** deserve special attention, particularly in relation to sentence adjustments such as early release measures or servicing the custodial measure at home. It is the same for **children under 18 years living in prison or in detention with their toddler**. Specific support measures must be put implemented at the place of detention for these teen parents living in prison with their children or who have had to leave them with relatives or in an institution.

20. **The media** should convey to the people an image of the child suspected of, accused of or convicted with infringing the penal law that does not present him as a person without rights, but as a rights holder entitled to be accompanied, by means of socio-educational measures, so that he can play a positive role in the community.