

2013 International congress

# JUVENILE JUSTICE: what socio-educational approach?

## I. INTRODUCTION

The International Catholic Child Bureau (BICE,) conducted – with representatives of public authorities, international experts, practitioners working in the field, and representatives of ten partner organizations of its program "Childhood without bars"<sup>1</sup>, on the occasion of the International Congress: *Juvenile Justice: What socio-educational approach?* held from 25 to 26 June 2013 in Paris – an analysis of the traditional juvenile justice system, geared towards repression, and the administration of restorative justice<sup>2</sup> focused on diversion, non-custodial measures and provisions for family, school, social and professional reintegration. It turns out that restorative justice offers more leverage to the rights of children and adolescents in conflict with the law<sup>3</sup>, and that it works in a fruitful way for the offense not to permanently compromise young offenders' positive contribution to society<sup>4</sup>.

States have realized the antithetical effect of deprivation of liberty by adopting the Convention on the Rights of the Child (CRC), which provides in *Article 37 b*): *in fine that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"*. The Convention also recognizes the rights and procedural safeguards attaching to children in conflict with the law.

A set of non-legally binding<sup>5</sup> international instruments have also consolidated the international normative framework for the juvenile justice system to become rather oriented towards a restorative approach.

Therefore, the General Assembly<sup>6</sup> and the UN Human Rights Council<sup>7</sup> have looked several times at the issue of the administration of juvenile justice through many resolutions that encourage States to use alternative measures to imprisonment such as "diversion and restorative justice, and ensuring compliance with the principle that deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children"<sup>8</sup>. They also point out, in a systematic way, that "the social rehabilitation of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are willing and able to lead a law-abiding and self-supporting life upon their return to society"<sup>9</sup>. These resolutions emphasize the need to "foster close cooperation between the justice sectors, different services in charge of law enforcement, social welfare and education sectors in order to promote the use and improved application of alternative measures in

<sup>1</sup> Partner organizations work in 5 Latin American countries (Pastoral do Menor in Brazil, the *Tertiary Capuchins* in Colombia and in Ecuador, the *Instituto de Estudios Comparados* in Ciencias Penales in Guatemala and *Compromiso desde la Infancia y Adolescencia* and the *Observatorio de Prisiones d'Arequipa* in Peru), and in 4 African countries (*Dignité et Droits de l'Enfant* in Ivory Coast, *Bureau National Catholique de l'Enfance* in Mali, in the DRC and in Togo).

<sup>2</sup> The phrase "justice restaurative" is used in French with reference to the English adjective, "restorative".

<sup>3</sup> Later, the word "child" will be used in accordance with article 1 of the Convention on the rights of the child indicating that " a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Hence, the word child includes "adolescents" or "teenagers".

<sup>4</sup> *Children without Bars*, BICE, Brussels, 2012.

<sup>5</sup> The UN Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), GA res. 40/33, annex; Basic Principles for the Treatment of Prisoners, GA res. 45/111, annex; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA res. 43/173, annex); UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (GA res. 45/112); UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) (GA res. 45/113); Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines) (ECOSOC res. 1997/30, annex); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC res. 2005/20, annex); UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, GA res. 65/229; and Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, GA res. 65/230);

<sup>6</sup> Res. 62/158, 18 December 2007, 63/241, 24 December 2008 and 65/231, 21 December 2010.

<sup>7</sup> Res. 7/29, 28 March 2008, 10/2, 25 March 2009 and 18/12 of 29 September 2011.

<sup>8</sup> Res. 18/12, § 9, 29 September 2011.

<sup>9</sup> *Ibid.*, preambular paragraph n°13.

juvenile justice<sup>10</sup> and stress the importance of “rehabilitation and reintegration strategies for former child offenders in juvenile justice policies, in particular through education programmes, with a view to their assuming a constructive role in society”<sup>11</sup>.

In State practice, the mechanism of the Universal Periodic Review (UPR)<sup>12</sup> is a new opportunity for the affirmation of principles and commitments through the recommendations made and accepted by States themselves. In addition, the UN treaty bodies<sup>13</sup> and the special procedures increasingly promote administration of juvenile justice that does not reduce the child in conflict with the law only to the offense he has committed.

Notwithstanding this intense international normative action and strengthening of international mechanisms for monitoring the implementation of States’ commitments, the national, legal and institutional framework does not always meet the requirements related to humane treatment and respect for the child’s dignity and rights.

Yet, several studies have demonstrated the ineffectiveness of deprivation of liberty, especially for children in conflict with the law. There is also evidence that prison sentences did not, in the majority of cases, play an educational role, and even worse, they injure more than they fix<sup>14</sup>. The impact of deprivation of liberty on recurrence is high and reduces children’s potential resilience while undermining their chances of socio-professional reintegration. Although deprivation of liberty is seen under the CRC as a measure of last resort and for the shortest appropriate period of time, it remains a path that should be the exception and not the principle.

BICE’s action, as well as other non-governmental organizations’ (NGOs)<sup>15</sup> pertain to this tradition and contribute, little by little, to make the international community aware of the need to change directions regarding the administration of juvenile justice. This is an encouraging trend, but it must be more rooted in the rights of the child and favor their participation in decisions and actions relating to them.

## II. BASIC PRINCIPLE

The legal system applicable to children suspected, accused of or recognized as having infringed the penal law must be separated from the system applicable to adult offenders, regardless of the severity and nature of the offense.

Every child in conflict with the law must be protected with presumption of innocence.

The legal framework for the administration of juvenile justice must be duly completed with a social device equipped with strategies for rehabilitation and reintegration of children in conflict with the law, particularly through educational programs and vocational training with a view to enabling them to play a useful role in society.

No child shall be subjected to torture or to cruel, inhuman or degrading treatment.

Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years.

No child shall be deprived of liberty, unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be a measure of last resort and for the shortest possible time.

Every child deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his age. In particular, every child deprived of liberty shall be separated from adults, unless it is considered preferable not to do so in the best interests of the child,

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<sup>10</sup> Rés. 18/12. § 10.

<sup>11</sup> *Ibid.* § 11.

<sup>12</sup> The UPR is a mechanism set up by resolution 60/251 of the UN General Assembly establishing the Human Rights Council. This is an examination that covers all the issues of human rights and, therefore, all UN member States will be submitted to it every four years. It is an intergovernmental mechanism because the cyclical review is done by peers, that is to say by States. The UPR involves cooperation between States for the promotion and protection of human rights. Involvement in the monitoring and implementation of the recommendations of a State is an integral part of its commitment and cooperation with the UPR mechanism. Relevant special procedures such as the Special Representative of the UN Secretary General on violence against children, and the Special Rapporteur on torture should, among others, focus their reports on the implementation and monitoring of the recommendations by the UPR and that relate to the administration of juvenile justice.

<sup>13</sup> **Human Rights Committee: General Comments n°21 concerning human treatment of persons deprived of liberty, and n°32 relating to the Right to equality before courts and tribunals and to a fair trial ; Committee on the Rights of the Child : General Comments N°10 on Children’s rights in juvenile justice, and n°13 concerning the right of the child to freedom from all forms of violence.**

<sup>14</sup> UN Office against Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes, Criminal justice Handbook series*, 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 and Summer 1999, n°1.

<sup>15</sup> See, for example, Defence of Children International, *Munyonyo Declaration on juvenile justice in Africa*, January 2012.

and he shall have the right to maintain contact with his family through correspondence and visits, save in exceptional circumstances.

Every child deprived of liberty shall have the right to prompt access to legal assistance or other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such matter.

It is necessary to establish a minimum age below which children shall be presumed not criminally responsible; the threshold should not be too low, given the problems of emotional, psychological and intellectual maturity.

The media should treat information relating to children in conflict with the law with delicacy and restraint, following a code of ethics and editorial policy respectful of their rights and conscious of the need to reintegrate them – an essential condition for the constructive role they are expected to play in society.

Family and community play a vital role in supporting and monitoring the child suspected of, accused of, or recognized as having infringed the penal law and being subject to a non-custodial measure, they ought to be recognized and integrated as key players in the juvenile justice system, especially when facing a restorative approach.

Identification and assessment should govern all decisions relating to the child. The child's views, his identity, preserving the environment and maintaining family relationships, the child's care, protection and safety, his state of vulnerability, and his right to health and education are key elements of the evaluation and determination of the child's best interests.

### **III. DEALING WITH CHILDREN WITH HUMANITY AND RESPECT FOR THE CHILD'S DIGNITY AND RIGHTS**

A child suspected of, accused of, or recognized as having infringed the penal law is and remains a subject of rights and as such has all the rights pertaining to this status. Being in conflict with the law does not deprive children of enjoying their rights and receive a fair trial.

#### **3.1. Procedural safeguards**

They must be applied at all stages of the judicial process to ensure the holding of a fair trial:

##### *Procedural measures*

- The right to the presumption of innocence and a fair trial;
- Presence at trial;
- The right to be informed – in the shortest possible time, in a language that the child understands and in detail – of the nature and cause of the accusation against him;
- The right to be assisted by a counsel of his choice or appointed by the judge;
- The right to have his case tried within a reasonable time;
- The right to have adequate time and facilities for the preparation of his defense;
- The right to a free interpreter in the country of residence or abroad;
- The right to respect his private and family life at all stages of the proceedings (proceedings in camera);
- The right to be heard in the presence of the child's parents, guardian, persons having custody of him or social services;
- The right not to be compelled to plead guilty;
- The right to examine witnesses against him or have them examined and obtain the attendance and examination of witnesses on his behalf under the same conditions.

##### *Legal and judicial assistance*

Legal and judicial assistance is essential to enjoying the right to the 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 juvenile courts or sections and chambers entitled to address the affairs of minors. Bars can also be organized by the government to meet this legal requirement.

#### **3.2. Conditions of detention**

To evade their obligations, some States use the semantic artifice using the word "retention" instead of "detention" to refer to the same reality<sup>16</sup>. Thus, foreign children in conflict with the law, accompanied or not, are subject to retention measures without the benefit of the corresponding rights. In addition, for benign or for a first offense crimes, deprivation of liberty is often the preferred option. In both developed and developing countries, prison conditions often do not meet minimum standards in terms of hygiene, physical and mental health, psychological support and social service interventions. In addition, preventive or provisional detention and deprivation of liberty after the issuance of an administrative or judicial decision contribute to the overpopulation of closed educational centers or prisons.

#### *Monitoring places of detention*

Transparent and regular independent monitoring of places of detention is a guarantee of quality in the services and the rights of child detainees. Evaluation helps to improve detention conditions.

In addition, children in detention should be able to complain to the supervisory authority or ombudsman about the conditions of detention, extortion, torture, inhuman and degrading treatments they have suffered.

#### *Preventive or pre-trial detention*

The duration of preventive or pre-trial detention must necessarily be limited. Any extension of time to be served must be fully reasoned. The juvenile justice system's information sources must properly record the daily disaggregated data relatively to preventive detention.

Under Article 13.1 of the Beijing Rules, "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time" and Article 13.2 adds that " Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home". It appears that the competent authority must deal with diligence and speed with the cases brought before it as «Each case shall from the outset be handled expeditiously, without any unnecessary delay" (Article 20, the Beijing Rules).

#### *Separation of children from adults*

To prevent detention from turning into a school of crime, children must be held separately from adults. It is shown that relationships in detention essentially amount to discussions about crimes and offenses, which is detrimental to post-detention community reintegration. This separation is necessary particularly, but not exclusively, to reduce risks and criminogenic factors that are recurrence catalysts.

#### *Separation of underage boys and girls*

This requirement follows from Articles 37 c) of the CRC and Article 26.3 of the Beijing Rules . Separating children and adults is not enough. It must also be done with underage boys and girls. Prison overcrowding, the group effect, isolation and deprivation of certain pleasures in prison are all factors likely to produce adverse consequences such as early pregnancy and transmission of sexually transmitted diseases.

#### *Single mothers' situation in detention, whether in open or closed centers*

When a teenage girl is pregnant or detained with her child, appropriate social services for the supervision of the pregnancy or the care of the child must be made available to her.

#### *Right to life*

The prison administration shall ensure that children deprived of liberty do not die in custody. A regularly updated register must include disaggregated data on children who died in custody. Parents or guardians must be properly informed of the death and its causes.

#### *Prohibition of torture and other cruel, inhumane and degrading treatments*

Articles 30 a) and 40 of the CRC are applicable to children in conflict with the law. Furthermore, Article 2 of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatments urges States to take all necessary measures to prevent acts of torture, even in exceptional circumstances, and that "an order from a superior officer or a public authority may not be invoked as a justification of torture". All forms of physical and verbal abuse, corporal punishment, rudeness and behavior meant to humiliate or degrade the child should be banned in places of detention.

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<sup>16</sup> Retention is a measure that deprives a person of her liberty, but, under this terminology, it does not grant the child who is being held any of the rights attached to detention, and the administration in charge of the retention premises does not actually have to ensure the guarantees that apply during a normal detention period. Therefore, the notion of "retention" is less protective for the child.

### *Right to food*

In most States, feeding detained children is the responsibility of civil society. Detention is not a reason for starvation. Instead, detainees held in prison, in closed or open centers keep the right to be fed.

### *Right to health*

Overcrowding is a scourge in places of detention. The promiscuity it generates is often the cause of skin and respiratory diseases. The lack of clean clothes, squalor in detention centers and lack of hygiene inside cells and sanitation facilities predispose children in detention to health problems. This is a public health issue because these children may be at risk on leaving prison.

The practice of over-medication has been increasing dangerously. Under the pretext of controlling violent inmates or experiencing psychological problems, the prison administration of certain States gorge children with drugs, further destabilizing and exposing them to health risks and others, thereby compromising their constructive contribution to society once out of prison.

### *Right to education*

One of the issues to consider in the determination and evaluation of the child's best interests resides in access to education opportunities. Given the purpose of the juvenile justice system, detention facilities must provide for the rehabilitation of the child deprived of liberty, as soon as he begins serving his sentence, through establishing a life project whose backbones are education and training. Education enables children deprived of liberty to overcome the limitations of their vulnerability and consider a proper rehabilitation.

### *Right to play and leisure*

General Comment No. 17<sup>17</sup> of the UN Committee on the Rights of the Child has given precise guidelines about the implementation of Article 31 of the CRC. The Committee experts recommend States hosting children (all childcare institutions, including prisons, closed or open centers) should adopt measures to ensure that guarantee spaces and opportunities for children to play with their peers and participate in games, physical exercises as well as in cultural and artistic life. Therefore, the right to play and leisure for children deprived of liberty must be respected.

### *Security*

Some prison or childcare institutions and youth infrastructures expose minors to higher risk of accidents, especially because of the fragility of the structure, its state of dilapidation and lack of maintenance. Deprivation of liberty does not exempt the authorities of their responsibility to protect inmates. Children's safety and security involve respect for their rights and needs.

### *The use of child-labor in detention*

Work in detention may amount to forced labor if it is not executed with the child's consent or does not benefit the child. It must be designed to prepare the child for his family, educational, social and professional reintegration.

BICE recommends that States:

**Treat a child deprived of liberty with humanity and respect for his dignity in order to ensure he enjoys all his rights, including the guarantee of a fair trial, regardless of the nature of the offense;**

**Use retention or detention only as a measure of last resort and for the shortest appropriate period of time;**

**Make sure that the short duration of detention is served in decent hygiene and health conditions while monitoring the child's behavioral development;**

**Ensure that, on one hand children are separated from adults and on the other hand, boys are not held in the same cells as girls;**

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<sup>17</sup> CRC/C/GC/17 § 51.

**Ensure a safe, healthy and supportive environment for pregnant women, children born in detention or living in detention with one parent or both, in order to protect the child's best interests by ensuring that adequate monitoring is carried out by social services;**

**Respect the principle that a child's place is not in prison, avoiding custody and abnormally long preventive or pre-trial detention periods as well as detention after a decision has been made by authorities, in order, particularly, to avoid overcrowding.**

**Ensure that a child being held or in detention is not subject to physical and / or psychological violence;**

**Refrain from extorting confessions from children being held or detained by threatening them or their families with violence;**

**Ensure that children being held or in detention are not subject to over-medication under the pretext of neutralizing them, particularly to avoid compromising their chances of professional reintegration;**

**Provide children – already in custody or detention – with conditions for vocational rehabilitation.**

#### **IV. PROVIDING AN APPROPRIATE LEGAL AND INSTITUTIONAL DEVICE**

##### **4.1. An appropriate legal framework**

In many States – including those who have acceded to the international instruments for the administration of juvenile justice – the national legal framework often has gaps, in particular due to the fact that the process of transposing international obligations does not include the practical aspects contained in non-binding instruments and resolutions, including the General Assembly and the Human Rights Council or in the recommendations of the Universal Periodic Review, Special Procedures and Treaty Bodies<sup>18</sup>.

In addition, in several States, positive law is in conflict with customary law, which makes it difficult to implement the former. Sometimes, the legal framework tends to fail to comply with the specific legal regime for children, for reasons related to the seriousness of the facts, to security concerns or electoral and ideological motives.

In defiance of international law, this leveling trend gradually leads to the convergence or the coincidence of two regimes that should apply, instead, to two different categories. It leads to reducing, sometimes drastically, the age of criminal responsibility, to sometimes vague and imprecise legislation on new offenses, non-compliance with the child's status as a subject of law, to the lack of diversion measures and / or non-custodial measures and of socio-professional reinsertion. Therefore, the use of deprivation of liberty is then given priority, including sometimes for petty and first offenses, even though the conditions of detention are degrading and detrimental to the rights and dignity of the child in conflict with the law.

##### *Age of criminal responsibility*

Article 4 of the Beijing Rules and paragraphs 30 to 35 of General Comment No. 10 of the Committee on the Rights of the Child have set States clear guidelines and recommendations on the minimum age of criminal responsibility to avoid disparities or discrimination in the judge's discretion. The absolute minimum age cannot be less than 12 years and shall be applicable in impersonal and uniform ways, regardless of the seriousness of offenses. National law shall proceed to the recovery of this age, should it be too low, to stand at 14 or 16 or, even better, 18.

When there is a doubt about the child's age, this must benefit the child, because the State may have failed in its obligation to register the child at birth, in accordance with Article 7 paragraph 1 of the CRC.

##### **4.2. An appropriate institutional framework**

A suitable legal framework lacking mechanisms for implementation cannot achieve the desired objectives. Institutions and implementation mechanisms shall engage in a process of cooperation and complementarities.

##### *Redress mechanisms*

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<sup>18</sup> See footnotes, pages 4, 5, 6, 7, 8 and 9 *supra*.

Experience of the judiciary system and of deprivation of liberty psychologically traumatize and destabilize the child. To preserve his potential and opportunities for family, educational, social and professional reintegration, diversion is favored by the restorative approach to juvenile justice, especially concerning offenses of lesser gravity, under the auspices of the child protection services, with the consent of the parties concerned. Diversion can be achieved through mediation, (re)conciliation, forgiveness or other pre-judicial channels that avoid, wherever possible, the use of a trial by the competent authority<sup>19</sup>. Even *in limine litis*, the option of alternative treatment, by reference to a body having jurisdiction to do so, should be preferred.

It is important that these judicial mechanisms should be institutionalized so that the use of diversion is not accidental, casual or opportunistic. To this end, States' best practices and customary law can provide modern law with endless opportunities for creative solutions.

#### *An appropriate legal system*

It is assumed that the juvenile justice administration system is different from that of adults, so it is recommended that the judicial system should be suited to the child's psychology, personality, needs, potential for resilience and human rights. Harmonized national legislation with ratified international instruments shall provide, in addition to extra-judicial mechanisms, a specific judicial system with juvenile courts, or at least, chambers or sections close to ordinary courts, but with a specific skill to know business relating to children in conflict with the law. Other specialized institutions should be provided for, such as specialized police, social welfare institutions, an inter-institutional coordination network and a partnership between the private sector and civil society.

#### *Juvenile courts*

The implementation of this specific jurisdiction is controlled by the need for special procedures adapted to the child's personality and specific needs. Transiently, sections or chambers with competence to deal with children's cases may be instituted.

#### *Specialized police or gendarmerie*

The techniques and environment when hearing a child in conflict with the law are different from those of adults. The collection of facts and the child's testimony shall be conducted in non-stressful and non-traumatic conditions, as these may distort the quality of statements. It is therefore important that the police or specialized gendarmerie should be trained in these techniques that take into account the child's psychology, personality and needs.

#### *Services for the child's social protection*

These are services specialized in listening and supporting the child. The goal is to work towards his behavioral change by encouraging maximum expression and realization of its resilience potential, with a view to his family, educational, social and professional reintegration.

These services are involved in the diversion phase as a prelude to the judicial one or during the retrial or appeal of the decision, with a review of the child's behavioral development designed to inform the judge, especially in the implementation and monitoring phases of the judicial decision.

All social levers such as schools, vocational training centers, pediatric and therapeutic health centers must be mobilized to transform the child suspected of, accused of, or recognized as having infringed the penal law into a person capable of playing a constructive role in society.

#### *Community relays*

The degree of integration and involvement of community relays is a key indicator of a restorative juvenile justice system. These are essential links in the reconstruction of the child in conflict with the law because they have a mission to promote the child's return to normal life, accompanying the development of his life project, its implementation, monitoring and evaluation. The collaboration between the child's family, relatives and community relays is fundamental to his rehabilitation.

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<sup>19</sup> [States Parties shall seek to... ] whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. Beijing Rules, article 11.1. "Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority (...)"

### *Public and private sectors alliance*

This alliance is a marker of restorative juvenile justice. It mobilizes and connects various actors who bring a variety of complementary solutions for the child's family, educational, social and professional reintegration, whether at the end of the extrajudicial treatment or the execution of the court decision. This alliance should be woven especially between the executive magistrate, the prosecutor / public ministry, social services and state social institutions, international organizations, private sector, media, civil society and community organizations.

### *Inter-institutional mechanisms*

The effectiveness of restorative justice is linked to an active cooperation between the various institutions involved. Collaboration is needed between the diversion mechanisms and child welfare institutions for monitoring children who received an alternative measure. This collaboration is essential in the implementation of the court decision. It is equally important between child protection institutions and the judiciary (the executive magistrate, public ministry / prosecution and juvenile courts or chambers playing this role).

In the implementation of the judicial or diversion decisions, the child's social protection institutions must cooperate with diversion mechanisms, the prosecutor and the juvenile court, including the executive magistrate, the child's family and relatives as well as community relays for the implementation, evaluation and monitoring of the decision. The development and implementation of the child's life project requires, beyond the latter's participation, collaboration among all the concerned actors.

Inter-agency cooperation helps develop the coordination, complementarities and evaluation of the system.

Under the domestic legal framework and its implementation, BICE recommends that States:

**Organize the administration of juvenile justice through a specific map of the juvenile justice system<sup>20</sup> that provides both the laws (legal framework) applicable to children in conflict with the law and the institutional framework for the arrest, prosecution, investigations, the authorities competent to make a decision, deprivation of liberty, and child protection, including through extrajudicial measures, not to mention the cooperation dynamics between legal and institutional frameworks;**

**Include within national law the prohibition of capital punishment, life imprisonment – or life imprisonment without possibility of release –, for offenses committed by children, especially when they are not repeat offenders;**

**Set a limit for preventive or pre-trial detention, which is only a procedural means, and provide for scrupulous compliance with the period of custody;**

**Provide for the prohibition of deprivation of liberty after an administrative or judicial decision of acquittal has been made, unless it is strictly a rigorously reasoned protection measure;**

**Provide or enhance the application of diversion, non-custodial measures, and socio-educational ones for the child's family, social and professional reintegration, through quadripartite mechanisms among States-International Organizations-Private Sector-NGOs;**

**Establishing the age of criminal responsibility to 18 years, or at least over 12 years, which is the absolute minimum age. Criminal liability should be reduced and graduated between the minimum age adopted and the end of minority;**

**Provision for the body of social workers to undertake remedial action, via the Public Prosecutor against the decision, whatever it is, in case it is not accompanied by measures of social and educational support;**

**Legally promote media self-regulation for better awareness about the rights of the child, including when the child is suspected, accused or convicted of an offense under the criminal law; better processing of information relating to children in conflict with the law so as not to affect their private and family life, and avoid jeopardizing their reintegration into society.**

## **V. IMPLEMENTING PROGRAMMES AND NATIONAL ACTION PLANS**

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<sup>20</sup> The map of the juvenile justice system is the photograph of the system with its judicial and institutional components, its actors and internal interactions.



A comprehensive legal framework, as complete as it can be, will provide optimum protection only if it is implemented through national programs and decentralized action plans. States often cite the lack of financial resources to justify the absence or insufficiency of governmental action, even when rational use of available resources may already contribute to address some challenges. An organized device should therefore revolve around the child's best interests, respect for the rights, needs and conditions of family, social and professional reintegration of children in conflict with the law.

### 5.1. Prevention

For the Committee on the Rights of the Child, "it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities.<sup>21</sup>" Governments' policies, strategies and programs should focus on support for particularly vulnerable families, schools' participation in the teaching of human rights and taking into account the need to provide special care and give particular attention to at-risk youths. The education of children and their academic monitoring participate in the creation of "conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible<sup>22</sup>". The counterpart of parents' responsibility to raise their children is the obligation of States to provide appropriate assistance to parents and legal representatives for the exercise of parental responsibilities.

### 5.2. Protection

Protection pertains to a bundle of policies, strategies, actions, decisions and with perspectives to empower the child to play a constructive role in society.

In view of the national prevention and protection programs and plans, BICE calls on States to:

**Provide free birth registration as well as late registration of births, by implementing universal, accessible, simple, fast and efficient registration processes, without any discrimination, while removing material, administrative and procedural obstacles, including barriers due to detention, because an unregistered child is extremely vulnerable to any type of injury in the family, regarding access to employment, vocational training, education and work, and more particularly in the criminal justice system.**

**Focus on prevention policies to facilitate family, social and professional reintegration of children at risk;**

**Set up campaigns to raise awareness among the family, the community, peer groups, schools and vocational training institutions, to enable child offenders to reintegrate society without being stigmatized for too long;**

**Undertake all necessary political reforms and adopt programs and schemes towards diversion, non-custodial measures, as well as social and educational measures to promote social and professional reintegration schemes for children in conflict with the law;**

**Establish or strengthen institutional mechanisms suitable for children, including special courts for children, police officers and other actors trained to listen to and support children in conflict with the law, pre-judicial institutions for mediation or conciliation, as well as reinsertion and rehabilitation centers with adequate financial, human and logistical resources;**

**Develop partnerships between Government-private sector-community as levers for social and professional reintegration of children in conflict with the law;**

**Establish a media self-regulatory system for dealing with issues relating to children in conflict with the law;**

**Decentralize prevention and protection by providing federal States and decentralized communities with jurisdiction and skills for taking action.**

## VI. COURT DECISIONS

The principle of the legality of penalties (*nullum crimen nulla poena sine lege*) continues to apply and procedural rules must be complied with. There can be no application of the principle of retroactivity for children, because no child can be

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<sup>21</sup> CRC/C/GC/10, § 16.

<sup>22</sup> Article 1.2 of the Beijing Rules.

accused of, or recognized as having infringed the penal law for any act or omission which, at the time they were committed, were not prohibited by national or international law.

### ***Deprivation of liberty as a last resort***

Resorting to non-custodial measures is the principle; the imposition of custodial measures must be the exception. This exception is also subject to careful scrutiny<sup>23</sup> and to the determination and preliminary evaluation of the child's best interests, as outlined by the Committee on the Rights of the Child in its General Comment No. 14<sup>24</sup>. Therefore, recurrent use of custodial measures is an indication on compliance to, or otherwise, of Article 37 of the CRC and Article 17 1) c) and 18 1) of the Beijing Rules.

Should the judge have to impose a custodial sentence, it should not, as such, prevent the child from going on with normally started or planned learning, already started or planned training or a scheduled academic examination – in short, deprive him of an opportunity for future rehabilitation.

When the child's behavioral changes and potential resilience may recommend it, the judiciary system should consider a semi-detention regime, especially in institutions such as the intermediate host centers, educational homes, vocational training day schools and other institutions promoting juveniles' social reintegration.

### ***Prohibition of the death penalty***

Furthermore, it is forbidden to bring a death sentence on a person who was under 18 at the time the offense was committed. States should therefore, beyond grace periods, abolish capital punishment for all offenses committed by persons below 18 years of age. Any death penalty already imposed should be commuted to treatment in accordance with relevant international provisions.

### ***Prohibition of life imprisonment without possibility of parole***

This prohibition is driven by the belief that a child, by reason of his physical and mental immaturity, needs special protection and care, including appropriate legal protection to fully play his role in the community, particularly when it is suspected of, accused of, or recognized as having infringed the penal law. Also, the inability to release a child hampers his chances of rehabilitation and is therefore contrary to the whole purpose of the juvenile justice system.

### ***Use of non-custodial measures***

Reprimand and recommendation of remedial action to be performed, providing parents with a parental supervision order or social monitoring, conditional and suspended sentences, community service, serving the sentence at home under the supervision of social workers, security measures, a penalty proportionate with parents' financial standing, legal pardon, probation, parole, conditional sentencing... all these are just some non-custodial measures that should be preferred. Customary law is often a reservoir of non-custodial measures that can be transposed into positive law.

Any decision or acquittal must be accompanied by measures of protection against retaliation by the victim or the victim's relatives on the child or his family.

### ***Judicial decisions and welfare measures***

Any judicial decision must be preceded by a social survey on the child's behavioral development, on his personality, needs, potential for resilience, his family, family members and community.

Any judicial decision, whether it imposes a deprivation of liberty, shall imperatively be accompanied with measures of socio-educational support for monitoring the child's behavioral diagnosis, elaborating – together with him and his family – his life project and its implementation, besides monitoring and evaluation thereof.

Child social protection institutions as well as civil society organizations should be awarded, through the public prosecutor / Civil Court, quality (*locus standi*) to appeal against a court decision if it is not accompanied with socio-educational measures.

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<sup>23</sup> Beijing Rules, article 17 1) b): "Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum".

<sup>24</sup> CRC/C/GC/14, §§ 46-99.

In the absence of a non-custodial measure, the judgment should target penalty adjustments in close collaboration with the child, the prosecutor / civil court, the executive magistrate and social welfare institutions.

### *Right to appeal*

The right to appeal device should facilitate appealing against a decision at first instance if the child and his guardians decide to expedite appeal. He enjoys, as in the first instance, all the rights and procedural safeguards. Behavioral change is part of the bundle of new elements to consider.

Promoting the revision of a sentence to a term of imprisonment into non-custodial alternative sentences should be encouraged. The child's behavioral development, social monitoring, family and community mobilization around him is also part of the bundle of new elements to consider.

## **VII. DEVELOP AND IMPLEMENT SOCIO-EDUCATIONAL MEASURES**

Socio-educational measures are transverse to the restorative juvenile justice system and may be imposed, implemented and monitored at any time during the pre-judicial, judicial or post-judicial proceedings. The police officer, the prosecutor / Public Ministry and the judge for juveniles may use the socio-educational measures according to the phases of the proceedings. They consist of measures under Article 79 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) to "assist them in returning to society, family life, education or employment after release". The role of institutions for the protection of children – their family and family environment as well as an alliance between public-private stakeholders, in partnership with the judiciary – is essential here.

### *Drafting the individual life-project*

The life-project is the result of the concrete implementation of socio-educational measures, following a participatory process involving the child, his family, his relatives as well as his extended family and the community, if necessary. It is individualized or customized in accordance with the child's capabilities, resources and potential resilience. The life-project is achieved through education or remedial education prior to vocational training, apprenticeships, etc... A system fostering the development of life-projects should be established within the public-private alliance.

The process of developing the project begins with the delivery of the sentence, and social protection services ensure that the maturation of the project throughout the support period for serving the sentence (custodial or not) does allow the child to have clear benchmarks for its completion.

### *Conditions to be met prior to implementing the individualized life project*

A child may be released and find himself subject to discrimination and stigmatization. Institutions involved in his support must make sure to minimize bias by obtaining for him a house, suitable clothing and a livelihood during the period following his release, pending the completion of the life-project.

Non-disclosure of the criminal record of the child suspected, accused or convicted of an offense under criminal law should be preferred. It is even better not to include in his criminal record offenses committed during his minority, to prevent encouraging stigma and discrimination, which would weigh down his rehabilitation. The media must be trained to respect the confidentiality of records and the child's private and family life, while refraining from worsening the situation through photos, articles and editorials that do not support the reintegration and reconciliation between the victim and the child suspected, accused of or recognized as having infringed the penal law.

### *Implementation of the proposed individualized life-project*

The completion of the individualized life-project is a crucial step. Preventing relapse and thus recidivism is totally dependent on its success.

### *Monitoring and evaluation of the individualized life-project*

Monitoring the life-project is a valuable indicator of restorative justice regarding its ambition to reduce recidivism. In the absence of systematic monitoring, the released child may lose its bearings again and hang around the wrong crowd. It is therefore important to mobilize the family, family members, community volunteers, the education world, vocational training and employment and get them to focus on such monitoring.

### *Effectiveness of public-private alliance*

The chambers of trades and crafts, the chambers of commerce and industry, small and medium enterprises, formal and informal education institutions, vocational training centers, formal and informal structures of training update as well as community associations should be mobilized for the success of the life-project thus developed. A framework for consultation and dialogue is necessary for different actors to coordinate their work and encourage the establishment of a Charter to favor the reintegration of children in conflict with the law. States should consider supporting the effectiveness of this alliance by means of tax reductions or exemptions or granting access to benefits and free services.

### *Benefit of socio-educational measures*

The benefit of socio-educational measures should not be ended abruptly, as this would encourage relapse and recidivism. This is why States should put in place a 3 to 5-year transitional regime, to allow children to enjoy these measures fostering their return to normal life.

### *Pivotal role of the family, family members and extended family*

As much during pre-jurisdictional, jurisdictional and post-jurisdictional phases, participation and contact between the child and his family, family members or legal representatives are critical to maintaining family ties. Nothing can replace this contact and it should be encouraged and facilitated as it is in the interest and well-being of children deprived of liberty, who must also be “authorized (...)to leave detention facilities for a visit to their home and family”, according to Article 59 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Family, family members or the legal representative must take part, upstream and downstream of the elaboration of the life project, its implementation as well as its monitoring and evaluation.

## **VIII. APPLY INTERNATIONAL OBLIGATIONS AT THE NATIONAL LEVEL**

### **8.1. Compliance with international obligations**

For BICE, States’ political will to comply with their international obligations in terms of human rights in general and of the administration of juvenile justice in particular, can be measured especially as regards the following:

**Make a standing invitation<sup>25</sup> to the Special Procedures of the United Nations to promote the *in situ* evaluation and supervision of their juvenile justice system, including the state of internal law, compliance with international law, public policies and programs as well as the implementation device thereof;**

**Meet deadlines for the submission of periodic reports to treaty bodies and incorporate disaggregated data as well as information on progress made and challenges met;**

**Make available, when they suggest recommendations on juvenile justice, States’ technical or financial support for the implementation of these recommendations on the principle of cooperation that guides the UPR;**

**Share significant practices on the administration of juvenile justice, including the benefits of restorative approach to both the normative and programmatic dimensions;**

**Make requests for technical assistance on the administration of justice, including the restorative approach to relevant United Nations agencies, programs and funds.**

### **8.2. Monitoring, coordination and evaluation**

States’ obligations under human rights international instruments, including the administration of juvenile justice, have meaning only if they are accompanied with institutional mechanisms for implementation, monitoring and system evaluations.

According to BICE, monitoring, coordination and evaluation needs require States to:

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<sup>25</sup> A “standing invitation” is a way to encourage a State to open at any time its territory to visits of the Human Rights Council special procedures. This is a clear message and the staunch expression of the desire of a State to cooperate with the UN human rights mechanisms.

**Establish, at each level of the juvenile justice system, tools for gathering reliable information leading to the definition of qualitative and quantitative indicators suited to the national context, in order to measure, monitor and evaluate progress and challenges ;**

**Develop a coordinated mechanism for the collection of credible, reliable and disaggregated data at all levels of the sources of information of the juvenile justice system;**

**Establish a permanent framework for coordination and evaluation consisting of all stakeholders, including government departments with child protection within their remit as well as international and civil society organizations;**

**Ensure smooth coordination between the various departments of the juvenile justice system in order to ensure consistency in the operation of all services through information and data sharing as well as mutual capacity building, which may allow avoid duplication, overlap, and other misunderstandings.**

### **8.3. Support and technical assistance**

Some agencies, funds, programs or UN experts are specialized in the field of the administration of juvenile justice. These include the Office of the United Nations High Commissioner for Human Rights, the United Nations Office against Drugs and Crime, the United Nations Fund for Children, the Special Representative of the UN Secretary-General on violence against children and the UN Committee on the Rights of the Child. These should strengthen their technical assistance to States in the establishment and consolidation of their juvenile justice system for full compliance with international standards.

For BICE, these entities should provide technical assistance to States, so as to:

**Harmonize the national standards system with international obligations under the relevant international treaties, but also with non-binding international instruments;**

**Develop tools for collecting disaggregated data at all levels of the juvenile justice system;**

**Establish interdisciplinary teams for monitoring, coordinating and evaluating resource-persons in various ministries, the judiciary, international organizations, civil society and community organizations;**

**Establish, ensure the effective operation, and evaluate the system of the juvenile justice administration;**

**Provide specialized training to all States and non-State actors involved in the implementation, monitoring and evaluation of the judicial system.**