

**The United Nation Convention On The Rights Of The Child: Are Children**

**“In Conflict With Law” Really Protected?**

**A Case Study of Republic of Albania’s Juvenile Justice System**

A thesis submitted in partial fulfillment of the requirements of  
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By

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## ABSTRACT

This thesis aims to provide a systematic and comprehensive analysis of the implications of the UN Convention on the Rights of the Child (CRC) with regard to the administration of juvenile justice in Albania. The central questions addressed are what overall approach does the CRC, as the guiding framework, adopt towards children in conflict with the law; what overall approach does Albania adopt towards children in conflict with the law; and what does being part of the juvenile justice system mean for a young Albanian person?

Mixed methods are utilised to analyse research and provide a theoretical working basis of the thesis. As such, a detailed legal analysis of the available literature, CRC, and other relevant international instruments was performed in order to ascertain the international standards and norms applied to the juvenile justice system. Examining juvenile justice in Albania involved in-depth policy and legal analysis of domestic legislation and policy papers relating to juvenile justice, in addition to shedding light on the policymaking process and local implementation itself through qualitative interviews at the Ministry of Justice in Albania and child-oriented local and international NGOs. These were combined with survey results to provide a more rounded picture concerning both the formal aspects of the system and the reality as experienced by those subjected to it.

The general conclusion of the thesis is that the present juvenile justice in Albania fails to implement, in full, the articles of UN Convention on the Rights of the Child and UN Norms on Juvenile Justice. No diversionary measures from the criminal justice system are available to children in conflict with the law. The juveniles are tried at juvenile sections of courts under the same procedure and conditions that apply to adult offenders. There is a lack of a child-oriented approach on alternative measures to deprivation of liberty, the effective implementation of which is currently not supported by the institutional mechanisms. Similarly, the penitentiary system dealing with children deprived of liberty, whilst violating juvenile rights, fails to comply with juvenile reintegration and the juvenile assuming a constructive role in society.

The study concludes by proposing a set of recommendations and actions for implementing international standards, concerning domestic legislation and enforcement, including awareness raising and training.

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## ABBREVIATION

<b>Beijing Rules</b>	UN Standard Minimum Rules for the Administration of Juvenile Justice
<b>CARDS</b>	The Community Assistance for Reconstruction, Development and Stabilization, European Union
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CC</b>	Criminal Code of Republic of Albania
<b>CCP</b>	Criminal Code of Procedure of Republic of Albania
<b>CoE</b>	Council of Europe
<b>Committee</b>	UN Human Rights Committee on the Rights of the Child
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRC</b>	UN Convention on the Rights of the Child
<b>CRCA</b>	Children's Human Rights Centre of Albania
<b>DCI</b>	Defence for Children International
<b>ECHR</b>	European Convention on Human Rights and Freedoms
<b>ECtHR</b>	European Court of Human Rights
<b>ECOSOC</b>	UN Economic and Social Council
<b>EU</b>	European Union
<b>GRP</b>	General Regulation of Prisons
<b>HRC</b>	UN Human Rights Committee
<b>ICCPR</b>	International Covenant on Politic and Civil Rights
<b>IECS</b>	Institution of Execution of Criminal Sentences
<b>INSTAT</b>	Albanian National Institute of Statistics
<b>JDLs</b>	UN Rules for the Protection of Juveniles Deprived of their Liberty
<b>MJ</b>	Ministry of Justice
<b>NGO</b>	Non-Governmental Organisation

<b>OJJFR</b>	Office of Juvenile Justice and Family Rights
<b>OSCE</b>	The Organization for Security and Co-operation in Europe
<b>SIDA</b>	Swedish International Development Cooperation Agency
<b>SMR</b>	United Nations Standard Minimum Rules for the Treatment of Prisoners
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund

## LIST OF TREATIES

- CAT** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)
- ICCPR** International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.
- CRC** Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.
- JDLs** United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).
- Riyadh Guidelines** United Nations Guidelines for the Prevention of Juvenile Delinquency G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).
- Beijing Rules** United Nations Standard Minimum Rules for the Administration of Juvenile Justice G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).
- ECHR** (European) Convention for the Protection of Human Rights and Fundamental Freedom, ETS 5, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which *entered into force* on 21 September 1970, 20 December 1971 and 1 January 1990 respectively.
- SMR** Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).
- Body of Principles** of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)
- Vienna Guidelines** UN Guidelines on the Administration of Juvenile Justice, ECOSOC Resolution 1997/30 (1997)
- Tokyo Rules** United Nations Standard Minimum Rules for Non-custodial Measures, The Tokyo Rules, G.A. res. 45/110, (1990)

## LIST OF ALBANIAN LEGISLATION

- Council Of Minister Decision No. 127, date 15.03.2201 'Committee for Equal Opportunities'
- Council Of Minister Decision No. 303, date 25.03.2009 'On General Prison Rules'
- Council Of Minister Decision No. 368, date 31.05.2005 'On National Strategy for Children'
- Council Of Minister Decision No. 415 date 01.07.1998 'On establishment and functioning of Committee Women and Family'
- Council Of Minister Decision No. 63 date 9.03.2000 'On General Prison Rules'
- Council Of Minister Decision No.302, date 25.3.2009 'On approval of regulation 'On organisation and functioning of probation service and determination of standards and procedures for supervision of execution of alternative sentences'
- Council of Minister Order No.118, date 30.06.2004 'On the Inter-Ministerial Committee on Children'
- Council of Minister Order No.162, date 24.07.2006 'On Technical Secretariat for Children'
- Law No. 5591, date 15.06.1977 'Criminal Code of Popular Socialist Republic of Albania'
- Law No. 7527, dated 2.11.1991, "On Military Service"
- Law No. 7850, date 29.07.1994 'Civil Code of Republic of Albania'
- Law No. 7895, date 27.1.1995 'Criminal Code of Republic of Albania'
- Law No. 7905, date 21.03.1995 'The Criminal Procedure Code of Republic of Albania'
- Law No. 7952, date 21.06.1995 'On Pre-university Education System'
- Law No. 7961, date 12.07.1995, 'Code of Labour of the Republic of Albania', as amended by Law No. 8085, date 13.03.1996 and Law 9125, date 29.07.2003
- Law No. 8305, date 30.06.1999 'On the right to information over the official documents'
- Law No. 8321, date 02.04.1998 'On Prison Police'
- Law No. 8328, date 16.4.1998, "On Rights and Treatment of person deprived of liberty"
- Law No. 8331, date 21.04.1998 'On execution of criminal sentences'
- Law No. 8417, date 22.11.1998, 'Constitution of Republic of Albania'
- Law No. 8436, date 28.12.1998 'On the organization of judiciary power in the Republic of Albania'
- Law No. 8454 date 4.02.1999 'On People's Advocate'
- Law No. 8656, date 31.7.2000 'On amendments and supplements to Law No. 8436, date

28.12.1998 'On the organization of judiciary power in the Republic of Albania'

Law No. 8678, date 14.05.2001 'On Organization and Functioning of the Ministry of Justice'

Law No. 8737, date 12.02.2001 'On the organisation and functioning of the Prosecutor's Office in the Republic of Albania'

Law No. 8757, date 26.03.2001 'On supplement and amendments to Law No. 8321, date 02.04.1998 'On Prison Police'

Law No. 8758, date 26.03.2001 "On Amendments to law no. 8328, date 16.4.1998, "On Rights and Treatment of person deprived of liberty'

Law No. 8767, date 2.11.2000 "On judicial police"

Law No. 9062, date 08.05.2003 'Family Code'

Law No. 9090, dated 26.03.2003 'On Mediation in Dispute Resolution'

Law No. 9102, date 10.7.2003 'On Amendments to Law No. 8737, date 12.02.2001 'On the organisation and functioning of the Prosecutor's Office in the Republic of Albania'

Law No. 9110, date 24.07. 2003, 'On the Organisation and Functioning of the Courts for Serious Crimes'.

Law No. 9112, date 24.07.2003 'On Amendments and Supplements to Law No. 8678, date 14.5.2001 'On Organization and Functioning of the Ministry of Justice'

Law No. 9241, date 10.6.2004, 'On amendments to Law no. 8677, date 2.11.2000 "On judicial police"

Law No. 9397, date 12.5.2005 'On the of internal control service of the detention system'

Law No. 9398, date 12.05.2005 "On amendments to law No. 8454 date 4.02.1999 'On People's Advocate'

Law No. 9686 dated 26.2.2007 'On some supplements and amendments to the Law No 7895, date 27.1.1995 'On Criminal Code of the Republic of Albania'

Law No. 9749, date 04.06.2007 'On State Police'

Law No. 9877, date 18.02.2008 'On the organization of judiciary power in the Republic of Albania'

Law No. 9888, date 10.03.2008 "On Amendments to law no. 8328, date 16.4.1998, "On Rights and Treatment of person deprived of liberty'

Law No. 10023, date 27.11.2008 "On amendments to law no. 7895, date 27.1.1995 'Criminal Code of Republic of Albania', amended'

Law No. 10024, date 27.11.2008 "On Amendments and Supplements to law No. 8331,

date 21.04.1998 'On execution of criminal sentences'

Law No. 10032, date 11.12.2008 'On the detention centre Police'

Law No. 10039, date 22.12.2008 "On legal aid".

Law No. 10051, date 29.12.2008 'On Amendments to Law No. 8737, date 12.02.2001 'On the organisation and functioning of the Prosecutor's Office in the Republic of Albania'

Law No. 10087, date 26.02.2009 "On Amendments to law no. 8328, date 16.4.1998, "On Rights and Treatment of person deprived of liberty'

President of Albania, Decree No.2868, date 16.3.1959 'On Declaration of Penal Code of Popular Republic of Albania'

President of Republic of Albania Decree No.6218 date 07.07.2009, 'On establishment of special section for trial of minors at First Instance Courts'

President of Republic of Albania, Decree No.5351 date 11.06.2007, 'On establishment of special section for trial of minors at First Instance Courts'

President of Republic of Albania, Decree No.5559 date 27.12.2007, 'On amendments to Decree No.5351 date 11.06.2007, 'On establishment of special section for trial of minors at First Instance Courts'

## INTRODUCTION

'Children in many countries face the wrath of the law for the 'crimes' of being poor, neglected or abused. Regardless of the reasons for their offences, young people are entitled to fair treatment at the hands of juvenile justice systems that are designed to aid youngsters' return to productive society as quickly as possible.'

Lisbet Palme<sup>1</sup>

The protection of the rights of all juveniles who come into conflict with the law is a matter of growing international concern. Approaches to the prevention of juvenile delinquency, administration of juvenile justice and protection of the young have undergone a progressive evolution of thought and action under the aegis of the United Nations.

During the 1980s and 1990s, the United Nations opened a new range of applications for human rights<sup>2</sup> regarding to its standards and norms in the area of juvenile justice. These include:

- 1985 Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')<sup>3</sup>
- 1989 Convention on the Rights of the Child<sup>4</sup> ('CRC')
- 1990 Guidelines for the Prevention of Juvenile Delinquency<sup>5</sup> ('The Riyadh Guidelines')
- 1990 Rules for the Protection of Juveniles Deprived of their Liberty<sup>6</sup> ('JDL')

These standards and norms envelop a full spectrum of laws and legal procedures, which a typical justice system requires if it is to be fully compliant with international standards. Topics include crime prevention and diversion, administration of juvenile justice, sentencing, and the training of personnel to ensure certain conditions in prisons and facilities in which young people are deprived of their liberty.

<sup>1</sup> Lisbet Palme, 'No age of innocence: Justice for children', *UNICEF*, 1997 <http://www.unicef.org/pon97/protec1.htm>, (Accessed 27/10/09)

<sup>2</sup> In Art. 10 II b, III and 14 II b ICCP of 1966 and U.N. Standard Minimum Rules for the Treatment of Prisoners of 1955 and regional Human Rights Treaties very specific provisions on juvenile justice could be found sporadically

<sup>3</sup> General Assembly Resolution 45/112

<sup>4</sup> General Assembly Resolution 44/25.

<sup>5</sup> General Assembly Resolution 45/112.

<sup>6</sup> General Assembly Resolution 45/113



One important question is how to facilitate reform tendencies in State Parties, in order to bring their justice systems into line with international standards. The majority of studies carried out in regard to implementation of the CRC and the UN standards and norms in juvenile justice fall into two clusters. The first cluster includes studies that analyse the national legislative framework and provide recommendations on how to bring legal provisions in line with the CRC and the UN standards and norms in juvenile justice.<sup>7</sup> Within the second cluster are studies conducted, or commissioned, by international non-governmental organisations such as the DCI, Human Rights Watch and Amnesty International that map the implementation of relevant international standards on juvenile justice.<sup>8</sup> In addition, there are academic studies, which analyse appropriate responses to matters regarding, for instance, legal reform process, treatment methods, alternative and restorative measures, in addition to recidivism and social integration.<sup>9</sup> One common aspect of these studies is that they are based on quantitative data, pure legal analysis, or empirical research involving juveniles. Few studies involve all national stakeholders when analysing the practical implementation of standards and norms, possible deviations from them, explanations and the forces and institutions administering them.<sup>10</sup>

This thesis aims to define the breadth of impact that the CRC has had in terms of how it has been disseminated, implemented and monitored by a State Party – the Republic of Albania – with regard to juvenile justice.

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<sup>7</sup> For example: 'Justice for Children: Detention as a Last Resort. Innovative Initiatives in the East Asia and Pacific Region', *United Nations Children's Fund UNICEF 2003*, 'No age of innocence: Justice for children The Progress of Nations', *United Nations Children's Fund UNICEF 1997*, Ann Skelton, Stephen Asquith, Geert Cappelaere, and Giuseppe La Greca, 'Towards a Comprehensive Juvenile Justice System for Albania - Final Report of an Expert Group Mission', *UNICEF Tirana, Albania, 2000*

<sup>8</sup> For example: 'From Legislation to Action? Trends in Juvenile Justice Systems Across 15 Countries', *Defence for Children International Geneva 2007*; Stan Meuwese. 'Kids behind bars. A study on Children in conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards', *Amsterdam: Defence for Children International 2003*; 'Violence Against Girls in Conflict with the Law', Human Rights Watch,

<sup>9</sup> For example Ido Weijer, 'The double Paradox of Juvenile Justice', *European Journal on Criminal Policy and Research*, Vol 7, Issue 3, 1999, pp: 329–351; Loraine Gelsthorpe and Nicola Padfield, *Exercising discretion: Decision-making in the criminal justice system and beyond*, Willan Publishing, 2003; Ton Liefwaard, *Deprivation of liberty of children in light of international human rights law and standards*, Intersentia, 2008.

<sup>10</sup> The only academic study is one carried on by Dr. Heidrun Kiessl on behalf of Max Planck Institute for Foreign and International Criminal Law, Germany. (Kiessl, H. 2001 'United Nations standards and norms in the area of juvenile justice in theory and practice: An empirical study on the use and application of UN rules for the protection of juveniles deprived of their liberty in South African practice' – (manuscript) at Max Planck Institute for Foreign and International Criminal Law, Germany). The study's approach was questionnaires focus on similar areas for the staff of prisons and places of safety and also the juveniles themselves. UNDOC project in Lebanon conducted interviews with key players and interlocutors and only field visits to the key juvenile institutions

The purpose of this thesis is not merely to define the current juvenile justice situation in Albania. In terms of broader impact, the thesis goes beyond existing studies that focus largely on enumerating the non-compliance with international standards, as it offers a more detailed account of the expectation international standards establish and their actual usage in practice. In doing so, the thesis provides a detailed investigation into the discrepancies in compliance between the international standards in juvenile justice and the factual reality of their implementation by Albania. In order to achieve this, the thesis will focus in particular on two issues:

- What are the current theory, policy and practice of juvenile justice adopted by the Republic of Albania?
- How far juvenile justice falls short of the UN Convention of the Rights of Child related to children in conflict with the law?

The thesis provides a source of information regarding the advancement made in Albania since the recommendations made by the Committee on the Rights of Child in 2005 until June 2009. For example, whether there have been changes in policies and programmes to reflect the recommendations, and whether there is more interest from the key stakeholders involved in reforming the juvenile justice system.<sup>11</sup> To this end, the thesis also looks ahead, using the historic developmental peculiarities of Albania's juvenile justice system, to possible future improvement and the prospects for development of the system, whilst taking into account the political and socio-economic reality of the country.

Finally, the thesis is descriptive as well as analytical in nature. It attempts to describe in detail the juvenile justice structure, international standards and existing mechanisms created to implement the standards. The thesis includes analysis of the impact that these international standards have had in favour of the rights of juveniles in conflict with the law. Thus, the thesis combines literature and political analysis and uses data gathered from different sources in addition to empirical investigation. By adopting such methods, the thesis helps to pinpoint areas of discrepancy between international standards and their implementation in Albania. The discrepancies are identified using perspectives gained during the research, and take into

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<sup>11</sup> The recommendation were issued once the Committee considered the initial report of Albania (CRC/C/11/Add.27), at its 1003rd and 1004th meetings (see CRC/C/SR.1003-1004), held on 12 January 2005. UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania* CRC/C/15/Add.249, 28 January 2005

account the elements obtained through the usage of a mix of quantitative and qualitative methods.<sup>12</sup> By identifying the precise areas of non-compliance, the conclusions of the thesis provide a solid basis for recommending change in the juvenile justice system in Albania.

For the purpose of the thesis, juveniles are defined as young persons in conflict with the law, who were under 18 years old at the time of alleged offence and above the age of criminal responsibility.<sup>13</sup> Young persons detained for reasons other than penal sanctions are out of the scope of this study. Most children in conflict with the law have committed petty crimes or minor offences such as vagrancy, truancy, begging or alcohol use, known as 'status offences'. For the purpose of this research, status offences will not be considered.<sup>14</sup> The work is also limited to international human rights standards and national laws relating to the problem and application of juvenile justice in Albania. All the terms will be used according to the meaning given by the United Nations Office on Drugs and Crime and UNICEF using the Manual Measurement of Juvenile Justice Indicators, attached as Appendix 1 to the thesis.<sup>15</sup>

This introduction sets out a brief preliminary summary of the reasons why juveniles in conflict with the law, the international standards on juvenile justice, and why Albania motivated the research. A brief overview of the questions raised is also provided. The thesis is structured into two parts, which are described in the final section of this introduction.

## **1. Why juveniles in conflict with the law?**

There is universal concern and recognition of the importance of children for future communities. This concern relates directly to society's steadfast belief that young people represent our greatest asset for the future welfare of the community.

*"A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone; attend to these things, which you think are important. You may adopt all the policies you please; but how they are carried out depends on him. He will assume the control of your cities, states and nations. He is going to move in and take over your churches, schools universities and*

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<sup>12</sup> A full methodological overview can be found in Chapter 2

<sup>13</sup> Article 1 CRC is read in conjunction with Article 40 (3)(a) CRC. A full discussion would be provided in chapter two.

<sup>14</sup> 'The status offences' are not included at the Penal Code of Albania. For the purposes of principal aim it was considered to exclude from the review.

<sup>15</sup> 'Manual for measurement of juvenile justice indicators', *United Nations Office on Drugs and Crime (UNODC) Vienna, 2006*, [http://www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf) (accessed 27/08/2011)

*corporations. All your books are going to be judged, praised or condemned by him. The fate of humanity is in his hands."*

Abraham Lincoln<sup>16</sup>

For centuries 'the idea of law – the idea that order is necessary and chaos inimical to a just and stable existence',<sup>17</sup> – has always played a central role in the development of human society. To this end, any civilised society establishes a 'framework of principles', which regulate 'the behaviour' of members and 'their adherence to recognized values and standards'.<sup>18</sup> This framework, consisting of 'a series of rules' known as 'law', is the key element that 'binds the members of the community together'<sup>19</sup> and facilitates social order. Thus the main legitimate interest for each community remains the need for instilling law-abiding attitudes to maintain the behaviours of its young members in conformity with the established values and standards. It falls to the family, 'as the fundamental group unit of society'<sup>20</sup> to introduce children to the values, culture, and norms of their society.<sup>21</sup> Although the primary responsibility for the protection, upbringing and development of children rests with the family, international human rights law imposes a positive obligation upon States to support families in performing their child-rearing responsibilities.<sup>22</sup> One aspect of state obligation consists not only 'to render appropriate' material and financial assistance, but also to ensure, that where at all possible, children can be cared for by their parents.<sup>23</sup> If the family

<sup>16</sup> David Shumaker, and Robert Heckel, *Kids of Character: A guide to Promoting Moral Development*, Greenwood Press Praeger Publishers Inc, 2007, p.201

<sup>17</sup> Malcolm N. Shaw, *International law*, Fifth edition, Cambridge University Press, 2003, p.1

<sup>18</sup> Shaw argues that 'every society, whether it be large or small, powerful or weak, has created for itself a framework of principles within which to develop'. To his understanding the principles have all been spelt out within the consciousness of that community and consist on what can be done and what cannot be done, what behaviour is permitted and what behaviours is forbidden. Shaw 2003, p.1)

<sup>19</sup> According to Shaw, law facilitate the social order by fulfilling in the same time its permissive function – 'allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts'- and coercive function – 'as it punishes those who infringe its regulations'. (Shaw 2003, p.1)

<sup>20</sup> Article 16 (3) of UDHR proclaims that 'The family is the natural and fundamental group unit of society and is entitled to protection by society and state'. Similarly, Article 23(1) of ICCPR states that 'the family is the natural and fundamental group unit of society ad is entitled to protection by society and the State'.

<sup>21</sup> A number of international human rights instrument contains specific provisions in regard to the parental rights and responsibilities. Thus Article 18.4 ICCPR embodies the parental liberty to ensure the religious and moral education of their children in conformity with their own convictions. Article 13.3 ICESCR enumerates the parental liberty to choose for their children school in conformity with their own convictions. The preamble of the CRC reiterates that one of the most important conditions for the realization of the rights of the child is that the child grows up in a family environment and in an atmosphere of happiness, love and understanding, because that condition is crucial for the full and harmonious development of the child's personality.

<sup>22</sup> Article 18(1) CRC implies that that the State has the secondary responsibility to assist parents where necessary. At least 192 states, signatory to CRC, have taken upon themselves the obligation to comply with such requirement while using the available resources to the maximum extent possible (Article 4 CRC).

<sup>23</sup> Article 18(2) and 27 (3) CRC implies that the State has a secondary responsibility to assist parents where necessary. The provisions indicate in one hand state's obligation to take various legislative, administrative

cannot, or will not, adequately meet the needs of the child and, specifically, where the child is being subjected to or is at significant risk of harm, whether that be physical, mental or sexual harm, the State is under a duty to intervene to safeguard the well-being of that child.<sup>24</sup> However, the State should intervene to remove a child from the family only if it is absolutely necessary and where it is in the best interests of the child.<sup>25</sup>

## 2. Why international law regulating juvenile justice?

Society's attitude towards evil behaviour of its young reflects the vagaries of social constructions of youth and youth deviance. The United States of America was the first country to reform policies regarding judicial 'treatment' of 'potential paupers' in the late 1800s.<sup>26</sup> This was because of 'ideological changes in the cultural conception of children and in strategies of social control differentiating youths from adult offenders during the nineteenth century.'<sup>27</sup> Such processes were finalised with the passing of the Illinois Juvenile Court Act in 1899, which established the United States of America's and world's first juvenile court.<sup>28</sup> The act was in response to ideological changes regarding the concept of problematic children, of a family's responsibility for troublesome youths, and of the State's role in response to undesirable behaviour in children.<sup>29</sup> All over the western world, a view was emerging at that time that 'children in trouble ought to be 'saved' and not punished'.<sup>30</sup> The judicial treatment of 'potential paupers' through the establishment of special courts to

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financial measures to support parents in the performance of their responsibility, on the other hand state's right to be selective in its intervention. In practical terms the parents cannot expect the State to always intervene if a problem occurs.

<sup>24</sup> As Eide notes the obligations imposed upon states by Article 27 CRC are two folds. They do imply a responsibility to ensure that guardians fulfil their responsibility toward the child. (Asbjørn Eide, 'Article 27: the Right to an Adequate Standard of Living' in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F Ang. E. Berghmans and M. Verheyde, Leiden: Martinus Nijhoff Publishers, 2006, p.2)

<sup>25</sup> Article 9(1) of the CRC embodies the safeguards for children not be separated from their families against their will, except when competent authorities subject to judicial review, so determine in accordance with applicable law and procedure, that such separation is necessary for the best interests of the child.

<sup>26</sup> Ido Weijer, 'The double Paradox of Juvenile Justice', *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp. 329-351, p.332

<sup>27</sup> Jean Trépanier, 'Juvenile Courts After 100 years: Past and Present Orientations', *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp. 303-327, p. 309; Barry C. Field, 'Juvenile Justice: History and Philosophy' in *Encyclopaedia of Crime and Justice*. 2002. *Encyclopedia.com*. 25 Jun. 2011 <http://www.encyclopedia.com> (accessed 22/06/2011)

<sup>28</sup> Trépanier, 1999, p. 303, Weijers 1999, p.332, As Trepanier acknowledges, 'there seems to be a wide consensus that the Chicago court in Illinois was the first of its kind to be created by a specific act with the characteristics then attributed to juvenile court. (Trepanier 1999, p. 311) Juvenile justice systems began in Europe at the turn of the century, shortly after the first juvenile court was established in Chicago in 1899. Children's courts were created between 1905 and 1912 in the Netherlands, United Kingdom, Belgium, France, and Germany. (Trepanier 1999, p.316)

<sup>29</sup> Trépanier, 1999, p. 303, Weijers 1999, p.332

<sup>30</sup> Weijers, 1999, p.334

deal only with them 'seems to have marked the main breaking point with the punitive philosophy of criminal justice'.<sup>31</sup> Not only by taking children out of adult criminal courts, but also treating them according to a welfare-orientated approach<sup>32</sup>, seems to mark the first main step towards the establishment of the juvenile justice system. Despite the influence of the American model of a children's court, different justice models and approaches with respect to juveniles were applied in North America and Europe, as a result of different histories and cultures.<sup>33</sup> Whatever the differences, the foundation of juvenile justice systems was and remains the assumption that children are different from adults, as they are in a process of moral and social development, which make them more prone to increase their opportunity to reintegrate into society at the end of their rehabilitation.<sup>34</sup> Nowadays, this assumption has achieved such universal acceptance across the diverse legal systems, as to require a set of principles that can be universally applied. International law has a key role to play in this respect as, notwithstanding how juvenile justice systems are dealt with individually by various states, it shapes common values and standards.<sup>35</sup>

Thus, international law seeks to offer guidance and appropriate policy responses through several guidelines aimed at creating a framework of additional protection, conducive to the well-being of children. It also adheres to recognition of the special needs and universality of children as human beings. The importance that the international community attaches to juvenile justice means that an international dialogue on how to help society deal with problematic youth is established. Many results of this dialogue have been officially reflected through universally ratified key instruments or non-binding ones, which have drawn up standards that attempt to harmonise all elements of juvenile justice, from the way the police and courts deal with young people in conflict with criminal law, right through to re-education and reintegration. Far from ignoring the standards foreseen regarding international law, states have taken them on board to encourage reforms consistent with emerging international

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<sup>31</sup> Trépanier, 1999, p. 303

<sup>32</sup> A whole range of institution designed specifically for children and young people, such as youth prisons, youth penitentiaries, reform prisons, reform schools, industrial schools, penal colonies (colonies pénitenciaires), agricultural colonies and houses of refuge, were established to support the execution of decision issued by juvenile courts.

<sup>33</sup> Weijers: 1999, Trépanier, 1999

<sup>34</sup> Weijers: 1999, Trépanier, 1999, Geraldine Van Bueren, *The international law on the rights of the child*, M. Nijhoff Dordrecht, London, 1998, p.169, Bruce Abramson, 'The Right to Diversion: Using the Convention on the Rights of the Child to turn juvenile justice rights into reality' in *Proceeding of the 1<sup>st</sup> International Conference on 'Juvenile Justice and the Prevention of Juvenile Delinquency in a Globalized World'*, 27-29 October, International Juvenile Justice Observatory, Valencia, 2004, p. 20-22,

<sup>35</sup> Shaw 2003, p.208

recommendations on how to treat minors in conflict with the law. Thus, international binding or non-binding instruments provide guidance and appropriate policy responses through several guidelines aimed at creating a framework of additional protection, conducive to the well being of children. They also adhere to recognition of the special needs and universality of children as human beings.

In both binding and non-binding international law, juvenile justice and its associated fields (such as the prevention of delinquency and conditions of detention) are the subject of provisions whose comprehensive and detailed nature has no equal in the overall field of children's rights.<sup>36</sup> The most significant instrument of international law providing a legally binding document on the treatment of children and expelling children's rights is the 1989 United Nations Convention on the Rights of the Child (CRC). Beyond the CRC, international law seeks to offer guidance and appropriate policy responses via several guidelines on implementation of effective juvenile systems on rules and guidelines. This includes, for example, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules of 1985), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Respecting the obligation imposed by these principles and standards requires, for many states, a radical change not only of law, policy, and practice, but also perception of young people as well. This implies a political commitment from states, as reform presumes public debate over the material things of life, such as the allocation of financial incentives, and over issues such as seeking public support on whether to implement the policy.<sup>37</sup> The juvenile justice system is a modification of the criminal system in response to juvenile crime, taking into account the developmental needs of minors. However, the picture that emerges is that states have failed to grasp the reasons for having a special system of justice for young

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<sup>36</sup> Van Bueren 1998, p. 169; Deirdre Fottrell, 'Bringing Rights All the Way Home – Some Issues of Law and Policy in International Law and Juvenile Justice', in *Youth Justice, Theory and Practice*, eds. J. Pickford Routledge-Cavendish, 2000 p.99, 'Innocenti Digest: Juvenile Justice', *UNICEF International Child Development Centre Florence- Italy*, <http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=105>, 1998 (Accessed 25/07/11), p.2,

<sup>37</sup> Abramson 2004, p. 35; Carolyn Hamilton and Rachel Harvey, 'The role of public opinion in the implementation of international juvenile standards', *The International Journal of Children's Rights*, Vol.11, Issue 4, 2004, pp. 369-390, p.369 Many of international instruments impose an obligation upon signatory's parties to give effect to their provisions by importing their standards into the legislative and administrative practices. However, most of the power of their implementation lies in socio-political dimension.

people who are in trouble with the law.<sup>38</sup> Juvenile justice is the 'unwanted child' of States when it comes to living up to their obligations under the international instruments, especially the CRC.<sup>39</sup> The thesis tries to produce an accurate 'snapshot' of the current strengths and weaknesses of the Albanian juvenile justice system 'in action'; therefore, it seeks to provide an example of how the provisions of international obligations are transposed into domestic legislation.

### 3. Why Albania?

In 1991, Albania embarked on an intense period of political and economic reform aimed at establishing a democratic system through the protection of individual rights and at raising the standard of living through a free market economy. Despite its small size (28,748 square km), a population of 3.2 million and its wealth of natural resources, Albania was, and still is, one of the poorest countries in Europe. Before 1990, Albania, belonged to the Socialist block, but in fact was totally isolated, was one of the least known countries in Europe, and arguably one of the least known in the world.<sup>40</sup>

Since 1991, Albania has been undergoing a contentious process of change, undergoing a complex transition period and a controversial process of institution-building. After almost two decades of system changes, Albania still lacks a mature market economy, energy, water, and transportation infrastructure, and elections conducted in line with international standards. The economic and political reforms suffered noticeably because of brutal suspension three times; firstly in 1991-1992 as a result of social turmoil; secondly during the collapse of pyramidal schemes in the beginning of 1997; and thirdly in 1999, because of the war in Kosovo.<sup>41</sup>

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<sup>38</sup> Bruce Abramson, 'Juvenile Justice: The 'Unwanted Child': Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it' – (manuscript) at *International Network on Juvenile Justice/Defence for Children International*, 2005, p.6

<sup>39</sup> In calling juvenile justice as 'unwanted child', Abramson refers to marginalization of juvenile justice within the children's rights movement, and within the broader human rights movement; to the frequency with which the Committee has called for 'comprehensive reform' of the juvenile justice system; to the number of times that the Committee has had to urge states to end inhumane practices that constitute *per se* violations of international law, like using the death penalty on minors, or flogging and torture. (Abramson 2005, p. 6)

<sup>40</sup> <http://www.state.gov/r/pa/ei/bgn/3235.htm>, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/albania>.

<sup>41</sup> Miranda Vickers, M. *The Albanians: A modern History*, I.Ib Tauris & Co Ltd, London, 1999 provides a detail account in support of the three interruptions on the eleventh chapter 'The democratic 'dream' fades'.



In 1992, Albania faced deep legal reform, which consisted of transforming the existing communist legal system into a civilised legal system, which would meet the requirements of a democratic state. Nowadays the focus of reform has shifted towards the approximation of national legislation with the provisions of international laws, particularly EU legislation, and foreseeing their development prospects.<sup>42</sup> Such reform must not only establish a state governed by democratic institutions, but also guarantee the protection of fundamental freedoms, the rights of the individual, and also help to support people's welfare.<sup>43</sup> However, the history of Albania's transition provides a somewhat specific but also typical example of the strong dependency between the level of democratic development and rule of law on one side, and the achieved level of reforms and economic growth on the other. Albania is still a developing democracy where respect for, and implementation of, the rule of law remains deficient.<sup>44</sup> Widespread corruption and organized crime continue to be serious threats to the stability and progress of the country.<sup>45</sup> Albania has not shown a desire to uphold human and minority rights.<sup>46</sup> The judicial system has serious deficiencies and is viewed by the public as corrupt, unprofessional, and ineffective.

Albania has a total population of 3,320,000, which included 1,396,000 children in 2004. Thirty-three per cent of children are below the age of 15 years, and 40 per cent are below the age of 18 years. With regard to the Albanian Constitution, children, like the rest of Albania's citizens, enjoy equal rights under the law.<sup>47</sup> However, the 2004 figure reported above does not represent the accurate percentage of children. The 2004 figure is estimated to be consistent with the 2001 census, with the official population estimation for 2004, which follows the estimation of subsequent trends in fertility, mortality and international

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<sup>42</sup> The Stabilisation and Association Agreement establishes a comprehensive contractual framework between the EU and Albania in regard to approximates its legislation in the relevant sectors to that of the EU and to effectively implement it. [http://eeas.europa.eu/delegations/albania/eu\\_albania/political\\_relations/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/political_relations/index_en.htm)  
A Stabilisation and Association Agreement is part of the EU Stabilisation and Association Process with a country, which has expressed a wish to join the European Union.

<sup>43</sup> The guarantee of 'rule of law' is one of the criteria for accession of Albania to the EU, which the EU defined at the Copenhagen European Council in 1993, as the requirement to satisfy the economic and political conditions. [http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm)

<sup>44</sup> Communication from the Commission to the Council and the European Parliament 'Enlargement Strategy and Main Challenges 2010-2011', COM (2010) 660, Annex  
[http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm)

<sup>45</sup> Ibid p.14 and 23

<sup>46</sup> Ibid, p. 23

<sup>47</sup> UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Periodic Report of States Parties due in 1994: Albania*, CRC/C/11/Add.27, 5 July 2004, para. 45

migration.<sup>48</sup> In recent times, Albania's demographic profile has been characterized by three main phenomena; large internal and external migratory waves, improving mortality rates, and declining fertility rates. Massive migration occurred from the poorest rural areas to the more developed urban centres, especially the capital Tirana and the largest port city, Durres.

For nearly half a century, Albania experienced a brand of communism unknown to the rest of Eastern Europe. During his 40-year reign, the Albanian leader Enver Hoxha banned religion, forbade travel, and outlawed private property. Any resistance to his rule was met with severe retribution, including internal exile, long-term imprisonment, and execution. His domination of Albania's political, economic, and social life was absolute.<sup>49</sup> In the light of this history, Albania has made substantial progress towards respect for civil and political rights. The complete absence under communism of independent courts, a free media and a human rights mechanism, still poses a serious challenge to Albanian democracy today.<sup>50</sup> Human rights, particularly the rights of the child, have only been introduced within the last decade to Albanian society.<sup>51</sup> The Albanian Constitution provides the essential elements of due trial, human rights, and freedoms.<sup>52</sup> Moreover, the Constitution of Albania explicitly states that every international agreement ratified by the Parliament constitutes part of the internal judicial system. An international agreement ratified by law is superior to national laws, which are not in accordance with it.<sup>53</sup> However, implementation of those laws is severely lacking.<sup>54</sup>

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<sup>48</sup> The statistics for 2001 are taken from the results of Population and Household Census accomplished in April 2001. After 2001, the population is calculated based upon population projections by INSTAT, [www.instat.gov.al](http://www.instat.gov.al) (accessed 13/01/2011). The next Population census is programmed to run in November 2011. The current INSTAT figures on population number includes a subcategory of age distribution for 18-19 years old, which renders impossible to provide a calculation on children number. UNICEF figures adopts two categories 'under 18' and 'under 5', but does not give a total population figure for 2008. Similarly, the Index Mundi <http://www.indexmundi.com/albania/population.html> (accessed 13/01/2011) provides subcategories about age (0-14 years, 15-64 years and 65 years and over), structure which renders impossible to define the number and percentage of children in Albania.

<sup>49</sup> See more Chapter 9, in James S. O'Donnell, *A coming of age: Albania under Enver Hoxha*, Boulder: East European Monographs; New York: Distributed by Columbia University Press, 1999. In addition, more reading at <http://www.state.gov/r/pa/ei/bgn/3235.htm>

<sup>50</sup> COM (2010) 660, Annex In addition, the country's ranking in international indexes measuring media quality is low for 2011 -2.27 points IREX Media Sustainability Index for Europe <http://www.irex.org/resource/albania-media-sustainability-index-msi>; 80<sup>th</sup> in the Reporters Without Borders' 2010 Freedom of Media Index, <http://en.rsf.org/press-freedom-index-2010.1034.html>; and 102<sup>nd</sup> in Freedom House's 2010 worldwide rating, qualified only 'partly free' <http://www.freedomhouse.org/template.cfm?page=560&year=2010>

<sup>51</sup> Please see below the analysis of this issue.

<sup>52</sup> Law No.8417, dated 21.10.1998, 'The Constitution of Republic of Albania' (hereinafter the Constitution) extends the legal rights to cover the panoply of modern human rights, including private property. Part II of the constitution, 'Fundamental Human Rights and Freedoms', enumerates the rights and guarantees that any individual, Albanian or foreigner, enjoys against state interference in their lives.

<sup>53</sup> Art.17 of the Albanian Constitution

Albania acceded to the UN Convention on the Rights of the Child on February 1992.<sup>55</sup> However, the absence of political willingness by the government and 'the shortcomings in the knowledge on the Convention on the Rights of the Child by staff at local and central level have brought about non-implementation of the CRC as a whole and as a result, it can be said that the rights of the child are cruelly violated and in many other cases they have not been guaranteed or protected'.<sup>56</sup> Children's rights must be analysed in the context of this transition and the strong social, cultural and political traditions that influence life in Albania. Children's rights are a new concept introduced to Albanian society.

Despite protracted communist rule, Albania is a society still deeply imbued with a powerful and sombre patriarchal tradition that dates back more than 1,000 years. As a result of many historical, political, and economical factors, 'traditional relationships have persisted in Albanian communities probably to a greater degree than in any other ethnic group in the Balkans'.<sup>57</sup> The position of children within Albanian families is related to that of women. 'Albanian society has a long history of male domination in which women and children are taught to obey their husbands and parents and accept their submissive roles, a reflection of the strong patriarchal traditions of the Balkans'.<sup>58</sup> Despite all the efforts made during the communist regime in the second half of the twentieth century, Albania remains still a largely rural country.<sup>59</sup> The high rural population means that traditional patriarchal values and

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<sup>54</sup> The effectively implementation of legislation through appropriate administrative and judicial structures is the other requirement for membership to EU, defined at the Madrid European Council in December 1995. [http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm)

<sup>55</sup> The Convention on the Rights of the Child was ratified by the Parliament of the Republic of Albania in February 1992, and entered into force in March 1992. The Parliament ratified the present Convention grounded on Article 16 of the Principal Constitutional Provisions 1991.

<sup>56</sup> Such a statement has been issued by a local NGO in the form of alternative report presented to the Committee in regard to situation of children rights and the implementation of the CRC in Albania. Albania: Alternative Report 'For the situation of children's rights and the implementation of the Convention on the Rights of the Child in Albania', 2004, [http://www.crin.org/docs/resources/treaties/crc.38/Albania\\_ngo\\_report.pdf](http://www.crin.org/docs/resources/treaties/crc.38/Albania_ngo_report.pdf), (Accessed 15/08/09), p. 5.

<sup>57</sup> Colin W. Lawson, and Douglas K. Saltmarshe, 'The Psychology of Economic Transformation: the Impact of the Market on Social Institutions, Status and Values in a Northern Albanian Village' *Journal of Economic Psychology*, Vol. 23, Issue 4, 2002, pp. 487-500, p. 488. Lawson & Saltmarshe recognize that as result of market incentives social institutions that determine the social life are gradually becoming more consonant with a modern market system. However, the progress is very slow due to very strong influence behaviour that these social institutions, identified as household, group of brothers and family clan, are presenting in Albanian society.

<sup>58</sup> Saimira Gjipali, and Lavdie Ruci, 'The Albanian Women: Hesitations and Perspective' in *Gains and Losses: Women and Transition in Eastern and Central Europe*, eds. L. Barrow and L. Grünberg, UNESCO/European Network for Women Studies, Bucharest, 1994, p.32

<sup>59</sup> In the aftermath of the Second World War, the central task of the newly established communist rule was considered to be not only the rebuilding a country destroyed by the war, but also to seek and develop a modern country from the ruins of a semi-feudal society. In the early 1940s, Albania remained predominantly rural, with about 85% of the population living in villages or the countryside. In 1975 the percentage of urban population shifted into 32.7%. Despite all the efforts, in the early 1990s, about 65 per cent of the population were still rural.

peasant culture dominate much of society, defining gender roles, relations between family members and childbearing. Gjonca et al, recognize that equal rights at home are still an issue that needs to be addressed in current Albanian society.<sup>60</sup> All the advances made throughout the communist era regarding the emancipation of women, increasing their dominance in the family, and the enjoyment of equal rights, have been reversed since the introduction of democracy and a free market economy. Old traditions have revived, particularly in rural areas, and family organization fosters the idea of children as obedient to the 'master of family' (father) and parents. In families, decisions are still taken by the mother and the father. Child participation is not yet accepted as an important key for integrating children into society, especially in rural areas.<sup>61</sup> Children between 14-18 years of age are organised in Children's Governments,<sup>62</sup> but they do not present a strong voice in society. The educational authorities in every school control the election and activities of such governments. There is no form of child participation in the education system from primary to secondary level (1-8 degree). Most of the decisions at national or local level are taken without the participation of children.

There is not a genuine culture of acknowledging children in line with the CRC, including awareness training and information on the facts of children's rights for all professionals in contact with them.<sup>63</sup> Neither the state, public administration, nor families are prepared to accept or implement the major message of the CRC. Albanian society is mainly concerned

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According to 2007/2008 UNDP Human Development Report, in 2005 the percentage of urban population in Albania was 45.4%.

<sup>60</sup> Arjan Gjonca, Arnstein Aassve and Letizia Mencarini 'Albania: Trends and patterns, proximate determinants and policies', *Demographic Research*, Vol. 19, Article 11, Pages 261-292 (Publication is part of Special Collection 7: Childbearing Trends and Policies in Europe, 2008, p. 284. Gjoncaj recognise that tradition is still affecting the marriage patterns in Albania. In addition, there is interplay between traditional and modern values with regard to demographic behaviour in Albania.

<sup>61</sup> The second national youth opinion poll 2007, titled 'Albania Young Voices', which reflects the views of Albanian children from 9 to 17 years, provides an unusual look into the thoughts and feelings of Albanian young people, their perception about the present and future of the country. A National Youth Poll was conducted in 2001. The survey 'Albania Young Voices' gives an overview on children from relationships to hopes and fears about the future to substance abuse and knowledge of children's rights. In both the opinion poll, the children acknowledge that government never listens to their views on children's issues, (58%) and only 10% of children, think that government considers their opinion when taking decisions concerning them. Both the opinion poll highlight that the principal concern of children and youth remain: lack of culture/sports/leisure facilities <http://www.unicef.org/albania/web-Albanian-Young-Voices.pdf>

<sup>62</sup> Children's Government is an independent structure that enables children to actively participate and fully engaged in the school life. The children's Government is built through a very carefully devised election system. Article 37(1) of Normative Disposition of Albanian Ministry of Education makes them obligatory within the all-Albanian education system. In certain point the children's Government should ensure that children's voices are heard in matters that affect them

<sup>63</sup>, 'Legjislacioni Shqiptar dhe Konventa e te drejtave te Femijes', *Qendra e Sherbimeve dhe Praktikave Ligjore te Integruara /Save the Children Tirana Albania*, <http://www.scalbania.org/1.pdf> (available only in Albanian language)

about the decreasing well-being of children because of the economic hardships and withdrawal of the state from the direct and indirect financial support of families. Currently, there is no child protection system in place in Albania to ensure detection, registration, assessment, referral and provision of appropriate support to children at-risk and their families.<sup>64</sup> Referral systems within and across sectors are non-existent, as practitioners generally work in institutional isolation, rather than across multiple sectors.<sup>65</sup> The detection and referral of children at risk is highly dependent upon the personal initiative of the individual professional involved. Even if a child suffering from violence, abuse, exploitation, and negligence is referred to authorities, there are only limited resources that can be drawn upon to respond in an appropriate manner. In many cases, the only resources are virtually 'offered by the non-statutory sector', which 'at present, is subject to minimum quality standards and is not monitored and inspected'.<sup>66</sup> Moreover, the written and electronic media, instead of making efforts to empower a genuine discussion on the issues of the rights of the child and to advocate improvements to children's rights, 'often, victimize or criminalize children, sometimes violating even the most elementary rules of journalistic ethics'.<sup>67</sup> The current problems of children are still not the subject of genuine political attention and debate. When it comes to children in conflict with the law, this seems to be an issue to be better postponed for the next elections.<sup>68</sup>

Albania submitted its initial report on implementation of the Convention to the UN Committee on the Rights of the Child (the Committee) on 5<sup>th</sup> July 2004.<sup>69</sup> The Committee, in paragraph 76 and 77 of Concluding Observations – the report on 28<sup>th</sup> January 2005 – recorded its deep concerns at the lack of implementation of the existing provisions and the lack of an effective juvenile justice system of specialized police prosecutors, judges, and

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<sup>64</sup> Hamilton et al. (2007) recognizes that 'the fundamental problem for the Albanian child protection system is the lack of an Albanian child protection law, and lack of a local body with specific responsibility for child protection'. (Carolyn Hamilton, Steven Malby, and Gwen Ross, 'Analysis of the Child Protection System in Albania', *Children Legal Centre UK*, 2007 p.117)

<sup>65</sup> Ibid, p.117

<sup>66</sup> Ibid p. 100

<sup>67</sup> CRCA 2004, p.5

<sup>68</sup> An expert group mission organized by UNICEF was 'committed to the view that the development of appropriate measure for dealing with children who offend and for reducing the risk that children will become offenders has to be done in the wider context of promoting the rights of children in general.' (Skelton et al. 2000, p.2) However CRCA assess that, in practice, 'there is lack of mechanisms for implementation and financial support, as well as of the means for monitoring the implementation of the CRC'

<sup>69</sup> CRC/C/11/Add.27

social workers to deal with children in conflict with the law.<sup>70</sup> The Committee recommended *inter alia* that Albania should:<sup>71</sup>

- a) Ensure the full implementation of juvenile justice standards and in particular articles 37, 40 and 39 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Vienna Guidelines for Action on Children in the Criminal Justice System and in the light of the Committee's 1995 discussion day on the administration of juvenile justice;
- b) Pay in this effort particular attention, as a matter of priority, to:
  - a. The need to take measures to prevent and reduce the use of pre-trial and other forms of detention and to make this detention as short as possible, *inter alia*, by developing and implementing alternatives to detention such as community service orders, interventions of restorative justice, etc.
  - b. The need to train police officers, prosecutors, judges and others involved in the process of dealing with children in conflict with the law, in order to, *inter alia*, make sure that these children are interrogated by trained police officers who notify parents immediately about their child's arrest and who encourage the presence of legal assistance for the child;
  - c. The need to promote, in accordance with article 40 paragraph 1 of the Convention, social reintegration of children in the society;
- c) Strengthen preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction;

The Committee also recommended that Albania should define the minimum age of criminal responsibility, set a database, and finally stated that the government should seek technical assistance in the area of juvenile justice from UNICEF.<sup>72</sup>

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<sup>70</sup> UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania CRC/C/15/Add.249*, 28 January 2005 <http://daccessdds.un.org/doc/UNDOC/GEN/G05/408/44/PDF/G0540844.pdf?OpenElement> (Accessed 09/02/05), para.76

<sup>71</sup> *Ibid* para. 77

<sup>72</sup> UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania CRC/C/15/Add.249*, 28 January 2005, para. 77d)

Juvenile justice in Albania is in the sphere of the legal system, which requires action. It is widely accepted that when children commit a penal offence in Albania, they enter into a justice system that is not ready to handle juveniles.<sup>73</sup> Quite a number of unsolved problems remain in the area of juvenile justice, from the safeguards against unlawful detention, detention pending trial, procedural safeguards on diversionary measures up to norms on the standards of deprivation of liberty.<sup>74</sup> In practice, hardly anything has changed here since 2005. There is no special act or law designed to provide on the protection of the Rights of Child, covering the issues of juvenile justice as well. Thus, it is important to analyse the most typical conditions and circumstances of juvenile justice, which could be of consequence for making forecasts and projections.

#### 4. Research questions

At this stage, it is important to interject several points regarding two principal questions, which will be considered in the course of the thesis.

- *What are the current theory, policy and practice of juvenile justice adopted by the Republic of Albania?*

Answering this question requires analysis of all the elements of Albania's juvenile justice system and considering whether the system is ready or not to handle the juveniles who fall into conflict with the law.

The CRC impose an obligation upon State Parties in article 40(1), to:

‘... recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law 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 into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.’

<sup>73</sup>Oneworld 2006, CRCA 2004, p.23 (Albanian Alternative Report), [www.unicef.org/ceecis/9302.html](http://www.unicef.org/ceecis/9302.html), OSCE ‘Preliminary Comment on Albania's Draft Amendment to Legislation Concerning Juvenile Justice’, *OSCE Opinion-Nr.: FAIRTRIAL – ALB/005/2004*, p.3

<sup>74</sup> See more on the reports Ann Skelton, Stephen Asquith, Geert Cappelaere, and Giuseppe La Greca, ‘Towards a Comprehensive Juvenile Justice System for Albania - Final Report of an Expert Group Mission’, *UNICEF Tirana, Albania 2000*, OSCE ‘Preliminary Comment on Albania's Draft Amendment to Legislation Concerning Juvenile Justice’, *OSCE Opinion-Nr.: FAIRTRIAL – ALB/005/2004(IU2004, CRC/C/15/Add.249, para. 77d)*

Upon ratification of the CRC, the Republic of Albania is under domestic obligations, even in terms of article 40(3), to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.<sup>75</sup> What is already happening in the juvenile justice field in Albania does not seem at this stage to form part of an overall strategic vision for the future of juvenile justice.<sup>76</sup> With no overall strategy, it would be difficult to coordinate programmes, to base future developments on shared principles, and to support the legislative review process. Therefore the first issue to consider is whether there is a national strategy and what it provides with regard to the juvenile justice system.

Another aspect still to be resolved by policy-makers are the penal ideologies and penal practices that guide juvenile justice in Albania. There is currently no single law in Albania applying solely to juvenile justice. Provisions providing specifically for the consideration of children in conflict with the law are spread throughout several separate bills.<sup>77</sup> The principles, objectives, and the requirement of juvenile justice, imply a multi-level and multi-sectorial approach to develop, in concert, all the elements of the child-centred system. Therefore, in the second stage, an analysis of all legislation related to juvenile justice will be provided. The aim is to evaluate whether development, if possible, of a specific law on juvenile justice, a separate chapter on juvenile justice, or at least specific provisions in every body of law affecting children would contribute to coordinate every component of system.

Furthermore, the Albanian juvenile justice system suffers from a lack of personnel who are trained in the unique requirements of handling young offenders. There are no specialized juvenile courts or specialized institutions for youth.<sup>78</sup> There is a constant note within international human rights reports on the problematic situation of juveniles in detention, especially in the pre-trial detention sites.<sup>79</sup> Therefore the third issue to be considered is whether people involved within the system are able to professionally handle the juveniles in conflict with the law, respecting the international standards.

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<sup>75</sup> Articles 5, 116 and 122 of Albanian Constitution do recognize the authority of international agreements in the domestic order.

<sup>76</sup> Skelton et al. 2000, p.4

<sup>77</sup> Such statement is made on the basis of general analysis of Albanian legislation. Such analysis is provided in more details on the following.

<sup>78</sup> Concluding Observations of the Committee on the Rights of the Child

<sup>79</sup> UNICEF 2007, pp.20



One important question posed by the UN Committee on the Rights of the Child is how to facilitate reform tendencies in Member States in order to bring their justice systems in line with CRC and international standards. Research based only on data yields incomplete information on the practical implementation of international standards and norms. Data generated through looking at international law and the overall approach in Albania helps to identify the key features of the juvenile justice system that are the focus of this research and creates a picture of the implementation of the standards. Nevertheless, the data only concerns the standards and norms and national implementing measures and is silent on what happens in reality during the administration of juvenile justice. Any discussion on the practical implementation of international standards and norms is impossible on the basis of the available information, other than in a purely speculative way. To examine this point and, eventually, to make a more accurate assessment than is currently possible of the implementation of international standards and norms at national level, it is imperative to investigate the reality around their impact, including their use, results, and side effects that do not come to light. Information of this type can be obtained only through acquaintance with the relevant practice, by listening to the voices of juveniles who are incarcerated in detention centres, as well as of practitioners who benefit, are affected or concerned by administration of juvenile justice. In real life, the juvenile justice system faces a whole host of practical and organizational difficulties every day. As many Albanian lawyers remarked to the author once asked to provide a comment on the current juvenile justice system:

*“Currently not working at all, even ignored by the court.”<sup>80</sup>*

It is against this background that a thorough legislative analysis will be offered to assess how closely the system is in line with the international standards.

○ *How far does juvenile justice fall short of the UN Convention of the Rights of Child related to children in conflict with the law?*

Measuring the extent to which Albanian juvenile justice system complies with the CRC is one of the principal objectives of the thesis. Two main outputs are intended to contribute to the achievement of this objective. The first is an analysis of the requirements for ‘a comprehensive juvenile justice policy’; the second is an analysis and review of the existing

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<sup>80</sup> General comment received during the empirical research

Albanian national juvenile justice system and its performance in practice. While the second output is the result of scrutiny provided by answering the first research question as discussed above, dealing with the first output requires examination of the CRC as the main international instrument, and especially of Article 37 and 40 as core provisions relevant for the children in conflict with the law. Reading both outputs determines the answer to the question on the shortcomings of the Albanian juvenile justice with respect to the principles and provisions of the CRC. That answer then leads to suggestions about the ways forward to solve any discrepancy encountered between the Albanian juvenile justice system and 'a comprehensive juvenile justice policy'.

The core elements of a comprehensive structure for juvenile justice consist of; the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age limits for juvenile justice; guarantees for a fair trial; and deprivation of liberty including pre-trial detention and post-trial incarceration.<sup>81</sup> According to Article 40(1) CRC, the objective of juvenile justice institutions is the reinforcement of the child's respect for human rights and fundamental freedoms of others and the child's reintegration into society, where they can play their assumed constructive role. This calls for a child-focused climate within all juvenile justice institutions, which takes into account the needs of children and their families, and ensures that children's physical, mental and moral integrity is respected.<sup>82</sup> The objectives of a juvenile justice institution and the treatment provided are inherent in the right to dignity and worth of a juvenile.<sup>83</sup> This principle and the leading objectives need to be taken into consideration when addressing the elements of the juvenile justice system such as police, prosecution, courts, and detention centres.

In addition, knowledge about the constraints on implementation of the CRC, including all binding or non-binding instruments which make the international framework of juvenile justice, helps to explain the discrepancies between stated commitments to comply with international standards and their limited implementation in practice. Two levels of monitoring mechanisms should be distinguished, one at an international level and one at a national level.

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<sup>81</sup> UN Committee on the Rights of Child *General Comment No. 10: Children's rights in Juvenile Justice*, CRC/C/GC/10, 2 February 2007 <http://www2.ohchr.org/english/bodies/crc/comments.htm> (Accessed on 14/09/11), para. 5

<sup>82</sup> *Ibid* para. 4e

<sup>83</sup> *Ibid* para. 4e the respecting and protecting the right to dignity and worth is considered of such fundamental paramount as the Committee observes several times in paragraph 4e.

At the international level, the CRC provides for a process of monitoring of implementation in different countries, which is intended to allow for public scrutiny and pressure to ensure compliance.<sup>84</sup> The monitoring mechanism not only seeks to enhance understanding of the indivisibility of the rights of children enumerated by the CRC, but also aims to strengthen the relationship between the international and national monitoring system. The monitoring mechanism involves engaging other agencies and organisations from inside and outside the UN in the reporting procedure as critical bodies in promoting and monitoring children's rights.<sup>85</sup> The Committee can ask these organisation and agencies to submit reports, known as alternative reports, which provide expert advice in the areas falling within their scope. In order to enhance the implementation of the CRC obligations at a national level, the CRC calls for the establishment of domestic monitoring mechanisms, 'which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others'.<sup>86</sup> Such bodies carry out wide child-focused and child-sensitive activities, which extend up to considering individual complaints and petitions and providing remedies for the breach of children's rights.<sup>87</sup>

While Article 37 of the CRC focuses on general issues surrounding all of those who are under 18 years of age and face 'deprivation of liberty', Article 40 articulates the rights of 'every child alleged to, accused of, or recognized as having infringed the penal law' in the administration of juvenile justice, including obligation of the states corresponding to this rights. This thesis should not be read as a scrutiny of the so-called juvenile justice articles of the CRC: article 37 (inhumane treatment) and article 40 (administration of justice). Rather, the concern here has been objectively to evaluate the requirement of the provisions and the

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<sup>84</sup> According to Article 44 of the CRC State parties are required to submit every five years a report on the rights of the children, which should contain sufficient information to make a comprehensive understanding implementation of obligation deriving from CRC. The reports should be made available to the public in their own countries.

<sup>85</sup> Article 45 CRC explicitly allows the Committee draw the expert advice from specialized agencies, and other competent bodies, including the national NGOs, on the implementation of the CRC in areas falling within their mandate.

<sup>86</sup> UN Committee on the Rights of Child General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts.4, 42 and 44, para.6), CRC/GC/2003/5, 27 November 2003 <http://www2.ohchr.org/english/bodies/crc/comments.htm> (Accessed 14/09/11), para. 27 Accordingly the para.9 enumerates examples of independent bodies which might include children's rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children's budgets and "state of children's rights" reports, NGO coalitions on children's rights, children's ombudspersons and children's rights commissioners and so on.

<sup>87</sup> UN Committee on the Rights of Child General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002, <http://www2.ohchr.org/english/bodies/crc/comments.htm> (Accessed 14/09/11), para.19

practical implications through adopting a holistic approach. 'The holistic approach' refers to the way of considering the juvenile justice in light of general principles and other sets of rights enshrined by the CRC.<sup>88</sup> The standards embodied by these rules represent the basic principles of juvenile justice enshrined by the CRC. Firstly, a 'holistic approach' implies reading Articles 37 and 40 of the CRC in conjunction with other articles of the CRC that are of less direct relevance to juvenile justice, to enumerate a series of child rights in the social, economic, and health and welfare fields. Secondly, it implies reading both provisions in conjunction with other relevant non-binding instruments such as the Beijing Rules and JDLs,<sup>89</sup> which supplement, expand, and support CRC.<sup>90</sup>

Finally, it should be emphasized that this research is concerned with the juvenile justice system rather than juvenile delinquency. Again, part of the reason for this choice is simply the enormous task represented by tackling juvenile delinquency. Consequently, the Riyadh Guidelines on the prevention of juvenile delinquency are not within the scope of this research.

## **5. Structure of the thesis**

Over seven chapters, this thesis provides an analysis of the juvenile justice system in Albania, primarily covering the legal and deprivation liberty systems, which, considered broadly, constitute the existing Albanian juvenile justice system. Societal behaviour and attitude towards juveniles in conflict with the law has not been examined in its widest sense. However, attitudes and knowledge have been considered in the context of professionals working within either of the systems discussed.

Chapter One (Literature Review) places juvenile justice concerns in Albania in a conceptual framework, taking into account the international standards and norms for a child-friendly juvenile justice system, together with the broader socio-economic, political and cultural, international and country context. Special attention is placed on understanding 'children's justice' and the 'juvenile justice system'. Its aim is to set out a general framework on objectives, principles and defining the group covered by the system. Once the general

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<sup>88</sup> Abramson observes that term 'holistic' embodies 'a cluster of concepts'. Used in the context of international human rights instruments 'holistic' refers to the 'interdependency' of all the rights. Under the holistic approach, virtually every CRC right can be seen as a juvenile justice right, from the point of view of the boys and girls who are in conflict with the law. (Abramson 2005)

<sup>89</sup> The issue would be further clarified throughout the thesis.

<sup>90</sup> The issue will be further discussed on the following chapters.

framework is set up, it continues with the leading principles of a comprehensive policy for juvenile justice and identification of benchmarks for assessing the system under UN Convention on the Rights of the Child 1989 (CRC), ratified by Albania on 27 February 1992. The Committee on the Rights of the Child has provided further guidance for Member States on the implementation of their obligations under the CRC in its concluding observations and General Comments. These documents and other international binding or non-binding instruments, including regional instruments, are used to analyse laws, policies and practices for each component of the juvenile justice system in Albania. An important consideration in the end is to identify issues of reinforcement for international instruments. Chapter Two provides a general overview of the methodology used during the research, as well as a discussion on research techniques adopted in response to thesis questions.

All the remaining chapters of the thesis are divided between two distinct, but complementary, parts. The first part provides in detail the international standards as stated in Articles 37 and 40 CRC, the core provisions on juvenile justice. Chapters 3 and 4 consider the history of the Article 37 and 40 CRC' drafting procedure and their scope, including a detailed analysis of each paragraph contained in the articles.

The second part considers the practical implementation of international standards and norms, which will necessarily involve an assessment of the juvenile justice system in Albania in theoretical and practical terms. Based on this analysis, conclusions will be drawn on whether change and/or reform is necessary. The greatest strength of this approach lies in its comprehensive analysis, which will be conducted in such a way so as to preserve both the transparency and coherence of the issues to be considered. Therefore, Chapter Five provides an overview of the juvenile justice system in Albania and explores the capacity of the existing juvenile justice system to comply with international standards and norms of a child-friendly juvenile justice system. An assessment is conducted for the different components of the juvenile justice system. To this end, a diagram of the system and institutional structure is set out, and laws and policies are examined. In addition to the overview, the thesis aims to provide an analysis of the juvenile justice system in Albania, as a child would experience it. Therefore the chapter incorporates all systems dealing with a juvenile in conflict with the law, and examines them in procedural, structural and legislative terms, providing as well an account on their performance in practice in Albania. The aim is to clarify and scrutinize how

the components of juvenile justice, together as a system, can work to guarantee respect for international standards and norms.

Chapter Six identifies key areas where the Albanian juvenile justice system falls short on harmonisation with the provisions of the CRC, as well as provisions of national law, in order to rectify inconsistencies, contradictions or gaps. Discussion on the identified issues is organised according to elements of juvenile justice system, and includes additional conclusions for the overarching legal framework.

Chapter Seven offers conclusions, accompanied by specific recommendations on solving the discrepancies identified, the primary aim of which is the closer alignment of the child protection system in Albania with international norms and standards.

## CHAPTER ONE

### JUVENILE JUSTICE: CONCEPTS, THE CRC, MINIMUM STANDARDS OF THE UNITED NATIONS AND NORMS IN JUVENILE JUSTICE

#### 1. Introduction

It is estimated that more than a million children worldwide are deprived of their liberty.<sup>91</sup> The figure leads us to ask: Is the youth of today more violent? Should the judges 'get tough', issuing more severe sentences to place them on the right track? These questions and others represent the complex relationship between the 'adult' society and the impact on it of the criminal offences committed by young people. However, before presenting practical answers to these questions it is important to think about the effect such offences are having on young people. Instead of criminalizing, misjudging, and condemning these youngsters, the adult world should demand to know if the criminal offences carried out by them are result of other more serious problems in their everyday lives, such as being homeless and have nowhere else to go; being apprehended for behaviour which should be decriminalised in national legislation, such as status offences (e.g. truancy and running away from home) and survival behaviours (e.g. begging, vagrancy and being victims/survivors of commercial exploitation). The majority of children and adolescents in detention who have committed an offence are usually there for property-related crimes (e.g. theft), crimes of violence (e.g. robbery and mugging), and illegal commerce (e.g. drug dealing and prostitution) often linked to poverty.<sup>92</sup> Unfortunately, the media and politicians do not take such needs into account. The outcome is reflected in negative and often exaggerated media attention, affecting public and political perceptions of 'delinquents'. This results in harsher and more repressive measures being

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<sup>91</sup> The figure is subject of discussion due to the dearth of data and information on the numbers of children deprived of their liberty and their conditions. The estimation of one million juvenile deprived of liberty initially was calculated in Geert Cappelaere, Anne Grandjean, Yasmin Naqvi, *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 44-45. The estimated figure was referred consequently in Florence Martin, and John Parry-Williams, *The Right Not to Lose Hope*. London, Save the Children UK, 2005, Paulo Sérgio Pinheiro, 'World Report on violence against children'. *United Nations Secretary-General's Study on Violence against Children*, Geneva, Switzerland, <http://www.unviolencestudy.org/> 2006 (Accessed 23/11/09), p.190, Office of the United Nations High Commissioner for Human Rights, *Dignity and Justice for Detainees Week: Information Note No.6: Children* [http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention\\_infonote\\_6.pdf](http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_6.pdf) (accessed 10/08/2011), Sharon Detrick, Gilles Abel, Maartje Berger, Aurore Delon, Rosie Meek, 'Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands', *Defence for Children International - The Netherlands*, 2008, <http://www.defenceforchildren.org/files/Violence-Against-Children-in-Conflict-with-the-Law-EN.pdf> (accessed 31/07/2011). More recently UNICEF estimated to around 1.1 million the figure of children deprived of their liberty by criminal courts worldwide. United Nations Children's Fund (UNICEF). *Progress for Children, A report card on child protection, No. 8*, September 2009, [http://www.unicef.org/publications/index\\_50921.html](http://www.unicef.org/publications/index_50921.html) (accessed 31/07/2011), p.20

<sup>92</sup> Bruce Abramson 2005

advocated. It is also not a popular subject for political reforms to address the root causes of marginalisation from society. In other words, the majority of governments are failing in their obligation under international human rights instruments to treat such children and adolescents:

*'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 into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'*<sup>93</sup>

This chapter will address the concepts of juvenile justice and the UN framework on juvenile justice. The chapter is constructed in three parts. Part I begins with an overview of concepts deriving from juvenile justice, focusing on the meanings of the terms 'child' and 'childhood', and considers whether children are rights holders. This is because of a specific feature of childhood affecting the realisation of children's rights. It was deemed as necessary to provide a brief understanding of 'childhood' and 'child', as considering them in depth would go beyond the scope of this study. Major steps will be taken in all the other main areas of concern, such as what constitutes the juvenile justice system and how it works. Part II then reviews the UN framework for the protection of children in conflict with the law, by examining the key international convention and treaties before moving on to how such international instruments are enforced. Part III will conclude ways forward for this research.

## **Part I: What is justice for children who are in conflict with the law?**

### **2. Child and Childhood**

Before looking at the question, 'What is justice for children who are in conflict with the law?' it seems appropriate to make some observations on the concepts of 'child' and 'childhood'. Understanding issues about juvenile justice requires combining society's perception of children, their place and position in society both as objects and individuals in need of protection and, at the same time, as subjects and individuals with distinct human rights. It is this consideration of the child as the subject of rights that has contributed to changes in the ways society thinks about children, motivating national and international communities to reform legal institutions and programmes. As Mayall argues, an important social group such

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<sup>93</sup> CRC Article 40.1



as children, and childhood as their institution, are an essential component of social order.<sup>94</sup> Mayall considers children as social agents participating in the formation of their social reality instead of merely having their lives shaped by policies and practices introduced on their behalf by adults.<sup>95</sup> Similarly, James and James consider 'childhood' as not being immune from policies addressing the needs of children and describe the impact of macro global economic upon children.<sup>96</sup> Overall, leading childhood theorists consider that understanding concepts of children and childhood is essential to understanding a society or social context as a whole.<sup>97</sup> In addition they emphasise that to conceptualise the childhood and to provide a detailed account of how society considers its children needs a strategic approach in which complex social, political and moral agendas are mobilised.

Different approaches to defining 'child' and 'childhood' are possible. James and Prout recognize that conceiving the meaning of 'child' and 'childhood' is not just a matter of semantics, but also a question increasingly central to academic and professional practice.<sup>98</sup> The Oxford Dictionary states that the word 'child' normally indicates a young human being who has not attained puberty/the age of majority and/or is the offspring of an adult. 'Childhood' is defined as the state or period of being a child.<sup>99</sup> Archard argues, in a broad definition, that 'childhood' is a comprehensive term for the stage extending from birth to adulthood.<sup>100</sup> On a narrow rendering, childhood follows infancy and is succeeded by adolescence, adulthood, middle age and old age.<sup>101</sup> Development studies relate childhood to age, to cognitive competence, awareness, rationality, ability to sustain oneself independently, and to being responsible for one's actions by virtue of age and experience. Overall, the nature of childhood is that of a state of vulnerability, tendency, and innocence. It is a transitional

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<sup>94</sup> Beery Mayall, 'Conversations with children: Working with generational issues' in *Research with Children: Perspectives and Practices* Second eds. Christensen P and James A London: Routledge 2008, p.109

<sup>95</sup> Ibid

<sup>96</sup> Allison James and Adrian James, 'Introduction: the Politics of Childhood – An Overview' in *The Politics of Childhood: International Perspectives, Contemporary Developments* eds. J. Goddard, S. McNamee, A. James, and A. James. Basingstoke: Palgrave Macmillan, 2004, p.4

<sup>97</sup> Chris Jenks, *Childhood*, London: Routledge, 2005, p.53 Allison James, and Prout Alan, *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. London: Routledge/Falmer, 2001, p.ix & 2, William A. Corsaro, *The Sociology of Childhood*. Thousand Oaks, Pine Forge Press, 2006 p.xi

<sup>98</sup> James and Prout 2001, p.ix & 2, Wyse, Wyness and Corsaro conclude in similar terms. Dominic Wyse, *Childhood Studies: An Introduction*. Oxford: Blackwell, 2003, p. xvii, Michael G. Wyness, *Childhood and Society: An Introduction to the Sociology of Childhood*. New York: Palgrave Macmillan, 2006 p. 1, Corsaro 2006 p.xi

<sup>99</sup> [www.askoxford.com](http://www.askoxford.com)

<sup>100</sup> David Archard, *Children: Rights and Childhood*, 2nd ed, London: Routledge, 2004, p.26

<sup>101</sup> Archard 2004, James & Prout 1997

phase, sometimes viewed by adults only in terms of the 'incompetence relative to adulthood'.<sup>102</sup> Adulthood in contrast is viewed as the culmination of 'the capacities, skills, and powers' of development.<sup>103</sup> At a minimum, adulthood is understood in terms of age, and growing power to reason, understanding and implementing its choices and achievement of maturity.

The first historian of childhood, Philippe Ariès, in his famous study '*Centuries of Childhood*' (1962) proposed that the concept of childhood was a modern invention, largely originating in Europe in the 17<sup>th</sup> century. Using medieval art, which depicted a child as an adult on a smaller scale, Ariès concluded that 'in medieval society, the idea of childhood did not exist'.<sup>104</sup> While Ariès' accounts of childhood are widely criticised, his contribution lays in the recognition of childhood as a social construction, and in focussing attention on the history of childhood as a serious field of study. Sociologists have turned their attention to the social meaning of childhood and to socially construct the nature of childhood from the varied forms that childhood can take, and the active involvement of children in negotiating their lives. Based upon the ways of construction, 'childhood' is considered a social concept that reflects a variety of cultural traditions and historical backgrounds.<sup>105</sup> All cultures appear to have known that children are importantly different from adults.<sup>106</sup> John Locke was of the opinion in his book *Some Thoughts Concerning Education*, that the child was a *tabula rasa*, and it was up to adults to write the blank paper to give it a form, thus effectively subjugating the child to an identity that was forged by an adult. Despite this view, much more significant was his recognition that children were not all the same—they differed and, therefore, they were individuals.<sup>107</sup> On the other hand, Emile Rousseau inspires a new philosophical emphasis on the *child* as a child: 'We know nothing of childhood'—'Nature wants children to be children before they are men'.<sup>108</sup> This new philosophy would lead to 'childhood' to be conceived as a stage in human development and to be the subject of serious investigation. Thus, Dietrich Tiedemann's account of sensory, motor, language and intellectual development of the infant, Johann Pestalozzi's focus on educational psychology, Wilhelm Preyer's empirical

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<sup>102</sup> Archard 2004, p.26

<sup>103</sup> Ibid

<sup>104</sup> Phillippe Ariès, *Centuries of Childhood* London: Jonathan Cape, 1962, p.125

<sup>105</sup> James and Prout 2001, Wyse 2003, Archard 2004, Wyness 2006, Corsaro 2006, Mayall 2008

<sup>106</sup> Archard 2004, p.28

<sup>107</sup> Harry Hendrick, 'Constructions and Reconstructions of British Childhood: An Interpretative Survey, 1800 to the Present' in '*Constructing and reconstructing childhood: contemporary issues in the sociological study of childhood*' *Second Edition*, A. James, and P. Alan, London: Routledge/Falmer, 2001, p.36

<sup>108</sup> Ibid

observation and experimentation on developmental psychology and physiology of the child, Charles Darwin's discussion on the origin of species, Jean Piaget's description of cognitive development, Robert Sear's social learning theory, and Sigmund Freud's psychoanalytic orientation, enriched the fields of child development and launched various trends about the content of child study.<sup>109</sup>

Overall all these scholars indicated in their works that the psychology of childhood is fundamentally different from adulthood. To their view, children are helpless and vulnerable in contrast to adults whom play a significant role in their lives. Children's vulnerability derives from the fact that they are still developing their potential personalities and future full personalities as well. Contemporaneous researchers, such as Wolfson expand further the idea of these scholars, emphasising that children's vulnerability derives from children's rights competing with those others significant to their life. Furthermore, Wolfson argues that the inconceivability of children is 'rooted' not only to their social setting, but also derives from the actions of others undertaken on the behalf of children.<sup>110</sup> The latest statement, leads to the emphasis of two major points related to childhood. In the first place, childhood is, of course, a social construct, a man-made phenomenon; those in authority determine who is a child.<sup>111</sup> The childhood conception derives from adults' studies of children and its boundaries, dimensions and divisions are conceptualised and structured by adults' social and economic goals in specific societies.<sup>112</sup> The history of the study of childhood in the social sciences has been marked not by an absence of interest in children—as we shall show this has been far from the case—but by their silence.<sup>113</sup> Secondly, by avoiding responsibilities and adversities of adult life being accorded to childhood, and proposing that adults (and parents in particular) have the best interest of children at heart; we deny children's rights.<sup>114</sup> We deny children the right to participate based only on the presumption they are too young to know what is best for them, incompetent and unable to take moral or social responsibility. However a universal 'cut-off' does not exist, as nature does not stipulate one specific age as the end of childhood.

<sup>109</sup> Account of this history was build up referring to Paula S. Fass 'Encyclopaedia of children and childhood: in history and society', New York, Macmillan Reference USA 2004

<sup>110</sup> Susan A. Wolfson, 'Children's Rights: The Theoretical Underpinning of the 'Best Interest of the Child', in *The Ideologies of Children's Rights* (eds), M. Freeman and P. Veerman, Martinus Nijhoff, Dordrecht, 1992, p. 24

<sup>111</sup> See above

<sup>112</sup> James & Prout 1997p.7, Mayall 2000 Archard, 2004

<sup>113</sup> James & Prout, 1997, p.7

<sup>114</sup> Freeman, 1992, p. 30, Mayall, Berry, 'The Sociology of Childhood in relation to children's rights', *The International Journal of Children's Rights*, Vol.8, Issue 3, 2000, pp. 243-259, p.256, Archard 2004, p.58

Childhood is perceived as a continuous process and varies from individual to individual eventually leading to mature adulthood. Thus, it would be morally arbitrary and unjust to deny children rights merely because they were younger than adults.<sup>115</sup> Though adults do work to protect children and provide for them at individual, institutional and state levels, letting children have a voice in decisions that directly affect them as individuals is not likely to happen. What is significant is that children are in a position to be involved in political structures, where they can exert a degree of influence over decisions at both individual and general levels.

### 3. Can children be rights holders?

Children's rights have been debated for many years now. Different views and perspectives exist, offering double standards. Quennerstedt summarizes the rationale on children's right as necessary to be pronounced to a group of humans that is embedded in such specific circumstances with regard to social conditions and status that their human rights need to be specifically considered.<sup>116</sup> Pupavac goes further, arguing that questioning of children's rights carries the risk of being described as 'a modern-day heresy'.<sup>117</sup>

The debate on children's right is centred on the utility of rights. Thus, King advocated that children do not need specific rights as adults provide the peace, stability and prosperity that children need to enjoy a childhood free of misery.<sup>118</sup> Such a statement emphasises, among other things, that adults have the best interests of the child at heart. The view that children are cared for and hence do not therefore need specific rights does still exist and can be found in the writing of Goldstein, Freud and Solnit (1973, 1980, 1996) and in Guggenheim's recent book (2005).<sup>119</sup> Another view on more or less the same point is the perception of childhood as a special age, an age of innocence. Since children are kept free of the stress and worries of an adult life, there is no need to think in terms of 'children's rights'.<sup>120</sup> There are those also who argue that children are less capable than adults to exercise their rights and their decisions

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<sup>115</sup> Archard, 2004, p.58

<sup>116</sup> Ann Quennerstedt, 'Children, but not really humans? Critical reflections on the hampering effect of the '3 p's'. *International Journal of Children's Rights*, Vol. 18, Issue 4, 2010, pp. 619-635.

<sup>117</sup> Vanessa Pupavac, 'The International Children's Rights Regime' in *Rethinking Human Rights: Critical Approaches to International Politics*, eds D. Chandler, Palgrave Macmillan Ltd, Basingstoke, 2002, p.58

<sup>118</sup> King Michael, 'Children's Rights as Communication: Reflection on autopoietic theory and the United Nations Convention', *The Modern Law Review*, Vol. 57, Issue 3, 1994, pp. 385-401, p. 385

<sup>119</sup> Quoted on Michael Freeman, 'Why it remains important to take children's rights seriously', *The International Journal of Children's Rights*, Vol. 15, 2007, p. 5-23

<sup>120</sup> Michael Freeman, 'The Sociology of Childhood and Children's Rights', *The International Journal of Children's Rights* Vol.6, Issue 3, 1998, pp.433-444, p.436, Archard 2004, p.48

are not based on rational considerations.<sup>121</sup> The children's rights advocates, gaining support from the new approach of childhood studies, reject the objection to children's rights, arguing that children are social actors as well as social agents who construct their lives through their own right. As Freeman acknowledges, the 'competence' issue is something of a buzzword.<sup>122</sup> A possible effect of the discourse of 'child's competence' derives from the giving of responsibility to the child exercising its rights itself. The responsibility to exercise the rights in practical terms means that the child is expected to know its own life through 'allowing him or her to grow at his/her own peace.'<sup>123</sup> Freeman emphasises that 'competence' is not an easy concept to be dealt with.<sup>124</sup> However, Freeman acknowledges that the case of *Gillick v West Norfolk and Wisbech Area Authority*<sup>125</sup> in the UK has tied empowerment to the issue of competence. In the *Gillick* case, the House of Lord indicated that a more intelligent approach to assessing children's competence should be adopted:

*"If the law should impose on the process of 'growing up' fixed limits where nature knows only a continuous process the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social changes". Competence of child 'to make his or her own decision depends upon the minor having sufficient understanding and intelligence to make the decision and is not to be determined by reference to any judicially fixed age limit'.*<sup>126</sup>

The interpretation of the *Gillick* case highlights that the term 'competences' implies that every child's maturity, their ability to understand and cope with the situation, would need to be assessed. To assess maturity, there is the need to allow expression. The ability for children to express themselves is an essential part of determining where the child's interest is. As Holt submits 'nobody can know better than the child himself in important matters'.<sup>127</sup> Therefore, we understand children not just as individuals but also as members of a social group, the interests of which are represented through childhood.<sup>128</sup>

<sup>121</sup> Freeman 1992, Wolfson 1992, Archard 2004, Freeman 2007

<sup>122</sup> Freeman 2007, p.12

<sup>123</sup> Sigal. R. Ben-Porath, 'Autonomy and vulnerability: On just relations between adults and children' *Journal of Philosophy of Education* Vol. 37, Issue 1, 2003, pp.127-145, p.136. Ben-Porath bases this discussion on the example of a person moving to a foreign country, whose language, culture and traditions are unfamiliar to him/her. Being a stranger in a strange land offers a partial opportunity to experience what it means to be a child in an adult world. (ibid)

<sup>124</sup> Freeman 2007, p.12-13

<sup>125</sup> In England the *Gillick* decision ([1986] AC112) 186-187, the case dealt with the ability of teenagers to take responsibility for the important decision regarding health and contraception in opposition to the views of parents and society.

<sup>126</sup> Ibid, par. 188-189

<sup>127</sup> John Holt, *Escape from Childhood* Boston: E. P. Dutton, 1974, p. 175

<sup>128</sup> Mayall 2001, p. 256, Archard 2004

Freeman and Mayall have already identified the overlap in perspectives between sociologists of childhood and children's rights advocating the change of childhood image to the 'competent child'.<sup>129</sup> Both disciplines share a focus on children's agency and how children construct their social worlds; children as subjects not objects of control or concern; and children as individuals and persons rather than as a collective undifferentiated class or immature beings. As Freeman emphasises, both the disciplines are divided on the view of 'childhood'.<sup>130</sup> Thus, the children's rights discipline emphasises the recognition of the child as an autonomous subject with personhood and integrity.<sup>131</sup> The initial assumption of the children's rights movement is that children share universal biological and physiological attributes across the world.<sup>132</sup> At the same time, sociology of childhood questions the possible existence of such universal childhood.<sup>133</sup> James and James propose that such universalism should be read within the context of 'cultural politics of the childhood' model.<sup>134</sup> According to the 'cultural politics of childhood' different social, cultural, political and economical conditions force societies to treat children quite differently, as well as nest together these elements to capture the specific conditions for childhood and being a child.<sup>135</sup> In simple words, the cultural politics of childhood 'asks about the outcomes for children who may live very different lives and whose everyday experiences may be quite diverse, of inhabiting a unitary 'childhood' that is regulated and ordered by sets of laws, policies and social practices that work to sweep aside any differences between them'.<sup>136</sup> Overall the sociology of childhood implies the relevance of looking at both 'childhood', which considers similarities between and across social contexts,<sup>137</sup> and 'childhoods', which considers the accommodation of diversity of children experiences.<sup>138</sup>

A second point to the children's rights discourse, which is worth referring to, relates to the rapport between the needs and interests of children. An overview of the literature relating to

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<sup>129</sup> Freeman 1998, p. 433–444. Mayall 2001, p.256-257

<sup>130</sup> Freeman 1998, p.433

<sup>131</sup> Ibid p.434

<sup>132</sup> Ibid p. 438

<sup>133</sup> Ibid

<sup>134</sup> Allison James, and Adrian James, '*Constructing Childhood: Theory, policy and social practice*' Hampshire and NY, Palgrave 2004, p.8. 30, 114

<sup>135</sup> Ibid p. 30

<sup>136</sup> Ibid p.11

<sup>137</sup> Jens Qvortrup, Marjatta Bardy, Giovanni Sgritta, and Helmut Wintersberger, *Childhood Matters: Social theory, practice and politics*. Aldershot: Avebury 1994

<sup>138</sup> James & James 2004, Eva Brems, 'Children's rights and universality' in '*Developmental and autonomy rights of children*'. eds J. Willems. Antwerp: Intersentia, 2002

children' right reveals that children's rights to *welfare* and their rights to *self-determination* are considered as rights in conflict, because of very different implications for children and their relations with adults.<sup>139</sup> More precisely, this conflict arises from the effort to carefully divide between the rights of parents to raise their children on one hand, and the rights of children to autonomy and self-determination on the other hand. Thus, the children's right relating to welfare holds the responsibility of parents over children to ensure the physical, moral and social well being of children.<sup>140</sup> Archard defined the rights to welfare as incorporating a 'caretaker thesis', based upon the idea of needs.<sup>141</sup> The 'caretaker thesis' suggests that the physical, moral, and social needs of children are the responsibility of adult caretakers rather than the children themselves. Adults ensure that children receive a range of common goods that support their physical and social development. This, in effect, limits the children's right to make a decision so arrangements are made on their behalf by adults to support their physical and social development. As Wyness summarises, the right to welfare implies that adults do things to and for children.<sup>142</sup> On the other hand, self-determination rights are far more controversial with regard to the limitations they impose on the responsibilities and powers of adults. More precisely, self-determination rights consider children as capable of making rational, autonomous decision for themselves that could potentially go against adults' claims that they are acting in the child's 'best interests'.<sup>143</sup> Rearing and educating a child to be an autonomous adult requires an adult to act in their welfare interest, so far as the capacity of a child to act on his/her own interest has not yet been developed.<sup>144</sup> Since the goal is independence, those who exercise constraints must do so in such way as to enable the child to develop their capacities and their behaviour should meet one's responsibilities to the child to guarantee future independence. Thus, the duties of adults are to provide adequate guidance and protection. As Ochaita and Espinosa acknowledge, such activity represents a developmental psychological perspective on children's self-

<sup>139</sup> Freeman, 1983; Eekelaar, John, 'The importance of thinking that children have rights', *International Journal of Law and the Family*, Vol.6, Issue 1, 1992, pp. 221-235

<sup>140</sup> Freeman 1983, Archard 1993, Bob Franklin, 'Children's rights and media wrongs', in *The New Handbook of Children's Rights: Comparative Policy and Practice*, Second eds. B. Franklin, Routledge 2001, p.21

<sup>141</sup> Archards 1993, pp. 51- 57

<sup>142</sup> Michael Wyness, *Childhood and Society: an Introduction to the Sociology of Childhood*, Basingstoke: Palgrave, 2006, p.208

<sup>143</sup> Jack C. Westman, 'Children's rights, parents' prerogatives, and society's obligations' *Child Psychiatry & Human Development*, Vol 29, Issue 4, 1999, pp. 315-328. Tom D. Campbell, 'The Rights Of The Minor: As Person, As Child, As Juvenile, As Future Adult' *International Journal of Law, Policy and Family*, Vol. 6, Issue 1, 1992, pp. 1-23

<sup>144</sup> Wolfson 1992 p. 23, Archard 2004,p.55, Eekelaar 1992, p.229

determination.<sup>145</sup> Again, Archard explores the concept of self-determination and connects it with 'competence' of children.<sup>146</sup> He points out that children are in a position to articulate their views to the adults. Rather than completely discounting their request, the adults should weight the children's choice, which reflects their competence to choose for their own good.<sup>147</sup> Similarly, Mayall acknowledges that children are in a different position with regard to their ability to be heard and taken seriously.<sup>148</sup> Whilst the concern may be real and justified in the context of procedures inimical to participation by children, the correct response is to change the system and the procedure to accommodate children. John Holt and Richard Farson made their view on overriding the importance of children's right to self-determination very clear. Holt asserts that children have an obligation to exercise their rights and this should be made possible for any young person, of whatever age, who wants to make use of them.<sup>149</sup> Farson set out all the rights to which children are entitled to, subject to the acceptance of the child's right to self-determination.<sup>150</sup>

Meanwhile, Freeman submits that taking children's rights seriously is still an open debate in which the case for children's rights will prevail.<sup>151</sup> Such affirmation derives from the observation that 'many references to children's rights turn out, after inspection, to be aspirations for the accomplishment of particular social or moral grounds'.<sup>152</sup> Indeed, as Brems sums up, the specificity of children's rights discourse has inspired the drafters of the CRC to build a text upon the vulnerability of children, their development towards adulthood, and their autonomy.<sup>153</sup> Therefore, the CRC is not a treaty on children's general 'personhoods', but rather is constructed upon the 'evolving capacities of the child'.<sup>154</sup>

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<sup>145</sup> Esperanza Ochoa, and Angeles M. Espinosa, 'Children's participation in family and school life: A psychological and development approach' *International Journal of Children's Rights* Vol.5, Issue 3, 1997, pp.279-297

<sup>146</sup> Archard 1993, p.87

<sup>147</sup> Ibid

<sup>148</sup> Mayall 2001, p.257

<sup>149</sup> Holt, 1974, p.15

<sup>150</sup> Richard Farson, *Birthrights*, Collier Macmillan 1974, p.27

<sup>151</sup> Freemans 2007, p.20

<sup>152</sup> Freeman Michael, *The Rights and Wrongs of Children*, Frances Pinter 1983, p.37

<sup>153</sup> Brems 2007, p.20

<sup>154</sup> Brems 2007, p.20, Thomas Hammarberg, 'The UN Convention on the Rights of the Child - and How to Make It Work', *Human Rights Quarterly*, Vol. 12, Issue 1, 1990, pp 97-105, Geraldine Van Bueren, 'Children's rights: balancing traditional values and cultural plurality', in *Children's rights and traditional values*. (eds), G. Douglas and L. Sebba Hants: Dartmouth Publishing Company, 1998, p. 21



#### 4. What is juvenile justice?

Overall juvenile justice/youth justice or child-centred justice is perhaps best defined as dealing with children in conflict with the law through a formal or informal justice system, taking into account their specific needs and circumstances.<sup>155</sup> Where the regular adult criminal system contains a degree of specialisation for children and adolescents, by building the necessary infrastructure and treating them outside this system, it is known as a juvenile justice process. A juvenile justice system is concerned with the manner in which the police arrest or interrogates children; the attitude of lawyers and prosecutors; the way that decisions are made about being guilty or sentencing; handling by prison staff; the living, educational, recreational and safety conditions in detention facilities; and programmes for rehabilitation and reintegration. It should be noticed that there are many actors in the 'play' and difficulty comes in trying to find out how each actor can work together in harmony. Each component of a juvenile justice system should, in its facilities and its mode of functioning, consider the needs and best interests of the child and address the root causes of conflict with the law, as well as protecting the rights and welfare of children,<sup>156</sup> contributing to the healthy development of the child,<sup>157</sup> and safeguarding the community.<sup>158</sup>

In 1987 Robert Harris and David Webb observed that the '[youth justice] system is riddled with paradox, irony, even contradiction ... [it] exists as a function of the child care and criminal justice system or either side of it, a meeting place of two otherwise separate worlds'.<sup>159</sup> Goldson states that juvenile justice is dynamic in presenting various means, policies, and practices for governing children and young people in conflict with the law and/or in delivering juvenile justice.<sup>160</sup> Indeed, there is no strict and clear-cut dividing line between the philosophies and approaches in a general justice system and those that should be

<sup>155</sup> Throughout Europe the term 'juvenile' justice is preferred (many of the recommendations issued by Council of Europe address in their title 'juvenile', for example Recommendation CM/Rec(2008)11 of the Committee of Ministers 'On the European Rules for juvenile offenders subject to sanctions or measures', Recommendation R (2003)20 'On new ways dealing with juvenile delinquency and the role of juvenile justice', recommendation R (87)20 'On social response to juvenile delinquency'. 'Youth' justice prevails as a term among the Anglo-Saxon countries such as USA, UK and Australia. Meanwhile the CRC and all the UN framework uses both the terms interchangeably supporting a child-centred justice.

<sup>156</sup> Beijing Rules, Rule 1.1 (fundamental perspectives) and Rule 5.1 (aims of juvenile justice)

<sup>157</sup> Beijing Rules, Commentary to Rule 1.

<sup>158</sup> Tokyo Rules, Rule 1.4 'ensure a proper balance between the rights of individual offender, the right of victims, and the concern of society for public safety and crime prevention'.

<sup>159</sup> Robert Harris, and David Webb. *Welfare, Power and Juvenile Justice*. London Tavistock. 1987, cited in Barry Goldson, *The Dictionary of Youth Justice*. Cullumpton, Willan. 2008, p.xvii

<sup>160</sup> Goldson 2008, p.xvii

applied to juveniles.<sup>161</sup> The origins and evolution of juvenile justice illustrate that the prevailing philosophy of juvenile justice acknowledges that juvenile offenders should be held responsible for the 'wrong-doing' they commit.<sup>162</sup> What has changed through years is the way that society views this category of children, not only as rational actors, but as moral actors as well.<sup>163</sup> At the same time, however, society understands that they are in a process of moral and social development.<sup>164</sup> Thus, while holding them responsible for their wrongdoing, society must take into account their developmental needs as well as what Scott and Zimring have described as their 'diminished responsibility'.<sup>165</sup> Their view on diminished responsibility, supported by other commentators,<sup>166</sup> is based upon an assumption that children and young people have a relative immaturity that affects their ability to understand and reason when making decisions. This immaturity also reflects on their understanding of the seriousness of their offences and their ability to foresee the consequences of their actions.<sup>167</sup> Linked to this is the belief that the culpability of many juveniles in conflict with the law might be affected from other factors such as poverty, cruelty or neglect they have suffer.<sup>168</sup> These limitations in young offenders' capacities and development should be a significant factor in how society responds to their wrongdoings. According to Abramson, society holds minors accountable for their wrongdoings, but when it comes to judging them, it uses a different moral yardstick from that of adults.<sup>169</sup> Being in a process of rapid development, physically, mentally and socially, on one hand entitles them to 'special care and assistance'. However, on the other hand, it makes them better able to respond to the process of

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<sup>161</sup> Innocenti Digest: Juvenile Justice, *UNICEF International Child Development Centre Florence- Italy*, <http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=105>, 1998 (Accessed 25/07/11), p.4

<sup>162</sup> A brief history of juvenile justice was previously presenting in Introduction. Trepanier 1999, Field 2002, Weijers 1999, David S Tanenhaus. *Juvenile Justice in the Making*. Oxford: Oxford University Press, 2004, Robin A Duff, and Ido Weijers. *Punishing Juveniles: Principle and Critique*. Oxford: Hart, 2002.

<sup>163</sup> Abramson 2004, Archard 2004,

<sup>164</sup> Abramson 2004, p.20

<sup>165</sup> Elisabeth S. Scott, 'The legal Construction of Childhood' in *A Century of Juvenile Justice*, eds. M.K. Rosenheim, Chicago: University of Chicago Press, 2002, p.136 and 137, Franklin E. Zimring, *American Juvenile Justice*, Oxford University Press, 2005, p. 49.

<sup>166</sup> Elizabeth S Scott, and Laurence Steinberg. *Rethinking Juvenile Justice*. Cambridge, Mass: Harvard University Press, 2008, Don Cipriani, *Children's Rights And The Minimum Age Of Criminal Responsibility: A Global Perspective*. Farnham: Ashgate, 2009, Happold, Matthew. *Child Soldiers in International Law*. Manchester: Manchester Univ. Press, 2005, Ido Weijers and Thomas Grisso, 'Criminal responsibility of adolescents Youth as junior citizenship' in *Reforming Juvenile Justice eds. J. Junger-Tas, and F. Dünkler*. Dordrecht: Springer-Verlag, 2009, Archard 2004

<sup>167</sup> John Pitts, 'Youth Justice in England and Wales' in *The New Politics of Crime and Punishment eds R. Matthews and J. Young*, Cullompton, Devon: Willan Publishing, 2003, p.74

<sup>168</sup> Ibid

<sup>169</sup> Bruce Abramson, 'The Right to Diversion: Using the Convention on the Rights of the Child to turn juvenile justice rights into reality' in *Proceeding of the 1<sup>st</sup> International Conference on 'Juvenile Justice and the Prevention of Juvenile Delinquency in a Globalized World'*, 27-29 October, International Juvenile Justice Observatory, Valencia, 2004

rehabilitation and assume a constructive role in society in the future.<sup>170</sup> In other words, juvenile justice might be considered as being informed by a philosophy that aims to temper the punitive nature of criminal justice processes in recognition of the particular vulnerabilities of juvenile offenders.<sup>171</sup>

Overall, the policy solutions that states adopt towards 'deviant' children and young people in conflict with the law are influenced by a complex interaction of factors, such as political agendas; public opinion; social values and norms; economic standards; cultural ideologies at the national and local level; judicial conceptualisations; and operational strategies.<sup>172</sup> Despite the diversity and considerable variations between states, and even within one country, it is possible to relate the different national systems and their associated similarities, in order to identify 'system models'.<sup>173</sup> The system models do not assume that one state's policies and practices of juvenile justice could be replicated in another state. Rather, they provide a framework, developed around philosophical approaches, and/or patterns in institutional arrangements and procedures in place for dealing with children in conflict with law, to consider or compare juvenile justice systems.

When it comes to the philosophical approaches of juvenile justice systems, the discussion tends to be focused around two main approaches: welfare versus justice. The approaches are based on two philosophies differentiated in regard to the discourse of accountability, responsibility, and the primacy of punishment. One is based on sociological interpretation, while the other is based on neo-classical retributive principles, emphasising a more 'juridical approach' or 'criminal justice model'.

**Welfare approach.**<sup>174</sup> Goldson summarise the welfare approach as '*rooted in inquisitorial, adaptable, informal, needs-oriented and child-specific processes*'.<sup>175</sup> The welfare approach is

<sup>170</sup> Abramson 2004, p.23, Martin & Parry Williams 2005, p.4

<sup>171</sup> Abramson 2004, p.21, Martin & Parry-Williams 2005, p.3

<sup>172</sup> Barry Goldson, and John Muncie, *Comparative Youth Justice: Critical Issues*. 2<sup>nd</sup> eds London: SAGE, 2008, p.213, John A. Winterdyk, 'Juvenile Justice in the International era' in *Handbook of Transnational Crime and Justice* eds. R. Philip, Thousand Oaks: Sage, 2008, p.466, Michael Cavadino, and Jim Dignan, *Penal Systems: A Comparative Approach*. London: Sage, 2006, p.197 Josine Junger-Tas, and Scott Decker, *International Handbook on Juvenile Justice*. Kluwer Academic Publishers, 2006

<sup>173</sup> Ibid

<sup>174</sup> The paragraph is written by combination of the literature resources as follow: Goldson 2008, Muncie & Goldson 2006, Cavadino & Dignan 2006, Jungers-Tass and Decker 2006, Christine Alder, and Joy Wundersitz, 'New Directions in Juvenile Justice Reform in Australia' in *Family Conferencing and Juvenile Justice: The Way*

common in areas of Europe including Germany, France, Belgium as well as East Europe. The welfare approach assumes that wrongdoing is caused by biological, psychological and social factors and is a product of the environment within which the juvenile lives. Therefore, the principal concern is to take into account both the offence and the special needs of the young offender, to help the young offender rather than punished. Such considerations give rise to a 'minimum intervention' strategy, which involves avoiding the use of custodial or residential institutions, a greater commitment to suspending sentences, possibly dealing with the cases out of court and employing exclusionary and participative community-based interventions as direct alternatives to custody. Consequently, there is an informality of proceedings and interventions are developed based on the best interests of the young person. The welfare approach has such a potential impact that it would be internationally legalised by being incorporated in Article 37 of the UN Convention of the Rights of the Child.

**Justice approach.**<sup>176</sup> Goldson summarises the justice approach as '*derived from adversarial, fixed, formal, proportionate and offence focused priorities*'.<sup>177</sup> The 'justice approach' is common in English speaking countries (except Scotland) and the Netherlands. In contrast to a welfare approach, the justice approach assumes that the juvenile is primarily responsible for the wrongdoing. Therefore the principal concern is about holding them accountable for their actions and enforcing punitive measures. Such considerations shift attention towards the young person's wrongdoing and determining an appropriate response to it ('*just deserts*'). Consequently, there is formality of proceedings, which places a great emphasis upon ensuring that young person's rights of due process are upheld.

**'Hybrid' approach.** Muncie and Goldson submit that, by the 21st century, juvenile/youth justice has appeared to incorporate a third 'hybrid' approach, which attempts to deliver neither welfare nor justice. Instead, it involves a complex and contradictory amalgam of the punitive, the responsabilising, the inclusionary, the exclusionary, and the protective.<sup>178</sup> The hybrid approach refers to a variety of models, proffered by other approaches such as 'left realism', restorative justice, human rights theory, and cultural criminology. Such approaches

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*Forward or Misplaced Optimism?* eds C Alder and J. Wundersitz, Canberra: Australian Institute of Criminology. 1994

<sup>175</sup> Goldson 2008, p.xvii

<sup>176</sup> The paragraph is written by combination of the literature resources as follow: Goldson 2008, Muncie & Goldson 2006, Cavadino & Dignan 2006, Jungers-Tass and Decker 2006, Alder and Wundersitz, 1994

<sup>177</sup> Goldson 2008, p.xvii

<sup>178</sup> Muncie & Goldson 2006, p.214 Goldson 2008, p. xvii

encourage the formulation of policies on juvenile justice that are drawn from a 'what works' response to crime and social control (as captured in 'left realism'); devolving responsibility for crime control to individuals, families, and communities (as captured by restorative justice); framing juvenile justice values in the language of human rights (as captured in human rights theory); and in tackling juveniles in conflict with the law from a variety of new perspectives and academic disciplines (as captured by cultural criminology).<sup>179</sup>

Other scholars present a more complex model typology in the analysis of juvenile justice systems. Thus, reflecting major practical and theoretical differences, Winterdyk built a complex model incorporating, beside the traditional welfare and justice models, participatory, corporatism, modified justice and crime control models.<sup>180</sup> Cavadino and Dignan proposed a typology of youth justice models, constructed upon philosophical assumptions, institutional arrangements, and operational policies and processes,<sup>181</sup> which, beside the welfare and justice models, encapsulates minimum intervention, restorative and neo-correctionalist models. Junger-Tas and Decker, categorized juvenile justice systems by conceptual orientation and based on physical proximity, political linkage, and legal systems presented a three cluster geographical model - Anglo-Saxon, Western continental Europe, and Scandinavian model.<sup>182</sup>

**CRC approach.** Following the adoption, member states are under obligation to develop (or revise) their juvenile justice system in accordance with agreed principles and minimum standards provided in the CRC.<sup>183</sup> In the general terms of the CRC, 'juvenile justice' refers to a state's criminal justice responses to children who are alleged to have infringed the criminal law, or who are accused of, or recognized as having done so. From this definition it might be assumed that legislation, norms and standards, procedures, mechanisms and provision, and institutions and bodies specifically applicable to juvenile offenders, constitute 'juvenile justice'. The CRC establishes two core principles for juvenile justice. Firstly, it recognizes that children in conflict with the law require discrete recognition and different

<sup>179</sup> This paragraph was constructed by making reference to John Muncie, *Youth & Crime*. 3<sup>rd</sup> eds Los Angeles (Calif.): Sage, 2009, Sandra Walklate. *Understanding Criminology: Current Theoretical Debates*. Maidenhead: McGraw-Hill/Open University Press, 2007, Goldson 2008,

<sup>180</sup> Winterdyk 2008, John A. Winterdyk, *Juvenile Justice Systems: International Perspectives*. Canadian Scholars Press, 2002

<sup>181</sup> Cavadino & Dignan 2006, p.201 The model is further discussed in the subsequent section.

<sup>182</sup> Josine Junger-Tas, and Scott H. Decker. *International Handbook of Juvenile Justice*. Dordrecht: Springer, 2006

<sup>183</sup> The CRC would be further discussed in Part II of this chapter. In this section attention is paid to the philosophical approach of the CRC.

responses from that of adults. Affording children a recognised status means that, when dealing with juveniles, the criminal justice system should take into account the development, capacities, and individual experience of the child. Secondly, the child's welfare should be prioritised, implying treatment, support and guidance based on individual needs and promotion of the child's sense of dignity and worth. Therefore, the dominant approach governing the CRC and, consequently, its approach to juvenile justice, is acting in 'the best interests of the child'.

The CRC provides that a juvenile justice system may operate within the context of the adult criminal justice system as an internal system, as a division or section, or external system through committees, commissions or administrative panels.

Compared to the CRC, Rule 1.3, The Beijing Rules expands on the application of 'children's justice' with respect, not only to the treatment of children in conflict with the law, but also to the root causes of offending behaviour and measures to prevent it. According to the Beijing Rules' definition work in the field of juvenile justice has three major strands:

- *Prevention* – in order to ensure juveniles do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system;
- *Protection* – of children who are already in conflict with the law from human rights violations, focusing on their development in order to deter them from re-offending and to promote their rehabilitation and smooth their reintegration back into society; and
- *Diversion* – to ensure that at all possible stages juveniles are diverted away from the formal justice system and into community-based and restorative processes that effectively address the causes of their behaviours and identify strategies at the community level to effectively prevent re-offending.

The above paragraphs explored the philosophical approaches to juvenile justice, as well as the CRC's approach. There was a need to acknowledge competing debates about the nature and direction of 'juvenile justice', to indicate a philosophical approach, which might be applicable to children in Albania. As hypothesised in the Chapter 'Introduction', it was expected that this thesis would reveal shortcomings in the present juvenile justice in

Albania. Therefore, as part of the study, I will be attempting to identifying means of adapting the current Albanian juvenile system to make it compatible with international standards and norms. To that end, the thesis contains a historical description of the Albanian juvenile justice, which provides a background to the philosophical approach of the system.

Being an ex-communist country, it might be expected to have in place a welfare-oriented system for dealing with children in conflict with law.<sup>184</sup> Since the change of system in 1990, the criminal system, and consequently the juvenile criminal law, has been amended several times. Most of the amendments had been made in the light of Albania's proposed accession to the European Union, and of its becoming a signatory to, or ratification of, several international conventions. In the aftermath of these reforms, it remains to be considered whether a welfare orientation remains the main characteristic of the system. As such, this thesis will not at any stage deny the possibility of either a more punitive, or a 'hybrid' orientation. Some of the Committee's recommendations made on the report of Albania, such as setting a minimum age of criminal responsibility or the need for training of juvenile justice personnel, imply that Albanian juvenile justice policy embodies an ideological struggle in penal theory. My argument is that, whilst we may be able to understand the philosophical approach of juvenile justice by reading the laws, policies, guidelines, customary norms, systems,<sup>185</sup> there are professionals, institutions, and juveniles dealt by the system whom indicate the informal aspects of the system and reality. Therefore, both the formal and informal provides the real facet in the development of policy and a theoretical conception of juvenile justice.

##### **5. How does the juvenile justice system work?**

In response to the developmental differences of young people, societies agree to modify their penal systems and to keep 'children in danger' out of traditional systems of justice. As a consequence, the society engages their mechanism to establish a juvenile justice system as an alternative to criminal justice system, which divert the young offenders from the criminal law system to the juvenile justice system. On this basis, Abramson concludes that juvenile justice

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<sup>184</sup> There is less written about juvenile justice in Eastern and Central Europe. A historical sketch of juvenile justice development in ex-communist countries as Poland, the Czech Republic, Slovenia, and Bosnia implicitly suggest the welfare orientation of the previous system before the change of system in 1990. Junger-Tas & Decker, 2006)

<sup>185</sup> Manual for the Measurement of Juvenile Justice Indicators, *United Nations Office On Drugs And Crime Vienna, UNICEF* [http://www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf) (Accessed 25/07/11)

system is *a diversion system*.<sup>186</sup> Moreover, this diversion system overpasses the level of national penal system by becoming *mandatory under international law*, through Article 37(b) and 40(3) of the Convention. Furthermore, Abramson argues that while speaking about the 'juvenile justice system' we are talking not about *a single system* but *an overlapping of multiple, inter-connected systems*. Abramson identifies occupational systems and functional systems.<sup>187</sup> The police, the lawyers, the judges, the prison staff, the probation and the rehabilitation personnel are separate *occupational systems*, each with their own rights, objectives, performance standards, ethos, and command structure. The prevention, apprehension (investigation and arrest), diversion, imprisonment, trial and rehabilitation are compounds of *functional systems*. Although the systems are separate, they are designed to complement each other to interplay between them. In such interplay, occupational and functional systems overlap on the objectives and working methods, exercising a pressure between them. Therefore, reforms to juvenile justice system should be carefully devised to minimise pressure exercised between multiple systems and avoid the 'balloon effect', which lies behind it.<sup>188</sup> This is why, Abramson concludes, juvenile justice should be addressed not as a system, but as a set of over-lapping systems.

Muncie and Goldson (2006) are well aware of the complexity of juvenile justice. They are sensitive to the structural, cultural and political constraints of specific countries that produce *a diversity of juvenile justice* legislative rules and agencies to enforce and implement them. They state, for instance, that juvenile justice development in any single national state 'cannot be fully explored without reference to sub-national, regional and local diversity as well as acknowledging the impact of international and global forces'.<sup>189</sup> Such influence is not without a cost for systems, as a 'renewed emphasis on local political cultures and governance may well open up an 'implementation gap' in which spaces for re-working, re-interpretation and avoidance of national or international trends can be forged'.<sup>190</sup>

For Cavadino and Dignan (2006), *juvenile systems are related to 'patterns of penalty'*.<sup>191</sup> They apply a radical pluralist framework to the realm of penalty. The penal framework is

<sup>186</sup> Abramson 2005, p.7

<sup>187</sup> Abramson 2004

<sup>188</sup> To define the 'balloon effect' Abramson use as example the squeeze of a tube of toothpaste with cap on; just as you grab a hold of one part, it bulges somewhere else.

<sup>189</sup> John Muncie, and Barry Goldson, States of Transition: Convergence and diversity in international youth justice, in *Comparative Youth Justice: Critical Issues*, eds J. Muncie and B. Goldson, London Sage: 2006, p.196

<sup>190</sup> Muncie and Goldson 2006, p.214

<sup>191</sup> Mike Cavadino, and Jim Dignan, '*Penal systems: A comparative approach*'. London: SAGE. 2006



systematically undermined by the way states reorganize social, political, and economic affairs. These differences in the reorganization of state appear to be reflected in certain aspects of their penal ideologies and penal practices, including the juvenile justice system. Thus, they identify four main types of youth justice systems; neo-liberal, conservative corporatist, social democratic, and oriental liberal corporatist, which in terms has been influenced by five different youth justice models, or approaches:

- *The welfare model* with primary goal of the youth justice system to provide appropriate help or treatment for offenders, rather than punishment;
- *The justice model* with primary focus of the youth justice system to determine the suspect's legal guilt or innocence and next to assess the degree of culpability that they bear, punishing according to principle of 'just desserts';
- *The minimum intervention model* with primary focus of youth justice to avoid the use of custodial of residential institutions wherever possible;
- *The restorative justice models* advocate a policy based on involving those who are most directly affected by a particular offence – victims, offenders and their 'communities of care' – in decisions about how it should be resolved, giving primacy to those interests as opposed to the more general and abstract 'public interest'.
- *The neo-correctionalist model* espouses a much more ambitious crime control goal for youth justice, by according primacy to prevention of offending by young people and considering all other aims subordinate to it.

Cavadino and Dignan's juvenile justice typologies are a useful resource for explaining differences in juvenile justice systems, even if it is not the only way of taking into account the diversity of national legislations in designing juvenile justice system(s). Their typologies highlight that the adoption of common strategies differ according to local penal practices and follows distinctively different developmental trajectories. However, as Cavadino and Dignan's typologies assume, national perspectives can be brought together through the approach of the CRC to juvenile justice.

Overall, all the above commentators make the important point that juvenile justice system(s) are complex and diverse, and all features of juvenile systems are not separate from the diverse range of 'local' juvenile justice practices based on informal social controls, diversion, education and social protection.

## 6. Child, Juvenile or Young Person?

Before discussing international standards relating to juvenile justice it seems necessary to briefly discuss the term 'child', as the holder of the rights enshrined in the CRC and define what is meant by 'juvenile'. A basic understanding of child development and psychology is essential to understand the variations of 'age grades' within the life span and to then assess which children are considered juveniles in conflict with law. Such discussion is necessary because of the fact that the CRC is not clear to whom it applies with regard to juvenile justice. Article 1 of the CRC defines the child as any human person below the age of 18, unless domestic law recognizes an earlier age of majority. The wording of the CRC's Article 1 is intended to allow for a certain degree in setting up minimum ages for certain purposes.<sup>192</sup> Although, the reference to domestic legislation does not provide an escape clause, member states apply different restrictive practices to the rights of children, which derive from setting up different ages of attaining majority. As previously discussed in childhood, a period of 'youth'/'juvenile' is rarely evoked with the same impersonality as that of 'adulthood'. Cultural and historical perspectives in perceiving the different competences and incapacities associated with childhood differ from society to society, but also within the same culture compounded by gender distinctions and capacities acquainted at different ages. The consequences of this variation are clear in terms of setting the definition of 'child' and the age grades within a life span.<sup>193</sup> Goldson notes that chronological age (age grades) is 'a fundamental determinant in the distribution of rights, power and participation', confirming and guaranteeing children's 'marginalisation by legal obligation and the rule of law'.<sup>194</sup> Therefore the 'age' serves, in many societies, as a determinant key to establish thresholds, through law or cultural protocols, at which children achieve protection of their interests and welfare, as well as acquisition of rights and autonomy over their own lives.

Therefore, according to developmental psychology and every day life, the term 'child' refers to a person from birth until the period of puberty (Table No.1) Afterward the person is recognized as an 'adolescent'. In common usage around the world, 'adolescent', 'teenager',

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<sup>192</sup> 'Manual on Human Rights Reporting under Six Major International Human Rights Instruments', *Office of the Higher Commissioner for Human Rights/United Nations Institute for Training and Research/United Nations Staff College Project*, UN Publication: Geneva 1997, p.415

<sup>193</sup> Jo Boyden, 'Childhood and Policy Makers' in *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* eds. A. James, and A. Prout, London: Routledge/Falmer, 2001, p.203

<sup>194</sup> Barry Goldson, 'Childhood': An Introduction to Historical and Theoretical Analyses' in *Childhood in 'Crisis'?* eds P. Scraton, London: UCL Press 1997, p.20

'teen', 'youth', 'young adult', 'lighty', 'youngster', 'youngun', 'young person' and 'emerging adult' may be considered synonyms of 'juvenile'.

Table 1. Human Development Table

<i>Stages</i>		<i>Years</i>
CHILD	prenatal	>0
	infancy	0 – walking
	toddlerhood	walking - 3
	play age	3-6
	preadolescence	10 - puberty
	adolescence	puberty - 19
YOUNG ADULT	twentysomething	20-29
	thirtysomething	30-39
MIDDLE AGE	fortysomething	40-49
	quincuagenarian	50-59
ADVANCED ADULT	sexagenarian	60-69
	septuagenarian	70-79
	octogenarian	80-89
	nonagenarian	90-99
	centenarian	100-109
	supercentenarian	110

As it might be noticed from Table No.1, there is an inconsistency between the definitions in international law and every day life with regard to 'child'. Such 'inconsistency' is particularly relevant to juvenile justice. As Abramson points out, the majority of children who come into conflict with the law fall within the category of 'teenagers' in every day life.<sup>195</sup> Abramson provides a detailed analysis, arguing that 'inconsistency' is a result of 'legal fiction' created by the CRC advocates who speak only about the 'child', without confronting the gaps between word and daily life.<sup>196</sup> Consequently, their terminology leads to invisibility of the adolescent (juvenile, young person) in the CRC movement. According to Abramson, Article 1 the CRC does not read that all human beings under 18 are children, but only that the world 'child' in the treaty is to be translated as everyone under 18, encompassing children and

<sup>195</sup> Abramson 2005, p.24

<sup>196</sup> Ibid

adolescent.<sup>197</sup> Similarly, Van Bueren notes that the term 'juvenile' does not necessarily correspond to the concept of 'child'.<sup>198</sup>

The inconsistency about the use of 'child' has a direct impact upon international instruments, which reveal incoherence regarding choices of terminology. Thus, the UN Rules for the Administration of Juvenile Justice (Beijing Rules) opt for use of 'juvenile' to emphasise the manner of how a child is treated for an offence. Rule 2(2) paragraph a of the Beijing Rules try to partially overcome the handicap of terminology by defining 'juvenile' as 'a child or young person' who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult'. 'Partially' refers to the fact that the Beijing Rules does not explicitly imply that treatment of a human being as 'juvenile' leads to them being considered as 'a juvenile'.<sup>199</sup> The UN Rules for the Protection of Juveniles Deprived of Liberty refers to 'juveniles' as every human being under the age of 18.<sup>200</sup> There is no explicit definition on the UN Guideline for the Prevention of Juvenile Delinquency (Riyadh Guidelines) about 'juvenile', while 'delinquency' is described as a collective phenomenon of young persons' acts. Interestingly, the Riyadh Guidelines are the only instrument to refer to young persons as 'adolescent' and refers to their previous development as early childhood.<sup>201</sup> Similarly, Article 10 of International Covenant on Civil and Political Rights (ICCPR) address the safeguards to 'juveniles' (Article 10(3) and 14(4)) with no indication about limits of juvenile age. Defining the boundaries of age groups of persons treated as juveniles, because of relevant social, cultural, and other conditions, is a matter falling within the discretion of State Parties according to the Human Rights Committee (HRC).<sup>202</sup> However, the HRC advocates that 'all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice'.<sup>203</sup>

## 7. Minimum Age of Criminal Responsibility

As Goldson acknowledges, 'rightly or wrongly', the law serves to provide an appropriate mechanism to reflect the transition from the age of childhood innocence through 'adulthood',

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<sup>197</sup> Abramson 2005, p. 9. Ibid

<sup>198</sup> Geraldine V. Bueren, *The International Law on the Rights of the Child*. Dordrecht: Nijhoff, 1998, p.171

<sup>199</sup> Ibid

<sup>200</sup> JDLs Rule 11(a)

<sup>201</sup> Riyadh Guidelines, guidelines 2 and 4

<sup>202</sup> UN Human Rights Committee, *General Comment No. 21: Article 10 (Humane treatment of Persons Deprived of Their Liberty)*, 10 April 1992, <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (accessed 5/05/2008) para.13

<sup>203</sup> Ibid

while constructing the legal personality of the child and assigning responsibilities under the criminal law.<sup>204</sup> However, as Cipriani notes, 'government intrusion into the lives of individuals, and social control through criminal justice mechanism, is only permitted insofar as it is a proportional response to the free choices of individuals.'<sup>205</sup> As previously noted, age is a determinant element in the criminal justice system because it is a major demarcation for the methods or processes that the system uses to achieve its goals. As such, setting a minimum age of framework for criminal responsibility (MACR) is considered to be essential for the moral legitimacy of the criminal and juvenile justice system.<sup>206</sup> Most definitions of the MACR confine at 'the lowest age at which children may potentially be held liable for infringement of a given country's penal law'.<sup>207</sup> Besides providing a minimum degree of legal certainty to children by limiting the ability of government to intervene in their lives, MACR provides legal and economic efficiency in precluding the necessity for the extremely costly individual assessment of capacity of discernment.<sup>208</sup> In addition, there is a general principle that no person below MACR can be formally charged and, consequently be convicted for an offence because of inability to understand the consequences of the act.<sup>209</sup> If a child is below this threshold, special protective measures are taken to safeguard their best interest.

Although the provisions of a number of human rights instruments refrain from specifying an arbitrary age of criminal responsibility, they have a great deal to say about MACR. Thus, Article 40(3)(a) of the CRC is written in a language that accommodates all legal traditions and daily life, simply requiring State Parties to 'seek to promote' the establishment of 'a minimum age of criminal responsibility'. Even so, the definition of a juvenile person is absent in Article 14 paragraph 4 of ICCPR, and it implies the establishment of MACR.<sup>210</sup> Rule 4(1) of the Beijing Rules recommends that State Parties link the concept of the age of criminal responsibility for juveniles to the child's development (emotional, mental and intellectual maturity). In addition, Rule 4(1) the Beijing Rules requires State Parties to not fix

<sup>204</sup> Barry Goldson, 'Counterblast: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility', *The Howard Journal of Criminal Justice*, Vol.48, Issue 5, 2009, pp.514-521, p.517

<sup>205</sup> Don Cipriani, *Children's Rights And The Minimum Age Of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate, 2009, p.12

<sup>206</sup> Cipriani 2009, p.12, Nuno Ferreira, 'Putting the age of criminal and tort liability into context: A dialogue between law and psychology.' *International Journal of Children's Rights*, Vol. 16, Issue 1, 2008, pp. 29-54. p.47

<sup>207</sup> Cipriani 2009, p. xiii

<sup>208</sup> Cipriani 2009, p.12, Ferreira p.51

<sup>209</sup> Cipriani 2009, p.156

<sup>210</sup> HRC General Comment No.21, para.13

the MACR too low without giving a specific definition of such an age, which might leave room for interpretation in courts in cases where a young offender is accused of a serious crime. Furthermore, the official commentary on this provision points out the close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc)'. Goldson argues that this element advocates 'consistency and integrity within and across the wider corpus of criminal and civil law providing for 'social rights and responsibilities' within a given jurisdiction'.<sup>211</sup>

The lack of clarity in Article 40(3) paragraph (a) of the CRC with regard to what might be internationally accepted as MACR, has resulted in a wide disparity of MACR, not only globally, but even within the same continent.<sup>212</sup> Cipriani provides a comprehensive global study of where MACR is set in the world's jurisdictions. Reading through Annex 2, which provides a breakdown for 193 countries, it might be noticed that a majority of states apply as a minimum age of criminal responsibility high levels such as 14 or 16. Whereas quite a number of State Parties apply a two tier system of minimum ages of criminal responsibility starting from as young as 7 or 8. The two tier system requires a test to be applied in court to determine if the child, who at the time of the commission of the crime was of an age at or above the lower minimum age but below the higher minimum age, has the required maturity to be held criminally responsible.

Despite being considered as 'down to history and culture', the disparities do not refrain the Committee from discussing and giving a strong indication on parameters considered to be acceptable under the CRC with regard to MACR in its General Comment No 10 paragraphs 16-22. Therefore, the Committee defines the age of 12 years as the absolute minimum to be internationally acceptable for setting MACR. In line with this interpretation, State Parties are recommended to provide with an increase (in case of non-compliance) at a preferable level of such as age of 14 or 16 years.

Within the discourse of MACR the Committee considers the 'upper age limit for juvenile justice'. Thus, under juvenile law system a person above the minimum age of criminal responsibility but younger than 18 years at the time of the commission of an offence is held

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<sup>211</sup> Goldson 2009, p. 517

<sup>212</sup> Van Bueren 1998, p.173, Cipriani 200, p.187

accountable under the penal law.<sup>213</sup> In other words, MACR provides on the one hand a safeguard on criminal capacity, and on the other hand immunity from the adult system of criminal prosecution and punishment.

## **Part II: Which are the principal juvenile justice instruments and how do they reinforce each other?**

This part presents the key international rules and guidelines that provide the framework for administration of juvenile justice and the mechanisms of their enforcement. The CRC and its acceptance by so many countries heightens the recognition of the fundamental human dignity of all children and the urgency of ensuring their well-being and development. However, various reports underline the fact that states do not pay the same attention to the field of juvenile justice as in other major areas covered by the CRC. The general picture is that no member state escapes unchallenged during examination by the Committee on the Rights of the Child (the Committee), the monitoring body for the CRC, of their juvenile justice system, and that all of them have to question, or at least improve, their system.<sup>214</sup> Analysing the enforcement mechanism of the CRC as a framework treaty, aims to offer a better understanding of how the juvenile justice specialist could use the international mechanisms to drive the process reform forward.<sup>215</sup>

However it should be noted that the CRC does not stand on its own. The CRC is an umbrella of a family of children's rights instruments, which is composed of an elaborate body of universal and regional treaties, non-binding declarations, resolutions, rules, and guidelines. The CRC serves as the starting point to build the right framework for children in conflict with the law, containing both binding and non-binding international law, whose comprehensive and detailed nature has no equal in the overall field of children's rights.<sup>216</sup>

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<sup>213</sup> The Committee recognises that all children who at the time of their alleged commission of an offence or act punishable under criminal law, have not yet reached the age of 18 years must be treated under the rules of juvenile justice (General Comment No.10, para. 20,21) If there is no proof of age and it cannot be established that the child is at or above the minimum age of criminal responsibility, the child shall not be held criminally responsible (General Comment No.10, para.19) and shall have the right to the rule of the benefit of doubt (General Comment No.10, para.22).

<sup>214</sup> Zermatten, 2007, pp.97

<sup>215</sup> Abramson 2005, pp.38

<sup>216</sup> Innocenti Digest: Juvenile Justice, p.2

## 8. The CRC and the international framework on juvenile justice

The incorporation of specific rights of children into the administration of juvenile justice is a comparatively recent development. Juvenile justice is not included in either the 1924 or the 1959 Declarations of the Rights of the Child. It was not until 1966, with the adoption of the International Covenant on Civil and Political Rights (ICCPR), that juvenile rights in judicial proceedings made their first formal appearance.<sup>217</sup> The ICCPR urged states to separate juvenile offenders from their adult counterparts, and speedily adjudicate claims: Article 10(2)(b); adopts different trial procedures for juveniles, considers the juvenile's age, and promotes rehabilitation: Article 14(4). Despite being useful, these provisions are limited as they only focus on narrow and specific aspects of juvenile justice. Moreover, they had limited impact on the standards of juvenile justice within the domestic arena of most State Parties. Two decades elapsed before the international community attempted to curtail the broad discretion nation states had in determining the nature of their separate juvenile justice systems. As an increasing number of states began to develop separate juvenile justice systems, it became apparent that an international complete framework, more akin to a child rights approach, was required to be utilized for guidance in establishing and operating at the national level of juvenile justice systems.<sup>218</sup> The International Year of the Child in 1979 triggered the construction of a comprehensive framework, covering all aspects of juvenile justice; prevention, the proper administration of juvenile justice, protection of juveniles deprived of their liberty, alternative measures, and the mechanisms for enforcing them. This section will briefly describe UN Convention on the Rights of the Child (specifically articles 37 and 40)(the CRC), as the most important international instrument to set out the principle of juvenile justice, and other non-binding juvenile justice instruments, which support the CRC and are referred to as the United Nations Minimum Standards and Norms in Juvenile Justice.<sup>219</sup> The CRC as a treaty umbrella set out – in a system detailed and regulated by the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),<sup>220</sup> the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs),<sup>221</sup> the UN

<sup>217</sup> Geraldine Van Bueren, Child-oriented Justice – An International Challenge for Europe, *International Journal of Law and the Family* Vol.6, Issue 1, 1992, p. 381-399, p.382

<sup>218</sup> Van Bueren, 1992, p.383

<sup>219</sup> 'United Nations Minimum Standards and Norms in Juvenile Justice' was introduced as a term in Vienna Guidelines for Action on Children in the Criminal Justice System. (To be discussed)

<sup>220</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985)

<sup>221</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990)



Guidelines for the Prevention of Juvenile Delinquency (Riyadh Rules),<sup>222</sup> UN Standard Minimum Rules for Non-Custodial Measures: The Tokyo Rules,<sup>223</sup> and Vienna Guidelines for Action on Children in the Criminal Justice System.<sup>224</sup> Although a part of the instruments are of non-binding nature, (soft international law), the Committee on the Rights of the Child, the monitoring body for the CRC, explicitly refers to these instruments in addition to the CRC, to evaluate states' juvenile justice systems as 'they constitute a comprehensive set of universal standards and set out desirable practices to be pursued by the world community'.<sup>225</sup> In addition to instruments, a brief discussion will be provided about General Comment no. 10: 'Children's rights in juvenile justice' issued by the Committee on the Rights of the Child in February 2007. This is because of the specificity of General Comment No. 10 in addressing the obligations of State Parties under Articles 37 and 40 the CRC, and serve as an important tool in both understanding these obligations, and in promoting their implementation under the United Nations Minimum Standards and Norms in Juvenile Justice.

**8.1 UN Convention on the Rights of the Child (the CRC).** The Convention on the Rights of the Child 1989 has created a special place for children within international law and provides a legal framework for the protection of their rights. The history of the CRC text starts with presentation of a draft proposal on a convention for protection of children's rights by the Polish government to the UN Human Rights Commission (UNCHR) in 1978, with the initial aim of being adopted during the International Year of the Child in 1979.<sup>226</sup> The proposal was based upon 'United Declaration of the Rights of the Child' adopted in 1959, which was itself based on the 'Geneva Declaration of the Rights of the Child' adopted by the 5th Assembly of the League of Nations in 1924, regarded as the first international human rights instrument to address the rights of the children.<sup>227</sup> The proposal was deemed to need review and carefully modification.<sup>228</sup> Consequently, the UNCHR established the Open-Ended Working Group on a Draft Convention on the Rights of the Child, composed of representatives from any of the 43

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<sup>222</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency, G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990)

<sup>223</sup> United Nations Standard Minimum Rules for Non-custodial Measures The Tokyo Rules, G.A. res. 45/110, (1990)

<sup>224</sup> UN Guidelines on the Administration of Juvenile Justice, ECOSOC Resolution 1997/30 (1997)

<sup>225</sup> UN Committee on the Rights of Child, *General Comment No. 10: Children's rights in Juvenile Justice*, CRC/C/GC/10, 2 February 2007 <http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 24.08.2011)

<sup>226</sup> U.N. ESCOR, 34th Sess., Supp. No. 4, U.N. Doc. E/1978/34 (1978), reprinted in Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht: Nijhoff, 1992

<sup>227</sup> Detrick 1992 p. 21

<sup>228</sup> Ibid

member states that desired to attend, and representatives from other bodies, such as international governmental organizations and nongovernmental organizations, and assigned to prepare a more detailed proposal for children's rights.<sup>229</sup> Based on a new and revised draft document from Poland, the working group met annually to prepare, negotiate, elaborate and extend the text for 10 years. The final draft was presented in 1989 to the UN General Assembly and was adopted without a vote on November 20, 1989. The CRC entered into force on September 2, 1990. The fact that it has been ratified by 193 of the world's states,<sup>230</sup> only serves to confirm that the international community has recognized the universality of the principles it enshrines and has been prepared to accept the legal obligations it imposes.<sup>231</sup>

Within 41 substantive articles, the CRC alters the way the adult world looks at children or 'the persons up to the age of 18 years'. While recognizing and re-iterating children as vulnerable category which deserve special protection, the CRC also underlines that children are human beings equal in dignity and rights. The significance of the CRC lies in the fact that it is the first international instrument that not only recognizes that children possess rights, but also makes it possible for these rights to be asserted in national judicial or administrative proceedings.<sup>232</sup> Many scholars consider the CRC to be a 'comprehensive instrument', with no hierarchy and interdependent rights.<sup>233</sup> Introducing an innovative holistic approach, the CRC embodies the 'indivisibility' of rights contained, avoiding the traditional dichotomy between civil and political rights, and economic, social and cultural rights, as well as hierarchy

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<sup>229</sup> Ibid p.21-22

<sup>230</sup> As of November 2009, 193 countries have ratified it, including every member of the United Nations except the United States. [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en)

<sup>231</sup> Marta Santo Pais, Innocenti Essay No 9, 'A Human Rights Conceptual Framework for', *UNICEF International Child Development Centre Florence- Italy*, 1999, Henry J. Steiner, H and Philip Alston, *International Human Rights in Context: Law Politics and Morals*, Oxford University Press, 2000, pp.511-538. Article 26 of the VCLT provides that 'Every treaty in force is upon the parties to it and must be performed by them in good faith.'

<sup>232</sup> For more see Article 12 of the Convention

<sup>233</sup> Thomas Hammarberg, 'The UN Convention on the Rights of the Child – and How to Make It Work', *Human Rights Quarterly*, Vol.12, Issue 1, 1990, pp. 97 – 105, p. 99. James Kunder and Bo Viktor Nylund, 'Protecting the Rights of Displaced Children: Some Suggestion for Enhanced Monitoring and Reporting', in *Human Rights and Forced Displacement*, eds. A.F. Bayefsky, J. Fitzpatrick, The Hague: Nijhoff, 2001, p.90, Valerie Oosterveld and Isfahan Merali, *Giving Meaning to Economic, Social, and Cultural Rights*. Philadelphia: Univ. of Pennsylvania Press, 2001, p.1, Graig Scott, 'Towards the Institutional Integration of the Core Human Rights Treaties' in *Giving Meaning to Economic, Social and Cultural Rights* eds.V. Oosterveld and I. Merali, Philadelphia: University of Pennsylvania Press, 2001, p.30 Similarly, the Committee on the Rights of the Child (the Committee), responsible for overseeing the implementation of the Convention, in accordance with the holistic approach of the Convention, has avoided an article by article approach to its work by grouping the rights set forth by CRC into major themes.

between all rights.<sup>234</sup> Therefore, the CRC not only protects the child's political rights: fundamental freedoms of expression, of religion, of peaceful assembly and association;<sup>235</sup> civil rights, as in the case of the right to a name and a nationality;<sup>236</sup> economic and social rights, including the right to health and social security;<sup>237</sup> and cultural rights, including the right to education and participation in cultural life,<sup>238</sup> but goes further by offering protection to the child refugees,<sup>239</sup> the child participating in war<sup>240</sup> and providing for physical recovery and social reintegration of children who have been traumatized by a variety of causes. The CRC was designed, as a universal instrument, considering children as entire human beings, accommodating cultural, economic circumstances and gender diversity.<sup>241</sup> The CRC rights are usually grouped into what usually are referred as the '4 Ps':<sup>242</sup> P for provision – rights providing access to goods and services such as nutrition, housing, education, health as well as identity; P for protection – the right to be protected from certain activities such as protection against forms of abuse, labour, sexual exploitation, as well as protection against torture, involvement of children in armed conflicts, trafficking and consumption of narcotics, deprivation of liberty, and the separation from their parents without a reason; P for participation rights – such as the right to act in certain circumstances and the right to be involved in decision-making as well as freedom of expression, freedom of information, freedom of opinion and freedom of association; and finally P for the prevention of harm to

<sup>234</sup> Pais 1999, p.8

<sup>235</sup> Respectively CRC Articles; 13,14

<sup>236</sup> CRC Article 7

<sup>237</sup> Respectively CRC Articles 24 and 26

<sup>238</sup> Article 28 and 29

<sup>239</sup> Article 22

<sup>240</sup> Article 38

<sup>241</sup> Brems 2007, 23, Van Bueren 1998, p.71, David Johnson, 'Cultural and Regional Pluralism in the Drafting of the UN Convention on the Rights of the Child' in *The Ideologies of Children's Rights* eds. M. Freeman and P. Veerman, Dordrecht: Martinus Nijhoff Publishers, 1992, Philip Alston, 'The Best Interest Principle: Towards a Reconciliation of Culture and Human Rights' in *The Best Interests of the Child: Reconciling Culture and Human Rights*, eds P. Alston, Oxford: Clarendon Press 1994, p.7

<sup>242</sup> In using the term 'usually, reference is made to the fact that rights contained in the CRC are categorised in a variety of ways. LeBlanc, for instance, has grouped the rights into 'survival rights', 'membership rights', 'protection rights' and 'empowerment rights' Lawrence LeBlanc, *The Convention on the Rights of the Child: United Nations lawmaking on human rights*. Lincoln: University of Nebraska Press.1995, p.65. Hammarberg 1990, the most common referred to, introduced a 'model' for understanding children's rights, grouping the articles according to 'three P's': 'provision' – the right to get one's basic needs fulfilled such as the rights to food, health care, and education; 'protection' - the right to 'be shielded from harmful acts or practices' such as commercial or sexual exploitation and involvement in warfare; and 'participation' - the right to be heard on decisions affecting one's own life'. Hammarberg 1990, p. 99. Van Bueren 1998 expand the grouping into 'the four P's': the participation of children in decision affecting their own destiny; the protection of children against discrimination and all forms of neglect and exploitation; the prevention of harm and the provision of assistance for their basic needs. Van Bueren argues that the fourth 'P' about prevention of harm is twinned with the protection, but distinguishes in relevance of prevention, which consists on technical advice and assistance to prevent the use of protection. 1998, p.15

children. The general opinion is that the CRC's main advancement is with regard to the participation rights, which grant to the child a new status of someone expressing their views and having their opinion taken into account in all matters affecting the child. Four overriding principles apply to all the CRC articles:<sup>243</sup> non-discrimination, the principle of the 'best interests of the child', the right to survival, and development and respect for the child's views.<sup>244</sup>

Other treaties to interpret issues regarding children's rights refer to the CRC. Despite being considered a milestone on development of children's rights, the CRC has generated many debates and critiques with regard to a notion of global child and cultural bias, treaty commitments, children rights versus parental rights.<sup>245</sup>

The CRC considers the situation of children in conflict with the law in two articles: Article 37 on Torture and Deprivation of Liberty and Article 40 on the Administration of Juvenile Justice. What it is significant to highlight is that Articles 37 and 40 should be read taking into account the overall framework of the CRC and its main overriding principles.

### ***8.2 UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules'.***

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, through its Resolution 4, called for the development of standard minimum rules for the administration of juvenile justice. The Beijing Rules were adopted by the General Assembly in its Resolution 40/33 of 29 November 1985, upon the recommendation of the Seventh Congress.<sup>246</sup>

The rules were designed to promote juvenile welfare to the greatest possible extent, and to minimize the need for intervention by the juvenile justice system.<sup>247</sup> The General Assembly adopted the Beijing Rules with the aim of having established criminal systems throughout the

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<sup>243</sup> The Committee has identified four articles that should be considered as 'general principles' and taken into account in the implementation of all other articles of the CRC in its General Comment No. 5, UN Committee on the Rights of Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (art.4, 42 and 44, para.6), CRC/GC/2003/5, 27 November 2003 <http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 14.08.2011).

<sup>244</sup> Respectively CRC, Article 2 paragraph 1, Article 3 paragraph 1, Article 6 and Article 12

<sup>245</sup> Didier Reynaert, Maria Bouverne-de-Bie, and Stijn Vandeveldel, 'A Review of Children's Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child, *Childhood*, Vol.16, Issue No.4, 2009 pp.518-534, provides a detailed account with references drawn from ISIS web of knowledge about the themes of discussion with regard to CRC.

<sup>246</sup> Van Bueren 1992, p. 383

<sup>247</sup> Beijing Rule Commentary to Rule 1.

world apply the minimum standards.<sup>248</sup> While taking into account diverse national settings and legal structures, the Beijing Rules set forth minimum standards for the administration of a juvenile justice system and the care of juveniles within that system. Recognizing that any juvenile justice system necessarily depended on economic, social, political, cultural, and legal systems currently in place in each state, the Beijing Rules intend to serve as a basic model for its member states in their development of a comprehensive framework of social justice for all juveniles. They represent the minimum conditions internationally accepted for the treatment of juveniles who come into conflict with the law. According to the Beijing Rules a juvenile justice system should be designed to meet the special needs of young offenders and to protect their rights while meeting the needs of society. With the provision divided into six parts, the Beijing Rules aim to cover most of the elements of a juvenile justice system. While dictating that the welfare of the juvenile should be the most important concern of a juvenile justice system, the sentencing guidelines of the Rule 5 proposes that a juvenile justice system ensures that any criminal sanctions imposed on the young offender are proportional to the particular circumstances of the crime and the offender. Although a court must base juvenile sentences on the gravity of the offence as well as the personal circumstances of the offender, it should impose restrictions on the personal liberty only as a last resort and for the minimum period necessary. In order to safeguard the well-being of the juvenile, the Beijing Rules emphasize specialized training and professional personnel, co-ordination and co-operation between actors on the system, and the use of research as a basis for planning, policy, formulation and evaluations. Although the Beijing Rules are not in treaty form, and thus are not directly enforceable, some of the rules have become binding on the State Parties by being incorporated into the CRC. Others can be treated not as establishing new rights, but as providing more details on the contents of existing rights.<sup>249</sup>

### ***8.3 UN Rules for the Protection of Juveniles Deprived of their Liberty: (the JDLs).***

International law accepts that deprivation of liberty may be required for juveniles in certain cases. In so doing, however, it sets out in detail the instrument – the JDLs – standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence,

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<sup>248</sup> Beijing Rules, Rule 2.3 and its commentary

<sup>249</sup> The United Nations and juvenile justice: A guide to international standards and best practice, New York: United Nations, 1999, p.38

or simply because the child is deemed 'at risk') by order of any judicial, administrative or other public authority. The JDLs provide a detailed reference to a large number of issues, which are set out in 87 rules divided into five sections. In addition, the JDLs include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases.<sup>250</sup> In the context where deprivation of liberty is unavoidable, detailed minimum standards of conditions are set out. Beside implying protection, the fundamental requirement of juvenile's separation from adults covers all aspects of confinement, including privacy, access to medical treatment, adequate nutrition, clothing, and availability of educational and recreational activities, as well as issues such as contact with the outside world (including family) and preparation for release.<sup>251</sup> The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.<sup>252</sup> According to Rule 11 (a) JDLs should be applied to all juveniles, which include 'every person under the age of 18'. The adopted definition raises two issues. The first issue relates to the minimum age of criminal responsibility. The JDLs fail to establish an age limit below which a child should not be deprived of his or her liberty'. Not detailing a specific lower age limit and requiring State Parties to determine such a limit by law, leaves the definition open to misinterpretation and discretion of a wide array at the domestic level. To Van Bueren, such an issue does not present a problem, as the limit should be set out at the same minimum age limit determined by domestic law regarding criminal capacity.<sup>253</sup> The second issue relates to the terminology used by the definition. The definition adopts both the words 'juvenile' and 'child', creating an ambiguity with regard to terminology. Using both words leaves the definition as a patchwork, which can accommodate the CRC and Beijing Rules' definitions.<sup>254</sup> The definition of 'deprivation of liberty' adopted by JDLs represents a broader

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<sup>250</sup> Rule 2

<sup>251</sup> Article 10, paragraph 2(b) of the ICCPR provides the separation of convicted children and adults. Further see Detrick, 1999 pp.633-638

<sup>252</sup> Rule 3

<sup>253</sup> Van Bueren 1998, p. 208 Van Bueren logically argues that 'if a child is presumed not to have the capacity to infringe the penal law, he or she could not be deprived of liberty for breaches of the penal law'

<sup>254</sup> Indeed the drafting history clearly indicates that the main intention had been to adopt the Beijing Rules definition. In effort to make the draft compatible the CRC definition was incorporated. In response to objection of states, which wanted to safeguard the difference of age limit for criminal and civil purposes, the words clarifying the meaning of definition were deleted. (For more details please see Ton Liefwaard, *Deprivation of liberty of children in light of international human rights law and standards*. Intersentia, 2008, pp.96-97

approach than the juvenile justice context adopted by article 37(b) the CRC.<sup>255</sup> The JDL provisions apply to 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority'.<sup>256</sup> The definition adopted indicates that the provisions of JDLs are applicable to all types and forms of deprivation of liberty and there is no distinction between children, who are held in custody during the pre-trial and trial stage.<sup>257</sup> Therefore, the definition includes 'open' or 'closed' facilities,<sup>258</sup> which may be administered by public, private companies or individuals,<sup>259</sup> or by non-governmental or faith-based organizations.<sup>260</sup> Whether restrictions of liberty amount to a deprivation of liberty will need to be determined in each local context.<sup>261</sup> As to the drafting history, the broad definition was adopted to unify the practice and provide the same protection for juveniles deprived of liberty on welfare and protection grounds, including child immigrants and asylum seekers.<sup>262</sup> Despite the broad definition of 'deprivation of liberty', the JDL rules and structure by no means speak the 'care system' language required to deal with the special needs of specific groups of children outside the juvenile justice context.<sup>263</sup> Even the deprivation of liberty on welfare and protection grounds might comply with an order of a judicial, administrative or other public authority and may involve the child's inability in principle to leave at will, is not pertinent with the JDLs' main intention. As Rule 2 of the JDLs points out, the rules are mainly intended to deal with juveniles who are suspected, alleged to, or convicted of having committed an offence.<sup>264</sup> Indeed, it is not the case that the

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<sup>255</sup> There are arguments that consider the JDLs provision as a trend toward the emancipation of deprivation of liberty standards, that consider exclusion of other forms of deprivation of liberty as not compatible with the object and purpose of over-all CRC standards on deprivation of liberty. The Committee has accepted the JDLs definition of deprivation of liberty on its recommendation. For more please see Liefgaard 2008, p. 86-88

<sup>256</sup> JDLs Rule 11(b), For more please see Detrick 1999, p. 629

<sup>257</sup> According to Rule 15, Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

<sup>258</sup> Rule 30 provides that open detention facilities for juveniles should be established (art. 30).

<sup>259</sup> The Manual for the Measurement of Juvenile Justice Indicators uses the term 'place of detention' for any public or private facility where a child is deprived of liberty.

<sup>260</sup> This might be the case on residential substance abuse facilities for children, mental or psychiatric institutions.

<sup>261</sup> The Manual for the Measurement of Juvenile Justice Indicators, p.28

<sup>262</sup> According to Defence for Children, on several occasions the criminal justice system has been used as a substitute for adequate care and protection systems. Some degree of deprivation of liberty is often defended on the grounds of ensuring protection, particularly for children on arrival in a new country or seeking asylum. A strict definition would 'anomalous effect of depriving many juveniles of the protection which are intended to provide, and whose need for such protection is no less than that of juveniles offenders'. (Quoted on Liefgaard (2008) p.91)

<sup>263</sup> JDLs

<sup>264</sup> According to Rule 2 JDLs, the deprivation of liberty for juveniles should comply with the principles and procedures set forth in JDLs and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

Committee adopted the decision at its 37th Session (Autumn 2004), which requested the UN Commission on Human Rights to establish a working group to prepare a draft of UN Guidelines for the protection and alternative care of children without parental care.<sup>265</sup> Whether the scope of Article 37(b) is applicable to children outside the juvenile justice context, as with the JDL provisions, remains an open discussion requiring further guidance and the attention of the Committee.

**8.4 UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).** In contrast to the Beijing Rules, which offer protection to children who come into conflict with the law, the main focus of the Riyadh Guidelines is the pre-conflict stage; early protection and preventive intervention of juveniles, paying particular attention to those in situation of “social risk”, to offend. The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area, family, school and community, the media, social policy, legislation, and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather a means of positively promoting general welfare and well-being.<sup>266</sup> It requires a more proactive approach that should involve ‘efforts by the entire society to ensure the harmonious development of adolescents’.<sup>267</sup> More particularly, countries are recommended to develop with the law, and to recognise that ‘formal agencies of social control’ should be utilised only as a means of last resort.<sup>268</sup> General prevention consists of ‘comprehensive prevention plans at every governmental level’ and should include; mechanisms for the co-ordination of efforts between governmental and non-governmental agencies; continuous monitoring and evaluation; community involvement through a wide range of services and programmes; interdisciplinary co-operation; and youth participation in prevention policies and processes. The Riyadh Guidelines also call for the end of labelling of behaviour by young offenders and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited, and abused.<sup>269</sup>

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<sup>265</sup> Albeit outside the UN framework, the Inter-Agency Guiding Principles on Unaccompanied and Separated Children set out the basic requirement regarding the child asylum seekers and other unaccompanied minors outside their home country.

<sup>266</sup> Guideline 1 & 4

<sup>267</sup> Guideline 2

<sup>268</sup> Guideline 6

<sup>269</sup> Guideline 5(f)



**8.5 UN Standard Minimum Rules for Non-Custodial Measures: The Tokyo Rules.** The need to make the greatest possible use of non-custodial measures for offenders whatever their age is strongly reinforced by the 1990 United Nations Standard Minimum Rules for Non-Custodial Measures – the Tokyo Rules. They are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.<sup>270</sup> When implementing the Rules, governments shall endeavour to ensure proper balance between the rights of individual offenders, victims and concern of society for public safety, and crime prevention.<sup>271</sup> In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender, and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post sentencing dispositions.<sup>272</sup> Where appropriate and compatible with the legal system, the police, the prosecution service, or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.<sup>273</sup> The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated, involving both public and private bodies in the organization. Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.<sup>274</sup>

**8.6 UN Resolution 1997/30 – Administration of Juvenile Justice: the ‘Vienna Guidelines’**

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and, in particular, about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to

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<sup>270</sup> The Tokyo Rules, Rule 1.2

<sup>271</sup> The Tokyo Rules, Rule 1.4

<sup>272</sup> The Tokyo Rules, Rule 2.3

<sup>273</sup> The Tokyo Rules, Rule 5.1

<sup>274</sup> The Tokyo Rules, Rule 21.1

be implemented in order to establish a well-functioning system of juvenile justice administration according to the Convention, Riyadh Guidelines, Beijing Rules and JDLs. The Vienna Guidelines urge states to take measures and to undertake reforms with the goal of ensuring that the principles and provisions of the CRC and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society.<sup>275</sup> In addition, if necessary, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, at least from their first contact with the criminal justice system, and is reminded of their obligation to obey the law.<sup>276</sup> The Vienna Guidelines request a review of existing procedures at national and international level, and where possible, use of diversion or development of a broad range alternative initiatives, such as mechanisms for the informal resolution of disputes, mediation and restorative justice practices, to the classical criminal justice systems avoiding recourse to the criminal justice systems for young persons accused of an offence. Whenever the measure is to be adopted, the family should be involved, to the extent that it operates in the favour of the good of the child offender.<sup>277</sup> The Guidelines also stress the need for partnerships and cooperation between governments, United Nations bodies, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society.

### **9. Implementation of international law obligations at the domestic level.**

This section reviews the processes through which the CRC as the international treaty law umbrella is implemented at a domestic-level. As noted earlier, the United Nations Minimum Standards and Norms in Juvenile Justice are referred as 'soft-law' instrument. To this end the last part of the section provides a brief discussion regarding commitment and compliance with non-binding norms.

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<sup>275</sup> The Vienna Guidelines, Guideline 11(a)

<sup>276</sup> The Vienna Guidelines, Guideline 11(b)

<sup>277</sup> The Vienna Guidelines, Guideline 15

'*International law*' is the term commonly used for referring to the system of implicit and explicit agreements that binds together nation-states in adherence to recognized values and standards, differing from other legal systems in that it concerns nations rather than private citizens.<sup>278</sup> International law consists of rules and principles, which govern the relations and dealings of nations with each other. International Law, which is in most other countries referred to as *Public International Law*, concerns itself only with questions of rights between several nations or nations and the citizens or subjects of other nations. In contrast, municipal law governs the domestic aspects of government and deals with issues between individuals, and between individuals and the administrative apparatus.

International law is universally binding. It is rooted in acceptance by the nation states, which constitute the system. Customary law and conventional law are primary sources of international law. Customary international law results when states follow certain practices generally and consistently out of a sense of legal obligation. The customary law is codified in the Vienna Convention on the Law of the Treaties.<sup>279</sup> Conventional international law derives from international agreements and may take any form that the contracting parties agree upon. Agreements may be made in respect to any matter except to the extent that the agreement conflicts with the rules of international law incorporating basic standards of international conduct or the obligations of a member state under the Charter of the United Nations. International agreements create law for the parties of the agreement. They may also lead to the creation of customary international law when they are intended for adherence generally and are in fact widely accepted. Customary law, and law made by international agreement, has equal authority as international law. Parties may assign higher priority to one of the sources by agreement. The international community has recognized some international law rules as peremptory, permitting no derogation. Such rules can be changed or modified only by a subsequent peremptory norm of international law.

International law is binding on a state inasmuch as it agrees to comply with specific international obligations. This condition is inherent in state sovereignty. A treaty is not binding upon a state until the state has agreed to be bound by it, by accession or signature followed by ratification. In certain cases, states make statements upon signature, ratification,

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<sup>278</sup> Malcolm N. Shaw, *International Law*, 5<sup>th</sup> eds, Cambridge University Press, 2003 p.1

<sup>279</sup> Vienna Convention on the Law of Treaties 1969. The Following of the paragraph is written based on the Vienna Convention on the Law of Treaties.

acceptance, approval of or accession to a treaty. However phrased or named, any such statement purporting to exclude or modify the legal effect of a treaty provision with regard to the declaring is, in fact, a reservation (see article 2(1)(d) of the Vienna Convention 1969). A reservation may enable a state to participate in a multilateral treaty that the state would otherwise be unwilling or unable to participate in. However, states are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is 'incompatible with the object and purpose of the treaty'.<sup>280</sup>

Of particular importance is the need to clarify that the status of treaties in national law is determined by two different constitutional techniques, referred as 'transformation' and 'incorporation', based respectively on dualist and monist position.<sup>281</sup> States following the transformation approach, the provisions of ratified treaty, do not become national law unless they have been enacted as legislation by the normal method. With states following the incorporation approach, ratified treaties are rendered applicable directly in domestic law by virtue of ratification. Amongst these states are those which advocate the supremacy of treaties as a form of higher law to which other legislation has to correspond.<sup>282</sup>

The act of signing a treaty does not bind a particular state to becoming a party to the treaty, but it does create a duty to refrain from any actions that may defeat the objects and purposes of the treaty (Article 18, Vienna Convention). International treaties, therefore, bind states to give their own citizens rights that are agreed on at a global level.

**9.1 The CRC creates a system of state accountability.** Once a state freely decides to accede to or ratify the CRC, it takes on obligations under international law to implement and give effect to the treaty domestically. This is the responsibility of the state. In ratifying the treaty, a state accepts an obligation to respect, protect, promote and fulfil the enumerated rights – including by adopting or changing laws and policies that implement the provisions of the treaty. In the case of the CRC, it means states have committed themselves to protect and ensure children's rights and they have agreed to hold themselves accountable by giving effect to these obligation in front of the international community. Furthermore, Muscroft considers the act of ratification to be a key step forward in building the state's accountability at

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<sup>280</sup> Article 19, Vienna Convention

<sup>281</sup> Shaw, 2003, p.129, Van Bueren, 1998, p.380

<sup>282</sup> Van Bueren, 1998, p.381

domestic level, through providing mechanism on public scrutiny on government performance.<sup>283</sup>

Once the CRC's ratification procedure is completed, further consideration should be given to obligations undertaken, which fall under three main issues: an obligation of result, an obligation of conduct and an obligation of transparent assessment of progress.

- **An obligation of result.** Upon ratification, State Parties are required to implement the rights recognised by the CRC to every child under their jurisdiction.<sup>284</sup> In other words, State Parties are required to fulfil and honour commitments undertaken, using all appropriate means to give legal effect to children's rights within domestic legal system.<sup>285</sup>
- **An obligation of conduct.** The obligation of conduct are defined in Article 4 of the CRC, which makes a clear pronouncement on State Parties' obligations to undertake 'all appropriate measures, legislative, administrative and other measures' to ensure the implementation of the CRC; introduces the concept of 'progressive realisation' of such rights by providing on the CRC's implementation according to states' maximum extent of available resources; and, promotes contribution and assistance through international cooperation, to global implementation of the children' rights. Reference to 'appropriate' promotes discretion of State Parties to decide on more helpful measures to achieve the shared objectives of the CRC. In 2003, the Committee issued its 'General Comment No.5: On General Measures of Implementation for the Convention on the Rights of the Child', elaborating various elements on implementation of the provisions and principles of the CRC.<sup>286</sup> The Committee discusses the obligation of conduct of State Parties by using a comprehensive structure, which provides on legislative reform to be undertaken by State Parties; development and implementation of appropriate policies, services and programmes; establishment of coordinating and monitoring bodies; data collection and analysis and

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<sup>283</sup> Sarah Muscroft, *Children's Rights: Reality or Rhetoric: The United Nations Convention on the Rights of the Child: The First 10 years*, London: The International Save the Children Alliance, 1999, p.22 In drawing such conclusion, Muscroft refers to process of monitoring implementation of the CRC.

<sup>284</sup> According to the wording of Article 2 CRC, the state parties are required to 'respect and ensure the rights set forth in the Convention to each child within the jurisdiction'.

<sup>285</sup> General Comment No.5, para.19

<sup>286</sup> *General Comment No.5: General Measures of Implementation for the Convention on the Rights of the Child*, CRC/GC/2003/5, 03/10/2003 (accessed 24/08/2011) <http://www2.ohchr.org/english/bodies/crc/comments.htm>

development of indicator; awareness-raising; and training and capacity building. The Committee points out that considering the legislative measures starts a 'comprehensive' examination of all domestic legislation, including administrative guidance against the rights framework of the CRC. This is not one-off process, but rather a meaningful analysis carried out on a continuous basis and requiring the establishment of a 'review philosophy'.<sup>287</sup> Another important aspect of legislative reform relates to the establishment of appropriate mechanisms to ensure remedies and redress in case of violation of rights. The Committee considers closely legislative reform, the development of 'comprehensive national strategy or national plan of action for children', which reflects the implementation of the whole the CRC.<sup>288</sup> To this end, the Committee advocates for a comprehensive and detailed policy, which identifies all the marginalized and disadvantaged groups of children, is drafted involving and ensuring participation of all sectors of society, including children and young people and those living and working with them.<sup>289</sup> Enabling children to participate requires special child-sensitive materials and processes, considering 'their experiences as profound source of knowledge'.<sup>290</sup> Furthermore, the involvement of all sectors of society is expressed in the concerns of the Committee, not only for the detailed content of the policy, but also in the intimate connection of policy making with the allocation of adequate human and financial resources.<sup>291</sup> The Committee points out that full implementation of the CRC requires establishment of coordinating and monitoring bodies, operating between government agencies and departments and vertically across different government levels, from local, regional to central, but also between the government and the private sector.<sup>292</sup> The Committee points out that an essential part of child impact assessments is data collection and its analysis, which will enable on a detailed picture of children' s circumstances at all levels. To this end, the Committee promotes a comprehensive data collection system, which provides regular statistical information, research, and consistent monitoring and evaluation

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<sup>287</sup> 'Meaningful' refers to the requirement of the Committee to review the CRC on article basis, holistically as a text and recognition general human rights framework. Meanwhile 'review philosophy' is used in the context of the requirement of having the review process built into the machinery of all relevant government departments, including as well independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others. (General Comment No.5, para.18)

<sup>288</sup> General Comment No.5, para. 29

<sup>289</sup> Ibid

<sup>290</sup> Van Bueren, 1998, p.137

<sup>291</sup> General Comment No.5, para.31 and 32

<sup>292</sup> Ibid para. 37 -44

between the research community and those implementing policy and providing services. However, collection is only one aspect of monitoring. The other one consists of properly interpreting the data collected to assess progress in implementation, to identify problems and to inform all policy developments for children. On the one hand, development of detailed statistical indicators is useful to ensure that the minimum core of every right foreseen in the CRC is being implemented. On the other hand, by requiring such breakdowns, even though not every state is in a position to provide such information, the Committee is seeking to avoid overgeneralization.<sup>293</sup> To this end, the mass media 'have' an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding...' and have a role in making known the views and aspirations of the young generations.<sup>294</sup> Thus, states must take into account the role of mass media in forming public opinion and political response. States are therefore urged to encourage the mass media to have particular regard to the linguistic needs of minority and indigenous children.<sup>295</sup> The use of media in seeking, receiving and imparting information has a wide potential and could be extended to the administration of justice.<sup>296</sup> The misinformation on such levels could lead on policies that may not necessary support a juvenile justice system compliant with international standards and norms.<sup>297</sup> The Committee emphasises that the implementation of the CRC, depends on training and building the capacities of all actors involved with the implementation of the children's rights.

- ***An obligation of transparent self-assessment.*** In addition to the comprehensive sets of rules and guidelines, the CRC establishes an elaborate system for monitoring and enforcement. Article 44 of the CRC provided for the establishment of the Committee on the Rights of the Child (The Committee) to monitor countries' compliance with the articles of the CRC. The Committee reviews periodic state reports, detailing all the measures they have taken to give effect to all of the rights contained in the CRC. The reports should provide the Committee with sufficient information on the measures adopted by the state, on the results achieved, and on the factors and difficulties hindering further progress (Art 44, the CRC). The requirement for 'self-criticism' and

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<sup>293</sup> Van Bueren 1995, pp.391

<sup>294</sup> Van Bueren, 1995, pp.141

<sup>295</sup> Art.17 (d), The Convention

<sup>296</sup> Van Bueren 1995, pp.142

<sup>297</sup> Carolyn Hamilton, and Rachel Harvey, The Role of Public opinion in the implementation of international juvenile justice standards, *The international Journal of Children Rights*, Vol. 11, Issue 4, 2004, pp. 369-390 p.386

objective reports, ought to give the Committee a comprehensive understanding of the reality in the country, evaluate the degree of success achieved, and enable the provision of an identification of areas where future priority action should be focused.<sup>298</sup> Above all, the reports are considered as an important political tool to promote social change. The implementation reports, on how a state treats children and their rights, should be widely available to populations and the international community. The process is unlikely to have a substantial impact on children's lives, unless reports are disseminated and constructively debated at the national level, encouraging the engagement and participation of the civil society and generally fostering a process of public scrutiny of governmental policies in this area. Translations, including child-friendly versions, are essential for engaging children and minority groups in the process.<sup>299</sup> The Committee is also endowed with general powers to recommend to the General Assembly that the General Secretary be requested to undertake on its behalf studies on specific issues relating to the rights of child and it make suggestions and general recommendations.<sup>300</sup> Furthermore, the Committee has adopted a constructive approach to set time aside for general discussions on particular topics. Such an approach allows the Committee to provide consistent and progressive contribution to the clarification of the substantive content of the CRC's provisions, and to the development of international human rights law.<sup>301</sup>

**9.2 The CRC creates a system of cooperation and solidarity.** Article 4 of the CRC highlights the need for international cooperation and assistance to achieve the realization of the rights of the child. States, regional and international organizations, in particular all United Nations bodies, as well as the Bretton Woods institutions and other multilateral agencies, are encouraged to collaborate and play a key role in accelerating and achieving progress for children.<sup>302</sup> Furthermore, states are required to identify factors and difficulties affecting the degree of fulfilment of the obligations arising from the CRC, and are encouraged to formulate requests or indicate a need for technical advice or assistance.<sup>303</sup> The Committee urged State

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<sup>298</sup> Van Bueren 1995, pp.379

<sup>299</sup> General Comment No.5, para.49

<sup>300</sup> Art.45, CRC

<sup>301</sup> Among such contributions of the Committee could be mentioned *Vienna Guidelines* - outcome of thematic discussion- and *General Comment No. 10 (2007) Children Rights in Juvenile Justice*.

<sup>302</sup> UN General Assembly, *A world fit for children*, Adopted by General Assembly Resolution, A/RES/S-27/2 of 11 October 2002 <http://www.un.org/documents/resga.htm> (accessed 11/08/2011), para.32 (9)

<sup>303</sup> Art.44 (2) and 45(b), CRC



Parties to set up a framework of providing international development assistance related directly or indirectly to children.<sup>304</sup> Such framework need to be financially supported by donor states that develop rights-based programs.<sup>305</sup> Although the CRC does not explicitly require the establishment of special independent national human rights institutions, the Committee considers such bodies to fall within the commitment made by State Parties upon ratification to ensure the implementation of the CRC and advance the universal realization of children's rights.<sup>306</sup> Whatever the forms of such bodies, ombudspersons or commissioners for children's rights should be able independently and effectively to monitor, promote, protect and enhance public awareness of their human rights. Such bodies should be geographically and physically accessible to all children. States should grant statutory powers to these institutions to investigate violation of children' rights, take legal action, issue reports to the government and children, and be consulted on issues related to children rights. Furthermore, the independent national human rights institutions should contribute independently to the reporting process under the CRC and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee at its pre-sessional working group and with other relevant treaty bodies.<sup>307</sup>

The role of independent national human rights institutions is complimentary. Non-governmental organizations and academic institutions are invited to play a vital role in supporting the provision of advisory services and technical assistance in the implementation of the CRC. In order to ensure that the Committee is fully briefed on the country situations, time is set-aside for non-governmental organizations to meet privately with the Committee and even to provide 'shadow' reports. Thus, rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.

This network and coalition building that is taking place at the local, national and international level, allows for more effective political action in respect of children' rights. The network is of special relevance for juvenile justice reform, which requires a wide action within the

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<sup>304</sup> General Comment No.5, para.61

<sup>305</sup> Ibid

<sup>306</sup> General Comment No. 2, para.1

<sup>307</sup> General Comment No. 2, para.20

framework of the United Nations.<sup>308</sup> Using existing international and national networks on juvenile justice should strengthen the cooperation, in particular with regard to research, dissemination of information, training, implementation, and monitoring of the CRC and the use and application of existing standards, as well as with regard to the provision of technical advice and assistance programmes.<sup>309</sup>

**9.3 Commitment and compliance with non-binding norms.** As discussed earlier, all the documents contained are non-treaty standards, which are often referred to as 'soft-law'.<sup>310</sup> Therefore, instruments of the United Nations Minimum Standards and Norms in Juvenile Justice, being in the form of a non-binding recommendation, lack any strict obligations on State Parties and they are referred to as 'soft law'. However, Dinah Shelton recognizes that 'it is rare to find soft law standing in isolation'.<sup>311</sup> Indeed, increasingly the non-binding instruments are playing a significant role in the interpretation of binding international instruments. Thus, United Nations Minimum Standards and Norms in Juvenile Justice have become binding by virtue of supplementing, expanding and supporting the CRC. Together with the CRC, they constitute a 'complex international system' with a common purpose of regulating the deprivation of liberty for children.<sup>312</sup> Although a 'soft-law' instrument, United Nations Minimum Standards and Norms in Juvenile Justice incorporate supervisory mechanism, 'which traditionally are found in 'hard-law' instruments'.<sup>313</sup> Very often, the soft instruments can be hardened into binding instruments through the development of state practices and *opinio juris*.<sup>314</sup> In addition, states are required to monitor the application of the rules and to provide effective remedies for breach of the rules. Finally, it is important to note

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<sup>308</sup> Vienna Guidelines, 26

<sup>309</sup> Vienna Guidelines, 27

<sup>310</sup> Non-treaty standards takes the form of declaration, recommendation, guidelines, standard minimum rules, basic principles.

<sup>311</sup> Shelton (2003) recognizes that there is a dynamic interplay between soft and obligation and the line between them appeared to be blurred. Soft law is used most frequently either as a precursor to hard law or as a supplement to a hard law instrument. (Dinah Shelton, 'Law, Non-Law and the Problem of 'Soft Law', in *Commitment and compliance: the role of non-binding norms in the international legal system* eds Dinah Shelton, Oxford University Press, Oxford 2003, p.10)

<sup>312</sup> According to Shelton (2003), a complex international system is build of international instruments which might vary in forms, means and standards of measurement, but interact intensely and frequently, with the common purpose of regulating behaviour within a rule of law framework. As an example she brings the international management of commons areas, such as high seas and Antarctica, and ongoing intergovernmental cooperative arrangement. (Shelton 2003, p.10)

<sup>313</sup> Shelton 2003, p.10

<sup>314</sup> Christine Chinkin, 'Normative Development in the International Legal System', in *Commitment and compliance: the role of non-binding norms in the international legal system* eds Dinah Shelton, Oxford University Press, Oxford 2003, p. 30. Chinking brings as an example of hardening soft law the campaign with the respect to state responsibility for failure to eliminate violence against women. Ibid p.31

that United Nations Minimum Standards and Norms in Juvenile Justice on the one hand facilitate the needs of the international community to legitimate behaviour and to create stability with regard to children in conflict with law.<sup>315</sup> Such a statement could be drawn by closely looking into the drafting history of the United Nations Minimum Standards and Norms in Juvenile Justice, which 'indicates that the State Parties did not feel compelled to bring forward the same arguments used during the drafting of the CRC, simply because the latter would not limit their domestic discretion'.<sup>316</sup> This carries the risk of formulating relative standards between states and sheltering the government 'when demands for compliance are made'.<sup>317</sup> Such a loophole is resolved by the Committee, which sets out desirable practices to be pursued by the world community. Using the United Nations Minimum Standards and Norms in Juvenile Justice as an instrument to evaluate states' laws and practices, the Committee fosters compliance with the CRC's provisions and promotes international stability regarding the standards for children in conflict with law.<sup>318</sup> On this basis, it could be concluded that the status of United Nations Minimum Standards and Norms in Juvenile Justice as soft law instruments leads only to their normative effect, as their content with regard to the standards they incorporate is relevant to enhance the CRC's provisions.

#### **10. The leading principles and elements of a comprehensive policy for juvenile justice.**

International law sets out a variety of fundamental principles that apply to each stage of the juvenile justice system. Juvenile justice shall be conceived as an integral part of the national development process of each country,<sup>319</sup> and as such should receive sufficient resources to enable it to be organized in accordance with international principles.<sup>320</sup> This requirement, in turn, means that any juvenile justice system has to be based on, and in compliance with, the CRC as the prime instrument to the UN Minimum Standards and Norms in Juvenile Justice.<sup>321</sup> Although the CRC provides a holistic approach, the Committee on the Rights of

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<sup>315</sup> Chinkin recognizes that the concept of soft law facilitate international co-operation by acting as a bridge between the formalities of law-making and the needs of international life by legitimating behaviour and creating stability. According to her, behaviour in conformity with soft law principles is unlikely to be denounced, even by those who have remained outside their enunciation, while the appropriateness of adherence to hard obligations may be undermined by emerging soft law. (Chinkin 2003, p.42)

<sup>316</sup> Liefwaard, 2008, p..87

<sup>317</sup> Chinkin 2003, p.42

<sup>318</sup> General Comment No.10, para. 28c. The Committee recommends the states parties to incorporate the JDLs into their national laws and regulations, and to make them available in the national or regional language to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

<sup>319</sup> Beijing Rule 1.4

<sup>320</sup> Excerpted from CRC/C/43, Annex VIII, 10th Session, 13 November 1995, CRC/C/46 paragraph 206

<sup>321</sup> General Comment No.10 para.3

the Child has accorded four provisions contained in the Articles 2, 3, 6 and 12, the status of general principles, corresponding respectively to the principle of non-discrimination, the principle of the best interests of the child, the principle of life, survival, and development, and the respect for children's own views. These general principles also concern children in conflict with the law. A fifth principle may be added, which assumes particular importance in the context of children in conflict with the law: Article 37 and 40 concerning administration of juvenile justice. In February 2007, the Committee on the Rights of the Child issued its General Comment no. 10: 'Children's rights in juvenile justice', addressing the specific obligations of State Parties under Articles 37 and 40 the CRC, which might be considered an important tool in both understanding these obligations, and in promoting their implementation by governments. Within this section is a general brief on principles and the core elements of a juvenile justice system, as designated by the Committee. Their implications with regard to juvenile justice shall be explained further in chapters 3 and 4.

**10.1 Non-discrimination.** Article 2 of the CRC addresses the principle of non-discrimination. The non-discrimination principle lacks a definition within the CRC and the Committee has not undertaken any steps to clarify its meaning through general comments. The right to non-discrimination is one of the most frequently protected norms of international human rights law.<sup>322</sup> Despite being widely recognized, the majority of international human rights instruments do not define the meaning of 'discrimination', nor the exact content and scope of the principle of non-discrimination. Before considering the obligation at the basis of Article 2, it should be noted that the equality and non-discrimination are equivalent concepts in international human rights law as they are the positive and negative statements of the same principle.<sup>323</sup>

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<sup>322</sup> One of the purposes of the United Nations is to promote respect for human rights without distinction as to race, sex, language, or religion. UN Charter (1945), Article 1(3). The principle is present in the Universal Declaration of Human Rights (UDHR), Article 2 and 7; the International Covenant on Civil and Political Rights (ICCPR), Article 2 and 7; and the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 2; The Convention on the Elimination of All Forms of Racial Discrimination (CERD) Article 1,2, and 3; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Articles 1 and 2; Convention on the Rights of Persons with Disabilities (UNCRPD) Article 5; The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights (ACHR).

<sup>323</sup> Anne F. Bayefsky, 'The Principle of Equality or Non-Discrimination in International Law', *Human Rights Law Journal*, Vol. 11, Issue 1 - 2, 1990, pp. 1 - 34, p.1

The only references to the meaning of 'discrimination' covers discrimination on specific grounds such as 'racial discrimination' and 'discrimination against women'.<sup>324</sup> The UN Human Rights Committee (HRC) reads the 'discrimination' to imply:

'any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.'<sup>325</sup>

Providing concrete examples, the HRC recognizes and values differences in stating that the principle of non-discrimination does not imply identical treatment in every instance.<sup>326</sup>

Differentiation of treatment is justified if it is the consequence of actions with a legitimate aim and proved to be reasonable and objective of their legitimate aim.<sup>327</sup>

Besson considers the obligation imposed upon State Parties by Article 2 of the CRC to fall within the requirements 'to respect and ensure equality'.<sup>328</sup> Besson reads the two paragraphs of article 2 of the CRC as articulated to provide the grounds of discrimination, the rights to be protected and finally the obligation of State Parties. However, through analysis Besson identifies the necessity of reformulating new approaches about discrimination to avoid the 'ghettoisation' of some cases of child discrimination.

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<sup>324</sup> The Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965) defines the racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on the equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Whereas the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) Article 1 also defines "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

<sup>325</sup> UN Human Rights Committee, *General Comment No. 18: Non-Discrimination*. CCPR General Comment No.18, 10 November 1989 <http://www2.ohchr.org/english/bodies/hrc/comments.htm>, (accessed 24.08.2011) para.7

<sup>326</sup> Ibid, para.8

<sup>327</sup> Ibid para.13

<sup>328</sup> Samantha Besson, 'The Principle of Non-Discrimination in the Convention on the Rights of the Child', *The internal Journal of Children's Rights*, Vol.13, Issue 4, 2005, pp.433-461, p.434

Abramson identifies three elements to the right of non-discrimination deriving from the ordinary meaning of discrimination; 'to treat a person differently on the basis of membership in a group or category unrelated to merit, as well as from the umbrella principle of non-discrimination.'<sup>329</sup> According to Abramson, article 2 paragraph 1 of the CRC forbids the State Party to treat the rights holder differently on the basis of race, sex or any of the other named grounds, as in doing so it will impair the right-holder's enjoyment of another right in the CRC.<sup>330</sup> Abramson points out that the right to non-discrimination protects children's human dignity in three interconnected ways: forbidding the states to enact adverse distinctions between young peoples, blocking political actors to use adverse distinctions on gaining electorate (prevention of discriminatory law) and affirms the moral norm of non-discrimination.<sup>331</sup> Abramson concludes that the right of non-discrimination as provided in Article 2 of the CRC is an absolute right, as it does not contain any subjective qualification. The lack of subjective qualification implies that the wording of Article 2 paragraph 1 must be read in its entire context. Besides the phrases 'any forms' and 'or other status' cannot be interpreted literally, or in isolation of the rest of the provision. In addition Abramson points out that to protect children from discrimination implies defence from states as well as private actors, including the relatives.<sup>332</sup>

Overall, as Van Bueren highlights, the principle of discrimination as enacted in Article 2 of the CRC implies not only the obligation of State Parties to prevent discrimination, but also the obligation of concrete actions to be devised to enable and promote the rights of children.<sup>333</sup>

**10.2 The Best Interests Principle.** As stated in the Article 3 paragraph 1 of the CRC, the 'best interests of the child' must be 'a primary consideration' governing 'all actions concerning children'. The best interests is a principle of interpretation underpinning the rights set out throughout the CRC, as well as being applied widely to all actions concerning

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<sup>329</sup> Bruce Abramson. 'A Commentary on the United Nations Convention on the Rights of the Child: Article 2: The Right of Non-Discrimination'. Leiden: Nijhoff, 2008, p.18

<sup>330</sup> Ibid

<sup>331</sup> Ibid p. 39

<sup>332</sup> Abramson 2008, p.103

<sup>333</sup> Van Bueren 1998, p.

children.<sup>334</sup> Besides being explicitly addressed in Article 3 of the CRC, the best interests principle refers to six other articles within the CRC,<sup>335</sup> as well as being incorporated in other international human rights instruments.<sup>336</sup> A number of commentators consider that the relationship between the best interests principle and the rights listed in the CRC is inseparability from each other.<sup>337</sup> The principle was established for the first time in the non-binding 1959 UN Declaration on the Rights of the Child, stating that best principle of the child would be 'a paramount consideration' in legislation relating to children.<sup>338</sup> However, both the drafters of 1959 UN Declaration on the Rights of the Child and the CRC takes for 'granted' the familiarity deriving from domestic level, and hardly pay any attention to discuss the content of the principle.<sup>339</sup> The initial draft of Article 3(1) was identical to the text of Principle 2 of the non-binding 1959 Declaration on the Rights of the Child, with the difference of setting 'the paramount' rather than 'a paramount'.<sup>340</sup> As a result of opposition to 'the paramount consideration' formulation, the 1980 Working Group proposed a draft with reformulated formula of 'a primary consideration' as contained in the CRC.<sup>341</sup>

The absence of discussion at the time of the CRC drafting process, and the lack of comments from the Committee, has generated quite a lot of discussion on the definition of best interests of the child principle. One of the issues of the discussion focuses around the wording of the text defining the principle. As commentators note, the inclusion of best principle in the CRC is widely criticized as being an indeterminate or open-ended bold normative statement with

<sup>334</sup> Van Bueren 1998, p.46, Detrick 1999, p. 90, Philip Alston, 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights', *International Journal of Law and the Family*, Vol.8, Issue 1, 1994, pp.1-25, p.4

<sup>335</sup> It is present in Article 9 para. (a) and (c) – the separation of the child from family setting; Article 18 para. (a) – parental responsibility of both parents for upbringing and development of the child; Article 20 para. (a) and 21 – adoption and comparable practices such as temporary or permanently deprivation of the child from family setting; Article 37 para. (c) and 40 para. (b) (2) – and child's being subject of justice system.

<sup>336</sup> The principle is included in two provisions of 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), African Charter on the Rights and Welfare of the Child, the Hague Convention on International Child Abduction, the Hague Convention on Intercountry Adoption, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children 1996, The European Convention on the Exercise of Children's Rights

<sup>337</sup> Alston 1994, p.15-16, Van Bueren 1998, p.46, Detrick 1999, p. 90, Joachim Wolf, 'The Concept of the 'Best Interests' in terms of the UN Convention on the Rights of the Child' in *The Ideologies of Children's Rights eds. M. Freeman, and P. Veerman*, Dordrecht: Martinus Nijhoff Publishers, 1992. p.129

<sup>338</sup> Articles 2 and 6 of the UN Declaration of the Rights of the Child, General Assembly Res.1386 (XIV) November 1959

<sup>339</sup> Alston 1994, p.10-11, Van Bueren 1998, p.46, Detrick 1999, p. 89, Michael Freeman, 'A Commentary on the United Nations Convention on the Rights of the Child: Article 3: The Best Interests of the Child'. Leiden: Nijhoff, 2007, p.44

<sup>340</sup> UN Doc E/CN.4/L.1542 (1978), para.44, printed in Detrick 1992

<sup>341</sup> UN Doc E/CN.4/1989/48, paras. 117-118, printed in Detrick 1992

no precise criteria for implementation of the best interests of the child.<sup>342</sup> A substantial occurring theme in discussion considers the 'best interests of the child' as being 'a' primary consideration, rather than 'the' primary consideration. Freeman respond to this issue, arguing that obligations set out in the CRC imply that the best interests of the child should be the 'first consideration' before examining the interests and rights of others.<sup>343</sup> Freeman builds the argument around the word '*primary*' meaning 'first' and '*paramount*' emphasizing the child's best interests as 'determinative' for the course of action to be undertaken.<sup>344</sup> Van Bueren claims that the use of 'a primary consideration' instead of 'the primary consideration' entails the State Parties to balance the best interest of the child against the cultural relativist position of the state in defending their actions.<sup>345</sup> According to Alston the use of indefinite article 'a' entails imposing the burden of proof on those claiming that their interest has to prevail over the best interests of the child.<sup>346</sup> Detrick points out the use of indefinite article 'a' was a deliberate choice of the CRC's drafters, on the grounds that the paramount importance of children's interests could determine the course of action to be taken.<sup>347</sup> Another linguistic contradiction regards the meaning of formula in 'all actions concerning children'. Freeman interprets 'all actions' as informing the decision-making of those coming within the sphere of the principle, with exception to parents.<sup>348</sup> Both authors agree that 'all actions' implies positive action to be undertaken by the state. Despite not being considered by the CRC's drafters, there is no indication that term 'action' in Article 3 paragraph 1 is used within the meaning 'in contradiction to 'omissions.'<sup>349</sup> Freeman and Alston interpret 'concerning' to include any act affecting or impacting upon children.<sup>350</sup> Together with the word 'concerning', the term 'all action' entails a broad interpretation, leaving room for the best interests of children to play an extensive role for a arrange of issues. Similarly Alston implies that reference to 'children' rather than 'child' indicates the intention of drafters to achieve broad rather than narrow coverage for the principle.<sup>351</sup>

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<sup>342</sup> Detrick 1999, p.88

<sup>343</sup> Freeman 2007, p.44

<sup>344</sup> Ibid

<sup>345</sup> Van Bueren 1998, p.46-47

<sup>346</sup> Alston 1994, p.13

<sup>347</sup> Detrick 1999, p.91

<sup>348</sup> Freeman 2007, p. 44

<sup>349</sup> Freeman 2007, p.44, Alston 1994, p.13

<sup>350</sup> Freeman 2007, p.44, Alston 1994, p.14

<sup>351</sup> Alston 1994, p.14



Overall, as Freeman puts it, the best interest principle implies a mandatory duty to be taken into account, both in individual cases and with regard to children as a group.<sup>352</sup> To consider children's best interests requires drawing a balance between all legislation and various forms of policy development and the impact that might impose on the child's rights, as well as whether their implementation impairs the children's best interests.<sup>353</sup>

**10.3 The right to life, survival and development.** Article 6 of the CRC recognizes as inherent children's right to life and imposes positive obligations upon State Parties to ensure at the maximum extent possible the right to survival and development. The protection of the right to life is incorporated in several human rights instruments, notably Article 3 of Universal Declaration on Human Rights, Article 6(1) of the ICCPR, Article 2 of the ECHR, Article 4 of the ACHR, Article 4 of the African Charter. The rights to life, to survival and to development are regarded as holistic, complimentary rights that depend and rely on one another, as well as being defined by the other rights incorporated in the CRC.<sup>354</sup> The use of the word 'inherent' implies that the right to life is not a right conferred to the individual by society, but rather an existing right that society owns an obligation to protect.<sup>355</sup> Following this interpretation, the UN HRC categorizes the right to life as supreme, with no derogation permitted even in time of public emergency'.<sup>356</sup> Article 6 of the CRC does not deal with the issue when the inherent right to the child begins. Such an omission is in line with decision taken by the CRC's drafters to offer legal protection to the child's life only from the moment of birth.<sup>357</sup> The reference 'to the maximum extent possible' expresses the intention of the CRC's drafters to extend the range of positive measures undertaken by State Parties on behalf of the children according to their economic, social or cultural status.<sup>358</sup> The measures are designed to protect

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<sup>352</sup> Freeman 2007, p.60

<sup>353</sup> *General Comment No.5*, para.45

<sup>354</sup> Manfred Nowak, 'A Commentary on the United Nations Convention on the Rights of the Child: Article 6: The right to life, survival and development', Leiden: Nijhoff, 2005, p.13-14

<sup>355</sup> Detrick 1999, p.126

<sup>356</sup> UN Human Rights Committee, *General Comment No.6: The right to Life (art.6)*. CCPR General Comment No.6, 30 April 1982, <http://www2.ohchr.org/english/bodies/hrc/comments.htm>, (accessed 24.08.2011) para.1

<sup>357</sup> In drafting Article 1, the Working Group was involved into discussion whether the legal protection to child's life encompassed the rights of unborn child. The Working Group opted to introduce a preambular paragraph (paragraph 9), recognizing that the unborn child deserves an appropriate protection. However, the debate concerning the moment at which life begins was avoided, allowing states discretion in setting a lower age limit for the 'child' according to their own views on the issue of the right to life of the fetus or unborn child. Detrick 1999, p.133-136

<sup>358</sup> Detrick 1999, p.130

life, or as expressed in Article 6 to guarantee 'survival'.<sup>359</sup> The Committee explains the term 'survival' in the CRC context as including measures to improve prenatal care for mothers and babies, reduce infant and child mortality through combating diseases and rehabilitating health, malnutrition providing adequate nutritious foods and clean drinking water, as well as steps to safeguard life through preventing deprivation of life, namely by prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance.<sup>360</sup>

The Committee noted that the right to development under the CRC was to be defined in a similar way as human development is defined in Article 1 of the UN Declaration on the Right to Development 1986.<sup>361</sup> To this end, the Committee interprets the right to 'development' as a broad right, encompassing not only the physical, but also mental, emotional, cognitive, social, and cultural development.<sup>362</sup> Following the reasoning of the Committee, Nowak acknowledges that the right to development entails a comprehensive process of realising children's rights through providing optimal conditions to allow them to 'grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents, and mental and physical abilities to their fullest potential consistent with their evolving capacities'.<sup>363</sup>

Nowak remarks on the integral role of parents in raising and developing a child.<sup>364</sup> This view is consistent with the CRC's reference to the responsibilities, rights and duties of parents and the CRC's recognition of family environment in realising the full and harmonious

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<sup>359</sup> Detrick, Van Bueren and Nowak, point out that the right to survival is a dynamic concept, incorporating the obligations of a state to take positive steps in prolonging the life of the child. Detrick 1999, p.130, Van Bueren 1998 p.293, E/CN.4/1988/28, para.21

<sup>360</sup> The concept 'survival' was constructed referring to: UN Committee on the Rights of the Child, *General Comment No. 7: Implementing child rights in early childhood (2005)*, CRC/C/GC/7/Rev.1, 20 September 2006, (accessed 24/08/2011) <http://www2.ohchr.org/english/bodies/crc/comments.htm>, para. 10, and Marta Santos Pais, 'The Convention on the Rights of the Child', in *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, eds. Office of the High Commissioner for Human Rights, Geneva; United Nations Institute for Training and Research (UNITAR), United Nations Staff College Project, Turin, United Nations, Geneva, 1997, p.424

<sup>361</sup> Nowak 2005, p.2. Van Bueren notes that the right to development in a dynamic concept implying the rights of individuals, groups and arguably people to participate in, contribute to and enjoy continuous economic, social, political and cultural development in an environment in which all the human rights can be realized. Van Bueren 1998, p.293

<sup>362</sup> General Comment No.5, para.1

<sup>363</sup> Nowak 2005, p.2

<sup>364</sup> Ibid, p.37-38

development of the child as well as their personality.<sup>365</sup> The Committee's emphasis on the duties on a state to safeguard the social and economic rights and ensuring the development of children tends to stress the essential value of State Parties' actions.<sup>366</sup> To this end, the committee enumerates not only the rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play, but also respect for the responsibilities of parents and the provision of assistance and quality services under the duty of state to ensure the maximum extent to the right of survival and development. Van Bueren points out that the duties of a state are an umbrella approach of the CRC, which recognises the fundamental interdependence of the basic survival rights rather than the codification of a new right.<sup>367</sup>

**10.4 The right to participation.** Article 12 encompasses, where a child is capable of forming their own views, the right to express those views freely in all matters affecting the child and to have those views taken into account according to child's age and maturity, as well as the right of the child to be heard in any judicial or administrative proceedings affecting them. Van Bueren comments about the potential of Article 12 for the protection of children's rights in imposing an obligation upon State Parties to give children the opportunity to participate when they wish in all matters which affect them.<sup>368</sup>

Rights always require interpretation to determine their boundaries.<sup>369</sup> The Committee has already published a General Comment to Article 12 of the CRC, containing a detailed literal analysis of Article 12, action to be undertaken to ensure the implementation of the right to be heard, and detailed obligation of State Parties, as well as relation of Article 12 with other rights and principles in the CRC, and the implementation of the child's right to be heard in different settings and situations.<sup>370</sup> In response to 'the age and maturity', the Committee straightforwardly deems that the right to be heard is perceived not solely as a right of the

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<sup>365</sup> Beside the CRC preamble, recognizing the family as 'the fundamental group of society' the role of parents is incorporated in the following CRC Articles: 2, 3, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 22, 23, 24, 27, 37, and 40

<sup>366</sup> Pais 1997, p. 425

<sup>367</sup> Van Bueren 1998, 293

<sup>368</sup> Ibid, p.137

<sup>369</sup> Brems 2007, p.18

<sup>370</sup> UN Committee on the Rights of the Child, *General Comment No.12: the Right of the Child to Be Heard*, CRC/C/GC/12, 20 July 2009, (accessed 24/08/2011) <http://www2.ohchr.org/english/bodies/crc/comments.htm>. The General Comment No.12 was the outcome of Day of General Discussion to the theme 'Speak, Participate and Decide- The Child's Right to be Heard' held in 2006.

individual child in decisions personally affecting them, but also as a right of children which constitute a social group in decisions specifically relating to those group.<sup>371</sup>

Despite titling General Comment 'The right to be heard', the Committee refers to children's participation. This is a deliberate choice of the Committee to reflect a widespread practice in conceptualising the rights incorporated in Article 12 as 'participation'. Thus the Committee interprets the 'participation as description of 'ongoing processes, which include information sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes'.<sup>372</sup> The term 'processes' includes decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.<sup>373</sup> The Committee points explicitly that the information sharing should be understood as a process facilitating children's participation, not a one-off event.<sup>374</sup> The Committee designs a number of benchmarks, referring *inter alia* to transparency and honesty, voluntariness, respectfulness, relevance, child-friendly, inclusion, support by training, protection from harm and sensitiveness to risk, accountability, against which all processes in which a child or children are heard and participate must conform to.<sup>375</sup>

The Committee mentions that 'the rights of the child to freely express their views impose a strict obligation upon State Parties, with no leeway for State Parties' discretion.<sup>376</sup> Secondly, 'express views freely' is linked to the child's own perspective and implies consultation with the child. In other words, 'freely' gives to the child the opportunity to state their opinion on the matter without pressure, to choose whenever to exercise their right to express, with no manipulation or being subject of pressure, and no more often than necessary.<sup>377</sup> 'Freely' implies the right to information as a 'precondition to clarified decision, based upon information provided to the child about matters, options, and possible decisions to be taken, their consequences and environment condition of expressing the views.'<sup>378</sup> Secondly, 'capable of forming their own views' means no limitation based on age or assumption about the

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<sup>371</sup> General Comment No.12, title of part III, developed in para.9-14 Van Bueren presents a similar discussion in Van Bueren 1998, p.137

<sup>372</sup> General Comment No.12.3

<sup>373</sup> Ibid para.12

<sup>374</sup> Ibid para.13 and para.133

<sup>375</sup> Ibid para 134 (a) – (i)

<sup>376</sup> Ibid para.19

<sup>377</sup> Ibid para.22 and 24

<sup>378</sup> Ibid para. 25

child's incapability to express their own views.<sup>379</sup> More precisely, it is not up to the child to prove their capacity, but to State Parties to assess the capacity of the child in forming an autonomous opinion to the greatest extent possible. To this end, no age limit threshold is recommended and State Parties are urged to follow the same practice of no restriction.<sup>380</sup> The no restriction approach opens the possibility of making discretionary judgments about very young children giving the opportunity, 'whenever possible' to participate through the use non-verbal techniques of communications such as body language, facial expressions, and drawing, through which very young children demonstrate choices and preferences.<sup>381</sup> Thirdly, the 'matters' refer those directly pertinent to the life of the child concerned and encompass a broad definition.<sup>382</sup> Fourthly, 'being given due weight in accordance with the age and maturity of the child' refers to the need of allowing for individual distinctions between children based on the capacity and the maturity of the child.<sup>383</sup> Moreover, the Committee for the second time eliminates age criterion approach and refers to recognition of differences in the capacities of different children of the same age.<sup>384</sup> Acknowledging the difficulty in defining 'maturity', the Committee interprets its meaning in the context of Article 12 as referring 'the capacity of a child to express her or his views on issues in a reasonable and independent manner'.<sup>385</sup> Finally, discussing the overall measures to be undertaken for implementing Article 12, the Committee recognizes the fundamental shift in the ideologies of the rights of the child required from State Parties to enable the right to participation:

'Achieving meaningful opportunities for the implementation of Article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.'<sup>386</sup>

**10.5 The core elements of juvenile justice.** As mentioned earlier, the core elements of a comprehensive juvenile justice are provided in General Comment No.10 (GC10). It might be

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<sup>379</sup> Ibid para.20

<sup>380</sup> Ibid para.21

<sup>381</sup> Ibid

<sup>382</sup> General Comment No.12, para.26-27

<sup>383</sup> Ibid para.28 and 30

<sup>384</sup> Ibid para.29

<sup>385</sup> Ibid para.30

<sup>386</sup> Ibid para. 135

said that in considering a comprehensive juvenile justice system, the Committee in GC 10 follows a logical order, dealing with issues according to the steps that should be taken in dealing with children in conflict with law, dealing with a particular issue that of minimum age of criminal responsibility. To this end, the core elements of a comprehensive juvenile justice are grouped under five headings; the prevention of juvenile delinquency, interventions without resorting to judicial proceedings and interventions in the context of juvenile proceedings, the minimum age of criminal responsibility and the upper age limits for juvenile justice, the guarantees to a fair trial and deprivation of liberty including pre-trial detention and post-trial incarceration. Hereafter follows a brief consideration on certain headings of the GC 10. Such choice is based upon the fact that GC 10's implications are already discussed (MACR) or will discuss in analysing Article 37 and 40 of the CRC.

The Committee starts with considering *the prevention of juvenile delinquency*, as a key element in reducing the shortcomings of juvenile justice system. The Committee considers the prevention of delinquency as a 'mini system' facilitating socialization and integration of all children. Using a 'mini system' reference is made to Article 29 and other provision of the CRC, as well as sustaining social groups; the family, community, peers group, school, vocational training, and the world of work, which are referred to by the Committee. In inviting the states to implement programmes to assist parents in the performance of their responsibilities for upbringing of children, the Committee confirms its agreement with the Riyadh Guidelines. In addition, the Committee emphasizes the importance to early childhood education and to participation of children as important general prevention factors.

In discussing measures to be dealt with relating to children in conflict with the law, the Committee distinguishes two kinds of *interventions*; measures without resorting to judicial proceedings, and interventions in the context of judicial proceedings. This distinction is quite relevant in setting that 'diversion' (Article 40(3)), is not synonymous with 'alternatives to detention' (Article 40(4)).<sup>387</sup> Second, although leaving to discretion of State Parties to determine on the exact nature and content of the measure, it might be said that the Committee strongly advocates on the prevalence of the intervention outside the context of judicial proceedings. The Committee considers among the advantages of measures without resorting

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<sup>387</sup> The Committee defines diversion as a measure involving the referral of cases away from formal criminal court procedures and directing child offenders towards community support. General Comment No.10, para.11

to judicial proceedings avoidance of the complexity and stigmatization of the criminal system, good outcomes for both children and the interests of public safety, and advantages in economic terms. To fully respect human rights and legal safeguards of such measures, the Committee recommends on the establishment of clear rules to be taken into account for application of this type of intervention. Among the rules to be consider for this type of intervention, the Committee refers to relevant parts of Article 40 of the CRC and explicitly considers the presumption of innocence, voluntary consent, procedural settings, the child's right to participate in the proceedings, the outcomes of intervention, and finally confidentiality. The intervention within the context of judicial proceedings defines the procedure of referral for judicial proceedings of the children in conflict with the law by the competent authority. This implies that the State should have a juvenile justice system, preferably being specialized in dealing with children, to strictly limiting the use of liberty deprivation, and which includes services to allow for maximum and effective use of social or educational measures.

### **Part III: Conclusions**

The question 'how short juvenile justice in Albania falls to comply with the international standards' relates to the development in juvenile justice from a global perspective. In analysing and attempting to identify means of adapting the current Albanian juvenile system in order to comply with the international standards and norms, such perspectives and recent trends on approaching juvenile justice should be taken into consideration. Wherever we might care to look, national and international juvenile justice systems typically embrace the vulnerable children, children routinely neglected and even abused in the infrastructure of everyday life. Thus the challenge raised inevitably for a juvenile justice system goes beyond what a society believes. It transcends the reach and remit of any philosophy by recognizing that all children, even young offenders should be loved, valued and given an opportunity to fulfil their potential, to be made aware of their deed and be able to make amendments and to restore social cohesion.<sup>388</sup> Hence, on building a comprehensive juvenile justice system in line with international standards we should accommodate the application of research evidence to policy formation, compliance with the provisions of international human rights standards, treaties, rules and conventions and the opinion of those within in system.

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<sup>388</sup> Jean Zermatten, 'Children Rights and Juvenile Justice' in *'18 Candles - The Convention on the Rights of the Child Reaches Majority'*, eds. J. Connors, J. Zermatten, and A. Panayoditis, Institut international des Droits de l'Enfant (IDE), Sion, 2007

In the modern climate, any policy regarding juvenile justice would need to consider the category of children in conflict with the law, not only as a simply object worthy of state protection and its institutions but also as subject to rights that need to be recognised and guaranteed. In order to be effective, a comprehensive juvenile justice system need to be conceived from a multidisciplinary perspective, which takes into consideration: social and economic conditions, known as to give rise to conflict, harm, social distress; crime and criminalisation; be built upon children's and young people's strengths as distinct from emphasising their 'deficits' and adopt a social-structural approach to deal with them. Furthermore such system should address the balance between need and amenability to change of young offenders and the need of society to hold them accountable and to punish for their wrongdoing, between rehabilitative and retributive approach to juvenile justice. In striking such balance a policy maker should rethink fundamentally ingrained ideologies of childhood, children rights, families, communities and international law. The international norms offer the opportunity to develop juvenile justice systems that are responsive to the actual needs of offenders, families, and society, rather than prejudices and public opinion of the day. Moreover international law no longer limits itself to laws between nations. International law now includes legal rules and principles that apply both among states, between states and even between other actors. Increasing influence of international law has profound implications for juvenile justice systems as establish universal standards. By setting such standards, the international community establishes minimum underlying principles that should inform the system – detention as a last resort, the importance of a multi-faceted response to youth crime, the importance of efficient administration of the youth justice system, the desirability of key decision makers having a brief exclusively concerned with children and the importance of the national system to comply with international standards and practices. By establishing such principles, the international community on one hand maintains the power to intervene when violations of children's rights occurs in this field. On the other hand imposes upon itself the obligation to be a benefactor on repairing violation and assist the states to improve their potential regarding the category of children in conflict with the law. The obligations come in the form of sharing more than international principles and resources. To respect their obligation States are assisted by international community in conducting research and exchanging information with a view toward full implementation of principles and international norms and standards. In assessing their juvenile justice approach and its compliance with international principles each country should analyse 'what works' priorities;



'best value' imperatives and the need to ensure that 'programmes' are routinely 'evaluated' and 'outputs' are assiduously monitored and to recognize the potential utility and effectiveness of alternative sanctions. In order to maximize the benefits, the assessment must disregard the view of governmental policy makers build on misinterpreted public opinion. To provide a full assessment it is necessary to embrace views of all actors, whom are responsible for implementation of policy. Including 'professionalised' opinion of criminal justice professional and practitioners, such as lawyers, judges, prosecutors and other practitioners should provide a more rounded picture concerning both formal aspects of system and the reality as experienced by those who are subject to it. However, this review would offer single solution and fail unless would take into consideration even the voice of young people dealt within the system. Children have a right to be heard and to participate throughout the process. They do provide us with unique, specific set of 'takes' on the system, which both help us to understand how it works and provided pointers towards ways of improving such system and solutions safeguarding it from the violations. The points mentioned above are something that this thesis will attempt to shed light on. As such, this thesis will contribute to examining whether Albanian juveniles may be afforded international principles within Albanian juvenile justice system – amounting to 'non-fundamental reform' – and if those international standards are enforceable within the system. From the discussion above, such principles will arguably include protecting of the rights of the child in cases where custody, as a last option, is used, ensuring that the child's best interests are promoted in criminal justice proceedings, comprehensive legislation incorporating and where relevant, restorative justice principles, setting up community-based conflict-resolution and rehabilitation mechanisms.

Fundamental reform is difficult to define. Nevertheless, it is possible to establish static norms that essentially characterise juvenile justice system in Albania. The distinction to be drawn, I believe, is between reforms that model the system in itself and alters the roles of those within it (fundamental) and reforms that adapt the manner in which this existing system operates and how its participants perform existing roles (non-fundamental).

In referring to the CRC and UN Minimum Standards and Norms in Juvenile Justice, the intention is not to overplay the power of these instruments. Indeed, the CRC and UN Minimum Standards and Norms in Juvenile Justice, provide the core elements of a comprehensive juvenile justice, providing a 'balanced approach' by far preferable to be implemented by State Parties. However, the international core elements used as benchmarks

against which the juvenile justice system in Albania should comply with are considered as a 'model whose inspiration might provide some counterbalance to some of the current fads'.<sup>389</sup> Despite this, it will remain essential for this thesis to keep an open mind in considering the international elements of juvenile justice, relevant to recognition of strength and weaknesses of these elements, which will help to maximize the appraisal of their impact at a domestic level.

This thesis, derived from a wider and more ambitious project of rethinking, has attempted to map the contours of a youth justice system with integrity; free of crude political posturing and informed by comparative analysis, international human rights and research evidence. The project is just a small effort, but even in its form it poses a fundamental challenge to politicians and youth justice policy-makers in Albania.

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<sup>389</sup> Jean Trépanier, 'Children's rights in juvenile justice: a historical glance', in *The Un Children's Rights Convention: Theory Meets Practice: Proceedings of the International Interdisciplinary Conference on Children's Rights, 18-19 May 2006, Ghent, Belgium*, eds. A. Alen et al, Antwerpen: Intersentia, 2007, p.259

## CHAPTER TWO METHODOLOGY

### 1. Introduction

The preceding chapters presented the background of the research, defined the research questions, and presented the theoretical underpinning of the juvenile justice system. The overall objective of this research is to provide a scientific analysis of how a state party to the CRC (Albania), implemented the Articles of the CRC in response to children in conflict with the law. This chapter provides an insight into the methodology used during the research.

O'Leary describes a research design as a plan that incorporates both appropriate methodology and logical/feasible methods.<sup>390</sup> In other words, a research design can be described as a master plan that indicates the strategies used in the pursuit of the research objective(s) and answering the research question(s). The way in which research is designed may be conceived in terms of paradigmatic considerations – the research philosophy subscribed to, methodology – macro-level research strategy employed; methods – micro-level techniques used to collect and analyse data, and tools-details related to methods execution.<sup>391</sup>

The chapter provides a detailed account of the main stages related to deciding the research approach, identifying data requirements and subjects, and the techniques by which data was gathered and analysed. The first section maps out the research theory by introducing the perspective taken when considering the implementation of international standards and norms by Albania regarding juvenile justice. This is followed by a more substantial analysis dealing with the overall design of the methodology, providing an insight into the reasons and strengths of the methodology adopted from personal and scientific perspectives. A discussion focussing on the methodology will lead to a discussion of research methods, addressing procedures that should be used to collect and analyse the necessary data and information in response to each of the research question objectives. Considerable attention is paid to the methods adopted with regard to the administration of juvenile justice in practice in Albania. The complexity of the juvenile justice system is reflected in the tools used to respond to this issue. The final part of the chapter concludes by reflecting on the position of the researcher toward the methodology adopted.

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<sup>390</sup> Zina O'Leary, *The Essential Guide to Doing Your Research Project*. London etc.: Sage, 2010, p.88

<sup>391</sup> O'Leary 2010, p.103

## 2. Research Theory Framework

Before describing the methodologies adopted to respond to the questions of this thesis, along with their associated practical and ethical implications, it is worth outlining the main methodological goals and characteristics of the thesis.

The research is underpinned by implementation research as the theoretical working basis. 'Implementation' is defined as 'the process and art of deliberately achieving social change through law.'<sup>392</sup> Implementation research is the study of methods to promote the uptake of research findings into routine practice.<sup>393</sup> Implementation research is not a new concept. It was established in political sciences during the 1970s in response to growing concern about the effectiveness of public policy and governance.<sup>394</sup> Although being dormant for some time because of a shift of ideologies, implementation research continues to hold much practical interest for policymakers as a major obstacle in the policy process. Indeed, policy analysts find research on policy evaluation and implementation to be one of the most heavily utilized areas of policy analysis.<sup>395</sup> At this point, it is important to define what is meant by the term 'implementation' within this context. Thus, 'implementation' is used to define a process, a series of national policies and actions directed towards putting a prior authoritative international decision into effect. The essential characteristic of the implementation process in juvenile justice is the timely and satisfactory performance of elements, which enable it to carry out the intent of the law.<sup>396</sup> Thus, an alternative way of analysing implementation is to choose a policy problem, in this case juvenile justice, to see which agents deal with the issue and how. Thus, the second important aspect of implementation research would be the identification of the implementers and their respective roles in the larger political and administrative system.<sup>397</sup> Identification of the actors enables us to reconstruct the actual way of collectively dealing with the problem. The implementation process of policy largely

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<sup>392</sup> Francis Snyder, 'General Course on European Community Law: Constitutional Law of the European Union: Principles, Processes and Culture', in *Collected Courses of the Academy of European - La Recueil Des Cours De L'académie De Droit Européen: 1995*. The Hague: M. Nijhoff, 1998, p.108

<sup>393</sup> Onil Bhattacharyya, Scott Reeves, and Merrick Zwarenstein, What Is Implementation Research?: Rationale, Concepts, and Practices, *Research on Social Work Practice*, Vol.19, Issue 5, 2009, pp.491-502, Anne E Walker, Jeremy Grimshaw, Marie Johnston, Nigel Pitts, Nick Steen, and Martin Eccles, PRIME – Process modelling in Implementation research: selecting a theoretical basis for interventions to change clinical practice. *BMC Health Services Research* 2003, 3:22doi: 10.1186/1472-6963-3-22 <http://www.biomedcentral.com/1472-6963/3/22> (accessed 4/07/2011)

<sup>394</sup> Susan M. Barrett, 'Implementation studies: time for a revival? Personal reflection on 20 years of implementation studies', *Public Administration*, Vol.82, Issue 2, 2004, pp.249-262, p.250

<sup>395</sup> James P. Lester, and Malcolm L. Goggin, Back to the Future: The Rediscovery of Implementation Studies, *Policy Currents*, Vol.8, Issue 3, pp.1-9, p.1, Barrett, 2004

<sup>396</sup> Lester & Goggins, 1998, p.5

<sup>397</sup> Lester & Goggins, 1998, p.5

depends on the behaviour of implementation agents; what are the interests, motives, and individual resources within the implementation field? These are primarily the characteristics and behaviour of the target group and other interested parties. In other words, the third important aspect of implementation research is to establish the implementation agents' role and whose interest they serve.

There were two primary reasons to adopt an implementation research framework to consider a social justice issue such as juvenile justice. The first reason relates to the role of the researcher. 'The role of the researcher in this context is reframed as one who recognizes inequalities and injustices in society and strives to challenge the status quo, who is a bit of a provocateur with overtones of humility and who possesses a sense of responsibility'.<sup>398</sup> The methodological imperative behind this research is the determination of the extent to which the intended aims of the implementation process – international standards of the juvenile justice system – are accomplished by Albania. The identification of the extent overpasses the boundaries of mere nomination of the stakeholders interacting into the system and the way of perceiving juvenile justice by them. It reaches up to the identification of modalities for stakeholders' co-operation on a day-to-day bases. The benefit of this approach should be clear; the more the researcher is concerned with the impact of various policies, even in the longer term, the more reasons there are to study the level where single administrative processes meet the real world.

Secondly, this research aims to promote discussion and development of implementation studies within Albanian academic circles, introducing new techniques on auditing and evaluating on a scientific level the policies adopted by the Albanian government over recent years. The Albanian government has drafted a myriad of policies in all fields including juvenile justice. A myriad of laws have been passed by the Albanian parliament to support such policies. Despite this, little, or rather nothing has been done to evaluate or audit the implementation of such policies. In particular, the impact of the system built to deal with juveniles in conflict with the law has never been the subject of an empirical study on a scientific level that would involve all the systems of juvenile justice. By providing a multi-research approach, it is hoped that the attention of civil society and academics would be

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<sup>398</sup> Donna M. Mertens, 'Transformative Paradigm: Mixed Methods and Social Justice', *Journal of Mixed Methods Research*, Vol.1 Issue 3, 2007; p. 212-22, p. 212

drawn towards the design of a policy that is based upon desirable impacts as criteria, whilst aiming to finding out what works, and not what policymakers want to work.

**2.1 Data Collection Approach.** A conceptual methodology framework, informed by theory and practice, is adopted in order to address the extent to which the administration of juvenile justice in Albania is in compliance with the CRC. The research examined the implementation of international standards and norms in the juvenile justice system in Albania, involving state level implementation policy. Whilst analysing the recommendation of the Committee of the Rights of the Child in regard to the juvenile justice system in Albania, it became evident that there was a necessity to bring together both qualitative and quantitative data representing individuals' experiences and state or national trends to bear on the complex issue that implementation analysis was posing. Thus, the decision to combine methods was made based on the purpose of the research as outlined in study research questions. Implementation research studies on juvenile justice in Albania are non-existent. From this perspective, the study was designed to discover fresh, comprehensive understandings of the implementation process, rather than a quality-added value. The goal was to gain a different perspective instead of accumulating additional layers of research that repeat the same values despite being conducted by independent researchers. The research demanded a multilevel inquiry. Table No.2 presents a comparison of the elements adopted to comply with research questions. The research includes exploratory and descriptive questions, which incorporate quantitative and qualitative elements. If the research questions were considered as only exploratory, designed to describe how Albanians implement international norms and standards, a single method qualitative design, including a few cases, would likely have been sufficient to produce new findings.<sup>399</sup> The research uses qualitative data from in-depth interviews to compare practice and then to inform quantitative data analysis. The use of quantitative data did not add new dimensions to the research question.<sup>400</sup> It did, however, strengthen the study,

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<sup>399</sup> Onwuegbuzie & Johnson, and Bryman note qualitative research is responsive to changes that occur during the conduct of study. (Anthony J. Onwuegbuzie, and Burke R. Johnson, *Mixed Methods Research: A Research Paradigm Whose Time Has Come* Source, *Educational Researcher*, Vol. 33, Issue. 7, 2004, pp. 14-26, p. 18 and Alan Bryman, *Social Research Methods*. Oxford: Oxford University Press, 2008, p.22 & p.366) Qualitative data in the words and categories of participants lend themselves to exploring how and why phenomena occur. Data collection is open to adaptation and modification and the approaches are responsive to local situations, conditions and stakeholder needs

<sup>400</sup> Onwuegbuzie & Johnson, and Bryman recognise that the aim of quantitative research is to test and validate already constructed theories about how phenomena occur. (Onwuegbuzie & Johnson, 2004, p. 18, Bryman 2008, p.22 & p.155-158) The question is about the extent or size of effects and the answer is, in some sense, countable, standardised data collection and statistical analysis. Although the researcher may have multiple

leading to additional analysis of the field data, which in turn added a new dimension that might have been absent from the study.

**Table No.2: Comparison of Research' Elements**

Purpose of the question	Research Questions
Exploratory, Descriptive & Analytical	1. What overall approach does the UN CRC of the Rights of Child and its special instruments adopt towards children in conflict with the law?
Exploratory, Descriptive & Analytical	2. What overall approach does Albania adopt towards children in conflict with the law?
Implemental	3. What being part of the juvenile justice system meant for a young Albanian person
Interpretative	4. How the overall Albanian approach towards children in conflict with the law is in line with international standards and norms.

However, the research called for a mixed methodology because of questions integrating the implementation element. In this situation, the advantages of collecting both closed-ended quantitative data and open-ended qualitative data prove advantageous to best understanding research problems. The implemental element was presented in an in-depth experiential context, directly attached to quantitative data sets, and used to gather a new understanding of the experiences of those stakeholders involved in policy implementation. This different perspective on approaching implementation of policy could lead to innovative solutions and policy recommendations to Albanian juvenile justice policy makers.

**2.2 Data Collection Technique.** To achieve the overall objective, it was deemed useful to combine a number of research methods. Within the diverse and active circles of social science research, there is an on-going discussion about the benefits of research designs that combine qualitative and quantitative approaches.<sup>401</sup> Mixed method research is formally

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hypotheses about the relationship to explore, the question itself is not altered in the process of searching for the solution.

<sup>401</sup> Alan Bryman, 'Barriers to Integrating Quantitative and Qualitative Research', *Journal of Mixed Methods Research*, Vol, Issue 1, 2007, p. 8-22, p.8, Abbas Tashakkori, and John W. Creswell, 'The new era of mixed methods', *Journal of Mixed Methods Research*, Vol. 1, Issue 1, 2007, pp. 3-7, p.4

defined here as the class of research where the researcher mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study.<sup>402</sup> Research that mixes methods can temper biases inherent in each tradition; the power of numbers and an aim of generalizing quantified outcomes, balanced with the rich context of lived experiences captured in qualitative inquiry, can yield results that are quite distinct from single method designs.<sup>403</sup> As such, mixed method studies are often suggested as a way to disentangle intricate relationships and understand more fully complex social phenomena.<sup>404</sup>

Such a combination yields at least two important benefits from the outset. Firstly, only a few pieces of research in this area combine and adopt a multi-strategy approach of literature and political analysis, gathering data from different sources and empirical investigations as well.<sup>405</sup> One common aspect of studies is that they are based on quantitative data, pure legal analysis or empirical research involving juveniles. Few studies involve all national stakeholders and analyse the practical implementation of standards and norms, possible deviations from them, explanations, and the forces and institutions administering them.<sup>406</sup> Thus, the combination of quantitative and qualitative data would improve the credentials of this research as a source of new information. Furthermore, by carefully devising mixed methods to obtain input into the conditions that warrant the conduct of research, opportunities are opened for those whose voices have been traditionally excluded.<sup>407</sup>

Secondly, to date, 'the development of a mixed methods theory has involved a dynamic interplay with creative practice in highly practical fields, with the felt limits of traditional theory in fields with strong disciplinary theoretical traditions'.<sup>408</sup> This is because of the fact

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<sup>402</sup> Bryman, 2008, p.603, Onwuegbuzie, & Johnson, 2004, p.17

<sup>403</sup> Tashakkori & Creswell, 2007, p.4

<sup>404</sup> Mertens, 2007

<sup>405</sup> From the methods adopted to evaluate implementation of CRC and the UN standards and norms in juvenile justice by a particular state, the studies fall within three clusters, referred at Introduction p.2

<sup>406</sup> Kiessl carried a study of South African practice for protection of juvenile deprived of liberty, using questionnaires focus on similar areas for the staff of prisons and places of safety and also the juveniles themselves. (Kiessl, H. 2001 'United Nations standards and norms in the area of juvenile justice in theory and practice: An empirical study on the use and application of UN rules for the protection of juveniles deprived of their liberty in South African practice' – (manuscript) at Max Planck Institute for Foreign and International Criminal Law, Germany) UNDOC project in Lebanon conducted interviews with key players and interlocutors and only field visits to the key juvenile institutions Hanson, K., Hanna C. 'Project Title: Strengthening legislative and institutional capacity for juvenile justice and Support to the juvenile justice system in Lebanon', *United Nations Office on Drugs and Crime, (Project Number: LEB/98/R72 and LEB/02/R30) Vienna, July 2005* [http://www.unodc.org/pdf/criminal\\_justice/Juvenile\\_Justice\\_Lebanon.pdf](http://www.unodc.org/pdf/criminal_justice/Juvenile_Justice_Lebanon.pdf)

<sup>407</sup> Mertens, 2007, p. 224

<sup>408</sup> Jennifer C Greene, 'Is Mixed Methods Social Inquiry a Distinctive Methodology?' *Journal of Mixed Methods Research* 2008; Vol. 2, Issue 1, pp.7-22, p. 8



that research gains powers by using quantitative data, such as demographic, epidemiological, and literacy assessments, in conjunction with qualitative data; mixed methods provide a better understanding of realities. Thus, a major rationale to adopt this approach lies in the fact that mixed methods 'enable the researcher to simultaneously answer confirmatory and exploratory questions and therefore verify and generate theory in the same study'.<sup>409</sup> Furthermore, mixed methods provide an avenue to enhance the development of a trusted partnership between researchers and communities, because researchers are responsive to the needs of communities and communities witness the power of both qualitative and quantitative data.<sup>410</sup> Three considerations come into the decision to adopt a mixed methodology: The research problem, the personal experiences of the researcher, and the audience(s) to whom the thesis will be addressed.

**Research Problem.** Research questions that ask to what extent an event occurs or what impact it has, and what the nature of the occurrence or impact is, demand multidimensional answers that are both objective and subjective. Mixed methods offer the opportunity to use together qualitative and quantitative research and produce more complete knowledge necessary to inform theory and practice.<sup>411</sup> Moreover, by applying mixed methods, a broader and more complete range of research questions are answered, as the researcher is not confined to a single method or approach.

**Personal experiences.** Was a mixed method design appropriate? Yes, for several reasons. First, from a pragmatic standpoint, mixed methods techniques were feasible because of the researcher's own personal training and experience. Holding a degree in social work made the author familiar with both quantitative and qualitative research and led to a better understanding of the rationale for combining both forms of data. The mixed methods approach required knowledge about the different mixed methods designs that help organize procedures for a study. Single-method research might have been sufficient to provide some pieces of the research puzzles, but questions that include *what, how and why* elements require integration of both quantitative and qualitative data to fully grasp the nature of particular phenomena and indicate appropriate responses. Whilst it could be difficult for a single researcher to carry out both qualitative and quantitative research, being both time consuming

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<sup>409</sup> Abbas Tashakkori, and Charles Teddlie, *Handbook of mixed methods in social & behavioural research*, Thousand Oaks, CA: Sage, 2003, p.15

<sup>410</sup> Mertens, 2007, p.224

<sup>411</sup> Ibid, p.17, Greene 2008, p.20,

and financially demanding, the author enjoyed both the structure of quantitative research and the flexibility of qualitative inquiry.

***Audience.*** The author was sensitive to audiences to whom the thesis would be addressed. Hopefully, the experience of these audiences with mixed methods will shape the decision made about this choice.

### **3. Research design**

It was not possible to let the project rely principally on a quantitative or qualitative approach, because the goal, as discussed earlier, is to explore in depth all the facets of implementation of an international framework. Nevertheless, it is hoped that the analysis described below will help to illustrate the merits of combining both quantitative and qualitative data. Although different methods were designed to respond to, research questions were never treated as separate research components or entities. Methods addressing each of the research questions were designed to create a chain of information. The method adopted to construct international standards shaping juvenile justice, in particular, influenced the methods chosen for the two questions of the research, which are of an empirical nature.

***Research steps.*** Although mixed research starts with a purpose, and one or more research questions, the rest of the steps can vary in order and even the questions and/or purposes can be revised when needed<sup>412</sup>. The research was designed following a mixed research process model presented by Onwuegbuzie and Johnson, 2004, whose steps are displayed in figure No.1.

In designing a research strategy, a final factor was taken into consideration: The larger international norms and standards as guiding framework for the research. The research steps involved collecting original qualitative data and using publicly available quantitative data sets. Qualitative and quantitative data was then combined in cross-case analysis to develop a typology of implementation policy. Finally, the quantitative data served as an independent source of statistical testing for the typology. The qualitative data came from the case studies undertaken by the Children Human Rights Centre in Albania, which adapted the field research as methodology. However, they presented a limitation regarding the degree of

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<sup>412</sup> Onwuegbuzie & Johnson, 2004, p. 21



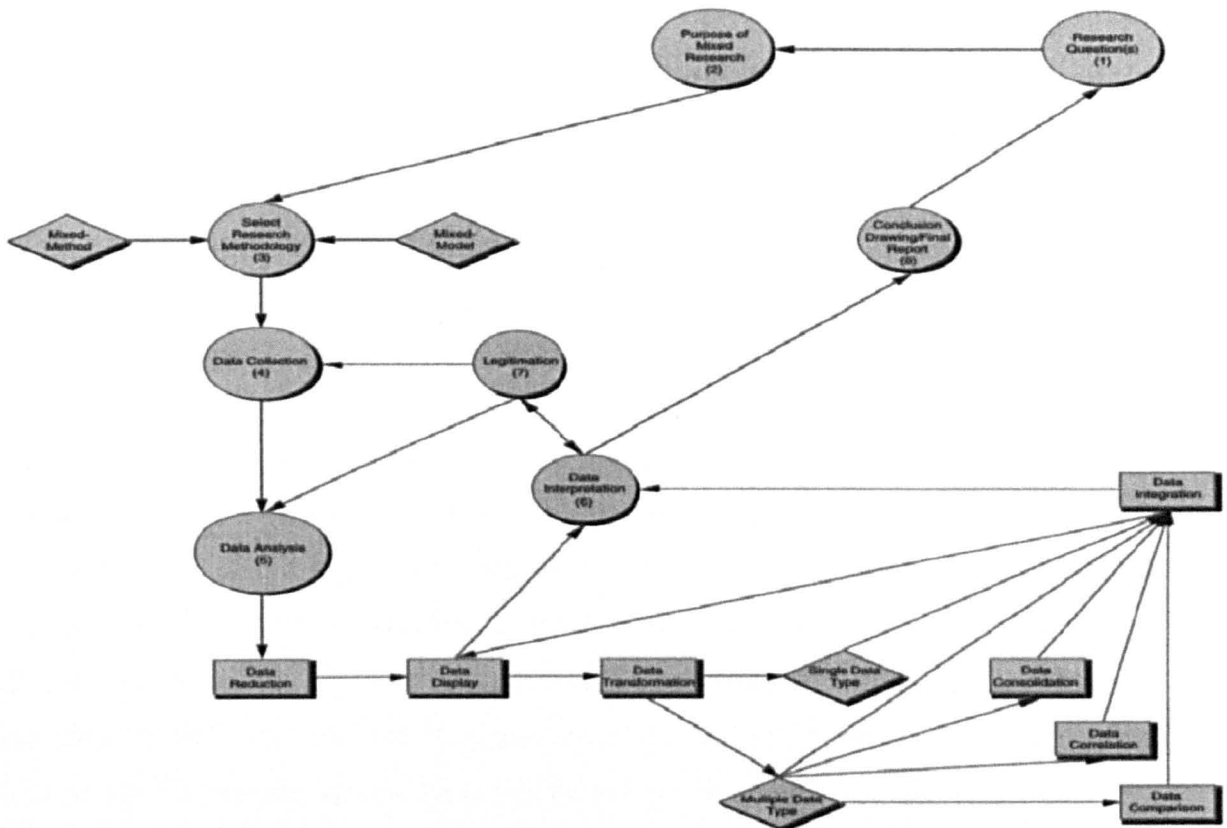
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Figure No.1 Mixed Research Process Model



Note. Circles represent steps (1-8) in the mixed research process; rectangles represent steps in the mixed data analysis process; diamonds represent components

Analysis provided for the juvenile justice system in Albania and scale of implementation of international standards and norms. The quantitative data regarding the state's implementation policy were lacking consistency and did not offer any analysis as to why certain decisions were taken. The inclusion of multiple types and sources of data in the research design helped to overcome these limitations. However, it should be noted that the primary focus of the research was not to predict or show how the international norms and standards were implemented, but rather to explore practices and elements to which the system does not comply. Collecting more qualitative data on the second stage offered detailed information about whether and how the state was implementing international norms and standards and designing the policy of juvenile justice, which formed the core of the research. In addition, because the study explored the implementation of state policy, a new way of exploration in Albania, it was necessary to include techniques and principles for the qualitative data analysis. Open and pattern coding generated a set of themes related to what a comprehensive juvenile justice system, in line with international standards, might look like. After coding and identifying themes, dimensions of practice variation were identified through qualitative

analysis and organised into a typology of state response to implementation policy. During this phase of analysis, master charts were used to assemble descriptive data from each agent, including how the current juvenile justice in Albania responded to juveniles and the expectation of agents involved, and implementation of the international norms and standards. At this point in the analysis, qualitative and quantitative data sources truly become united. Creswell defines this procedure as concurrent triangulation strategy.<sup>413</sup>

The approach might, however, be subject to criticism. In particular, one might argue that the identification of themes and categories from the dataset was influenced by the hypotheses and existing opinions regarding the juvenile justice system in Albania. The author would agree with such criticisms but responds to them in this project by consistently considering the relationships between the three research questions and attempting to view the issue of the juvenile justice system in Albania holistically. Most importantly, investigators who conduct mixed methods research are more likely to select methods and approaches with respect to their underlying research questions rather than with regard to some preconceived biases about which research paradigm should have hegemony in social science research.<sup>414</sup> Thus, it is essential for the researcher, having decided to follow the mixed methods route, to continually assess the research as it proceeds and to document the process. Hence, the confidence comes from understanding the purpose of research, the types of knowledge the author has to build on, where the data is derived from and the choice made in how to interpret the information gathered and combined. Thus, the author would argue that wider context of the subject matter is kept at the forefront of this thesis.

**3.1 Approaching the CRC framework regarding juvenile justice.** Addressing the CRC as an instrument, especially requirements of Articles 37 and 40 relating to juvenile justice, sets out the theoretical background of the research. Although ascertaining international standards of 'a comprehensive juvenile justice' seems straightforward, thorough thought and periodical literature searching, specification of sources and techniques are implied. Obviously, the information generated was under various formats. There are conventions, rules, principles, papers, textbooks, articles, conference papers, and so on. Beside the form, information differs in content, as it ranges from considering very specific issues to broad elements of juvenile

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<sup>413</sup> John W. Creswell, *Research design: Qualitative, quantitative and mixed methods approaches*. Los Angeles: Sage. 2009, p. 213

<sup>414</sup> Onwuegbuzie & Johnson, 2004, p.24

justice, from being full of legal and technical language, to general information. The huge spectrum of literature made necessary a division of the identification process *per se* and aftermath on the location sources. Such a technique was made imperative because of the fact that, when research started in 2003, the CRC framework and juvenile justice as issues were not considered of high interest to be placed on the agenda of web resources. At the beginning, the process of identifying and locating the most appropriate material for research was a daunting one. However, the literature search was performed periodically, aiming to fill every little gap of information left emptied. Thus, it was noticed that over the last three years, more literature has become available on juvenile justice topics. Nowadays there is a proliferation of studies and analyses of juvenile justice from a global perspective, providing a picture of juvenile systems worldwide. To a certain degree, this research has made an effort to highlight many of them.

A principal source for text and official interpretation of the CRC, guidelines and principles, is the UN Official Documents System available at [www.un.org](http://www.un.org). In addition, the work of the UN Committee on the Rights of the Child was followed systematically, including all the publications.

As a result of the different formats represented, a two-tier system of information was constructed regarding the literature related to juvenile justice. The first tier included printed books, articles published in academic journals, international documents, and academic databases. A keyword search was submitted to five published literature databases, selected according to the framework of literature provided: Applied Social Sciences Index and Abstracts (ASSIA); Google Scholar; ISI Web of Knowledge; JSTOR; and Westlaw UK.<sup>415</sup> Although the search identified materials published between 1992 and 2008, the information did not include sources to satisfy the enquiry on child justice issues. Different keywords with a similar meaning were chosen in order to generate the required information. The literature was limited in terms and authors and did not offer any specific practical comment on international standards, especially on dissemination of core elements of the juvenile justice system. 'Tracking' citation and associating individual authors would generate crucial information in this component. In the second tier, the review was broadened by considering publications of well-known international governmental and non-governmental organisations

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<sup>415</sup> Respectively <http://www.csa.com>, <http://scholar.google.co.uk>, <http://isiwebofknowledge.com>, <http://uk.jstor.org>, <http://www.westlaw.co.uk>

operating in the field of child rights, juvenile justice and grey literature (Table No.2). As the NGO is child-focused, it tends to generate information more specific to juvenile justice. Generally it provides forums and newsletters, which facilitate the periodical research, as there is notification about new materials included in the database. In addition, there is also access to an electronic database for the purpose of tracing further sources of information available. The sheer volume of literature derived by using the second tier made it inevitable that there would be some exclusions and careful consideration was given to whether the items were credible and met at least minimal standards of academic research. Because of relevant information and analysis found in sources of second tier, in the form of traditional academic publications or reports, it was more accurate to think of a research task as a 'review of existing knowledge in practical terms', rather than a review of literature per se.

**Table No.3: Non-Governmental Organisations and details**

<i>Non-Governmental organisations</i>	<i>Details</i>
Office of the United Nations High Commissioner for Human Rights (OHCHR)	<a href="http://www.ohchr.org">http://www.ohchr.org</a>
United Nations Children's Fund (UNICEF)	<a href="http://www.unicef.org/">http://www.unicef.org/</a>
UN Office on Drugs and Crime (UNODC)	<a href="http://www.unodc.org/">http://www.unodc.org/</a>
UN Development Programme (UNDP)	<a href="http://www.undp.org/">http://www.undp.org/</a>
Committee on the Rights of the Child	<a href="http://www2.ohchr.org/english/bodies/crc/index.htm">http://www2.ohchr.org/english/bodies/crc/index.htm</a>
Defence for Children International (DCI)	<a href="http://www.dci-is.org/">http://www.dci-is.org/</a>
Save the Children UK	<a href="http://www.savethechildren.org.uk/">http://www.savethechildren.org.uk/</a>
Juvenile Justice Panel	<a href="http://www.juvenilejusticepanel.org/en/">http://www.juvenilejusticepanel.org/en/</a>
Child Rights Information Network (CRIN)	<a href="http://www.crin.org/index.asp">http://www.crin.org/index.asp</a>
<u>European Forum on Juvenile Justice</u>	<a href="http://www.eurojuvjustice.org/en.html">http://www.eurojuvjustice.org/en.html</a>
UNICEF Innocenti Research Centre	<a href="http://www.unicef-irc.org/research">http://www.unicef-irc.org/research</a>
International Juvenile Justice Observatory	<a href="http://www.oijj.org/home.php">http://www.oijj.org/home.php</a>
No Kids Behind Bars	<a href="http://www.kidsbehindbars.org/english/index.html">http://www.kidsbehindbars.org/english/index.html</a>

Addressing the CRC framework involved determining the meaning of each paragraph of Articles 37 and 40. The main framework was the result of carefully reading binding and non-binding international instruments, whose comprehensive and detailed nature provided the necessary information to create the legal aspect of each relationship. Academic literature

provided more theoretical grounds and considered what the relationship of children with each authority might look like. The reports resulting from the second tier offered a general picture of how such relations were taking place in practice and helped in creating the framework for design of research in practice.

All literature was included in the review if it contained information on international juvenile justice systems and practices. Inclusion was warranted where studies were able to satisfy four key criteria, namely:

- the study was published or written between 1992 and 2008;<sup>416</sup>
- the intervention in the study is focused on juvenile justice systems;
- the intervention in the study can be classified as a programmed or practice;
- the study is about implementing international standards of juvenile justice systems.

The choice of these inclusion criteria reflected the finite resources and limited time available to carry out the review. Bearing in mind the shortage of literature on theoretical discussion of standards and norms, and the opening date for the ratification of the CRC in 1989, 1992 seemed a realistic start date. Secondly, it felt appropriate to focus on interventions with juvenile justice systems as a distinct goal. The third question was included so as to target policy-useful studies and to eliminate interventions that have not as yet come to be accepted as a program or practice. The fourth criterion intended to identify studies addressing implementation of international standards in the juvenile justice system.

**3.2 Approaching the juvenile justice system in Albania.** The first research question required an in-depth policy analysis, which involved the analysis of public policy papers regarding juvenile justice, mainly available from the Albanian government. Although such practice is straightforward and fairly well established in developed countries such as the UK, it is not the case in Albania. It should be noted that in providing an analysis of policies, there are implicit assumptions about the operation of state institutions in western democracies that cannot be applied to Albania. The following paragraphs briefly discuss some of the more obvious obstacles, which had significantly influenced the methodologies chosen to answer the question.

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<sup>416</sup> 1992 was the year in which the CRC entered in force. 2008 is the limit to which this thesis provide information



**3.2.1 Access to information in Albania.** There is little reason, in principle, why a researcher cannot gain an understanding of a governmental policy. Clearly, printed materials intended for public dissemination should sufficiently establish what processes lay behind the juvenile justice policy in Albania. But there are clearly great practical difficulties, particularly in the context of a developing country such as Albania, that help account for the dearth of such information. It is known that state information is very carefully controlled. The right to information in Albania is guaranteed by Article 23 of the Albanian Constitution and Law No.8305, date 30.06.1999, 'On the right to information over the official documents'.<sup>417</sup> Everyone has the right, in compliance with law, to obtain information about the activity of state organs, as well as of persons who exercise state functions. Despite the law, however, individuals may face a 'gagging order' like the one issued in August 2002, but never publicly disclosed, which banned senior civil servants from providing any official information to the media.<sup>418</sup> Although the Albanian Prime Minister officially revoked the gagging order five days before the Constitutional Court was due to consider a challenge to its legality, brought by media and human rights groups, it is not possible to know of internal orders that circulate within the departments.

Access to governmental institutions in Albania is regarded as particularly difficult as they are considered in nature 'elite', and 'establish barriers that set their members apart from the rest of society'.<sup>419</sup> As a result of the restrictions of such access, it is necessary to approach subjects well in advance, and in a formal way, to gain approval from multiple gatekeepers prior to gaining direct contact with potential informants. Despite the difficulties, personal contact offers advantages to 'work your way to the top', by getting to know people who already have contact, or for whom contact would serve certain interests.<sup>420</sup> Thus, an Albanian gatekeeper, when requested to provide information, will consider how far the researcher will ensure confidentiality and whether they will trust them not to reveal their information sources. The crucial factor in the decision to agree to cooperate is the personal relationship and the confidence in the author's ability and probity as a researcher. A second useful tool to

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<sup>417</sup> Day of General Discussion, Working Group 1: The child's right to be heard in judicial and administrative proceedings 'Some difficulties arising from Article 12 CRC', *UN Committee on the Rights of the Child* [http://www.crin.org/docs/GDD\\_2006\\_IAP\\_Discussionpaper\\_1.doc](http://www.crin.org/docs/GDD_2006_IAP_Discussionpaper_1.doc), 2006, (access on 25/01/2008)

<sup>418</sup> Please visit for further details <http://www.justiceinitiative.org/activities/foifoe/adv/albania2>

<sup>419</sup> Rosanna Hertz, and Jonathan B. Imber, 'Fieldwork in elite settings: Introduction', *Journal of Contemporary Ethnography*, Vol.22, Issue 3, 1993

<sup>420</sup> Robert J. Thomas, 'Interviewing important people in big companies' *Journal of Contemporary Ethnography*, Vol.22, Issue 1, 1993, p. 86

gain access would be the 'reciprocity'. 'Reciprocity' is meant to describe an Albanian gatekeeper's intention to respond to research issues that interests them, background work and knowing at least some of the pressing issues are important.<sup>421</sup> In the course of negotiating access, making clear the goals of study and the conditions for doing the research from the 'outset' would facilitate such access. Whereas compromise, in terms of timing of the release of the study, was necessary, and officially promising to provide the organization with a copy of study findings, no compromise was agreed on the contents of the study. The compromise regarding the notification about the release of the research was prompted by Albanian practice. The most common way to find out that organizations have been involved in a study through the media, especially when negative aspects have been found. Overall, agreement to co-operate is usually decided based on minimal use of resources or strong protection of the identity of the gatekeeper. Even if official information is used, once that research is published and contains 'negative' comments, researchers may find themselves confronted by the same institution that provided the information.

**3.2.2 Data limitations.** Such limitations undoubtedly inhibit research. In order to protect every child deprived of liberty against any form of violence, comprehensive and high quality information about juvenile justice systems, institutions, and regimes is imperative. To scrutinise juvenile justice systems in a scientific way requires information to be widely available, not just to government officials and policy makers, but also to those such as NGOs, academics and, importantly, the general public. National policies and legislation on children in conflict with the law are improved if based on reliable and publicly accessible data. Thus, regularly produced local statistics on the number of minors who have allegedly committed a crime, or number of minors sentenced by the court and sanctions imposed, for example, may be an essential ingredient for constructing baseline amendments on policy followed and assessable outcomes. Ideally, disaggregation will be sufficiently rich to support analysis of displacement effects so that a full picture of the impact of an intervention can be established. However, in Albania the resources are simply not available for such routine collection of statistics. Data limitations in Albania are often severe and the picture is complicated by different, not necessarily compatible, sources of data. There are currently studies that have been produced by local non-governmental organisations, providing some data, but much of it is either out of date or has no clear indication on the methodologies followed.

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<sup>421</sup> Susan A. Ostrander, 'Surely you're not in this just to be helpful': Access, rapport, and interviews in three studies of elites, *Journal of Contemporary Ethnography*, Vol.22, Issue 1, pp. 7-27, p.25

**3.2.3 Source Data** Three agencies are primarily responsible for the production and dissemination of data covered by the juvenile justice system in Albania: INSTAT, the Ministry of Justice (MJ), and the Ministry of Interior. The dissemination of most data is carried out as a public service. As provided by law, INSTAT is required to collect, process, and publish statistical results in compliance with the National Statistical Program (NSP) and in accordance with international standards.<sup>422</sup> By law, all statistical information collected by INSTAT is confidential and can only be used or published in aggregated form and on an anonymous basis. Staff are subject to fines and other administrative sanctions if confidential data is revealed. Individual data cannot be used for purposes of fiscal control, economic repression, or juridical investigation. The Law of Statistics renders it obligatory for all institutions comprising the public sector (general government and public enterprises), as well as private enterprises with 10 or more employees, to report statistical information to INSTAT as part of the NSP. The MJ collects data from the judiciary system, including the military court, disseminating it according to age, gender, penal offences, and contraventions for each category. The MPO collects data on crimes and reported individuals, disseminating it according to offences and contraventions, including a subcategory for juveniles. All three agencies currently disseminate data through various publications, which are available with and without charge by subscription.

**3.2.4 Statistical Techniques.** Incomplete or weak source data means that estimates have to be made to compile real and external sector statistics and socio-demographic indicators. Data on births and deaths from the vital registration offices are adjusted for consistency with other demographic indicators; population is estimated on the basis of statistics on live births and deaths and assumptions on migration flows. With regard to the provision of information that allows users to assess aspects of the quality of data, there is no methodology followed to publicly disseminate criminality data. Furthermore, INSTAT nominates the Ministry of Interior as the source of information for judiciary data (data on the penal cases revised by three court levels), while MJ already publishes its annual statistics. Although the Albanian authorities have placed considerable emphasis on articulating principles and establishing practices with respect to data integrity and access to the data by the public, they do tend not to be respected in practice. Only a few governmental institutions have access to special

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<sup>422</sup> INSTAT, the national statistical agency of Albania, operates according to Law No. 7687, date 16.03. 1993 'On Statistics', and Council of Ministers Decision No. 97, date 15.03.1994. 'On Organization and Functioning of the Albanian Institute of Statistics.

statistical bulletins published by INSTAT and MJ, and there are no press releases to inform when data is available. Another issue relates to the utilization of the internet as a dissemination mode. Computerization and the launch of web pages for INSTAT, MJ, MPO and the main courts in the country, is a significant step towards a more transparent justice system in Albania. However, the quality of data and quantity of material available online is a subject of concern because of the lack of periodical updating. Apart from this, much remains to be done to properly offer the data at a scientific level. Thus, the institutions need to establish internal rules as well as create structures to respond diligently to requests for timely access and long-term databases. The second issue is related to accessibility of internet pages that do not run continuously and tend to have connection problems.

**3.3 Administration of juvenile justice in Albania.** Taking into consideration obstacles to be encountered in accessing information in Albania, it was considered necessary to build a combination of primary and secondary information sources. *Primary information* consisted of statistical data, drawn from official sources and statistical reports produced by the MJ, INSTAT and MPO, together with reports from UNICEF, the initial report of Albanian implementation of the CRC, Children's Human Rights Centre of Albania, International Centre for Prison Studies at King's College of London,<sup>423</sup> and any other official source. *Secondary information* was collected through the establishment of contacts and by conducting qualitative interviews with those involved in the policymaking process at the MJ and non-governmental organisations, such as UNICEF Albania, Children's Human Rights Centre of Albania (CRCA) and Albanian Helsinki Committee. Both sources provided combined information and assist in clarifying and identifying gaps and issues of concern such as:

- The status of the Albanian legislation related to juvenile justice within the Albanian context
- Status of criminal codes and criminal procedure codes and other relevant legislation;
- Other existing policy documents: police guidelines, codes of conduct;
- Current initiatives/law reform under way or planned;
- Conformity of Albanian legislation to international standards given in key international documents regulating the juvenile justice;
- Knowledge within the juvenile justice organisations and gaps;

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<sup>423</sup> The International Centre for Prison studies (ICPS) entered into an academic partnership with the University of Essex in 2011 – moving from its based at King's College, London

- Juvenile justice policy: the roles of different state bodies in the administration of the juvenile justice system;
- The process, respective roles and responsibilities of governmental bodies (police, court, prison, etc), and specific issues of concern;
- Routine data-gathering, monitoring and analysis arrangements;
- Co-ordination between agencies and overlapping;
- Resource allocation.

Collection of data on *primary information* was an on-going process involving periodical searches on the website of the entities provided in Table No.4:

**Table No.4: Database on Albanian information**

	<i>Details</i>
INSTAT	<a href="http://www.instat.gov.al">www.instat.gov.al</a>
European Source book of Crime and Criminal Justice Statistics.	<a href="http://www.europeansourcebook.org">www.europeansourcebook.org</a> .
TransMONEE 2006 Database, UNICEF, IRC, Florence.	<a href="http://www.unicef-icdc.org/resources/transmonee.html">www.unicef-icdc.org/resources/transmonee.html</a>
International Centre of Prison Studies, King's College London.	<a href="http://www.prisonstudies.org">www.prisonstudies.org</a>
Ministry of Public Order of Albania.	<a href="http://www.moi.gov.al">www.moi.gov.al</a>

The collection of data on *secondary information* went through three stages:

- **First Stage:** problem identification and interview schedule outline;
- **Second Stage:** scheduling of appointments and interviewing, collection of statistical information;
- **Third Stage:** data processing;

An interview schedule was used to collect primary information through individual interviews. The interview schedule consisted of 22 questions (*Appendix 2*) related to legislation, its implementation, evaluations studies, treatment of juveniles in detentions centres and new policy initiatives. The problems identified, and recommendations of the Committee on the report of Republic of Albania, as well as problems identified by alternative reports of the NGO in Albania, were utilized to design the questions for the interview schedule. Furthermore, the questions were aimed at drawing information on policies, procedures, and

criteria used in decision-making, emphasising the use of research and evaluation of current policies.

The interviewees were located in three levels: Governmental, international organizations, and non-governmental organizations. The three levels represented the three main actors responsible for the implementation of the CRC (See Chapter 2 for how the CRC is enforced). The sample of specific individuals interviewed was selected through discussion with respective agencies. The criteria used for selection of respondents, especially of non-governmental organizations, was the length of time in service, contribution and involvement in policy drafting, as well as availability and willingness to participate. Access at governmental institutions was facilitated through presentation of the interview schedules and preconceived information, clearly detailing the aims of the research. Previous work on government departments contributed with the necessary information about the governmental environment and skills to communicate with such entities. This approach has provided the dataset provided in Table No.5:

**Table 5: Summary of Policy makers and government departments addressed**

Ministry of Justice	
- Head of the Judiciary Service	1
- Unit of Juvenile Justice	2
Directorate of Prisons	
- Unit of Social Problems	2
Ombudsman	
- Officer dealing with children's rights	1
International Organisations	
- UNICEF	1
- Albanian Helsinki Committee	1
Non-Governmental Organisation	
- Children's Human Rights Centre of Albania	1
- Legal Clinic for Minors	1

Discussing and sharing knowledge on the issues with the respondents yielded a two-way benefit. On one hand, the participation increased the possibility of a respondent participating to research and providing positive feedback when responding to the question of interview

schedule. On the other hand, it increased the cooperation of a respondent when providing information about workshops or other initiatives. The documents, collected in this way, were not 'private'. The majority were studies or conferences, seminar materials and reports accessible to public, but were not published in mass media were not accessible because of a lack of available websites. Whenever such documents became available, it was important to clarify the possibility of their use in terms of quotations or citations. In most cases, no restrictions were imposed.

Although a qualitative interview schedule was presented, the questions were designed to be 'wide' in order to explore different aspects of policy. Such an approach allowed for flexibility in the order and time of the interview schedule; this encouraged two-way communication by allowing questions to be answered by the respondent, providing not just answers but also the reason for answers. Besides gathering important information, the methodology chosen introduced issues that were not previously anticipated. Interviews were conducted face-to-face, usually in the office of the respondent or in an available meeting room, with notes being kept.

The decision to conduct field research was twofold. Firstly, as mentioned before, this is an implementation research study and, as such, takes into account the agents' role and whose interest they serve whilst implementing the policy. Secondly, it was considered important to conduct fieldwork to acquire a deeper understanding of implementation agents and actors involved in the system. Since the data was demonstrating weaknesses by not being complete and disaggregated, comparisons and conclusion based only on the data was felt to be appropriate.

Conducting the field research would raise the most significant and complex methodological and ethical challenges faced during the course of this research project. The first stage was related to the identification of participants. Hearing only the voice of children and young people within the Albanian juvenile justice system was not deemed satisfactory to the aims of the research. To fulfil this task it was necessary to have knowledge of all actors. This would lead to the second stage, that of finding a definition of juvenile offenders in Albania and finding out the role of each governmental institution in the system. Resolving these questions led on to the third stage; that of conducting a separate programme of qualitative interviews with each group of actors specified. Before discussing techniques and procedures applied to

each stage, it should be noted that the empirical study, with its evaluating character, focused primarily on the situation of children deprived of their liberty, omitting considerations of prevention and administration of justice, which are the other key concerns of the international standards and norms.

**3.3.1. Participants.** Once all agents were identified they were grouped into three principal sets of participants:

- 1) Juveniles deprived of their liberties; ranging from those who have just been adjudicated to those who are in the last stages of their incarceration period. [Sample A].
- 2) Criminal justice professionals and practitioners who are responsible for dealing with juveniles, comprising prison directors and custodial staff plus other specialised staff, including social workers and education workers. [Sample B].
- 3) Lawyers, judicial police, prosecutors and judges who are responsible for framing legislation, and setting and monitoring standards within the Albanian juvenile justice system [Sample C].

The criteria used for such selection were based on the role of actors within the juvenile justice system. Thus, Sample A covers those to whom regulations are applied; Sample B covers the agents who are responsible for the administration of rules related to deprivation of liberty, and Sample C is responsible for framing the legislation during the pre-trial, trial and sentence of young offenders.

**3.3.2 Research Methods.** The empirical research method was adopted as a match to the aims and focuses of finding out about the practical aspects of the system, discovering the concerns of persons involved in the system, and understanding how the juvenile justice system works from the inside.

**3.3.3 Data collection techniques.** In selecting the technique to collect the data, factors including access to information, time frame, and financial means were considered. The time available for the collection and analysis of empirical data was six months, and the researcher provided the financial resources. The process that seemed more likely to ensure maximum access, relevance, and accuracy of information within the time and financial frame of the research was qualitative content analysis provided through an interview schedule. The



interview schedule was drafted using parallel quantitative closed questions and qualitative open-ended questions. Incorporating closed questions offered the opportunity to gain a limited set of response categories and ask each respondent the same set of questions in order to ensure comparability of the data. The closed question aimed to evaluate the enforcement of legislation by the quantitative strand of the research,<sup>424</sup> while the open questions allowed for more flexibility to digress and to probe, based on interactions during the interview. Such an approach was deemed particularly useful to gain a better understanding of how juvenile justice operates from the perspective of actors involved within it, by the qualitative strand of the research.<sup>425</sup> Such an approach provided greater breadth and depth of information, the opportunity to discover the respondent's experience and interpretation of reality, and access to people's ideas, thoughts and memories in their own words rather than the author's, but at the cost of a reduced ability to make systematic comparisons between interview responses. Furthermore, the use of such techniques required the active and visible engagement of the researcher to create an authentic dialogue with the interviewer, which was important, especially for Sample A. To this end, four drafts were discussed until the interview schedules reached their final versions. In addition, a preliminary stage was used, both to try out the interview schedule and the interviewing process. The researcher already knew the practitioners and authorities consulted in the preliminary stage. For this reason, they responded swiftly to the request for cooperation in the project and were willing to provide assistance. Regarding the Sample A interview schedule, views were sought from the juveniles in a low security prison, which provided a more relaxed and friendly environment, and facilitated the building of communication. In relation to the question of whether conducting semi-structured interview schedules was an appropriate way to elicit the quality of information sought in the context of the research presented, the outcome of the preliminary consultation was positive. In addition, the distribution of open and closed questions within the interview schedule was made in a way so as to not influence the answers of participants and to ensure a dynamic participation.

**3.4.4 Sampling.** The investigation of large samples was impossible because of time and money limits. Therefore, purposive sampling was designed to generate a sample that would

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<sup>424</sup> Abbas Tashakkori, and Charles Teddlie, 'The past and future of mixed methods research: From data triangulation to mixed model designs', in *Handbook of mixed methods in social & behavioral sciences* eds A. Tashakkori & C. Teddlie. Thousand Oaks, CA: Sage. 2003b (pp. 671-702)

<sup>425</sup> Ibid

address the research questions.<sup>426</sup> The samples were purposively chosen to ensure a variety of characteristics of categories that were going to be involved. For the size of juvenile sample (Sample A) and penitentiary personnel sample (Sample B) a theoretical sampling was chosen, leaving the sample to evolve of its own accord as data was being collected. The size of legal sample (Sample C) was defined to correspond to representation of the system as closely as possible. It was calculated that an average of 50 interviews would be a reasonable number, depending on the willingness of persons contacted to participate in the research. The sampling frame for each category of participants is provided below.

**3.4.5 Data content.** The first step was to construct a set of questions that took into consideration the central aims of the research, as well as the social and demographic characteristics of the interview sample. The three interview schedules were designed to gather information on similar issues from two contrasting sets of perspectives – juvenile and adult, while drawing on a variety of occupational groupings to provide a more rounded picture concerning both the formal aspects of the system and the reality as experienced by those subject to it. Both the order of the questions, and the level of language, was adapted to the samples to promote rapport between interviewer and interviewee. Starting with a brief list of demographic questions, the interview schedules were designed to cover identical issues related to:

- a) Pre-trial safeguards; notify the parents, guarantee the basic procedural safeguards.
- b) The rights of children during the determination of criminal charges; right to a fair trial.
- c) The rights of children deprived of their liberty.
- d) Knowledge of international law, norms and standards.
  - Accommodation
  - Clothing
  - Hygienic conditions
  - Food
  - Discipline
  - Medical and social services
  - Educational programmes
  - Relations among the staff and children

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<sup>426</sup> Charles Teddlie and Fen Yu, 'Mixed methods sampling: A typology with examples', *Journal of Mixed Methods Research*, Vol., Issue 1, 2007

- Relations to fellow inmates
- Contact with the family
- Contacts with the outside

As interview schedules covered the everyday life or everyday work experiences, it enabled the participants to willingly participate and to fill the forms in with care.

Once the Research Ethic Committee at the University of Sheffield approved the fieldwork, a strategy to approach each sample was drafted. The research was carried out over a four-month period from October 2006 to January 2007. It should be noted that the samples were purposive, and therefore the size was completely specified at the outset to fit the needs of the research. Once the target was identified, an interview was conducted through an interview schedule, which generated the following data, summarised in Table No.6:

- o Sample A: From 44 children/juveniles contacted, a total of 42 responded, resulting in a return rate of 95.5%.
- o Sample B: From 25 staff of institutions contacted, a total of 24 responded, resulting in a return rate of 96%.
- o Sample C: From 55 legal services (judges, prosecutors, judicial police, attorneys) contacted, a total of 50 responded (the target set) resulting in a return rate of 90%.

**Table 6: Interview with each Sample**

Juveniles	Director of prison	Educational – Social Personnel	Guarding prison officers	Judges	Prosecutors	Judicial Police	Attorneys
42	3	11	10	13	10	15	12

### **3.4 Overview of Sampling Technique.**

**3.4.1 Sample A: Juveniles deprived of their liberty.** It is widely recognized by national or international researchers that Albania is deficient in reliable statistical background information (see point 3.3.2).<sup>427</sup> In order to determine the potential size of Sample A, a preliminary survey took place to ascertain how many young people are currently held in detention in Albania. As there was no clear indication of the court cases involving juveniles, and no national juvenile court data archive, the research process began by collecting data

<sup>427</sup> For further reading please refer to UNDP: Country programming and related matters, Country program document for Albania 2006-2010 [www.undp.org.al/download/cpd/cpd.pdf](http://www.undp.org.al/download/cpd/cpd.pdf) Please see paragraphs 3, 19, 23

from the detention centres and police stations and identifying the number. It was initially agreed that in the case of figures lower than 100 persons, all young people serving a custody disposition were going to be approached to participate in the study. In the case of figures surpassing 100 persons, the researcher was going to make the necessary statistical calculation to ensure a sufficiently large sample that was also adequately representative for the purpose of drawing meaningful conclusions.

**Sampling.** To meet these ends a preparatory phase was designed, with specific steps to be undertaken. Initially, a request for formal permission/authorization for permission to visit the detention facilities was presented to DGP through the Public Relations Department. The request included an outline of the research, a brief summary of the survey, and the interview schedule. Furthermore, it requested clarification on the number of young inmates held in detention to ascertain the number of detention facilities and the number of young inmates housed in each of them. Once the General Director of Prisons reviewed the request, permission was granted to visit two facilities: Institute of Re-education Vaqarr – Ordinary Security Prison and Reprimand Institution No. 313 – Supreme Security Prison. The Institute of Re-education Lezhe was excluded from the list because of major construction work being undertaken within the facility. The director issued the permission to visit Institute of Re-education No. 325 – known as Women Prison, because of its classification by law as Low Security Prison. Further to this permission, detailed information was provided on the number of young inmates held in detention (*Appendix 3*). There is no figure related to Reprimand Institution. Furthermore, there were no juvenile offender figures on Women Institution No.325 and in Vaqar there were 21 young offenders. Sampling and conducting the interview schedule presented a challenge and required drastic measures to be undertaken. It was clear that sampling would involve tackling the following issues:

- a) Categories of 18-21 year olds; if there was any young person sentenced as a juvenile;
- b) Sorting out the figure of juveniles in reprimand institutions; looking for the possibility to involve other pre-trial centres other than Institution 313;
- c) Trying to involve all the younger people within each facility.

The first issue was tackled during the initial visit at the women's prison and after in Vaqarr. Request was presented to the Director of the women's prison to involve all the persons detained at the institution that were sentenced as a juvenile in the research. At Vaqarr, the

situation was different because of the MJ order on continuing to keep the detainees over 18 years old who were sentenced as juveniles separate.

The second issue, increasing the number of pre-trial facilities, was not possible because of an administrative issue. The law stipulates that the management of prison systems and pre-trial detention facilities is the responsibility of MJ. In spite of this, the process of transferring the custody of remand prisoners was not yet completed when the research took place. Despite being under the management of MPO, receiving permission to visit the juveniles in pre-trial facilities was also a legal challenge. In order to interview a juvenile, who has been declared under arrest or apprehended pursuant to an arrest warrant without appearing to a court, it is necessary to get permission from the prosecutor responsible for the case. The number of juveniles in reprimand at Institution 313 would be clarified in two steps; request statistics from Ministry of Justice and observation during the visit. Table No.7 presents the differences between figures collected by both sources on the respective age categories of juveniles. As result of steps undertaken, the figures for each approached institution resulted as follow:

**Table 7: Juvenile in detention during November 2006**

Institution	14- 18		18-21	
	Official Figure*	Actual Figure**	Official Figure	Actual Figure
No.325 (women)	0	0	12	5
Vaqar	21	15	9	8
313 (reprimand)	0	25	0	1
<b>Total</b>		<b>40</b>		<b>14</b>

\* Official Figure given from the General Directorate of Prison

\*\* Number of juvenile resident in respective institution at the time of research.

Having passed the principal 'gatekeeper' (GDP), several meetings with the heads of identified institutions were arranged in order to ensure that they, or an appropriate deputy, would be available and that there was a suitable venue in which to conduct the interviews. An important part of the concept was the execution of the survey for juveniles in a friendly environment, which needed to be as relaxed and as private as possible, and adequately supervised without infringing on the anonymity or confidentiality of the response. In practice, library facilities were used within each institution, guaranteeing the non-presence of staff but

also being under supervision for any eventuality. Furthermore, the issues of personal safety would also be discussed with the head of the institutions. As a result of their situation, the interviews with the young people were conducted within the incarceration system. Although the vast majority of young people interviewed were housed in low security institutions, where any threat for security was relatively minor, prior information was sought if any grave or violent behaviour or action could be expected from the young people.

***Conducting the interviews with the young people.*** The young person was included in the research only if they had given their valid consent. The information sheet (***Appendix 4***) aimed to provide the participant with a detailed account of what was going to happen to them, what was going to happen with their information and when the research would be completed, using language that should be easily understood by young people aged 14-18 years old. In addition, it was made clear to the young people, prior to their participation, that they had an explicit right to refuse to participate in and/or to withdraw from the research at any stage, that this right would be respected, and no one would be informed about the decision. In case of non-consent, informal discussions continued, leaving no room for any official or other young person to deduce that no interview took place. Once access was granted, the young person's information sheet was presented to the potential respondent. Any questions were answered and any concerns were addressed before consent was sought (***Appendix 5***). Only when a young person had freely given their consent were they invited to answer the questions specially designed for them on a semi-structured interview schedule (***Appendix 6***). Prior to the interview, each participant's official file would be coded for a wide range of information, ranging from socio-demographic variables to identification of police station, court, and defence solicitors. The information would be used to identify the sample of the other two groups of participants, that of a defence solicitor or barrister and judges. Taking into account the age of young people, their level of education, privacy and possibility for misunderstanding questions, it was deemed necessary to drop the self-completion option and administer the interview schedule.

***3.4.2 Sample B: prison director and custodial staff plus other specialised staff, including social workers and education workers.*** The interview schedule focused on the application of the international standards and norms for children deprived of their liberty. The principal aim was to seek a view in terms of their level of execution; in particular, their use and application by personnel in places of safety and prison personnel in the relevant institutions. There was

no obligation for member states to implement UN Standards, such as the JDL, into their national legislation. Therefore, the recommending and non-binding character of the JDL justified the approach chosen in this research; focal points were the staff of prisons and places of safety (detention centres for children awaiting trial) and their acceptance of the JDL, as a target group in the implementation field.

**Sampling:** Staff in Albanian prisons are divided into two sections; the civil section and police section. The police section supports the civil section. The civil section is organised in a management unit (director and vice director), educational unit (educator and librarian), health unit (doctor and dentist), support unit, and finance unit. Only recently in the structure, because of international pressure on the Albanian Government to respect human rights, has a social unit been introduced. Currently, one social worker is hired in the social unit. The police section is organised with a Head of Police (who organises, controls and is responsible for the work of two inspectors); the External Inspector Police (who is responsible for the security of prison territory inside and outside the prison); and the Interior Inspector (who is responsible for the protection and security of the prisoners). For the purposes of the survey, the only sections involved were management, social, health, and educational units of the civil sector, and all the components of the police sections. The criterion used for selection of respondents was length of time in service and involvement with juveniles, sex, and availability and willingness to participate. Table No.8 provides details on the numbers of persons involved for each respective section.

**Table 8: Official position of sample B**

Director	Educator	Legal Service	Social Worker	Psychologist	Custody Officer	Chief of Custody Officer
3	3	1	6	1	5	5

**Conduct the interview with Sample B.** The interview schedule was distributed and collected once the session within the regime terminated. The longer form of interview schedule (*Appendix 7*) sought views only from the director of institutions because of its length and technical questions. Two shorter versions with specific questions were designed for social and educational workers (*Appendix 8*) and police sections (*Appendix 9*). The benefit of this method was related to gaining access to information where persons were expert and securing their participation. The information sheet (*Appendix 10*) aimed to provide the participant with a detailed account of the research. This technique produced a sufficient response rate to

make it viable for a multivariate quantitative analysis. Although the number of participants may appear low, almost all such responses contained the crucial answers regarding the educational programme, medical, and social programmes and treatment of juveniles in prisons. Moreover, conducting the interview schedule with young people within the institution's regime offered the unique opportunity to explore the prevailing factual situation. Thus, the author was able to evaluate the responses of Sample B by observing them in their daily activity. The response rate was consequently viewed as a success as it finally afforded the author some first-hand information from the personnel perspective.

**3.5.3 Sample C: Lawyers, judicial police, prosecutors and judges.** It was particularly beneficial for this project to ascertain the views not only of those responsible for formulating the policy, but also those charged with administrating the legal framework and implementing them in practice, including their attitudes towards the Albanian juvenile system and imprisonment of juveniles, international norms, standards of children and service, and points which need intervention. In this stage, judiciary police, prosecutor lawyers and judges were approached and invited to participate in the research.

**Sampling.** With regard to sample size, the study aimed to interview around 50 people and the interview schedule was distributed in equal number for each category; judiciary police, prosecutors, judges, and barristers. It was not anticipated that there would be a problem of over-participation with any of the categories of participants selected. Generally, in Albania there is a positive attitude towards academic surveys, provided data protection can be guaranteed and respondents are offered feedback with regard to overall findings. Moreover, it was the first time that this category of people was invited to discuss and express their opinion on the issue of juvenile justice.

Gathering the sample presented a challenge, which was resolved by pursuing the following techniques. Albanian first instance courts are organized using a penal chamber and a civil chamber. The penal chamber adjudicates penal offences and contraventions. The penal chamber is organized in penal and military sections. No juvenile sections operated when the research was conducted; such an absence would be reflected on by the organization of the Albanian Prosecutor Office and Albanian Bar Association. Moreover, the representative of the Albanian Bar Association clarified to the author that there was no civil and penal division



on the bar, and no statistics were kept on the area of practice of their members. As a result of a lack of such a division, to approach the right target was becoming problematic.

Aware of the problem, a lot of thought was dedicated from the beginning about ways to resolve it. The first step to be used was during the interview with young people. Information received in confidence is used to identify the initial sample of the defence solicitors, prosecutors and judges. Through this initial network the target group of 'experts', via recommendations and introductions, would be built.

The possibility of directly approaching judges, prosecutors and barristers at the start or end of a trial was excluded because of respect for international standards and norms. Attempts were made on the Tirana District Court with a web page listing the trial schedules. Access to the schedules however, was complicated. It was necessary to have the case name in order to find when the trial was scheduled and access the information requested. While having a decision publicised on the web pages was an improvement, it was unpractical to find out what case addressed a juvenile. Table No.9 provides on the figures for each target group involved.

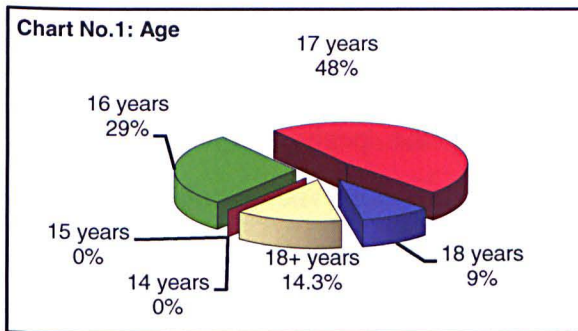
**Table 9: Official position of Sample C**

<b>Judicial Police</b>	<b>Prosecutor</b>	<b>Judge first instance court</b>	<b>Judge appeal court</b>	<b>Attorney</b>
15	10	13	0	12

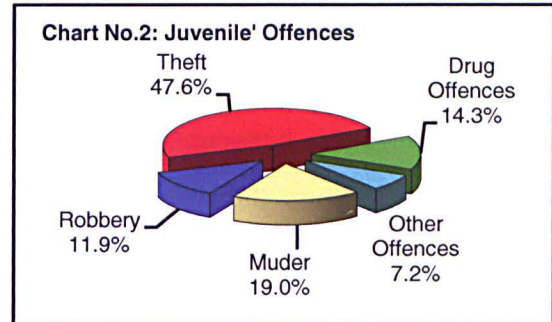
*Conduct the interview with Sample C.* Methodologically, the author employed almost identical techniques for these interviews as had been done when interviewing policy-makers, arranging a mutually convenient appointment. Once the meetings were arranged, the information sheet (*Appendix 10*) was distributed, aiming to provide the participant with a detailed account of the research. If the person agreed to participate, an interview schedule was presented (*Appendix 11*). The author also visited many of the participants in their offices at a convenient time. As a result it was possible to engage in less formal conversation and to gain and share further information.

**3.5 Overview of demographic data for samples. Sample A.** 47.6% of juveniles were 17 years old (Chart No.1). The majority of respondents were male, accounting for 92.2%. Only 57.1% lived in a city at the time they committed their offence(s), accounting for 52.4% in Tirana.

Juveniles were responsible for very serious crimes such as murder and attempted murder, which accounted for 19% of cases (Chart No.2). However, most juvenile offences were

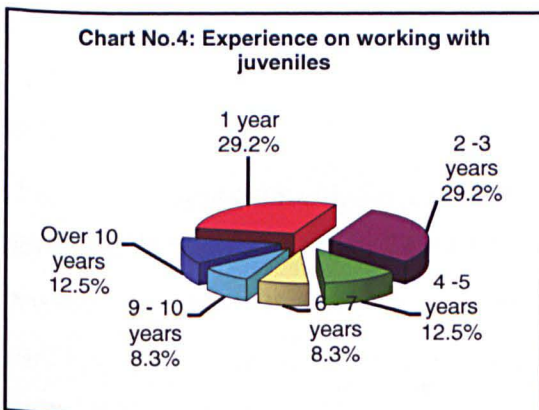
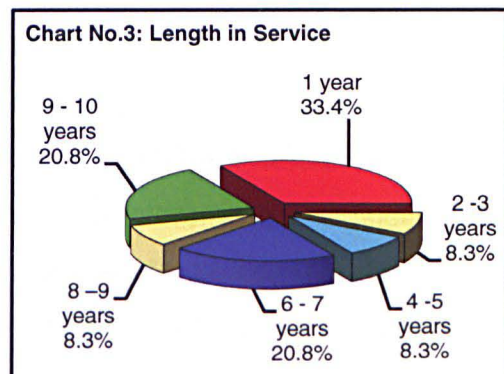


A total of 47.6% of cases were related to theft, while robbery accounted for 11.9% of cases. In addition, 14.3% of juveniles were



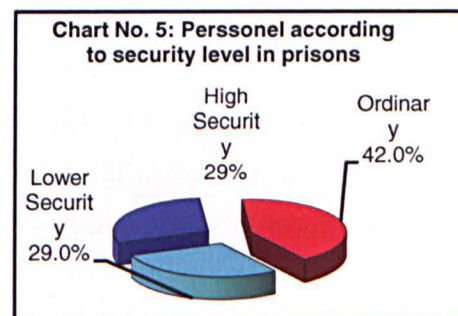
alleged to have committed a crime or were sentenced for a crime relating to cultivation, possession and trafficking of prohibited substances.

**Sample B.** In this sample, 33.4% of people were 30 years old or younger, 20.8% were between 31 and 40, 20.8% were between 41 and 50 years old, and 25% were between 51 and 60. With regard to general population quotas, female personnel were under-represented. However, the survey has noted



an equal representation because of the fact that most females work within the educational service. More than 33.4% of the respondents were on the first year of their duty (Chart No.3), and 58.4% had experience of working with juveniles of less than three years (Chart No.4). While only 4.2% of respondents dealt only with juveniles, 25% of them

were able to deal with both categories of persons deprived of liberty, reprimand and imprisonment. Although 42% of respondents asserted to work in a juvenile section, 29% of them acknowledged that the institution was classified as High Security (Chart No.5). Indeed, the juveniles in pre-trial detention were housed



within an institution that still is labelled as 'high security'. This raised many concerns,

beginning with the violation of international standards and the level of treatment, which would depend largely on the security level of the institution.

**Sample C.** The sample was distributed in such a way to represent in equal numbers all the actors of the various occupational systems (excluding the penitentiary system). The participants covered a wide range of professions, degrees of involvement with young offenders and socio-demographic variables. Of the representative sample, 42% of the respondents were between 31-40 years old, 60% were male, 50% had been working in their current position for more than 5 years, and less than 35% had been dealing with juveniles in conflict with the law for less than 5 years. The sample verified the assumption made before that there is no division between adults and juveniles within the systems.

#### **4. Ethical Issues**

The research involved children and young people under the age of 18. All empirical research was carried out under the title: "Hear Our Voice! Albanian Children in Penal Detention." Hearing the voice of children in the research context involved not only issues of research methodology and opportunities to contribute to research agendas, but also ethics guidelines, such that the need and right to be heard is better met. The issue was not only considered as a tick on the box of respecting the university guidance on ethics or research codes. It was carefully considered for each specific situation and received a specific meaning, involving openness and flexibility to particular circumstances of daily research. The author agreed to discuss and follow up the ethical issues raised on the project.

**4.1 Children on research: the right to participate.** The CRC spells out the basic human rights to which children are entitled: *To speak, to participate, and to have their views taken into account.* These three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract. This is one by which children are fully recognised as rights-holders, who are not only entitled to receive protection, but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders.<sup>428</sup> Moreover, the right of children to receive and impart

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<sup>428</sup> Day of General Discussion, The child's right to be heard in judicial and administrative proceedings 'Some difficulties arising from Article 12 CRC', *UN Committee on the Rights of the Child*

information is an important pre-requisite to realise participation of children.<sup>429</sup> Recognising the right of the child to express views and to participate in various activities, according to their evolving capacities, is beneficial for the child, for the family, for the community, the school, the state, for democracy,<sup>430</sup> and thus does not exclude the research. However, when participating in research, children need to be informed in such a way that they understand their own right to decide whether they wish to take a part, they are enabled to make independent choices, and contribute to the research design throughout the research process.<sup>431</sup> A research practice based on a set of ethical values requires the active consideration of children as fellow human beings and a continual sensitivity to their own emotions, interests and considerations in the varied situations of their lives.<sup>432</sup>

**4.2 Ethics approval.** The first issue arises from the fact that the research was carried out in Albania. Over recent decades, scientific, public, and media interest and anxiety relating to scientific conduct and misconduct have increased. In many western industrialised countries, this has resulted in reviews of arrangements to protect both the scientific community and the public from research misconduct.<sup>433</sup> To prevent misconduct from researchers, official research guidelines are issued from established ethical committees. Ethical guidelines are considered necessary as a way of regulating what the researcher can, cannot, or should not do in certain areas of research. At the same time, ethical frameworks protect researchers from being exploited or put at risk.<sup>434</sup>

When research is planned to be carried out in another country, it is normally an expectation that ethical approval will be sought, via the procedure in place, in the country where the researcher intends to carry out the research. Albania does not have an appropriate ethics review procedure. The country operates a National Ethical Committee. Unfortunately, little information was available on the effectiveness of the committee, or details of where it could be contacted. Furthermore, ethics approval generally involves obtaining the signature of a

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<sup>429</sup> Article 13 of the CRC

<sup>430</sup> Committee 2006

<sup>431</sup> Alan Prout, and Pia Christensen, 'Working with ethical symmetry in social research with children', *Childhood*, Vol 9, Issue 4, 2007, pp.477-497, p.493

<sup>432</sup> Ibid

<sup>433</sup> Richard Coker and Martin McKee, 'Ethical approval for health research in central and Eastern Europe: An international survey', *Clinical Medicine* Vol. 1, Issue 3, 2001, pp.197-199, p. 198

<sup>434</sup> Jason Ferdinand, Geoff Pearson, Mike Rowe and Frank Worthington, 'A Different Kind of Ethics', *Ethnography* Vol.8, 2007

local official from the ministry in which the involved institution is attached.<sup>435</sup> Unable to follow such procedure in Albania, and bearing in mind that it should be proven that the research was sufficiently robust on ethical grounds, an ethics decision was sought, with regards to the project, from the University of Sheffield, School of Law.

**4.3 Confidentiality.** The research was guided by a strict confidentiality agreement (*Appendix 12*). None of the interview schedules required names or data that could lead to the identification of the participants. During the data elaboration, if it was noticed that the participants might be identifiable by the details of the information given during the research, the author reserved the right to change the identifying details of that information in order to preserve the anonymity of the participant. Information given about an individual from a third party was not disclosed during the writing up of the results, nor at any time. The author faced such dilemmas when interviewing young people. The ongoing cooperation of the staff was needed for the project to take place, but the author felt that keeping the promises made to the young people was also vital. The member of staff would usually encourage friendly chats about what juveniles were saying, particularly in relation to the education programmes offered by staff. Making a copy of the interview schedule available to them and changing the discourse to other issues generally resolved the issue. Keeping the promise of confidentiality to children was quite important on the first day of the research activity. It was not possible to permit any single piece of information being passed to staff, as this would have jeopardised the whole process. If the researcher was going to be a “spy”, the respect of the entire group of juveniles would have been lost, as well as those the author was in communication with.

The author was particularly aware of protecting confidentiality when interviewing professionals (Sample B and Sample C). Their opinions and concerns tended to be related to the position in which they were operating as personnel of detention centres, as part of criminal justice or policy making. The important task was not to transmit such concerns to different groups. Another important issue was how the data was stored and privacy on elaborating on it. All electronic initial data was kept on a password file, not on a shared drive, and hard copies were kept in a locked file cabinet, which was accessible only by the author. Data would be destroyed by a specialized agency once the research was completed.

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<sup>435</sup> Cooker and McKee 2001, p.1998

**4.4 Informed consent.** The process of securing ethical approval encouraged the author to think hard about the ethical aspect of conducting qualitative interviews. Such concerns were related to methods used to gain informed consent from participants for the interview itself and the use to be made of quotations. A consent form (for both young people and staff) was used when undertaking the survey (*Appendix 5*). The consent forms aimed to assure participants of the confidential nature of the interviews and obtain permission for the interview. Using recording techniques was considered initially but was later dropped, as it was not permitted within the institutions' regime. Prospective participants in research are generally considered to be entitled to be provided with information about the projects in which they may take part, but that information needs to be presented in a form that is manageable and meaningful to them and within timeframes that suit them.<sup>436</sup> The information forms (*Appendix 4*)- informing the young people and (*Appendix 10*)- informing the staff, provided extra information explaining the purposes and aims of the interviews and clearly informed respondents according to their age about their right to refuse to answer a question or to terminate their interview at any time. Of particular importance to young people, it was clarified in their language that the research hoped to give something back to them. It was not a 'big thing' and would not have a 'sudden' impact, but may act as some contribution to help other children who might be in their position.

An important issue in gaining informed consent is a young person's competency to give that consent. A key factor of a young person's competence relates to when and whether children become sufficiently 'aware' to be able to give their consent freely and autonomously. Thus, the issue to be raised was whether young people were capable of giving valid consent by themselves, or whether it may be necessary for additional consent to be sought from either their parents or guardians, which in this case were the prison authorities as they are acting '*in loco parentis*'. Moreover, seeking consent from the prison authorities risks the possibility that young people might feel coerced into agreeing to take part and marginalize their response. To resolve this issue, the researcher sought assistance from the CRC and Albanian legislation. Article 21 (a) of the CRC stipulates that 'the persons concerned have given their informed consent' which should be considered in context of the right of the child to express their views

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<sup>436</sup> Graham Crow, Rose Wiles, Sue Heath and Vikki Charles, Research Ethics and Data Quality: The Implications of Informed Consent, *International Journal of Social Research Methodology*, Vol.9, Issue 2, 2006,

and have them considered in accordance with the age of maturity of the child.<sup>437</sup> Therefore, the burden of proof is explicitly put on the child. The child's capability is presumed, at least for all children who have reached the legal minimum age of 12.

Article (40(3)(a) of the Albanian Criminal Code titled "*age of criminal responsibility*" which reads:

"A person bears criminal responsibility if, at the time he or she commits an offence, has reached the age of fourteen. A person who commits petty crimes bears responsibility at the age of sixteen."

Under Albanian law, a child finishes obligatory education at the age of fourteen or fifteen years, depending on the age they started school.

Under Law no. 8389, dated 5 August 1998, "On Albanian Citizenship", no action to change the citizenship of the minor aged 14-18 should be taken without the prior consent of the child (Article 5). The law, likewise, stipulates that when both parents acquire Albanian citizenship through naturalization, their child, if they are below the age of eighteen years and lives with their parents, becomes an Albanian citizen at the parents' request, and with the child's consent if they are aged 14-18.

The Albanian legislation, the governmental institutions and the community consider the child a human being that takes an active part in the organization of their life and the surrounding environment in a progressive way, in accordance with their intellect. Hence, under the Civil Procedure Code (Article 356), [the court] must also ask or take account of the minor's opinion when they have attained the age of ten years. However, the capacity of a minor to have their own opinion is supposed to vary in accordance with their development, their ability to reach an understanding of the events affecting them, and the nature and weight of the concrete issue.

Another issue to be taken into consideration was that of participation by young people, the need to obtain consent and to avoid any suggestion of pressure and intimidation. At each meeting the author clarified to the head of the institution their position on obtaining consent

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<sup>437</sup> Day of General Discussion, Working Group 1: The child's right to be heard in judicial and administrative proceedings "Some difficulties arising from Article 12 CRC", *UN Committee on the Rights of the Child*



of young people to participate in the research. It was made clear to the head of the organisation that under no circumstances should their participation or non-participation be “penalized” by the authorities and that the author was strongly committed to the person’s ability to freely and voluntarily participate in the research. It was explained to every member of staff that if someone did not want to participate it was not a ‘big issue’ or a ‘lack of respect’. The researcher was going to ‘chat’ with every young person who wanted to talk.

**4.5 Potential for physical and/or psychological harm/distress to participants.** Sensitive research has consequences that go beyond ethics. The researcher is aware of the highly sensitive and potentially distressing nature of the questions concerning abuse posed to young people. With this in mind, if it is revealed that participants should require support in relation to their personal experiences of abuse, it was appropriate to request information about appropriate channels of support, for example the Albanian Helsinki Committee or Ombudsman. The first tasks, before interviewing young people, were taking advice from the supporting channels and about the appropriate action to be followed if such support was needed. However, the author’s background, bachelor degree in social work, and training on counselling women and children facing the problem of domestic violence, would be useful if dealing with the first signs of distress.

Young people were assured that any information they provided was confidential to the research unless the researcher was told of circumstances suggesting that they were in danger. If such circumstances were noticed, it would have to be reported to an appropriate authority that could protect the child. In such circumstances, the young person would be assured that nothing would be done without them first being told what was happening (see statement of confidentiality policy *Appendix 12*).

In case the young person became visibly distressed during the questioning, the author would notify the appropriate official, educator, or social worker and would not leave without ensuring support or assistance was available for the young person immediately on the conclusion of the interview. However, such a policy was not employed, as such extreme cases were not encountered.



## 5. Conclusion

The 'qualitative' component required taking into account the author's personality, the fact of being an Albanian, and presence in research. The process where researchers engage in explicit self-awareness-analysis is not new in qualitative research. Although not always referred to explicitly as reflexivity, the project of examining how the researcher and inter-subjective elements impinge on and even transform research *per se* has been an important part of the evolution of qualitative research.<sup>438</sup>

*'Reflexivity requires an awareness of the researcher's contribution to the construction of meanings throughout the research process, and an acknowledgment of the impossibility of remaining 'outside of' one's subject matter while conducting research. Reflexivity then, urges us "to explore the ways in which a researcher's involvement with a particular study influences, acts upon and informs such research."*<sup>439</sup>

Hindsight has enabled the author to understand and articulate how this doctoral research was the product of their academic and personal biography. The author came from a position of theoretical and methodological pluralism, because of degrees in social work with strong psychological and sociological approach, international human rights, and children studies. Such a 'hybrid' position emerged gradually, beginning with roots in Marxism and a socialist upbringing, which then combined with later interests in qualitative analyse. With hindsight the author has become acutely aware of how a personal biography affected the choice of academic texts that guided this research and how this combination of personal life and academic texts led to particular ways of 'seeing' and 'hearing' during data analysis processes.

Conceiving subjects in relational terms drew the author's attention to target respondents that were overlooked by other researchers. This allowed the author to make original contributions and hopefully generate further debates within this research area. Within this context, the author would highly value the support, encouragement and intellectual input offered by mentors who were keen to sustain such an interest and enthusiasm. This in particular led the

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<sup>438</sup> Linda Finlay, Negotiating the swamp: the opportunity and challenge of reflexivity in research practice, *Qualitative Research*, Vol 2, Issue 2, 2002 p. 209-230

<sup>439</sup> David Nightingale, and John Cromby, *Social Constructionist psychology: a critical analysis of theory and practice*, Buckingham: Open University Press. 1999, p. 228

author to draw increasingly on their work and way of thinking, thus deeply shaping the methodological, theoretical, epistemological and ontological contours of thinking and theses.

The data collected was certainly affected by personal opinions, methods and pre-existing impression of the juvenile justice system of Albania. Thus, an advanced familiarity with the field can in some ways threaten research work, just as much as being an 'outsider' can involve digging into people's heads, skin, and shoes to extract information. However, the author was generally perceived as a sympathetic foreign Albanian student with an interest in children in conflict with the law. This earned a 'stranger-value' that is reflected to a large extent in the level of openness from informants. In addition, the intellectual input of mentors during analysis contributed 'to put my feet on the ground' and forget being an Albanian.

The other issue relates to perceiving the author's position and of those being observed. One of the major outcomes was avoiding seeing them as a 'subject' in favour of considering them as a 'respondent' or a 'participant'. The terminology was strongly influenced from the principle of the CRC and being a human rights believer. The author's own part in fieldwork interactions was regularly brought home. For instance, the author sometimes had to face some hostility (as in a case with a custody respondent) or upset respondents. However, for the majority of time, respondents commented positively how easy it was to talk to the author and how impressed they felt by the fact that such a young woman, who was not part of their institution or circle, seemed to grasp their realities. Indeed, some respondents said they only gave up so much of their time because they felt the author was carrying out professional and worthwhile work. Therefore, what the author brought to the research – personally and professionally – undoubtedly influenced its outcome and outputs.

Another vital aspect of qualitative research carried out was its interactive nature. As much for reasons of ethics and respect, the author sensed that respondents, especially the professional ones, were entitled to explanations of why the research was being done in a particular way, whilst also appreciating that they were the best experts in their field. Knowledge of 'interviewer effects' gleaned from experience in public relations resulted in a reflexive awareness of the author's own role in the research process.

The researcher and the degree of reflexivity is a personal journey. Writing this part does not mean that objectivity of research has lost its aim. On the contrary, it highlights that the actions and statements could only be fully understood within the context they were produced.

## **FIRST PART**

# **IMPLICATIONS OF UN CONVENTION ON THE RIGHTS OF THE CHILD REGARDING JUVENILE JUSTICE**

### CHAPTER 3

#### ARTICLE 37 OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD

##### 1. Introduction.

Article 37 concerns the establishment of leading principles regarding the detention of the child. The Article consists of two important elements. Firstly, Article 37(a) explicitly addresses the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment, as a universal norm applicable to adults as well as children. Secondly, Articles 37(b), (c) and (d) establish a broad range of standards in regard to deprivation of liberty of children expressed as legal requirements related to the use of deprivation of liberty, provisions regarding the treatment of children deprived of their liberty, and procedural and substantive rights for every child deprived of liberty. Article 37 CRC reads:

*State Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

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

The aim of this chapter is to explore in detail the normative aspects of Article 37 CRC. The chapter is built around the two elements of the Article, and consequently divided into two sections. Each section begins with a brief outline of the drafting history, to be followed by an analysis of the respective paragraphs. Paragraph (a) of Article 37 establishes four distinct prohibitions: Torture, cruel, inhuman or degrading treatment, the death penalty, and life imprisonment. The aim of the first section is to set out a distinction between torture and other cruel, inhuman or degrading treatment, or punishment. Such a distinction is of relevance to the application of these concepts in reference to the experiences of children. Beside the distinction, this section will address corporal punishment and certain conditions of deprivation of liberty as expressions of ill-treatment. The paragraph considering the death penalty focuses on the origins of the provision, the customary nature of prohibition on death penalty for the juveniles, and the issue of establishing the age at which offenders can receive the death sentence. This section concludes with a discussion on the prohibition on life imprisonment, which is centred on clarifying the meaning of the 'without possibility of release' condition to which the prohibition is subject.

The second section approaches the issues relating to the deprivation of liberty of children. The section proceeds systematically through paragraphs (b), (c) and (d), providing an insight into their respective issues. In order to deprive a child of liberty, a double test of lawfulness and non-arbitrariness for justification, must be met as well as complying with the principle of last resort and for an appropriate period of time. Beside the above mentioned principles, this section considers the treatment of children deprived of liberty 'with humanity and respect for the inherent dignity of the human person in a manner which takes into account the needs of persons of his or her age' and enforcement of 'the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances'. The requirement to separate children deprived of liberty from adults, unless it is considered in the child's best interest not to do so, will also be explored in full. Finally, the chapter focuses on the review of deprivation of liberty. This paragraph focuses on procedural safeguards contained in Article 37(d), highlighting their specific child development orientation.

## **2. Article 37(a): Prohibition of Torture, Prohibition of Death Penalty and Life Imprisonment**

**2.1 Drafting of Article 37(a).** None of the provisions, on prohibition of torture and other cruel, inhuman or degrading treatment or punishment, or provision on death penalty and life

imprisonment, were contained in the very first 1978 proposal for the Draft Convention.<sup>440</sup> The prohibition on 'capital punishment' is the first element of Article 37(a) to appear in the 1980 Working Party draft of the CRC. This element was accompanied by the requirement that 'any other punishment shall be adequate to the particular phase of *child* development' (emphasis added).<sup>441</sup> In an effort to meet the rights of the child upon being 'accused or found guilty of infringing the penal law', Canada proposed a new provision for article 20 in 1984. Beside the prohibition of the death penalty, the Canadian proposal added a new sentence: 'No child shall be subjected to cruel, inhuman or degrading treatment or punishment.'<sup>442</sup> The proposal was submitted again and was considered by the 1985 Working Group. A year later, the delegation of Canada presented a revised text, which competed with a draft proposal from a Polish delegation.<sup>443</sup> However, having a cross-reference to respective articles of ICCPR and UDHR made this proposal more prone to focusing on the discussion of the 1986 Working Group. What should be noted is the fact that, although cross-reference was made to Article 7 of ICCPR, the Canadian proposal omitted the word 'torture'. After a further exchange of views, an informal drafting party reworked the text at the 1986 Working session. The reworked text and Article 7 ICCPR prohibited both 'torture' and 'other cruel, inhuman or degrading treatment or punishment'. Moreover, the new version expanded further Article 6(5) of ICCPR, by prohibiting the imposition of life imprisonment on children. This was a new element not expressly contained in the major universal and regional general conventions on human rights.<sup>444</sup> Thus, the reworked text read as follows: '...the State Parties shall, in particular, ensure that: a) No child is arbitrarily detained or subject to torture, cruel, inhuman or degrading treatment and punishment; b) Capital punishment or life imprisonment is not imposed for crimes committed by persons below eighteen years of age.'<sup>445</sup>

Together with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the prohibition on capital punishment does not appear to have generated further discussion, while the prohibition of life imprisonment was the subject of much debate leading

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<sup>440</sup> U.N. ESCOR, 34th Sess., Supp. No. 4, U.N. Doc. E/1978/34 (1978), reprinted in Sharon Detrick (1992), *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht: Nijhoff, 1992

<sup>441</sup> UN Doc. E/CN.4/1349, Article 20 para. 2 reprinted in Detrick 1992

<sup>442</sup> UN Doc. E/CN.4/1984/71, Annex II, p.3, Article 20, para. 2(d) reprinted in Detrick 1992

<sup>443</sup> UN Doc. E/CN.4/1986/39 reprinted in Detrick 1992

<sup>444</sup> Sharon Detrick, *A commentary on the United Nations Convention on the Rights of the Child*, M. Nijhoff Publishers, The Hague, 1999, pp.627, William Schabas, and Helmut Sax, *A Commentary on the United Nations Convention on the Rights of the Child; Article 37: Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty*, Leiden: Martinus Nijhoff, 2006, p.8

<sup>445</sup> UN Doc. E/CN.4/1986/39, para. 99

up to the final stages of the CRC's drafting. The debate focused around considering a prohibition on 'life imprisonment' *per se*. As Schabas acknowledges, this is because of the fact that 'the reference to life imprisonment was very much a matter of progressive development of the law, and no prior text existed on this subject'.<sup>446</sup> In the 1986 Working Group, the Japanese delegation stated that it could not go along with an absolute prohibition of life imprisonment, and proposed its deletion.<sup>447</sup> In order to 'accommodate' the Japanese position, the delegation from Canada suggested adding the words 'without possibility of release' after the words 'life imprisonment'.<sup>448</sup> However, the Japanese delegation was not the only one to object to the prohibition on imprisonment in the 1986 Working Group. Thus, the report indicates that the representatives of the United Kingdom placed a reservation to the provision without stating a reason for objection. The representative of United States, however, voiced their disagreement with whole provision, stating that the reference to 'persons below the age of eighteen years' was too arbitrary and proposed its deletion.<sup>449</sup> The 1988 Working Group adopted the paragraph (b) formulation as agreed in the 1986 session: 'Capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age.'<sup>450</sup>

In the 1989 Working Group, beside the Working Group text two other versions were proposed. The version proposed by the Crime, Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna stated: '...State Parties shall ensure that: ...(c) The death penalty or a term of life imprisonment is not imposed for offences committed by children below 18 years of age.'<sup>451</sup> The Venezuelan delegation's proposal completely omitted the issue of prohibition of the death penalty and life imprisonment.<sup>452</sup> Faced with 'a total lack of consensus', the Chairman of the 1989 Working Group appointed an open-ended drafting group that presented the proposal as follows: 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment and punishment. Neither capital punishment nor life imprisonment [without possibility of release] shall be imposed for offences committed by persons below 18

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<sup>446</sup> Schabas & Sax 2006 p.10

<sup>447</sup> UN Doc. E/CN.4/1986/39, para. 104

<sup>448</sup> Ibid

<sup>449</sup> UN Doc. E/CN.4/1986/39, para. 105 and 107. The life imprisonment would remain one issue of main concern for the United States delegation till the end of CRC' s drafting process. See, for example: UN Doc. E/CN.4/1989/48 para. 544 reprinted in Detrick 1992

<sup>450</sup> UN Doc. E/CN.4/1988/WG.1/WP.1/Rev.2, pp 23-25 reprinted in Detrick 1992

<sup>451</sup> UN Doc. E/CN.4/1989/48, para. 534

<sup>452</sup> Ibid para. 535



years of age.’<sup>453</sup> As Schabas notes, ‘the square brackets indicated that the issue of life imprisonment without possibility of release had not been settled by consensus within the drafting group.’<sup>454</sup> When introducing the proposal, the Portuguese representative indicated that the division of various independent situations requiring protection into two articles were dependant on the intention of the Working Group ‘to draw up a text consistent with the instruments adopted in this field by the United Nations.’<sup>455</sup> Therefore, the Working Group drew up a new article 19, providing for the prohibition of torture and other cruel, inhuman, or degrading treatment and punishment, the death penalty, or life imprisonment. The proposed draft would again generate debate regarding firstly the form and, secondly, the principal point in dispute – life imprisonment.

Firstly, the delegation of the German Democratic Republic, with the support of the Italian delegation and Union of Soviet Socialist Republics, proposed that the two sentences should be divided to create two separate paragraphs.<sup>456</sup> The reason behind this proposal was ‘the lack in homogeneity’ by paragraph as ‘it dealt both with manifest illegalities, torture etc., as well as with punishment pursuant to due process of law’.<sup>457</sup> Other delegations – the Federal Republic of Germany, Canada, and Senegal – opposed the proposal by arguing that “the imposition of capital punishment on children was ‘inhuman... treatment or punishment’ and therefore that the proposed paragraph was sufficiently homogenous to be left as it stood”.<sup>458</sup> ‘In a spirit of compromise’ and in the interest of consensus, the delegation of the German Democratic Republic withdrew the proposal.<sup>459</sup>

Secondly, the delegations of Austria, Federal Republic of Germany, Senegal and Venezuela proposed that the words ‘without possibility of release’ in regard to life imprisonment should be deleted.<sup>460</sup> The delegations of China, India, Japan, Norway, the Union of Soviet Socialist Republics and the United States argued for their retention.<sup>461</sup> In addition, the delegation of India and Norway indicated that the reason behind the objection lay in the fact that the

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<sup>453</sup> Ibid para. 536

<sup>454</sup> Schabas & Sax 2006, p.9

<sup>455</sup> UN Doc. E/CN.4/1989/48, para. 537

<sup>456</sup> Ibid para. 540

<sup>457</sup> Ibid

<sup>458</sup> Ibid

<sup>459</sup> Ibid

<sup>460</sup> Ibid para. 541

<sup>461</sup> Ibid.

proposal would profoundly change the text already approved by their governments.<sup>462</sup> In order to promote a consensus about the question of release, the delegations of China, the Federal Republic of Germany, the Netherlands and Venezuela suggested that the whole reference to life imprisonment should be omitted from the provision.<sup>463</sup> Following the debate, the representative of Senegal would be clearly expressed on the reason of non-omitting a prohibition on life imprisonment. According to the representative of Senegal, by retaining the prohibition on life imprisonment within the provision, the judges would not be at liberty to use life imprisonment as a substitute for capital punishment.<sup>464</sup> In a spirit of compromise, the delegation arguing about the question of release backed down, enabling a consensus to retain the phrase 'without possibility of release'. The Working Group incorporated the paragraph as Article 37(a),<sup>465</sup> which was adopted by the Commission on Human Rights by consensus,<sup>466</sup> by the third Committee in an unrecorded vote<sup>467</sup> and ultimately by the General Assembly.<sup>468</sup>

**2.2 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.** The first phrase of Article 37(a) requires State Parties to ensure that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. Such prohibition is not new to the CRC. The prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishments is contained in many international and regional human rights instruments,<sup>469</sup> and humanitarian treaties.<sup>470</sup> Combating torture is considered of such importance that it is addressed in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (hereafter CAT). Regional treaties have also been drawn-up specifically, such as the Inter-American Convention to Prevent and Punish Torture 1985 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment 1989.

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<sup>462</sup> Ibid

<sup>463</sup> Ibid para. 542

<sup>464</sup> Ibid

<sup>465</sup> UN Doc. E/CN.4/1989/29/Rev.1, p.15 reprinted in Detrick 1992

<sup>466</sup> UN Doc. E/CN.4/1989/L.88 reprinted in Detrick 1992

<sup>467</sup> UN Doc. A/C.3/SR.44, para. 63, UN Doc. A/C.3/44/L.44 reprinted in Detrick 1992

<sup>468</sup> UN Doc. A/44/PV.61 as GA RES.44/25 reprinted in Detrick 1992

<sup>469</sup> Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights (with the exclusion of cruel treatment or punishment which is not mentioned) and Article 5 of the American Convention on Human Rights.

<sup>470</sup> The Common Article 3 of the Geneva Conventions expressly prohibits 'at any time and in any place whatsoever' 'cruel treatment and torture' and 'outrages upon personal dignity, in particular humiliating and degrading treatment'. Torture and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health are also considered to be a crime against humanity and war crimes by Article 7 and 8 of the Rome Statute of the International Criminal Court (ICC).

The prohibition of torture is widely understood by the international community to be a peremptory norm of *jus cogens*.<sup>471</sup> The International Criminal Tribunal for the former Yugoslavia reaffirmed in *Prosecutor v Furundžija* that the prohibition against torture has attained the status of *jus cogens*.<sup>472</sup> The most relevant consequence of *jus cogens* status of prohibition on torture is that no derogation is ever permitted from by states, 'even in times of war or other emergency threatening the life of the nation, and there are no circumstances in which states can set aside or restrict this obligation'.<sup>473</sup> The fact that a particular state is party to a treaty expressly containing the prohibition is irrelevant.<sup>474</sup> On the contrary, the HRC, when commenting on Article 7 of the ICCPR, stressed that states are under a positive obligation to protect individuals from treatment that would amount to a violation of the prohibition. This is irrespective of whether the practice was performed by public officials or other persons acting on behalf of the State, or by private persons acting outside or without official authority.<sup>475</sup> Everybody is entitled to be protected against acts that amount to torture, cruel, inhuman and degrading treatment and punishment. However, when it comes to children, the impact of torture or any ill-treatment is generally much greater than on adults, as children have a lower threshold for pain and less understanding of why others use torture.<sup>476</sup> Therefore, children may experience many of the same physical and mental after-effects of torture as adults, but they suffer graver consequences than similarly-treated adults because of specific differences on physiological, emotional, social, and mental development.<sup>477</sup>

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<sup>471</sup> UN Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008 <http://www2.ohchr.org/english/bodies/cat/comments.htm> (accessed on 27.06.2011), para.1 (CAT General Comment No.2)

<sup>472</sup> Erica De Wet, 'The Prohibition of Torture as an International Norm of *Jus Cogens* and its Implications for National and Customary Law', *European Journal of International Law*, Vol.15, Issue 1, 2004, pp. 97-121, p.97. Ken Roberts, 'The Contribution of the ICTY to the Grave Breaches Regime', *Journal of International Criminal Justice*, Vol.7, Issue 4, 2009 pp. 743-761, p.756

<sup>473</sup> Article 4, paragraph 2, of the ICCPR explicitly prescribes that no derogation may be made from the article 7 - prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent. Similarly CAT interprets Article 2 paragraph 2 of the CAT Convention as to provide absolute and non-derogable prohibition on torture. (CAT General Comment No.2 para.5)

<sup>474</sup> Nigel S Rodley, *The Treatment of Prisoners Under International Law*, Second Edition, Oxford University Press, Oxford, 1999, p. 74

<sup>475</sup> UN Human Rights Committee, *General Comment 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7) CCPR/C/21/Rev.1/Add.3*, 7 April 1992 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (accessed 5.05.2008), paragraph 2. The CAT expressed similarly in CAT General Comment No.2 para.7

<sup>476</sup> 'Hidden Scandal, Secret shame', *Amnesty International*, 2000, p. 1

<sup>477</sup> 'Violence against children in juvenile justice system', *World Organization Against Torture*, Geneva, 2006, p.3, Amnesty International The Special Rapporteur on torture, recognizes that 'children are more vulnerable to the effects of torture; they are in the critical stages of physical and psychological development where they may suffer graver consequences than similarly ill-treated adults'. (E/CN.4/1996/35 paragraph 10)

Little attention has been paid to the scope of the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment specifically with regard to children. Although the Committee has identified several specific manifestations of cruel, inhuman or degrading treatment or punishment on different occasions,<sup>478</sup> it does not set up any meaning of Article 37 paragraph (a). Even the Special Rapporteur on Torture acknowledges that it 'remains a clear and compelling necessity to make a separate comment on the issue'.<sup>479</sup> A definition of Committee would be useful, particularly in order to make a sharp distinction between those forms of treatment which amount to torture and those which amount to other cruel, inhuman, or degrading treatment (ill-treatment), while taking into account the experiences of children.<sup>480</sup> The distinction between concepts is already available, but has been largely forged from the experience of adults.<sup>481</sup> Van Bueren notes that distinction is helpful as the application of concepts such as cruelty and degradation may have their greatest potential for children.<sup>482</sup> Setting the distinction between concepts has a direct impact upon establishment of threshold regarding severity of pain or suffering as contemplated from a child's perspective, which in turn has implications for the constitution of other forms of ill-treatment.

The prohibition on torture and other forms of ill-treatment is not limited only to the deprivation of liberty; the prohibition is particularly important to all those situations where a child – or, for that matter, any person – is deprived of their liberty. This is because children at particular risk of torture or ill-treatment tend to be those from socially marginalized groups and those lacking adequate support through their families or community networks.<sup>483</sup> The

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<sup>478</sup> Schabas 2006, p.16

<sup>479</sup> Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/1996/35, 9 January 1996, para. 10 The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is appointed by the UN Commission of Human Rights to examine questions relevant to torture. The mandate authorises The Special Rapporteur to carry out three main activities: 1) transmit urgent appeals to States on behalf of individuals who might be at risk of torture or other forms of ill-treatment; 2) undertake fact-finding country visits; and 3) submitting annual reports on activities, the mandate and methods of work to the HRC and the General Assembly. The exhaustion of domestic remedies and being part to CAT is irrelevant for the Special Rapporteur to exercise within a country the authority vested by mandate.  
<http://www2.ohchr.org/english/issues/torture/rapporteur>

<sup>480</sup> Van Bueren 1998, p.223

<sup>481</sup> Van Bueren 1998 p.223, Geraldine Van Bueren, Opening Pandora's Box: Protecting children against Torture or Cruel Inhuman and Degrading Treatment or Punishment, *Law & Policy*, Vol.17, Issue 4, 1995, pp.377-396, (Van Bueren 1995(a), p.385

<sup>482</sup> Van Bueren 1995(a) p. 384

<sup>483</sup> UN General Assembly, *Note by General- Secretary transmitting: the Report of the independent expert for the United Nations study on violence against children, Paulo Sérgio Pinheiro, submitted pursuant to General Assembly resolution 60/231, A/61/299, 29 August 2006, paragraph 31*

Violence Study 2006 reported various forms of violence used against children within the penal justice system in many States party to the CRC, therefore highlighting their vulnerability. Consequently, if the Committee would interpret the provision of Article 37(a), it should not only include the general definition of torture or ill-treatment as for adults, but should also provide a specific interpretation according to the status of the child and the particular vulnerable situation when they are involved in the justice system. The prohibition on torture and other forms of ill-treatment is considered in this section, not only in principle, but also through specific applications related to the conditions of deprivation of liberty – which include solitary confinement, detention incommunicado, and corporal punishment – because of the fact that they may amount to violation of prohibition on torture and ill-treatment.

**Torture.** Despite the variety of sources of interpretation and legislation that exists in relation to the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, the provision in article 37(a) CRC should be read according to the widely accepted definition contained in CAT.<sup>484</sup> Torture, is defined in Article 1 CAT, as:

*[...] any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

From the definition in Article 1 CAT, it is possible to extract four essential elements that are required for an act to amount to torture.

Firstly, torture is an act that causes *infliction of severe mental or physical pain or suffering*. This component is rather subjective, as the threshold at which ‘pain or suffering’ becomes severe will be different from each victim’s point of view. As Ingelse noted:

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<sup>484</sup> The ICCPR, as well as the ECHR, the IACHR and the ACHPR contain provisions on the prohibition of torture and ill-treatment, without providing a definition of the scope of these prohibitions. Ton Liefwaard, *Deprivation of liberty of children in light of international human rights law and standards*. Intersentia, 2008, p.234

*In view of the way in which the provision is formulated, only the victim himself can bear witness to the pain and its intensity. The effect that the action has on the victim is also determinative for the question as to whether torture has occurred. The intention of the person inflicting the pain is, at least for the subjective perception of its intensity, irrelevant . . . This offers few clues on which to base an objective conclusion.*<sup>485</sup>

In *Ireland v. The United Kingdom*,<sup>486</sup> the European Court of Human Rights established that the assessment of minimum level of severe pain or suffering must be made on a case-by-case basis and 'would depend on all circumstances of the case, such as the duration of the treatment, its physical or mental effects, and on the sex, age and state of health of the victim.'<sup>487</sup> The reference to 'age' implies that the physical and mental attributes of the child need to be taken into consideration in determining whether a particular act constitutes torture. As regards the threshold of severity, the level is arguably lower in regard to children as 'children are more vulnerable to the effects of torture; they are in the critical stages of physical and psychological development where they may suffer graver consequences than similarly ill-treated adults.'<sup>488</sup>

Secondly, *intent on the part of the perpetrator to cause the act of torture* is required. As Nowak explains, the requirement of 'intention on the part of perpetrator' refers to the intention of the perpetrator to adopt the conduct which inflicts severe pain or suffering and that the purpose be achieved by such conduct'.<sup>489</sup> To clarify further the meaning of the term 'intent', Nowak presents the example of medical treatment which inflicts severe pain or suffering, but such 'conduct cannot constitute torture because it lacks both the purpose and

<sup>485</sup> Chris Ingelse, *The UN Committee against Torture: An Assessment*. The Hague: Kluwer Law International, 2001, p.209

<sup>486</sup> *Ireland v. UK, Judgment*, 18 January 1978, ECHR Ser. A., No. 25 (2 EHRR 25)

<sup>487</sup> *Ireland v. UK, Judgment*, 18 January 1978, ECHR Ser. A., No. 25 (2 EHRR 25), (1980). para.162. *Villagran-Morales et al.*, case (The "Street Children Case"), Inter-American Court of Human Rights, Judgment of November 19, 1999, par. 74, quoted OCMT p.6. The same phrase was adopted by the European Court of Human Rights in *A v UK*, 1999, EHRR 611, paragraph 20

<sup>488</sup> Report of Mr. Nigel Rodley, Special Rapporteur on torture to the UN Commission on Human Rights, on the Question of the Human Rights of all Persons subjected to any form of detention or imprisonment, in particular: Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. E/CN.4/1996/35 para.10

<sup>489</sup> Manfred Nowak. 'What Practices Constitute Torture?: US and UN Standards' *Human Rights Quarterly* Vol. 28, 2006, pp. 809–841, p.830

intent enumerated in Article 1 CAT'.<sup>490</sup> Meanwhile, the text of Article 2 of the Inter-American Convention to Prevent and Punish Torture (IACPPT) expands the 'intent' requirement further than Article 1 of CAT.<sup>491</sup> It provides that an act amounting to torture by being 'intentionally performed', as well as by using 'methods upon a person with intent to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical or mental anguish...'. Therefore, according to IACPPT, a form of torture may not necessarily involve pain or suffering, but also the motive of a person who commits the act.<sup>492</sup> The relevance of the 'intention' element lies in relation to the psychological impact caused to children.<sup>493</sup>

The third component is that the act of torture must be inflicted for *the purpose of achieving a particular result*. This component is rather objective as, to assess the purpose of the act, it is necessary to look at its context. The list of purposes in Article 1 CAT – extracting a confession, punishment, intimidation, or coercion in order to gain information – was meant to be indicative, rather than exhaustive, punishment or intimidation, leaving room for inclusion of other forms of action that might be qualified as torture.<sup>494</sup> As Burgers and Danelius observe, these purposes are not necessarily illegitimate, but are directly linked to activities generally carried out for 'the interests or policies of the state and its organs'.<sup>495</sup> The association of list of purposes in Article 1 CAT derives from the primary objective of the CAT, which is the bringing to an end of 'torture committed by or under responsibility of public officials for purposes connected with their public functions'.<sup>496</sup> Thus, if an official causes severe pain or suffering for purely sadistic, private reasons, the act would not

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<sup>490</sup> Ibid

<sup>491</sup> Debra Long, 'Aspects of the definition of Torture in the Regional Human Rights Jurisdictions and the International Criminal Tribunals of the Former Yugoslavia and Rwanda' in *Association for the Prevention of Torture, The Definition of Torture. Proceedings of an Expert Seminar*, APT, Geneva, 2001

<sup>492</sup> Joseph, Schultz & Castan argue that 'as the definition of torture refers twice more to 'pain and suffering', it seems that the relevant intention is to cause or at least be recklessly indifferent to the possibility of causing the pain or suffering.' Sarah Joseph, Schultz Jenny, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. Oxford: Oxford University Press, 2004, p.196-197

<sup>493</sup> As psychologist with extensive experience caring for torture victims underlines 'The intention of the aggressors and of the torture system lies at the heart of the symptoms of children, subjected to a deliberate enterprise of psychological destruction.' Quoted in Dan O'Donnell, and Norberto Liwski, 'Children and Torture', Innocenti Working Paper, No. 2010-11, *UNICEF Innocenti Research Centre, Florence, Italy*. 2010, <http://www.unicef-irc.org/publications/608> (accessed 24/06/2011) p.4

<sup>494</sup> Nowak 2006, p.831, Ingelse 2001, p.209,

<sup>495</sup> Herman J. Burgers, and Hans Danelius. *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*. Dordrecht: M. Nijhoff, 1988, p.118-119

<sup>496</sup> Ibid p.119 Burgers and Danelius based their interpretation on travaux préparatoires and the preamble of CAT.

constitute torture under CAT definition.<sup>497</sup> Similarly, if severe pain or suffering were inflicted in the course of a fully justified medical treatment, the act would not constitute torture under CAT definition.<sup>498</sup> Indeed, the jurisprudence of the International Criminal Tribunal of Yugoslavia (ICTY) has expressly stated that there is no exhaustive list of prohibited purposes.<sup>499</sup> However, the ICTY jurisprudence would indirectly provide 'the most constructive contributions' to the identification of specific acts, which may amount to torture.  
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The final component defines torture as '*an act committed by an individual acting in an official capacity or an individual acting with the acquiescence of the State*'. This component encompasses a two-fold obligation upon states and their officials. On the one hand, the state is under an obligation to ensure that state officials refrain from committing acts of torture.<sup>501</sup> On the other hand, the definition is broad enough to cover state inaction in the face 'of a wide range of actions committed by private persons'.<sup>502</sup> In other words, 'State responsibility also arises where national authorities are "unable or unwilling" to provide effective protection from ill-treatment (i.e. states fail to prevent or remedy such acts), including ill-treatment by non-State actors.'<sup>503</sup> Indeed, this reading of 'public official' requirement has a direct impact regarding children. Thus, in *Z. v. The United Kingdom*,<sup>504</sup> the ECHR held that the UK was directly responsible for the inhuman and degrading treatment inflicted on four children by their parents.<sup>505</sup> The UK was held to have violated the European Convention on Human

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<sup>497</sup> Ibid p.119

<sup>498</sup> Ibid p.119

<sup>499</sup> Robert 2009 p.756

<sup>500</sup> Ibid. p.758 In an early examination of this crime, the Delalic et al. Trial Judgment took note of acts found to constitute torture by the UN Human Rights Committee, the European Court and European Commission of Human Rights and the Special Rapporteur on Torture for the UN Commission on Human Rights, including: beating; extraction of nails, teeth, etc.; burns; electric shocks; mock executions; suspension; suffocation; exposure to excessive light or noise; sexual aggression; administration of drugs in detention or psychiatric institutions; prolonged denial of rest or sleep; prolonged denial of food; prolonged denial of sufficient hygiene; prolonged denial of medical assistance; total isolation and sensory deprivation; being kept in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment; being held incommunicado; rape and being paraded naked in humiliating circumstances, p.758. Moreover, Roberts notes that 'recognising that rape is a crime as severe as torture may be regarded as a positive development in international law.' p.756

<sup>501</sup> As Ingelse notes, this requirement must be read as the act 'involves torture by a person whom the State in some way or other endorses or acquiesces, without the existence of a formal employer-employee relationship between the State and the person acting' Ingelse 2001, p.210

<sup>502</sup> Ibid

<sup>503</sup> Office of the United Nations High Commissioner for Human Rights, *Human Rights FactSheet: No. 4 Combating Torture*, at 34 (May 2002), p. 34 available at <http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx>.

<sup>504</sup> *Z v. The United Kingdom*, 34 E.H.R.R. 3 (ECHR 2001).

<sup>505</sup> Ibid para.73



Rights for failing to guarantee that the right not to be subjected to torture be respected by private individuals.<sup>506</sup>

**Other forms of cruel, inhuman or degrading treatment and punishment.** The CAT and other relevant international instruments do not provide an international legal definition of cruel, inhuman or degrading treatment or punishment. Article 16 of the CAT describes 'ill-treatment' as comprising:

Acts... which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Reading Articles 1 and 16 of the CAT, it is possible to deduce that torture is an aggravated form of cruel, inhuman, or degrading treatment or punishment.<sup>507</sup> In addition, acts that inflict 'pain or suffering arising only from inherent or incidental lawful sanctions' do not constitute torture or ill-treatment.<sup>508</sup> Moreover, HRC has not considered it necessary to list or draw sharp distinctions between the 'different kinds of punishment or treatment'.<sup>509</sup> Therefore, a cruel, inhuman, or degrading treatment or punishment could be considered as a form of ill-treatment or punishment that is not sufficiently serious as to amount to torture because of its nature. Rodley argues that these forms of prohibited treatment and punishment climb a scale of severity, in which the degrading treatment represents the lower threshold of behaviour, with torture being the most severe.<sup>510</sup>

In applying the scale of severity for children, a few issues should be noted. Firstly, while treatment or punishment of an adult might be compatible with human rights standards, the

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<sup>506</sup> Ibid para. 69-75

<sup>507</sup> The European Commission in *the Greek Case*, which involved the conduct of Greek Security forces following the military coup in 1967, provided the distinction between torture, inhuman and degrading treatment or punishment for the first time. The Commission held that the word 'torture' is often used to describe inhuman treatment which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment'. *Greek Case*, Report of the European Commission on Human Rights Year Book Of The European Convention On Human Rights 186, (1969) p. 186

<sup>508</sup> Second phrase of Article 1(1) CAT. Such acts might include for example deliberately shoots of a person's leg by the police officer, in order to effect a lawful arrest or prevent the escape of a person lawfully detained, or uses physical force for the purpose of breaking up an unlawful demonstration or quelling a riot. (Nowak 2006, p. 832)

<sup>509</sup> General Comment No. 20, para. 4

<sup>510</sup> Rodley 1999, p. 78. The sliding scale, based upon level of severity, was considered in the case *Ireland v. UK*, which concerned the treatment of IRA suspects by UK troops in Northern Ireland.

imposition of these measures on a child may have consequences amounting to cruel and degrading treatment.<sup>511</sup> For example, solitary confinement may be held to be ill-treatment in the case of an adult, but for a young child the experience may be so terrifying as to amount to torture.<sup>512</sup> In addition, certain treatment practices may amount to degrading treatment for children as they cause anguish or may humiliate or debase them and, in doing this, 'attain a particular level, which is in any event other than that usual element of humiliation which is present in punishment in general'.<sup>513</sup> For example, Rule 36 JDLs interpret the 'wearing of specific forms of clothing' as degrading treatment and humiliation.<sup>514</sup>

Secondly, independent from the classification of the act as torture or ill-treatment, the act *per se* might jeopardize a child's capacity to develop their personality in a holistic manner and health, as it leaves more long-lasting effects than on an adult and influences the overall confidence a child has in life.<sup>515</sup> Indeed, there is growing evidence suggesting that torture is a traumatic interruption of the process of psychosocial maturing and social integration.<sup>516</sup> The response to torture and ill-treatment differs according to the physical and mental attributes of children during the developmental stages. Thus, younger children perceive specific treatments and punishments differently to older children.<sup>517</sup> Nejad and Van Bueren recognize the lacuna of international law in considering the attributes of groups of individuals (i.e. adults, women, and children) rather than taking into account the attributes of individual members of those groups.<sup>518</sup> Therefore, in establishing whether an act inflicted upon children amounts to torture, cruel, inhuman and degrading treatment, and punishment, it is relevant to make the assessment on a case-by-case basis. Taking into account the physical and mental

<sup>511</sup> Van Bueren 1995(a), p. 385

<sup>512</sup> Assessing the third periodic report of Denmark, the Committee has furthermore recommended that solitary confinement should not be used against children. Concluding observations on the third periodic report of Denmark (CRC/C/DNK/CO/3), para. 59 (a). Similarly, The Special Rapporteur on Torture calls for an absolute prohibition of solitary confinement in regard to children. (A/63/175, Annex The Istanbul Statement on the Use and Effects of Solitary Confinement).

<sup>513</sup> *Tyler v UK*, 1979, 2 E.H.R.R. 1

<sup>514</sup> Therefore, Rule 36 imposes an obligation to detention facilities to ensure, to every extent possible, that each juvenile use their personal clothing, 'suitable for the climate and adequate to ensure good health'.

<sup>515</sup> Aida Nejad, 'How does the Current Definition of Torture apply to Children?' in *Association for the Prevention of Torture, The Definition of Torture. Proceedings of an Expert Seminar*, APT, Geneva, 2001, p.80; Amnesty International 2000, p.16

<sup>516</sup> Professional Training Series No.8/Rev.1: Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Office of the United Nations High Commissioner for Human Rights*, 2004 [www.ohchr.org/Documents/Publications/training8Rev1en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf) (accessed 27/06/2011) (here and after referred as Istanbul Protocol), O'Donnell & Liwski 2010, p.25-27

<sup>517</sup> Istanbul Protocol para.311

<sup>518</sup> Nejad 2001, p.80; Van Bueren 1995(a) p.384

attributes entrenches 'a more 'child-friendly' approach towards interpreting the definition of torture.'<sup>519</sup>

Certain *conditions of deprivation of liberty* constitute forms of torture, cruel treatment, inhuman treatment, degrading treatment, and punishment with regard to children.<sup>520</sup> For example, the Special Rapporteur on Torture recognizes that:

*Severe overcrowding, unsanitary conditions and inadequate and/or insufficient food and clothing are often exacerbated by a shortage or absence of adequately trained professionals.<sup>521</sup> The resulting lack of appropriate attention to the medical, emotional, educational, rehabilitative and recreational needs of detained children can result in conditions that amount to cruel or inhuman treatment.*

Similarly, Van Bueren argues that the conditions of a child's detention, such as housing, accommodation and physical environment as well as quality of care, 'may also amount to a prohibited form of treatment and punishment.'<sup>522</sup> In addition, Novak considers that 'manifold and blindfolded, deprivation of sleep, food, water, and lavatories, subjected to freezing air or sounding of loud music for prolonged periods, kept into a coffin cell with inadequate ventilation and no light', amount to inhuman and degrading treatment.<sup>523</sup> Rule 87(a) JDLs highlights the importance of respect and protection of human dignity as a fundamental human right of all juveniles, and provides a detailed list of prohibited acts to the personnel of detention facilities or institutions. In addition to setting out the prohibition of torture, cruel, inhuman or degrading treatment or punishment, Rule 87(a) introduces 'harsh' as an additional prohibited form of treatment and punishment. As there is no indication as to the meaning of 'harsh', Van Bueren simply implies that 'harsh treatment' might refer to a treatment causing a lower level of suffering to the child than cruel treatment.<sup>524</sup> The Committee has indirectly expressed an opinion on what constitutes 'harsh conditions of

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<sup>519</sup> Nejad 2001, p.81

<sup>520</sup> In the *Greek Case*, the European Commission of Human Rights held that 'the failure of the Government of Greece to provide food, water, heating in winter, proper washing facilities, clothing, medical and dental care to prisoners constitutes an "act" of torture'.

<sup>521</sup> UN General Assembly, *Question of torture and other cruel, inhuman or degrading treatment or punishment: the interim report on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, in accordance with paragraph 29 of General Assembly resolution 54/156A, A/55/290*, 11 August 2000, para 10 and 11

<sup>522</sup> Van Bueren 1998, p.224

<sup>523</sup> Nowak 2006, p. 827-828

<sup>524</sup> Van Bueren 1998, p.224

detention'; no separation from adults, poor conditions of detention, psychological intimidation, and overcrowding that 'might render children vulnerable to abuse and ill-treatment'.<sup>525</sup>

Besides the 'actual' conditions of detention, there are other forms of detention which amount to ill-treatment or even torture.<sup>526</sup> According to Rule 67 JDLs, these forms include 'placement in a dark cell, closed or solitary confinement or any other punishment' such as detention incommunicado<sup>527</sup> or disciplinary corporal punishment. In essence, solitary confinement should be understood as the physical isolation of a person from other inmates through confinement in their cell and deprivation of meaningful contact with the outside world.<sup>528</sup> In detention incommunicado, the person is denied access to family members and others.<sup>529</sup> Solitary confinement may be imposed on prisoners as a short-term lawful form of punishment for disciplinary infractions by inmates or as a way of managing specific groups of prisoners.<sup>530</sup> In addition, solitary confinement may be imposed for criminal investigation purposes, or as a judicial sentence.<sup>531</sup> In addition, solitary confinement is adopted as 'a form of treatment for the persons in need of psychiatric care'.<sup>532</sup> Besides lawful use, solitary confinement is increasingly also used as part of coercive interrogation, and is often an integral part of enforced disappearance or detention incommunicado.<sup>533</sup> The HRC strongly

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<sup>525</sup> Liefwaard 2008, p.247

<sup>526</sup> The rule makes no mention of torture. However, the Special Rapporteur on Torture recognises that the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. (A/63/175, para. 77)

<sup>527</sup> The international law does not provide a special provision to expressly prohibit incommunicado detention. However, international standards impose an obligation on states to afford the detainee protection which implies 'prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members'. Furthermore, HRC impose a requirement on state parties to include within their legislation special provision against incommunicado detention as a safeguard against torture and ill-treatment (General Comment 20 para. 11)

<sup>528</sup> A/63/175, According to 'the definition' on Annex The Istanbul Statement on the Use and Effects of Solitary Confinement (hereinafter The Istanbul Statement), the reduction of stimuli is not only quantitative such as being isolated confinement for twenty-two to twenty-four hours a day with occasional permission for one hour of solitary exercise, but also qualitative as, when occasional social contacts are seldom allowed, these are generally monotonous and are often not empathetic

<sup>529</sup> Liefwaard 2008, p. 248. According to Rodley 'a prisoner who is held incommunicado is simply one who is unable to communicate with the world outside the place of detention. Normally a prisoner, once taken into custody, may be expected to be allowed to have contact with a lawyer, with family members, with a doctor, and possibly with others too... One who is held incommunicado, then, is one who is denied access to all of these.' (Rodley 1999, p.334)

<sup>530</sup> A/63/175, para. 79

<sup>531</sup> Ibid

<sup>532</sup> Ibid

<sup>533</sup> Although the communications reflect the state of information brought to the attention of the Special Rapporteur, they do contain, on a country-by-country basis, summaries of reliable and credible allegations of torture and other cruel, inhuman or degrading treatment or punishment. Solitary confinement and incommunicado detention were evident on the communication for Algeria, Azerbaijan, Bahrain, Belarus,

acknowledges that the use of prolonged solitary confinement may amount to a breach of article 7 ICCPR.<sup>534</sup> In dealing with individual communications in relation to solitary confinement and detention incommunicado, the HRC has frequently found violations of both Article 7 and Article 10(1) and, on certain occasions, ruled the practice was conducive to torture.<sup>535</sup> The Special Rapporteur on Torture expresses a similar opinion.<sup>536</sup> In addition to the potentially serious psychological and sometimes physiological ill-effects solitary confinement and detention incommunicado also places individuals 'very far out of sight of justice'.<sup>537</sup> As a result of psychological and physical effects, and the impact on mental health and well-being, the Committee strictly prohibits the use of solitary confinement against children.<sup>538</sup> This statement is of importance, as it strengthens the prohibition on solitary confinement that is contained in a non-binding existing rule (Rule 67 JDLs). Having as the respectively main feature deprivation of contact with outside world and denial of access to family and others, solitary confinement and detention incommunicado might contradict one of the purposes of the deprivation of liberty, which is to rehabilitate juveniles and facilitate their reintegration into society. This is mainly because of the deprivation of contact with the outside world and other inmates that reduce to a minimal level the sensory and environmental stimulation and opportunities for interaction with other people for the juvenile placed in solitary confinement or detention incommunicado. Knowledge of identity regulates and structures human interaction.<sup>539</sup> In turn, the 'self' of an individual emerges, and is shaped, by social interaction. Therefore, isolation deprives a juvenile from effective interaction, which in

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Bulgaria, Cambodia, Chad, China, Democratic Republic of Congo, Egypt, Iran, Malaysia, Myanmar, Russia, Saudi Arabia, Sri-Lanka, Turkey for the period 16 December 2007-14 December 2008 (The Special Rapporteur on Torture Addendum, A/HRC/10/44/Add.4)

<sup>534</sup> General Comment No. 20 (1992) para. 6.

<sup>535</sup> The leading HRC case on solitary confinement is *Polay Campos v Pery* (HRC Comm. No. 577/1994). According to Nowak, the HRS has established that the practice of incommunicado detention constitutes in principle a violation of Article 10(1). Once applied for longer periods amount to violation of Art.7. While prolonged incommunicado detention (three years) it even constitutes torture. (Liefwaard 2008, p. 249)

<sup>536</sup> UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Commission on Human Rights Sir Nigel Rodley, submitted in accordance with paragraph 30 of General Assembly resolution 55/89,A/56/156*, 3 July 2001 para.11

<sup>537</sup> Violation Study 2006 (p.17-18) mentioned the deterrent effects of prolonged or indefinite detention and isolation on children. Solitary confinement and detention incommunicado do places children at heightened risk of self-harm or suicidal behaviour on children. The Istanbul Statement highlights, that solitary confinement may also cause mental illness and aggravate any prior mental health problems. (Istanbul Statement section 'the effects of solitary confinement'; A/56/156 para.14)

<sup>538</sup> General Comment No.10, para.28c Generally, abolition on the use of solitary confinement seems to be internationally supported. Thus, principle 7 of Basic Principles for the Treatment of Prisoners welcomed and encourages any initiate toward the abolition of solitary confinement as a punishment, or to the restriction of its use. The Committee against Torture has recommended that the use of solitary confinement be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and exercised under judicial supervision.

<sup>539</sup> Michael A, Hogg, and Graham M. Vaughan. *Social Psychology*. Harlow, Pearson/Prentice Hall, 2008, p.112-

turn enables them to take the role of the others (ultimately society) in constructing a self-concept.<sup>540</sup>

**Corporal punishment.** Whether ordered as punishment for a crime or administered as an educative or disciplinary measure, corporal punishment, including excessive chastisement, is contrary to the prohibition on torture and cruel, inhuman or degrading treatment, or punishment.<sup>541</sup> However, the HRC extends the applicability of the prohibition only to children, pupils and patients in teaching and medical institutions.<sup>542</sup> Although the CAT does not expressly mention the act of corporal punishment, the Special Rapporteur on torture has highlighted the inconsistency of corporal punishment with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.<sup>543</sup> In addition, the Special Rapporteur on Torture considers that domestic legislation containing a provision on corporal punishment could constitute a violation of CAT in itself.<sup>544</sup> Both Rule 17(3) of the Beijing Rules and Rule 67 of JDLs explicitly prohibit use of corporal punishment for juvenile detainees.<sup>545</sup>

The prohibition on corporal punishment in clear terms is found in Article 37(a) CRC. Although Articles 19 and 28(2) CRC do not specifically refer to corporal punishment, they complement and extend the prohibition on torture and ill-treatment to all forms of physical and mental violence, including school discipline.<sup>546</sup> They impose a positive obligation on State Parties to undertake 'all appropriate legislative, administrative, social and educational measures' and to enforce the prohibition on corporal punishment and other cruel or degrading forms of punishment in any setting, including home, school and other institutions. Accordingly, the Committee recognized that tackling 'the widespread acceptance or tolerance of corporal punishment of children' and making real efforts to effectively enforce measures

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<sup>540</sup> Ibid. p. 115.

<sup>541</sup> General Comment No. 20, para.5 The HCR goes further to uphold this opinion by ruling in *Osborne v Jamaica* that corporal punishment, imposed as a sentence, constitutes cruel, inhuman or degrading punishment and violates the rights of a sentenced person under Article 7 ICCPR.

<sup>542</sup> General Comment No.20, para. 5

<sup>543</sup> UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 63/166, A/64/215, 3 August 2009, para.85*

<sup>544</sup> Ibid

<sup>545</sup> Both provision adopts verb 'shall' hard law language. Meanwhile Rule 67 JDLs enforce the prohibition by adding the phrase 'strictly', which could be interpreted as 'no exception'

<sup>546</sup> While Article 19 provides protection to, Article 28(2) provides on school discipline.

prohibiting corporal punishment constitutes 'a key strategy for reducing and preventing all forms of violence in societies'.<sup>547</sup>

According to the Committee, 'corporal' or 'physical' punishment is defined as 'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light'.<sup>548</sup> Consistent with the scale of severity applied to torture, the Committee adopts the approach of defining the practice of corporal punishment to amount 'invariably degrading'<sup>549</sup> rather than torture. The Committee expands the scope of corporal punishment beyond the physical element, including other non-physical forms of punishment, which belittles, humiliates, denigrates, scapegoats, threatens, scares, or ridicules the child. Such an approach is of particular significance for children deprived of liberty who, because of their vulnerability, 'demanded the need for more, rather than less, legal and other protection from all forms of violence'.<sup>550</sup> It is important to note that the Committee does not reject the positive concept of discipline. In exceptional circumstances, reasonable restraint may be used to confront dangerous behaviour expressed by children and to impose discipline in any setting.<sup>551</sup> Whether the use of corporal punishment is justified, or must be qualified as inhuman treatment, depends on the proportionality of the force applied in relation to the lawful goal to be achieved. In drawing the line, the Committee make reference to the application of the principle of the minimum necessary use of force for the shortest necessary period of time.<sup>552</sup> According to the Committee, the principle of minimum use of force implies with regard to corporal punishment *inter alia* detailed guidance and proper training, of all persons involved in the administration of juvenile justice and those working with children

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<sup>547</sup> UN Committee on the Rights of Child, *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*, CRC/C/GC/8, 21 August 2006 (General Comment No.8), para.3

<sup>548</sup> *Ibid*, para. 21

<sup>549</sup> *Ibid*, para.21

<sup>550</sup> *Ibid*, para. 21.

<sup>551</sup> Consequently, the Committee considers it necessary to point out that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour that justifies the use of reasonable restraint to control it. However the Committee strongly recommend that a clear distinction should be made between the use of force motivated by the need to protect a child or others and the use of force to punish. In drawing the line, the principle of the minimum necessary use of force for the shortest necessary period of time must always apply. To this end a detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control. (General Comment No.8 para.15)

<sup>552</sup> General Comment No.8 para.15. The Committee extends the application of the principle of the minimum use of force defined the United Nations Code of Conduct for Law Enforcement Officials (1978) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Both the international instruments, define that the use of force of any kind should not be the norm but the exception.

and children' institutions, on imposing discipline measures using safe methods in proportion to the situation and without deliberately inflicting more pain than necessary.<sup>553</sup>

The Committee goes beyond defining excessive chastisement and corporal punishment as degrading. To the Committee, such practices are clearly in violation with the rights of every child to respect for their dignity and physical integrity and to equal protection under the law.<sup>554</sup> For these reasons, the Committee concludes that corporal punishment of children is incompatible with the CRC. This requires legal reforms to be undertaken by State Parties to prohibit and eliminate corporal punishment in all settings;<sup>555</sup> to advocate and to launch public information campaigns, which raise awareness and sensitize the public about children's rights of being protected and laws providing for the child's protection;<sup>556</sup> and to promote positive, non-violent relationships and education 'to parents, carers, teachers and all others who work with children and families'.<sup>557</sup>

**2.3 Death penalty.** The prohibition on capital punishment for crimes committed by persons under the age of eighteen raises three issues.

The first is the exclusion of juvenile offenders from the death penalty. It was not new to the working group of CRC. Numerous treaties, declarations and pronouncements by international bodies make reference to the imposition of the execution of persons who are under the age of 18 at the time of their crime. As Schabas notes, the prohibition on the execution of juvenile offenders 'made its first appearance as an international norm in Article 68(4) of the fourth Geneva Convention of 1949, which affords protection to civilians, including in occupied territory.'<sup>558</sup> The Red Cross commentary on Article 68(4) states:

This clause originated in a proposal made at the XVIIth International Red Cross Conference by the International Union for Child [p.347] Welfare (8). It makes eighteen years the absolute age limit below which the death penalty may not be inflicted, even if all the other conditions that make that penalty applicable are present.

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<sup>553</sup> Ibid para.15

<sup>554</sup> Ibid para 21

<sup>555</sup> Ibid para 34-35

<sup>556</sup> Ibid para.45

<sup>557</sup> Ibid para.46

<sup>558</sup> Schabas & Sax 2006, p.4 Geneva Convention of August 12, 1949 Relative to the Protection of Civilians 1950 available at <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView> (accessed 20/04/2011)



The clause corresponds to similar provisions in the penal codes of many countries, and is based on the idea that a person who has not reached the age of eighteen years is not fully capable of sound judgment, does not always realize the significance of his actions and often acts under the influence of others, if not under constraint.<sup>559</sup>

As an international norm in all circumstances, the prohibition of the death penalty for crimes committed by persons below eighteen years of age was incorporated in the Article 6(5) of the ICCPR. The ECHR, adopted in 1950, imposes no such restriction on the death penalty in Article 2(1). However, the position of ECHR has evolved since its adoption. Members of the Council of Europe amended Article 2(1) so as to outlaw the death penalty, through Protocols No.6<sup>560</sup> and No.13.<sup>561</sup> As Frank notes, 'it is not apparent that juvenile executions were ever carried out in State Parties to the ECHR before the death penalty was comprehensively abolished within Council of Europe Member States, in the mid-1990s'.<sup>562</sup> Similarly, Article 4(5) of the American Convention on Human Rights (ACHR) incorporates a moratorium on 'capital punishment... upon persons who, at the time the crime was committed, were under 18 years of age'. Reference to the death penalty is omitted from the African Charter, but that omission is corrected in Article 5(3) of the African Charter on the Rights and Welfare of the Child. It states that the 'death sentence shall not be pronounced for crimes committed by children'.

Secondly, from the above description it can be seen that numerous treaties attest that the execution of persons who are under the age of 18 at the time of their crime is not accepted in international law. As Mary Robinson, acting as UN High Commissioner for Human Rights, notes:

The overwhelming international consensus that the death penalty should not apply to juvenile offenders stems from the recognition that young persons, because of their

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<sup>559</sup> Commentary available at <http://www.icrc.org/ihl.nsf/COM/380-600075?OpenDocument> accessed 20/04/2011

<sup>560</sup> Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, adopted on 28/4/1983, entered in force 1/3/1985, text and commentary available at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>, accessed 30/4/2011

<sup>561</sup> Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, adopted on 3/5/2002, entered in force 1/07/2003 text and commentary available at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>, accessed 30/4/2011

<sup>562</sup> Hans Göran Frank, *The barbaric Punishment, Abolishing the Death Penalty*, The Hague/London/New York, Martinus Nijhoff Publishers, 2003,

immaturity, may not fully comprehend the consequences of their actions and should therefore benefit from less severe sanctions than adults. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults.<sup>563</sup>

Thus, having a wide international consensus, the prohibition on executions for crimes committed under the age of 18 is recognised as a norm of customary international law. The customary nature of prohibition on juveniles' execution is confirmed by:

- a resolution adopted by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in 2000.<sup>564</sup> While condemning the imposition of the death penalty in relation to juveniles, it affirmed that such use 'is in contravention of customary international law'.
- a decision of the Inter-American Commission on Human Rights that was issued in 2002 which concluded that 'a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime' and that 'this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*'.<sup>565</sup>

Third, Schabas acknowledges that the difficulty of accepting the norm is not the prohibition on capital punishment *per se*, but rather establishing the age to which this prohibition applies.<sup>566</sup> China, the Democratic Republic of the Congo, Iran, Pakistan and the USA are known to have executed child offenders since 2000, while in the Philippines, the Sudan, Saudi Arabia, United Arab Emirates, Yemen and Nigeria, child offenders are currently under the death sentence.<sup>567</sup> All of these states, however, with the exception of the USA, are parties to CRC and have not made an explicit reservation to Article 37(a), which might justify the

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<sup>563</sup> Statement by Mary Robinson urging clemency for US child offenders T.J. Jones and Toronto Patterson, Office of the UN High Commissioner for Human Rights, press release, 1 August 2002, quoted on Stop Child Executions! Ending the death penalty for child offenders, *Amnesty International*, January 2004, <http://www.amnesty.org/en/library/info/ACT50/001/2004/en> (accessed 29/03/2011)

<sup>564</sup> UN Office of the High Commissioner for Human Rights, The Death Penalty in Relation to Juvenile Offenders, Resolution 2000/17, adopted Aug. 17, 2000. E/CN.4/Sub.2/RES/2000/17 (2000)

<sup>565</sup> *Michael Domingues v. United States*, Case 12.285, Report 62/02, Annual Report of the IACHR 2002, available on the IACHR web site at <http://www.cidh.org/annualrep/2002eng/USA.12285.htm> para. 85

<sup>566</sup> Schabas & Sax 2006, p.24

<sup>567</sup> Amnesty International 2004, Death Sentences and Executions 2010, Amnesty International, March 2011, <http://www.amnesty.org/en/library/info/ACT50/001/2011/en> (accessed 31/03/2011) (AI Index: ACT 50/001/2011)

use of the death penalty as a sentence for juveniles.<sup>568</sup> When presenting periodic reports, well aware of the non-compliance with their obligation, the representatives of these governments have generally avoided mentioning the matter of prohibition on death penalty, or, once challenged by the Committee, have justified the imposition to death penalty of children with Shari'a jurisdiction, and even argued that the age of juvenile subject to death penalty 'has not been determined'.<sup>569</sup> Yet, the 'age' element arises despite the Committee strongly affirming that, under the prohibition on the death penalty, 'the explicit and decisive criterion is the age at the time of the commission of the offence'.<sup>570</sup> Such criteria should not be understood as a prohibition of the execution of persons below the age of 18 years. On the contrary, the Committee firmly establishes that the 'age criterion means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of their age at the time of the trial or sentencing or of the execution of the sanction.'<sup>571</sup>

**2.4 Life imprisonment.** The CRC was the first international treaty to explicitly prohibit the sentencing of child offenders to terms of life imprisonment 'without the possibility of release or parole'. In an indirect way, numerous other international instruments prohibit sentencing juveniles to prison forever, owing to the principle that imprisonment of juveniles should be used as a measure of last resort and for the shortest period possible.<sup>572</sup> Thus, Rule 17.1(b) of Beijing Rules states that 'restriction on personal liberty shall be imposed only after careful consideration and for the shortest period possible'.<sup>573</sup> The commentary on this rule emphasises that punitive approaches are not appropriate for juveniles and that the well-being and the future of the young person should 'always' outweigh retributive sanctions.<sup>574</sup> Thus, several articles of the ICCPR, such as Article 7 and Article 10(3), once considered together, argue against imprisonment for a life term. The 'desirability of promoting rehabilitation' in the case of juveniles, is reinforced by Article 14(4) of ICCPR, as well as Article 24(1), which states that every child shall have 'the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State'.

<sup>568</sup> Schabas & Sax 2006, p.27 It should be noted that entering a reservation, as to Article 2 (1) (d), Vienna Convention on the Law of Treaties 1969, enables State parties to a treaty to adapt specific elements in their laws, and to admit that they have difficulties in guaranteeing all the rights in the Covenant none the less to accept the generality of obligations in that instrument.

<sup>569</sup> For details please refer to Schabas & Sax 2006 p. 28-29, and Amnesty International Report on Death Sentences 2011

<sup>570</sup> General Comment No.10, para.26

<sup>571</sup> Ibid

<sup>572</sup> This principle would be clarified further while discussing Article 37(b).

<sup>573</sup> Beijing Rules, para. 17.1(b). Similar principle is adopted by Riyadh Guidelines at para.46

<sup>574</sup> Beijing Rules Commentary to Rule 17.1(b).

It should be noted that the debate over the prohibition on life imprisonment centres on the 'possibility of release', which is considered by different systems exercising arbitrary discretionary authority and following strict procedures to grant the release.<sup>575</sup> However, in Europe the 'jurisprudence of the European Court of Human Rights (the ECtHR) has put the discussion beyond doubt' regarding the 'possibility of release'.<sup>576</sup> Thus, in *Weeks v. United Kingdom*, the ECtHR held that a discretionary life sentence imposed on a 17-year-old was acceptable only because he had a real prospect of release, and required that additional procedural due process guarantees be put in place through which his release could be considered.<sup>577</sup> In *Hussain v. United Kingdom*, the central issue before the ECtHR was whether a sentence of detention during Her Majesty's Pleasure should be akin to a discretionary life sentence, implying periodic review of the detention in the post tariff-phase.<sup>578</sup> Finally, in *V v. United Kingdom*, the Grand Chamber of the ECtHR underlined the importance in these cases of having robust release procedures and of promptly stipulating a clear and relatively short minimum period after which release would have to be considered, particularly for cases in which the offender was very young at the time the offence was committed.<sup>579</sup>

Faced with different excuses presented by the State Parties to the CRC once challenged about the 'without possibility of release' for juveniles sentenced to life imprisonment,<sup>580</sup> the Committee deemed it necessary to clarify what is meant by 'no life imprisonment without parole'. Thus, the Committee extended the application of 'possibility of release' not only to life imprisonment, but also 'for all sentences' involving deprivation of liberty. In doing so, the Committee determined two elements that states should comply with when considering the possibility of release; the realistic application of possibility of release *per se* and regularity in considering it as an option to deprivation of liberty. However, the Committee opted to refer to article 25 CRC, which provides on the review of treatment in care, rather defining the

<sup>575</sup> Schabas & Sax 2006, p.30

<sup>576</sup> Dirk Van Zyl Smit, Outlawing Irreducible Life Sentences: Europe on the Brink? *Federal Sentencing Reporter* Vol. 23, No. 1 (2010), pp. 39-48, p.39

<sup>577</sup> Ibid, refers to the case *Weeks v. United Kingdom* (1987) 10 EHRR 293, 68

<sup>578</sup> *Hussain and Singh v UK* (1996) 22 EHRR 1

<sup>579</sup> Van Zyl Smit 2010, refer to the case *V v United Kingdom* (1999) 30 EHRR 121

<sup>580</sup> Thus Schabas refers the response given to the Committee by Zambia, Dominica, Romania, Kazakhstan, Burkina Faso, Israel and Sudan. The examples point to the ambiguities presented by this states in their own laws to confirm the prohibition of the life imprisonment without possibility of release sentence for juveniles Schabas & Sax 2006, p. 31

meaning of elements in General Comment No.10. The Committee acknowledges that life imprisonment as a sentence is still applicable by member states. Therefore, the Committee acknowledges the existence of juveniles sentenced to life imprisonment, and requires State Parties to treat them strictly under the principles of juvenile justice established in Article 40(1). However, once the aims of juvenile justice, stated in Article 40(1) CRC, are transposed to practical implications of sentence, the Committee acknowledges impossibility in the achievement of such aims in the case of juveniles sentenced to life imprisonment, despite the possibility of release. More precisely, life imprisonment with or without parole contradicts the primary aim of education and social integration and principle of last resort and for shortest appropriate time. The institutions of deprivation of liberty have a duty to put in place arrangements designed to address the vulnerability of juveniles deprived of liberty in assessing their current situation in institutions; to facilitate the eventual child's reintegration into society; to counteract negative effects of deprivation of liberty; and to minimise the physical, psychological, and mental effects of incarceration on juveniles. However, all these efforts are jeopardised by the possibility that the juvenile might not return to society. Unlike a sentence of imprisonment for a term of years, a life sentence is, by its very nature indeterminate, causing psychological anguish to the person who is subject to it.<sup>581</sup> Thus, as Baker notes, a person who is sentenced to life imprisonment has no such guarantee about the date on which they can expect to be released. Thus, rather than being concerned to detail the requirements expected to be fulfilled by State Parties in compliance to life imprisonment, the Committee adopts 'hard language'<sup>582</sup> compared to CRC, and calls for the abolition of all forms of life imprisonment for offences committed by persons under the age of 18.

The Centre for Law and Global Justice at the University of San Francisco, in collaboration with Human Rights Watch, has confirmed that there are no juvenile offenders serving life without parole sentences anywhere in the world except the United States.<sup>583</sup> In fact, the majority of European countries do not allow life sentences to be imposed on children at all.<sup>584</sup>

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<sup>581</sup> Estella Baker, 'Dangerousness, Rights and Criminal Justice', *Modern Law Review*, Vol.56, Issue 4, 1993, pp.528-547 p.533

<sup>582</sup> 'Hard language' refers to 'strongly recommends' and the title of paragraph 'no life imprisonment'.

<sup>583</sup> The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008, *Human Rights Watch*, May 2008, <http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives> (accessed 4/04/2011)

<sup>584</sup> Frieder Dunkel & Barbara Stando-Kawecka, *Juvenile Imprisonment and Placement in Institutions for Deprivation of Liberty-Comparative Aspects Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. Monchengladbach: Forum Verlag Godesberg, 2010, p. 1772. Quoted in Van Zyl Smith 2010, p.39

Arguing on non-compliance with the right of child to development and principles of a comprehensive juvenile justice policy, most governments around the world have either expressly prohibited, or are not applying, life imprisonment.<sup>585</sup>

### 3. Deprivation of liberty of children in the context of juvenile justice: (Article 37(b), (c), (d))

'It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.'

Nelson Mandela<sup>586</sup>

Despite the different contexts,<sup>587</sup> in this chapter the deprivation of liberty is approached exclusively in relation to children in conflict with the law.

Several studies have acknowledged that 'once placed in police lock-ups or detention facilities, children are frequently subjected to severe corporal punishment, torture, isolation, restraints, sexual assaults, harassment, and humiliation'.<sup>588</sup> Although prohibited by the provisions of the United Nations Convention on the Rights of a Child (CRC), one may encounter children in detention centres, under investigation or on trial, sharing a facility with children or sometimes adults convicted of a crime. Consequently, there are detained children,

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<sup>585</sup> De la Vega & Leighton provide a detailed account dated up to 2008 regarding the application of life imprisonment without parole around the world. Thus '135 countries have expressly rejected the sentence through their domestic laws, and 185 have done so in the UN General Assembly. Israel, Tanzania, and South Africa, have amended their laws to allow parole for juveniles in all cases. Although General Assembly statements are not binding, and ten countries have laws that could theoretically allow children to receive a life without parole sentence, there are no known cases of these countries actually using the sentence. The United States is the only known violator of international human rights standards prohibiting life without parole sentences for children.' Connie De la Vega, and Michelle Leighton, Sentencing Our Children to Die in Prison: Global Law and Practice. University of San Francisco Law Review, Vol. 42, Issue 4, 2008, pp. 938-1044, p.989

<sup>586</sup> Nelson Mandela, *Long Walk to Freedom*, Little Brown, London, 1994, p.187 quoted in Lazarus 2004 page 1

<sup>587</sup> Children are deprived of their liberty for a variety of reasons and in a variety of ways. Few are placed in residential care because they have no parents, or because they suffer violence at home. For many children, family disintegration, social and economic conditions, including poverty, constitute reasonable grounds to institutionalise them. Others are institutionalised in hospital due to the widespread stigmatisation of particular physical or mental disabilities, psychiatric or other severe illness, as well as the lack of support provided to parents. Few are detained merely because of their immigration status. Many children working or living on the streets end up in detention regardless of whether or not they have committed an offence, simply because they are assumed to be anti-social elements. At least one million children worldwide are deprived of their liberty as they are alleged to have come into conflict with the law.

<sup>588</sup> 'Easy Targets: Violence Against Children Worldwide'. Human Rights Watch 2001, <http://www.hrw.org/sites/default/files/reports/violence2001.pdf> (accessed on 20/4/09), Stan Meuwese, Kids behind bars. A study on Children in conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards, Amsterdam: *Defence for Children International*, 2003,

that are abused and exploited by adults or other children deprived of liberty.<sup>589</sup> In addition, girls in detention facilities are a group vulnerable to physical and sexual abuse, mainly when supervised by male staff.<sup>590</sup> Levels of self-harm among detained children highlight 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.<sup>591</sup>

Violence is only one aspect of institutionalisation. Locked behind bars, children are excluded from a family environment, excluded from school, excluded from their community, and excluded from society. Their situation is 'unknown; unknown to the general public, to politicians, and even to Non-Governmental Organisations (NGOs)'.<sup>592</sup> Very often, authorities are reluctant to provide disaggregated statistical data on their treatment.<sup>593</sup> Deprived of their liberty, children are forgotten and out of sight, as they are the 'unwanted child' of state human rights obligation.<sup>594</sup>

In its attempts to protect the best interests of children, international law has developed a set of standards regarding juvenile deprivation of liberty. Studies emphasise that 'the effects of institutionalisation can include poor physical health, severe developmental delays, disability, and potentially irreversible psychological damage'.<sup>595</sup> Furthermore, 'a century of experience with training schools and youth prisons demonstrates that they constitute the one extensively evaluated and clearly ineffective method to treat delinquents'.<sup>596</sup> In discussions about deprivation of liberty, it is important to bear in mind that it means 'locking up' young people

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<sup>589</sup> Ibid,

<sup>590</sup> Paulo Sergio Pinheiro, "World Report on violence against children". United Nations Secretary-General's Study on Violence against Children, Geneva, Switzerland, 2006, p.16, para.62

<sup>591</sup> Martin & Parry-Williams, p. 34, Pinheiro 2006, pp. 199-200 Both Pinheiro in, and Martin and Parry-Williams in 'The Right not to Loose Hope' point out the 'heightened risk of self-mutilation and suicidal behaviour' among juvenile deprived of liberty. The evidence provided by them mostly relate to UK and US. Thus, in the USA, 110 youth suicides are reported to have occurred nationwide in juvenile facilities from 1995 to 1999 alone. In the UK, the Howard League reports that there were 17 suicides of children in prison between 1995 and 2004 and 28 deaths of children in penal custody in total since 1990. To further provide a worldwide picture is rendered difficult. General international penal statistics, like Space 1 of Council of Europe do not break the suicide rates into age, sex. ([http://www.coe.int/T/E/Legal\\_affairs/Legal\\_cooperation/Prisons\\_and\\_alternatives/Statistics\\_SPACE\\_I](http://www.coe.int/T/E/Legal_affairs/Legal_cooperation/Prisons_and_alternatives/Statistics_SPACE_I))

<sup>592</sup> Meuwese 2003, p.9

<sup>593</sup> Although the data and information is crucial for the monitoring and evaluation of progress achieved on their treatment, very often the Committee had point the lack of practical information related to the treatment of children in conflict with the law in the country reports.

<sup>594</sup> Abrahansom 2005, p.1

<sup>595</sup> Pinheiro 2006, p.189 Martin & Parry-Williams, p. 34. Both Pinheiro in, and Martin and Parry-Williams in 'The Right not to Loose Hope' point out the 'heightened risk of self-mutilation and suicidal behaviour' among juvenile deprived of liberty.

<sup>596</sup> Feld BC (1998) quoted on Pinheiro 2006, p. 200

who have no clear idea of the 'pains of imprisonment'.<sup>597</sup> Besides the physical, social and psychological effect upon juveniles, the effects of deprivation of liberty should be expanded to an evaluation of the financial cost encountered by State Parties in running institutions with high walls, bars, locked doors and barbed wire.<sup>598</sup>

However, children deprived of their liberty are as entitled to rights and fundamental liberties as adults. International law provides a legal umbrella which is meant to recognise their rights, to protect them against torture, cruel, inhuman, and degrading treatment (i.e. Article 37(a) CRC) and to guarantee treatment with humanity and respect for the inherent dignity of the human person, taking into account the needs of the person of his or her age. The CRC provisions incorporate standards already embodied in the Beijing Rules. In addition, the 1990 UN Rules for the Protection of Juveniles Deprived of Their Liberty (JDLs) supplement the provisions of the CRC, particularly with regard to what children deprived of their liberty are entitled to. The Beijing Rules and JDS, together with CRC, serve as a comprehensive, internationally accepted framework to be incorporated by states 'with a view to counteracting the detrimental effects of detention', and to provide guidance to professionals involved in the management of the juvenile justice system.<sup>599</sup> The juvenile justice framework operates in conjunction with other relevant human rights provisions and is applicable to all juveniles deprived of their liberty. The other human rights provision refers to the International Covenant on Civil and Political Rights (ICCPR), the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles). The CRC and JDLs do not purport to establish an array of rights for children deprived of their liberty, as the international instruments mentioned above supplement the CRC and JDLs by providing broader legal protection or stronger supervisory mechanisms to enforce the rights of juveniles deprived of liberty.<sup>600</sup>

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<sup>597</sup> Vindzio, Michael. 'Is there a deterrent effect of pains of imprisonment? The impact of 'social costs' of first incarceration on the hazard rate of recidivism', *Punishment Society*, Vol 8; Issue 3, 2006, p.342

<sup>598</sup> Feld 1998, Feld recognizes that the influx of younger offenders poses management, programming, and control challenges for correctional administrators. Young peoples' dietary and exercise needs differ from those of older inmates.

<sup>599</sup> General Comment No.10 para.2-3, more in the fundamental principles of JDLs.

<sup>600</sup> For example prisoners in Europe are having the opportunity to invoke the ECHR and its enforcement mechanism on seeking to improve prison conditions. Even children, in several occasions have challenged their treatment and condition of deprivation of liberty (for more please see Van Bueren 1998, or Van Bueren 2007)



**3.1 Drafting History.** Overall drafting of Article 37(b), (c), and (d) resembles a ‘test drive’ with regard to incorporation of safeguards for deprivation of liberty.<sup>601</sup> While being absent in the first 1978 proposal for the draft Convention, the issue of deprivation of liberty would be first introduced only in the 1986 Working Group, while Canada presented the revised text of Article 19 at the time.<sup>602</sup> The issue of deprivation of liberty was considered within a draft article encompassing a wide range of guarantees, from due process and fair trial standards, to torture prohibition.<sup>603</sup> Each issue considered in the draft was based upon a provision taken directly from other international human rights treaties.<sup>604</sup> Yet, Canada’s proposal generated much debate. An informal working party was established to redraft the proposal and to attempt consolidating many delegations’ views’.<sup>605</sup> The revised proposal made reference to ‘the relevant provisions of other international instruments’ in paragraph 2 and required states ‘(a) as a minimum to ensure to the child in every appropriate respect, the same legal rights as an adult accused or found guilty of infringing the penal law’.<sup>606</sup> In addition, this proposal introduced a new element regarding detention pending trial, newly incorporated in Rule 13(1) of the 1985 Beijing Rules, reading ‘(b) detention awaiting trial shall be used only as a measure of last resort, for the shortest possible period of time’.<sup>607</sup> It also contained a new approach regarding deprivation of liberty, by declaring that ‘no child is unnecessarily institutionalised’,<sup>608</sup> and explicitly defining in a separate paragraph (3) that ‘Penal law and the penitentiary system shall not be used as a substitute for child welfare and facilities’.<sup>609</sup> Again, this proposal would be subject to debate and more revision, resulting in another revised text that omitted the ‘measure of last resort and shortest appropriate time’ rule.<sup>610</sup> In addition, a debate on an alternative wording would terminate with the deletion of the ‘unnecessarily institutionalised’ requirement as well.<sup>611</sup> By the end of the 1986 Working Group Session, there was a draft text containing provisions on deprivation of liberty, within a very lengthy Article 19 (Article 37 after).

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<sup>601</sup> Schabas & Sax 2006, p. 52

<sup>602</sup> UN Doc. E/CN.4/1986/39, para.90

<sup>603</sup> Ibid

<sup>604</sup> Ibid look on the explanatory notes

<sup>605</sup> Ibid para. 92

<sup>606</sup> Ibid para. 93

<sup>607</sup> Ibid

<sup>608</sup> Cf. Rule 17 of the 1985 Beijing Rules

<sup>609</sup> UN Doc. E/CN.4/1986/39, para.93

<sup>610</sup> UN Doc. E/CN.4/1986/39, para.99

<sup>611</sup> UN Doc. E/CN.4/1986/39, para.117

While the 1988 Working Group adopted the draft text as agreed by the 1986 Working Group Session, the 1989 Working Group session undertook a significant revision of Article 19 (Article 37 after). In the 1989 Working Group, two other lengthy versions of Article 19 were proposed beside the Working Group text, one by the Crime, Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna, and the other by delegation of Venezuela. Faced with a total lack of consensus, the chairman of the 1989 Working Group appointed an open-ended drafting group<sup>612</sup> that split the draft Article 19 into two separate provisions.<sup>613</sup> Members of the drafting group explained that the split was necessary to accommodate, on the one hand, the comments formulated by the Human Rights Committee regarding the deprivation of liberty and 'to show the respect due to human dignity, recognition of the needs of the children and the concern to assure them legal and other assistance'.<sup>614</sup> On the other hand, the split was necessary to incorporate some ideas that were the result 'of the initiatives taken in the United Nations'.<sup>615</sup> Thus, the proposed draft provided safeguards regarding both deprivation of liberty (paragraph 2) and the state of deprivation of liberty (paragraph 3), as well as establishing the right of review of that state of deprivation of liberty (paragraph 4). The proposal was complemented with the introduction of '*a chapeau*', which required State Parties to 'ensure' the guarantees provided by the Article.<sup>616</sup>

While a consensus emerged quickly regarding the first phrase of paragraph 2 ('No child shall be deprived of his or her liberty unlawfully or arbitrarily'), it proved more difficult for the second one to be accepted. Discussion on the second sentence focused around two issues. The first related to the reference of using deprivation of liberty 'for the shortest possible period of time'. During the debate, deletion of the phrase<sup>617</sup> or even of the entire sentence was proposed.<sup>618</sup> Following the debate, the Senegalese representative highlighted the reason for referring to 'shortest possible period of time', which was to encourage judges 'to consider the use of other educational or correctional measures than deprivation of liberty and to ensure that, if at all, custodial measures would only be used as a measure of last resort'.<sup>619</sup> In a spirit

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<sup>612</sup> UN Doc. E/CN.4/1989/48, para. 536

<sup>613</sup> UN Doc. E/CN.4/1989/WG.1/WP.67/Rev.1

<sup>614</sup> UN Doc. E/CN.4/1989/48, para. 537

<sup>615</sup> Ibid

<sup>616</sup> Ibid para. 538-539

<sup>617</sup> Ibid para. 549 and 551

<sup>618</sup> Ibid para. 550

<sup>619</sup> Ibid para. 550

of compromise, the delegation arguing about the 'shortest possible period of time' backed down, and gave consensus to retain the phrase 'for the shortest *appropriate* period of time'.

The second focused on the consistency of using the term 'deprivation of liberty'. Several delegations expressed their concern with regard to 'deprivation of liberty', as the term, besides detention, arrest or imprisonment, encompassed other types of deprivation of liberty applied to juveniles such as educational or Borstal institution.<sup>620</sup> As a result of this debate, the 'remarkable terminological consistency'<sup>621</sup> was lost in order to achieve a compromise text determining 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 text of paragraph 3 did not give rise to controversy, as 'there was virtually no new language included'.<sup>622</sup> No debate took place regarding the insertion of the condition 'save in exceptional circumstances'.<sup>623</sup> Therefore, no explanation might be presented about the reason of working group placing a condition to the right to maintain the family life.

Replacing the term 'all children' with 'every child' and removing the brackets around the words 'or other competent independent and impartial authority' to correspond with relevant provisions of the International Covenant on Civil and Political Rights refined the text of paragraph 4.<sup>624</sup>

In conclusion, the drafting process of Article 37(b), (c) and (d) reflected the evolution of new initiatives taken in the United Nations to reduce deprivation of liberty of children as far as possible. The informal drafting group explicitly emphasised that adoption of less formal solutions compared to other international human rights instruments derived from the necessity to accommodate both the needs of the child to 'grow up in an atmosphere of love and understanding' and the respect of his/her human rights and legal guarantees.<sup>625</sup>

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<sup>620</sup> Ibid para. 556

<sup>621</sup> Schabas & Sax p. 54

<sup>622</sup> UN Doc. E/CN.4/1989/48, para. 561

<sup>623</sup> Ibid para. 562

<sup>624</sup> Ibid para. 563

<sup>625</sup> Ibid para. 537

**3.2 Legality and Non-Arbitrariness.** The first sentence of Article 37(b) explicitly provides that: 'No child shall be deprived of his or her liberty unlawfully or arbitrarily.' Unfortunately, the Committee does not explicitly consider 'lawfulness' and 'non-arbitrary' as different requirements.<sup>626</sup> While discussing the 'Basic Principles' of deprivation of liberty, it enunciates the principles without providing any further explanation of the requirement to comply with them. Presented with the lacuna created by the Committee in defining the first sentence of Article 37(b), it would be necessary to refer to Article 9(1) of the ICCPR, which served as the basis for this provision.<sup>627</sup>

Article 5(1) of the ECHR has an almost identical provision, safeguarding the right to liberty and security of person. Despite the different formulation employed by Article 9(1) and Article 5(1), the wording stipulates that deprivation of liberty is permissible only when it is 'in accordance with a procedure prescribed/established by law' and when this is not arbitrary.<sup>628</sup> Both requirements are recognised as distinct notions, i.e. 'lawfulness' and 'arbitrariness', and have to be satisfied in a cumulative way. Thus, the component of 'lawfulness' (principle of legality) is aimed at the lawfulness of both procedure and substance set primarily under domestic law for deprivation of liberty.<sup>629</sup> Prohibition of arbitrariness, however, should be considered as 'a safeguard against the injustices of states, because it applies not only to the laws but also to statutory regulations, and to all acts performed by the executive'.<sup>630</sup>

In relation to Article 9(1) of the ICCPR, the world 'law' in the phrase 'established by law' should be understood in the sense of a parliamentary statute or equivalent, or an unwritten norm of common law accessible to individuals who are subject to the relevant jurisdiction.<sup>631</sup> An administrative act for deprivation of liberty satisfies the lawfulness requirement only if it is carried out according to a procedure clearly prescribed and regulated by law.<sup>632</sup> Consequently, the deprivation of a person's liberty, carried out according to procedures not

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<sup>626</sup> General Comment No.10, para. 28a

<sup>627</sup> Detrick 1999, p.629, Schabas & Sax 2006 p.76

<sup>628</sup> Manfred Nowak, '*UN Covenant on Civil and Political Rights. CCPR Commentary*' (2nd rev. ed.). Kehlram Rhein: Engel, 2005, Article 9 para.25 p.223, David J Harris, Michael O'Boyle, Ed P Bates, and Carla Buckley, '*Law of the European Convention on Human Rights*, 2<sup>nd</sup> eds, Oxford University Press, 2009 (Harris et al. 2009), Article 5 p.133

<sup>629</sup> Ibid

<sup>630</sup> Detrick 1999, p.630

<sup>631</sup> Nowak 2005, Article 9 para.27 p.224

<sup>632</sup> Ibid Nowak refers to cases of *Bolanos v. Ecuador* or *Domukovsky et al. v. Georgia*

having a basis in domestic law, and which result in unacknowledged detention or are a consequence of illegal arrest, violates the principle of legality.<sup>633</sup>

In the context of Article 5(1), the European Court of Human Rights (ECtHR) has taken a wide view in considering the notion of law as well as in defining the requirements of 'lawfulness'. Thus, the term 'law' is a concept referring to both statutory law and case law, as well as 'a rule of international law or common law so long as it purports to authorise the interference.'<sup>634</sup> The requirement of 'lawfulness' means that not only must the state have a basis in national law for its interference, but the law concerned must also satisfy the test of legal certainty and 'quality of law'.<sup>635</sup> The 'quality of law' test requires that all 'law' concerned must be accessible, sufficiently precise and foreseeable.<sup>636</sup>

In relation to Article 37(b) of the CRC, the principle of legality acquires another dimension beside that discussed above. The requirement of 'lawfulness' means that as well as the State Parties having a basis in national law, the law concerned must provide that this interference with personal liberty of children 'shall be used only as a measure of last resort and for the shortest appropriate period of time'.<sup>637</sup>

The prohibition of arbitrariness was adopted as an alternative to an exhaustive listing of all permissible cases of deprivation of liberty.<sup>638</sup> As Nowak notes, the prohibition of arbitrariness by Article 9(1) of the ICCPR concerns domestic law, as well as the acts of enforcement authorities, which are going to impose deprivation of liberty.<sup>639</sup> This in turn means that any deprivation of liberty provided for by law cannot be unjust, unpredictable, manifestly disproportionate, discriminatory, or inappropriate to the circumstances of the case.<sup>640</sup> 'Arbitrariness' includes cases of detention initially lawful and non-arbitrary, which might become arbitrary after prolonged continuation without justification.<sup>641</sup> It even encompasses cases such as political arrest or detention, incommunicado detention, enforced disappearance,

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<sup>633</sup> Ibid

<sup>634</sup> Harris et al, 2009 p. 344

<sup>635</sup> Ibid p.133

<sup>636</sup> Ibid p.134.

<sup>637</sup> This new dimension of principle of legality would be further discussed in detail at the subsequent section.

<sup>638</sup> Nowak 2005 Article 9 para.29 p.224, Detrick 1999, p. 629-630

<sup>639</sup> Nowak 2005. Article 9 para.28 p.224

<sup>640</sup> Ibid para.30

<sup>641</sup> Ibid para.33

or kidnapping by secret service agents, which are obvious cases of arbitrary detention from the very beginning.<sup>642</sup>

Similarly, in relation to Article 5(1) of the ECHR, the prohibition of arbitrariness 'extends beyond lack of conformity with national law'.<sup>643</sup> Article 5(1) of the ECHR requires that 'any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness'.<sup>644</sup> The notion of 'arbitrariness' is built upon a concrete situation emerging from case law,<sup>645</sup> since Article 5(1) sub-paragraphs (a) to (f) contain an 'exhaustive' list of circumstances in which the state may detain an individual in the public interest. The list has a direct impact on the deprivation of liberty of children. Thus, Article 5(1)(d) of the ECHR permits 'the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority'. Consequently, the detention for the purpose of educational supervision is not arbitrary, while the detention of a minor accused of a crime during the preparation of psychiatric report necessary to the taking of a decision in his case is permitted, as is detention pending the making of a court order placing a child in care.<sup>646</sup>

**3.3 Principle of last resort and for appropriate period of time.** The second sentence of Article 37(b) of the CRC lays down one of the most important principles relating to the deprivation of liberty of children, that of 'last resort and shortest appropriate period of time'. The principle is applicable only in the context of juvenile justice.<sup>647</sup> According to Van Bueren, adoption of such 'weaker standards', compared to those laid down in Rule 13(1) of the Beijing Rules and Rule 17 JDLs, reflects the position of the international community which has not yet accepted an absolute prohibition on the imprisonment of children.<sup>648</sup>

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<sup>642</sup> Ibid para. 34

<sup>643</sup> Harris et al. p.136

<sup>644</sup> Ibid

<sup>645</sup> Ibid

<sup>646</sup> Ibid

<sup>647</sup> Indeed the drafting history clearly indicates that the principle's limitation only to the juvenile criminal justice context was a solution to the objection of states for second sentence of Article 37 (b). Some countries to safeguard their discretion regarding other forms of deprivation of liberty, were objecting the attempt to broaden the ambit of the sentence beyond the juvenile justice context. (Please see more on Detrick 1999, pp.477, Van Bueren 1998, p.209)

<sup>648</sup> Vann Bueren refers with the term 'weaker standards' to the word's adoption: 'the arrest, detention or imprisonment' rather than 'deprivation of liberty' and 'for the shortest appropriate period of time' rather 'for the shortest possible period of time'. To her views such wording rather than maintaining the higher standards introduced during the first reading of the draft, lower the position of principle. Van Bueren 1998, p.206.

Introduced as an exclusive child-specific requirement,<sup>649</sup> the principle is based on scientific research exposing the negative impact of imprisonment not only to juveniles, but also to their families, their victims (compensation) and society at large (recidivism).<sup>650</sup> The principle simply imposes a duty on State Parties to continuously explore the variety of dispositions operating as alternatives to institutionalisation and to establish facilities offering less restrictive environment.<sup>651</sup> In addition, the principles imply that whole juvenile justice systems should provide, by law, an indication of the competencies of authorities and time limits for the use of arrest, detention, and imprisonment. Striking a balance toward the juveniles and their best interests, the principle of 'last resort and shortest appropriate period of time' might come into conflict with the public interest and principle of proportionality. When arrest, detention, and imprisonment are imposed, authorities involved in the administration of juvenile justice must have regard to the whole picture of the case in consideration. Consequently, the authorities dealing with a case involving a juvenile must prove that the use of arrest, detention and imprisonment, including the duration of deprivation of liberty and the use of alternative sanctions or granting less time of imprisonment than provided by law, are sufficient to attain a balance between the legitimate aim of punishment of juvenile for the wrongdoing and the needs of public safety. The principle of proportionality serves as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts, to be extended in terms that cannot be justified by the gravity of the offence.<sup>652</sup> By the same token, the principle of last resort and for the shortest appropriate period of time should be used to justify interventions that are in proportion to the offence implying an individualised decision. More precisely, the principle requires not only that alternative options should be considered or excluded rather than imposing deprivation of liberty, but, if deprivation of liberty is the only appropriate option, that an 'appropriate' time frame is considered. Therefore, the principle of last resort and shortest appropriate time reinforces the principle of proportionality with regard to juveniles in conflict with the law and

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<sup>649</sup> Application of the principle of last resort for shortest appropriate of time of in all stages of administration of justice is found only in Article 37(b) CRC. Article (3) ICCPR determines that only pre-trial detention should be an exception and as short as possible.

<sup>650</sup> Sonja Snacken, A Reductionist Penal Policy and European Human Rights Standards, *European Journal on Criminal Policy and Research*, Vol.12, Issue 2, 2006, pp.143–164, pp.161. Snacken (2006) present this statement discussing what is questioned by the principle of imprisonment as a last resort in regard to deprivation of liberty for adults. At the introduction of this chapter was presenting the violence as one aspect of juvenile institutionalisation.

<sup>651</sup> Beijing Rules, Explanatory note to Rule 19.1 para. 2 According to this requirement priority should be given to so-called 'open' institution over 'closed' institution. The use of open institution is favoured as well by JDL's. Moreover, the Committee on General Comment No.10 strongly favours the use of alternative dispositions rather than court convictions and deprivation of liberty.

<sup>652</sup> Commentary of Rule 5, Beijing Rules

replaces more retributive principles.<sup>653</sup> More precisely, the use of deprivation of liberty as last resort might be read as a way of 'having a more humane penal policy and keeping a better balance between the requirements of crime control and human rights'.<sup>654</sup>

The Committee was likewise concerned with the requirement of last resort in General Comment No.10, and avoided the interpretation of for 'the shortest appropriate period of time'. The drafting history of provision sheds light around the meaning for 'the shortest appropriate period of time'. To draft the principle 'of the shortest appropriate period of time' is not necessarily compatible with the 'shortest possible penalty'.<sup>655</sup> There are arguments that the requirement of the shortest appropriate period of time might be 'potentially paradoxical itself, since shortest and appropriate do not necessarily serve the same interest'.<sup>656</sup> It is understood that the shortest and appropriate time does complement each other. The 'shortest appropriate time' principle aims to curb the detention as short as possible and for the appropriate period of time, meaning the time frame necessary to fulfil the requirements specified by the relevant authorities in the sentence. Having presented the basic principles enshrined in Article 40(1) with regard to the administration of juvenile justice, the necessary time frame might be interpreted as the time required to prepare for returning to society, to promote re-integration and assuming a constructive role in society of the juvenile. To this end, it is to the discretion of State Parties finding alternatives to review and evaluating whether the length of sentences are short and appropriate enough to attain the aims of sentence.

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<sup>653</sup> Snacken (2006) pp.161. In addition Snacken recognises that a proper balance between the two principles is better achieved by revolving the role of defendant and prosecutor. According to her, 'in every sentencing or early release case, the choice of sanction should be the object of a debate, in which it is up to the prosecutor to demonstrate that a longer prison sentence is necessary or that a fine or a community sanction is insufficient.

<sup>654</sup> Snacken (2006) pp.162. According to Snacken European institutions such as the Council of Europe or the European Union, advocate that imprisonment be used as infrequently as possible and seek to stimulate non-custodial sanctions and measures. She support her view in several recommendations of the Council of Europe, such as the Recommendation R(80)11 on Pre-trial detention, R(87)3 and R(2006)2 on the European Prison Rules, R(92) 16 on the European Rules on community sanctions and measures, R(99)22 concerning prison overcrowding and prison population inflation, and in the standards and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (11th general Report on the CPT's activities, CPT/Inf (2001) 16, Strasbourg, September 2001). At the level of the European Union, the European Parliament expresses it in the Resolution on conditions of detention and the use of alternative sanctions of 17 December 1999. (Snacken 2006, pp.145)

<sup>655</sup> Van Bueren 1998, p.214. Schabas and Sax 2006, p.85 Van Bueren's statement is based upon drafting history of the provision. The meaning of shortest possible penalty, proposed by Senegal's delegation, was rejected from the working group. (UN Doc. E/CN.4/1989/WG.1/L.4)

<sup>656</sup> Liefwaard (2008), pp.224. Although Liefwaard notes the paradox, does not provide an analysis to support the discussion.



**3.4 Quality of Treatment of children deprived of their liberty.** The third paragraph of Article 37(c) deals with the quality of treatment of children deprived of liberty. The provision further clarifies the prohibition of ill-treatment foreseen in article 37(a) and requires State Parties to treat every child deprived of liberty 'with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age'. The reference to the 'needs of persons' and 'child's age' is a clear application of the evolving capacities of the child principle, which is one of the umbrella principles underlining the exercise of all the rights in the CRC.<sup>657</sup> From the evolving capacity of the child principle stems the acknowledgment that children deprived of liberty should not be regarded as a homogenous group of individuals, but rather individual members of the group who require that their conditions and treatment respond to their personal development.<sup>658</sup> The provision is based on Article 10 of the ICCPR and consequently 'imposes on State Parties a positive obligation towards persons who are vulnerable because of their status as persons deprived of liberty.'<sup>659</sup>

In particular, 'unless it is considered in the child's best interest not to do so', Article 37(c) imposes two strict obligations upon State Parties; 'to separate children in detention from adults' and 'to guarantee to the child the right to maintain contact with his or her family through correspondence and visits save in exceptional circumstances'. In addition, from the evolving capacity of the child principle stems the acknowledgment of the Committee that Article 37(c) builds up a comprehensive set of obligation for states parties to be read alongside Article 20 CRC (continuation of upbringing); Article 3 CRC (best interest of the child); Article 9 CRC (contact with family and providing family with information); Article 12 (about the right to be heard); Article 28 and 29 about the right of education; and Article 24 (about the right to health).<sup>660</sup> Furthermore, Article 37(c) should be read along with the child development-oriented obligation for State Parties to ensure the treatment of 'every child deprived of liberty' is 'in a manner consistent with the promotion of the child's sense of

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<sup>657</sup> Van Bueren 1998, p.219 and 50-51

<sup>658</sup> Van Bueren acknowledges that the principle 'evolving capacities of the child' reflects children's different rates of development. Therefore she notes that if the international law on the rights of the child is to be effective it must be able to respond to these developments. According to Van Bueren the principle requires that the evolving nature of childhood is also considered to enable children gradually to take responsibility for different areas of their own lives. Van Bueren 1998 p. 50

<sup>659</sup> Detrick 1999, p.633

<sup>660</sup> General Comment No.10, para.28c and para.3. In paragraphs 28c the Committee emphasizes that 'inter alia' a set of principles and rules 'need to be observed in all the cases of deprivation of liberty', and specifically enumerates the rights deriving from other article of the CRC.

dignity and worth, in order to reinforce a child's respect for human rights and fundamental freedoms of others and also takes into account the desirability of promoting a child's reintegration and the child assuming a constructive role in society'.<sup>661</sup>

Article 3, paragraph 3 of the CRC imposes an obligation on State Parties to ensure that all institutions responsible for the care or protection of children should 'conform with the standards established by competent authorities'.<sup>662</sup> Reading the provision raises an important issue with regard to whether the standard established by competent authorities means compatible with relevant international standards. To the Committee, reliance on international standards is not presumption.<sup>663</sup> The Committee strongly emphasises that the basic provisions of law and procedures for children deprived of liberty are required to be according to the meaning given in General Comment No. 10.<sup>664</sup> Accordingly, the reliance on international standards is clearly expressed, while the Committee recommends State Parties to fully implement and incorporate JDLs, the Beijing Rules, and the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) at domestic level.<sup>665</sup>

It is not clear why the Committee refers to SMR.<sup>666</sup> The SMR in Part II does not refer to juvenile prisoners. The absence is also reflected in the language adopted by the SMR. Generally speaking, the rules are written to be adapted to adult institutions. They do not take into account the specific needs of young people. According to Van Bueren, there is an element of ambiguity in applying SMR to children.<sup>667</sup> The ambiguity derives from the division introduced in Rule 5 in regard to institutions designed for children deprived of

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<sup>661</sup> Article 40(1) of the CRC

<sup>662</sup> Article 3(3) CRC

<sup>663</sup> Van Bueren affirms that the relevant applicable standards would presumably include the international standards. Van Bueren presumes this, pointing out the paucity of CRC's provision to set out any reference on the reliance of standards. Van Bueren 1998, p.217

<sup>664</sup> General Comment, No.10, para. 32, The General comments are issued under the recommendatory function of the Committee. To Alston and Steiner, one of the functions of General Comments is to be a mean by which the Committee makes general interpretations on an issue that arises out of the provisions of the CRC. (Steiner 2000, p.52, Alston (2001), p.764)

<sup>665</sup> As earlier discussed, although the General Comments do not carry formal authority to bind states parties, they do provide an authoritative interpretation on the meaning and scope of a CRC provision.

<sup>666</sup> The SMR were first adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and were later approved by the UN Economic and Social Council (ECOSOC) through resolutions adopted in 1957 and 1977. The SMR are built in two parts. Part I of the rules covers many facets of general management of institutions dealing with all categories of prisoners. In addition, it sets out minimum standards in relation to areas as diverse as accommodation, personal hygiene, clothing, food, access to medical services, discipline and punishment and work. Part II of the SMR contains guidelines and principles applicable only to special categories of prisoners: prisoners under sentence, including insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners and persons arrested or imprisoned without charge.

<sup>667</sup> Van Bueren 1998, p. 207

liberty. On one hand, the SMR excludes 'the management of institutions set aside for young persons such as Borstal institutions or correctional schools' and, on the other hand, the rules 'are equally applicable in such institutions'.<sup>668</sup> In addition, the SMR is evasive with regard to applicability of the rules. The first Phrase of Rule 5(2) categorise the rules by determining their applicability only to 'young prisoners who come within the jurisdiction of juvenile courts'.<sup>669</sup> The second phrase does not provide a proper indication about whether the category of young persons who should not be sentenced to imprisonment includes those attending Borstal institutions or correctional schools.

**3.4.1 Equal rights.** The HRC points out that 'Article 10, paragraph 1 of the ICCPR, imposes on state parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty'. According to the HRC, juveniles 'deprived of their liberty enjoy all the human rights set forth'. Thus, juveniles deprived of liberty are entitled to all those civil, economic, political, social or cultural rights, under national or international law, compatible with the deprivation of liberty.<sup>670</sup> Nothing can affect or deny the enjoyment of the rights of the juvenile, including the deprivation of liberty. Other provisions of CRC reinforce the enjoyment of such rights. Thus, Article 41 CRC states 'nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child'. Article 2(1) imposes an obligation on State Parties 'to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's... status'.

Unavoidably, the circumstances of deprivation of liberty restrict the 'enjoyment of human rights, due to a closed environment'.<sup>671</sup> However, as Bal argues, 'the deprivation of liberty should be restricted to an *ultimum remedium*'.<sup>672</sup> Therefore, 'assuming that a deprivation of liberty is justified as a sanction for the violation of moral norms', the restriction imposed because of a closed environment 'should not go any further than the necessary isolation from society'.<sup>673</sup> Thus, closed conditions and circumstances, the consequences of the deprivation

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<sup>668</sup> SMR, Rule 5(1)

<sup>669</sup> SMR, Rule 5(2)

<sup>670</sup> JDLs Rule 13

<sup>671</sup> Peter Bal, (1994) 'Discourse ethics and human rights in criminal procedure', *Philosophy and Social Criticism* Vol.20, Issue 4, pp.71-99, quoted on Stephen Livingstone, 'Prisoners' Rights in the Context of the European Convention on Human Rights', *Punishment & Society*, Vol. 2, No. 3, 2000, p.309-324, p.311

<sup>672</sup> *Ibid* p.131

<sup>673</sup> *Ibid* pp.311 Bal starts the discussion by arguing that legitimacy of law is in need of moral standards. Supporting the view of Habermas (1992), Bal states that the role of moral issues is particularly vital for criminal

of liberty, should ensure that 'other fundamental rights remain unimpeded like the right to family life, labour, education, free expression and gathering etc'.<sup>674</sup>

Safeguarding the human rights of juveniles deprived of liberty is considered to be of such paramount importance to demand establishment of 'a duly constituted body', with the main task to visit detention places, carry out inspections and provide outside scrutiny for the detention facilities.<sup>675</sup> As the protection of the individual rights of juveniles is so important, the activity of 'duly constituted body' should be regulated at three levels; international, national laws, and regulation of detention facilities.<sup>676</sup> This domestic law should provide for two principal functions of the controlling body. The first function charges the body with the monitoring of the effective application of the rules for the treatment of juveniles deprived of liberty. The second function enables juveniles to address their complaints to the monitoring body 'if the rules are ignored and to obtain adequate compensation in the event of a violation'.<sup>677</sup> It should be mentioned that there is no indication within international human rights instruments regarding the authority undertaking the control, leaving it to the discretion of State Parties to decide on the form of monitoring. Rule 14 JDLs requires the monitoring body to be 'constituted'. The HRC expressed its view on the monitoring body through demanding in state reports specific information about 'concrete measures' undertaken by the State Parties to effectively monitor application of the rules regarding the treatment of persons deprived of their liberty.<sup>678</sup>

Enjoyment of equal human rights is expressed through the requirement to provide meaningful activities and programmes, helping juveniles deprived of liberty to improve their situation,

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law. This is due to the fact that for criminal law the weight of moral content is dependent on reaction to norm violations, i.e. the moral indignation and the imposed sanctions. The 'norm violation' refers to violation of moral values upon which many definition of crime have been based on (common sense). Bal acknowledges that from a liberal perspective, criminal law should not enforce moral values. However, Bal concludes that whatever concepts of social harm of protectable goods one adheres to, they necessarily imply some kind of moral choice. (Bal 1994, p.71)

<sup>674</sup> Ibid pp.311. In addition, Rule 12 of JDLs implies that 'the deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles'.

<sup>675</sup> JDLs Rule 14

<sup>676</sup> Ibid

<sup>677</sup> UN Human Rights Committee, *General Comment No. 21: Article 10 (Humane treatment of Persons Deprived of Their Liberty)*, 10 April 1992, para. 6 and 7

<sup>678</sup> HRC General Comment No.21 para.6. There is no indication by the HRC whether the monitoring of effective application of the rules regarding the treatment of persons deprived of their liberty is performed by the system required to supervise penitentiary establishments, the specific measures to prevent torture and cruel, inhuman or degrading treatment. Having presented this ambiguity the term 'body' was adopted when talking about monitoring system.

and developing them as a whole person, fostering their sense of responsibility, helping them to improve their confidence and belief in themselves, and equipping the juvenile with the resources and skills they need for life after their release and developing their potential as constructive members of society.<sup>679</sup>

**3.4.2 The right to be treated with humanity and dignity.** The first sentence of Article 37(c) states that ‘every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age’. It should be mentioned that treatment with humanity and respect for inherent dignity establishes a connection between the rights of a person to liberty and personal integrity.<sup>680</sup> Van Bueren notes that Article 37 (c), within the same phrase, links ‘all three concepts: dignity, family contacts and separation’.<sup>681</sup> Therefore, Article 37(c) recognises the developmental needs of the juvenile, the significance of the environment in which juvenile is placed, and the significant role of the family in the juvenile’s life. Consequently, Article 37(c) establishes a relationship between the treatment with humanity and respect for the inherent dignity and the personal integrity of a juvenile.

Here, the UN Rules for the Protection of Juveniles Deprived of Their Liberty (the JDLs) come into play as they provide a set of principles and standards conceived and designed to protect ‘juveniles deprived of their liberty in all forms’ and are ‘consistent with human rights and fundamental freedoms’.<sup>682</sup> The JDLs under Section IV (management of juvenile facilities) regulate the selection of facility and a number of administrative aspects related to admission and registration, classification and placement, records and files, child information, and transfers. They impose an obligation upon the institutions not only to cater fully for all physical health and material conditions such as housing, clothing, nutrition, health care, and education, but also to guarantee adequate elements of a child’s mental, spiritual, moral, and social ‘health’. This is done through the involvement of children in a variety of programmes, such as educational, vocational training, and leisure/recreation, that aim to influence their

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<sup>679</sup> JDLs Rule 12 second sentence

<sup>680</sup> Liefard 2008 when discussing Article 37 CRC adopt the same approach made by Novak in regard of Article 10 ICCPR (pp. 227-228). The conclusion is based on the fact that the HRC recognises the complimentary function of the right to the prohibition of torture and cruel treatment or punishment, which in turn has the fundamental objective of ‘protection of an individual’s dignity and physical and mental integrity. (General Comment No 20, para. 2)

<sup>681</sup> Van Bueren 1998, p. 219

<sup>682</sup> JDLs Rule 3 United Nations.

wholesome development and behaviour and change this for the better. The JDLs address measures that seek to maintain order in institutions, provide details about their implications, and establish a monitoring mechanism through inspection, supervision, and complaints procedures.

Article 40, paragraph 1 of the CRC enshrines that the objective of deprivation of liberty is to foster the reinforcement of the juvenile's respect for human rights and fundamental freedoms for others and the reintegration of the juvenile into society, where they can assume a constructive role. In addition, treatment offered to the juvenile should be 'consistent with the child's sense of dignity and worth'.<sup>683</sup> The way a juvenile is treated is of particular significance for the realisation of the main objectives of the deprivation of liberty – education and social integration. The quality of treatment is closely linked to arrangements designed for the benefit of juveniles, either at an individual or institutional level, aiming 'to assist their return to society, family life, education or employment after release'. A clear challenge facing each juvenile institution is to develop the institutional climate and provide the treatment that should lessen the prejudice against such children, whilst also taking into account the child's needs and support for the child's development. To this end, regimes tailored to each child's specific characteristics or backgrounds are required to meet their specific needs. Rule 30 JDLs recommends that institutions for juveniles should be sufficiently small in order to preserve this individual approach as far as possible.<sup>684</sup>

Achievement of the objectives of deprivation of liberty involves efforts made by a detention institution to minimise 'any differences between prison life and life in the community'.<sup>685</sup> This implies that the management authorities of a prison should seek to establish a close connection with the community, in order to provide juveniles in their care with opportunities to change, develop, and reintegrate within the community rather than excluding them from being a part of it.<sup>686</sup> Increasing the connection between juveniles and their families with the community largely depends on the location of the facility. This, in turn, presumes that institutions are built in places where access is not an issue and the contact between the

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<sup>683</sup> General Comment No.10, para. 4(e)

<sup>684</sup> Rule 63(3) and (4) SMR clarify further the concept of 'sufficiently small'. The rule emphasise the importance of small number of prisoners in order not to hinder the individualisation of treatment. In one hand the population of institutions should not exceed five hundred. On the other hand, it is undesirable to maintain prisons, which are so small that proper facilities cannot be provided.

<sup>685</sup> Rule 60 (1) SMR.

<sup>686</sup> Rule 61 SMR

juvenile and their family is easily maintained. Rule 31 JDLs determines that physical environment of the facility is as relevant as the location. In other words, Rule 31 JDL implies the internal design of a facility should comply with the rehabilitative aim of residential treatment and the social and educational needs of juveniles held there.

The institutions taking care of juveniles deprived of liberty should provide an environment that recognises that the persons who work and juveniles who live within the institution are still human beings; their common humanity should be observed and they should behave in a way which respects their rights and special needs (in this case, children's needs). To a large degree, effective and efficient staff in any organisation or institution is a product of the management style and philosophy employed in the institutions, the available resources, and the knowledge, motivation, expertise, and correctional philosophy of the staff. At an institutional level, this in turn implies careful selection and recruitment in meeting the demands in quantity for in every field or job.<sup>687</sup> To a large extent, the suitability of personnel should encompass the requirement of a professional team with appropriate skills for communicating and establishing positive contacts with juveniles, different services engaged in the care of juveniles, as well as a team of people manifesting great personal integrity and humanity to carry out the work in a professional manner.<sup>688</sup> Finally, management of the institution must use all the appropriate means and lead both the personnel and the public, to recognise that work in prisons is a key public service of 'great importance'.<sup>689</sup>

The suitability of personnel is closely related to training as a way of obtaining further knowledge, which is important not only to enable the professionals to carry out their responsibilities effectively, but also to ensure that they enforce both international and domestic legislation.<sup>690</sup> Training for the personnel of detention facilities housing children includes subjects such as 'child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present JDLs'.<sup>691</sup> Besides addressing the practical aspects of the professional's role, the subjects considered during

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<sup>687</sup> Rule 81 JDLs and Rule 82 JDLs. For institutional settings this mean that personnel should include 'a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists and trade instructors'

<sup>688</sup> Rule 82 JDLs and Rule 84 JDLs. Cooperation is specially introduced to JDLs rules. The intention is to secure an educative and socio-therapeutic environment to respond in an effective manner to individual needs of children.

<sup>689</sup> Rule 46(2) SMR

<sup>690</sup> Rule 85 JDLs

<sup>691</sup> Ibid

training should be read in their depth to enable personnel to adequately respond to the individual needs of juveniles.<sup>692</sup> Personnel should also rigorously fight against any form of corruption, respect international standards – especially JDLs – and report any violation, by respecting the juvenile’s right to privacy and safeguarding each juvenile’s physical and mental health.<sup>693</sup> According to rule 87 JDL, the principle task of personnel is to ensure juveniles’ physical and mental well-being, and to protect them from any form of violence and exploitation. Overall, the objective of all tasks performed by personnel should be the minimisation of any differences between life inside and outside the detention facility, which tend to reduce respect for the dignity of juveniles as human beings.<sup>694</sup>

**3.4.3 Separation.** The requirement to separate children from adults can be considered fundamental to international human rights law.<sup>695</sup> It is found in most of the human rights standards, set at both the international and regional level. This requirement requires State Parties to separate children deprived of liberty without specifying categories of ‘accused juvenile persons’ (in Article 10(2)(b) ICCPR) and juvenile offenders (in article 10(3) ICCPR).<sup>696</sup>

The requirement to separate children from adults derives from the assumption that children must be protected from harmful influences and risky situations and against the risk of being abused, exploited or influenced in a harmful way by adults, as well as a juvenile’s need to be surrounded by a protective environment that provides them every opportunity to avoid further conflict and develop positive life skills.<sup>697</sup> The segregation of juveniles deprived of liberty engages and links the evolving capacities of the child according to their need – ‘full account of their particular needs, status and special requirements; their age – ‘according to their age’;

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<sup>692</sup> Rule 85 JDIs. Rule 47 (2) SMR, requires that, the personnel receive the adequate training in their general and specific duties, before entering on duty. Although highlighting the importance of well-training in general terms, the Committee on the relevance of providing the professionals with legislative and professional information to ensure an effective administration of juvenile justice (General Comment No.10, para.33)

<sup>693</sup> Rule 87 JDLs

<sup>694</sup> Ibid

<sup>695</sup> Liefard 2008, p. 264 According to article 17(2)(b) of the African Charter on the Rights and Welfare of the Child, the States parties ‘shall ... ensure that children are separated from adults in their place of detention or imprisonment’. Article 5(5) of the American Convention on Human Rights stipulates in this respect that minors ‘while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors’. The lack of such provision on ECHR is compensated on the European Prison Rules. Thus, Rule 11.1 of the European Prison Rules ‘Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purposes’.

<sup>696</sup> Identically, Rule 8(d) of SMR provides that ‘young prisoners shall be kept separate from adults’.

<sup>697</sup> General Comments N.10 paragraph 28(c), Rule 28 JDLs



and their maturity – ‘personality, sex and type of offence, as well as mental and physical health’.<sup>698</sup>

The applicability of the separation principle is further clarified in relevant international instruments. While the Committee strictly recommends State Parties to establish ‘separate facilities’,<sup>699</sup> Rule 13.4 of the Beijing Rules does allow for some flexibility in covering situations when the housing of children in ‘a separate institution’ is not possible, suggesting to State Parties that they should house the children ‘in a separate part of institution’. The Committee seemed to be in favour of a strict separation because of the fact that a separate establishment was specially designed to be child-oriented in levels of staff, personnel, policies, and practices.<sup>700</sup> The separation requirement is not limited to placement of juveniles in cells, but extends to transport vehicles as well.<sup>701</sup> While Article 10 (2)(b) and (3) ICCPR stipulate a mandatory separation of children from adult prisoners,<sup>702</sup> Article 37(c) CRC permits ‘the non-separation of child from adult prisoners in child’s best interest’. The permitted exception in child’s best interest is granted in cases of adults belonging to the same child’s family, or carefully selected adults who, under controlled conditions, ‘may be brought together with juveniles as part of a special programme that has been shown to be beneficial for the juveniles concerned’.<sup>703</sup> Van Bueren recognises that ‘by allowing State Parties’ to make an exception on the separation of ‘children and adults in the child’s best interest, the CRC provides a state with an impetus to admit to the existence of child prisoners in adult institutions and to recognize their entitlements’.<sup>704</sup> The provision of Article 37(c), by introducing non-separation in the best interests of the child, takes on board the view of State Parties that an absolute prohibition on separation is inappropriate.<sup>705</sup> Schabas and Sax argue that the incorporation of the best interest clause in Article 37(c) CRC qualifies the permitted exception on separation of children to satisfy child well-being rather than to accommodate

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<sup>698</sup> Article 37 (c) and JDLs Rule 28 first sentence

<sup>699</sup> General Comment No. 10, paragraph 28 (c )

<sup>700</sup> Ibid

<sup>701</sup> Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule.

<sup>702</sup> According to HRC, ‘the separation of accused juveniles from adults ‘is a mandatory provision of the Covenant’ General Comment No.21 para. 13

<sup>703</sup> JDLs Rule 29

<sup>704</sup> Van Bueren 1995:p222

<sup>705</sup> Several States parties have found it necessary to enter reservations to the provision of Article 10 (2)(b) and (3) ICCPR, in regard of their obligation to separate children from adults in the course of detention or imprisonment

exception for budgetary reason by State Parties.<sup>706</sup> The Committee adopts a similar approach when emphasising that 'the permitted exception to the separation of children from adults stated in article 37(c) CRC' go beyond a narrow interpretation of the child's best interest 'for the convenience of the State Parties'.<sup>707</sup> This interpretation implies, in practical terms, that reasons such as inadequate facilities, lack of financial resources, or ignored status of juvenile inmates do not fall within the ambit of the child's best interests.

Three issues deserve special consideration with regard to the principle of separation, because of the problems that might occur in practice. The first issue relates to children deprived of their liberty who turn eighteen. There are two subcategories; the young adult who was a child while committing the offence, and the young adult who turns eighteen while serving a sentence. The Committee proclaims that 'every child alleged as, accused of, or recognized as having infringed the penal law *has the right* (emphasis added) to be treated in accordance with the provisions of article 40 CRC'.<sup>708</sup> The age at the time of the alleged commission of the offence entitles him or her 'to be treated under the rules of juvenile justice',<sup>709</sup> once the child turns eighteen while prosecuted. In practical terms, this requirement entitles children and young adults to benefit from the protections provided in Article 37(b) and (c) CRC and Article 40 CRC. It is an approach that leads to the conclusion that young adults, who were children at the time of an alleged offence, should be housed in facilities designed for children, rather than adult centres or prisons. In addition, the Committee emphasises that if it was deemed to be in their interest and not contrary to the best interest of younger children, the principle of separation implied the possibility to continue the child's stays in the facility for children once he or she turns 18.<sup>710</sup> However, a transfer to adult facilities might take place if the presence of a young adult was negatively affecting and jeopardising the best interests of juveniles housed with them. One solution to avoid the issue of placement for these two categories would be to establish special units for young adults within a juvenile facility. The Committee has clearly urged State Parties to consider the possibility of considering any initiatives that permits treatment of children at the upper age limit for juvenile justice to benefit from the rules and regulations of administering juvenile justice.<sup>711</sup> Interestingly, the Council of Europe goes further than the Committee, and makes it obligatory for State Parties

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<sup>706</sup> Schabas & Sax 2006, p.92

<sup>707</sup> General Comment No.10, paragraph 28(c)

<sup>708</sup> General Comment No.10, paragraph 21

<sup>709</sup> Ibid supra note 96

<sup>710</sup> General Comment No.10, para. 28(c)

<sup>711</sup> General Comment No.10, paragraph 21

to allow all the ‘juveniles who reach the age of majority and young adults dealt with as if they were juveniles’ to remain ‘in institutions for juvenile offenders or in specialised institutions for young adults’.<sup>712</sup> The rationale behind the requirement is to ensure that a subsequent transfer to a prison for adults does not undermine positive educational results that might be achieved by serving the sentence in the same institution. Such a transfer might take place only if it is prompted by the interest of the child.<sup>713</sup>

The second issue to be considered is the separation of females from males. In many countries, women and girls in prison and other places of detention are victims of gender-based violence.<sup>714</sup> As women constitute a small minority of the prison population, State Parties may have even fewer specialised custodial facilities for them, which often makes it more difficult to guarantee the segregation of juvenile females from adults. Therefore, juvenile females are often detained with older women, with no attention to their needs or their vulnerability to violence.<sup>715</sup> Article 37(c) and JDLs are silent with regard to separation based on sex; however, the Beijing Rule 26.4 recognises and addresses the special needs of juvenile females. According to the commentary on Rule 26.4, adoption of a position with regard to separation of females from males is prompted by ‘the fact that female offenders normally receive less attention than their male counterparts’ and that they have ‘particular problems and needs while in custody’. Although the CRC and other international instruments do not specify the separation of males from females, other international human rights instruments impose an obligation on State Parties to comply with gender separation. Thus, the SMR states firmly in Rule 8 that ‘men and women shall so far as possible be detained in separate institutions’. Even when there is no possibility of separate institutions, the facility should be designed in a way to provide entire separation of women.<sup>716</sup> The necessity of having a strict separation derives from the fact that women are treated ‘in a system primarily designed for men’.<sup>717</sup> In addition, HRC emphasises that it is preferred that women in detention are only

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<sup>712</sup> Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers’ Deputies), para. 59.3,

<sup>713</sup> Ibid Supra note 100

<sup>714</sup> ‘Violence Against Girls in Conflict with the Law’ *Human Rights Watch*, 2005

<sup>715</sup> Pinheiro 2006 2006, p.195

<sup>716</sup> Rule 8 of SMR

<sup>717</sup> ‘Violence against women and girls in prison – Submission to the Study of the Secretary-General of the United Nations on Violence against Women’. *Quaker United Nations Office*, Geneva, 2005, pp. 1. Although the conditions of detention may not be discriminatory *per se*, not taking into account the special needs of women in a system primarily designed for men results in detention having a discriminatory impact on women.

supervised by females to prevent incidents of ill-treatment of women in prisons by male staff.<sup>718</sup> As several reports highlight the risk of physical and sexual abuse of girls in detention facilities,<sup>719</sup> the HRC stresses the importance of specific reporting by State Parties regarding the compliance to the separation juvenile females from adults and their access to rehabilitation and education programmes and to conjugal and family visits.<sup>720</sup>

The third issue relates to the separation of children pending trial from convicted children. Article 37(c) does not explicitly contain a clause requiring such separation. To the Committee, 'the presumption of innocence is a fundamental principle for the protection of human rights of children in conflict with the law'.<sup>721</sup> Therefore, the Committee does not explicitly consider the issue of separation between untried/convicted juveniles, as it is strongly persuaded that the use of pre-trial detention as punishment violates the presumption of innocence.<sup>722</sup> The Committee urges State Parties to avoid pre-trial detention as much as possible and to 'take adequate legislative and other measures to reduce the use of pre-trial detention'. The Committee approaches the requirement of Rule 13 of the Beijing Rules, which require the use of detention pending trial 'only as a measure of last resort and for the shortest possible period of time' because of the danger of 'criminal contamination' that it presents to juveniles. However, Rule 13 of the Beijing Rules goes beyond the mere request for compliance with the principle of last measure and for the shortest appropriate time, as it covers situations when detention cannot be avoided, and entitles juveniles under detention pending trial 'to all the rights and guarantees' provided in SMR and article 9 and 10, paragraphs 2(b) and 3 ICCPR. Article 10, paragraphs 2 and 3 of ICCPR explicitly articulate an obligation on State Parties to take into account the status of these two groups and to impose separation and different treatment. In this light, Rule 8(b) SMR provides that 'untried prisoners shall be kept separate from convicted prisoners'. The segregation of the two categories is considered of such importance that it deserves an entire section of SMR, to

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<sup>718</sup> General Comment No. 28, para. 15,

<sup>719</sup> Since 2002, Human Rights Watch investigations of police violence and juvenile justice systems have documented abuses against girls in Brazil, Egypt, the Democratic Republic of Congo, Papua New Guinea, and the United States. <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm> Two QUNO studies: 'Violence against girls in detention' and 'Violence against women and girls in prison' highlight some of the physical and abuse of girls in detention facilities. <http://www.quno.org/humanrights/women-in-prison/womenPrisonLinks.htm#QUNOPUB>

<sup>720</sup> Ibid note 106

<sup>721</sup> General Comment No.10, para. 23(b)

<sup>722</sup> General Comment No.10, para. 28(a) According to the principle of presumption of innocence pre-trial detention may not have a punitive nature and may not be imposed for punitive reason. Generally speaking the Committee is not in favour of detention to be used as a pre-trial measure.

provide detailed guidance regarding treatment of untried prisoners. Thus, Section C SMR entitles the untried prisoners to benefit from a 'special regime of treatment', which respects their presumption of innocence.<sup>723</sup> The approach of Article 10, paragraph 2(b) and paragraph 3 ICCPR and SMR is recapitulated in a more concise way in JDLs. Thus, Rule 17 JDLs strongly reiterates the separation of 'untried' from convicted juveniles, implying differentiated treatment for untried juveniles because of their status of being presumed innocent.

Van Bueren notes that Article 37(c) 'has a broader ambit than article 10(2)(b) and (3) ICCPR'. She believes that 'it applies to all deprivation of liberty and not only to children facing or found guilty of criminal charges'.<sup>724</sup> However, Van Bueren and Liefwaard agree that the separation issues discussed above need to be considered in selecting the most appropriate placement for children deprived of liberty.<sup>725</sup>

#### ***3.4.4 The right of the child to remain in contact with his or her family***

The second aspect of the right to be treated with humanity and with respect for inherent dignity is linked to the right of a child deprived of liberty 'to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances'. The clause of 'exceptional circumstances' was included for the benefit of states to permit them to exercise discretion in whether to derogate from the principle 'in the best interest of the child in cases where family members continue to exert damaging influences on the child'.<sup>726</sup> The Committee emphasises that 'exceptional circumstances' should not be interpreted restrictively and used to the convenience of State Parties. The Committee set out that domestic legislation should indicate clearly the conditions when the right is restricted or denied and not leave it to the discretion of competent authorities to make such decision.<sup>727</sup> Despite the deceptiveness of 'exceptional circumstances' looking to not comply with a child's best interests, Van Bueren argues that they 'should be exercised only in accordance with a child's best interest'.<sup>728</sup> This interpretation is based upon categorical prohibition on restriction or denial of contact with the family for any purpose of Rule 67 JDLs. According to Van Bueren, 'for any purposes' even includes the situation of restricting family contacts 'as a

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<sup>723</sup> SMR Rule 84 (3)

<sup>724</sup> Van Bueren 1998, p. 222

<sup>725</sup> Van Bueren 1998, p.222, Liefwaard, p. 274

<sup>726</sup> Van Bueren 1998, p.219

<sup>727</sup> General Comment No.10, paragraph 28(c)

<sup>728</sup> Van Bueren 1998, p. 220

means of securing a child's cooperation'.<sup>729</sup> The last context is of great importance as it protects the child from coercion or making a confession or a self-incriminatory testimony.

International treaties still regard the family as providing society with an organised unit upon which the structure of society is based.<sup>730</sup> Besides being a child's right to humane treatment, receiving visits by family members contributes to one of the principal aims of juvenile justice and that of preparing juveniles for their return to society.<sup>731</sup> In light of this, it is important to provide and facilitate 'regular and frequent visits' of family members 'in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family'. Regularity and frequency refers to visit taking place once a week and not less than once a month.<sup>732</sup> However, a child's entitlement to maintain contact with their family is not only limited to receiving visitors. In order to achieve the objective of reintegration into society, juveniles have a right to pay a visit to their home and family.<sup>733</sup> The principal condition to guarantee compliance on maintaining contact with the family is the placement of a child in a facility that 'is as close as possible to the place of residence of his/her family'.<sup>734</sup> The Committee has not commented on what should happen if family visits are not possible because of a facility being located a considerable distance from the habitual residence, nor has it elaborated how, and on which grounds, the institution might assist a juvenile and his family who are not able to maintain contact because of financial circumstances.

Besides family visits, Article 37(c) provides for correspondence either via post or telephone. Furthermore, Rules 59 to 62 of JDLs set out more detailed information regarding contact and correspondence with the family. Although Rule 61 JDLs imposes a duty on the institution to assist the juvenile 'as necessary' to enjoy the right of correspondence, State Parties have interpreted this as meaning 'at least twice a week' with this, in many cases, the maximum to be fulfilled.<sup>735</sup>

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<sup>729</sup> *ibid supra* note 116.

<sup>730</sup> Van Bueren 1998, p. 77

<sup>731</sup> Rule 59, JDLs

<sup>732</sup> Rule 60 JDLs

<sup>733</sup> Rule 59, JDLs

<sup>734</sup> General Comment No.10, para. 28(c)

<sup>735</sup> Rule 61 JDLs entitles to a juvenile 'the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted'. Contrary to JDLs, Recommendation CM/Rec(2008)11 para. 83, provides for communication by an unrestricted number of letters and, as often as possible, by telephone or other forms of communication. These latter forms may include contacts through the Internet, by e-mail for example.

Neither the CRC provision nor the respective JDLs rules provide a clause to oblige an institution to assist a juvenile with the appropriate financial and welfare support to maintain family contact.<sup>736</sup> The international standards do not cover the situation where State Parties cannot guarantee postal or telephone services. The instruments mentioned above also do not call for institutional arrangements of more suitable hours when the family members are not able to visit the juvenile during the established time frame laid down by the institution.

A child's right to maintain contact with his or her family should be read in conjunction with other rights set out in the CRC. On the one hand, Article 9(4) CRC imposes a positive obligation on State Parties to provide 'essential information concerning the whereabouts of the members of the family'.<sup>737</sup> On the other hand, provision of information is left at the discretion of State Parties. They are recommended to provide the information only 'upon request' and after taking into consideration 'the detrimental effects' that such submission might have 'to the well-being of the child'.

Compared to CRC, the JDLs set up clear rules on the range of information to be provided. Thus, Rule 22 imposes a requirement upon authorities to provide information to parents and guardians or closest relative of the juvenile about admission, place, transfer and release of the juvenile without delay. However, Rule 56 JDLs adds a new element, as it includes the right to be informed 'of the state of health of the juvenile on request',<sup>738</sup> or 'in the event of any important changes in the health of the juvenile'. The latter element implies *inter alia* information 'on illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours'.<sup>739</sup> Section I of JDLs adopts Rule 44 SMR, which deals with the information provided to juvenile with regard to illness, injury, and death of a family member from the facility authorities. Rule 56 and Rule 58 establish a reciprocal share of information between facility and family on the death, serious illness, or injury of juvenile, or any immediate family member. Rule 58 expands the scope of Rule 44(2) SMR, as it imposes an explicit requirement on authorities that the juvenile be permitted 'to attend the funeral of the deceased

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<sup>736</sup> Besides assisting juveniles in maintaining adequate contact with the outside world, Rule 85.1 Recommendation 59.3 establishes a duty on institution to provide juveniles with the appropriate means to do so.

<sup>737</sup> Article 9(4) CRC

<sup>738</sup> Rule 44(2) SMR requests the authorities to permit prisoner 'whenever the circumstances allow, to go to the bedside of critically ill relative. Rule 56(1) JDLs requests the authorities to provide to a juvenile the opportunity not only during the illness, but also attending the funeral in case of death.

<sup>739</sup> Rule 56, JDLs

or go to the bedside of a critically ill relative'.<sup>740</sup> However, none of the international instruments clarify whether a person deprived of liberty is allowed to leave the institutions for other humanitarian reasons, such as weddings or the birth of a juvenile's own child.

**3.5 Review of deprivation of liberty-assistance and prompt decision.** Article 37(d) contains procedural safeguards for children deprived of liberty by spelling out 'the right to prompt access to legal and other assistance', 'the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority', and the right 'to a prompt decision on any such action'. Despite some textual differences, most implications of Article 9(4) of the ICCPR apply to Article 37(d).<sup>741</sup>

What should be noted is the fact that Article 37(d) stipulates that these procedural safeguards apply to 'every child' deprived of liberty, making no distinction between different forms or contexts of deprivation of liberty.

CRC does require that 'every child deprived of his or her liberty shall have the right to prompt access to assistance', which is not necessarily under all circumstances legal, but it must be appropriate in the preparation of his or her defence.<sup>742</sup> The formulation reflects the nature of a state's legal procedures once a person violates the penal law.<sup>743</sup> To entitle a child to the right of assistance in preparation of defence, a right not particularly contained in Article 9(4) ICCPR and Article 5(4) ECHR, is a clear expression of the evolving capacities of the child principle.<sup>744</sup>

Article 37(d) is the *habeas corpus* provision for children deprived of liberty. It provides a crucial safeguard, which is, in essence, a child's right to have the detention reviewed in court without delay. The term 'review' relates 'exclusively to the 'lawfulness' of deprivation of liberty, i.e. the compatibility of the detention with domestic and international law',<sup>745</sup>

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<sup>740</sup> Rule 59, JDLs

<sup>741</sup> Schabas & Sax 2006, p. 94 in addition the provision incorporates most implication of Article 5(4) of the ECHR as well.

<sup>742</sup> Article 37 (d) and Article 40(2)(b)(ii) of CRC,

<sup>743</sup> Van Bueren 1998, p.178

<sup>744</sup> This right would be further discussed while considering the element of fair trial in the next chapter.

<sup>745</sup> Nowak 2005, Article 9 para.51, p. 236



independently of the right to appeal in criminal matters.<sup>746</sup> Granting to a 'court or other competent, independent and impartial authority' *habeas corpus* status accommodates all differences among justice systems. In addition, it implies that a judicial review procedure should be available in cases where the deprivation of liberty is an administrative decision.<sup>747</sup> The immediate release of the child concerned must be ordered, if the 'court or other competent, independent and impartial authority' concludes that detention is 'unlawful'.

The core rule is that the decision on the legality must be taken 'promptly'. By referencing 'promptly' rather than 'without delay' of Article 9(4) ICCPR or 'speedily' of Article 5(4) ECHR, Article 37(d) incorporates the 'avoidance of unnecessary delay' requirement of Rule 20 of the Beijing Rules. The 'promptly' requirement highlights a specific child development-orientation as it conveys the message that 'a speedy conduct of formal procedures in juvenile cases is a paramount concern.'<sup>748</sup> The Committee on the General Comment No. 10 emphasised this message by clarifying the meaning of 'prompt decision'. Thus, it determines a term of 'within 24 hours' 'to examine the legality of (or the continuation of) deprivation of liberty' of 'every child arrested and deprived of his/her liberty'.<sup>749</sup> Furthermore, the Committee recommends a regular review of pre-trial detention at reasonable intervals, preferably every two weeks, even if the original basis for detention is a court order.<sup>750</sup> Finally, the Committee suggested to State Parties the establishment of a time limit 'e.g. within or no later than two weeks after the challenge is made' in regard to render the decision once that deprivation of liberty decision is challenged.<sup>751</sup>

#### 4. Conclusion

Article 37 CRC provides for a strong and clear legal child-oriented framework on the issue surrounding the detention and deprivation of liberty of children. A general reading of Article 37 clearly indicates that two distinct issues are addressed; first, procedural and substantive rights of deprivation liberty, as contained in the second sentence of paragraph (a), first sentence of paragraph (b) and paragraph (d); and second, in respect of the protection of

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<sup>746</sup> ECtHR has concluded that 'the review, which must be obtained 'speedily', is not an appeal but must examine the procedural and substantive conditions which are essential for the 'lawfulness', in the Convention terms, of the deprivation of liberty'. Harris et al 2009, p.182

<sup>747</sup> General Comment No.10 para. 28b

<sup>748</sup> The Commentary on Rule 20 of the Beijing Rules.

<sup>749</sup> General Comment No.10 para. 28b

<sup>750</sup> Ibid

<sup>751</sup> Ibid

liberty of the child and states' obligations regarding the treatment of children deprived of their liberty, as contained in the first sentence of paragraph (a), second sentence of paragraph (b) and paragraph (c).

While combining specific elements of its direct ancestors, Articles 9 and 10 ICCPR, into one article, Article 37 CRC adds and refines several elements that are more specific to a child development-orientation. Thus, Article 37(a) is the only international provision to prohibit life imprisonment to the extent that there is no possibility of release for crimes committed under the age of eighteen. Although the second sentence of Article 37(b) represents a restrictive approach compared to JDLs by subjecting the period of time to 'appropriate', the requirement of last resort and shortest appropriate period of time is a unique expression of the evolving capacities of the child. While it is important to note that Article 37(c), referencing to the 'needs of persons' and 'child's age', is a clear application of the evolving capacities of the child, it explicitly addresses the right of 'every child deprived of liberty' to be treated with humanity and respect for the inherent dignity of the human person. Finally, Article 37(d), among other things, extends the child elements by adopting the right to prompt access to legal and other appropriate assistance, demanding a 'prompt decision' on reviewing the legality of deprivation of liberty.

## CHAPTER FOUR

### ARTICLE 40 OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD

#### 1. Introduction

Article 40 provides an integrated framework regulating the treatment of children in the criminal justice system. In four paragraphs, Article 40 introduces a number of basic principles upon which child criminal justice should be built. The general aim of Article 40 is to uphold the rights, and ensure the safety, of all juveniles in conflict with the law, who fall within the remit of the juvenile justice system. Besides enumerating procedural guarantees to the right of a fair trial, Article 40 enshrines new provisions compared to other relevant human rights instruments. Article 40 CRC reads:

*1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law 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 into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

*2. To this end, and having regard to the relevant provisions of international instruments, State Parties shall, in particular, ensure that:*

*(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*

*(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

*(i) To be presumed innocent until proven guilty according to law;*

*(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*

*(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*

*(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*

*(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*

*(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;*

*(vii) To have his or her privacy fully respected at all stages of the proceedings.*

*3. State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

*(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*

*(b) 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.*

*4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*

The aim of this chapter is to explore in detail the normative aspects of Article 40 CRC. The chapter is built around the paragraphs of the text, and consequently it is divided into four sections. At the beginning, a drafting history is introduced to understand the lengthy Article 40 of the CRC. The drafting history is followed by a discussion of Article 40, systematically proceeding through paragraphs (1), (2) (3) and (4).

Paragraph (1) of Article 40 provides a set of fundamental principles for the treatment to be accorded to 'every child alleged as, accused of, or recognized as having infringed the penal law'. The aim of the first section is to separately address the set of principles. Therefore, the paragraph considers treatment that is consistent with the child's sense of dignity and worth; treatment that reinforces the child's respect for the human rights and freedom of others; and treatment that takes into account the child's age and promotes the child's reintegration into and assumption of a constructive role in society.

The second section is rather long because of the extensive text of Article 40(2). Article 40 paragraph 2 of CRC sets out the basic procedural safeguards to be guaranteed at all stages of proceedings concerning a child alleged as, or accused of, having infringed the penal law. The section starts by providing a brief discussion of some additional principles, which, directly or indirectly, are taken into consideration when dealing with children accused of infringing the criminal law. Equality before the courts and the principle of proportionality are widely considered in international human rights law. However, this paragraph highlights their relevance to juvenile justice. The best interests of the child and the right to be heard are contained in the CRC. The section continues by discussing the guarantees to a fair trial and to a hearing according to the list contained in Article 40(2). In addition to the text of the article and General Comment No.10, other international instruments related to the guarantees of a fair trial and hearing, such as ICCPR and ECHR, are used as sources of interpretation. The

section is finalized by considering the role of the police in the juvenile justice system and elements of making a court child-friendly.

The focus in section three is Article 40(3), which requires State Parties to establish whether a system is specifically applicable to children in conflict with the law. A comprehensive juvenile justice system requires 'the establishment of laws, procedures, authorities and institutions specifically applicable to children'. In addition, Article 40(3)(a) places a duty upon State Parties to adopt a minimum age of criminal responsibility, previously discussed in Chapter One. The requirement to develop alternatives to judicial proceedings and penal sanctions for youth offenders (non-intervention/diversion) will be explored in full. Diversion is discussed in terms of a diversion from judicial proceedings, as well as exploring restorative justice as a new approach to diversion.

Finally, section four focuses on alternative measures to institutional care contained in Article 40(4) of the CRC.

## 2. Drafting History

No provisions on administration of juvenile justice were contained in the very first proposal for the Draft Convention in 1978.<sup>752</sup> It was not until the final stages of the drafting process of the CRC that issues of fair trial and criminal justice matters were considered. The development was in response to parallel activities at the time in the area of juvenile justice (Beijing Rules).<sup>753</sup>

Elements of administration of juvenile justice were considered within a draft article encompassing a wide range of guarantees, which was introduced in the 1986 Working Group by Canada, as a revised text of Article 19 at the time.<sup>754</sup> Each issue considered in the draft

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<sup>752</sup> U.N. ESCOR, 34th Sess., Supp. No. 4, U.N. Doc. E/1978/34 (1978), reprinted in Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht: Nijhoff, 1992 (Detrick 1992)

<sup>753</sup> As Van Bueren notes, in the early 1980s, an international community increased the efforts to provide a complete 'framework within which a national juvenile justice system should operate and a model for States of a fair and human response to juveniles' who are in conflict with the law. (Geraldine Van Bueren, *A Commentary on the United Nations Convention on the Rights of the Child; Article 37: Child Criminal Justice*, Leiden: Martinus Nijhoff, 2006, p.4) Detrick expressed in similar terms commenting Article 40. (Sharon Detrick, *A commentary on the United Nations Convention on the Rights of the Child*, M. Nijhoff Publishers, The Hague, 1999, (Detrick 1999) p.681.

<sup>754</sup> UN Doc. E/CN.4/1986/39, para. 90 reprinted in Detrick 1992

was based upon a provision taken directly from other international human rights treaties.<sup>755</sup> Yet the proposal generated sufficient debate to require the establishment of an informal working party to 'redraft a proposal that attempted to consolidate many delegations' view.<sup>756</sup> The importance of this draft proposal lies within paragraph 1, which sets the tone of Article 19 by referring to children within the penal system only, and requires states to recognise the right of this category of children to be treated in a child-friendly manner.<sup>757</sup> In addition, the provision expelled a new child-friendly element, namely 'the promotion of the child's sense of dignity and worth'. However, criminal justice matters addressed by paragraph 2 were limited. States were required to recognise in a child '...the same legal rights as an adult accused or found guilty of infringing the penal law' and to provide legal assistance 'in the preparation of the child's defence'.<sup>758</sup> After a debate on the expression adopted, agreement was reached to replace the words 'found guilty of infringing' by the words 'recognised as having infringed'.<sup>759</sup> Thus, at the end of the debate, paragraph 1 read as follows: 'State Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth, and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.'<sup>760</sup>

While the 1988 Working Group adopted the draft text as agreed by the 1986 Working Group Session, the 1989 Working Group session undertook a significant revision of Article 19. In the 1989 Working Group, beside the Working Group text, two other lengthy versions of Article 19 were proposed, one by the Crime, Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna, and the other by a Venezuelan delegation. Faced with 'a total lack of consensus', the Chairman of the 1989 Working Group appointed an open-ended drafting group,<sup>761</sup> that split the draft article 19 into two separate provisions.<sup>762</sup> Members of the drafting group explained that such a split was necessary to accommodate, on the one hand, the comments formulated

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<sup>755</sup> Ibid

<sup>756</sup> Ibid para. 92

<sup>757</sup> Ibid para. 93

<sup>758</sup> Ibid

<sup>759</sup> Ibid para.94

<sup>760</sup> Ibid

<sup>761</sup> UN Doc. E/CN.4/1989/48, para. 536 reprinted in Detrick 1992

<sup>762</sup> UN Doc. E/CN.4/1989/WG.1/WP.67/Rev.1

by the Human Rights Committee regarding the deprivation of liberty and 'to show the respect due to human dignity, recognition of the needs of the children and the concern to assure them legal and other assistance' and, on the other hand, some ideas in the area of juvenile justice, which were the result of initiatives taken in the United Nations.'<sup>763</sup> By adopting such an approach, Article 19bis (later Article 40) got a clearer profile in providing procedural guarantees to the right of fair trial.

Paragraph 1 of previous article 19 would serve as the chapeau for the new Article 19bis. The other three paragraphs set out the obligation of states deriving from the recognition that children 'alleged as, accused of, or recognised as having infringed the penal law' should be treated in a child-adequate manner. Thus, paragraph 2 of the proposed text spelled out the principle of *nullum crimen sine lege* and minimum procedural safeguards to be guaranteed at all stages of penal proceedings. While paragraph 3 considered the necessity of establishing laws, procedures, authorities, and institutions in each national jurisdiction, and incorporated the concept of the age of criminal responsibility for juveniles and the desirability of diverting children from formal aspects of the criminal justice system. Finally, paragraph 4 considered the adjudication and dispositions in the administration of juvenile justice.

The text of the provision was based on Articles 14 and 15 of the ICCPR, and considerably influenced by the Beijing Rules.<sup>764</sup> However, the drafters decided to 'deliberately' write certain sentences in 'non-imperative language'.<sup>765</sup> On the one hand, the use of such language would weaken the sentences and build up 'an inherent tension' within the provision itself. While the provision sought to establish a child-oriented criminal justice system focusing on the child's well-being, it built 'tension' with the option given to states 'to achieve a balance between the desirability and the advisability of introducing these measures into their legal system.'<sup>766</sup> The result of this 'tension' was manifested in shortfalls among the juvenile justice systems of many state parties present in the areas of procedural rights, development and implementation of diversionary measures, and an over reliance in the use of deprivation of liberty.<sup>767</sup> On the other hand, drafters considered the use of non-imperative language as an option of facilitating a discussion focused on the proposal per se. Indeed, because of such an

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<sup>763</sup> UN Doc. E/CN.4/1989/48, para. 537

<sup>764</sup> Detrick 1999, p.681

<sup>765</sup> UN Doc. E/CN.4/1989/48, para.537 and 565

<sup>766</sup> Ibid

<sup>767</sup> General Comment No.10 para.1

option, much of the discussion around the draft would be centred on editorial changes to improve and clarify the meaning of phrases.<sup>768</sup> Thus, compared to the initial provision, paragraph 1 of the new draft was improved in form, by expanding its scope to 'every child'. The concept of 'rehabilitation' was dropped and replaced with 'the desirability of the child's assuming a constructive role in society'.<sup>769</sup> Upon remarks made over the concept of 'rehabilitation', it was clarified that 'rehabilitation' covered 'the desirability of promoting the child's *reintegration* (emphasis added) and the child's assuming a constructive role in society'.<sup>770</sup> Discussion of paragraph 2 of the draft was focused on the readjustment to the chapeau of subparagraph (b);<sup>771</sup> two issues represented by the wording of point (ii), namely the child being directly informed of the charges brought against them and the type of legal assistance they would be provided with;<sup>772</sup> and the terms 'legal counsel' and 'judicial body' as to point (iii).<sup>773</sup> Paragraph 3 and 4 were adopted after some editorial changes with no debate.

### **3. Article 40(1): fundamental principles for the treatment to be accorded to children in conflict with the law**

Article 40(1) provides a set of fundamental principles for the treatment to be accorded to 'every child alleged as, accused of, or recognized as having infringed the penal law'. The set contains three principles, especially important for 'promoting the child's sense of well-being'.<sup>774</sup> The principles consist of:

- Treatment that is consistent with the child's sense of dignity and worth;
- Treatment that reinforces the child's respect for the human rights and freedom of others;
- Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.

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<sup>768</sup> Such affirmation is based upon reading through paragraphs 566-599 of the UN Doc. E/CN.4/1989/48.

<sup>769</sup> UN Doc. E/CN.4/1989/48, para.566

<sup>770</sup> Ibid para.567-569

<sup>771</sup> Ibid para.571

<sup>772</sup> Ibid para.573-579

<sup>773</sup> Ibid para.583-588

<sup>774</sup> Van Bueren 2006, p.12. As Van Bueren notes, both the CRC and the Beijing Rules emphasize the well-being of the child in the administration of child criminal justice. Such conclusion is drawn in reference to Article 40(4) of the CRC and Rule 5 of the Beijing Rules.



Although the principles are 'sliced' into three and independently considered in order to facilitate discussion by the Committee, a multidimensional and holistic approach must be taken in reading them. The principles are interrelated to, and interdependent upon, each other as well as being linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. Furthermore, the principles interrelate and interact with principles expressed in other articles of the CRC.<sup>775</sup>

***Treatment that is consistent with the child's sense of dignity and worth.*** In the principles commentary, the Committee places the right to inherent dignity and worth in the context of both 'article 1 Universal Declaration of Human Rights' and the preamble of the CRC. The Committee further observed that the State Parties have to respect and protect the right to dignity and worth throughout the entire process of dealing with the child. Two key elements derived from the Committee's reading of the right to inherent dignity and worth. Firstly, the Committee's approach to the right to dignity and worth is no other than an explicit reference to the most fundamental requirement of the CRC, according to which the child is recognized and fully respected as a human being with rights. Secondly, the Committee emphasises that the right to dignity and worth is premised on fundamental and inviolable standards, and consequently is universal and inalienable.

***Treatment that reinforces the child's respect for the human rights and freedom of others.*** This principle was an explicit reference to one of the fundamental requirements expressed in CRC's preamble, according to which 'a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations.'<sup>776</sup> The Committee identifies two ways to achieve the reinforcement of the child's respect for the human rights and freedom of others. The first is to direct treatment and education of children 'to the development of respect for human rights and freedoms'.<sup>777</sup> The second implies 'a full respect for and implementation' of human rights from the key actors in juvenile justice.<sup>778</sup> The two requirements interrelate and

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<sup>775</sup> The Committee, rather than dividing, considers in General Comment No.10 Section III interrelation and interdependence of principles of a comprehensive policy, without making particular reference to anyone in particular for juvenile justice.

<sup>776</sup> General Comment No.10, para.4e

<sup>777</sup> Ibid. The Committee does not expand further the requirement. It prefers rather to direct the States parties to Article 29(1)(b) and General Comment No.1 on the aims of education, to elaborate

<sup>778</sup> Ibid. Once applying this principle to juvenile justice, the Committee emphasises 'the guarantees for a fair trial recognized in article 40(2) CRC'.

are interdependent upon each other. Read as one, they imply that the reinforcement of the child's respect for the human rights and freedom of others can only be accomplished through developing a sense of respecting the child as a right-holder.<sup>779</sup>

*Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* Similarly to the right to dignity and worth, the Committee, in recognition of the child as a rights holder, emphasises that the principle is premised on fundamental and inviolable standards, and consequently is universal and inalienable.<sup>780</sup> However, the language adopted 'must be applied, observed and respected' and is harder (using a strong verb such as 'must') than in considering the right to dignity and worth. Perhaps this is because of the fact that the principle is an expression that recognises the evolving capacities of the child principle that underpins the CRC. The principle does not incorporate the concept of 'rehabilitation' introduced at Article 14(4) of the ICCPR.<sup>781</sup> The incorporation of 'social reintegration' was as a consequence of evolution in the field of juvenile justice regarding the starting point.<sup>782</sup> As the Committee does not develop further the notion of 'reintegration' in General Comment No.10, in shedding light about its meaning reference is made to other sources. Therefore, Van Bueren notes that, 'compared to 'rehabilitation', the notion of 'reintegration' rejects the old assumption that the difficulties faced by children are necessarily individual, and considers the social environment and the social relationships of the child.'<sup>783</sup> In no circumstances should juvenile justice be perceived as compassion for children. Juvenile justice implies the establishment of 'responsibility, and at the same time, to promote re-integration'.<sup>784</sup> Hammamberg develops further the concept of 'reintegration', by considering the process by which 'the young offender should learn the

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<sup>779</sup> The Committee expresses in a rhetoric way the implication at General Comment no.10 para.4e

<sup>780</sup> General Comment No.10, para. 34(e)

<sup>781</sup> As Detrick notes, 'the obligation of states parties under article 14(4) of the ICCPR to ensure...' 'the desirability of promoting their rehabilitation' is based on the view that juveniles, should as far as possible, be protected against the detrimental effects of stigmatization and that offences by juveniles should not be responded to by punitive measures, but rather, by educational measures.' Detrick 1999, p.683

<sup>782</sup> The starting point was forged in part from the criminological 'labelling theory', strain theory hypothesis and cultural and sociological studies, which all together coined the class and race bias in the detection, recording and treatment of juvenile offenders. The processes of penalization and adulteration of juveniles makes it more difficult for them to desist from crimes and disorder in the future. When dealing with this category of juveniles, rather than 'labelling' and stigmatising them as criminals, account should be taken both of the offence and the special needs of the young offender, thus 'reflecting a remarkable equilibrium between concerns that cannot be easily reconciled'. Trepanier 1999, p.320

<sup>783</sup> Van Bueren 2006, p.12

<sup>784</sup> Thomas Hammamberg, 'Juvenile Justice Approach Built on Human Rights Principles', *National Association for Youth Justice*, Vol. 8 Issue 3, 2008, pp.193-196 p.194

lesson and never repeat the wrongdoing'.<sup>785</sup> The principle takes into account the child's age', which is an explicit facet of promoting the child's sense of well-being. As Doek notes, the child's sense of well-being 'serves both individual and societal interests'.<sup>786</sup> Regarding the individual aspect, the child's sense of well-being enables him/her 'to live an individual life in society'.<sup>787</sup> Regarding the societal aspect, the child's sense of well-being would allow and facilitate that they actively participate, and fully assume, their responsibilities and a constructive role within the community.<sup>788</sup> There is one important implication from the assumption 'of a constructive role in society' and 'reintegration', which is that children should not be isolated for treatment or stigmatised. On the contrary, 'children should be assisted within the community to develop a sense of responsibility, which can only be accomplished if children are shown how to develop a sense of belonging'.<sup>789</sup>

#### **4. Article 40(2): Minimum guarantees for the child alleged as or accused of having infringed the penal law**

Article 40 paragraph 2 of CRC sets out the basic procedural safeguards to be guaranteed at all stages of proceedings concerning a child alleged as, or accused of, having infringed the penal law. All of its respective rights and guarantees are meant to ensure that such children receive fair treatment and a fair trial. The list of rights and guarantees is basic for two reasons. Firstly, the chapeau of paragraph 2 clearly relates the provision to other 'international instruments'. Van Bueren interprets the term 'international instruments' to include both international and regional human rights treaties which are also applicable to children.<sup>790</sup> Secondly, the basic list is drawn from a detailed catalogue of minimal procedural guarantees found in Articles 14(2) and 15 of the International Covenant on Civil and Political Rights (ICCPR),<sup>791</sup> and at a regional level, Article 6 of the ECHR.

Within General Comment No.10, the Committee makes two important remarks regarding implementation of the guarantees to a fair trial. Firstly, the Committee notes that the State

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<sup>785</sup> Ibid p.194

<sup>786</sup> Doek Jaap. Children's Rights fundamental to well-being, and under threat, *Keynote at the ACWA Conference August 14-17 2006 Sydney* (2006), available at <http://www.jaapedoek.nl/publications/keynote.php> (accessed 12/05/2011) Doek based this conclusion upon the basis of the preamble and various provisions of the CRC.

<sup>787</sup> Seventh preambular paragraph CRC, Article 29(d),

<sup>788</sup> Doek 2006. Aspects of actively participating in are expressed in Article 12-17 CRC.

<sup>789</sup> Van Bueren 2006, p.12

<sup>790</sup> Van Bueren, 1998, p.180

<sup>791</sup> Detrick 1999, p.676-686. Similarly, the Committee refers to Article 14 ICCPR and the General Comments 13: Article 14 – Administration of Justice. General Comment No.10, para.23

Parties have no authority to determine the implementation of 'minimum standards' as a full compliance with CRC. In clarifying the meaning of this remark, it expresses that states parties should make every effort 'to establish and observe higher standards'.<sup>792</sup> To this end, it acknowledges that children could benefit both on the national and international level from wider interpretation of the guarantees to a fair trial. In addition, the Committee's remark should be read in conjunction with the Beijing Rules, which contain an interpretation of minimum guarantees to a fair trial as applied to children.<sup>793</sup> Secondly, the Committee notes explicitly from the beginning that achievement of a proper and effective implementation of the right to fair trial depends not only on juridical measures, but also on the conduct throughout the process of law enforcement officials toward respecting these rights or guarantees.<sup>794</sup> Therefore, high quality training should be given to all parties in the justice system, e.g. police officers, prosecutors, legal representatives of the child, judges, probation officers, social workers, and other special professionals concerned, in a systematic and ongoing manner. The programme training informs professionals about a child's psychological, physical and developmental capacities, as well as about the special needs of the most vulnerable children.<sup>795</sup>

**4.1 Additional principles related to children accused of infringing the criminal law.** Beside the basic procedural safeguards to fair trial contained in Article 40 of the CRC, there are some additional principles; equality before the courts, the best interests of the child, principle of proportionality, and the right to be heard, which must be taken into account while dealing with children accused of infringing the criminal law.<sup>796</sup>

**Equality before the courts.** As discussed, the chapeau of Article 40(2) of the CRC states that a child has 'at least the following guarantees'. Although not expressed in Article 40(2) of the CRC, children, like adults, are entitled to benefit from the right of equality before the court.<sup>797</sup> The HRC interprets the term 'the court' to refer '... not only courts and tribunals',

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<sup>792</sup> General Comment No.10, para.23

<sup>793</sup> Rule 7 of the Beijing Rules entitled 'Rights of juvenile', addresses the basic procedural safeguards to be guaranteed at all stages of proceedings in juvenile cases.

<sup>794</sup> General Comment No.10, para.23

<sup>795</sup> Ibid

<sup>796</sup> As earlier discussed the chapeau of paragraph 2 clearly relates the provision to other international instruments.

<sup>797</sup> Van Bueren 1998, p.180 Similarly Mason enumerates 'clear recognition and implementation of the principle of equality before the law' among the essential means to ensure respect for the rights of child in juvenile justice. UN Committee on the Rights of Child, *Report on the tenth session of the Committee on the Rights of the Child*,

but also a judicial body empowered by domestic law to carry out a judicial task.’<sup>798</sup> This interpretation is of relevance to juvenile justice, as it clarifies the reasons of having an ‘authority’ and a ‘judiciary body’ incorporated by Article 40(2)(iii).<sup>799</sup> The HRC has interpreted the principle of equality before the court as being ‘to guarantee equal access and equality of arms’.<sup>800</sup> Furthermore, the HRC affirms that equality before the court ‘ensures the parties to the proceedings in question are treated without any discrimination’.<sup>801</sup> It therefore holds the view that the equality before the court goes beyond the equality before the law, encompassing procedural equality, which impacts directly on the manner in which the law is applied by the judiciary.<sup>802</sup> The procedural equality refers to ‘a reasonable opportunity given to a child in presenting his/her case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his/her opponent.’<sup>803</sup> The element of the right of access to the court applies to criminal cases and in the determination of ‘civil rights and obligations’.<sup>804</sup> The right of access is interpreted not only as formal access by law, but also giving every person the possibility to functionally get the case to court, regardless of nationality or statelessness.<sup>805</sup> The right of access entails legal assistance and conditional imposition of fees on the parties to proceedings with insufficient means and under particular personal circumstances.<sup>806</sup> Both conditions of right to access are relevant to juvenile justice as they might jeopardize the access of a juvenile to the court, especially in proceedings manifesting a conflict of interest between the child and the parents or other involved parties.

The equality of arms strikes a fair balance between all parties in proceedings. In practical terms, a fair balance means – unless distinctions are based on law – ensuring that all the parties, are not at a substantial disadvantage against each other in terms of procedural rights.<sup>807</sup> Of principal importance to achieving a fair balance is the idea that both parties

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CRC/C/46, 18 December 1995,  
<http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/24b13ed424177d4ec1256333004b0e0e?Opendocument>  
(accessed 26/04/2011) para.212

<sup>798</sup> HRC General Comment No.32, para. 6

<sup>799</sup> The meaning of the phrase would be discussed in section of Article 40(2)(b)(iii).

<sup>800</sup> HRC General Comment No.32, para. 8

<sup>801</sup> Ibid

<sup>802</sup> Nowak 2005, Article 14, para.6, pp.308

<sup>803</sup> Harris et al.2009, p. 251

<sup>804</sup> Term adopted by Harris et al. 2009, p. 235

<sup>805</sup> General Comment No.32, para. 9, Harris et al. 2009, p. 236

<sup>806</sup> General Comment No.32, para 9-10. The condition on the fees is presented as a formulation deriving from the jurisprudence of ECtHR. Harris et al. 2009, p. 238

<sup>807</sup> General Comment No.32, para. 13

should equally stand and be accorded equal treatment during the whole course of proceedings.<sup>808</sup>

*The best interests principle.* The principle provides that, in all procedures and justice systems affecting children, ‘the best interests of the child shall be a primary consideration’.<sup>809</sup> As discussed earlier, ‘the best interests of the child’ is one of a small group of principles, which underpin all the other CRC rights.<sup>810</sup> Rules 5 and 17(1)(d) of the Beijing Rules emphasise that the best interest principle is as much a sentencing principle as any other. The Committee reinforce this by considering ‘best interests’ as one of the leading principles that decision-makers shall consider ‘in all decisions taken within the context of administration of justice’.<sup>811</sup> However, there is no indication why the Committee limits the best interest principle to the ‘decision’ rather than ‘actions’ or ‘case’ as a whole.<sup>812</sup> Extending the application of principle beyond the ‘decision’ would render the whole process child-friendly and place the child at the centre of all actions undertaken. Contradicting the Committee’s limitation to the ‘decision’ is Rule 17(1) of the Beijing Rules, which define the best interests of child-juvenile ‘well-being’ not merely ‘a primary consideration’ but rather a primary, if not the paramount, consideration that must be ‘ensured’.<sup>813</sup> In addition, limitation to decision, contradicts the meaning give to ‘*paramount*’ in Article 3 of the CRC, which refers to the child’s best interests as determinative; they determine the course of action to be taken.’<sup>814</sup> Therefore, the best interests principle demands to weigh what is consistent with the well-being and the future of the young person *before* decisions are taken (emphasis added). It strikes a balance of consistency between the decision and the best interests of the child, and implies that the background and circumstances in which the juvenile is living, and the conditions under which the crime has been committed, must be properly investigated. As previously discussed, the overall aim of all actions must be to protect and promote children’s fundamental rights and to give young people, who are found guilty of a criminal offence, the greatest possible chance of reintegrating into society and assuming a constructive role in society.<sup>815</sup>

<sup>808</sup> Harris et al. 2009, p. 251-254, Nowak 2005, Article 14, para.65-68 pp.341-342

<sup>809</sup> Article 3.1, CRC

<sup>810</sup> Please see more at literature review chapter section

<sup>811</sup> General Comment No.10, para 4b

<sup>812</sup> Term ‘action’ is adopted in Article 3, and ‘case’ in Rule 17(1)(d) of the Beijing Rules.

<sup>813</sup> Read in conjunction with Article. 40.4, CRC

<sup>814</sup> Michael Freeman, *A Commentary on the United Nations Convention on the Rights of the Child: Article 3: The Best Interest of the child*, Leiden: Martinus Nijhoff, 2007, p.60

<sup>815</sup> Article 40 (1), CRC

Secondly, as Freeman points out, 'primary' implies 'that a child's best interests should be the 'first consideration' [and] is an exhortation to consider specifically the best interests of the child and to give the child's best interests greater weight than other considerations.'<sup>816</sup> This issue is particularly relevant as far as juvenile justice is concerned. The question should be asked of how is it possible to balance the best interests of the child/children with the protective and retributive needs of society. Implementation of the best interests principle in no circumstances implies that the protective and retributive needs of society are considered as second hand and that the preservation of public safety is in jeopardy. The Committee emphasises that the protection of the best interests of the child is balanced with attention to effective public safety, and with the interest of their victims.<sup>817</sup> On the contrary, society's needs are viewed as being satisfied in the case of the child offender, whilst compensating for wrongdoing, as a way of integrating and assuming a constructive role in society.<sup>818</sup> Indeed, the best interests of the child are to be considered on a case-by-case basis, suggesting that the interests of a child in conflict with the law are subject to each unique circumstance.

***Principle of proportionality.*** The principle of proportionality is a fundamental principle of international law, which regulates all state conduct vis-à-vis the citizen. Christoffersen notes 'the term proportionality derived from *pro portio*, in equal shares, and the term indicates that the principle of proportionality is concerned with the distribution of some kind of equal weight to various interests'.<sup>819</sup> Rivers considers the principle of proportionality as a structured approach to balancing fundamental rights with other rights and interests in the best possible way.<sup>820</sup> In addition, in the field of criminal law, the principle of proportionality has been conceived to restrain the power of state authorities to interfere with the rights of individual persons, and hence it should be regarded as a device for the protection of individual autonomy from the public interest.<sup>821</sup> In the field of juvenile justice, the principle

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<sup>816</sup> Freeman 2007, p.61

<sup>817</sup> General Comment No.10, para 4b

<sup>818</sup> Van Bueren 1998, p. 183

<sup>819</sup> Jonas Christoffersen, *Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights*. Boston, Mass: Brill Academic Publishers, 2009, p.35, Similarly Trimadis summarizes the principle of proportionality as to require that action undertaken must be proportionate to its objectives. Takis Tridimas, Proportionality in Community Law: Searching for the Appropriate Standard of Scrutiny, in *The Principle of Proportionality in the Laws of Europe*, Hart Publishing, Oxford, 1999, p. 65

<sup>820</sup> Rivers Julian, 'Proportionality and Variable Intensity of Review', *The Cambridge Law Journal*, Vol. 65 Issue 1, 2006, p. 174-207, p. 176

<sup>821</sup> Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Antwerp: Intersentia, 2002, p. 2. Similarly, the ECtHR court stated the principle of proportionality requires 'a search for a fair balance between the demands of general interest of the community and the requirement of protection of the individual's fundamental rights.' Harris et al. 2009, p.10

of proportionality is described 'as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence'.<sup>822</sup> To this end, when applied to juvenile justice the proportionality test contains three elements:<sup>823</sup>

- *Suitability*: An administrative or legal power must be exercised in a way that is suitable to achieve the purpose intended and for which the power was conferred.<sup>824</sup> Applying this element in conjunction with the principle of best interests, the achievement of proportionality requires that the punishment measures designed by the legislator for the offences committed by juveniles should always be outweighed by the interest of safeguarding the well-being and the future of the young person. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases the strictly punitive approaches are not appropriate.<sup>825</sup>
- *Fair Balance*: The exercise of the power must not impose burdens or cause harm to other legitimate interests, which are unbalanced to the object to be achieved.<sup>826</sup> In the context of juvenile justice, this means that both the internal conditions of the juvenile and the external conditions of the behaviour are taken into account. Only by constructing a full picture of the offence and offender will the judge be able to determine what sentence will be more appropriate to promote the child's reintegration and the child's assuming a constructive role in society. Beside the rehabilitative needs of the offender, and the protection of society, the judicial authority should take into consideration in making its decision even the interests of the victim, who should be consulted whenever it is appropriate.<sup>827</sup>

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<sup>822</sup> Commentary of Rule 5, Beijing Rules

<sup>823</sup> While Rivers structures the answer to the principle of proportionality by way of a fourfold test (Rivers 2006, p.181), Varuhas prefers to a threefold one (Jason N E Varuhas, Keeping Things in Proportion: The Judiciary, Executive Action and Human Rights, *New Zealand Universities Law Review*, Vol 22, Issue 2, 2006, p. 301). There is nothing wrong with this approach. As Rivers and Christoffersen acknowledge, the general impression from both judicial and practitioner exposition is that there is essentially one doctrine of proportionality offering a range of tests directed towards the same end. Although the assessment leads to different results in different contexts, the language used to identify the various stages of the test is very similar, indeed interchangeable. Rivers 2006 p.178, Christoffersen 2009 p.32

<sup>824</sup> Varuhas 2006, p. 301

<sup>825</sup> Rule 17 (1) of the Beijing Rules

<sup>826</sup> Varuhas 2006, pp. 301 Varuhas adopts the term 'proportionate', while Rivers 2006 refers as fair balance or proportionate.

<sup>827</sup> The Tokyo Rules, Rule 8.1



- *Necessity:* The exercise of the power must be necessary to achieve the relevant purpose.<sup>828</sup> In the context of the juvenile justice, this principle requires that the sentence must not exceed a response that is appropriate to the seriousness of the offence and the degree of responsibility of the child. Juvenile justice is distinguished from adult criminal justice because it is founded on the idea that reactions to juvenile offenders should have a pedagogical task.<sup>829</sup> To this end, the sentence should be calling for no less and no more than a fair intervention than the minimum necessary to achieve the purpose of sentencing.<sup>830</sup> This requirement allows for the appropriate scope of discretion to be used at all stages of proceedings and implementation of a wide range of non-custodial sentences.

All the three elements must be taken into consideration in the final disposition.

***The right to be heard.*** The Committee is of the view that the right to be heard is fundamental for a fair trial. The right to be heard initially was introduced by Rule 14(2), Beijing Rules. According to its provision, in order to safeguard the best interests of the juvenile, the proceedings shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate and to express themselves freely. Article 12(2) of CRC strengthens further the provision,<sup>831</sup> by providing the child with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative, or an appropriate body in a manner consistent with the procedural rules of national law. It is not just a matter of the young person's right to be heard (although this is crucially important); it might also assist decision-makers in forming a view of the young person's understanding and comprehension.<sup>832</sup> In other words, the child must be given the opportunity to express their views freely, and those views should be given due weight in accordance with the age and maturity of the child throughout the juvenile justice process.<sup>833</sup> It remains to the judge to make the final decision; an active engagement of the child in the decision and its implementation will, in most cases, contribute to a positive result.

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<sup>828</sup> Varuhas 2006, pp. 301

<sup>829</sup> Ido Weijers, Requirements for Communication in the Courtroom: A Comparative Perspective on the Youth Court in England/Wales and The Netherlands, *Youth Justice*, Vol. 4, Issue 1, 2004, pp. 22-31, pp. 24

<sup>830</sup> Commentary of Rule 5, Beijing Rules

<sup>831</sup> Van Bueren 1998, pp.181

<sup>832</sup> Weijers 2004, pp. 26

<sup>833</sup> Art. 12(1)

## 4.2 The guarantees of a fair trial

**Art.40(2)(a): No retroactive juvenile justice.** Article 40(2)(a) CRC embodies the obligation to protect the right of freedom from *ext post facto* laws. Article 40(2)(a) pursuant to Article 15(1) ICCPR affirms that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited by national or international law. In the light of the article, states parties have an obligation to define precisely by law all the criminal offences in the interest of legal certainty, and to preclude the application of criminal laws from being extended by analogy.<sup>834</sup> The main purpose of the reference to 'international law' was to ensure that no one could escape punishment from a criminal offence under international law by pleading that their act did not constitute a criminal offence under their own national law.<sup>835</sup> Thus, the article not only prohibits the retroactive application of both national and international criminal law, but also embodies the principle of *nullum crimen sine legge*. In recent events, many State Parties have strengthened and/or expanded their criminal law provisions to prevent and combat terrorism. The Committee takes the view that these changes should not result in retroactive or unintended punishment of children.<sup>836</sup>

Although Article 40(2)(a) does not expressly embody the principle of *nulla poena sine lege*, the Committee in the light of Article 41 CRC refers to Article 15 ICCPR and renders valid the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed. However, the Committee applies a two-fold option. The child may benefit from the change of law if the act provides for a lighter penalty.

**Article 40(2)(b)(i): The presumption of innocence.** According to Article 40(2)(b)(i) CRC 'every child alleged as or accused of having infringed the penal law shall be presumed innocent until proved guilty according to the law'. The presumption of innocence, which is fundamental to the protection of human rights, extends beyond the domestic judicial system.<sup>837</sup> The significance of this principle with regard to proper administration of juvenile justice is apparent for children in conflict with the law. This is included in Rule 7.1 of the Beijing Rules, Rule 17 of JDLs, and re-enforced by Article 40(2)(b)(i) of CRC. The

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<sup>834</sup> Detrick 1992, p.684

<sup>835</sup> Detrick 1992, p.685

<sup>836</sup> General Comment No.10, para.23a

<sup>837</sup> The presumption of innocence is enshrined on Article 14(2) of the ICCPR, Article 7(1)(b) of the ACHPR, Article 8 of the ACHR and Article 6(2) of the ECHR, which underline the importance of it regarding protection of human rights.

Committee recognises that the presumption of innocence acquires importance in the case of a juvenile offender as the child may behave in a suspicious manner because of the lack of understanding of the process, immaturity, and fear or for other reasons.<sup>838</sup> By imposing on the prosecution the burden of proving the charges, the principle of innocence refrains the judges and other public officials from prejudging any case 'until the charge has been proved beyond reasonable doubt'.<sup>839</sup> From the accused's perspective, the presumption of innocence provides effective safeguards by giving the accused the benefit of the doubt.<sup>840</sup> In practical terms, this means that public authorities, particularly prosecutors and police, should not make public statements affirming the guilt or innocence of an accused before the outcome of the trial. In particular, the public authority should abstain from issuing press releases if the accused person is a juvenile in order to prevent, and to avoid, the harm that may be caused to the juvenile by undue publicity and labelling.<sup>841</sup> The HRC add in General Comment No.32 an element to the application of presumption of innocence, which is of relevance to juvenile justice. Although not categorically imposing a prohibition, the HRC advises the public authorities to refrain from shackling the defendant or keeping them in cages during a trial, or otherwise presenting to the court in a manner indicating that they may be dangerous criminals.<sup>842</sup> Complex human rights issues arise from the use of physical restraint on children and young people.<sup>843</sup> Therefore, this particular remark by the HRC demonstrates how the standards and principles under the CRC can be used to prevent the negative outcomes of subjecting juvenile defendants to public physical restraint.

**Article 40(2)(b)(ii): *Informed promptly of the charges.*** The child's first need is information regarding charges. Every child alleged as, or accused of, having infringed the penal law has the right to be informed promptly and directly of the charges against them. Prompt and direct means 'as soon as possible'. This means from when the prosecutor or judge initiates the very first steps of dealing against the child. In addition, when the authorities decide to deal with

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<sup>838</sup> General Comment No. 10, para. 231

<sup>839</sup> UN Human Rights Committee, *General Comment No.32: Article 14: Right to equality before the courts and tribunals and to a fair trial.* CCPR/C/GC/32, 23 August 2007 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (accessed 5.05.2011), para.30

<sup>840</sup> Ibid

<sup>841</sup> General Comment No.10, para. 231

<sup>842</sup> HRC General Comment No.32, para.30

<sup>843</sup> Tobin enumerates at least four specific rights that are relevant to the use of physical restraints. They are: right to liberty, the right to privacy, the right not to be subject to torture or ill-treatment or punishment, and the right to be treated with humanity and respect for the inherent dignity of the human person. John William Tobin, 'Time to remove the shackles: The legality of restraints on children deprived of their liberty under international law' *International Journal of Children's Rights*, Vol.9, Issue 3, 2001, pp. 213-239, p.217-218

the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach.<sup>844</sup> The right of an accused person to be informed promptly and directly of the charges against them is also recognised in Article 14(3)(a) of the ICCPR, Article 8(2)(b) of the ACHR and Article 6(3)(a) of the ECHR. Thus, when it comes to interpreting this right, the recommendation and cases on the above articles are substantial. According to the HRC, the right to be informed of the charges ‘applies to all cases of criminal charges, including those of persons not in detention’.<sup>845</sup> However, the HRC, in commenting upon the right, excludes ‘criminal investigations preceding the laying of charges’ from the scope of exercising the right.<sup>846</sup> Nowak comments that the duty to inform relates to the nature and cause of the charge and accusation.<sup>847</sup> The right to be informed is the subject of a two-fold test – ‘promptly’ and ‘in detail’. According to the HRC, the right of ‘prompt’ notification requires State Parties to give information as to whether the person concerned is formally charged with a criminal offence under domestic law or is publicly named as such. The specific requirements of prompt notification may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.<sup>848</sup> The ‘in detail’ requirement means that, because of the nature and cause of a criminal charge, the information provides not only the exact legal description of the offence, but also the facts underlying it.<sup>849</sup> However, the Committee has deemed that providing the child with an official document is not enough.<sup>850</sup> Thus, the Committee defines the requirement ‘in detail’ as to include notification in a language they understand as well. This element implies often ‘translation’ of the formal legal language used to inform charges, into a wording that a child can understand.<sup>851</sup> The Committee’s view is that it is the responsibility of the authorities (e.g. police, prosecutor, judge), rather than parents, legal guardians, or the child’s legal or other assistance, to make sure that the child understands each charge that is brought against them.<sup>852</sup>

**Article 40(2)(b)(ii): *To have parents or guardian notified.*** Upon the apprehension of a juvenile, their parents or guardian shall be immediately notified of such apprehension or, if

<sup>844</sup> General Comment No.10, para. 23a

<sup>845</sup> HRC General Comment No.32, para. 31

<sup>846</sup> Ibid

<sup>847</sup> Nowak 2005, Article 14, para.46 p.331

<sup>848</sup> HRC General Comment No.32, para. 31

<sup>849</sup> Nowak 2005, Article 14, para.46 p.331

<sup>850</sup> General Comment No.10, para. 23e

<sup>851</sup> Ibid

<sup>852</sup> Ibid

this is not possible, within the shortest possible time.<sup>853</sup> The term 'guardian' is not restricted to legal guardians, but includes those who, de facto, have been responsible for the child.<sup>854</sup> Unfortunately, Article 40(2)(b) of the CRC appears to have sacrificed the right of children to have their parents notified of their immediate apprehension, by placing a duty on the State Parties only to inform, 'if appropriate'. Even Article 9(4) of CRC, which exclusively aims to prevent disappearance, has not remedied the situation. As to Article 9(4) of CRC, the burden of notification of family members is a prerequisite to parents' request on the whereabouts of the child, excluding situations when such information would be detrimental to the well-being of the child. Despite several violations highlighted by national and international non-governmental children's rights organisations, this legal loophole has not yet drawn the necessary attention of the Committee to issue any general comment.

**Article 40(2)(b)(ii): *The right of silence.*** Similarly, the CRC is silent regarding the right to remain silent. However, Rule 7 of the Beijing Rules further extends the safeguards of children during apprehension by recommending that children should be entitled to the right of silence as a 'basic safeguard'. The reasoning behind such a safeguard relates to the fact that a child who is questioned by the police has the same rights as an adult not to answer their questions. In practical terms, the right of silence means that the child must tell the police their name and address, but does not have to answer other questions if they have not received legal advice. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead them to a confession that is not true.<sup>855</sup> The right to silence helps to prevent such pressures.<sup>856</sup> Furthermore, police officers and other investigating authorities should be well-trained to avoid interrogation techniques and practices that result in coerced or unreliable confession or testimonies.<sup>857</sup> The child being questioned must have access to a legal and other appropriate representative. In addition to legal representation, children must be able to request that their parent(s) be present during questioning.<sup>858</sup>

**Article 40(2)(b)(ii): *The right to legal or other appropriate assistance.*** The right to legal assistance, which necessarily includes the right to communicate with counsel, is one of the

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<sup>853</sup> The Beijing Rules, Rule 10.1

<sup>854</sup> Van Bueren 1998, p.177

<sup>855</sup> General Comment No.10, para. 23h

<sup>856</sup> Van Bueren, 1995, pp.178

<sup>857</sup> General Comment No.10, para. 23h

<sup>858</sup> General Comment No.10, para. 23h

most essential elements of a fair trial. Unfortunately, it is also one of the rights most often violated.<sup>859</sup> The second part of Article 42(2)(ii) of the CRC provides that 'every child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence'. The right implies that, once arrested or detained, a child is to be advised immediately by the arresting officer, or the officers in charge, of their right to counsel. With regard to the notification, the police's duty extends beyond enumerating the right and includes passing detailed information to the child about the existence and availability of duty counsel, free preliminary legal advice, and legal aid.<sup>860</sup> However, the provision leaves the discretion to state parties to provide the appropriate assistance, discretion which is not necessarily under all circumstances legal. This approach tries to accommodate the more informal approaches to juvenile justice that some states have adopted.<sup>861</sup> Thus, overemphasis should not necessarily be placed on legal or non-legal qualifications of the child's representative; rather it is the quality of the representation that is important.<sup>862</sup>

Although Article 40(2)(ii) CRC omits any explicit reference to free legal assistance, this right is anchored in other international and regional human rights treaties. Thus, Rule 15.1 of the Beijing Rules provides that the juvenile shall have the right to apply for free legal aid where there is provision for such aid in the country. Furthermore, Rule 18(a) of the JDLs extends the right of legal counsel and free legal aid, where such aid is available, to all juveniles who are detained, under arrest or awaiting trial. Whatever the nature of provided assistance, State Parties are urged by the Vienna Guidelines to set up agencies and programmes, to provide legal and other assistance to children – if needed – free of charge, including interpretation services.<sup>863</sup> In particular, State Parties are required to ensure that the right of every child to have access to such assistance, from the moment the child is detained, is respected in practice.<sup>864</sup> Being aware of the limited availability of lawyers, and the limited choice of lawyers available to children, the Committee considers the appropriate training of lawyers or

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<sup>859</sup> A study on the 'Situation of Children in Places of Detention', published by the Institute of Penal Reform (PRI) and UNICEF in 2004 revealed that 85% of juveniles in pre-trial detention have never met a lawyer. The study was quoted in 'Juvenile justice experts from 10 countries (Eastern and South-Eastern Europe) created a sub-regional network', *UNICEF*, [http://www.unicef.org/ceecis/media\\_2873.html](http://www.unicef.org/ceecis/media_2873.html) (Accessed 11/07/2011)

<sup>860</sup> 'Juvenile Justice Training Manual', *Penal Reform International/UNICEF, 2007*, <http://www.penalreform.org/publications/juvenile-justice-manual> (Accessed 11/07/2011) (PRI/UNICEF 2007), Module 4

<sup>861</sup> Van Bueren 1995, pp.180

<sup>862</sup> Van Bueren 1995, pp.180

<sup>863</sup> Vienna Guidelines, Guideline 16

<sup>864</sup> Ibid

paralegal professionals by State Parties as a high imperative issue.<sup>865</sup> In practical terms 'high imperative' place an obligation upon state parties to train all professionals involved about the relevant national and international legal provisions, including the social and psychological aspect of juvenile delinquency and development of children.<sup>866</sup> When other appropriate assistance is offered to juveniles, the person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice, and must be trained to work with children in conflict with the law.<sup>867</sup>

The second part of Article 40(2)(b)(ii) CRC entitles the child not only to be assisted by a lawyer, but also to have adequate time and facilities for the preparation of their defence. The HRC considers that 'adequate time' depends on the nature of the proceedings and the factual circumstances of each case.<sup>868</sup> The term 'adequate facilities' has, among other things, been interpreted to mean that the accused and defence counsel must be granted access to appropriate information, files, and documents necessary for the preparation of a defence, and that the defendant must be provided with facilities enabling communication, in confidence, with the defence counsel.<sup>869</sup> The confidentiality of this communication is provided for in Article 40(2)(b)(vii) CRC, and the right of the child to be protected against interference with their privacy and correspondence (Art. 16 CRC). Furthermore, the right to adequate time and facilities for the preparation of a defence applies not only to the defendant, but also to their defence counsel, and is to be observed at all stages of the proceedings. This right is one important element to the principle of the equality of arms, which implies that, in relation to the prosecution, the defence must have an equal opportunity to prepare and present a case, and that both the prosecution and the defence must have an equal position throughout the proceedings. Furthermore, the counsel should be able to advise and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures, or undue interference from any quarter.<sup>870</sup>

**Article 40(2)(b)(iii): *To have the matter determined without delay by competent, independent and impartial authority or judicial body.*** Where a child's case has not been diverted away from juvenile justice, the matter should be determined without delay by a

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<sup>865</sup> General Comment No.10, para. 33

<sup>866</sup> Ibid

<sup>867</sup> General Comment No.10, para. 23f

<sup>868</sup> HRC General Comment No.32, para. 32

<sup>869</sup> Detrick 1992, pp.689

<sup>870</sup> HRC General Comment No.32, para. 34

competent, independent, and impartial authority or judicial body in a fair hearing according to the law.<sup>871</sup> The reasoning behind such a long description relates to the difficulty in formulating a universal definition of an adjudicating authority. Thus, the commentary on Rule 14.1 of the Beijing Rules addresses the phrase 'authority or judicial body' as to encompass those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates, administrative boards (for example, the Scottish and Scandinavian systems), as well as more informal community and conflict resolution agencies of an adjudicatory nature. The emphasis on the 'competent, impartial and independent' follow the stream of elaborating the requirement of a 'fair hearing' in regard to criminal charges.<sup>872</sup> The meaning of the phrase 'competent, impartial and independent' is determined by the comments issued by the UN Human Rights Committee on Article 14(3) of the ICCPR and the case law of the European Court of Human Rights (the Court). Both Article 40(2)(b)(iii) of CRC and Article 6 of the ECHR are based on Article 14(3) of the ICCPR. The requirement that a tribunal be 'established by law' is intended to ensure that the judicial organisation in a democratic society should not depend upon the discretion of the executive, but should be regulated by law emanating from parliament setting out the basic framework concerning the organisation of the courts.<sup>873</sup> In the General Comment No.32 and jurisprudence of the HRC, there is no indication on the interpretation of the requirement 'to be competent' for the purposes of Article 14 paragraph 1 of the ICCPR. The only non-official definition is provided by Amnesty International, according to which 'the requirement of a competent tribunal refers to power given by law to the tribunal to have the jurisdiction to hear the case, over the subject matter and the person, and to conduct the trial with any applicable time limit prescribed by law'.<sup>874</sup> In General Comment No.32, the HRC adopts the approach of the ECtHR jurisprudence in considering the requirement of independence and impartiality as closely linked. Thus, the requirement of independence refers to the procedure and rules regulating the institutional position of the judge and the guarantees to protect the judiciary from outside pressure, such as political interference by the executive and legislature.<sup>875</sup> To determine whether this requirement is met, due regard must

<sup>871</sup> Article 40 (2)(b)(iii), CRC

<sup>872</sup> Detrick 1992, pp. 691

<sup>873</sup> See HRC, General Comment No.32, para. 19, Harris et al. 2009, p.297

<sup>874</sup> Amnesty International Fair Trials Manual, *Amnesty International*, 1998, <http://www.amnesty.org/en/library/info/POL30/002/1998> (accessed 31/05/2011) p.88

<sup>875</sup> Harris et al. 2009, p.286, Nowak 2006 Article 14 para. 25, p.319



be given to the manner of appointment of the judges, their term to office, the impartiality of the court, and the issue as to whether the body manifests independence.<sup>876</sup>

It is well established by HRC and ECtHR jurisprudence that the requirement for an impartial judiciary embodies two aspects; subjective and objective appearance of impartiality. The HRC committee in General Comment No.32 reaffirms this position. Thus, the subjective test of impartiality asserts that a member of the judiciary hears the case before them with no personal prejudice or bias, no harboured preconceptions, and does not act in ways to improperly promote the interests of one of the parties to the detriment of the other.<sup>877</sup> In applying the test, there is a presumption that the court has acted impartially, which must be displaced by evidence to the contrary.<sup>878</sup> In terms of the objective test, the judiciary 'must also appear to a reasonable observer to be impartial'.<sup>879</sup> In practical terms, the objective test requires the judiciary to offer sufficient guarantees to exclude any legitimate doubt in the respect.<sup>880</sup>

Article 40(2)(b)(iii) of CRC introduces stronger standards with the phrase 'without delay' compared to 'without undue delay' of Article 14(3) of the ICCPR. The HRC has pointed out that it relates to the time by which a trial should commence, but also the time by which it should end and judgment be rendered.<sup>881</sup> The Committee interprets that the effective enforcement of the requirement 'without delay' is manifested by setting and implementing time limits for the period between the time that the offence comes to the attention of the authorities and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and disposition by the court or other competent judicial body.<sup>882</sup> However, the State Parties are advised to strike a balance between time limits being much shorter than the ones for adults,

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<sup>876</sup> See HRC, General Comment No.32 para. 19, Harris et al. 2009, p.287-290, Nowak 2006 Article 14 para. 25

<sup>877</sup> HRC, General Comment No.32 para. 21 Harris et al. 2009, p.290, Nowak 2006 Article 14 para.27

<sup>878</sup> Harris et al. 2009, p.290, Nowak 2006 Article 14 para.27

<sup>879</sup> HRC, General Comment No.32 para. 21

<sup>880</sup> Harris et al. 2009, p.291 While discussing the objective test, Harris et al. enumerate as examples of it separation of powers: judges acted in different position, judges taking part in the proceeding in pre-trial stage, judges acting as investigating authority, judges sitting at more than one stage at hearing, judges making extra-judicial pronouncements in press or elsewhere, judges have a personal interest on the test, executive intervenes with a view to influence the outcome of certain policy when considered by the court. Harris et al. 2009 p.291-297

<sup>881</sup> Detrick 1992, pp.692

<sup>882</sup> General Comment No.10, para. 23h

and the respect of human rights of the child and legal safeguards of the process.<sup>883</sup> In the circumstances of absence of such balance, the right to fair trial will be placed in jeopardy.<sup>884</sup> Normally, the domestic legislation sets a limit of 24 hours or, more rarely, between 48 hours and four days as the maximum period of remand before a child is brought before the authority or judicial body to examine the legality of (the continuation of) this deprivation of liberty.<sup>885</sup> An effective procedure must ensure, in practice, that the legality of a pre-trial detention is reviewed regularly, preferably every two weeks.<sup>886</sup> 'Without delay' imposes the duty on State Parties to bring the child before a court or other competent, independent, and impartial authority or judicial body, not later than thirty days after their pre-trial detention takes effect.<sup>887</sup> The child is entitled to challenge the legality of the deprivation of their liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.<sup>888</sup>

**Article 40(2)(b)(iii): *Decision without delay and with involvement of parents.*** Both Article 40(2)(b)(iii) CRC and Beijing Rules, Rule 15(2) provide that parents or legal guardians should also be present at the proceedings. Beside the general psychological and emotional assistance to the juvenile, the presence of a parent or legal guardian(s) contributes to an effective response to the child's infringement of the penal law. Although such presence may extend throughout the proceeding, it is also considered important to have the parental involvement as soon as the child is apprehended. For this reason, the Committee strongly recommends State Parties notify parents as soon as possible of the apprehension of their child.<sup>889</sup> To this end, the Committee recommends State Parties to explicitly provide, by law, for the maximum possible involvement of parents or legal guardians in the proceedings against the child. However, in no circumstances should their presence be interpreted as a right to act in defence of the child or be involved in the decision-making process.<sup>890</sup>

**Article 40(2)(b)(iv): *Freedom from compulsory self-incrimination.*** The first part of Article 40(2)(b)(iv) provides that every child alleged as or accused of having infringed the penal law

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<sup>883</sup> Ibid

<sup>884</sup> Ibid

<sup>885</sup> 'Innocenti Digest: Juvenile Justice', *UNICEF International Child Development Centre Florence- Italy*, <http://www.unicef-irc.org/publications/105>, 1998 (accessed 11/07/2011), (Innocenti Digest No.3 1998), p. 9

<sup>886</sup> General Comment No.10, para. 28b

<sup>887</sup> Ibid

<sup>888</sup> Article 37(d), CRC

<sup>889</sup> General Comment No.10, para. 23g

<sup>890</sup> Ibid

shall have the right 'not to be compelled to give testimony or to confess guilt'. This provision is based on Article 14(3)(g) of the ICCPR that provides that, in the determination of any criminal charge against them, everyone shall be entitled to 'not to be compelled to testify against himself or to confess guilt'. The right to silence and the right not to self-incriminate are generally recognised international standards, which lie at the heart of the notion of a fair procedure.<sup>891</sup> While the right of silence protects a suspect or accused against 'indirect coercion' by the investigating authorities, the right not to self-incriminate protects them against 'direct coercion' into producing self-incriminating evidence.<sup>892</sup> In practical terms, the HRC emphasises that this safeguard excludes tangible evidence obtained from 'any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused'.<sup>893</sup> As Harris *et al.* note, three elements determine the relevance of the freedom from self-incrimination; the autonomy of the individual, the need to avoid miscarriages of justice, and the principle that the prosecution should prove the case without the assistance of the accused.<sup>894</sup> To comply with the safeguard, the statements or confessions obtained in violation of freedom from self-incrimination are not admissible as evidence. *A fortiori*, the burden is on the state to prove that statements made by the accused have been given of their own free will.<sup>895</sup> The Committee acknowledges that the term 'compelled' acquires a broader meaning, beyond direct or indirect physical force, once applied to children in conflict with the law. For example, it can extend to even less violent ways; a 'reward', such as 'you can go home as soon as you have given us the true story', or promises for lighter sanctions or release, which could compel the child to make a confession or a self-incriminatory testimony. In response to these situations, the Committee recommends that, when a child is questioned, they must have access to a legal or other appropriate representative, and must be able to request that their parent(s) be present during questioning. Furthermore, the State Parties must provide within the legal system for independent scrutiny the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. States should equally ensure that those found responsible are duly sanctioned.<sup>896</sup> One way to achieve independent scrutiny is through the court or other judicial body. A judicial body is advised, when considering the voluntariness and reliability of an admission or confession by

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<sup>891</sup> Harris 2009, p.259

<sup>892</sup> Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure*. London: Sweet & Maxwell, 2002.p. 18

<sup>893</sup> HRC, General Comment No.32, para. 41

<sup>894</sup> Harris 2009, p.259

<sup>895</sup> HRC, General Comment No.32, para. 41

<sup>896</sup> Vienna Guidelines, Guideline 25

a child, to take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives for the child. However, if police officers and other investigating authorities are well-trained, interrogation techniques and practices that are likely to elicit an incriminating response that result in coerced, or unreliable, confessions or testimonies should be avoided.

**Article 40(2)(b)(iv): *The right to the presence and cross-examination of witnesses.*** When a child is alleged or accused of having infringed penal law, the child's right to examine or have examined adverse witnesses, and to obtain the presence and examination of witnesses on their behalf under the same condition as for adverse witnesses, is an essential element of the principle of equality of arms. The ECtHR has interpreted the right as the examination of the witnesses, which 'occur before the court who decide the case, so that if a judge is replaced after a witness has been heard, the witness must generally be recalled'.<sup>897</sup> The Committee considers the use of the phrase 'to examine or to have examined' as accommodating the distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials.<sup>898</sup> The HRC points out that the right is designed to guarantee to the accused the same legal power of compelling the attendance of witnesses, and of examination of the witnesses to the lawyer, as are available to the prosecutor. However, the Committee states that that, in the case of children, it remains important that the lawyer or other representative informs the child about the possibility of examining witnesses and to allow them to express their views in that regard. Their views should be given due weight in accordance with the age and maturity of the child.<sup>899</sup>

**Article 40(2)(b)(v): *The right to appeal.*** The CRC provides that the child has the right to appeal against the conviction and sentence. The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal. A higher, competent, independent and impartial authority or judicial body should conduct the appeal. In other words, it should be a body that meets the same standards and requirements as the one that dealt with the case in the first instance.<sup>900</sup> The right of appeal is applied to every child's case, with no limitation to only the most serious offences. This resulted in a number of state parties to make a reservation regarding such a provision.

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<sup>897</sup> Harris et al. 2009, p. 322

<sup>898</sup> General Comment No.10, para. 23i

<sup>899</sup> Article.12 CRC, General Comment No.10, para. 23i

<sup>900</sup> General Comment No.10, para. 23j

**Article 40(2)(b)(vi): *Interpreter.*** The CRC provides that if the child cannot understand or speak the language used by the juvenile justice system, they have the right to the free assistance of an interpreter. The assistance of an interpreter is essential, given that all rights to a fair trial are useless if the child does not have the linguistic capabilities to understand the charges brought against them, to fully understand the proceedings, and the outcomes of proceedings. The use of the phrase 'if' implies that a child of foreign or ethnic origin, for example, that understands and speaks the official language as well as their mother tongue, does not have to be provided with the free assistance of an interpreter.<sup>901</sup> The right applies not only to oral statements made during the trial, but also to the documentary materials and pre-trial stage of the case. It does not include, however, all the written translation of all items, because 'the assistance should be such as to enable the defendant to have knowledge of the case against him and to defend himself'.<sup>902</sup> The Committee considered the training of interpreters to work with/for children as very important, as a lack of knowledge and/or experiences may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation<sup>903</sup>. The right to free assistance of an interpreter is extended to children with speech impairments or other disabilities. The aim is to ensure that even when children with speech impairment or other disabilities are subject of judicial proceedings, they are guaranteed the right to fair trial through adequate and effective assistance by well-trained professionals, such as sign language. Costs are covered by the state because of the importance of the assistance of an interpreter in criminal proceedings.

**Article 40(2)(b)(vii): *The right to privacy.*** The right to a public hearing is considered by international human rights treaties as one of the essential elements of the concept of a fair trial. The right to a public hearing means that the hearing should, as a rule, be conducted orally and publicly, and judgments should be made public. However, the public should be excluded from all stages of the proceedings and the judgment should not be made public if the case is against a juvenile offender. The use of the phrase 'all stage of proceedings' in both international provisions – Article 40(2)(b)(vii) CRC and Rule 8.1, Beijing Rules – covers not only those conducted on court premises, but also the stage from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority or release from supervision, custody, or deprivation of liberty.

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<sup>901</sup> General Comment No.10, para. 23k

<sup>902</sup> Harris 299 et al. p.327

<sup>903</sup> General Comment No.10, para. 23k

Furthermore, the right of the child to have their privacy fully respected in all stages of the proceedings complements the right to protection of privacy enshrined in Article 16 of the CRC. Used in the context of juvenile justice, it is meant to avoid harm caused by undue publicity or by the process of labelling.<sup>904</sup> In addition, both provisions prohibit the publication and broadcasting of any information that may lead to the identification of a child involved in proceedings, because of its effect of stigmatisation, and possible impact on their ability to obtain an education, work, and housing, or to be safe. Such provisions require the State Parties to not only take measures to guarantee that children are not identifiable via press releases, but also to provide disciplinary and penal sanctions in case journalists violate the right to privacy. An additional safeguard could include the introduction of a special rule that court and other hearings of a child in conflict with the law should be conducted behind closed doors.<sup>905</sup> Moreover, Article 40(2)(b)(vii) foresees that the verdict/sentence should be pronounced in public at a session of the court in such a way that the identity of the child is not revealed.<sup>906</sup> The right to privacy imposes an obligation upon all professionals involved in the implementation of the measures taken by the court, or another competent authority, to keep all information that may result in identification of the child confidential in all their external contacts. In addition, the Beijing Rules – Rules 21.1 and 21.2 – imply that the records of child offenders shall be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication, and disposition of the case. Such records of child offenders shall not be used in adult proceedings in subsequent cases involving the same offender. The aim is to achieve a balance between conflicting interests connected with records or files; those of the police, prosecution, and other authorities in improving control versus the best interests of the juvenile offender (see also rule 8). ‘Other duly authorized persons’ would generally include among others, researchers.

**4.3 What role do the police play in juvenile justice system?** One of the most important aspects of the juvenile justice system is the interaction between police and juvenile offenders. The police are usually the first point of contact within the formal criminal justice system for children coming into conflict with the law. The action taken by arresting police officers and any other involved police officers has the potential to change the child's life in a positive

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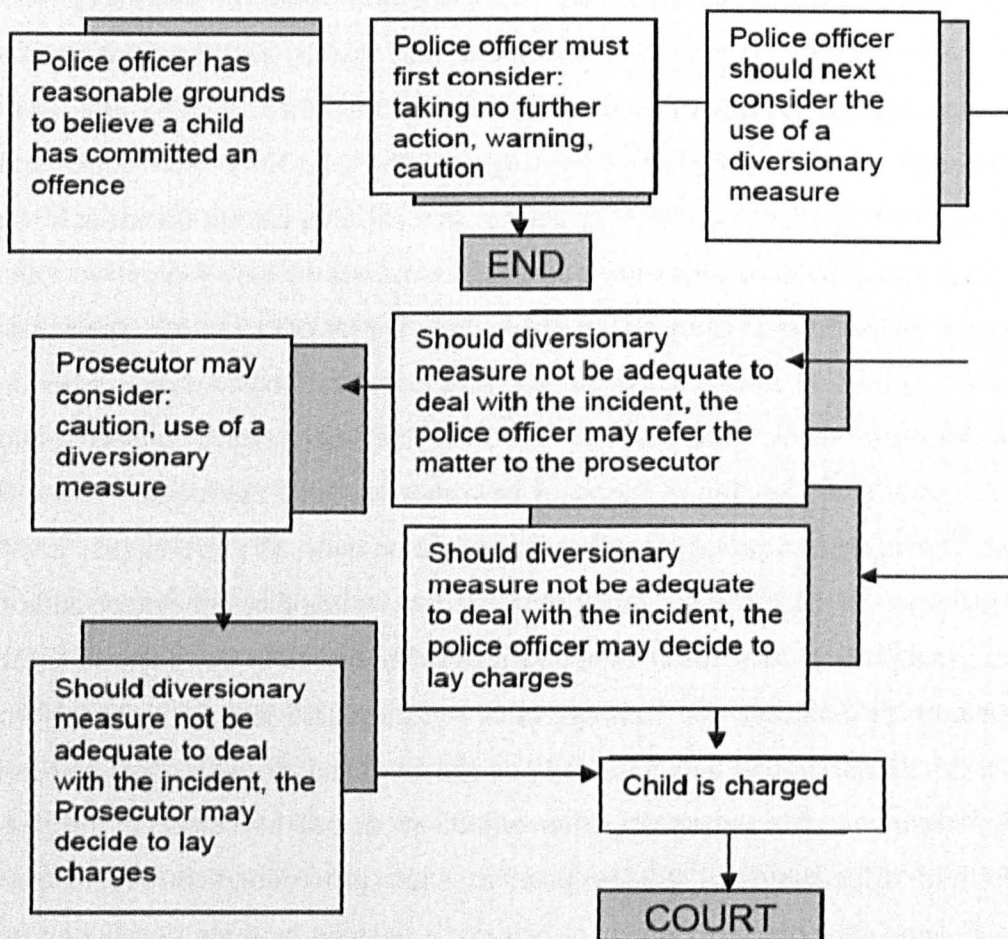
<sup>904</sup> Beijing Rules, Rule Commentary on Rule 18.1

<sup>905</sup> General Comment No.10, para. 231

<sup>906</sup> Ibid

direction. In practical terms, Figure No. 2 provides a summary of the role of police interaction with a juvenile in conflict with the law.

**Figure No. 2: Summary of Police Intervention<sup>907</sup>**



The police officer is often the individual who decides whether a particular juvenile offender will or will not continue further into the system. In other words, the police may be considered to be the gatekeepers of the system.<sup>908</sup> However, this would largely depend on the attitudes, beliefs, knowledge, skills and resources of the police officer handling the case. Despite being an important relationship, little has been written about interaction between police officers and juveniles in conflict with the law from the international human rights law perspective. Therefore, in writing this section, heavy reliance is made upon the PRI/ UNICEF (2007)

<sup>907</sup> PRI/UNICEF 2007, Module 4

<sup>908</sup> Gordon Bazemore, and Scott Senjo. 'Police encounters with juveniles revisited: An exploratory study of themes and styles in community policing', *Policing: International Journal of Police Strategies and Management*, Vol. 20, Issue 1, 1997, pp.60-82, (Bazemore & Senjo 1997) pp. 60



Juvenile Justice Training Manual,<sup>909</sup> which, in building the role of the police and interaction with the juvenile offender, relies upon the Articles of CRC and especially the Beijing Rules. Inevitably, coverage will be selective, since all aspects of such interaction are enormous.

When police officers are confronted with young people/minors engaged in criminal behaviour at the police station, they could become involved and play a role in:<sup>910</sup>

- *Diversion* schemes by selecting young people to be involved in them. They can decide not to refer the case to the juvenile courts or prosecutor, if the juvenile/minor in question meets certain conditions, directing them instead towards community support, both formal and informal.
- *Resorting* to a formal trial. If a diversion is not deemed appropriate, the police can make official complaints or bring charges against young people/juveniles who have participated in illegal activities. An official complaint triggers the judicial procedure; therefore it brings the minor into this procedure.
- *Detaining* young people in custody if they have been refused bail or other reprimand measures, and escorting young people to detention centres.

All the situations mentioned above are very delicate and need to be managed seriously and objectively. Police have to deal with such situations on a daily basis; they are the first actors within the judicial procedure and are often the only ones to establish the first contact between the juvenile and the 'official authority'. Therefore, such contact might profoundly influence the juvenile's attitude towards the state and society.<sup>911</sup> The interaction between police and young people should be based on respect for the law, for the rights of the minor, and avoid the use of harsh language, and physical violence.<sup>912</sup> The approach to the child must be constructive. It is in the cases of dealing with a child where police will need to have the necessary knowledge and skills to negotiate and mediate in order to ensure that the child's rights are upheld and that opportunities for diversion or non-custodial options are explored.<sup>913</sup>

At this stage, it is important to keep in mind the minor's state of mind, whether they are a victim or in conflict with the law. This means that police officers must work towards paving

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<sup>909</sup> 'Juvenile Justice Training Manual', Penal Reform International/UNICEF, 2007, <http://www.penalreform.org/publications/juvenile-justice-manual> (Accessed 11/07/2011)

<sup>910</sup> PRI/UNICEF 2007, Module 4

<sup>911</sup> Commentary on the Beijing Rules, Rule 10.3

<sup>912</sup> Beijing Rules, Rule 10.3

<sup>913</sup> Beijing Rules, Rule 11 and 12



the way to rehabilitation and reintegration of children, rather than emphasizing measures that are meant only to punish children in conflict with the law. Far from his environment, parents, and friends, the juvenile will feel fear and anxiety; they are lost and are trying to hold on to something or someone in order to feel secure. Compassion and kind firmness are important in such situations. When dealing with young people, police officers need to use not only their ordinary investigation techniques, but should also follow an approach that takes into consideration the juvenile's psychological and family background. They should have to be even more vigilant with regard to security issues and administrative matters.<sup>914</sup> Thus, police officers should try to monitor the situation of children and learn about conditions and experiences that cause children to be in conflict with the law.<sup>915</sup> These may be children that are referred to the police for the first time, or they may be repeat offenders. They may be referred individually, or as members of neighbourhood groups, or street gangs that act in groups. In some cases, children in conflict with the law may withhold information or hide evidence in order to protect persons that are close to them or persons they fear.

Historically, the interaction between police and young people has been described as an antagonistic one.<sup>916</sup> Thus, children may refuse to speak because they feel overwhelmed by what has taken place. However, they should not be seen as stubborn or exposed to different kinds of abuse by police officers. It is most important that police officers act in an informed and appropriate manner, whatever situation they are presented with. A police officer in contact with children must always introduce their name and explain tasks to children in a simple and understandable manner. Police officers should not assume that children know about the identity and the tasks of the police in relation to the case.<sup>917</sup>

In reality, children become particularly vulnerable in the hands of authorities that have power over them at the moment they are arrested. Their perception of the police and its role as well as its relationship with children coming into conflict with the law, was identified as mainly negative, and often violent.<sup>918</sup> Violations range from ignoring standard operating procedures

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<sup>914</sup> PRI/UNICEF 2007, Module 4

<sup>915</sup> Ibid

<sup>916</sup> Bazemore & Senjo 1997, p.61 & 77

<sup>917</sup> PRI/UNICEF 2007, Module 4

<sup>918</sup> Martin & Parry-Williams enumerates several examples of the violence exercised by police officers. The police abuse of power ranges 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, and abuse of power as an easy means of supplementing their meagre incomes. At one extreme, the police may even become actively involved in the elimination of 'undesirables', often children and young people

covering children's rights, to verbal, physical, and sexual abuse and the exploitation of children.<sup>919</sup> One of the striking and disturbing findings, in analysing this interaction, 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.<sup>920</sup> For the youth, the issues most frequently raised about their perception of the police are the lack of respect for the law, for their rights, communication problems, and violence. Youths may feel that police are not in a position to protect them, because police officers are 'all powerful' as far as such children are concerned.<sup>921</sup> Overall, it might be concluded that the imbalance of power is one major issue in police/youth relations.

In order to best fulfil their functions, police officers that frequently or exclusively deal with juveniles shall be specially instructed and trained.<sup>922</sup> Training needs to be provided to ensure that police are familiar with the CRC, international standards, national legislation, police policy, and the divergence between policy and actual practice on the ground; as a result, they will be properly equipped with the knowledge and understanding to deal appropriately with children in conflict with the law.

Equally, in order to develop effective and appropriate mechanisms to respond to children's offending behaviours, police officers need to understand the complex reasons why children may enter into conflict in the first place. As Amnesty International has stated, 'most of the children coming into conflict with the law, commit minor, non-violent offences, such as theft', and in some cases their only 'crime' is that they are poor, homeless and disadvantaged'.<sup>923</sup> It is the routine exposition to poverty that leads them into the path of delinquency, as they are forced into begging, petty crime, or prostitution in order to survive

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accused of being gang members or deemed to be 'bad for business' because they live and work on the streets. Florence Martin, and John Parry-Williams, *The Right Not to Lose Hope*. London, Save the Children UK, 2005 pp. 30-32

<sup>919</sup> Ibid

<sup>920</sup> Martin & Parry-Williams, 2005, p.30

<sup>921</sup> Martin & Parry-Williams, 2005 p. 30

<sup>922</sup> The Beijing Rules, Rule 12

<sup>923</sup> Children's Human Rights – The Future Starts Here, *Amnesty International Canada*, [www.amnestyusa.org/children/future](http://www.amnestyusa.org/children/future), (Accessed 09/09/11) Similarly, Martin & Parry-Williams, 2005, p.10, UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 63/166, A/64/215, 3 August 2009, para.63 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/440/75/PDF/N0844075.pdf?OpenElement> accessed 09/09/2011);

abuse.<sup>924</sup> The risks of coming into conflict with the law are often unforeseen by the children and they do not realize the consequences until they are already caught in a downward spiral. As girls are proportionately much less likely to come into contact with the law than boys, they are rarely treated with due regard for their gender-specific needs.<sup>925</sup> Thus, it is important that police clearly recognize the difficulties faced by all the categories of juveniles they deal with, from 'street children' up to juveniles engaged in 'gangs'. The juvenile justice system has to ensure fair, just, and humane treatment for youth through specialized institutions, procedures, and practices within a larger justice system. The question is how? Increasing the education of police to deal more sensitively and effectively with youth, while very important, is not sufficient in itself. It is crucial to have educators, social workers, psychologists, and other professionals working closely together with police officers from the very beginning.

**4.4. What makes the court child-friendly?** The judicial body, or, as it is more familiarly known, the youth court, constitutes one of the most significant elements in the juvenile justice system. Its significance lies not only in the fact that it was the first institution which, in part, recognised the immaturity of youth, but it is also the institution which started the reforms that brought about juvenile justice.<sup>926</sup> Despite holding a significant authoritative position in being the ultimate decision-maker in both adjudication and disposition of a juvenile's case, relatively little analysis has been written about the role juvenile court judge should have. This should be kept in mind when considering what makes the court child-friendly.

The juvenile court system emerged in response to two fundamental beliefs about young people in conflict with the law. One was based on the early nineteenth century belief that juvenile delinquents or other abandoned children lacked what at the time had become the accepted characteristics of children.<sup>927</sup> The other factor considered juvenile offenders as 'children in trouble' who ought to be 'saved' rather than punished.<sup>928</sup> Whether involving a

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<sup>924</sup> Barry Goldson, 'Children in need or young offenders?', *Child and Family Social Work*, Vol.5, Issue 3, 2000 pp.255-265.

<sup>925</sup> Amnesty International Canada. A discussion related to this issue is provided in 'Children, Youth and Crime: Working Paper Prepared by the Secretariat' *Twelve United Nations Congress on Crime Prevention and Criminal Justice (12-19 April 2010, Salvador, Brazil)*, UN, 15 February 2010, [www.unodc.org/unodc/en/crime-congress/crime-congresses.html](http://www.unodc.org/unodc/en/crime-congress/crime-congresses.html) (Accessed 09/09/11), para.20

<sup>926</sup> Weijer 1999, p.332, Trépanier 199, p.309, Feld 2002

<sup>927</sup> Hugh Cunningham, *Children and Childhood in Western Society since 1500*. 2nd ed., London: Longman, 2005, p.148, Josine Junger-Tas, *The juvenile justice system: Past and present trends in Western Society*, In I. Weijers & A.Duff (eds) *Punishing juveniles: principle and critique*, Oxford: Hart, 2002, pp. 26

<sup>928</sup> Trépanier 1999, p.305, Weijer, Ido. 'The double Paradox of Juvenile Justice', *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp 329-351, pp. 329

separate juvenile court, a juvenile judge, or a welfare board,<sup>929</sup> the juvenile court mission was to accomplish the rehabilitation of the juvenile in trouble and to prevent future criminal behaviour. Acting in its role as *parens patriae*, the juvenile judge's functions were to diagnose the youth at risk to prevent them from becoming serious offenders.<sup>930</sup> In furtherance of this mission, hearings in the juvenile court were conducted less adversarially, focusing more on the social and moral needs of the child and how to assist them in order to reform the deviant behaviour. While having power to act in the best interest of the child, juvenile court judges had large discretionary powers, both in adjudicatory practices and in dispositional sanctions.<sup>931</sup> *Parens patriae*, on the basis of establishment of the juvenile court, may still persist in certain jurisdictions. Nowadays, the juvenile court exists between the very soft and the very hard end of the juvenile justice system.<sup>932</sup> What started as a court to which juveniles should be diverted, in soft terms, nowadays is a court from which juveniles are to be diverted. The soft version of the juvenile court respects the principles of proportionality and fair trial, notions of personal responsibility, and guilt. The judge exercises exceptional discretionary power to diffuse a mixture of institutional welfare and punishment at the soft court.<sup>933</sup> In these terms, the juvenile court judge is considered as a component element of a diversionary system, however, enjoying its own rights *per se* and governed by its own objectives, performance standards, ethos, and command structure.<sup>934</sup> What started as a court to which juveniles should be diverted, in hard terms nowadays has a more juridical approach; diverting the juvenile to a criminal court. The juvenile court bears more conformity with adult criminal proceedings, and places more emphasis on proportionality, on responsibility, on guilt and on punishment. In these terms, the juvenile court judge is in charge of 'tightening the web' by holding the juvenile accountable for his or her actions but also incapacitating them for an extended period of time.<sup>935</sup>

<sup>929</sup> Junger Tass-2002, pp. 30

<sup>930</sup> Junger Tass-2002, pp. 30, Trepanier 1999, pp. 314, Singer, Simone. Juvenile court and its systems of juvenile justice, in *Handbook of Youth and Justice*, eds S. O. White New York: Kluwer Academic/Plenum Publishers, 2001, pp. 351

<sup>931</sup> Junger Tass-2002, pp. 30, Trepanier 1999, pp.314, Singer 2001, pp. 351

<sup>932</sup> Singer 2001, pp.359

<sup>933</sup> Weijers 1999, pp.339

<sup>934</sup> Bruce Abramson, 2005, p.5, 'Violence Against Girls in Conflict with the Law'. Human Rights Watch, <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm> (accessed 20/10/2009)

<sup>935</sup> Trepanier 1999, p. 321

Although no international standard goes as far as to require explicitly the establishment of a separate set of courts for children,<sup>936</sup> there is an implicit presumption that youth offenders should be dealt with differently from adults.<sup>937</sup> While examining State Parties' reports, the Committee has strongly recommended that they should undertake all necessary measures to ensure the establishment of juvenile courts and the appointment of juvenile judges in all regions of the States Parties. In cases where this is not immediately feasible, either for practical or financial reasons, States Parties are under an obligation to at least ensure the appointment of specialised judges or magistrates for dealing with such cases.<sup>938</sup> However, there are remarks about how the juvenile must be dealt with once they are present in the courtroom. Thus, Rule 14.2 of the Beijing Rules requires States Parties to provide an understanding environment, which permits the juvenile to participate therein and to express themselves freely.

Why does the international community need to consider the importance of appointing a juvenile judge within the courtroom? The answer to this question lies within the terms of factors that might jeopardise the juvenile's competence to stand trial. The key conditions for any criminal proceedings to meet the requirements of a fair trial are that the defendant should be brought to trial only if they are competent to be tried. As previously considered in Chapter One, 'competence' implies that every child's maturity, their ability to understand and cope with the situation would need to be assessed.<sup>939</sup> Weijers and Duff elaborate that in assessing the capability of juveniles to understand the process and fully participate in it, four key issues are important: (i) ability to grasp the meaning of the legal procedure, appreciate its significance and understand the outcomes it brings to their own situation; (ii) their basic cognitive and reasoning abilities; (iii) the ability to foresee the long-term consequences of their actions; and, the most important one, (iv) the less knowledgeable about the legal process and about matters related to their trials of the juveniles compared to adults.<sup>940</sup>

In practical terms, the key issues mean assessment of every juvenile's maturity, and their ability to understand and cope with the situation. Weijers considers that people who develop

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<sup>936</sup> Innocenti Digest No.3 1998, pp. 10

<sup>937</sup> The Committee in several occasions has recommended to the state parties to establish juvenile courts either as separate units or as part of existing regional/district courts. General Comment No.10, para.31

<sup>938</sup> Ibid

<sup>939</sup> Chapter One, p.30

<sup>940</sup> Ido Weijers, and Antony Duff, Introduction: Themes in Juvenile Justice, in *Punishing juveniles: principle and critique*, eds I. Weijers & A. Duff, Oxford: Hart, 2002, p.11

a 'professional friendship' with juveniles play an important role in enabling them to demonstrate their maximum competence in court.<sup>941</sup> Within this context, the judge plays a very important role. Furthermore, the judge will not only decide what would happen to the juvenile in the courtroom, but will also conduct all participants in the courtroom; attorneys, defence counsel, the juvenile's family, the victim and the victim's family. The aim of the judge is to provide to the juvenile the most supportive atmosphere possible in order for them to understand specific procedures, rituals, questions, and explanations delivered in the courtroom. Thus, the judge is seen as the key element of offering to the juvenile a child-friendly courtroom, which goes beyond ensuring the right of the child to be heard and to participate in the process. A child-friendly courtroom has tremendous psychological effects, as Chief Judge in the Banda Aceh State Court, Mas Hushender, states:

...on the judge when handing out sentences, and influences the child as well. In the regular court the child feels he's being treated as an adult, and it's very scary for children. If you have a child-friendly court it feels warmer, with family members present.<sup>942</sup>

Beyond this, international standards imply that the juvenile judge is under a duty to be particularly active and assertive, especially in disposition, in understanding both the juvenile and programmes available to the juvenile justice system, and in individualising the juvenile court's response. Stemming from Article 40 (1) of the CRC, the promotion of the child's reintegration, and the child's assuming a constructive role in society, should be the judge's top priority. Whatever the case, the juvenile court continues to function as a society's appointed instrument to punish the juveniles in conflict with the law and to prevent them from repeating the offence in the future. However, as international provisions implies, a child-friendly court needs to look beyond the traditional system of punishment, leaving room for more essential communication to take place. The courtroom process has to attempt to get the young person to realize the negative consequences of their actions for all involved, to function as a crucial moral reference point for the offender.<sup>943</sup> In order to ascertain what would be effective as a response to the juvenile offender, the juvenile court has to try to look beyond the criminal evidence of the offence. To this end, relevant facts about the juvenile, such as living and family background, school career and educational experiences, as well as

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<sup>941</sup> Ido Weijers, *The Moral Dialogues: a Pedagogical Perspective on Juvenile Justice*, in *Punishing juveniles: principle and critique*, eds I. Weijers & A. Duff, Oxford: Hart, 2002, (Weijers 2002a) p.142

<sup>942</sup> [http://www.unicef.org/infobycountry/indonesia\\_42219.html](http://www.unicef.org/infobycountry/indonesia_42219.html) (available on 22.12.2008)

<sup>943</sup> Weijers 2002a, pp.145

the circumstances under which the offence was committed, would provide a more appropriate framework in regard to the juvenile and the offence.<sup>944</sup> This requires the establishment of adequate social services or personnel within the structure of the court or board and with specific training, aiming to deliver social inquiry reports of a qualified nature in cooperation with other juvenile services as well. However, the job does not stop there. The juvenile judge is required to be more than just a leader of a 'courtroom team'. The exercising of such function requires a deep knowledge of the roles played by all the team; the legislator, police, prosecutor, defence, corrections, probation, and community services.<sup>945</sup> Therefore, good collaboration and cooperation with all these actors in favour of the young offender contributes to 'entering his/her world', showing a personal interest in them and assisting the juvenile judge to formulate the most appropriate and feasible sentence for the young person.

Whether the proceedings are formal or informal, they should be conducted in a manner and atmosphere of understanding permitting to the juvenile to participate therein. Communication in the courtroom comprises more than just words.<sup>946</sup> The use of a legal language affects a juvenile's understanding of courtroom proceedings. The continued use of legal terms and definitions may mean that juveniles will often not understand what is happening in the court on a given day. For sure, the defence counsel can anticipate the legal words and phrases that might be used and explain them to the juvenile. The defence counsel's explanations go beyond the 'translation' of words. It includes providing an explanation of the court process and procedure to the juvenile and their family, ensuring that the child's views are expressed to the court, and finally, in a majority of jurisdictions, ensuring that all relevant facts and laws are brought to the judge's attention. Clearly, the majority of the verbal exchange in the courtroom occurs between the judge, lawyer, and prosecutor. The juvenile judge is the person that presides over the dialogue occurring in the room by personally, actively, and professionally leading the proceedings. Thus, it remains for the judge to constantly ask the juvenile if they understand what is being said and what exactly happened and why.<sup>947</sup>

In addition to the communication in the courtroom, the physical environment, layout, and structure of the courtroom has a huge impact on the nature of the court experience for young

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<sup>944</sup> Beijing Rule, Rule 16

<sup>945</sup> Lucien A. Beaulieu, and Carla Cesaroni, 1999, *The Changing Role of the Youth Court Judge*, *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp.363-393, pp. 370

<sup>946</sup> Weijers 2004, pp.26

<sup>947</sup> Weijers 2004, pp.28, General Comment No.10, para. 23e

people. Historically, criminal courts are not child-friendly. Having a courtroom, designated in being used exclusively for children's cases, where privacy, colour scheme, and furniture are appropriate to their size, and arranged to offer them a formal role in the process, as well as a direct visual line of communication with the prosecutor, the judge, and their defence counsel, maximises their participation in the process.

Rule 15.2 of the Beijing Rules refers to the right of the child to be tried in the presence of their family. The rule reflects the importance of having family present in court to support the young person. Engagement of the family in attending court together with their child trespasses the merely family's supporting of the child. Such requirement points to the fact that, apart from being a serious and significant event in the youth's life, enough to demand the parents' attention, the hearing aims to treat the family as a unit, not just the child.<sup>948</sup>

Although operating against a backdrop of social change and public pressures,<sup>949</sup> there is no conflict for the judge in delivering the sentence because the community's interests are not equal in importance to the child's best interests in court. In essence, a sentence taking into account the needs of the juvenile provides a measure to society's confidence in the viability of the family and significantly influences the manner in which others view children before the court.<sup>950</sup> A society's interest and need for more appropriate sentencing, in recognition of consequences and demands for protection, are satisfied by juvenile courts through individualised decision-making, tailored around the offence and developmental needs of child, while holding the juvenile offender accountable for their offences. Summarised in a few words, an individualised sentence is translated to the juvenile offender as a punishment by a society, to whom it matters who the child is, of what and whom they care about and who they want to become.<sup>951</sup>

The authorities involved in the courtroom may be persons with very different social and professional backgrounds. While their legal training and education are considered as an essential element in ensuring the impartial and effective administration of juvenile justice,<sup>952</sup> getting to know and understanding the child and, more particularly, an adolescent's physical,

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<sup>948</sup> Beaulieu, and Cesaroni, 1999, pp. 369

<sup>949</sup> Beaulieu, and Cesaroni, 199, pp. 364

<sup>950</sup> Beaulieu, and Cesaroni, 199, pp. 369

<sup>951</sup> Weijers 2002a, pp.149

<sup>952</sup> Commentary of Rule 22, Beijing Rules



psychological, mental and social development, is arguably the most important aspect of their duties to the juvenile, regardless of the role assigned. It is essential that all authorities, especially judges, are equipped with a basic amount of knowledge and understanding of the special needs of the most vulnerable children – such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic, or other minorities – if they are to be seen to be administering justice fairly to people with whom they have little in common in terms of upbringing, culture, and experience.<sup>953</sup> To facilitate the involvement of young people in the process, it is necessary that all systems involved develop the necessary skills to engage with young people.

Furthermore, for all these authorities, at least a part of education and training of law enforcement should be devoted to an understanding of international standards on juvenile justice, especially the content and meaning of provisions of the CRC in general and those directly relevant for their daily practice in particular.<sup>954</sup> In summary, the Committee's comments on juvenile justice, education, and training programmes should pay a particular focus on providing the necessary information about the measures used to deal with children in conflict with the law, without resorting to judicial proceeding; what types mechanisms for the informal resolution of disputes in cases involving a child offender are available; what range of support services is available to assist a young offender' what comprises the role or other systems of juvenile justice such as police, the court, the lawyers (the prosecutors and the defenders); the jails and prisons; the juvenile officers; and the rehabilitation, prevention, and diversion programmes, and how they interact with each other.

##### **5. Article 40(3): A system specifically applicable to a juvenile in conflict with the law.**

Article 40(3) requires State Parties to establish a system specifically applicable to children in conflict with the law. The language used in the first paragraph of Article 40(3) is similar to that used in Article 4 of the CRC, though in a slightly different formulation. Compared to the 'shall undertake' requirement of Article 4, the wording '*shall seek to promote*' in the first paragraph points out the direction that the state must move in, rather than imposing an

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<sup>953</sup> Beaulieu, & Cesaroni, 1999, pp. 385

<sup>954</sup> General Comment No.10, para. 33

obligation to take any particular concrete step.<sup>955</sup> The Committee makes an effort to establish the meaning of 'shall seek to promote' as an obligation rather than 'desirability'. Such effort is noticeable in two directions. Firstly, the Committee emphasises that Article 4 cuts across all the rights in the CRC and it is vital that its implementation is carried out in the light of Article 4.<sup>956</sup> Secondly, the Committee issued General Comment No. 10 'On children's rights in juvenile justice', which directly spell out the requirement of Article 40(3).<sup>957</sup> Besides being tailored around children in conflict with the law, the Committee deems it necessary that laws, procedures, authorities and institutions develop an organization, working effectively for the administration of juvenile justice and set up a comprehensive juvenile justice system.<sup>958</sup> According to the Committee, the meaning of 'effective' and 'comprehensive', as well as the basic provisions of these laws and procedures, are elaborated in General Comments No.10.<sup>959</sup> Furthermore, the Committee emphasizes that 'a comprehensive juvenile justice system' is a system built upon multiple, inter-connected systems.<sup>960</sup> Similarly to Article 40(3) paragraph one, the Committee avoids specifying specific forms of legislation or structures of juvenile justice system, leaving them to the discretion of the State Parties. The Committee deems to elaborate what is a basic requirement for the system, suggesting what is compliant with the CRC regarding the system as a whole and the form of laws, courts, and specialized services.<sup>961</sup>

Finally, Article 40(3) paragraph one expressly states that the system is applicable to children, stating that children younger than 18 years are dealt within it.<sup>962</sup> Article 40(3) paragraph (a)

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<sup>955</sup> Abramson, Bruce 'The Right to Diversion: Using the Convention on the Rights of the Child to turn juvenile justice rights into reality' in *Proceeding of the 1<sup>st</sup> International Conference on 'Juvenile Justice and the Prevention of Juvenile Delinquency in a Globalized World'*, 27-29 October, International Juvenile Justice Observatory, Valencia, 2004, p. 27 Similarly Van Bueren notes that the Article 40(3) lack strictness and direction incorporated in Article 5(5) of the American Convention of Human Rights. Van Bueren 2006, p.25

<sup>956</sup> In General Comment No. 5, the Committee on the Rights of the Child provides guidance on requisite steps that State parties must take to fulfil their obligations under the Convention. UN Committee on the Rights of Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003 <http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 14.05.2011)

<sup>957</sup> General Comment No.10, para.3. The Committee notes that the objective of the General Comment No.10 is to underscore that 'the CRC requires States Parties to Develop and implement a comprehensive juvenile justice policy'.

<sup>958</sup> General Comment No.10, para.30

<sup>959</sup> Ibid

<sup>960</sup> The Committee emphasises that 'a comprehensive juvenile justice system' further requires the establishment of specialized unit in all stakeholder involved with the administration of juvenile justice. General Comment No.10, para.30

<sup>961</sup> Ibid para.30-31

<sup>962</sup> Article 1 of the CRC defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger.

requires the State Parties to set a bottom limit – minimum age of criminal responsibility – below which children shall be presumed not to have the capacity to infringe the penal law. The minimum age of criminal responsibility is not included in this section as it is discussed in Chapter One.

**5.1 Article 40(3) paragraph (b): Intervention without resorting to judicial proceedings.** The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. The process of arrest, trial, and sentencing can be immensely frightening and damaging for a child. As the arrest, detention, or imprisonment of a child may be used only as a measure of last resort,<sup>963</sup> international rules and guidelines promote alternatives to formal court procedures. Diversion can be understood as a way of channelling children away from the formal justice system through alternative procedures to institutionalisation and programmes. According to Article 40(3) paragraph (b) of CRC, ‘State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular, 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’. The Committee extends the application of diversions at any stage of juvenile justice, and holds the view that it is not necessarily limited to minor offences because of its great potential and practical scope.<sup>964</sup> In one sense, however, adoption of the term diversion is misleading as children are not diverted away from the legal system itself, but merely away from its more formal aspects towards a variety of decisions and measures which do not have the same level of public scrutiny as a criminal trial. Despite being diverted, the juvenile offenders are still dealt with within the juvenile justice system and are held accountable for their offences.

The benefits of diversion are two-fold. On the one hand, the importance of this practice lies principally in its capacity to limit the negative impact of the juvenile justice system on a young offender and ensures that constructive action could be undertaken to prevent re-offending without the effects of stigma or labelling.<sup>965</sup> Through diversion, a child who is

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<sup>963</sup> Art.37 (b) of CRC, Rule 13, 17 and 19 of the Beijing Rules, Rules 1, 2 and 17 of the JDL Rules

<sup>964</sup> General Comment No. 10, para. 12

<sup>965</sup> Frieder Dünkler, *Diversion: A Meaningful and Successful Alternative to Punishment in European Juvenile Justice System*, in *Reforming Juvenile Justice*, eds J. Junger-Tas, and D. Frieder, Dordrecht: Springer-Verlag, 2009, p. 149

alleged or accused of committing a crime is given the opportunity to take responsibility for their conduct and to make good a wrongful action.<sup>966</sup> Children are particularly vulnerable to negative influences because the combined effect of a loss of liberty and separation from their accustomed daily social life has an acute negative effect.<sup>967</sup> The empirical evidence also recognises that most juvenile offending is episodic and of a petty nature and transitory – most young people mature out of criminal behaviour.<sup>968</sup> Non-intervention measures and diversionary options, which require the family, the school, or other informal social control institutions to have already reacted, or be likely to react, in an appropriate and constructive manner, would be the best response for most of the offences of a non-serious nature committed by children.<sup>969</sup>

On the other hand, the managerial benefits of diversion cannot be ignored for policy makers and society as whole.<sup>970</sup> Restriction on the flow of cases of young offenders, and the extensive use of less costly alternatives to prosecution, can provide a pressure valve in easing delays and expenses of court proceedings. By building a diversion system, policy makers are bringing together various actors and agents who will be able to make more appropriate decisions with respect to the individual juveniles they are responsible for.<sup>971</sup> Moreover, diversionary measures allow for participation of victims where appropriate and participation of the community, giving the child the opportunity to make reparation to the victim and the community through integration rather than isolating them from the social network.<sup>972</sup> Moreover, the diversionary measures provide for non-isolation of child from the community, which is in the best interests of the child and society, because it avoids the adding of new psychological wounds as a result of the child's institutionalisation.<sup>973</sup>

Notwithstanding such advantages, there is a view that diversionary measures may erode the guarantees to fair trial, such as rights to remain silent and the right to be considered innocent

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<sup>966</sup> PRI/UNICEF 2007, Module.3

<sup>967</sup> Van Bueren 1995, p.184

<sup>968</sup> Dunkel 2009, p. 149. Dunkel acknowledges the criminological research has well demonstrated that the juvenile delinquency is ubiquitous and a passing phenomenon linked to age. Ibid

<sup>969</sup> Commentary on Rule 11.1, Beijing Rules. Similarly Dunkel refers to this as theoretical assumption of the perspective of sociology of law. Dunkel 2009, p. 149

<sup>970</sup> Dunkel refers to this as the 'economic' base of diversion. Dunkel 2009, p. 149

<sup>971</sup> Abramson 2004, p. 39

<sup>972</sup> PRI/UNICEF, 2007, Mod.3

<sup>973</sup> Abramson (2004), p. 9

until proven guilty.<sup>974</sup> These fundamental elements may be placed at risk by a tendency to coerce children to admit guilt in order for them to be considered for diversion programmes instead of 'going to the court'. Thus, in order to be effective, the possibility of diversion should be considered in every case and accepted where children admit an offence or are found guilty of an offence, without being coerced and intimidated into consenting to diversion programmes. A further concern might be about children being referred to diversion programmes in situations where they would otherwise not have been prosecuted because of a paucity of evidence, or because a case was deemed too petty to prosecute. Moreover, diversionary measures might raise allegations that relatively uncountable practitioners may exercise their discretion in a discriminatory and inconsistent way. No matter how much well-meaning professionals believe that a particular course of action might be advantageous to a child, there must be constant vigilance towards the right to fair trial. Pressure into an admission of guilt or into accepting diversions, without sufficient evidence presented by the state and without being made fully aware of the right to consult legal or other appropriate assistance, would constitute a serious invasion of the accused child's rights to be presumed innocent until proven guilty.

**5.1.1 Ground requirement to development of diversionary options.** While Article 40(3) paragraph (b) is limited to addressing the desirability of diverting children away from judicial proceedings, Rule 11 of the Beijing Rules articulates the requirements of diversion, which are further elaborated, setting clear guidance for the development of diversionary options by the Committee at the General Comments No.10. The rationale behind setting out the requirement lies in the final clause of Article 40(3) paragraph (b), which makes the application of diversionary measures conditional to the respect of the right to fair trial, legal safeguards, and child's rights.

***Admission to an offence and consent to diversion.*** The prerequisite for starting a diversionary procedure is the requirement of convincing evidence that the child committed the alleged offence,<sup>975</sup> which supports a criminal prosecution in accordance with the national rules of criminal law. Upon satisfaction of this condition, the fundamental requirement of diversion guarantees that a diversionary procedure only occurs when the child has freely and voluntarily acknowledged responsibility, and no intimidation or pressure has been used to get

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<sup>974</sup> Innocenti Digest 3 1998, pp.12

<sup>975</sup> General Comment No.10, para. 13

that acknowledgement.<sup>976</sup> Because diversion depends on the 'consent of the child', the Committee elaborates all modalities regarding it. The rationale behind the Committee's remarks about the 'consent of the child' in such a detailed manner relates to the care that should be taken to minimise the potential for coercion at all levels in the diversion process. To this end, the Committee notes that 'consent of the child' must be an 'informed decision'. The term 'informed decision' refers to a decision taken voluntarily by the child's own free will, and based on 'adequate and specific information',<sup>977</sup> rather than 'sufficient information' of Rule 12.3 of Tokyo Rules. As to the Committee, the phrase 'adequate and specific' refers to information 'on the nature, content and duration of the diversionary measure, and on the consequences of failure to cooperate, carry out and complete the measure'.<sup>978</sup> By explicitly establishing such requirement, the Committee makes efforts to resolve a situation in which the consent of the child has been given, but it could be doubted whether that consent is fully informed and therefore genuine. To safeguard the process of 'informed decision', the Committee introduces a new element of consent being in a written form. Although left to the discretion of State Parties,<sup>979</sup> the requirement of consent, which could be mandatory if the child is below the age of 16 years, emphasizes the rights and responsibilities of the child's parent or guardian to participate at all stages of investigation and proceedings. The Committee considers this requirement in the function of 'strengthening parental involvement', and indirectly acknowledging that the parents and family may have a role to play and can have a positive impact on the juvenile and society.<sup>980</sup>

*Availability of diversion system.* The Committee promotes the desirability on the establishment of diversionary programmes by State Parties. Furthermore, the Committee emphasizes the discretion of State Parties to decide on the exact nature and the content of the diversionary measures. To a certain degree this may be read as a requirement to accommodate 'local needs'. Nonetheless, the Committee addresses the modalities of building up a diversionary system. The modalities can be considered in terms of a system:

- Providing viable diversionary alternatives; indicating clearly the forms of diversionary measures;

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<sup>976</sup> Ibid

<sup>977</sup> Ibid

<sup>978</sup> See similar requirement expressed by Rule

<sup>979</sup> The Committee adopts the verb 'may' rather than 'must'

<sup>980</sup> General Comment No.10, para. 23g

- Availability of diversionary measures at any stage of system; diversion may be used at any point of decision making by the police, the prosecution, or other agencies such as the courts or tribunals, emphasizing that diversionary measures should be an option 'whenever appropriate'. The earlier in the process diversion occurs, the more effective it can be in avoiding stigmatisation of the young offender. However, diversion should also be possible in the later stages of proceedings when the young person is facing the court. The fact that a juvenile has previously participated in a pre-court diversionary option should not preclude future diversion or referral to diversion in subsequent legal proceedings;
- Offences in which diversion is appropriate and possible; no restriction of diversionary measure to minor offences. Following this rationale, Commentary on Rule 11.4 of the Beijing Rules does not exclude, because of mitigating circumstances, application of diversionary measures when a more serious offence has been committed;
- Establishing criteria for diversion; clear regulation on the powers of respective agencies to take decisions on adopting diversionary measure. In other words, this modality sanctions the requirement that the diversionary programmes must not be arbitrary.

***In accordance with legal safeguards to the right of fair trial.*** Diversionary options must respect procedural safeguards for young people as established in the CRC and the other international human rights treaties, such as ICCPR, ECHR, and ACHR. In particular, the Committee emphasizes the guarantees to legal assistance. The relevance of such a requirement refers to the mandatory opportunity given to the child to consult with legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities.<sup>981</sup>

***Full review and accountability.*** The whole process of diversion and juveniles' rights are safeguarded from the arbitrary decisions and any abuses of discretionary power by having in place mechanisms of review and *accountability* (emphasis added). To the Committee, transparency of diversion measures is achieved through the establishment of 'the review of mechanisms'. The Committee rather prefers to not specify a precise mechanism of review, accommodating all differences among justice systems. Furthermore, the Committee does not

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<sup>981</sup> General Comment No.10, para. 13

elaborate the meaning of 'review measures'. This is because of the fact that Rule 6.2 of the Beijing Rules especially considers the scope of discretion, providing specific guidelines on mechanism to exercise discretion. For the purpose of exercising discretion, Rule 6.2 of the Beijing Rules obliges State Parties to set up a mechanism, not only on the provision of systems of review, but also on the legal mechanism of an appeal. Exercising the right of appeal provides the possibility of redressing any violation that may have been caused by the imposition and/or implementation of discretionary measures.

*'No previous conviction' status.* The successful completion of the diversionary measures results in the case disappearing from the 'criminal records'. The articulation of the Committee in this issue highlights the main aim of diversion granted to a child in conflict with the law the opportunity to forge a path in life, unburdened by the stigma of a criminal conviction.<sup>982</sup> To such relevance is considered this aim of diversion, as to lead the Committee to explicitly foresee an exclusive access and a limitation on keeping the registration about all diversion processes.<sup>983</sup>

*5.1.2 Examples of diversionary measures.* Two reasons are behind the silence of the Committee regarding examples of diversion. Firstly, because of the accommodation of the requirement of 'local needs' (formal, informal and traditional systems), there are a variety of different measures that may be used as part of a diversion. Second, a diversionary system as part of the juvenile justice system 'shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence'.<sup>984</sup> Therefore, Rule 5 of the Beijing Rules, in practical terms, implies the merits of individual cases such as the child's background, and circumstances of offences; the child's willingness to turn to a wholesome and useful life; and the needs of any victims/survivors involved should influence which measures, or combination of measures, are appropriate to diversion. Consequently, there is no place for a strict form of diversionary measures besides the suggestion of setting up viable diversionary alternatives in the form of community-based diversion, programmes that involve

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<sup>982</sup> Ibid

<sup>983</sup> Ibid. Thus the Committee suggests that access shall be granted only to the competent authorities authorized to deal with children in conflict with the law and time framework of keeping records is set for a maximum of one year.

<sup>984</sup> Rule 5 of the Beijing Rules.



settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance.

Examples of diversionary measures include:<sup>985</sup>

- No action,
- Formal or informal caution or warning,
- Written or verbal apology to the victim/survivor,
- Written essay on the effects of the crime committed to help the child gain insight into the consequences of their behaviour,
- Behavioural contracts, generally with conditions such as a curfew and agreements not to associate with specified negative peers,
- Curfew orders, which impose a restriction on a child's liberty between specified hours (usually at night) for a specified period of time where the child has to remain at a specified location/address,
- Agreement to attend school and/or vocational skills training, community service work, which requires the child to work a specified number of hours for free in some way that benefits the community, compensation or restitution to the victim/survivor,
- Inclusion of an option for non-monetary forms of restitution where the child/family cannot afford to pay,
- Referral to a peer education/youth mentoring programme,
- Referral to counselling or therapeutic treatment for drug, alcohol or other substance addiction, or sex offending,
- Participation in life skills or other competency development programme.

**5.2 Restorative justice as a new approach to diversion.** During the last decades, restorative justice has emerged internationally (partially in Europe, the United States, Canada, New Zealand, Australia and South Africa) as a viable response to the harm caused by crime.

Despite its increasing popularity, defining restorative justice is a controversial topic.<sup>986</sup> Generally it is pointed out that restorative justice is not a single coherent theory or

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<sup>985</sup> The following paragraph is constructed by referring to 'Toolkit on Diversion and Alternatives to Detention', UNICEF, 2009, [http://www.unicef.org/tdad/index\\_55653.html](http://www.unicef.org/tdad/index_55653.html) (Accessed 20/05/2011)

<sup>986</sup> Adam Crawford, and Tim Newburn, *Youth offending and restorative justice: implementing reform in youth justice*, Cullompton: Willan Publishing 2003, p. 21; Jim Dignan, *Understanding victims and restorative justice*, Maidenhead: Open University Press, 2005, p.2

perspective on crime and justice, but a loose unifying term, which encompasses a range of distinct ideas, practices, and proposals. Restorative justice is guided by the principle that crime harms both individuals and relationships.<sup>987</sup> As such, efforts must be made to address the harm (e.g. psychological, physical, and monetary loss) caused by the criminal offence, through connecting people impacted by it and aiming through dialogue to transform relationships, heal harm, increase safety, and build capacity in communities. The harm is experienced not only by 'parties with a stake in an offence' – victims and offenders – but also by their respective communities.<sup>988</sup> Thus, restorative justice is an ancient philosophy that is focused on healing harm among individuals and communities, and sourced in aboriginal and indigenous cultures around the world.<sup>989</sup>

Traditional criminal justice conceives of punishment as the a priori means of the intervention, aiming to achieve a variety of possible goals.<sup>990</sup> In the traditional criminal justice system, an offence is largely lifted away from the parties involved and considered as an offence against the state. At the centre of restorative justice is a wish to redefine crime as an offence against the victim and/or community. Contrasting with mainstream systems of justice, restorative practice recognizes the therapeutic value of having all affected parties decide how to respond to a crime, and advance restoration by choosing among a diversity of social and legal means and methods.<sup>991</sup> The victim becomes a central party in the process.

Nonetheless, restorative justice should not be considered as a ready-made package of roles, actions and outcomes that can be picked off the shelf; it has to be, often quite painfully, made from its basic ingredients by the particular participants who have been brought together as a result of the offence.<sup>992</sup> As such, restorative justice is intended as an alternative to existing practices, and is not a panacea or appropriate for all offenders or for all victims.

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<sup>987</sup> John Braithwaite, *Restorative justice and response regulation*. New York: Oxford University Press, 2002, p.15

<sup>988</sup> Crawford & Newburn, 2003, p.22

<sup>989</sup> Tim Marshall, 'Restorative Justice: An Overview' London: HMSO, 1999, p.7; Crawford & Newburn, 2003, p.20; Daniel Van Ness, Allison Morris, and Gabrielle Maxwell G. Introducing Restorative Justice, in *Restorative justice for juveniles: conferencing, mediation and circles*, eds A. Morris, and G. Maxwell, Oxford: Hart, 2001, p.4

<sup>990</sup> Lode Walgrave, Restorative Justice and the Law: Socio-Ethical and Juridical Foundations for a Systemic Approach', in *Restorative Justice and the Law: The case for an Integrated, systemic Approach*, eds L. Walgrave Cullompton: Willan Publishing, 2002, p.199

<sup>991</sup> Ibid

<sup>992</sup> Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, Jim Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson, and Angela Sorsby, Situating restorative justice within criminal justice, *Theoretical Criminology*, Vol 10, Issue 4, 2006, pp.505-532, p.507

There is gathering international and domestic evidence to suggest that restorative justice has gradually gained great credibility in recent decades because of its socio-ethical and instrumental value, and its potential, which extends much further than was originally believed.<sup>993</sup> Restorative justice programmes can be used to reduce the burden on the criminal justice system, to divert cases out of the system and to provide the system with a range of constructive sanctions, often transforming the relationships between the community and the justice system as a whole.<sup>994</sup> In recognition of such benefits, restorative justice has also secured a significant place at the level of international protocols and instruments. In 1997, the International Network for Research on Restorative Justice for Juveniles convened the first annual conference that resulted in the Declaration of Leuven (Belgium).<sup>995</sup> The Recommendation of the Council of Europe R(99) 19<sup>996</sup> and the framework decision of the Council of the European Union on the standing of victims in criminal proceedings promote specific legislation in the use of restorative justice. In addition, the United Nations Economic and Social Council endorsed Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (Basic Principles),<sup>997</sup> which urges governments of member nations to create guidelines and standards for the use of restorative justice programmes. The Basic Principles offer important guidance for policy makers, community organizations, and criminal justice officials involved in the development of restorative justice response to crime in their society. Furthermore, they secure through democratic deliberation a set of local commitments to standards that are widely shared.<sup>998</sup>

**5.2.1 Ground requirement of restorative intervention.** Restoration does not lie in the agreement alone, but in the entire process, which starts with the voluntary acceptance of mediation, continues with the meeting at the mediation and reconciliation service, and ends

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<sup>993</sup> Walgrave 2002, p. 215

<sup>994</sup> 'Handbook on restorative justice programmes', UNODC Vienna, [www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf), 2006 (accessed 11/07/2011), (UNODC 2006) p.6

<sup>995</sup> Appendix on Johnstone Gerry, *A restorative Justice Reader: Text, Sources Contexts*, Cullompton: Willan 2002. This declaration promotes the use of restorative approach to juvenile crime. The Declaration begins with a preliminary section entitled 'The Potential, containing five optimistic observations based on experience with restorative justice for juveniles to that date, emphasising its scope: worldwide; initial results: as positive; limits: no decisive limits have been observed; potentials: increased peacemaking, and application: appear promising.'

<sup>996</sup> Council of Europe Committee of Ministers (1999) 'Mediation in Penal Matters' Recommendation No. R(99)19, adopted 15 September 1999.

<sup>997</sup> UN Economic and Social Council (ECOSOC), *UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, 24 July 2002, 2002/12

<sup>998</sup> John Braithwaite, Setting standards for restorative justice, *British Journal of Criminology*, Vol. 42, Issue 3, 2002, p. 563-577, p. 575

with the carrying out of the agreement.<sup>999</sup> There are at least four critical ingredients for a fully restorative process to achieve its objectives: (a) an identifiable victim; (b) voluntary participation by the victim; (c) an offender who accepts responsibility for their criminal behaviour; and (d) non-coerced participation of the offender.<sup>1000</sup> According to paragraph 7 of the *Basic Principles*, the general principle is that 'restorative processes should be used only with the free and voluntary consent of the parties'. Voluntary practice means that parties participate and assume responsibilities because they have chosen to, and not because they were required to. Balance of interest means that restorative programmes avoid focusing on one task alone, and instead attempt to accommodate the interests of all the parties. For example, while restorative programmes respect the importance of the public interest in resolving crimes, they do not address that to the exclusion of the interests of others. The objective is to maintain an appropriate balance between all the stakeholders' interests. Furthermore, in achieving its goals, the restoration should be based on several underlying assumptions: (a) that the response to crime should repair as much as possible the harm suffered by the victim; (b) that offenders should be brought to understand that their behaviour is not acceptable and that it had some real consequences for the victim and community; (c) that offenders can and should accept responsibility for their action; (d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and (e) that the community has a responsibility to contribute to this process.<sup>1001</sup>

On restorative process, the state no longer has a monopoly over decision-making; the principal decision makers are the parties themselves.<sup>1002</sup> However, the state plays a multiple role in relation to restorative justice; enabler, resource provider, implementer, and guarantor of quality practices.<sup>1003</sup> Restorative justice means that the processes and their outcomes should respect fundamental procedural safeguards.<sup>1004</sup> On the one hand, procedural

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<sup>999</sup> UNODC, 2006, p. 8

<sup>1000</sup> Ibid

<sup>1001</sup> Ibid

<sup>1002</sup> Allison Morris, 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, p 596-615, p.598; Andrew Ashworth, 'Responsibilities, rights and restorative justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, p. 578-595, p.581

<sup>1003</sup> Ibid

<sup>1004</sup> Daniel Van Ness, 'Restorative Justice and International Human Rights' in, *Restorative Justice: International Perspectives*, eds B. Galaway and J. Hudson Monsey, NYL: Criminal Justice 1996; Dignan, Jim 'Restorative justice and the Law: The Case for an Integrated, Systemic Approach', in *Restorative Justice and the Law: The case for an Integrated, Systemic Approach*, eds L. Walgrave, Cullompton: Willan Publishing, 2002; Ashworth 2002, p. 581, Walgrave 2002a

safeguards provide a shield to protect citizens against illegitimate intrusions by fellow citizens and by the state, to create a non-adversarial, non-threatening environment for a restorative process to take place, to take into account the interests and needs of the victim, the offender, the community and society. On the other hand, the state has a crucial role to play as the guardian of the individual human rights of citizens – or, as Braithwaite and Pettit (1990) put it, of their ‘dominion’.<sup>1005</sup> Therefore, the state’s responsibility is to insist on ‘rule of law’ principles and to prevent restorative justice practices from deteriorating into unjust practices.<sup>1006</sup> This is achieved through availability of restorative process by law or policy. The *Basic Principles* do not assume that legislation will always be necessary to ensure that fundamental legal safeguards are in place to adequately protect participants in the restorative justice process and ensure the overall fairness of the process.<sup>1007</sup> The *Basic Principles* (paragraph 12) provide specifically that informing participants of their rights, including the disclosure of the nature of the process and the possible consequences of their decision, guarantees procedural safeguards of the parties. The victim and the offender should have access to legal advice before and after the restorative process. However, the right of legal assistance excludes the representation of parties by their lawyers during the restorative justice process. The main aim of restorative justice is to transcend adversarial legalism, and to empower parties to speak in their own voice, rather than through legal mouthpieces who might have an interest in polarizing a conflict.<sup>1008</sup> Finally, the exclusion of the legal representatives from the process acknowledges that some inducements given to parties to encourage them to participate in restorative justice programmes can be unfair. Examples include pressure by criminal justice officials on a defendant to participate when the defendant claims innocence, or a threat or bribe by the offender to the victim in order to coerce the victim’s involvement. In cases of children’s involvement, special advice and assistance is required before being able to form a valid and informed consent, as well as the presence and assistance of parents or guardian.<sup>1009</sup>

As previously discussed, a prerequisite for restorative justice is that the victim and offender agree on the facts of the case and the offender must accept responsibility, which implicitly

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<sup>1005</sup> Bazemore, Gordon and Walgrave, Lode. Introduction: Restorative Justice and the International Juvenile Justice Crisis, in *Restorative juvenile justice: Repairing the harm of youth crime*, eds G. Bazemore and L. Walgrave, Monsey, NY: Criminal Justice Press, 1999, p. 53

<sup>1006</sup> Ashworth 2002, p. 582, Braithwaite 2002 p.575

<sup>1007</sup> UNODC, 2006, p.34

<sup>1008</sup> Braithwaite, 2002, p.566

<sup>1009</sup> UNODC 2006, p.64

includes recognition of some sort of culpability on the part of the offender. It is quite possible for the parties to reach an agreement, after a restorative process, which would involve a rehabilitative outcome based on principles of effective treatment (as well as or instead of a reparative or, for that matter, a punitive outcome).<sup>1010</sup> Agreements arising out of a restorative process should be arrived at voluntarily and should contain only reasonable and proportionate obligations.<sup>1011</sup> In no circumstances should such agreement be out of proportion to the seriousness of the offence.<sup>1012</sup> The proportionality principle, applicable to restorative processes as well, means that, within rather wide limits, there should be correspondence between the burden on the offender and the seriousness of the offence; for instance, compensation should not be excessive.<sup>1013</sup> As long as the agreement is met, criminal justice officials are forbidden from initiating a new prosecution based on the facts of that case.<sup>1014</sup> However, failure to reach an agreement should not be used against the offender in subsequent criminal justice proceedings,<sup>1015</sup> minimizing the risk of unfair inducement of the offender to accept an onerous or disproportionate agreement. The lack of agreement should not be used to justify a more severe sentence later.

Restorative processes, as a rule, are not open to the public.<sup>1016</sup> Respecting this rule implies not only non-disclosure without consent of personal information (for example, a victim's contact details or an offender's criminal history), but also respect for privacy and protection of the intense personal nature of the experiences brought by both parties: victims and offender throughout process. Thus, the confidentiality of procedures serves to build up the fiduciary relationship among parties and the mediator required in conducting the process. The contents of restorative process are, therefore, destined to remain the private heritage of participants and must not be disclosed, unless they have consented to it, in accordance with the confidentiality of procedures. In practical terms this implies that the mediator himself

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<sup>1010</sup> Morris 2002, p.606

<sup>1011</sup> Basic Principles, para. 7 What distinguishes the restorative justice process from traditional criminal justice system, is the ability to offer a process where an impartial person listens to the parties, encouraging greater informality and flexibility than the courts, and bringing the parties to come up with their own decision and agreement completely voluntary.

<sup>1012</sup> Ashworth 2002, p.586

<sup>1013</sup> Council of Europe, European Committee on Crime Problems, Explanatory Memorandum on Draft Recommendation (99) on Mediation on Penal Matters, CM (99) 118add2 / 02 August 1999, (Accessed 11/07/2011) para.31

<https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM%2899%29118&Language=lanEnglish&Ver=add2&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

<sup>1014</sup> Basic Principles, para. 8

<sup>1015</sup> Ibid

<sup>1016</sup> Basic Principles, para. 14

cannot be called to witness if the parties might be involved in a judicial process. When a restorative process has led to an agreement, the criminal justice authorities accept the result and, as a consequence, the criminal proceedings are brought to an end (order not to prosecute or for the discontinuance of the proceedings). Thus it is important that the results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements.<sup>1017</sup>

**5.2.2 Models of Restorative Justice.** The outcomes of a restorative justice process can include some elements of retributive justice, some elements of rehabilitative justice that seek to encourage future law-abiding behaviour, and some elements of restorative justice by asking how the offender can make up for what they have done. The flexibility afforded by this approach allows for a far more holistic response that can address the causes of a crime and target factors that are likely to encourage future criminal behaviour. However, restorative justice should be considered as an ‘umbrella concept’, sheltering beneath its spokes a variety of practices, which aim to maximize the potential for restorative outcomes.<sup>1018</sup>

Generally speaking, restorative justice programmes should be available at all stages of the criminal justice process.<sup>1019</sup> A comprehensive approach to the implementation of restorative justice programmes within a national system would normally provide a range of programmes designed for referrals from different points within the criminal justice process.

Restorative justice models are extremely diverse in their jurisdiction, authority and access to resources. This is due in part to varying interpretations of conflict and different perspectives on how such conflict is addressed and resolved.<sup>1020</sup> While restorative justice programmes vary on a number of key dimensions, there are also a number of common features that facilitate their categorisation. Thus, UNODOC manuals identify five main categories of restorative programmes, namely: (a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; and (e) reparative probation and community boards and panels. Dignan,<sup>1021</sup> based on intellectual/philosophical

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<sup>1017</sup> Basic Principles, para. 15

<sup>1018</sup> Shapland et al 2006, p. 506

<sup>1019</sup> Basic Principles, para. 6

<sup>1020</sup> David Miers, ‘An International Review of Restorative Justice, Crime Reduction Research Series Paper 10’, Home Office London (U.K.), <http://www.homeoffice.gov.uk/rds/prgpdfs/crrs10.pdf> 2001 (accessed 1/06/2008)

<sup>1021</sup> Dignan 2005, Table 1, p.6

origins and aims of programmes, main operational features and implementation contexts, extends and redefines the restorative practices in five distinct categories or models:

- Court-based restitutive and reparative measures – includes some traditional criminal justice sanctions, such as restitution and community reparation being used in restorative responses to crime;
- Victim-offender mediation programmes – includes mediation programmes which are defined as a settlement between the two conflicting parties with the help of a third, neutral one, namely the mediator, charged with facilitating the negotiation process;
- Conferencing initiatives – encompass two principal variants, which usually are refereed as ‘family group conferencing’ and ‘police-led community conferencing’.<sup>1022</sup> The conferencing initiatives are defined as a process in which any group of individuals connected and affected by some action come together to discuss any issues that have arisen.<sup>1023</sup> Conferencing programmes involve not only victim and offender, but extend the participants by bringing together the family and friends of both the victim and the offender, and sometimes also other members of the community to participate in a professionally facilitated process to identify desirable outcomes for the parties.
- Community reparation boards and panels – a recent version of a much older and more widespread community sanctioning response to crime, generally known by such terms as youth panels, neighbourhood boards, or community diversion boards.
- Healing or sentencing circles – encompass two principal variants: healing and talking circles and sentencing circles. Sentencing circles have arisen from aboriginal peacemaking practices operated in many Native North American populations.

**5.2.3. Restorative justice programmes and juvenile offenders.** Nowhere has the intensity of activity around restorative justice been greater than in juvenile justice and the response to youth crime.<sup>1024</sup> Empirical evidence confirms that restorative actions have positive effects on

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<sup>1022</sup> Paul Mc Cold, Primary Restorative Justice Practices, in *Restorative justice for juveniles: conferencing, mediation and circles*, eds A. Morris, and G. Maxwell, Oxford: Hart, 2001, p.45, Dignan 2005, p.115

<sup>1023</sup> McCold, 2001, p. 44

<sup>1024</sup> Bazemore, G. and Walgrave 1999, p. 1



juvenile offenders and more so than traditional juvenile justice treatment programmes.<sup>1025</sup> These programmes have often provided the basis for the subsequent development of programmes for adult offenders.<sup>1026</sup> The appeal of restorative justice lies in its potential to change both the nature of juvenile justice intervention and the role of government and community in such interventions. While holding the juvenile offenders accountable for their delinquent acts, restorative justice processes work actively to repair the harm that they have caused to the victims and the community, developing their competencies while protecting the community. The restorative justice programmes are proving to be particularly useful in circumstances involving young offenders, for whom it is paramount to promote socially, shared values, and personal skills.<sup>1027</sup> Therefore, in the case of young offenders, beyond addressing the victim's prejudice and needs, restorative justice can achieve an educational effect by redressing the harm.<sup>1028</sup>

**5.3. Diversion and Restorative Justice.** The summary of this section is makes an important note about the key difference between a restorative justice programme and a diversionary programme. As discussed, both programmes operate within the juvenile justice system. The diversion avoids the formal judicial proceedings, directing the juvenile offenders towards community support. Diversion options are to be used only when the child admit to an offence and accept a non-judicial hearing measure, which exclude the deprivation of liberty in any form. The facilitator of a diversion programme is the state, represented by criminal justice agents (e.g. juvenile courts, prosecutors, and police), making the programme's outcome to depend on legal professionals. A restorative justice framework is a way of thinking outside of the criminal justice system, as it considers the offence committed by the juvenile to have both individual and social dimensions of responsibility, allowing for more community-based, holistic responses aiming to develop 'restoration, reintegration and responsibility'. The restorative programmes are based on a voluntary interaction of all the parties affected by the offence. The facilitator of a restorative program is the community. The impact of restorative justice programme on a juvenile relates directly to the supervision provided by criminal

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<sup>1025</sup> Crawford and Newburn, 2003, p.24

<sup>1026</sup> UNODC, 2006, p.26

<sup>1027</sup> Crawford and Newburn, 2003, p.24, Bazemore, G. and Walgrave 1999

<sup>1028</sup> Ibid

justice agents (e.g. juvenile courts, prosecutors, and police) and the work of victims and the community.<sup>1029</sup>

#### 6. Article 40(4): Alternatives to institutional care

Article 40(4) places a duty on State Parties to make available a wide variety of dispositions as alternatives to institutional care and *deprivation of liberty* (emphasis added),<sup>1030</sup> which are listed in a non-exhaustive manner. The purpose of having a separate paragraph (4) rather than considering this as part of diversion lies in the purpose of both measures. While diversionary measures deal with children in conflict with the law without resorting to judicial proceedings, the alternative measures refer to 'measures that may be imposed on children who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages, that do not involve deprivation of liberty'.<sup>1031</sup> The provision of Article 4(4) aims to adjust penal sanctions accommodating the well-being of juveniles in a manner proportionate to the offence committed. Besides the aims indicated in the text, the Committee connects the application of non-custodial measures with the principle that deprivation of liberty be used only as a measure of last resort and for the shortest length of time.<sup>1032</sup> However, the Committee refrains from elaborating further the text of Article 40(4). The rationale behind it is two-fold. Firstly, as Detrick notes, the text of Article 40(4) is a transcript from Rule 18 of the Beijing Rules.<sup>1033</sup> Secondly, the United Nations has adopted Standard Minimum Rules addressing the non-custodial measures (United Nations Standard Minimum Rules for Non-custodial Measures – Tokyo Rules). The Tokyo Rules provide a detailed account of justification, guiding principles and legal safeguards regarding non-custodial measures. The text of Article 40(4) summarizes the exhaustive list of non-custodial measures contained in Rule 18 of the Beijing Rules. In addition, it adopts the term 'other alternatives to institutional care' leaving the option for the future developments.

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<sup>1029</sup> Nancy Rodriguez, 'Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism', *Crime & Delinquency*, Vol.53, Issue 3, 2007, pp.355-379, p.357

<sup>1030</sup> Deprivation of liberty is phrase added by the Committee in General Comment No.10, para.25

<sup>1031</sup> 'Toolkit on Diversion and Alternatives to Detention, UNICEF [http://www.unicef.org/tdad/index\\_55653.html](http://www.unicef.org/tdad/index_55653.html), 2009, (Accessed 20/05/2011)

<sup>1032</sup> General Comment No.10, para.25

<sup>1033</sup> Detrick 1999, p.704, Rule 18 of the Beijing Rule states 'a large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible'

## **7. Conclusion.**

Article 40 of the CRC addresses the rights of the child in the administration of the juvenile justice. More than a century ago, the juvenile court emerged to save rather than punish 'children in trouble'. Nowadays, the juvenile court has shifted from initial paternalistic approach toward a system that recognizes children as persons in their own right and possessing rights, which have to be considered and respected by both administrative and judicial authorities. A child-friendly justice system captures and tries to use the vulnerability of the child in conflict with the law, in the most effective way, to teach them something constructive, with meaningful consequences. A child-friendly justice system, while punishing the juvenile for the wrongdoing, takes into account who they are, of what and whom they care about and who they want to become. It is a system to which the best interests of children – juvenile 'well-being' – are not merely 'a primary consideration' but rather the primary or the paramount consideration that must be 'ensured'. It is a system under which respecting the children's rights and the procedural safeguards related to a right of a fair trial takes an additional importance as it helps to reinforce the child's respect for the human rights and fundamental freedoms of the others. The overwhelming impression of a comprehensive juvenile justice system is that of diversity, which is guided by the aim to limit the negative impact of the juvenile justice system on a young offender as far as possible. The system as a whole, by adopting principles and safeguards, ensures that, once constructive action is undertaken, it is possible to prevent re-offending without the effects of stigma or labelling, and to offer the opportunity to the young offender to take responsibility for their conduct and to make a good for wrongful action. However, with the emergence of the new approach, restorative justice goes further, allowing for more community-based, holistic responses that aim to 'restore, reintegrate and give responsibility' to children in conflict with the law.

**PART TWO**

**A CONCEPTUAL FRAMEWORK OF JUVENILE JUSTICE SYSTEM  
IN ALBANIA**

**CHAPTER FIVE**  
**ALBANIA AND CHILDREN IN CONFLICT WITH THE LAW:**  
**OVERVIEW OF THE JUVENILE JUSTICE SYSTEM**

**1. Introduction**

As considered in part one of this thesis, international law, through the juvenile justice framework, defines the treatment of children in conflict with the law and prescribes the rights to which they are entitled. However, whilst international children's rights standards do not provide the perfect template for juvenile justice,<sup>1034</sup> they do represent an effective benchmark against which law, policy, and practice can be measured within a whole range of areas, and in the system as a whole.

The CRC neither prescribes nor defines how the standards and values are going to be implemented by that country. Irrespective of the status of international instruments at a domestic level, it is advisable for a state to adopt measures that bring its domestic legal orders and practices into conformity with international standards and values.<sup>1035</sup> Article 4 of the CRC places State Parties under an obligation not only to adopt these standards into their domestic legislation, but also to make effective use of accessible tools to translate these into concrete policies whilst taking into account specific cultural and social factors. The last requirement demonstrates the relevance of the political, historical, and institutional context in designing and subsequently implementing juvenile justice systems.<sup>1036</sup> It follows that in designing a juvenile justice system, concerns for both the specific reality of the country concerned and the available resources are utilised to the maximum extent possible. The extent of domestic law compliance in a specific country with international law is defined by the CRC's built-in implementation mechanism of periodic reporting as noted earlier.<sup>1037</sup> The Committee may make 'suggestions and general recommendations' based on information

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<sup>1034</sup> As highlighted throughout part one, there is ambiguity, vagueness and omissions in certain standards and values.

<sup>1035</sup> UN Economic and Social Council, General Comment No. 9, para.3

<sup>1036</sup> Article 4 of the CRC requires the government to undertake 'all appropriate means'. As the UN Economic and Social Council observes, such phrases represent 'a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.' (United Nations, Economic and Social Council, *General Comment No.9: The domestic application of the Covenant*, E/C.12/1998/24, CESCR, Adopted by 03/12/1998.)

<sup>1037</sup> Article 44 CRC. As earlier noted within the international framework of juvenile justice the CRC is the only binding instrument.

received.<sup>1038</sup> Clearly, the Concluding Observations of the Committee on the reports of state parties to the CRC and the recent General Comment No.10 highlight the fact that 'adherence to both the letter and the spirit of the international standards and norms on juvenile justice constitutes one of the major challenges worldwide'.<sup>1039</sup> Therefore, measuring the extent to which Albania complies with these standards and values is a highly valuable exercise. This review assesses the overall approach that Albania is adopting towards children in conflict with the law.

The review begins by providing a wide-range of background information relating to the Albanian juvenile justice system, which includes historical and legal issues. Within this theme, the status of international instruments at the Albanian domestic level is discussed, followed by the definition of a child at a domestic level and the minimum age of criminal responsibility. Before considering the system and its components, accurate information is provided with regard to data concerning children in conflict with the law. This is not simply a matter of presenting the information available from the government sources. It includes analysis of data and the sources. It continues by identifying which agencies (ministries, department, and so forth) should be included in the review. The primary criterion is the involvement of agencies with children in conflict with the law. As Smith observes, 'inclusion of an agency is, in itself a policy choice', which indicates the recognition of responsibilities of that agency toward children in conflict with the law.<sup>1040</sup> The purpose is not merely identification of an agency. As juvenile justice 'systems' are complex, adopting a review of the Albanian juvenile justice system requires a multi-faceted approach.<sup>1041</sup> The systems produce a diversity of juvenile justice legal rules and agencies to enforce and implement them. The review includes *occupational systems* relating to police, lawyers, judges, prison staff, the probation and the rehabilitation personnel, each separated with its own rights, objectives, performance standards, ethos and command structures. The review will include issues concerning the involvement of these systems in the juvenile justice system as a whole, responsibilities and law regulating their function and structure. The review attempts to highlight the compliance, or non-compliance, of Albanian standards with relevant international standards, and whether there is a need to pursue a reform. The work set out

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<sup>1038</sup> Article 45(d) CRC

<sup>1039</sup> Helen Moestue, *Lost in the justice system: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF, 2008 [www.unicef.org/russia/Lost\\_in\\_the\\_Justice\\_ENG.pdf](http://www.unicef.org/russia/Lost_in_the_Justice_ENG.pdf), p.6

<sup>1040</sup> Chris Smith, 'The Field Trial of a Policy Analysis Framework for the Convention on the Rights of the Child', *International Journal of Children's Rights*, Vol. 6, Issue 4, 1998, pp407-431, p. 410,

<sup>1041</sup> Juvenile justice as 'a system' or 'systems' was considered within chapter two.

above should provide grounds for a comprehensive overall analysis of juvenile justice in Albania.

## 2. Background

Albania was established as a proper and independent state on 12th November 1912.<sup>1042</sup> As a result of the feudal background of the Albanian economy and society, the First World War, combined with a very chaotic situation, threatened Albania's survival as an independent country. There is little to be said for the establishment of a responsible statehood for the period 1912-1925.<sup>1043</sup> With the proclamation of Albania as a Republic and the adoption of the first Constitution in 1925, 'Albania began to face the normal decisions of a civilised state'.<sup>1044</sup> With Albania a member of League of Nations,<sup>1045</sup> efforts were made to establish basic institutions. Penal and civil codes, approaching modern principles, were introduced, and efforts were made to render justice 'as well administered in Albania as anywhere else in the Balkans'.<sup>1046</sup> As Jacques acknowledges, France and Italy influenced Zogu's developing pattern of administration.<sup>1047</sup> Unfortunately, there is no reference to how the penal code responded to juvenile justice. This is because of the fact that little was known about these documents as a result of Albanian history suffering from distortion and falsifications.<sup>1048</sup>

Although abolishing the institution of defence, the communist regime adopted a specific way to deal with the offending behaviour of minors.<sup>1049</sup> Under the general postulate of building up

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<sup>1042</sup> United States of America, Department of State, Bureau of European and Eurasian Affairs, *Country Profile Albania* - (online), <http://www.state.gov/r/pa/ei/bgn/3235.htm> Last update January 2011, (accessed 12/07/2011); <http://www.albanian.com/main/history/independ.html>

<sup>1043</sup> Jacques, Edwin E. *The Albanians: An ethnic history from prehistoric times to the present*, McFarland & Co Inc, 1994, p.322-324 and chapter twenty-five. Jacques strongly emphasis this inability of statehood as he titles the chapter 25 'The fourteen Successive Ineffective Governments (1912-1925). (Jacques 1994, p.334)

<sup>1044</sup> Ahmed Zogu was appointed as President in 1925, and would crown himself King Zog I in 1928. (Jacques 1994, p383-386)

<sup>1045</sup> Albania was admitted to League of Nation on 17 December 1920. National Membership of the League of Nations, <http://www.indiana.edu/~league/nationalmember.htm> (Accessed 12/07/2011)

<sup>1046</sup> Jacques 1994, p.384; Agim Gjoleka, 'Nje veshtrim I shkurter mbi sistemin penitenciar; arritjet, sfidat, nevojat dhe plani I veprimit per kete fushe' in Komiteti Shqiptar I Helsinkit (eds) Sistemi penitenciar ne Shqiperi dhe roli I Shoqerise Civile ne permiresimin e tij, Kristalina-KH, Tirane 2002, p.12-13

<sup>1047</sup> Jacques 1994, p. 383-386

<sup>1048</sup> Miranda Vickers, *The Albanians: A modern History*, I.Ib Tauris & Co Ltd, London, 1999, p.8 Vickers observes that under communism, important events in recent Albanian history suffered from mythologisation. In addition, she underlines the fact that distortion occurs continuously in Albanian history even today. (Vickers 1999, p.9)

<sup>1049</sup> As noted in the introduction, the communist regime under Enver Hoxha, which rules Albania from 1944 to 1989, sought to establish the socialist system in Albania.

a 'new socialist man',<sup>1050</sup> the Penal Code determined few important characteristics of juvenile justice from its early days.<sup>1051</sup> Although underlining that sentence was a coercive measure and a 'weapon' in the hand of socialist order, its aims were to prevent any further criminal activity, educate the person to be available to society, and educate other citizens to respect socialist legislation.<sup>1052</sup> Thus, the death penalty,<sup>1053</sup> and internment,<sup>1054</sup> of minors as a sentence was strictly prohibited. Priority was given to educative measures.<sup>1055</sup> When the deprivation of liberty was imposed as a sentence for minors, it was applied as a half term when compared to adults.<sup>1056</sup> Divertive measures were applied for a minor, whether they were able to understand the consequences of the act, or whether it was committed under psychological pressure, influence, or other circumstances, and finally when it was evaluated that an imposed educative measure had been effective.<sup>1057</sup> Both codes provide details on conditional sentences. However, Article 39 of the Penal Code 1977 extends the application of conditions to release as well.<sup>1058</sup> In addition, the Penal Code 1977 introduces an important element of juvenile justice.<sup>1059</sup> Therefore, Article 7 sets out the minimum age of criminal responsibility to fourteen years old.<sup>1060</sup> When the deprivation of liberty is imposed as a sentence, it must be executed in an institution specifically design for juveniles.<sup>1061</sup>

Although initially with objectives similar to those of an adult prison, the first Institute of Re-Education for Minors was established in 1957.<sup>1062</sup> After 1960, educative and pedagogical objectives were introduced.<sup>1063</sup> The first full reform started in 1973 as the name School of Re-Education was given.<sup>1064</sup> Although within the structure of a dictatorial state, the programme

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<sup>1050</sup> Jacques 1994, p. 557. Jacques observes that the socialist regime was determined not only to change things, but to 'mould the new man'. Vickers observes that the dominant ethos of the regime was the desire to establish the 'new socialist man', who would be defined by the Albanian identity and communist consciousness, (Vickers 1999, p.3)

<sup>1051</sup> In issuing this statement reference was made to Decree No.2868, date 16.3.1959 'On Declaration of Penal Code of Popular Republic of Albania' and Law No.5591, date 15.06.1977 'Penal Code of Popular Socialist Republic of Albania' (Penal Code 1977).

<sup>1052</sup> Article 15 Decree No.2868, Article 16 Law No.5591

<sup>1053</sup> Article 19 Decree No.2868 and Article 22 Law No.5591

<sup>1054</sup> Article 21 Decree No.2868

<sup>1055</sup> Article 39 Decree No.2868, Article 28 Law No.5591

<sup>1056</sup> Article 46 Decree No.2868, Article 21 Law No.5591

<sup>1057</sup> Article 46 Decree No.2868, Article 34 Law No.5591

<sup>1058</sup> Article 39 Law No.5591

<sup>1059</sup> Law No.5591, date 15.06.1977 'Penal Code of Popular Socialist Republic of Albania'

<sup>1060</sup> *ibid*

<sup>1061</sup> Article 20 Decree No.2868, Article 21 Law No.5591

<sup>1062</sup> Jani Papandile, 'Pse s'ka Institut Riedukimi per te mitur?!, Albania, <http://www.gazeta-albania.net/news.php?id=2189>, 4 March 2008, (accessed 12/07/2011)

<sup>1063</sup> *Ibid*

<sup>1064</sup> Council of Minister Decision No.123, date 10.07.1973 (Papandile 2008)



that was adopted was rather advanced as it provided full education according to national curricula and vocational training and served the re-integration of minors into society. The school was a semi-open institution.<sup>1065</sup>

As a whole society, the entire Albanian legislation and justice system is undergoing a process of continuous reform.<sup>1066</sup> Juvenile justice is not an exception. However, all the reform undertaken in this field was not considered to be ensuring the full implementation of juvenile justice standards until 2005.<sup>1067</sup> In addition, it should be mentioned that the School of Re-education has not been operating in Albania since 1990.<sup>1068</sup> Therefore, it is against this background that the analysis will be conducted.

### 3. International treaties and their place in the legal system

International law does not state how it should be incorporated into national law. Alston *et al.* observed that the 'internalisation' of treaty values within the domestic level was accomplished through constitutional approaches, which very often are referred to as 'monist' and 'dualist'.<sup>1069</sup> The difference between the two methods is in principle the position of international law versus national law. Therefore, with regard to the 'monist' approach, international law is not only a direct part of the domestic legal system, but is also supposed to have supremacy over the last one.<sup>1070</sup> With regard to the dualist approach, international law and domestic law are two separate and independent legal systems.<sup>1071</sup> This implies that international laws do not become part of national law until they have been enacted through a legislative measure by the state.<sup>1072</sup> Consequently, whether a state adopts a 'monist' or 'dualist' approach, it is to be organised by its own constitutional law or specific statutory provisions.<sup>1073</sup> The relevance of a monist or dualist approach is mostly related to the application of international law in national courts. In practice, this means whether the norms

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<sup>1065</sup> Papandile 2008

<sup>1066</sup> As discussed in the Introduction.

<sup>1067</sup> The Committee, in paragraph 76 and 77 of Concluding Observations, UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania CRC/C/15/Add.249*, 28 January 2005

<sup>1068</sup> Papandile 2008

<sup>1069</sup> Philip Alston, Ryan Goodman and Henry J. Steiner, *International Human Rights in Context: Law, Politics, Morals*, 3<sup>rd</sup> eds, Oxford University Press, 2008, p.1096 Leary agrees with the two constitutional techniques, but refers to these using simple terminology of 'legislative' or 'automatic' incorporation. (Alston et Al. 2008, p.1096)

<sup>1070</sup> *ibid* p.1097

<sup>1071</sup> *Ibid* p.1097

<sup>1072</sup> Leary 1982 at Alston et Al. 2008, p.1095

<sup>1073</sup> *Ibid* p. 1096

of international law might be invoked in domestic courts in case of failure or absence of implementing legislation. As Leary notes 'in automatic incorporation treaty provisions are considered by national courts and administrators as self-executing when they lend themselves to judicial or administrative application without further legislative implementation'.<sup>1074</sup> In other words, the monist approach facilitates direct application of international law by national courts.<sup>1075</sup>

The approach adopted by Albania, therefore, is of importance, as different enforcement mechanisms might positively change the regime of CRC implementation to protect children's rights, and especially those of children in conflict with the law in Albania.<sup>1076</sup>

Rather than opting for a specific enumeration of international law, Part Seven of the Constitution considers the position and implementation of 'international agreements' by Albania.<sup>1077</sup> Article 116 of the Constitution provides that ratified international agreements constitute part of domestic legal system.<sup>1078</sup> Article 122 of the Constitution establishes that the relationship between international law and the national legal system is characterised by the systematic primacy of international law over national law. Once published in the Official Journal of the Republic of Albania, an international agreement:<sup>1079</sup>

- a) Is directly implemented, unless the instrument is not 'self-executed' and 'its implementation requires issuance of a law';
- b) Has superiority over laws of the country that are not compatible with it;
- c) Has primacy over national law in the event of arising conflict with one another.

The Albanian Constitutional Court must perform checks on the executive actions when acquiring or implementing an international agreement.<sup>1080</sup> Integration, direct application,

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<sup>1074</sup> Ibid p. 1096

<sup>1075</sup> Shah Alam, 'Enforcement of International Human Rights Law by Domestic Courts: A theoretical and practical study', *Netherlands International Law Review*, 2006, Vol. 53, Issue 3, p.406

<sup>1076</sup> Alam observes that direct application of international law enhances the role of domestic courts into their implementation by the executive, and might positively change the regime of treaty implementation to protect human rights. (Alam 2006, p. 438). Whether this could be a positive change in Albania remains to be analysed.

<sup>1077</sup> On one hand, the term 'International agreements' leaves open an option to diversify the form of treaty law. However on the other hand, it excludes the customary norms. However, Article 15 of the Constitution provides that fundamental human rights and freedoms stand at the basis of entire juridical order, which in no case may impose a restriction that exceed the limitation provided for in the European Convention on Human Rights.

<sup>1078</sup> Article 116 of the Constitution reads that ratified international agreement 'are effective in the entire territory of the Republic of Albania'.

<sup>1079</sup> Article 122 Constitution.

<sup>1080</sup> Article 131 explicitly provides that the Constitutional Court should decide on whether the executive and legislature actions are compatible with international agreements, or whether international agreements are compatible with the Constitution as the fundamental law of the country.

superiority, and primacy imply the permissibility to invoke international agreements in an Albanian domestic court regardless of the contradiction or repetition that can exist with national laws. As Traja observes, such status means an option to set up national customary norms through interpretation based on international agreement and given by the national court in case of legislative omission.<sup>1081</sup> Despite this powerful mechanism, the general picture in Albania is that of the domestic court relying on domestic law. Legislative awareness is the element that brings together the factors contributing to the non-application of international agreements in national courts.<sup>1082</sup> It is worth noting that the level of legislative awareness about international instruments by the judges, prosecutors, lawyers, executive and legislative is limited. This is as a result of:

1. Limitations on publishing the full text of an international agreement. Although the Constitution specifically mentioned the publication at the Official Gazette, the translation of original documents remains problematic and, in many cases, the quality of translation is not very good.<sup>1083</sup>
2. Absence of an indexed and updated database on all ratified international agreements. If properly built, such a database might not only provide easy access to the instruments but also help to transpose them into domestic legislation.<sup>1084</sup>
3. Lack of familiarity with international law theory and practice. The establishment of the Magistrate School has resulted in public international law beginning to be considered within teaching curricula.<sup>1085</sup> If judges, prosecutors and lawyers are familiar with international law, they are more likely to invoke the principles and rules from international agreements.<sup>1086</sup>

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<sup>1081</sup> Kristaq Traja, 'Legal Nature of decision of the Supreme Court', *Revista Juridike*, Vol. 1, 2005, p.20. In providing such option Traja refers to the unifying decisions of Supreme Court and their nature.

<sup>1082</sup> Alam observes that that legislative awareness is fundamentally important and necessary for a treaty to be operative within state territory. (Alam 2006, p.412)

<sup>1083</sup> Kathleen Imholz, 'Recommendation on translation of the *Acquis Communautaire* for the purposes of facilitating of international agreement and other documents', EURALIUS – European Assistance Mission to the Albanian Justice System, 2006, p.2, The Official Gazette, for instance, used to mention laws through which conventions were approved without providing information on the content and substance of those conventions. The Albanian Ombudsman expresses the same concern and considers of such importance the issue to address a Special Report to the Assembly. Special Report No.1 'On Publication of ratified international agreements at Official Gazette' 2008, <http://www.avokatipopullit.gov.al/Raporte/RV12008.pdf> (Accessed 01/12/09)

<sup>1084</sup> Kathleen Imholz, 'Recommendation about transposing international commitments into domestic legislation', EURALIUS – European Assistance Mission to the Albanian Justice System, 2005 refers to a national register, which should contain details about specific articles of specific laws that meet or does not come up the requirement of international documents.

<sup>1085</sup> Traja 2005, p.21

<sup>1086</sup> Although the Constitution makes special reference to the ECHR, its jurisprudence generally is unknown to domestic courts. As Bianku notes European (human rights) case law is rarely referred to in Albanian courts. (Ledi Bianku, *Jurisprudence of the Court of Strasbourg*, European Center, Tirana. 2005, p.2)

#### 4. Who should we consider a child?

Although adopting terms such as 'minors', 'young' and 'child', the Constitution of the Republic of Albania does not contain any provision that might specify who is considered a child in Albania.<sup>1087</sup> However, Article 54 of the Constitution entitles children to the right of special protection because of their status. In addition, Article 54 paragraph 3 emphasises:

*'Every child has the right to be protected from violence, ill treatment, exploitation and their use for work, especially under the minimum age for work, which could damage their health and morals or endanger their life or normal development.'*

The Albanian Government observes that 'under the Albanian legislation, a child means every human being, born alive, below the age of eighteen years, when he acquires full juridical capacity to act.'<sup>1088</sup> The definition is largely forged on the Civil Code of the Republic of Albania. Thus Article 6 of the Civil Code states that once the person reaches eighteen years old, they are entitled to exercise in full the rights and to hold civic responsibilities. Article 2 of the Civil Code, in considering the acquisition of the juridical capacity, defines the bottom limit term 'child' to the moment of birth.

The 'child' status below eighteen years old is also referred to in other fields. Therefore, the law 'on pre-university education' states that children of age six to 16 years should follow a mandatory nine years education.<sup>1089</sup> The Labour Code establishes sixteen years as a minimum age for employment, and sets out a list of prohibitions to safeguard the health and development of employed children.<sup>1090</sup> According to Article 7 of the Family Code, a woman and a man over 18 years may get married.<sup>1091</sup> In addition, male citizens may enlist for the military service as soon as they attain the age of 18 years.<sup>1092</sup>

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<sup>1087</sup> Article 27/ç adopts term 'minor' in setting up that freedom might be limited in cases for 'the supervision of a minor for purposes of education or for escorting him to a competent organ'. Article 54 and 59/ ç includes both the terms 'child' and 'young'.

<sup>1088</sup> UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Periodic Report of States Parties due in 1994: Albania, CRC/C/11/Add.27*, 5 July 2004, para. 42

<sup>1089</sup> Article 8, Law No. 7952, date 21.06.1995 'On Pre-university Education System',

<sup>1090</sup> Article 98 (1), Law No. 7961, date 12.07.1995, 'Code of Labour of the Republic of Albania', as amended. The list of prohibition and safeguards includes engagement in 'easy jobs', working time no more than six hours per day and no night work.

<sup>1091</sup> Law 9062, date 08.05.2003 'Family Code'

<sup>1092</sup> Law no. 7527, dated 2.11.1991, "On Military Service"

### 5. The minimum age of criminal responsibility

It should be noted that the Albanian legislation opts for a middle status of children as it often establishes a minimum age of legal responsibility (MACR) to which is accorded some rights. For example, Article 7 of the Civil Code entitles the minor, who has attained the age of 14 years, to perform legal transactions subject to prior approval of his legal representative. Article 356, of the Civil Procedure Code provides that children may give testimony to court after they attain the age of 16 years. The Family Code entitles a minor over 14 to perform all legal actions personally, including the administration of his or her own wealth, with the preliminary approval of the parents.<sup>1093</sup> Legal actions, which according to the law, might be performed by the minor himself, do not require preliminary parental approval.<sup>1094</sup>

This issue is particularly relevant for juvenile justice.<sup>1095</sup> Indeed, Article 12 of the Criminal Code (CC)<sup>1096</sup> sets up a two-tier system with regard to the MACR: 14 years 'if at the time the person has committed a crime, and 16 years when a person' has committed a criminal contravention. The range of offences defined as 'crime' constitute a vast amount of the offences provided by the CC and includes, for example, murder,<sup>1097</sup> deliberate causing of serious harm to health,<sup>1098</sup> kidnapping of the person,<sup>1099</sup> theft,<sup>1100</sup> robbery<sup>1101</sup>, production and illegal arms bearing and ammunition,<sup>1102</sup> cultivation, production, distribution and trafficking of narcotics substances.<sup>1103</sup> Consequently, many 'minors' who commit an offence when 14 or 15 years old, according to Article 12, have criminal responsibility and enter the system of criminal justice.

If the 'minor' is below the MACR, they are presumed not to bear criminal responsibility. However, Article 46 of the CC provides that a minor below the age of criminal responsibility may be placed in a re-education facility if the court decides so. Despite being provided for by

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<sup>1093</sup> Article 232 and 234 of Law No. 9062, date 08.05.2003 'Family Code'

<sup>1094</sup> Ibid

<sup>1095</sup> UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania* CRC/C/15/Add.249, 28 January 2005 para. 21. Juvenile justice is among the examples brought by the Committee to illustrate the concerns.

<sup>1096</sup> Law No. 7895, date 27.1.1995 'Criminal Code of Republic of Albania'

<sup>1097</sup> Article 76 CC, First Degree Murder (Manslaughter)- Article 78/1 CC, Murder in other circumstances - Article 79 CC, Murder due to carelessness - Article 85 CC

<sup>1098</sup> Article 88 -known as First Degree wounding: includes causing of serious harm due to psychological shock or trespassing the limits of necessary defence.

<sup>1099</sup> Article 109 CC

<sup>1100</sup> Theft includes theft, theft in partnership and recidivism - Article 134 CC

<sup>1101</sup> Robbery includes violent robbery - Article 139 CC and armed robbery - Article 140 CC

<sup>1102</sup> Article 278 CC

<sup>1103</sup> Article 283-285 CC

the CC, the provision has not been enforced because of the absence of relevant structures. Once such a structure is established, the formulation of a provision will be a matter of great concern.

Furthermore, the Albanian legislation provides on the upper limit of the MACR. Thus Article 81 paragraph 2 of the Criminal Procedural Code explicitly states that 'when the defendant at the time of judicial proceedings has reached the age of maturity, but has committed one or more of the criminal offences at an earlier age', the juvenile section has jurisdiction to hear the case. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be processed under the rules of juvenile justice.

Article 12 of the CC complies with the MACR's requirement of Article 40(3)(a) CRC. The bottom threshold of MACR responds to Rule 4.1 of the Beijing Rules and the recommendation of the Committee, as it is fixed not too low to take into account the level 'of emotional, mental and intellectual maturity'. However, the Committee considers that the middle status based on legal responsibility, set out by Article 12 of the CC, represents a lack of clarity with regard to the status of children between 14 and 18 years.<sup>1104</sup> The main concerns in regard to the middle status of responsibility relate to enjoyment of the special protection or the rights that this age group is entitled to under CRC.<sup>1105</sup> On this ground, the Committee recommends that Albania clarifies the definition of a child and reviews the legislation to ensure full implementation of the CRC.<sup>1106</sup> In reality, the minimum age of criminal responsibility in Albania is below the threshold of Article 12 CC, as minors who commit offences under the age of 14 might be sanctioned with educative measures. Article 46 CC or the CC itself does not set a minimum age below which the provision must not be imposed.

In the past attempts have been made to adopt a unified system with regard to the minimum age of criminal responsibility at 16 years. The suggestion was introduced as a special package of legislative intervention with regard to juvenile justice.<sup>1107</sup> Such suggestions were not founded on genuine research with regard to juvenile delinquency. The crime rate provides a better account with regard to any policy that might be undertaken to increase or lower the age

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<sup>1104</sup> CRC/C/15/Add.249 para.21

<sup>1105</sup> Ibid

<sup>1106</sup> Ibid, para.22

<sup>1107</sup> Package of Legal Amendments, prepared by Ministry of Justice, unpublished.

of criminal responsibility.<sup>1108</sup> It should be noted that the absence of data on the personality of juveniles makes it impossible to express a proper judgment on making such an intervention.<sup>1109</sup>

In conclusion, under the current criminal justice system in Albania a minor under the age of 14 clearly does not bear any criminal responsibility. A minor aged 16 who commits a contravention would also not bear any criminal responsibility.

### *6. A statistical overview*

Gathering data on juvenile justice has been one of the principal research tasks. Comprehensive and high quality information is necessary to analyse and monitor trends in juvenile delinquency as well as provide information about the most common crimes committed by children and categories of juveniles (e.g. juveniles living in poverty, experiencing breakdowns in the family, and abusive family dynamics) are at increased risk of committing acts of delinquency.

Quality data collection for juvenile justice system forms an essential basis to monitor and evaluate the outcomes of reforms and the performance of the system as a whole.<sup>1110</sup> This in turn would lead to an enhanced capacity of policy makers to formulate strategic responses for juveniles in conflict with the law. Moreover, the data collection is a valuable source to safeguard against violations of juveniles' rights, to ensure transparency, accountability of the system and to systematically measure the impact of juvenile justice reforms. In addition, data collection serves to develop common definitions, standards and methodologies in analysing the juvenile justice system at an international level.

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<sup>1108</sup> Vasilika Hysi, 'Kriminologjia', Kristalina, Tirana, 2005, Chapter 7, Tirana, 2005

<sup>1109</sup> Discussed at Methodology Chapter

<sup>1110</sup> The Committee, in its General Guidelines for Periodic Reports requests data from states to indicate the extent to which the juvenile justice system, in practice, operates in compliance with human rights standards contained in articles 37, 39 and 40 of the CRC. The list drew by the Committee includes data on the frequency at which non-custodial sentencing options are used by young offenders, disaggregated by age, gender, region, rural/urban area and social and ethnic origin; the number of children deprived of their liberty, unlawfully, arbitrarily and within the law, as well as the period of deprivation of liberty, disaggregated by gender, age, region, rural/urban area and national, social and ethnic origin; the percentage of cases in which children deprived of their liberty have access to legal representation disaggregated by gender, age, region, rural/urban area and social and ethnic origin; the law given access to measures to promote their physical and psychological recovery and social reintegration, disaggregated by gender, age, region, rural/urban area and social and ethnic origin. UN Committee on the Rights of Child, *Guidelines for Periodic Reports*, CRC/C/58, 20 November 1996

Unfortunately, data collection with regard to juvenile justice does not allow the production of routine statistics and analysis on juvenile crime and the operation of the juvenile justice system in Albania. For this research, the analyse of official data presented to the Committee by Albania's first report, has been followed by a process involving periodical searches of the INSTAT publications, newspapers, local NGO reports and printed publications of the MJ. In addition, relevant international sources such as the European Sourcebook of Crime and Criminal Justice Statistics,<sup>1111</sup> and International Centre for Prison Studies<sup>1112</sup> were regularly scanned for information. It should be noted that the situation has improved slightly because of Annual Justice Statistics published by the MJ at national level. In using 'slightly', reference is made to the fact that at least one could present a figure with regard to sentenced juveniles. However, consistent data available to the public, providing a figure for juveniles serving sentences in pre-trial detention and in prisons, does not exist.<sup>1113</sup> Similarly, there is no consistent data with regard to juveniles alleged of, apprehended or arrested by the police.<sup>1114</sup> Finally, despite collecting data on juvenile cases under investigation, the General Prosecutor's office does not make this available to the public.<sup>1115</sup> Despite the problems representing the data collection for juveniles in conflict with the law in Albania, the baseline data collected informs analysis relating to the extent and nature of juvenile crime in Albania. With regard to data collected, two important issues should be noted. Firstly, the data in the Annual Justice Statistics provide a yearly figure of sentenced juveniles, dissemination of figures into crimes and contravention in accordance to articles of CC, level of education and cases considered by each first instance court. With regard to level of education, there is no reference to the followed data indicator. Although considering the justice element, there is no disseminated information with regard to figures of cases registered at courts against juveniles, cases resulting in acquittal, exclusion from punishment or dismissal.<sup>1116</sup> There is also no

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<sup>1111</sup> European Sourcebook of Crime and Criminal Justice Statistics provides a compendium of crime and criminal justice data for member states of Council of Europe. <http://europeansourcebook.org> (accessed 18/07/2011)

<sup>1112</sup> International Centre for Prison Studies compiles the database of World Prison Brief, which provides factual information about prison systems throughout the world. <http://www.prisonstudies.org/> (accessed 18/07/2006)

<sup>1113</sup> Even when accessed the website of GDP by 15<sup>th</sup> of December 2009 still the statistic folder contained data in regard to March 2009.

<sup>1114</sup> What should be noted is the disparity of data between MJ and General Directorate of Police. Thus for example General Directorate of Police assess that 973 juveniles committed offences during 2007 and 684 juveniles for 11 months of 2008. (Please review this data with the one provided below from MJ) (Annual Analysis of General Directorate of Police p.14)

<sup>1115</sup> The statistic available referred only to the number of cases under investigation and cases refereed for hearing at court. There is no dissemination as to sex, age, education, social status etc. <http://www.pp.gov.al/sq/home/Publikime/Statistika.html>

<sup>1116</sup> The dissemination of data is provided only with regard to the total number of criminal cases rendering impossible to draw a data with regard to juvenile cases.



dissemination according to age and gender. Secondly, the information collected in Albania appears to rely upon sentence rates, pointing to the fact that sentencing remains the most popular method of measuring juvenile justice. However the Annual Justice Statistics refers to criminal cases against juveniles, presupposing that the case relates to one juvenile. In practice, the court in cases regarding theft in partnership, for example, might conduct a hearing against two or more juvenile defendants or against adults and juvenile defendants. Despite not being an accurate method, the majority of researchers have assumed that figures provided in the Annual Justice Statistics correspond to the number of convicted juveniles.<sup>1117</sup> Using Data from INSTAT (Table No.10), one can easily draw the conclusion that number of female juveniles committing an offence is very low.

**Table No. 10: Juvenile Convicted during 1993-2001**

Age Group	Years							
	1993	1994	1996	1997	1998	1999	2000	2001
Up to 18 years old								
Females	2	7	16	1	1	1	4	1
Males	242	296	465	91	386	402	413	20
Over 18 years old								
Females	87	83	34	41	64	27	38	33
Males	3,423	3,609	3,951	1,065	3,130	3,568	3,699	1,124

\*Source:

[http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Shkeljet%20e%20ligjit%20dhe%20drejtesia/S\\_HKL2001exl/shkl4.xls](http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Shkeljet%20e%20ligjit%20dhe%20drejtesia/S_HKL2001exl/shkl4.xls) (Accessed on 15.4.2008)

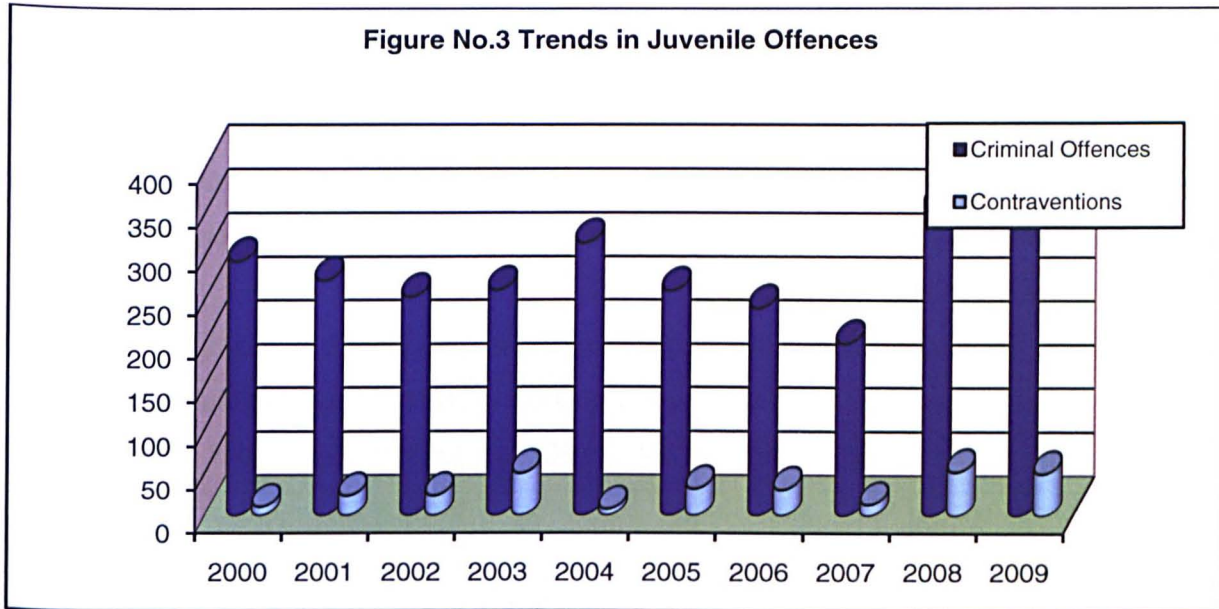
The Annual Statistics published by the Ministry of Justice revealed that juvenile offences have been mildly stagnating, and mildly increased in 2004 and abruptly increased in 2008 (Table No.11).

**Table No.11: Juveniles Convicted during 2000-2008**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Criminal Offences	292	270	251	259	313	258	238	198	356	362
Contraventions	10	23	23	49	7	31	30	13	51	49
Total	302	293	274	308	320	289	268	211	407	411

<sup>1117</sup> Haxhiymeri 2007, Mandro 2007, Euralius 2007. Euralius review points out the inaccuracy of data. However, Euralius accepts the assumption of the Chief of Statistical Department, which supervise the Annual Justice Statistics, 'that the provided figures of convicted juveniles are rather close to the numbers of penal cases against juveniles, as the above mentioned deviations somehow counterbalance each other'. (Euralius 2007, p. 3) UNICEF database TransMONEE provides data in regard to Albania. However there is no indication about the data's sources. In addition there is disparity on juvenile justice data of TransMONEE with the one published by the MJ. <http://www.transmonee.org>

\*Table constructed using the published annual statistic of the Ministry of Justice for each respective year, available only in printed edition in Albanian language



There is evidence that the number of juveniles convicted for offences classified as crime increased from 2001-2004; steadily declined from 2005-2007; sharply increased in 2008; and remained similar during 2009. While the number of juveniles convicted for contravention offences stagnated during 2001-2002, these increased in 2003 and fell sharply in 2004 only to then increase, reaching a sudden peak in 2008 and remaining similar during 2009. To shed light on the reason behind such an increase, it was deemed necessary to consider whether such a pattern was followed with regard to adults, as well as looking at types of criminal offences committed by juveniles. However, the comparison of juvenile and adult convictions was not possible because of a lack of continuous information from the same source. Faced with possible data disparity as different sources were used, it was considered adequate to provide an overall picture without making any further comment. Therefore, Table No.12 should be read cautiously as it is constructed using data collected from Ministry of Interior that uses MJ Annual Statistics.

**Table No.12: Juveniles and adults convicted 1993-2008**

	'93	'94	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09
Total sentenced	3510	3692	3985	1106	3194	3595	4090	4256	4370	5394	6379	6317	6613	5678	7602	7259
Juveniles	244	303	512	92	387	403	302	293	274	308	320	289	268	211	407	411

\*Table constructed from the Ministry of Interior resources for the period 1993-2000 and MJ Annual Justice Statistics for the period 2000-2009.

The deficiency of integrated data on the category of offences committed by juveniles, their family profile, gender, ethnic origin, and causative factors, leaves no room either for identification of the risk factors and individual characteristics of children in conflict with the law, but also to formulate several conclusions and recommendations for all the actors in the area of administration of juvenile justice. However, data collected from the Annual Justice Statistics published by MJ made it possible to draw Table No.13 and determine the types of criminal offences commonly committed by juveniles, and also shed light on their level of education.

**Table No.13: Categories of criminal offences committed by juveniles.**<sup>1118</sup>

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total	302	293	274	308	320	289	268	211	407
Murder*	9	12	7	6	11	5	7	3	5
Wounding*	1	3	6	9	5	5	10	3	7
Theft*	184	132	129	129	191	183	168	152	273
Robbery *	30	35	13	12	18	13	7	3	11
Illegal arms possession	37	1	41	51	23	11	11	9	14
Educated	-	-	256	307	303	272	230	203	339
Non-educated			18	1	17	17	27	18	68

\*Murder includes Murder - Article 76 CC, First Degree Murder (Manslaughter)- Article 78/1 CC, Murder in other circumstances - Article 79 CC, Murder due to carelessness - Article 85 CC; Wounding both degrees of wounding - Article 88 and 89 CC; Theft includes theft, theft in partnership and recidivism - Article 134 CC; Robbery includes violent robbery defined by Article 139 CC and armed robbery - Article 140 CC and death from robbery - Article 141 CC; Production and illegal arms bearing and ammunition - Article 278 and 279 CC.

The data presented in Table No.13 indicates that theft is the most commonly committed offence. Another interesting element is the fact that the offence of theft outweighs in considerable numbers a serious offence against a person.<sup>1119</sup> When disaggregated by level of education, the data on Table No.13 suggests that only a small percentage of these juveniles are non-educated.<sup>1120</sup>

Although the data extrapolated from the empirical research might not be used to generalise the characteristics of juveniles in conflict with the law in Albania, they serve to illustrate the category of offences and the personality characteristics of juveniles at the time of research.

<sup>1118</sup> Unfortunately a detailed analysis with regard to 2009 was not possible due to limited information provided by Ministry of Justice.

<sup>1119</sup> Both the terms are used in compliance with the definition provided in Juvenile Justice Indicators Manual provided in Appendix 1.

<sup>1120</sup> As earlier noted there is clear indication what is meant by the terms adopted.

To a large degree, the empirical data complies with the features found in the only profile of juveniles in conflict with law in Albania, designed by Haxhiymeri (2007).<sup>1121</sup> Juveniles were responsible for very serious crimes such as murder and attempt to murder, which accounted for 19% of cases (Chart No.2). However, most juvenile offences were property related. A total of 47.6% of cases related to theft, while robbery accounted for 11.9% of cases. In addition, 14.3% of juveniles were alleged of, or sentenced for, cultivation, possession and trafficking of prohibited substances. The data of empirical research confirm the alarm raised by Haxhiymeri about the tendency of juveniles to get involved in criminal activities in areas very similar to those of adults, such as the distribution and use of narcotics or serious offence against a person.<sup>1122</sup>

The small percentage of juveniles convicted should not lead to the conclusion that considering juvenile justice in Albania is not a priority; it reflects the overall trend of low criminality in Albania.<sup>1123</sup> A number of factors influenced the Committee to express concerns with regard to the level of implementation of the CRC, including the overall emphasis on punishment; the number of children sentenced to closed facilities for minor offences such as theft; the prevalence of physical violence by police; the lack of alternative measures; and the conditions for the deprivation of liberty.<sup>1124</sup> The Committee did not take into account the number of children dealt with by the system and recommended that reform was a high priority, if not urgent.<sup>1125</sup> In addition, the figure was not considered when UNICEF decided to be involved in the field of juvenile justice, and found the support of other major donators such as SIDA to support its project. The figure did not discourage the EU to allocate the necessary funds to build the new rehabilitation institute for juveniles.<sup>1126</sup> Finally, the rate of recidivism,<sup>1127</sup> and increasing trend of delinquency from juveniles under 14 years,<sup>1128</sup> requires a 'comprehensive juvenile justice' system to better respond to their needs.

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<sup>1121</sup> Haxhiymeri 2007, p.37. Haxhiymeri determines the extreme poverty, living in suburban and undeveloped areas within the urban areas, poor education, male presence and being 14-17 years old as the profile of juveniles in conflict with the law in Albania.

<sup>1122</sup> Haxhiymeri 2007, p. 20

<sup>1123</sup> Development of Monitoring Instruments for Judicial and Law Enforcement Institutions in the Western Balkans: Background Research on Systems and Contexts, *UNDOC – Justice and Home Affairs Statistics in the Western Balkans*, Vienna April 2010, (accessed 24/07/2011) p.59

[www.unodc.org/documents/southeasterneurope/CARDS\\_Background\\_Study\\_final.pdf](http://www.unodc.org/documents/southeasterneurope/CARDS_Background_Study_final.pdf)

<sup>1124</sup> Majority of these issues was highlighted in alternative report presented by CRCA

<sup>1125</sup> CRC/C/15/Add.249, para.77

<sup>1126</sup> To be considered

<sup>1127</sup> Haxhiymeri 2007, p.37

<sup>1128</sup> Hysi 2005, Parliament 2009

## 7. How does the juvenile justice work in Albania?

A two-tier analysis is adopted in considering how juvenile justice works in Albania. The first tier considers the policy-making system and how such a system is monitored. The second tier addresses the interplay between the system of police, courts, the lawyers (prosecutors and defenders), and penitentiary.<sup>1129</sup>

### 7.1 Policy making system and its monitoring

When considering the first tier, it should be noted that Albania remains a highly centralised country. Although a decentralisation reform aims to give more power to line ministries, the policies, the legislation, and the budget depend much on the Prime Minister's Office.<sup>1130</sup> This represents an obstacle as many of the policies are designed and drafted to respond to the political commitment of political forces that govern the country.<sup>1131</sup>

The National Strategy for Children (Strategy) is the document through which the Albanian Government sets out the policies and targets in respect of the rights of the child.<sup>1132</sup> The overall responsibility for the development of the Strategy in respect to the rights of the child sits with the Committee for Equal Opportunities.<sup>1133</sup> The Strategy aims to improve the situation for children in Albania.<sup>1134</sup> The monitoring of Strategy implementation is performed at two levels. The Inter-Ministerial Committee on Children has the duty to monitor the

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<sup>1129</sup> As discussed in the Literature Review chapter, the juvenile justice system is built upon systems that interplay with each other.

<sup>1130</sup> Commission of the European Communities in Albania 2009 Progress Report notes that 'relations between state institutions continued to be difficult at times'. They express their concern about 'a tendency by the executive to exert control over independent institutions, in particular in the judiciary'. (Commission of the European Communities, Albania 2009 Progress Report, SEC (2009) 1337/3, 14 October 2009, p.8) Similarly the Commission of European Communities express, in Albania 2008 Progress Report 'concerns about the independence of State institution from executive', poorly practice on the inter-ministerial consultation arrangements of draft laws, and finally weak involvement of civil society with regard to policy formation and coordination (Commission of the European Communities, Albania 2008 Progress Report, SEC (2008) 2692, final, 5 November 2008, p.7-8). Freedom House observes that 'during 2007, Albania's system of democratic governance suffered from the so-called 'governmentalisation of society'. In addition, Freedom House notes that on the whole, national democratic governance in Albania in 2007 was characterized by the ruling coalition's tendency to control independent institutions (Including the Constitutional Court, the Office of the General Prosecutor, the High Council of Justice, and the Office of the Public Procurement Ombudsman) through the appointment of figures closely linked with the ruling coalition, and the failure of a splintered opposition to capitalize on this trend. Freedom House 2007 Albania Report

<sup>1131</sup> *ibid*

<sup>1132</sup> The one in force was approved with Council of Minister, Decision No. 368, date 31.05.2005 'On National Strategy for Children' <http://www.mpcs.gov.al/strategji-standarte>

<sup>1133</sup> Initially established as the Committee of Woman and Family with Council of Minister Decision No. 415 date 01.07.1998 is operating as Committee for Equal Opportunities (Council of Minister Decision No. 127, date 15.03.2201). The coordination and management of the Committee for Equal Opportunities is the task of Ministry of Social Affairs, Labour and Equal Opportunities

<sup>1134</sup> National Strategy p.3 and p.4

progress of implementing the Strategy,<sup>1135</sup> which is assisted by the Technical Secretariat for Children.<sup>1136</sup> Once identified, the objectives for children have to be achieved by different line ministries, with the Technical Secretariat providing an Action Plan to establish focal points for monitoring the Strategy within line ministries.<sup>1137</sup> Although in drafting the Strategy efforts were made to involve all key parties – including civil society, communities and individuals – monitoring of the Strategy’s implementation excludes the dissemination of information and drawing up public opinion by ministers.<sup>1138</sup> The Strategy continues the trend of setting tasks under four pillars survival, protection, development and participation.<sup>1139</sup> The future expectation of the Strategy to build an appropriate juvenile justice system is contradicted by the fact that despite there being 11 objectives of the Strategy, none specifically address children in conflict with the law.<sup>1140</sup> According to the Strategy, the ‘appropriateness’ of the juvenile justice system is going to be achieved through three levels. The first level addresses identification and development of policies, interventions and measures that:<sup>1141</sup>

- Tackle the overall juvenile justice system and educational services provided within;
- Develop a legislative, material and procedural packet on a juvenile’s treatment especially in the penal, civil and family field;
- Build appropriate specialised structures within the prosecutor system and juvenile judicial police;
- Provide on legal, social and psychological assistance according to the needs of children in conflict with the law
- Prevent and re-integrate children in conflict with the law;
- Increase protection of juveniles deprived of liberty
- Provide professional training of staff involved with the juveniles.

The second level provides support on legislative and institutional reform for the juvenile justice system. This task itself involves development and guarantees of juvenile rights, preview of child punishment, adoption of legislation and sensitisation of public opinion and

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<sup>1135</sup> Council of Minister Order No.118, date 30.06.2004 ‘On Inter-Ministerial Committee on Children’

<sup>1136</sup> Council of Minister Order No.162, date 24.07.2006 ‘On Technical Secretariat for Children’

<sup>1137</sup> National Strategy p.4

<sup>1138</sup> Ibid p.57. Meanwhile, the Strategy as a whole is monitored through the annual report to the Council of Ministers.

<sup>1139</sup> National Strategy for period 2001-2005 was designed over these four pillars as well.

<sup>1140</sup> National Strategy, p. 15

<sup>1141</sup> National Strategy p. 13



the local community on the rights and protective measures on juvenile justice.<sup>1142</sup> The third level establishes structures related to juvenile justice. To this end, there are aims to establish an Institute of Re-education and Juvenile Section within Albanian courts.<sup>1143</sup>

Rather than defining the 'appropriateness', the three levels provide a vague perspective on actions to be undertaken as they adopt ambiguous terminology. The ambiguity on actions to be taken in reforming juvenile justice is extended to the Action Plan as well. The Action Plan continues the trend of the Strategy and does not contain any specific points on juvenile justice. The elements of reform are carried out in different paragraphs.<sup>1144</sup> The only paragraph mentioning juvenile justice is 5.7. The statement acknowledges the non-existence of a juvenile justice system and imposes a rather vague duty to establish one without determining clear objectives and intervention points.

According to the Action Plan and Strategy, overall responsibility for drafting juvenile justice policies, undertaking studies and analyses, improving and developing legislation respecting the international standards in the field, managing funds, and promulgating standards in the field of juvenile justice is accorded to the Ministry of Justice (MJ).<sup>1145</sup> The *Ministry of Justice* has:<sup>1146</sup>

- To follow and realize policies and activities related to adaptation and integration of system of justice with the respective international structure and initiatives;
- To attend the organization and functioning of the services related to judicial system and to justice in general;
- To direct the pre-trial detention system and the execution of criminal decisions;
- To attend the realization and co-ordination of activities for juveniles in the field of justice, the protection of their lawful rights and interests, legal education and the prevention of violations of law by them,
- To conduct of services for juveniles by the respective structures of the justice system.<sup>1147</sup>

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<sup>1142</sup> *ibid* p.15

<sup>1143</sup> *Ibid* p.15

<sup>1144</sup> For example on para .2.3 – Children Code, 2.5 – legislative improvement for group age 14-18 years, 5.3 – sanctions against ill-treatment of juvenile in police station, pre-trial detention and prisons, 5.7 – establishment of juvenile justice system, 5.8 – halting the data publication of arrested juveniles,

<sup>1145</sup> National Strategy p.5

<sup>1146</sup> Article 6 of Law 8678, dated 14.05.2001 'On organization and Functioning of the Ministry of Justice'

<sup>1147</sup> Paragraph added by Law 9112 of July 24, 2003

Although the law extends the authority of the Ministry of Justice to the management of pre-trial detention facilities, it was necessary for a Decision of the Council of Ministers to initiate the process and enforce the implementation of law.<sup>1148</sup> Despite the Decision of the Council of Ministers issued in 2003, it took more than five years to fully transfer the remand prisoner to an institution under the authority of the Ministry of Justice.<sup>1149</sup> The major issue came in relation to the allocation of funds in building new premises, rather than focusing on more specific reforms.

Under the new scheme of organisation of the Ministry of Justice,<sup>1150</sup> the former Directorate of Juvenile Justice has become the Office of Juvenile Justice and Family Rights (OJJFR) (Appendix 13). The duties of the OJJFR are:<sup>1151</sup>

- To prepare, follow and co-ordinate the realisation of policies, programmes and activities related to the field of justice for juveniles, legal education, the fight against and the prevention of violations of law and criminality by juveniles;
- To attend and co-ordinate the work with the institutions, foreseen by law to accomplish and defend the rights and lawful interests of juveniles in the field of justice, as well as in different legal matters administered by Family Code;
- To cooperate into development of normative acts on the subject of juvenile justice and family justice.

Again, there is vagueness and ambiguity in describing the duties of the office, and a lack of any reference to the implementation of the CRC and international standards and norms.<sup>1152</sup>

During November 2009, there was no indication of whether the Office has carried out any research to comply with the task of building a juvenile justice system.<sup>1153</sup> Although, there is

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<sup>1148</sup> Council of Minister, Decision No. 327, date 15.5.2003 'On transferring the pre-trial detention under the authority of the Ministry of Justice'

<sup>1149</sup> The minister of Justice declared the transfer process as completed during November 2009. Minister of Justice, Report at Law Commission of Assembly on 9.11.2009

<sup>1150</sup> The Prime-Minister Order of no. 292, date 20.12.2006, "On the approval of the structure of the Ministry of Justice".

<sup>1151</sup> <http://www.justice.gov.al/?fq=brenda&kid=168>

<sup>1152</sup> The Office notes that the tasks are performed in accordance with National Plan of Approximation of Albania with EU legislation, Partner document (there is indication in what the document consist of), and finally the Ministry of Justice Legislative Plan <http://www.justice.gov.al/?fq=brenda&kid=168>

<sup>1153</sup> The Strategy addresses the task of building a juvenile justice system, which required Albania budget planning and support of UNICEF. (Strategy, para. 5.7) The fulfilled tasks consisted in drafting reports and providing Relevant information about the children in conflict with the law to Albanian and international institution; drafting quarterly reports about the National Strategy for Children; and second, third and fourth report on the United Nations Convention on the Rights of the Child; review, analyse and recommend on ratification of international instruments about protection of children rights; follow on the procedure for the ratification of Council of Europe Convention 'On the Protection of Children against Sexual Exploitation and



some information about termination of the drafting process for the Code for Children's Rights,<sup>1154</sup> the draft is not available to the public for consultation.<sup>1155</sup> In addition, there is no information about the legal package for the amendment of juvenile law introduced by MJ with the support of UNICEF in 2005. Local and international bodies active in the field of human rights voiced their concerns that the amendments were introduced without making a genuine assessment regarding their effects.<sup>1156</sup> The current practice points out that the MJ has opted for measures being implemented in the context of the general reform of the justice system rather than introducing a single law to deal with the organization of the system for the sentencing, protection, care and rehabilitation of juvenile offenders. Thus, the last amendments of the Penal Code, which reinforced and expanded the alternative measures to detention, contain separate provisions rather than introducing a single article dealing with children in conflict with the law.<sup>1157</sup> Similarly, in the most recent amendments to the law 'On Rights and Treatment of persons deprived of liberty',<sup>1158</sup> and amendments to the law 'On execution of criminal sentences',<sup>1159</sup> no specific articles dealing with juveniles deprived of their liberty were introduced. Furthermore, the new law 'On Legal Aid' considers it sufficient to paraphrase Article 35 of the Criminal Code, rather than using strong language to set out the rights of children to legal aid.<sup>1160</sup>

Although acknowledging that it is a three-year project (2005-2008), the Strategy emphasises the establishment of the Sub-section on Child Rights within the People's Advocate (Ombudsman) as a national achievement.<sup>1161</sup> The aim of the Sub-Section is to monitor children's rights in compliance with the CRC.<sup>1162</sup> The main areas of work consisted of observing and providing advice to the executive, legislative and other institutions, protection of children's rights and handling of their complaints, communication and participation with

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*Sexual Abuse*'; participation on drafting work group in regard to amendments of Penal Code, and different draft laws. <http://www.justice.gov.al/?fq=brenda&kid=168>

<sup>1154</sup> According to the Strategy para 2.2

<sup>1155</sup> Ksera: Gati Ligji per garantimin e te drejtave, Shqip 20/10/2009, UNICEF 2009 p. 11

<sup>1156</sup> Vasilika Hysi, and Etilda Saliu 'Juvenile Justice System in Albania: Consideration on its present and future', Albanian Helsinki Committee, Pegi 2005, Chapter 3 in Juvenile Justice System in Albania, OSCE 2004, Kotherja 2005, Hazizaj 2005

<sup>1157</sup> Law No. 10039, date 22.12.2008 "On legal aid".

<sup>1158</sup> Law No. 10087, date 26.02.2009 "On Amendments to law no. 8328, date 16.4.1998, "On Rights and Treatment of person deprived of liberty"

<sup>1159</sup> Law No.10024, date 27.11.2008 "On Amendments and Supplements to law No. 8331, date 21.04.1998 'On execution of criminal sentences'

<sup>1160</sup> Article 13, Law No. 10039, date 22.12.2008 "On legal aid".

<sup>1161</sup> The National Strategy p. 5

<sup>1162</sup> *ibid* p.5

media and other actors, research about policies and legislation.<sup>1163</sup> Two issues should be noted here. Firstly, a Sub-Section requires both children and adults to be made aware of such services offered by the People's Advocate.<sup>1164</sup> As a result of a shortage of funds, such an awareness-raising campaign was limited to an annual conference, which considered children's rights and their enforcement in Albania.<sup>1165</sup> The concluding remarks and recommendations of the conference were forwarded to all principal institutions, which are directly involved in monitoring protection policies or development of children's rights.<sup>1166</sup> While the spot publicity was limited to only two months, efforts were made to make the public aware of children's rights through participation in different TV programmes.<sup>1167</sup> Secondly, despite being an independent institution, the financial resource of the People's Advocate is the Albanian budget. This means that despite the positive impact of the project, the continuity of the Sub-Section on Children would largely depend on the Albanian Government providing adequate financial resources.<sup>1168</sup> However, there are precedents where financial resources have been used as a pressure against independent institutions.<sup>1169</sup> Indeed, ensuring the independence of institutions such as the People's Advocate is of critical relevance, not only to ensure respect, but also to guarantee human rights and for the development of democracy in Albania.<sup>1170</sup> In addition, it was necessary to amend the law of the People's Advocate to respond to the new structure.<sup>1171</sup> However, the amendments were deemed insufficient to keep running the Sub-section on Children. Indeed the People's Advocate urged the Albanian legislative and executive to establish a definitive and independent children's institution, which makes decisions about young people whilst

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<sup>1163</sup> 'Special Report No.3 'On activity of Ombudsman to protect the children's rights', *Albania Ombudsman*, <http://www.avokatipopullit.gov.al/Raporte/RV32008.pdf>, 2008 (Accessed 01/12/09) p. 7-8

<sup>1164</sup> Even the Committee expressed concerns with regard to the limitations of awareness of children and adults alike about the services of the Office of the Peoples Advocate. CRC/C/15/Add.249 para.13

<sup>1165</sup> The Sub-Section on Children was established as a result of an agreement between Save the Children in Albania and the People's Advocate. The financial means were provided by the Swedish International Development Cooperation Agency (SIDA).

<sup>1166</sup> People's Advocate, Special report no.3, p. 10

<sup>1167</sup> Ibid p.13

<sup>1168</sup> Even the Committee recommends that the Albanian Government provides the Peoples Advocate with adequate human and financial resources to ensure the full-running of Sub-section on children. CRC/C/15/Add.249 para.14,

<sup>1169</sup> The last one was during the approval of 2010 Budget. Prosecutor, High Council of Justice, People's Advocate acknowledged that the financial funds were insufficient to provide the appropriate running of institution and to deal with the demand of increasing their personnel and material capacity. (Shekulli 14.11.09, Avokati I Popullit: Drafti per buxhetin, antikushtetues', Shekulli 19.11.2009, Ylli Pata, 'Qeveria I pret drejtesise 'rubinetin' e parave', Shqip 19.11.2009)

<sup>1170</sup> The President of Republic of Albania, Bamir Topi (Ylli Pata, 'Withers dhe Topi: Pavaresia e institucioneve, e paprekshme: Dy ambasadore dhe kreu I shtetit paralajmerojne ekzekutivin dhe mazhorancen' Shqip 11.12.2009)

<sup>1171</sup> Law No. 9398, date 12.05.2005 "On amendments to law No. 8454 date 4.02.1999 'On People's Advocate'

considering what is in their best interest.<sup>1172</sup> Whether it would be established as a Section of the People's Advocate, or as a Children's Ombudsman, remains to be seen.<sup>1173</sup> Whatever the form, it should be pointed out that the role of monitoring goes beyond looking into complaints made by children. Such institutions promote and coordinate all the actors' efforts in adopting reforms, policies and practices.<sup>1174</sup>

The Committee recognizes the important contribution that civil society organizations can make to increase the sensitivity of governance on children and their human rights.<sup>1175</sup> In Albania, the existence of national or international NGOs, such as the Children's Human Rights Centre of Albania (CRCA),<sup>1176</sup> the Centre of Integrated Legal Services and Practices (previously known as Legal Clinic for Minors),<sup>1177</sup> Terres des Hommes, Save the Children Foundation Albania, and the Albanian Helsinki Committee, are all interested in juvenile justice and play a very positive role. The role of NGOs extends beyond merely raising awareness of the issues of juvenile justice. NGOs have played a crucial role in the preparation of the situation analysis,<sup>1178</sup> in training of all professionals involved with children in conflict with the law,<sup>1179</sup> in monitoring the implementation of the CRC by the Albanian authorities,<sup>1180</sup> and even pinpointing intervention policies and setting up a discussion forum.<sup>1181</sup>

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<sup>1172</sup> People's Advocate, Special report no.3, p.20

<sup>1173</sup> Ibid p.17-19. The People's Advocate suggests two possible institutional arrangements. It is upon the Albanian executive and legislative to undertake the necessary analyses and to decide on the model to be adopted.

<sup>1174</sup> People's Advocate, Special report no.3, p.19

<sup>1175</sup> General Comment No.5, para. 9 and 10, General Comment No.10, para.31

<sup>1176</sup> Established in 1997, the Children's Human Rights Centre of Albania / Defence for Children International (CRCA / DCI Albania) is a major child-rights organisation, which is engaged in lobbying and advocacy to influence legislation and policies of the Government through a process that provides the participation of children and takes into account their best interest. <http://www.crca.org.al/faqja>

<sup>1177</sup> Established in 2000, the Centre of Integrated Legal Services and Practices provides free legal and psychosocial assistance to minors in conflict with the law.

<sup>1178</sup> CRCA has published several reports on the situation of children in pre-trial detention, in prisons, and studies regarding Juvenile Delinquency in Albania and Juvenile Justice in Albania. Centre of Integrated Legal Services and Practices has conducted studies on methods of documentation of juvenile's cases by the police, judiciary, pre-trial detention and prisons, observation and monitoring mission in police stations. The Albanian Helsinki Committee has published an Observance of the Rights of Juvenile Offenders in Criminal Proceedings and Juvenile Justice System in Albania

<sup>1179</sup> CRCA has organised training of prison staff and other actors. Similarly the Albanian Helsinki Committee has provided training to State Police. Centre of Integrated Legal Services and Practices provided a manual for attorneys on defending juveniles.

<sup>1180</sup> CRCA provided the Alternative report about Albania at the Committee.

<sup>1181</sup> 'Forum on alternatives measures approach for juveniles in conflict with the law', Terres des Hommes, Tirana, 10-11 April 2006, 'Forum on restorative justice and mediation approach', Albanian Foundation for Conflict Resolutions, Tirana 7-8 June 2006

The description above highlights a trend that has broader implications. Policies on building an appropriate juvenile justice system were rarely, if ever, identified as a priority by the Albanian executive and legislature. Children in conflict with the law are often seen as a priority only by those who are directly involved. It is to UNICEF's credit that it managed to create a commitment to juvenile justice reform on the part of the government.<sup>1182</sup> At first, UNICEF prepared a situation analysis that was expected to provide 'an overall plan for the development of a comprehensive juvenile justice system for Albania'.<sup>1183</sup> This was followed by supporting the formation of an Inter-Ministerial Working Group,<sup>1184</sup> supporting drafting of the National Strategy, supporting activities regarding law reforming,<sup>1185</sup> the development of professional capacity,<sup>1186</sup> and coordination between sectors. UNICEF has also assisted the Ministry of Justice, which is responsible for providing a juvenile justice policy, to gain a better understanding of the relevant international standards and best practices. The contribution made by UNICEF is valuable, as it has put children's rights and children in conflict with the law higher up the political agenda. However, there are some issues to be taken into consideration when evaluating UNICEF's contributions.

Firstly, UNICEF itself admits that 'juvenile justice is a relatively new area for the organization and limited in-house experience and expertise have had a negative impact on strategic planning, the development of indicators, and the monitoring and evaluation of implementation'.<sup>1187</sup> Despite this, UNICEF undertakes a programme called 'On the Rights Track: Preventive and Restorative Juvenile Justice Reform', funded by EU CARDS and SIDA, and covering the period 2005-2009.<sup>1188</sup> The main counterparts were the Ministry of Justice and the European Commission. The overall goal of the programme is 'the

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<sup>1182</sup> UNICEF interest in reforming juvenile justice dates to 1998, the year that UNICEF prepared an action plan on children and violence in Albania. (Cappelaere, G.; Action Plan on Children and Violence in Albania. 1998)

<sup>1183</sup> Ann Skelton, Stewart Asquith S, Geert Cappelaere, and Giuseppe La Greca, *Towards a Comprehensive Juvenile Justice System for Albania - Final Report of an Expert Group Mission*, UNICEF Tirana, Albania, 2000 [http://www.unicef.org/albania/juv\\_justice\\_albania.pdf](http://www.unicef.org/albania/juv_justice_albania.pdf), (Accessed 12/07/2011)

<sup>1184</sup> Composed of lawyers and experts from the Albanian central government departments involved in the juvenile justice system (the Ministry of Justice, the Prosecutor, the Ministry of Public Order, and the Courts), the group focused on legislation and training, identifying the main issues and adequate provisions that need to be amended. (Concept and Strategy Paper, 2004 p. 3)

<sup>1185</sup> Round table: Juvenile justice: Current situation and future prospects' 18 January 2005

<sup>1186</sup> UNICEF organised jointly with the NGOs the alternative measures forum and restorative justice forum. In addition it provided professional training such for Albanian official in co-operation with the International Institute for Children Rights – Institut International des Droits des Enfants (Sion Seminar 2006)

<sup>1187</sup> Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) 'Thematic evaluation of UNICEF's contribution to Juvenile Justice System Reform in four countries: Montenegro, Romania, Serbia, Tajikistan', *UNICEF, March 2007*

<sup>1188</sup> The amount of resources allocated to Albania was some € 2,257,000. 'On the rights track: Establishment of a preventive and restorative juvenile justice system in Albania', UNICEF Tirana, p.3

establishment of a juvenile justice system based on children's rights that offer alternative measures to detention at the pre-trial, trial and post-trial stages and promotes prevention of juvenile delinquency and social reintegration of offenders'.<sup>1189</sup> The programme operates in four areas, including advocacy for policy and legislative reform, institutional capacity building and establishment of alternatives to detention, protection of children deprived of their liberty and, finally, prevention of juvenile delinquency.<sup>1190</sup>

It should be noted that there is a two-fold impact of having the Ministry of Justice as a counter partner. The programme had a positive impact on raising the awareness of OJJFR about international standards and norms, and relevant components of juvenile justice. However, the programme would be internalised and referred to as 'their' own by the OJJFR and MJ.<sup>1191</sup> To this end, no further efforts have been made to properly draft a national policy on reforming the juvenile justice system. The OJJFR has not made an effort to identify the main elements within the national and cultural contexts that are implicit in the approach to juvenile justice reform and to develop longer-term plans once the programme terminates. Moreover, the legal package would not be postponed for the future.<sup>1192</sup> At certain points, the attitude of MJ towards juvenile justice reflects the lack of interest on the part of the government, whose priorities focus exclusively on reforms seen as necessary for membership of the EU.<sup>1193</sup>

Secondly, although the programme is considered 'comprehensive' as it covers reforms in each component of the juvenile justice system,<sup>1194</sup> it does not include an awareness campaign to change public attitudes towards children in conflict with the law and juvenile justice system reforms. In addition, the programme does not include any reform element about children who are in conflict with the law, but cannot be prosecuted because of the 'minimum age of criminal responsibility' set up by Albanian law. The third weakness relates to preventive components, which focus only on activities involving community and school, excluding family and juveniles, which express criminal behaviour. The reason behind this

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<sup>1189</sup> Ibid p.3

<sup>1190</sup> Ibid p. 7-8

<sup>1191</sup> When asked about a national strategy on reforming the juvenile justice system, the officials of MJ provided the booklet published by UNICEF about the program. (Response to the survey undertaken.)

<sup>1192</sup> Response received from the questionnaire and the continuous update with the Albanian legislation.

<sup>1193</sup> Discussed at introduction.

<sup>1194</sup> Ibid note p.9.

lacuna in UNICEF's programme most likely derives from the fact that national policies might consider these components.

Indeed, the national strategy does include elements of public awareness and increases the media capacity when reporting for children in conflict with the law. However, the elements are vague and are not set out in a single section. Despite the tendency of juveniles under the age of 14 years to get involved in criminal activity, the strategy and Albanian legislation is silent.<sup>1195</sup> The recent tendencies demonstrate that there is a connection between the family environment and juvenile delinquency.<sup>1196</sup> Again, such an element is absent in the Strategy.

In conclusion, there is no overall national strategy with regard to juvenile justice. The UNICEF programme does assist in developing important components of juvenile justice. However, even for UNICEF itself, without an overall strategy it will be impossible to guarantee that outcomes of the programme have a long lasting impact on the juvenile justice system in Albania.

## ***7.2 Dealing with juveniles in conflict with the law.***

Dealing with juveniles in conflict with the law. Defining the Albanian legal disposition with regard to children in conflict with the law will help to achieve a better picture of Albanian juvenile justice. No single law covers juveniles in conflict with the law. This means that the legal provisions building up the juvenile justice system are set up and scattered in criminal codes, laws and dispositions.<sup>1197</sup> The main legislative provisions with regard to juveniles in conflict with the law are set out below:

1. Constitution: Article 54 and Chapter 2 in Part II of the Constitution
2. Codes: Law No. 7885, date 27.01.1995 'The Criminal Code of Republic of Albania' (CC); Law No. 7905, date 21.03.1995 'The Criminal Procedure Code of Republic of Albania (CCP);

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<sup>1195</sup> Hysi and Saliu 2005 observe that there are problems with children under age of criminal responsibility. (Hysi & Saliu 2005, p.29) Mandro is the first one to evidence the tendency of children under age to get involved in criminal acts. According to Mandro there is an increase at 10-20 percent per year. Mostly the under aged children are involved in crime against property. (Mandro 2007, p.81)

<sup>1196</sup> Haxhiymeri notes most of juveniles in conflict with the law find themselves in family environments indifferent to their deviant behaviour and criminal acts such as robbery (Edlira Haxhiymeri, '*Juvenile Delinquency in Albania Analysis of Factors and Causes of Juvenile Delinquency in Albania*', Children's Human Rights Centre of Albania (CRCA), Visi Design Tirana, 2007, p.26)

<sup>1197</sup> The juridical system of Albania is part of the civil law family

3. Laws: Law No. 8328, date 16.4.1998 'On Rights and Treatment of person deprived of liberty' as amended; Law No. 8331, date 21.04.1998 'On execution of criminal sentences' as amended; Law no. 8677, date 2.11.2000 'On judicial police' as amended; Law no. 9397, date 12.5.2005 'On the internal control service of the detention system'; Law No. 10032, date 11.12.2008 'On the prison police'; Law No. 9749, date 04.06.2007 'On State Police'
4. Normative Acts: Council of Ministers Decision (CMD) No. 96, date 9.3.2000 'For the approval of regulation for detention centres'; CMD no. 182 date 6.3.1998 'For the transfer of prison hospital under the Ministry of Justice'; CMD no. 411 date 1.7.1998 'For the creation of a vocational training centre for prison personnel'; CMD No. 303, date 25.3.2009, 'General Regulation for Prisons'

Indeed, the state parties have discretion upon adoption of specific forms of legislation to structure the juvenile justice system.<sup>1198</sup> However, this approach is of little concern compared to the fact that the provisions applicable to juveniles are provided through paragraphs rather than specific juvenile sections within laws. As the legislation is scattered through various paragraphs of different provisions, this implies that norms apply to adults as well as juveniles in Albania. Moreover, this form of legislation might be interpreted as not being child-friendly at all, as the whole provision regulates the rights of another category of persons – adults – and consequently the language adopted in the provision corresponds to adults. Secondly, concerns might be raised for the paragraph regarding whether the principle of evolving capacities of the child were taken into consideration or not by the drafters of the provisions. It is through these lenses that the relevant dispositions dealing with children in conflict with the law would be considered while analysing the system. To this end, a detailed picture of all the stages is adopted in order to provide a proper description of the specific tasks of relevant systems.

The 'scattering' of legislation into several provisions is just one part of the problem with the system. As the Committee observes 'the implementation of the existing provisions and the lack of an effective juvenile justice system of specialized police prosecutors, judges and social workers to deal with children in conflict with the law' is the main concern.<sup>1199</sup>

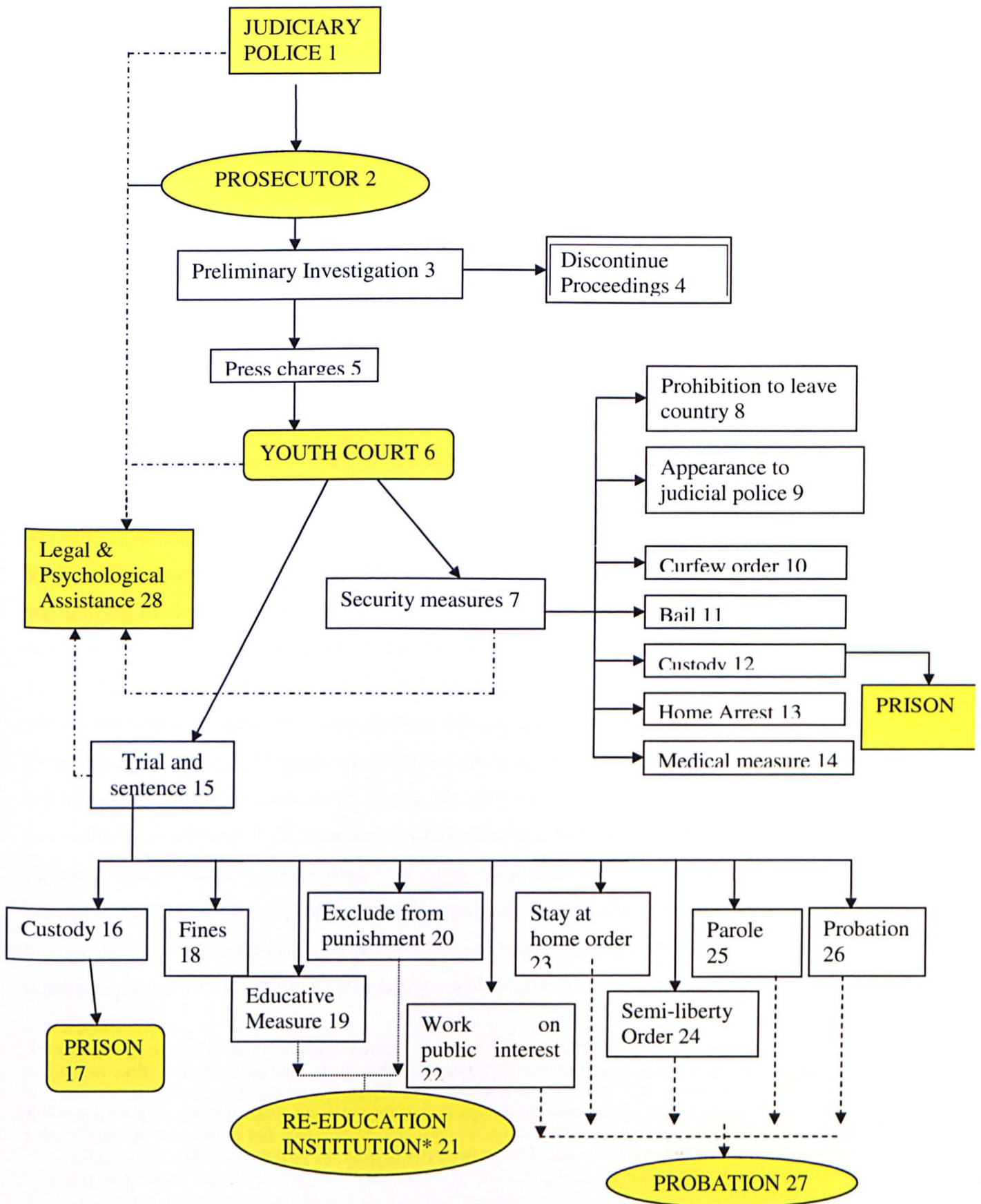
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<sup>1198</sup> As noted earlier, in discussing Article 40 paragraph 3, the Committee deems to elaborate what is a basic requirement for the system, suggesting what is compliant with the CRC regarding system as a whole and the form of laws, courts, and specialised services. In practical terms, it is primarily a domestic matter how the states adopts the international standards into domestic legislation.

<sup>1199</sup> CRC/C/15/Add.249 para.



Figure 4: The Albanian juvenile justice system in outline





The diagram presented in Figure No.4 sets out the institutional structure of the juvenile justice system. The diagram builds upon the criminal procedure provided by the CCP. The arrows within the diagram signify system relationships, and hence stages undertaken since the apprehension of a juvenile. The diagram is not exhaustive in showing all structures of the institutions, as it seeks to identify, through the various steps, the primary components of dealing with juveniles in conflict with the law. Moreover, the different styles of arrow are used to connect the steps with respective systems. Finally, the size and shape of boxes do not correspond to the importance, number of personnel, or resource allocation of systems.

The classification of an offence as a crime or contravention defines all proceeding stages and sentences given.<sup>1200</sup> Thus, if a juvenile is alleged to or has been found to have committed an offence, proceedings start with apprehension or arrest and terminate with a sentence. If the juvenile is alleged to have committed a contravention they must not be arrested even if he or she is found to have been committing the offence.<sup>1201</sup>

More precisely, when a minor is alleged to or has been found to have committed an offence and is within the minimum age of criminal responsibility, they are dealt with within three stages of the juvenile justice system prior to sentence; initial investigation, preliminary investigation and, finally, the trial itself. The CCP sanctions procedure sets out a guarantee to be observed with regard to all stages of proceedings. Firstly, Article 41 of the CCP sets as obligatory the verification of the age of the defendant in any stage and instance of the proceedings. To this end, the proceeding authority is required to make the necessary verifications and, in case of doubt, to order the necessary expertise.<sup>1202</sup> In addition, the CC gives priority to the status of being a juvenile in two situations. If, despite the verification and expertise, there are still doubts, a person is given the benefit of the doubt and is presumed to be a juvenile.<sup>1203</sup> When during the proceedings it emerges that the person is under 14 years, the case is dismissed because the minor has no criminal responsibility.<sup>1204</sup> Secondly, Article 42 of the CCP provides that the proceeding system must collect information on personal

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<sup>1200</sup> Article 1 PC classifies the criminal acts into crimes and contraventions. To this end Article 29 provides that sentence for a crime are: imprisonment, life imprisonment, fine, imprisonment and fine, while for contraventions: imprisonment (5 days to 2 years) and fine.

<sup>1201</sup> Article 230 paragraph 4 CCP. Islami et al commenting on the provision observes that even if the juvenile is caught committing the offence of contravention is must not be arrested. The reason lies in the fact that contraventions are defined as offences not of major dangerousness for the security of public.

<sup>1202</sup> Article 41 paragraph 1 CCP

<sup>1203</sup> Ibid paragraph 2

<sup>1204</sup> Article 290 and Article 328 paragraph ç CCP

living conditions, family and social situation of the juvenile offender. Such information is relevant not only to determine the consciousness and scale of responsibility, and to evaluate the social importance of the fact, but also to set up a general assessment of the offence and to respond to it in an appropriate manner. The juvenile's acquaintances and expert opinion serves as a source to build up this information.<sup>1205</sup> It remains to be seen how effectively the Albanian authorities comply with such a requirement.

### **7.2.1 Police system**

**Procedure.** Article 27 of the Constitution provides on the right to liberty of person.<sup>1206</sup> Its meaning is addressed within Chapter III of CCP, which regulates the apprehension and arrest of a person. In compliance with the requirements imposed on Articles 251-254 of the CCP, a juvenile might be apprehended when there are suspicions or arrested when there is evidence by the officers and agents of the judiciary police. Echoing many international human rights treaties, Article 28 paragraph 1 of the Constitution imposes an obligation upon the officers and the agent of judiciary police to immediately notify everyone, in a language that they understand, of the reasons for this measure, as well as the accusation made against them. Furthermore, everyone 'shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his rights.'<sup>1207</sup> Article 255 of CCP replicates Articles 28 of the Constitution, adding in paragraph 4 an explicit obligation to provide for the notification of parents or guardians in the case of juveniles. Upon the apprehension or arrest the judiciary police shall immediately refer the case to the prosecutor and make a juvenile available to a prosecutor.

**Structure for juveniles.** The Albanian legislation grants to the state police the attributes of the judicial police.<sup>1208</sup> The judicial police operate under the direction of prosecutors.<sup>1209</sup> The law set up the task of the judiciary police to become informed on criminal acts, to prevent further consequences from them, to execute full acts and all included investigations under

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<sup>1205</sup> Halimi et al observes that a whole psychological and social picture of the offence places the court in a better position to evaluate the impact of sentence to juvenile. (Halim Islami, Artan Hoxha, Ilir Panda, *Koment I Procedurës Penale*, Morava, Tirane 2003p. 598)

<sup>1206</sup> Article 27 of the Constitution reads: 'No one's liberty may be taken away except in the cases and according to the procedures provided by law'.

<sup>1207</sup> Article 28 (1) Constitution, Article 255 paragraph 1 CCP

<sup>1208</sup> Article 4, Law No.9749, date 4.06.2007 'On State Police', Article 6, Law No.8767

<sup>1209</sup> Article 30 paragraph 2 CCP, Article 6, Law No.8767. Law No. 9749 'On State Police' is silent with regard to relations of the judiciary police with other structures of police and the institution of prosecutor.

delegation and supervision of prosecution.<sup>1210</sup> Having responsibility for two institutions, the State police and prosecutor, renders it very difficult for the organizational structures of the judiciary police. Indeed, an organogram of the judiciary police is subject to revision every two-years, and is defined through the co-operation of the Ministry of the Interior, the General Prosecutor and the Ministry of Justice. It largely depends on the priorities set up in preventing delinquency and criminality.<sup>1211</sup> Therefore, setting up a special section on juveniles will largely depend on the political willingness of all institutions involved. Currently, there is no specific section to deal with juveniles within the judiciary police.<sup>1212</sup>

The double dependency (Ministry of Interior and the Prosecutor) has resulted in an abnormal functioning of the judiciary police, delays in investigation, and ambiguities with regard to competence.<sup>1213</sup> A joint order of the General Prosecutor and the Minister of the Interior mainly deals with the investigation procedure and the relationship between the prosecutor-judiciary and police officer, rather than discussing the structure and functioning of the judiciary police in respect to persons apprehended.<sup>1214</sup> Therefore a reference to role, functioning and organization of state police was deemed necessary to clarify whether the structure of the last one responds to the juveniles. The State police is a police service, which has a mission to maintain public order and safety according to law while respecting human rights and freedoms.<sup>1215</sup> While the Ministry of Interior has overall responsibility for policy-making, internal security of the country, including borders, and the management of police at governmental level, the General Directorate of Police is the authority that administers the operational activity of the state police. The General Directorate of the Police is present in all Albania through Directorate Police and the Police Commissariat.<sup>1216</sup> The new structure of the General Directorate of Police comprises five departments, which are divided in directories, sectors, and offices (Appendix 14). None of the departments include a sector dealing with

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<sup>1210</sup> Article 3, Law 8767

<sup>1211</sup> Article 8, Law 8767

<sup>1212</sup> Such a statement is based on the consultation of organogram of General Prosecutor office and district prosecutor office. <http://www.pp.gov.al/sq/home/PP/struktura.html> as reviewed by 26.12.2008

<sup>1213</sup> General Prosecutor Speech on 15 April 2008. <http://www.pp.gov.al/sq/home/Njofitime/marveshja%20me%20ministrine%20e%20brendshme.pdf>

<sup>1214</sup> Ibid

<sup>1215</sup> Ibid Article 1. The overall institutional duties of the State Police are in regard to personal life, security and property protection, crime prevention, detection and investigation, according to criminal and criminal procedural law criminal activity, protection of important public institutions and properties, and guarantee the enforcement of laws and legal acts entitled to.

<sup>1216</sup> Wherever there is a presence of a Prefecture (Albanian nomination for county: currently there are 12 counties) there is a Directorate of Police in the regions responsible for one or more Police Station. The organisational structure of directorate is the same as the General Directorate of Police.

juveniles in conflict with the law. This absence is extended to the level of specialists employed within the General Directorate of Police.<sup>1217</sup> The only structure closely related to juvenile justice is within the Directorate of Heavy Crimes, which includes the Sector of Child Protection and Domestic Violence. The work of this sector is limited to the compilation of detailed statistics on juveniles as authors of criminal acts.<sup>1218</sup> Apparently, the structure of Child Protection, which used to deal with criminal activity against children and criminality of children, has been discarded.<sup>1219</sup> Therefore, even the structure of the state police is insufficient at all levels to deal with juveniles in conflict with the law.<sup>1220</sup>

**Legislation.** Whilst Law 8767 'On judiciary police' lacks any specific reference, Law No. 9749 'On state police' incorporates some provisions regarding juveniles. Article 107, paragraph 2, provides on the immediate notification of a person responsible for the juvenile's custody. Two issues should be noted with regard to this provision. Firstly, there is no clear definition of whether the provision is used only when a legal guardian is appointed to a juvenile or whether it refers to the parent as well.<sup>1221</sup> Secondly, the provision does not transpose the specific requirement already established by the Constitution and the CCP. The difference in the terminology used is clear when considering Article 96, which explicitly obliges the state police to notify the parents of minors under 14 who violate the public order.<sup>1222</sup> Article 107, paragraph 3, adopts a child-oriented requirement that specifically states that minors should be escorted to separate premises than those used for adults. Finally, Article 109 paragraph 3 provides that a search of a minor should be made in the presence of parents or guardians. Article 118 outlines that a police officer is allowed to use force to achieve a legal purpose, but no more than necessary and after all other remedies have been exhausted. However, the specific provision which prohibited the breach of one's dignity, especially that of juveniles, in public broadcasting is discharged by the current law.<sup>1223</sup> In

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<sup>1217</sup> Mandro observes that in all directorates including that of Tirana district there is not a single specialist for juvenile issues. (Mandro 2007, p.33)

<sup>1218</sup> Ibid p.33

<sup>1219</sup> The Child Protection Department was established and has functioned since 1<sup>st</sup> of October 2004. The overall aim was protection of children from abuse, preventing the juveniles from being involved in crimes, and representing their recommendation in regard to juvenile in court. The work of the department at police station level consists of prevention, detection and documentation of the criminal activity against the children and the crimes committed by children themselves.

<sup>1220</sup> Directorate of Police and Police Station at Prefecture level replicate the structure of General Directorate of Police.

<sup>1221</sup> The next phrase states that 'this is also the case for the adults for whom legal guardians are appointed'.

<sup>1222</sup> As earlier noted there is an increase of delinquency among the minors under 14 years in Albania, and this is among the first safeguards introduced to deal with this category of minors.

<sup>1223</sup> Article 57 of Law No 8553, dated 25.11.1999 'On the State Police'

addition, the non-discrimination principle internalised by Article 61 lacks any reference to age.<sup>1224</sup> The law is limited to 'respect of human rights and freedoms' rather than categorically prohibiting the use of torture and inhuman and degrading treatment.<sup>1225</sup> Therefore, one might note that this law, with regard to juveniles in conflict with the law, makes little progress.

### **7.2.2 Prosecution System**

**Procedure.** The Office of the Prosecutor is responsible for carrying out criminal prosecutions, to represent charges in the name of the state in court, to undertake measures and to oversee the execution of criminal justice decisions, as well as performing other duties provided by law.<sup>1226</sup> Once the case is referred, the prosecutor proceeds with the interrogation of juveniles, which must take place in the presence of the selected or appointed ex-officio defence lawyer.<sup>1227</sup> According to Article 256 of the CCP, the prosecutor must notify the juvenile about the facts why they are being investigated and the reasons of the interrogation. When the investigation is not impaired, the juvenile is informed of the evidence and its source.<sup>1228</sup> In a case where a juvenile is confounded, the law requirements are not observed or the time limit of the prosecutor notification is violated, the prosecutor must authorise the discontinuation of proceedings.<sup>1229</sup> Once the prosecutor presses charges and continues with proceedings, the juvenile must be brought 'within 48 hours before a judge'.<sup>1230</sup> During all this time, the juvenile is detained in rooms used for accompaniment and detention of citizens at the Police Commissariat.

**Structures for juveniles.** The General Prosecutor has overall responsibility for organizing, managing, and representing the Prosecutor institution. As of November 2009, the Office of the General Prosecutor does not have within its structure a specialized section for juveniles. This absence is expanded to all levels of the prosecution system (Appendix 15 and Appendix 16).

**Legislation.** Article 6, Law No. 8737 explicitly prohibits the prosecutor to release data that infringes the rights of minors and damages the process of investigation. Despite this provision, there is no more indication with regard to juveniles. However, it should be noted

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<sup>1224</sup> Article 61 transposes Article 18 of the Constitution, which is also silent with regard to age.

<sup>1225</sup> Article 27, Law No 8553, dated 25.11.1999 'On the State Police' contained such provision.

<sup>1226</sup> Article 2, Law No. 8737, date 12.02.2001 'On the organisation and functioning of the Prosecutor's Office'

<sup>1227</sup> Article 256 CCP

<sup>1228</sup> Ibid

<sup>1229</sup> Article 257 CCP

<sup>1230</sup> Article 28 paragraph 2 of the Constitution, Article 258 and 259 CCP

that Law No.8737 'On the Organization and functioning of Prosecution' deals with the organization and functioning of the prosecution office, the appointment, status and disciplinary proceeding. The CCP provides on the specific duties of the prosecutor to deal with juveniles.<sup>1231</sup>

### **7.2.3 Legal (Defence lawyer)<sup>1232</sup> and psychological assistance system procedure.**

Providing legal and psychological support to a juvenile is considered of paramount importance and obligatory in all stages of proceedings.<sup>1233</sup> Although introduced as one system within the same article, the Albanian legislation considers the system as separated into two entities. The entity of legal assistance is introduced in a straightforward manner by Article 35 paragraph 2, which states that 'none of proceeding organs can undertake any actions and compile acts, which requires participation of juvenile without the presence of a defence lawyer'. Exemption to the presence of parents and other persons required by a juvenile and accepted by the proceeding authority is made only when there is a conflict with the interest of a juvenile or when a delay can damage the process.<sup>1234</sup> Article 49 paragraph 2 CC states that legal representation for a defendant under the age of 18 years old is obligatory.<sup>1235</sup> Article 31 (d) guarantees the right of free defence for those that do not possess sufficient funds to afford a private attorney.<sup>1236</sup> Similarly, it is mandatory to provide free legal assistance to a juvenile. If a defendant is not represented when the trial is scheduled to begin, the court must appoint a defence lawyer.

Although Article 35 of the CCP acknowledges the entity of psychological assistance, the CCP does not state the intentions for this assistance. In addition, there is no clarification whether this assistance means that the expert (psychologist or social worker) has to be involved in compiling the social report, or whether the expert has to be present during all proceeding stages.<sup>1237</sup> This unclear definition of the role has led to psychological assistance

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<sup>1231</sup> As provided in the Duties and Role section.

<sup>1232</sup> Article 35 CCP introduces the legal assistance at paragraph 1. However, paragraph 2 defines that this legal assistance is intended as a defence lawyer.

<sup>1233</sup> Article 35 CCP. As can be noted the provision internalise the international standards expressed in Article 37 (d) and Article 40(2)(b)(ii) of CRC and Rule 10.1 of Beijing Rules.

<sup>1234</sup> Ibid

<sup>1235</sup> The requirement of Article 49 paragraph 2 differs considerably from the paragraph one which provides that an adult defendant should explicitly require a defence lawyer to be appointed by the proceeding organ in case they have not selected one have remained without him.

<sup>1236</sup> Of such importance is considered the right to defence to be transposed in Article 6, 49(7), 255(1) and 309 CCP

<sup>1237</sup> Mandatory report according to Article 42 CCP

being neglected, as the absence of it does not render the processes or their outcomes invalid, as in the case of legal assistance.

**Structure for juveniles.** The attorney in Albania is a free and independent profession, which is self-regulated and self-governed. Law No.9109, date 17.07.2003 'On profession of attorney in the Republic of Albania' does not contain any provision to license the member based on their specialization. The National Bar Association is responsible for the control and regulation of the attorney profession and is required by law to provide a list of attorneys who may be appointed to represent accused persons who have not retained a defence lawyer.<sup>1238</sup> The existence of a list presumes that the appointment of a defence lawyer is entirely the responsibility of the prosecutor or the judge. To organise the proper functioning of legal aid, Law No. 10039, date 22.12.2008 'On legal aid' was approved. There is no information regarding whether the Commission on Legal Aid has started the activity.<sup>1239</sup> Whether the Commission on Legal Aid would introduce a division on attorneys according to their specialisation remains to be seen.

**Legislation:** Law No.9109, date 17.07.2003 'On profession of attorney in the Republic of Albania' does not contain any specific references to juveniles as it provides the general terms of reference for the functioning of the attorney profession. The Albanian Code of Ethics for Advocates again does not determine any ethical principle for the conduct of advocates while dealing with juveniles.<sup>1240</sup>

#### **7.2.4 The Court System**

**Procedure.** The Court system is responsible for dealing with the legal processes involving juveniles. The Courts in Albania are organised on three levels: a) First Instance Court, b) Court of Appeal and c) Supreme Court. The court system is involved in the evaluation of security measures and the trial.

The judge decides upon the pre-trial detention or release no later than 48 hours from the moment they receive documents for review.<sup>1241</sup> The evaluation hearing reviews whether there

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<sup>1238</sup> Article 49, paragraph 7 CCP, article 22 (dh) Law No. 9109

<sup>1239</sup> According to Article 4 and 10, Law No. 10039, the Commission on Legal Aid administer and manage all the issue of legal aid on behalf of Ministry of Justice and National Bar Association.

<sup>1240</sup> The Code of Ethics for Advocates was approved by National Bar Association in 12.11.200

<sup>1241</sup> Article 28 paragraph 2 of the Constitution, Article 258 and 259 CCP

are grounds and legality to apply a precautionary measure, regardless of whether liberty was taken away through a judge or prosecutor order, or whether the judicial police instigated it.<sup>1242</sup> Therefore, a court shall consider whether, because of the particular circumstances of the case and the individual, there are reasonable grounds for suspicion, as well as whether there is a risk of destroying evidence, escape or further criminality.<sup>1243</sup> Once the judge is satisfied that these conditions are met, they must consider whether the measure is proportionate,<sup>1244</sup> and finally whether any other measure, such as house arrest, bail or a reporting obligation would be sufficient.<sup>1245</sup> It should be noted that from the apprehension or arrest until the judge expresses a view on the pre-trial measure to be adopted, the juvenile has already been under police custody for ninety-six hours.<sup>1246</sup> If the judge issues a preventive measure with the deprivation of liberty, the juvenile is transferred to a pre-trial detention institution. Article 28, paragraph 3, of the Constitution entitles juveniles to the right to appeal the judge's decision with regard to pre-trial detention.

If the case is not discharged or suspended, the prosecutor must present the case for a trial within three months from the date that the case is notified as a criminal offence.<sup>1247</sup> The prosecutor may extend this deadline on the grounds of 'complex investigations or when it is objectively impossible to terminate them within the time-limit'.<sup>1248</sup> However, the law provides safeguards for this extension to take place. Thus, applying a three-month time limit, which must be evaluated by the court,<sup>1249</sup> the maximum deadline that an investigation could be extended is no more than two years.<sup>1250</sup> The hearing is scheduled for 10 days after the

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<sup>1242</sup> Article 28 explicitly states that every person whose liberty is taken away, through order or with the initiative of the judicial police, may address a judge at any time, who shall decide within 48 hours regarding the legality of this action. In addition the Article 5 CCP states that a person's liberty may be taken away only through pre-cautionary measures and according to the procedures provided by law.

<sup>1243</sup> Article 228 CCP

<sup>1244</sup> Article 229 CCP

<sup>1245</sup> Section I, of the Chapter I Title V "Security Measures" of CCP provides on division, conditions and criterion of precautionary measures, Section II considers prohibitive measures (as defined in Figure), their definition and execution. In addition the Chapter IV, V and VI of CCP explicitly address the modalities of pre-trial deprivation of liberty and bail.

<sup>1246</sup> A decision on whether to arrest or release such a person must then be taken within twenty-four hours by prosecutor (Art. 255, Chapter III, section III of the CCP). Once the prosecutor presses charges they must demand the evaluation of the measure by the court within forty-eight hours from the arrest or detention. The court fixes the hearing for the evaluation as quickly as it can but still within forty-eight forthcoming hours, giving notice to the prosecutor and the defence lawyer.

<sup>1247</sup> Article 323 CCP.

<sup>1248</sup> Article 324, paragraph 2 CCP

<sup>1249</sup> Article 325, CCP

<sup>1250</sup> Article 324, paragraph 2 CCP



prosecutor deposits the request.<sup>1251</sup> Article 42 of the Constitution entitles everyone 'to the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law'. Furthermore, everyone is entitled to the right of being innocent 'so long as his guilt is not proven by a final judicial decision'.<sup>1252</sup> The CCP of Albania adopts an element of the accusatorial system, incorporating some elements of the inquisitorial system with regard to rights of parties and the functions of the judge.<sup>1253</sup> According to Article 3 of the CCP, the court renders justice through decisions based upon evidence examined and revealed in the hearing. The hearing of juvenile cases is conducted in a juvenile section, established at district courts, by the Presidential Decree.<sup>1254</sup> The jurisdiction of the section is expanded to a hearing in the case of all juveniles whom were under the age of 18 years at the time of the alleged offence.<sup>1255</sup> The involvement of an adult in the commission of the offence is irrelevant to the jurisdiction of the special section over a juvenile.<sup>1256</sup> In case such an offence is punishable by a sentence of more than 10 years, the hearing panel is composed of three judges. The special section loses its jurisdiction only when the juvenile is accused of terrorism, organized crime or trafficking.<sup>1257</sup> According to the CCP, this offence falls within the jurisdiction of the Serious Crimes Court.<sup>1258</sup> The Constitution and CCP provide adequate procedural safeguards. The Albanian Constitution envisages that nobody shall be compelled to testify against themselves, their family and to confess guilt.<sup>1259</sup> The juveniles are entitled to put questions to the witnesses and to require the residence of the witnesses, experts, and other persons who can clarify the case.<sup>1260</sup> To fully respect the privacy of the child at all stages of the proceedings, in addition to what has been endorsed by the Constitution, the CCP prevents the publication of generalities and photos of the minor defendant accused of infringing penal law.<sup>1261</sup> Once the debate over the facts terminates, both parties present their concluding

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<sup>1251</sup> Article 333, paragraph 1 CCP

<sup>1252</sup> Article 30, Constitution. Similarly, the right of being innocent is recognised in Article 4 and 11 para. 2 CCP

<sup>1253</sup> Halimi et al. p.24. Therefore the CCP provides that both parties in preliminary investigation participate in gathering and exchanging facts on the offence, which are considered as evidence only through the examination and cross-examination at hearing. Consequently the role of judge is to preside over the proceedings and intervene when the parties do not respect the debate. However the role of judge goes beyond merely being a referee, as the judge might order additional evidence to be taken into account. (Halimi et al. p24-25)

<sup>1254</sup> Article 13, paragraph 4 CCP

<sup>1255</sup> Article 81, paragraph 2 CCP

<sup>1256</sup> Ibid paragraph 1

<sup>1257</sup> Articles 75.a, 140 and 284.a CCP

<sup>1258</sup> Serious Crime Court was established in 2004 in compliance with Law no. 9110, date 24.07. 2003, 'On the Organisation and Functioning of the Courts for Serious Crimes'. The Serious Crime Court has jurisdiction over crime defined in articles 73, 74, 75, 79 letters "c" and "ç", 109, 109/b, 110/a, 111, 114/b, 128/b, 219, 220, 221, 230, 230/a, 230/b, 231, 232, 233, 234, 234/a, 234/b, 278/a, 282/a, 283/a, 284/a, 287/a, 333, 333/a e 334 of CC

<sup>1259</sup> Article 32, The Constitution,

<sup>1260</sup> Article the Constitution, Chapter II, Section III CCP

<sup>1261</sup> Article 103 CCP

remarks to the judge.<sup>1262</sup> With judicial examination closed, the judge will make their decision in private deliberations, which can be an acquittal, a guilty sentence or a dismissal. The decision is based on the evidence presented and must be issued in a written form arguing the issue of guilt. If the judge declares the juvenile guilty, there is a conviction to be followed by a sentence. In addition to this, two more types of trial might take place. When the juvenile has been caught in *flagrante delicto*, or there is clear evidence of the offence, a direct trial takes place.<sup>1263</sup> The juvenile might demand the fast-track trial, in which the trial phase is absent.<sup>1264</sup> A hearing will be conducted on the facts gathered during the preliminary investigations by the prosecutor and his arguments with regard to the defendant's request,<sup>1265</sup> the juvenile must surrender their right to present and form the evidence. The reward of following this type of proceeding is a reduction of the sentence by one third.

**Structure for juveniles.** There are no juvenile courts in Albania. In response to such an absence, Article 13, paragraph 4 of the CCP delegated the task of establishing juvenile sections to the President. Despite the CCP entering into force in June 1996, the trial of juveniles would still take place in criminal courts designed for adults. Such proceedings took place up until September 2007, when six sections for juveniles were established next to the County Courts in Tirana, Durrës, Shkodër, Vlorë Korçë and Gjirokastër<sup>1266</sup> Since then, there have twice been interventions with regard to territorial jurisdiction of six sections for juveniles.<sup>1267</sup> Rather than establishing new sections in the First Instance Court, the territorial jurisdictions of the sections have been expanded. The decrees do not establish similar sections in appeal courts.

**Legislation.** The Courts are established in compliance with Law No.9877, date 18.02.2008 'On the organization of Judiciary System In Albania'. Thus, judicial power is executed through the First Instance Court, the Court of Appeals and Supreme Court (Figure No.5).<sup>1268</sup>

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<sup>1262</sup> Article 378, paragraph 4 CCP

<sup>1263</sup> Article 400 paragraph 1 CCP

<sup>1264</sup> Article 403 CCP

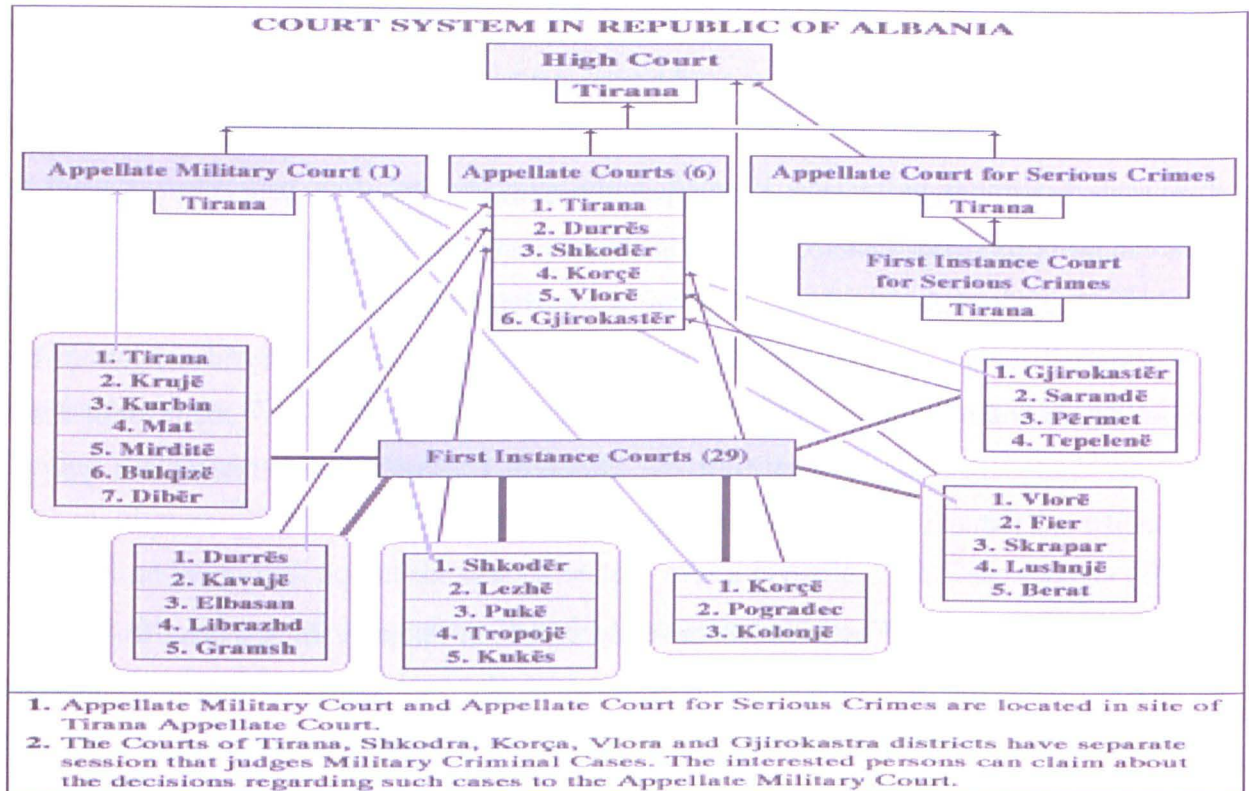
<sup>1265</sup> Article 405, paragraph 6 CCP

<sup>1266</sup> President of Republic of Albania, Decree No.5351 date 11.06.2007, 'On establishment of special section for trial of minors at First Instance Courts' President of Republic of Albania, Decree No.6218 date 07.07.2009, 'On establishment of special section for trial of minors at First Instance Courts'

<sup>1267</sup> President of Republic of Albania, Decree No.5559 date 27.12.2007, 'On amendments to Decree No.5351 date 11.06.2007, 'On establishment of special section for trial of minors at First Instance Courts', and

<sup>1268</sup> Article 3, paragraph 1 Law No. 9877

Figure 5: Court System in Republic of Albania.<sup>1269</sup>



In addition to these courts, other courts with specific purposes (as in the case of Serious Crime or the Administrative Court) might be established according to law.<sup>1270</sup> On one hand, the wording of the provision leaves open the way juvenile courts can be established. On the other hand, the law itself represents a regression with regard to the juvenile justice system. The law omits the provision of appointing psychologists in court proceedings. Thus, Law no. 8656/31.7.2000 introduced article 25/a that follows article 25, which provided ‘on the nomination of vacancies and appointments of psychologists participating in juvenile court proceedings the articles 21, 22 and 23 of this law are observed’. However, the disposition was never applied in practice. This was because a package designed to introduce the judgment of the minors by a judge team of two judges and a psychologist with the status of the judge was never considered by Parliament.<sup>1271</sup>

### 7.2.5 Penitentiary system for juveniles

**Procedure.** As discussed above, a juvenile would lose their liberty when the court decides to apply this as a precautionary measure or as a sentence. In the first option, the juvenile is kept imprisoned as a security measure at pre-trial detention institutions. In the second option, they

<sup>1269</sup> Serious Crime Court, Justice Institutions, Courts, <http://www.gjkr.gov.al/>

<sup>1270</sup> Ibid paragraph 2

<sup>1271</sup> CRC/C/11/Add.27, paragraph 462

will serve the sentence in a prison or, as it is currently known, an institution for execution of criminal sentences (IECS).<sup>1272</sup> Once the sentence is issued, the prosecutor is responsible for taking all measures for executing the court's decision.<sup>1273</sup> This responsibility implies allocation of:

- The institution where the juvenile shall serve the sentence;<sup>1274</sup>
- Authorisation of any transfer to other institution including on medical grounds;
- Considering information, requests and complaints of a juvenile deprived of liberty;
- Verification of documentation;
- Equipment and environment in the institution;<sup>1275</sup>
- Granting or extension of the prison leave when the director of a prison has refused to do so;<sup>1276</sup> and
- Requesting the court to permit the control of correspondence of a prisoner.<sup>1277</sup>

In other words, the prosecutor is responsible for controlling the execution of a criminal sentence for a juvenile.

Deprivation of liberty, whether as a pre-trial measure or imprisonment, starts with the issue of an execution order by the prosecutor. Once a valid order is presented, the juvenile is received in the facility. In response to specific needs, individualisation of treatment to the specific condition and characteristic of a juvenile is required.<sup>1278</sup>

Organisation, functioning, enforcement of criminal sentences, treatment of persons deprived of liberty and following up of policies for IECS is the responsibility of the General Directorate of Prisons (GDP), an institution affiliated to and dependent on the MJ.<sup>1279</sup> The task of day-to-day management of the premises and care of detainees is delegated to the IECS. The IECS is organised and managed according to its internal regulations. The

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<sup>1272</sup> 'General Rules of Prison' approved by CMD No.63 date 9.03.2000 are used throughout for the regulation of the term 'prison'. The new General Rules of Prison approved by CMD No. 303, date 25.3.2009 adopts the term 'institution for execution of criminal sentences'. However there is a contradiction as the title safeguards the old terminology while the text adopts the new terminology.

<sup>1273</sup> Article 463 paragraph 1 CCP,

<sup>1274</sup> Article 464 CCP, Article 13-17 Law No. 8323, Article 9 Law 8331

<sup>1275</sup> Article 70 Law No. 8328

<sup>1276</sup> Ibid Article 60. However, Law No. 9888, delegating this authority to the court, amended the provision.

<sup>1277</sup> Ibid Article 41

<sup>1278</sup> Article 10 Law No.8328

<sup>1279</sup> Article 16, Law No. 8678



Penitentiary Police, as an armed structure at the GDP,<sup>1280</sup> is assigned to safeguard the prison. Prison hospital is also under the authority of the Ministry of Justice.

**Juvenile structures.** Figure No. 6 below represents the penitentiary institutions (IECS), prisons and pre-trial detention institutions. The Director is responsible for the daily organization, control and management of prison. The penitentiary institutions are classified as follows:

- *High security prisons* are the penitentiary institutions for persons serving sentences following involvement in organized crime and other persons deprived of liberty whose conduct and behaviour makes impossible their stay in other categories of prisons.<sup>1281</sup> Women and juveniles might serve the sentence in a section of a high security prison for very severe offences and behaviour.<sup>1282</sup>



**Figure 6: Institution for Execution of Criminal Sentences in Albania**

<sup>1280</sup> Article 1, Law No. 8757. After being in force for more than 7 years the role of prison police is amended in a softer version to determine its mission as ‘safeguarding the order and security of IECS and transfer of detainees, in compliance with the law and respecting human rights’. (Article 2, Law No. 10087)

<sup>1281</sup> Article 13, Law No. 8328

<sup>1282</sup> Ibid second paragraph. However no longer in force as it was replaced by Article 7, Law No. 9888

- *Ordinary security prisons* are the penitentiary institutions where all persons deprived of liberty, including the sick and disabled, serve their sentences.<sup>1283</sup>
- *Low security prisons* are the penitentiary institutions where all persons deprived of liberty because of criminal contraventions or criminal offences because of negligence and whom are not recidivists serve their sentences, as well as all the inmates of ordinary security prisons, who are transferred for good conduct when there is less than six months imprisonment to serve.<sup>1284</sup>
- *Special institutions* are specific medical institutions or special sections in prisons or in civil hospitals, where they serve the deprivation of liberty for persons in need and attention of medical treatment, or persons with mental or psychiatric disturbances.<sup>1285</sup>
- *Pre-trial detention institutions* are institutions for detention of pre-trial detainees.<sup>1286</sup>

Juveniles must serve their sentence, involving the deprivation of liberty, in institutions separate from those outlined above. However, highlighting the inability to comply with such a requirement, Article 17 of Law No. 8328 provides that this placement might be in a separate section of the institutions described above. It is this second option that is largely applied to juveniles by the penitentiary system. In both options, the juveniles are housed in a special room or special wing. At present, there is no special institution for pre-trial detention. This is because of the fact that until the transfer was completed, the pre-trial detention – except in the capital Tirana – was located within police quarters. The juveniles are housed in a specific wing with their own access in pre-trial detention institutions in Tirana. The transfer has caused a number of difficulties, starting with the availability of institutions to house persons in reprimand and terminating with the negative impact on respecting the children's rights in this institution.<sup>1287</sup> Juveniles sentenced to deprivation of liberty are housed in a small wing consisting of five rooms for male juvenile offenders, in the ordinary security Prison of Vaqar (10 Km far from Tirana).<sup>1288</sup> In compliance with international standards, juveniles who

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<sup>1283</sup> Ibid Article 14. The placement of the sick and disabled under such regime is made on the grounds that there is no need for 24-hour medical surveillance. However this formulation of provision was amended and placement of the sick and disabled was removed by Article 8 Law No. 9888

<sup>1284</sup> Ibid Article 15. However Article 8 Law No. 9888 rebuff complete the formulation of the provision.

<sup>1285</sup> Ibid Article 16

<sup>1286</sup> This provision was added by Article 10 Law No.9888

<sup>1287</sup> Mandro p.61-62. Although it took over 7 years to complete the transfer, no plans were made to build the necessary infrastructure to respond to this development.

<sup>1288</sup> CRC/C/11/Add.27, paragraph 465, Mandro p.62, a new separate establishment for the treatment of minors in Kavaja was opened in October 2009. It is claimed by the Albanian authorities to be a 'modern centre'. The centre was built using donations from the European Community. The activity of this centre might be the subject of further studies in the future. <http://www.dpbsh.gov.al/?fq=brenda&gj=gj1&kid=64> (accessed 16/07/2011)

turn 18 while serving their sentence are housed within the same wing in a special room. For female juvenile offenders, there is no juvenile section except placement according to age in both pre-trial and sentence institutions.

**Legislation.** In addition to the CCP, Albanian legislation includes three fundamental normative acts in governing the penitentiary institutions. Law No. 8331, date 21.04.1998 'On execution of criminal sentences', as amended, provides on the enforcement of all criminal sentences describe in the figure. There is no specifically designed article or section regarding juveniles, except a statement acknowledging that 'the criminal court decision for juveniles and women are enforced in special and favourable places and modalities, according to this law or other normative acts'.<sup>1289</sup> With regard to deprivation of liberty, the principal legal disposition is Law no. 8328 date 16.4.1998, as amended, 'On the rights and treatment of persons deprived of liberty'. The law defines, in specific terms, the rights, aims and conditions on the treatment of persons deprived of liberty. However, similarly to Law No. 8331, there is no specific article or section, which address the juveniles deprived of liberty except formulation of Article 17. The law considers the re-education of detainees.<sup>1290</sup> In 2008, the penitentiary system of Albania started to discuss social rehabilitation of persons deprived of liberty rather than punishing and re-educating them.<sup>1291</sup> To this end, the placement of juveniles in high security institutions was ruled out.<sup>1292</sup> Article 5 Law No. 8328 entitles a juvenile to be treated with humanity and dignity. However, the provision lacks any reference to the specific needs of a juvenile. Thus, the law provides for an obligatory education system for juveniles,<sup>1293</sup> special measures to be designed with regard to a juvenile's contact with their family,<sup>1294</sup> reduction by half of the disciplinary measures,<sup>1295</sup> and notification of parents upon a juvenile's release.<sup>1296</sup>

Implementation of these laws is considered by the CMD No. 63 date 9.03.2000 'On General Prison Rules' (GRP). However, compared to the laws, the GRP adopts rather 'harsh' language when considering the rights and treatment of persons deprived of liberty, starting

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<sup>1289</sup> Article 5 Law 8331.

<sup>1290</sup> Article 9, Law No. 8328

<sup>1291</sup> Article 5, Law No. 9888

<sup>1292</sup> Ibid Article 7

<sup>1293</sup> Article 3, Law No. 8328

<sup>1294</sup> Ibid Article 40

<sup>1295</sup> Ibid Article 53

<sup>1296</sup> Ibid Article 67

with the term 'prison' rather than an 'institution of deprivation of liberty'. It subsequently continues with the objective of regulation which emphasises 'discipline' and lacks any reference to human rights,<sup>1297</sup> the introduction of an administrative hierarchy in which the Chief of Prison Police is positioned after the Director,<sup>1298</sup> a minimum of 1900k/cal per day of food intake,<sup>1299</sup> intervention of public order forces to exercise control,<sup>1300</sup> and rehabilitation to society only during the last six months before release of a detainee.<sup>1301</sup> Special treatment of juveniles is not considered. Overall, the GRP briefly describes the main duties of a prison administration. There is no detailed requirement to clearly provide on the rights of detainees and duties of administration to respect and comply with these rights. Despite such abnormalities, the GRP had a long life, until the Council of Ministers adopted the new regulation during March 2009.<sup>1302</sup> The new GRP introduced a new approach to considering persons deprived of liberty, as it places upfront the rights and obligations of detainees in pre-trial or imprisonment institutions.<sup>1303</sup> However, the new GRP does not distinguish between a juvenile's treatment and their needs. The requirements of their treatment are introduced while referring to those for adults. Thus, the new GRP transposes the requirement of Law No. 8328 as amended, introducing new elements such as explicit prohibition of housing juveniles with adults and females with juvenile males,<sup>1304</sup> and compensatory permissions to leave the institution doubles in time for juvenile detainees.<sup>1305</sup>

### **7.2.6 Alternative sentencing system**

**Procedure.** Alternative sentences to deprivation of liberty were only introduced into Albanian legislation in 2008. It should be noted that they do not distinguish between juveniles and adults. The alternative sentences include probation and community service. Thus, for educational purposes the sentences up to one year of deprivation of liberty might be executed in a semi-liberty order,<sup>1306</sup> or replaced by the obligation to perform 'work in the public interest' (community service).<sup>1307</sup> When the court considers that a juvenile offender does not represent a serious danger, the offence was committed because of specific circumstances, and

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<sup>1297</sup> Article 1 CMD No.63

<sup>1298</sup> Ibid Article 5

<sup>1299</sup> Ibid Article 27

<sup>1300</sup> Ibid Article 40

<sup>1301</sup> Ibid Article 90

<sup>1302</sup> CMD No. 303, date 25.03.2009 'On General Rules of Prisons'

<sup>1303</sup> Ibid Article 1

<sup>1304</sup> Ibid Article 21, paragraph 3

<sup>1305</sup> Ibid Article 68, paragraph 2

<sup>1306</sup> Article 58 CC

<sup>1307</sup> Ibid Article 63



the juvenile is sentenced to less than five years, the deprivation of liberty may be suspended and replaced by probation.<sup>1308</sup> Probation refers to conditions being imposed, such as the participation in vocational training, employment and programmes for the treatment of substance abuse, or avoiding certain places or the company of certain persons.<sup>1309</sup> When the sentence or time remaining to fulfil the sentence is up to two years, and there are special personal circumstances, the sentence might be replaced with a stay at home order.<sup>1310</sup> Article 64 CC, emphasizing the 'educational aim' provides on granting the parole to a juvenile.<sup>1311</sup> All the alternative sentences are supervised by the probation services.<sup>1312</sup>

**Structure for juveniles.** The probation service is a relatively new structure established in Albania. There is no specific reference to juveniles or employment of persons specialized in juvenile issues.<sup>1313</sup> However, it is too early to consider its organization and functioning.

**Legislation.** In addition to Chapter VII of the CC and regulation, there are no other normative acts related to the probation services.

#### **7.2.7 Juvenile re-education institution system**

**Procedure.** The placement of juveniles into a re-education institution is provided by Albanian legislation. Thus, Article 46 CC emphasizes the issuing of an education measure for two categories of children. The first includes children who commit a criminal offence, but are under the minimum age of criminal responsibility to bear legal responsibility. The second category is that of children within the limit of the minimum age of criminal responsibility, who commit contraventions (14-16 years as discussed earlier). In addition, Article 52 of the CC provides that the dismissal of a juvenile from a sentence might take place on the grounds of the level of a criminal offence, circumstances and behaviour prior to committing the offence. If it is the case, the court might replace the sentence with an educational measure.

**Structure.** No structure has supported the enforcement of the educational measures since the beginning of 1990.<sup>1314</sup> Construction of a juvenile institution in Kavaja was completed by June

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<sup>1308</sup> Ibid Article 59

<sup>1309</sup> Ibid Article 60

<sup>1310</sup> Ibid Article 59/a

<sup>1311</sup> The article was partially amended by Article 9 Law No. 10023. However, the concept of educational aim rather than rehabilitation remained within the provision.

<sup>1312</sup> Article 31/7 Law No. 8331 as amended by Law No. 10024

<sup>1313</sup> CMD No.302, date 25.3.2009 'On approval of regulation 'On organisation and functioning of probation service and determination of standards and procedures for supervision of execution of alternative sentences'

<sup>1314</sup> Refer to previous historical discussion

2009.<sup>1315</sup> According to the GPD, the aim is to turn this institution into rehabilitation, psychological counselling and education centre.<sup>1316</sup> In addition to the increased number of civil personnel as opposed to prison police, the programme also gives priority to educative measures.<sup>1317</sup> There is no official statement with regard to the transfer of juveniles in the new institute, as it is not officially open yet. Therefore, it remains to be seen whether a real and proper change will take place in this institution.

## 8. Conclusion

Albania signed the CRC on 26 January 1990 and ratified it on 27 September 1992. When the CRC came into force on 28 March 1992, no advantages from the CRC framework were taken to expand the previously flexible and educative approach based upon the principle of the juvenile's best interest with regard to children in conflict with the law. Nearly 10 years after the ratification of the CRC, children are being dealt with by a system that is designed to respond to adults rather than upholding their best interests. Legislation governing the treatment of children in conflict with the law falls short to embrace international juvenile justice standards and norms. In using 'falls short', reference is made to the absence of establishment of separate laws, procedures and institutions specific to children, as demanded by the CRC.

There is an ambiguity between the State acknowledging the shortcomings of the juvenile justice system, and the failure of successive government to transfers, not only international law, but also the objective set up to reform the system. All the aspects of the juvenile justice framework, from the investigation and trial process, to rehabilitation and reintegration, suffer from a shortage of legal, human, and financial resources. Where efforts have been made to develop and initiate reforms, there has been a preoccupation by UNICEF to carry on with them rather than the State. Such an approach has left limited patchwork of legislation 'scattered' into several provisions.

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<sup>1315</sup> SEC (2009) 1337/3 p.13

<sup>1316</sup> <http://www.dpbsh.gov.al/?fq=brenda&gj=gj1&kid=64>

<sup>1317</sup> Ibid. The aim is to adopt a rapport 80% versus 20%. There is no clear definition on the program apart the fact that in programming the activities will be used modules applied in Spain, Netherlands etc. this kind of statement clearly points out that despite being a new institution there is no policy in place about its organisation and functioning. There is no change on the enlisted educative program from the one that is already implemented in Vaqar.

To implement a comprehensive juvenile justice system it is necessary to establish a new system of institutions for the implementation and for the supervision of the measures previously discussed. Therefore, in the general system of administering justice it is necessary to provide for the specialization of administrative and criminal cases of the juvenile persons. The establishment of juvenile sections within the court's structure needs to be followed in the first stage with specialization of policemen, prosecutors, and employees from other institutions working in this field; later, after the system starts functioning, separate units and separate courts to deal with the cases of the juvenile persons may be established under the police, prosecutor's office and other institutions. All this must be reflected in corresponding legal acts.

The analysis provided on the Albanian juvenile justice system shows that implementation of international standards has produced a kind of 'felicitous paradox'; although the implementation of international standards has been extremely limited, the CRC is for Albania one of the most important multilateral conventions. The reason for this paradox lies in the effect of the CRC on the Albanian political will to address international standards on juvenile justice. What is the juvenile justice system in Albania? The answer to such question will depend on how the law translates to practice.

## CHAPTER SIX

### COMPLIANCE WITH THE UN CONVENTION ON THE RIGHTS OF THE CHILD

#### 1. Introduction

The recommendations of the Committee have been a key factor in guiding the reform process and highlighting particular intervention points for implementing international juvenile justice standards in Albania. Does Albania comply with the CRC even after the recommendations of the Committee with regard to full implementation of juvenile standards? After the guideline and intervention points were provided, does the implementation of international juvenile justice standards suffer?

Compliance with the CRC,<sup>1318</sup> particularly with international juvenile justice standards, comprises at least two distinctive stages of implementation for international standards. The first stage is putting international commitments into practice, which is known as 'implementation'. In this case, these stages refer to the passage of legislation, drafting of policies and regulations and other measures and initiatives, adopted to build the juvenile justice system as required by the CRC,<sup>1319</sup> in particular by Article 40(3) CRC. The second stage is the subsequent enforcement of rules by those to whom they are addressed, including the applications of the rules by public authorities. The second stage is of particular relevance because of the fact that even correctly implemented international standards can remain 'dead letters',<sup>1320</sup> if not applied on the ground by occupational systems of juvenile justice if public authorities do not take measures to enforce legislation. Analysis of this implementation

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<sup>1318</sup> 'Compliance' refers to the fulfilment by the contracting parties of obligations deriving from multilateral treaty and any amendments to the treaty. This mean was giving Karl Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance,' in *Handbook of International Relations*, eds W. Carlsnaes, Th. Risse and B. A. Simmons, Thousand Oaks, CA: Sage, 2002, p. 539 and Guidelines On Compliance With And Enforcement Of Multilateral Environmental Agreements (MEAs), *United Nations Environment Programme*, [http://www.unep.org/dec/MEA\\_Manual.html](http://www.unep.org/dec/MEA_Manual.html), 2006, (accessed 31/07/2011) para.9(a)

<sup>1319</sup> Raustiala and Slaughter, 2002, p. 539 Jonas Tallberg, 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organization*, Vol. 56, Issue 3, 2002, pp. 609-643, p.624,

<sup>1320</sup> The 'world of dead letters' was introduced as cluster of 'worlds of compliance' typology developed by Falkner, Treib, Hartlapp and Leiber (2005) in a comprehensive research about member states handle the duty of complying with labour law in the EU. Falkner, Gerda, Oliver Treib, Miriam Hartlapp and Simone Leiber. *Complying with Europe. EU Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press, 2005, p.320 Accordingly, the 'world of dead letters' refers to the implementation processes, which are typically characterized by a politicised yet relatively successful transposition and systematic shortcomings at the enforcement and application stage These shortcomings are based on malfunctioning structures (courts, labour inspectors, civil society) that cannot be expected to improve in a short-time perspective, even after accession. Falkner, Gerda, Oliver Treib, Elisabeth Holzleithner, Emmanuelle Causse, Petra Furtlehner, Marianne Schulze and Clemens Wiedermann. *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate, 2008, p. 172).

provides an indication of whether the Albanian juvenile justice system complies with the minimum requirements of international juvenile standards.

The chapter starts therefore with a hypothetical matrix allocating international standards and values, taken from the international framework of juvenile justice, to each occupational system discussed in Chapter 5. It would go beyond the scope of this chapter to address all relevant findings in detail regarding the administration of juvenile justice in Albania. Therefore, a technical approach was sought in presenting the most prominent general issues. Firstly, the issues to be scrutinised are grouped according to the following key areas; prohibition of torture and other cruel, inhuman or degrading treatment and punishment; treatment of juveniles deprived of liberty; the right to a fair trial; sentence; diversion and restorative justice; and policy. The issues are discussed in such a way so as to follow the juvenile through the key stages of the juvenile justice system. Secondly, with regard to implementation, the issues are assessed by looking at whether national legislation meets the minimum requirement of international standards in juvenile justice. Finally, in terms of enforcement, the issues are analysed by looking at the extent to which juvenile justice occupational systems are enforced in practice and whether national legislation is endowed with resources to implement minimum requirements of international standards and beyond. The analysis is based upon the findings of the empirical research.

## **2. Allocation of international standards in juvenile justice to relevant systems**

The Matrix (Table No.14) below allocates the international standards to the relevant systems of juvenile justice in Albania. The list of international standards was built according to General Comment No. 10 and the analysis provided in previous chapters of this thesis. The stars within the matrix signify system relationships. The relationship of juvenile justice stakeholders with the standard is set according to the procedure followed by each system. The matrix is not exhaustive in showing all structures of the system; rather it seeks to allocate responsibility for compliance with the international standards. The matrix facilitates the collection of information on the existing policy for a particular international standard. The following analysis seeks to establish whether the international standard is provided for in law or government policy. Information is gathered from the domestic legislation applicable to

each system. The analysis groups the international standards to functional systems.<sup>1321</sup> Such a method serves to pinpoint which of the systems requires strengthening. Furthermore, some of the international standards, such as definition, minimum age of criminal responsibility, the upper limit age of criminal responsibility, and the monitoring systems of policy-making are excluded from the forthcoming review as these were considered while building up the general system framework in Albania. The function of the analysis is to provide background to the data and to shed light on the capacity of juvenile justice systems in Albania.

**Table 14: Allocation of international standards in juvenile justice to relevant systems**

	<b>International Standard for Juvenile Justice</b>	<b>Policy makers</b>	<b>Police</b>	<b>Prosecutor</b>	<b>Court</b>	<b>Penitentiary System</b>	<b>Attorney</b>
1	Child definition	*					
3	Non-discrimination	*	*	*	*	*	*
4	Best interest of child	*	*	*	*	*	*
5	The right to life, survival & development	*	*	*	*	*	*
6	The right to be heard	*	*	*	*	*	*
7	Dignity and humanity	*	*	*	*	*	*
8	Minimum age of criminal responsibility	*					
9	Upper age limit for juvenile justice	*					
10	No retroactive juvenile justice	*			*		
11	Presumption of innocence	*	*	*	*		*
12	Parents or guardian notified	*	*	*			
13	Prohibition of torture	*	*	*	*	*	*
14	The right to remain silent	*	*				
15	The right to be informed promptly	*	*	*			
16	The right to be informed in appropriate language	*	*	*			
17	Freedom from compulsory self-incrimination	*	*	*			
18	The right to legal assistance	*	*	*	*		*
19	The right to privacy	*	*	*			*
20	The right to effective participation in proceeding	*	*	*	*		*
21	Diversion	*					

<sup>1321</sup> According to Abramson the prevention, apprehension (investigation and arrest), diversion, imprisonment, trial, and rehabilitation are compounds of *functional systems*. (Discussed in Chapter 2)

22	The right to have matter dealt without delay	*	*	*	*		
23	Decision without delay and with involvement of parents	*			*		*
24	The presence and examination of witness	*		*	*		*
25	The right to appeal	*					*
26	Free assistance of an interpreter	*	*	*	*		*
27	Alternative measures	*			*		*
28	Deprivation of liberty as last resort	*			*		
29	Deprivation of liberty for minimum possible time	*			*		
30	Separation from adults	*				*	
31	Maintain contact with family	*				*	
32	Rehabilitation	*				*	
33	Physical environment accommodation	*				*	
34	Education & vocational training	*				*	
35	Maintain contact with wider community	*				*	
36	Right to complain	*				*	
37	Aftercare	*					
38	Awareness raising	*					
39	Training	*	*	*	*	*	*
40	Monitoring	*	*	*	*	*	*
41	Data collection, evaluation and research	*	*	*	*	*	*

### 3. Overview of implementation and enforcement of international juvenile justice standards in Albania

This section provides a legislative analysis of the implementation and enforcement of the international framework on juvenile justice in Albania.

#### **3.1 Prohibition of torture or other cruel, inhuman or degrading treatment or punishment.**

Article 25 of the Constitution is limited to the strict prohibition of torture or other cruel, inhuman, or degrading treatment. The Criminal Code (CC) includes torture among the intentional offences against health. As they do not include all the elements, especially with regard to persons in official positions, the definition of torture provided in Articles 86 and 87 of the CC were both incompatible with definition of torture set out in Article 1 of the

CAT.<sup>1322</sup> Two years later the definition provided by Article 86 was amended, reflecting the recommendation of the UN Committee against Torture.<sup>1323</sup> Therefore 'torture' is defined as:

'The committal of acts, by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by another person acting in an official capacity, when such pain or suffering is inflicted by or at the instigation of or with his consent or acquiescence for such purposes as a) obtaining from him or a third person information or a confession; b) punishing him for an act he or a third person has committed or is suspected of having committed; c) intimidating or coercing him or a third person; d) for any reason based on discrimination of any kind; e) or any other inhuman or degrading act.'<sup>1324</sup>

No further revision of the CC means that a public official or other persons acting in an official capacity might be prosecuted only for torture and inhumane treatment. To not consider ill treatment as a criminal offence is deemed to be 'a failure to fulfil or a violation of state duty, definition which gives rise to disciplinary, coercive or criminal measures'.<sup>1325</sup> This absence of an explicit provision justifies the fact that the ill treatment and excessive use of force or means by public authorities is very often observed by the police, and within the penitentiary system.<sup>1326</sup>

Secondly, it should be noted that while the judiciary, police, and prison police might be the subject of administration or criminal sanctions, the administration of penitentiary systems do not bear any criminal responsibility for the failure to guarantee adequate social, physical and

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<sup>1322</sup> UN Committee against Torture, *Consideration of reports submitted by states parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture: Albania*, ComCAT/C/CR/34/ALB 21 June 2005 para. 7 (a) In addition the UN Committee against Torture expressed great concerns in Conclusion and Recommendation on the First Initial Report presented by Albania, in regard to the prevailing climate of de facto impunity among the law enforcement personnel who commit acts of torture or ill-treatment. (Ibid para. (b))

<sup>1323</sup> Article 10, Law No 9686 (official translation provided by the Albanian Government in Second National Periodical Rapport) it looks like the Albanian authorities transposed the definition of Article 1 of CAT with some amendments to the order of words.

<sup>1324</sup> Article 86 CC

<sup>1325</sup> Article 74 Law No. 9749, Article 36 Law No.10032

<sup>1326</sup> During the three visit carried out in Albania in 2005, 2006 and 2008 the CPT's delegations has received a number of credible allegation about ill-treatment during police questioning and more particular during interrogation by officer of judiciary police. (CPT/Inf (2009) 6 para. 9). Despite Law No. 9749 entering in force by June 2007, the People's Advocate concluded that only 14 of 34 received complaints for torture and ill-treatment from police were not found in 2008. In addition there was an increase by 11 complaints more than in 2007.



psychological environments, to all persons, especially juveniles, deprived of liberty. Thus, the concept of the actual conditions of detention, such as overcrowding, unsanitary conditions, inadequate and/or insufficient food, attention to medical, educational and rehabilitative and recreational needs of detained persons, is not included in the legislation as an offence which may amount to a prohibited form of treatment and punishment. In other words, nobody may be prosecuted for failure to comply with the requirement of laws 'on execution of criminal sentences' and 'on treatment of persons deprived of liberty'. In practical terms, although the lack of electricity and 24-hour running water and the buildings might be entirely worn-out and show humidity which have a direct impact on the health of persons deprived of their liberty, none of the administrations of the IEPD and pre-trial detention institutions are legally responsible for recognising such failures or reporting to the higher authorities.<sup>1327</sup>

Thirdly, with regard to corporal punishment, although Article 54 of 'General Prison Rules' prohibits the personnel of IEPD to commit any act against the detainee, which amounts to unlawful actions, punishment, torture, inhuman treatment, degrading, and other violence options, it does not contain a specific reference to corporal punishment. The General Prison Rules do not contain any other provision to explicitly define what is intended with all the acts above. However, the current 'General Prison Rules' take a positive step towards the previous regulation as they explicitly prohibit the possession of a baton within the perimeter of an IEPD by all persons in contact with detainees.<sup>1328</sup> All persons include the prison police.<sup>1329</sup>

Fourthly, solitary confinement within the Albanian criminal justice system was lawful until April 2008.<sup>1330</sup> The practice was mainly used as a form of treatment for an ill person, as a form of punishment for disciplinary infractions by detainees, to isolate suspects during criminal investigation (when apprehended and arrested), and as a judicial sentence (for persons deprived of liberty housed in the high security prisons).<sup>1331</sup> However the special supervision regime provided in Article 56 Law No.8328, which applies for infraction of discipline is still in force. There is no provision to safeguard detainees who are juveniles. Consequently, isolation as a term *per se* is not in force, but the practice of isolation is still

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<sup>1327</sup> It should be noted that by Prison Regulation the Director of facility should present a daily report on the facility to General Director of Prisons.

<sup>1328</sup> Article 55 paragraph 2 CMD No.303, versus Article 47 CMD No.63

<sup>1329</sup> Article 5 paragraph 2 Law No. 10032

<sup>1330</sup> Article 21 Law 9888 invalidates Article 46 Law No. 8328

<sup>1331</sup> Article 46 Law No. 8328

applicable when there is an infraction of discipline. Moreover, the practice is re-enforced by the new GRP.<sup>1332</sup>

Finally, it should be noted that legal loopholes are manifested in a general 'failure to investigate and prosecute allegations of ill treatment effectively'.<sup>1333</sup> The People's Advocate constantly acknowledges that officials have obstructed the denouncement of acts of torture and ill treatment of detainees.<sup>1334</sup> The impossibility of getting a medical report, difficulties in accessing a legal advisor because of time, and difficulties in presenting their complaints to relevant NGOs are enumerated among other reasons.<sup>1335</sup> Last but not least is the fact that denouncement of these acts is related to the level of awareness of all persons subject to torture and ill-treatment, willingness of a prosecutor to comply with the law, and finally to the judge to continue with proceedings when allegations of torture are raised.<sup>1336</sup>

Meanwhile, the reported prevalence of allegation for ill-treatment point to the weakness of law to properly define key concepts such as torture and ill-treatment and to provide adequate punishment of those responsible for ill-treatment. It should be noted that besides this loophole there is no distinction of whether an act of torture or ill treatment is against a child. In addition, the separation of children from adults while detained in police stations is not always fulfilled. A child may be questioned for more than three hours. Indeed, there is nothing in the

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<sup>1332</sup> Article 51 CMD No.303, provides that for very heavy infraction of discipline an inmate may be excluded in special area, from all common activities up to 20 days. The only safeguard to juveniles is the application of this measure for half of its duration.

<sup>1333</sup> Hammarberg, Thomas. 'Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007', Council of Europe, Strasbourg, 18 June 2008, Doc. CommDH(2008)8, paragraph 33  
<https://wcd.coe.int/ViewDoc.jsp?id=1327977&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>,

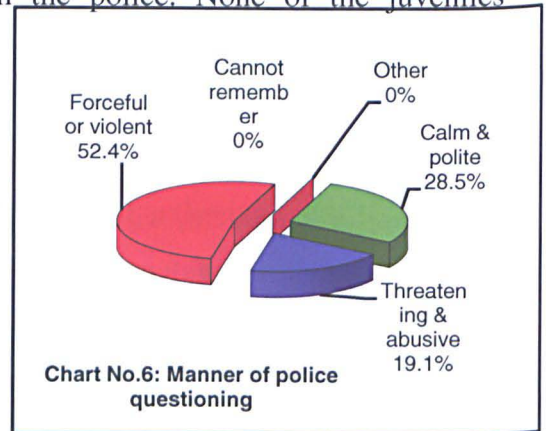
<sup>1334</sup> People's Advocate in the Republic of Albania refers to the institution of Ombudsman and represents the institution outside judiciary structures, which deals with complains against public authorities. Article 60 of the Albanian Constitution defines the institution of People's Advocate as defending the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration. The People's Advocate issues yearly reports informing the public and Albanian Parliament about the activity of the institution. The reports highlight the principal issues regarding the violation of human rights. 'Annual Report 2007', *Albania Ombudsman*, p.66, (Accessed 01/12/09) [http://www.avokatipopullit.gov.al/Raporte/Raporti\\_2007.pdf](http://www.avokatipopullit.gov.al/Raporte/Raporti_2007.pdf) and 'Annual Report 2008', *Albania Ombudsman*, [http://www.avokatipopullit.gov.al/Raporte/Raporti\\_2008.pdf](http://www.avokatipopullit.gov.al/Raporte/Raporti_2008.pdf) 2008 (Accessed 01/12/09) p.94. Due to political issue there is no nominee of People's Advocate from Parliament since 2008. The Office continues to carry out the duties, but no official report has been presented to public. The prohibitions of calling a free number or posting letters are enumerated among the means used by official of IEPD.

<sup>1335</sup> Hammarberg 2008 paragraph 35

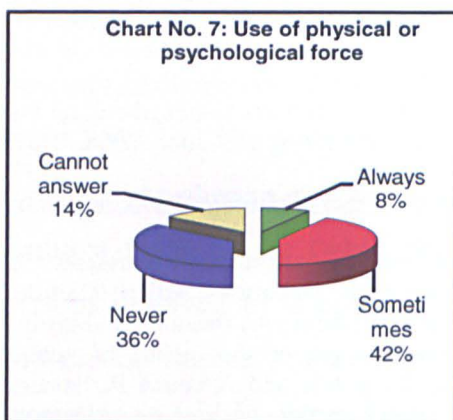
<sup>1336</sup> Amnesty International observes in the Annual Report 2009 that generally the criminal proceedings were initiated on the recommendation of People's Advocate. Only in one occasion the prosecutor and judge suspend remand hearing due to evident bruises. In addition Amnesty International emphasises the tendency of prosecutor to invoke lighter offences such as 'arbitrary acts' punished with fines rather than pressing charges against police officer.

Criminal Procedure Code (CPC) to cover at which time during the day a child may be questioned or the length of questioning. The impact of not considering such an issue leaves ground to assume that questioning of a juvenile around the time of arrival at the police station is inevitable, whatever the time of day.

In practice, juveniles are less likely to be subjected to physical and psychological force while being deprived of liberty than when they are with the police. None of the juveniles interviewed stated that they were subjected to torture. However, the data highlighted that once apprehended or arrested by police, juveniles faced harassment, violence and even ill-treatment. This was because of the failure of systems to comply with the protection from adults, including parents, social workers and legal representatives. A total of 52.4% declared that force and violence had been used during interrogation



(Chart No.6) while 19.1% of juveniles considered the questioning as threatening and abusive. Violence towards children in police stations was a well-recognised phenomenon; 50% of legal actors acknowledged the use of physical or psychological force by police while questioning children (Chart No.7). To this end, medical personnel were explicitly required to



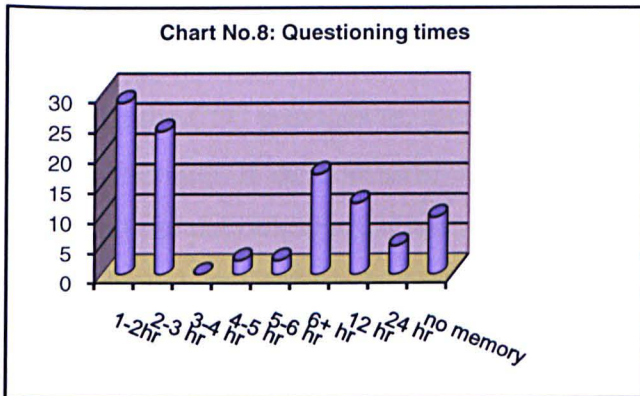
provide evidence of any violence used against the juveniles during their acceptance in a pre-trial detention institute. However, the procedure of transfer from police station to pre-trial detention was 'delayed' sometimes because of 'bureaucratic' procedures, rendering any evidence impossible. The use of violence and force is liable to prosecution or subject to internal disciplinary investigations and procedure. While 16% of the allegations of ill treatment are never followed up, 36%

affirmed that actions are sometimes undertaken.

A total of 28.5 % of juveniles described the manner of police questioning as calm and polite, but 19.1% considered the questioning as threatening and abusive. Indeed, 52% of the legal actors had no training in child-friendly interview techniques. This could explain the long intervals of questioning the juveniles, which may amount to abuse. While 23.8% of juveniles



were questioned for an interval of 2-3 hours, 16.7% confirmed that procedures passed 6 hours and reached 12 hours (11.9%) (Chart No.8). The psychological effects of questioning are



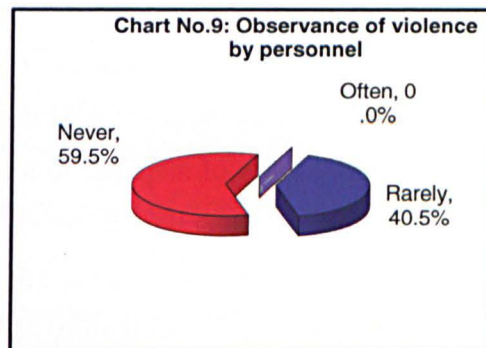
evident as 9.5% of juveniles affirmed to not have a memory of such a process.

Handcuffing during arrest, transportation and a form of restriction was a common practice. The method of handcuffing was clearly not child-friendly; 97.6% of juveniles reported that they were

handcuffed when moved to and from the detention centre and 69% of them emphasized that hands were handcuffed behind, restricting them and making movements painful.

While deprived of liberty, the juveniles may be subjected to physical or psychological force by two categories of persons – personnel of institutions and inmates. Firstly, juveniles were questioned about the frequency of searches for ‘prohibited articles’. In the second stage of questioning, direct or indirect information was collected about the frequency of physical and psychological force.

Thus, 78.5% of juveniles and all the personnel affirmed that a weekly search of the room was performed for ‘unauthorised articles’. However, 50% of prison officers confirmed that other searches might be conducted when there is suspicion, and 9.5% of juveniles reported that they were searched daily. Although 71.5% of juveniles have ‘never’ faced any violence by a member of staff,



28.5% affirmed to have been subjected to physical force. However, they clarified that physical force was not exercised by the custody officers or personnel, but by ‘group of intervention’.<sup>1337</sup> Meanwhile, 40.5% of juveniles have observed the use of physical force by staff members (Chart No.9). Although 87.5% of institution personnel strictly abstained from the use of physical force, 4.2% acknowledged they used force ‘rarely’ and 8.3% declined to answer. Handcuffing (92.3%) is the most commonly used method of restraint against violent

<sup>1337</sup> ‘Group of intervention’ apparently was a structure within the prison police called to intervene when the maintenance of discipline and order was rendered impossible to prison police.

or recalcitrant juveniles, followed by use of the baton (46.2%), headlocks (30.7%) and restraint jackets or belts (23.1%). However, 31% of juveniles confirmed that the baton was the 'weapon' carried by the 'group of intervention'. Once they were asked about the frequency in which allegations of physical force were followed up, the personnel opinion was divided between often (33.3%) and rarely (33.3%).

A total of 4.8% of juveniles indicated that their possessions were hidden or damaged. Similarly, 4.8% affirmed that their food or other things were taken away and 11.9% confirmed to sometimes having been physically assaulted by other juveniles.

Solitary confinement, also known as a special supervision regime, was imposed as a disciplinary measure on 35.7% of juveniles with 91.6% of personnel affirming that solitary confinement was used as a disciplinary measure.

### ***3.2 Treatment of juveniles deprived of liberty***

***3.2.1 Pre-trial detention.*** While considering pre-trial detention, one important issue should be noted. The CCP contains elements of evaluation of deprivation of liberty as a last resort. However, it fails to describe proper applicability of a principle for the shortest appropriate time. Article 228 and Article 229 provide the necessary elements to the court to exercise discretion while determining the most appropriate action to be undertaken with regard to security measures for juveniles. This discretion means that there are grounds to evaluate whether the detention is the best response for a juvenile. Indeed, the seriousness, nature and the proportionality of response to an offence,<sup>1338</sup> personal living conditions, family and social situation of the juvenile offender<sup>1339</sup> influence the court's decision on security measures. Article 229, paragraph 4, adds another child-friendly element, that of non-interruption of educative processes. Availability of a range of alternative 'security measures', which include house arrest, deposit of a caution and release subject to a duty to report periodically to the police or subject to a duty to remain within a certain geographic area, constitute more grounds to aim on applicability of detention only as a last resort. However, when detention is considered appropriate, there is no specific provision to provide on the applicability of the principle of the shortest appropriate time. While the CC provisions provide for differentiating

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<sup>1338</sup> Article 229 CCP

<sup>1339</sup> Article 42 CCP

juveniles from adults in the timeframe of a sentence,<sup>1340</sup> such a difference does not apply for security measures. For both juveniles and adults in pre-trial detention, the minimum time applicable is 3 months, reaching a maximum of two years.

Although the CPC provides for alternatives to the deprivation of liberty, either in the pre-trial stage or serving of the sentence, there is an over reliance by the prosecutors and judges on imposing the deprivation of liberty as a preliminary measure; 50% of the respondents were awaiting trial and they were not aware how long they were going to remain in pre-trial detention. While 42% of judicial actors have requested or defended or ordered deprivation of liberty as a preliminary measure.

**3.2.2 Deprivation of liberty.** In reviewing the penitentiary system the General Prison Regulations (GPR) would be taken into account. The reason behind this decision lies in the fact that the new GPR was introduced only by April 2009, making it impossible to judge the effectiveness of its enforcement. Consequently, the review provides a comparison between the relevant requirements of both GPR and Law No. 8328 'On the Rights and Treatment of persons deprived of liberty', which sets out the principles of functioning for penitentiary systems.

While Law No.8328 does not set out requirements for record keeping systems, the GPR sets out requirements on the admission and registration of persons deprived of liberty into a facility, including record keeping and storage of information. Thus, all the institutions for the execution of criminal sentences (IECS) are obliged by law to maintain a master register, which must contain information on the identity of persons deprived of liberty, information on the offence (such as offence committed, information on arrest, sentence issued by the court, any act issued by the prosecutor on execution of a sentence etc), and the day, hour of admission and release from a facility.<sup>1341</sup> Moreover, IECS are also required to maintain an individual file, which must be kept up to date from the opening until the release of the person deprived of liberty.<sup>1342</sup> Although there is to a certain degree a policy on the issue of confidentiality, there are some issues of concern regarding the personal file.<sup>1343</sup> While Article

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<sup>1340</sup> Article 51 of CC provides that imprisonment sentence of a juvenile must not exceed half of the prison sentence imposed on adult offenders for the same offence.

<sup>1341</sup> Article 16 CMD No.63, Article 11 CMD No.303

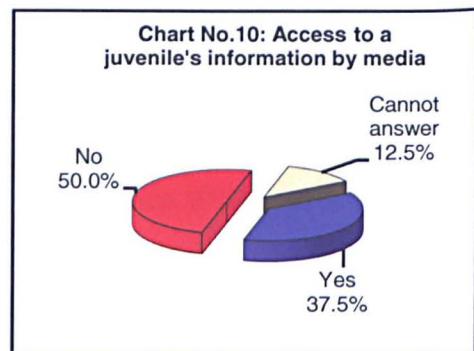
<sup>1342</sup> Article 15 CMD No.63, Article 10 CMD No.303

<sup>1343</sup> Article 18 CMD No.63, Article 13 CMD No.303



18 the old GPR was very evasive on who can access the personal file,<sup>1344</sup> Article 13 of the new GPR confined the access to a Minister or Justice, General Director of Prisons, Director of IECS, person deprived of liberty and other authority according to law. Firstly, the provision does not define any policy regarding access to the file by personnel. Secondly, there is no procedure on misuse of confidential information. Thirdly, no provision in both GPR provides on the disposal of information and expunging of the file. A fourth issue relates to the obligation of a person deprived of liberty to present reason and the kind of information to be accessed, while 'entitled to check on the content of his/her own file'. Finally, the person deprived of liberty is not allowed to correct inaccurate facts recorded.

Indeed, once accepted, all three facilities add the juvenile's personal information to a master register, which is computerised to certain requirements. The individual files were recorded manually. The loopholes of legislation with regard to confidentiality of files were expressed in answers received regarding access to personal files. Thus, 21.4% of personnel interviewed on



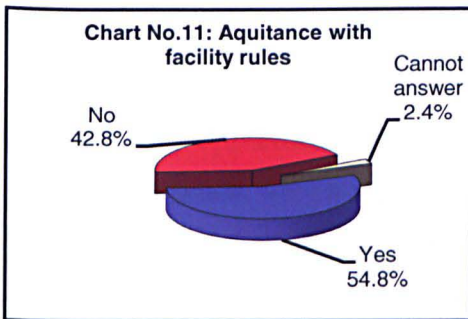
the issue confirmed that senior prison staff only accessed the personal file. To 21.4% of respondents, the information on file was confined to all prison personnel who treat juveniles. A total of 42.8% of respondents said that an appropriate third party might consult the file on request, for 71.4% of them any authorised person might access the file. Personnel were asked about the protection of confidentiality and the juvenile's right to privacy regarding media. According to 50% of personnel, the prison authorities do not enjoy the right to pass information on to juveniles deprived of liberty or their case (Chart No.10). In total, 37.5% of personnel recognised this entitlement by authorities. Whether permitted or not, the juvenile's consent has to be obtained before the information is released.

Article 30, Law No.8328, requires all institutions to establish a service that would greet the juvenile upon admission into the institution and provide them with essential information on the facility regulation. This service must establish positive relationships with juveniles in order to minimise the negative effects from the change of environment. Although the standards set into provision are in general compliance with international standards, in this

<sup>1344</sup> Article 18 CMD No. 63 allows authorised persons to have access and to consult the personal file.

area, two issues should be noted. Firstly the provision limits the information about the regulations to 'essential', without providing on the content, form, and ways of communicating it. Secondly, the Article does not provide on the structure and form of the service. Indeed, as to Article 12 GPR<sup>1345</sup> the service was understood to relate to the Director of the facility. Article 15 of the new GPR<sup>1346</sup> shapes this into the form of a 'welcome commission' service. Medical personnel and high-ranking officials of judicial, educational, and security services are the members who comprise the 'welcome commission'.<sup>1347</sup>

Thus, juveniles receive upon admission all the documents making them aware of the entitlements within the institution.<sup>1348</sup> The provision



does not contain an explicit reference to convert this information into a language that a juvenile is able to fully understand. In practice, once admitted into the institution, the juveniles receive a printed copy of the facility rules, general prison rules, and address and

telephone numbers of complaint bodies. All three institutions have internal rules, which are mainly written according to GPR. The rules do not contain a particular section to specifically deal with juveniles. According to personnel, the rules are written in a language that can easily be understood by the juveniles. If a juvenile is illiterate, the educational service communicates the rules within the first days in 57.1% of the cases; 78.5% of juveniles admit to having received the rules, which were explained by staff only in 54.8% of the cases (Chart No.11). A total of 42.8% of juveniles (mainly those in pre-trial detention) are informed about internal rules by their roommates.

All the dispositions adopt a general language requiring each person deprived of liberty to be assessed with a view to ascertaining their problems and personalities. Such assessment is considered to comply with the registration procedure rather than for the purpose of designing an individual programme. Indeed, Article 30 Law No.8328 requires a treatment programme to be compiled, but no details are contained regarding what this programme should consist of or stipulate any timescale, which should be applied to its implementation. Both GRPs set up

<sup>1345</sup> CMD No.63

<sup>1346</sup> CMD No.303

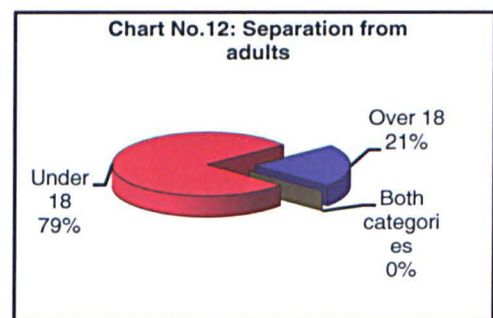
<sup>1347</sup> Article 15 CMD No.303

<sup>1348</sup> Article 5 General Regulation of Prisons CMD No. 303



delays to educational services during the assessment and drafting of treatment plans.<sup>1349</sup> According to both provisions, assessment consists of observance and scientific control of the personality of a person deprived of liberty.<sup>1350</sup> The purpose of assessment is to shed light on the physical, emotional, educational, and social needs of a person deprived of liberty, which have influenced their behaviour.<sup>1351</sup> While Article 76 GPR provides allowances for this assessment to be sought from other agencies regarding judiciary status, psychological, familiar and social needs, Article 78 of the new GPR is silent on this and bases the drafting of treatment plans only on the information provided by personal files. Article 78 of the new GPR introduces the assessment of a prisoner's ability to work and their professional skills as a new element to be included when drafting a treatment plan. However, both the provisions have a weakness, as they do not foresee the involvement of the person deprived of liberty in preparing a treatment plan or amending the programme along with development of the person deprived of liberty. Although Article 78 of the new GPR requires the treatment programme to be discussed with the person deprived of liberty, it does not express whether the comments should be input on the programme. In addition, Article 78 of the new GPR limits the treatment to individual therapy, counselling and library service, without containing any explicit reference to the involvement of other social agents, such as family or community.

Neither Law No.8323 'On treatment of persons deprived of liberty', nor the CMD No. 303 'General Prison Regulation' establishes a specific regime to reflect the status of juveniles or adults as untried and presumed innocent.<sup>1352</sup> Juveniles and personnel of institutions were asked to indicate whether inmate accommodation complies with the principle of separation of children from older inmates. The separation of juveniles on trial with those already sentenced is taking place in practice (Chart No.12).



There was no protection for juveniles reaching 18 in pre-trial detention as they were transferred to adult sections 'losing all privileges of being a juvenile'.<sup>1353</sup> While in imprisonment detention, there were rooms within the juvenile wing allocated to accommodate the juveniles over 18. Meanwhile, the girls in both situations of deprivation of

<sup>1349</sup> Article 76 CMD No.63 and Article 78 CMD No.303

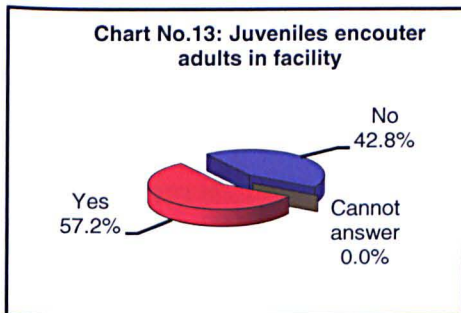
<sup>1350</sup> Ibid

<sup>1351</sup> Ibid

<sup>1352</sup> Both normative acts were considered having present the requirement of SMR for this category of persons deprived of liberty and Chapter III JDLs

<sup>1353</sup> The comments provided by juveniles.

liberty were sharing the room with adult detainees. Moreover, when asked about sharing the room with adults, the majority of juveniles mentioned that during their stay in police stations they were held in 'cells' with adults.



An additional question explored whether it was possible for the juveniles to meet adult inmates in the facility (apart from their accommodation); 57.2% of juveniles answered that they had the opportunity to meet adult inmates in the institution (Chart No.13). While for juveniles in pre-trial detention this was because of their

transfer to adult wings or during transfer to attend the court session, in imprisonment detention this opportunity existed every day. Although initially designed only for juveniles, the imprisonment detention was housing a large portion of adult detainees due to overcrowding of the penitentiary system. The structure of the building rendered it possible for juveniles to meet adult inmates almost everywhere, whether they were making a telephone call, in the visiting area or on the sports grounds. Some 50% of personnel (more or less those interviewed in prison and the female facility) affirmed that juveniles encountered adults while in the facility or during transfer from and within the facility.

The design of a physical environment and accommodation should meet the requirements of a 'normal life and achievement of activities in tandem with a treatment programme'.<sup>1354</sup> The provision does not contain a specific reference to the 'rehabilitative aim of a residential treatment'.<sup>1355</sup> The administration of an institution is obliged to ensure that persons deprived of liberty receive meals of a quality and quantity reflecting age, health conditions, work, climate and season.<sup>1356</sup> However, the GRP is absent on this requirement, as it limits this right to three meals according to the norms and variety defined on the tables approved by the GDP. There is no legal provision to ensure that juveniles receive nutritious meals adequate to their developmental requirements.

**Infrastructure and physical accommodation.** All the visited facilities are structures inherited from the old regime and pre-trial detention during the Second World War. There is a constant

<sup>1354</sup> Article 23 Law No. 8328

<sup>1355</sup> Rule 32 JDLs

<sup>1356</sup> Article 27 Law No.8328



need for renovation because of humidity. All the institutions presented different characteristics in their design. Usually, they have external security systems such as concrete walls, barbed wire and watchtowers and construction corresponding to their status of security level; low security for female prisons, ordinary security for imprisonment facilities, and high security for pre-trial detention facilities.<sup>1357</sup> Regardless of the status of security, the external security is maintained by the threat of armed guards. The building structures range from one-storey at female prisons to three-storey structures at the others facilities. The pre-trial detention and female prisons are located in urban areas, facilitating their access. Juvenile detention facilities are located on the outskirts of villages, not close to principal national roads, meaning that bad road conditions make public access difficult. In general, all the institutions are humid, have a lack of natural light, are unpainted, and have unplastered walls.

The accommodation is arranged in small groups at the imprisonment facilities (four juveniles per cell), while for the other two there was a high capacity with cells officially housing eight in pre-trial to 10 persons in female prisons, resembling more of a communal room. What should be noted is the fact that both sets of respondents – juveniles and personnel – reported a higher figure than the official capacity. Thus, 35.7% of juveniles shared a room with six people, while 30.9% of juveniles said they have more than six roommates (Chart No.14). A total of 58.4% of personnel affirm that juveniles are accommodated over four persons per room, while for 33% of personnel the figure passes over eight juveniles per room (Chart No.15); 42.9% of juveniles complained about not receiving sheets or pillows and about the deteriorating condition of mattresses. Only one facility provided clothes for juveniles. The juveniles are allowed to wear their own clothes. As there is no laundry facility, 90.5% of juveniles wait until the next meeting with their parents to receive clean clothes and bedding,

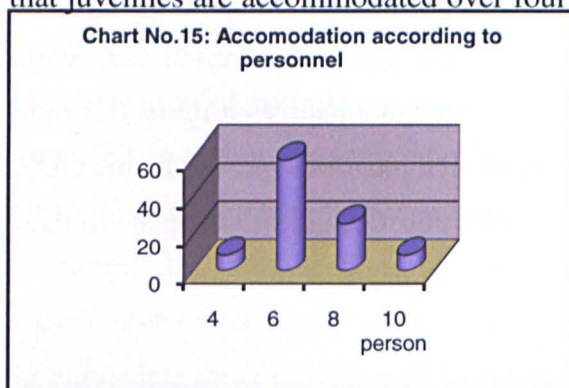
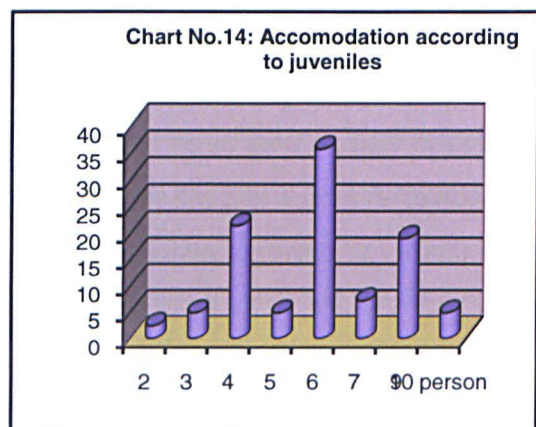


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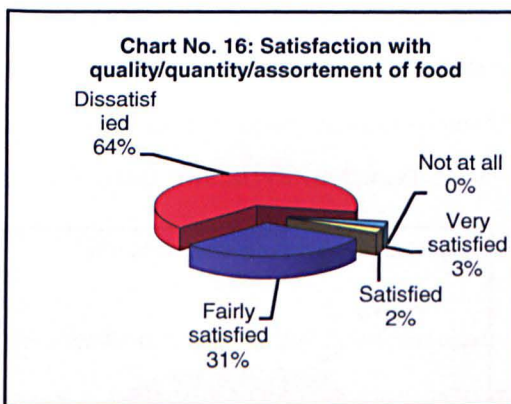
<sup>1357</sup> High security status of pre-trial detention derives from the fact that house the most dangerous offenders due to location next door to a Serious Crime Court. At the time a passage was building to connect the prison with the courtrooms.



or alternatively wash by hand. In all facilities, juveniles were able to keep personal possession, but no locking system was provided.

**Hygiene.** With the exception of the imprisonment facility, the toilets and shower areas were a major cause for concern among juveniles. In imprisonment facilities, the toilets and showers were located in their rooms, making them usable by juveniles at any time while in pre-trial facilities, toilets and showers are shared. Thus, 45.2% of them were fairly or dissatisfied by the number, condition, and functioning of toilets and showers. The absence of a call system made access difficult in case of emergency or during the day.<sup>1358</sup> Moreover, the lack of running water made the hygiene conditions worse. Showering is allowed once per day, but 95.2% of juveniles confirmed that they could shower only if there was water. Juveniles are obliged to get their own personal toiletries such as soap and shampoo. The cleaning of the room was left to juveniles.

**Food.** In compliance with international standards, food was provided according to a three times per day schedule to juveniles in all facilities; 95.2% of the juveniles were unsatisfied



with the quality and the quantity of the food served (Chart No.16). They described a very standard menu, which lacked elements of a healthy diet. All of them were relying on the food supplies provided by their families. When this was not possible, juveniles were consuming food provided by the institution. The food supplied by families was never refrigerated (except in female prisons)

because there was no refrigeration facility. Water was timed with the main city supply. A total of 50% of juveniles complained about the high presence of chlorine, leading to 16.7% of them buying drinking water

**Contact with family.** Article 40, Law No. 8328, emphasizes the priority of a juvenile's contact with their family. To this end, the administration of an institution is required to set up a special programme to facilitate such contact. However the GRP does not incorporate this obligation. Contrary, formulation of article 57 GRP renders applicable the regime of a

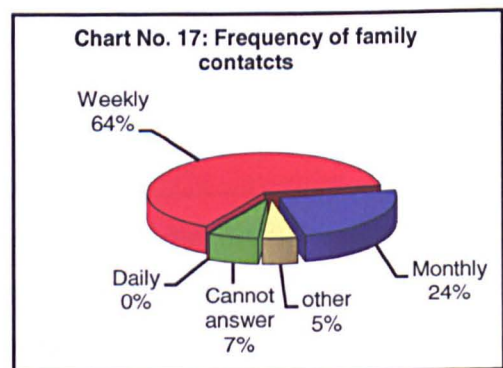
<sup>1358</sup> The juveniles needed to bang on the door to attract the attention of prison police to have toilet access granted.

family's visits designed for adults to juvenile, which consists of four times per month. Consequently, the provision represents the minimum requirement of family visits provided in Rule 62 JDLs. Despite limiting the number of visits, there is no specification in regard to the length of visit, leaving open the possibility for violation of this right. Finally, the provision introduces a restriction to the right to receive a family visit whilst completing criminal procedural actions.<sup>1359</sup> Clearly, such a provision contradicts Rule 67 JDLs, which categorically prohibit restriction or denial of contact with family for any purpose.

There is no limitation on the amount of mail that can be sent, which in case of a lack of financial means is facilitated by the administration of IECS.<sup>1360</sup> However, the restriction in function of completing criminal procedural actions is applied to mail as well.

Article 61 of the GRP introduces an advanced feature of communication such as telephone. In a similar way to family visits, the telephone communication regime of adults is also applied to juveniles. Such communication consists of a telephone conversation of 10 minutes with family or friends eight times per month. The restriction in function of completing criminal procedural actions is applied to telephone communication as well. While there is an indirect reference to the right of a juvenile to receive mail, a similar reference is not made for telephone communication.

Juveniles, like adult detainees, are entitled to meet their families four times a month for 30 minutes. Given the fact that there is only one institution housing a juvenile sentenced with deprivation of liberty, the length of their appointment is sometimes less than the travelling time of their family; 23.8% of juveniles received only monthly visits from their



family, as the detention centre was located too far from their places of residence (Chart No.17). In addition, 4.8% of juveniles were receiving occasional family visits because of the low-income levels of their family. There are no programmes to support families with low incomes or without financial means to meet with juveniles. Meeting rooms are mainly design

<sup>1359</sup> Article 57 paragraph 5, GRP

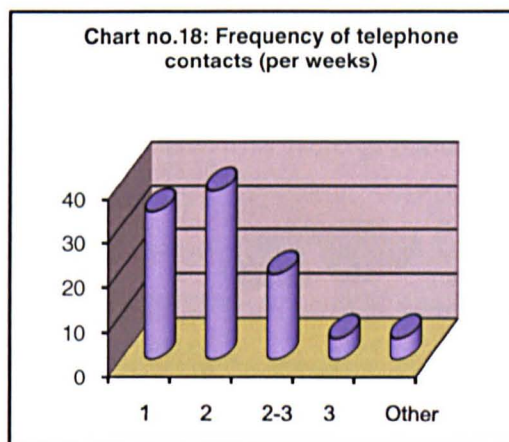
<sup>1360</sup> Article 60 GRP



for adults and generally have separated compartments provided with walls or bars. A total of 90.5% of juveniles affirmed to share the visiting areas with adult inmates.

All institutions notified the juveniles about deaths or serious injuries relating to any immediate family member. However, visits of seriously ill relatives or attendance at the funeral of a family member were subject to permission.

Juveniles in prisons are entitled to make phone calls to their family with prepaid calling cards, which can be purchased only by a family member. There was no phone box located in juvenile wings; consequently the accompaniment by a police officer is required to access the phone. In addition, there is no privacy during the calls as a police officer is always present in a hallway where the phone booth is located.<sup>1361</sup> A total of 33.3% of juveniles were making one phone call per week



(Chart No.18). Depending on the police and the affordability of prepaid cards, 61.9% of juveniles were able to contact their family two-three times per week. As to personnel, the juveniles are permitted to make one phone call per week.

Contacting a relative or friend is authorised only after their connection with the juvenile is verified.

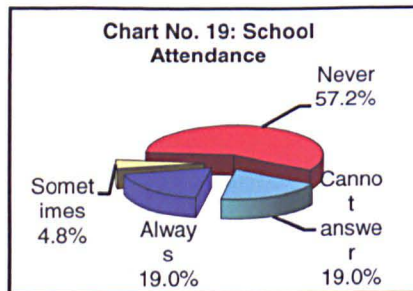
**Communication with the outside world.** No legal provisions support and encourage representatives of the community to meet with juveniles. In practice, there is no restriction on contacting representatives of NGOs or the People's Advocate. Although contact with journalists is permitted, 64.3% of juveniles refuse to have any contact with them. The majority of juveniles stressed that they would like not like to have journalists at the courtroom.

**Education and vocational training.** Part four of the GRP introduces new elements in the treatment of juveniles deprived of liberty, in response to the new rehabilitative approach of the penitentiary system. To this end, the right to education implies not only measures to

<sup>1361</sup> The small area and the absence of a proper telephone cabin did not permit for any privacy at all.

continue obligatory educational processes, but also to pursue further education within or outside the premises. The IECS are under obligation to cover all the financial expenses of juveniles attending compulsory education. Moreover Article 81 paragraph 4 extends the financial obligation to the secondary level of education *as well*. Compared to previous GPR, *the formulation of requirements to enforce the right to education represents advancement*. However, both the GPRs are silent on whether the entitlement to be taught must comply with national teaching curricula.

The objectives of juvenile justice are achieved through entitling juveniles deprived of liberty to vocational training as well.<sup>1362</sup> Furthermore, the right to work is also acknowledged. One imprisonment facility had a school established within the premises, which was attended by 70-80% of juveniles. At pre-trial detention centres, small classes were organised for illiterate children, offering basic lessons in maths and reading. Juvenile females in both



categories have no opportunities to attend elementary education. Although 52.4% of juveniles acknowledged having a school within the facility, only 23.8% of juveniles were frequenting it on regular basis (Chart No.19). The high disproportion between the two figures relates to the fact that the majority of juveniles were interested in attending more advanced education than elementary education. There is no opportunity for juveniles to attend secondary school classes or university lectures while serving sentences in prison.

The vocational training courses are available only in imprisonment facilities. While the vocational training programme for girls includes learning important skills that would assist the juvenile upon release, such as hairdressing or tailoring, they lack such important features for boys. The vocational training for boys only consists of learning foreign languages and using computers. Almost all vocational training programmes are provided by NGOs. All the facilities barely distribute their funds in vocational training.

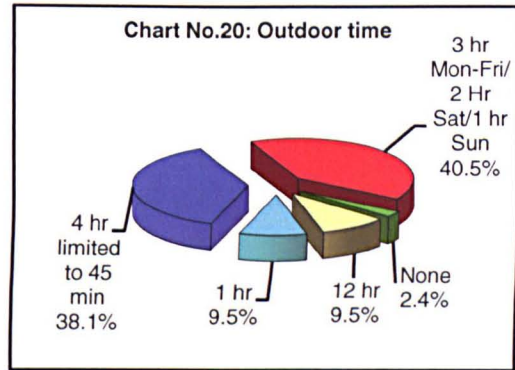
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With the exception juvenile girls housed in female prisons, juveniles are kept locked up all of the time. Most of the entertainment activities take place during the hour allocated for outdoor exercise. Even meetings with psychologists, social workers, educational personnel, or access

<sup>1362</sup> Article 82 CMD No.303,



to the library are planned during this time. Although the personnel acknowledged that juveniles have the right to four hours outdoors, 40.5% of juveniles complain that school attendance is included within this framework and, consequently, the outdoor time is restricted to three hours. All juveniles complained that outdoor exercise time is restricted over the weekend and public holidays, or is not granted. A thin metallic

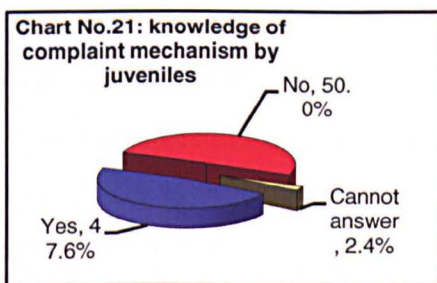


net, facilitating possible contact with adults, separates outdoor space designed for juvenile exercise. A total of 47.6% of juveniles, all in pre-trial detention, were permitted only 30 minutes per day due to construction work going on. No outdoor activities were granted over the weekend and 2.4% of juveniles were not offered outdoor activity at all.<sup>1363</sup>

Sport activities are carried out only during the outdoor time. As for most of the day, juveniles remained locked up in their cells; the time is spent reading, playing board games, and (for those who have access) listening to the radio or watching television. There is no restriction on attending religious services, or reading newspapers or magazines.

Only 9.5% of juveniles were working three-four hours per day at the time. The reward was four days reduction in the sentence.

**Complaint mechanism.** Compared to old regulations, the GRP introduces various elements to the new objective of the IECS and also has a complaint mechanism. Thus, priority in



determining the IECS to house the person deprived of liberty is given to the place of residence.<sup>1364</sup> To facilitate a parole decision, a juvenile's behaviour is monitored every six months by a commission on behavioural evaluation.<sup>1365</sup> The GRP improves the system of complaint. The administration of IECS is obliged to

<sup>1363</sup> The persons were transferred to adult wings during pre-trial detention.

<sup>1364</sup> Article 20 GRP

<sup>1365</sup> Article 44 GRP



facilitate confidential meetings of juveniles with representative of the People's Advocate and other bodies in case a juvenile specifically needs to talk to them.<sup>1366</sup>

The mechanism for complaints incorporates all the international elements of the right to complain. However, 50% of juveniles do not know where to complain about the use of physical force and disciplinary measures or any other issue (Chart No.21). The Director of a facility, the ombudsman, the girls from a legal clinic, the chief of prison police, and educators were all nominated as the possible persons to whom juveniles should file a complaint. Nevertheless, more than 50% of juveniles pointed out that there is no genuine place to complain, as the director does not pay attention to them and the Ombudsman does not reply to their requests. Furthermore, filing a complain to the institution outside the facility was rendered difficult because of the fact that their telephone calls were surveyed and letters opened by the administration. The mechanism of complaints was rendered difficult by another issue; the majority of personnel interviewed failed to provide a proper hierarchy of the institution where the juveniles might file complaints. Thus, according to personnel, the juveniles may address a request or complaint to the Director of the facility, the General Director of Prisons, the Disciplinary Commission, MJ, and the People's Advocate. All three facilities held a complaints book and they all provided the necessary information to juveniles to contact a prosecutor, the People's Advocate, and an NGO.

**Monitoring.** According to international standards, the institution should be independently monitored by 'a duly constituted authority'.<sup>1367</sup> Overall, there is no systematic monitoring of penitentiary systems in Albania. The CPT, Albanian Helsinki Committee, and, recently, the Peoples' Advocate, are monitoring only the conditions of the facility and the protection of the rights of children in the institutions.<sup>1368</sup> However, in practice Albanian juvenile justice fails to

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<sup>1366</sup> Article 56 GRP

<sup>1367</sup> Rule 72 JDLs.

<sup>1368</sup> CPT carried out three visits within the period 2005-2008. (Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Albanian Government on the visit to Albania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 16 to 20 June 2008*, CPT/Inf (2009)6, Strasbourg 21 January 2009) The Albanian Helsinki Committee has conducted several observation missions to monitor respect for the rights of arrested, detained, and convicted persons in penitentiary institutions for the last four years. (<http://www.ahc.org.al/kshh/eng/prison/prison.html>) Similarly Peoples' Advocate has carried out inspection visits to monitor the enforcement of Law No.8328 and GPR in all penitentiary institutions last four years (People's Advocate Report 2007, 2008). However, it should be noted that Albanian Helsinki Committee and People's Advocate' entrance into facility are subject to issue of authorization by Minister of Justice or General Director of Prison according to Article 43 Law No.8328

comply with international standards as no 'duly constituted authority' carries out systematic review and monitoring of the treatment received by juveniles.

Overall, the penitentiary system has as a priority the treatment of adults deprived of liberty, as the relevant normative acts are written in adult terms. Consequently, Law No. 8328 'On the Rights and Treatment of persons deprived of liberty' and DMC No. 303 'General Prison Rules' do not clearly define all of the international standards to be observed during the treatment of juveniles deprived of liberty.

### 3.3 *The right to fair trial*

**3.3.1 *Apprehension and arrest.*** When a juvenile is apprehended or arrested, it should be noted that no specific legislative provisions differentiate between children and adults with regard to investigative procedures. The only specific requirement is provided by Article 28, paragraph 1, of the Constitution which states:

*Everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his right.<sup>1369</sup>*

In addition, the police are required to notify the juvenile of the reason of apprehension, to notify the person responsible for the juvenile, and to escort the juvenile to separate premises than those used for adults.<sup>1370</sup> There is no provision to allow for the presence of parents during the questioning of a juvenile. As to Article 103 Law No. 9749, children currently have fingerprints taken, regardless of their age or of the offence for which they have been arrested, are photographed, and have DNA taken. While the juvenile's body search is safeguarded by the mandatory presence of parents,<sup>1371</sup> for an intimate search a court order must be issued.<sup>1372</sup> Two issues should be noted. Firstly, there is interplay between two provisions, as one

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<sup>1369</sup> While Article 255 paragraph 1 CCP transposes the constitutional requirement, Article 107 of Law No. 9749 lacks any specific reference to the notification of this rights by police, and Article 13 Law 8677 rather emphasises that the prosecutor controls and regulates the activity of judiciary police according to the CCP.

<sup>1370</sup> Article 107 Law No.9749

<sup>1371</sup> Article 109 paragraph 3, Law No.9749

<sup>1372</sup> Ibid paragraph 6

requires the notification of a person in custody of the juvenile while the other one provides on the presence only of parents. Secondly, the detailed procedure to be followed during the body search is not the subject of public knowledge, as rules are made available to judiciary police through a guideline provided by the Ministry of the Interior.<sup>1373</sup>

Article 255, paragraph two, lacks any specific time reference with regard to notification of a prosecutor.<sup>1374</sup> There is a legal loophole in authorising the judiciary police to acquire from the juvenile data a statement, which is necessary to continue an investigation, even without the presence of a defence lawyer, in the scence of an offence or when there is an evident criminal offence.<sup>1375</sup> Firstly, the demand for data acquisition might render the juvenile vulnerable and result in them issuing a statement. Secondly, although the use of a statement issued without the presence of a defence lawyer is not permitted, it might be presented as proof against a juvenile in case the content of deposition is challenged.<sup>1376</sup>

Furthermore, a juvenile under investigation might be apprehended and arbitrarily detained by police on the grounds of personal identification for a maximum of 12 hours.<sup>1377</sup> Although the provision provides on the notification of a prosecutor, no reference is made with regard to the defence lawyer.

Despite including other guarded places, the order to remain under surveillance in their home which can be issued by a prosecutor only when the juvenile is arrested must be considered as a child-friendly option.<sup>1378</sup> The necessity of being guarded might play an important role in giving priority to re-education institutions over home.<sup>1379</sup>

Finally, juveniles are entitled to be brought before a judge within 48 hours when apprehended or arrested for committing a criminal offence.<sup>1380</sup> However, a time limit of three days is

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<sup>1373</sup> Ibid paragraph 7

<sup>1374</sup> The provision adopts the expression 'as soon as possible' without defining what is meant with it.

<sup>1375</sup> Article 296 paragraph 2 and 3 CCP

<sup>1376</sup> Ibid paragraph 3

<sup>1377</sup> Article 295 paragraph 2, CCP

<sup>1378</sup> Article 255 paragraph 3 CCP

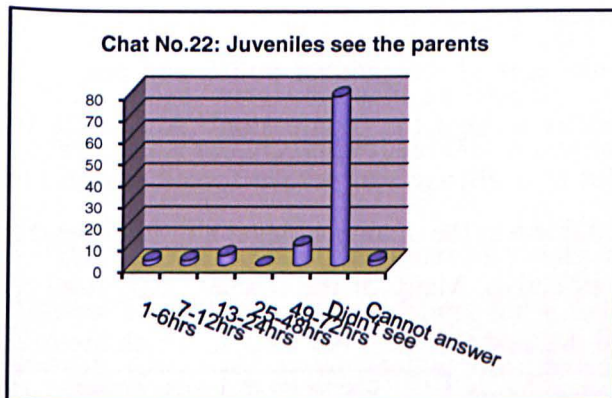
<sup>1379</sup> While commenting the provision Halimi et al. observe that relatives or re-education institution are included within the meaning of 'other guarded places. (Halimi p.599)

<sup>1380</sup> Article 258 paragraph 1

applied when the juvenile is arrested at the order of a court.<sup>1381</sup> Evidently there is clearly a contradiction of the principle of *Habeas Corpus* in the last requirement.<sup>1382</sup>

The research evidenced a series of problems during apprehension and arrest; 87.5% of juveniles affirmed to have been asked about their date of birth and address. Ten per cent of judicial actors observed did not strictly comply with this requirement, as they know juveniles as ‘problematic’. Meanwhile, the police officers explained the right to remain silent to only 14.3% of juveniles, informed 66.7% of juveniles about the reason why they had been stopped, and referred 54.8% of juveniles to their entitlement to a lawyer. According to judicial actors in 74% of the cases the juveniles are informed about the reason why they have been stopped, in 42% of the cases the juveniles are told about the right to remain silent, and in 82% of cases the ‘constitutional’ entitlement to a lawyer is explained to juveniles.

Police permitted only 28.6% of juveniles to call their parents. According to juveniles, in 61.9% of cases parents or guardians were directly or indirectly informed of their arrest. Police



deem that in 42% of cases the parents are always contacted, while in 42% of cases the notification depends on the circumstances of the cases, such as whether the juvenile was arrested at home. A total of 78.5% of juveniles did not meet their parents or guardians while being questioned by police, increasing their vulnerability (Chart No.22).

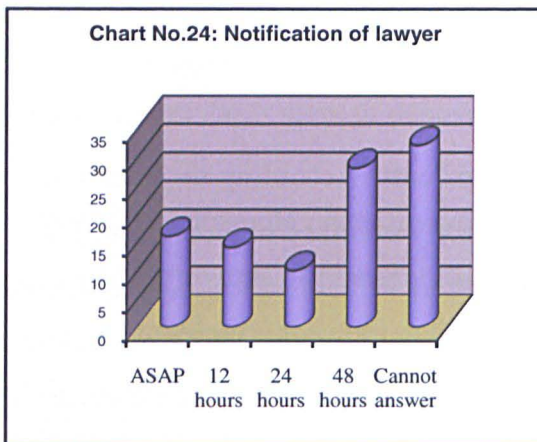
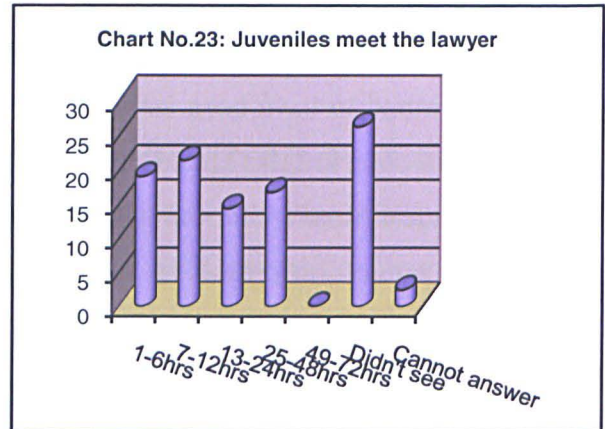
Although 9.5% of juveniles asked to see their parents within 24 hours, there was no explicit reference to whether they had a parent or guardian when their statement was taken. Meanwhile, 90% of judicial actors were aware that the presence of parents/guardians at all stages in proceedings was mandatory by Albanian legislation. However, only 20% of judicial actors observed that the notification of parents or guardians must be done as soon as the juvenile is apprehended or arrested, while 40% were unable to give an answer. Despite being mandatory, only 35.7% of juveniles explicitly demanded the

<sup>1381</sup> Article 248, paragraph 1

<sup>1382</sup> Although discussing the principle of Habeas Corpus, according to which a judge should hear an arrested person, Halimi et al do not consider the contradiction of two provisions. (Halimi et Al. p. 337)

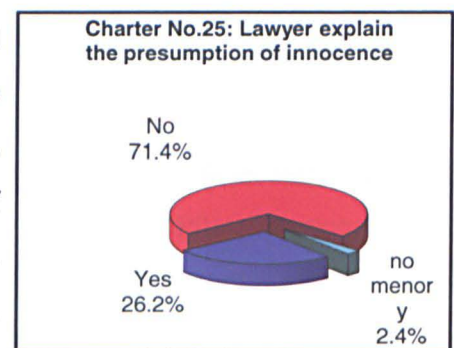


presence of a lawyer. A total of 73.8% of juveniles affirmed that police agreed to bring in a lawyer only when they accepted to give their statement voluntarily. However, 26.2% pointed out that they did not see any lawyer, while 19% managed to have contact with a lawyer within six hours (Chart No.23). According to judicial actors, a lawyer is notified about the juvenile apprehension or arrest as soon as possible in 16% of the cases, and within 48 hours in 28% of the cases (Chart No.24). The list of legal aid does not set out details on the



specialisation of lawyers. Thus, it is upon the prosecutor of the case and judiciary police to decide which lawyer to call on. The majority of solicitors complained about poor service offered by their colleagues on the legal aid list. There are unethical lawyers that for more money accept to become part of the judicial police and misguide juveniles to sign the 'confession'. According to

them, in practice it is very difficult for juveniles to challenge and revoke forced statements when their case is brought before the court. In addition to the quality of legal aid, interviewed judicial actors pointed out that defence is not effective. Many of the lawyers suggested to juveniles that they should accept the offence and demand the fast-track trial, in which the trial phase was absent. Indeed, the lawyers explain their legal position only to 61.9% juveniles, what was going to happen in court to 54.8% of juveniles, and what was going to happen if they were found guilty to 28.5% of juveniles. Meanwhile, the presumption of innocence was explained to only 26.2% of juveniles by their lawyers (Charter No.25). Moreover, the lawyers suggested to juveniles to accept the offence in 28.5% of the cases and to demand a fast-track trial. A total of 61.9% of juveniles affirmed to understand what the lawyer was saying to them.



**3.3.2 Trial.** Chapter II of the Constitution aims to ensure the protection of subjective rights of everyone on; a) the procedural fairness in the course of both civil and criminal proceedings; b) the right of access to court for the determination of civil rights and obligations and criminal charges; and in a more objective way on; c) the right to ensure that judgments shall be pronounced publicly and enforced. General due process guarantees and rights applicable to all persons involved in the criminal process contained in the Constitution are transposed into CCP in detailed requirement to be followed during criminal proceedings. However, the requirements are applied to children as much as to adults, and there is no specific provision to ensure protection or the best interests of a child are taken into account during the proceedings. In practical terms, the CCP does not contain a provision to explicitly ensure the participation in court proceedings of the parents or other legal representatives of the minor. In addition, there is no specific provision to exclude the juveniles from public hearing. Article 33 of the Constitution entitles all citizens to be heard before being judged. However, the CCP does not contain provision to ensure that this right is effectively enforced in proceedings against a juvenile. In considering 'effectively', reference is made to proceedings conducted in an atmosphere of understanding, which would allow the juvenile to participate. Indeed Article 358 CCP entitles the accused to participate in proceedings, but is absent in specifying that the judge, when conducting a hearing, must moderate the use of legal language in a way to ensure that minors understand the proceedings.

While the CCP explicitly enumerates to the court the elements to be taken into account while determining the security measures for a juvenile, this is not applied in the case of trial. Indeed, Article 42 provides that the proceeding authority must collect information with regard to juveniles. However the provision does not reinstate a formulation that this information should be available in all proceeding stages.

Finally, the hearings of juvenile cases should be conducted in a juvenile section. However, there is no specific guidance about the courtroom environment. The reason that this absence is highlighted is because it relates to the fact that Albanian courtrooms are designed with adults in mind rather than juveniles. Therefore children are placed in a cage in the court, away from their parents, reducing the parental support required for a juvenile (Figure No.7). Furthermore, Article 13 paragraph 4 stipulates for conducting hearings in juvenile sections, when Law No. 9877 'On organization of judiciary system in Albania' does not provide for

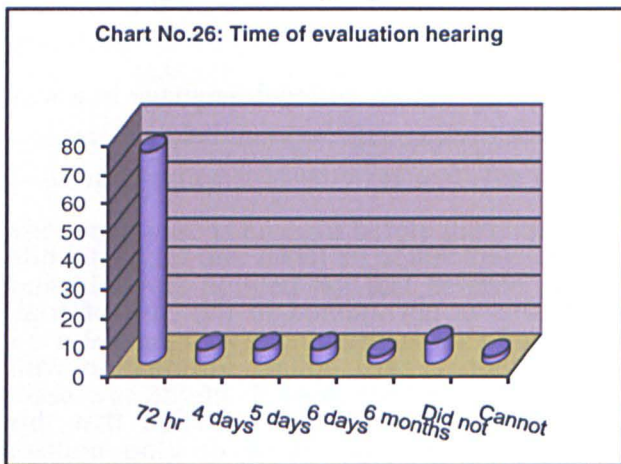


the nomination of specialist judges to examine cases concerning an offence committed by a minor.



Figure No.7: Standard courtroom in Albania (courtesy of [www.shekulli.com.al](http://www.shekulli.com.al))

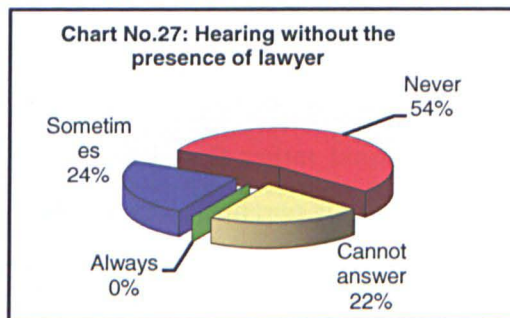
When it comes to the legal procedures of trials for juveniles, there is clearly non-compliance



with Article 13 of the CPC and the way trials are held. There is no juvenile court in Albania. When the research took place there was no juvenile section. Consequently, the Criminal Section of the court judges all juvenile offenders, which has a direct impact on the length of the process. All juveniles interviewed affirmed that the legal process in Albania is a long and drawn out affair.

The right to have matters dealt with without delay was not respected by the juvenile justice system in Albania. Thus, 73.7% of juveniles were sent before a court for the evaluation of preliminary measure within 72 hours (Chart No.26).

The lawyer represented 7.2% of juveniles at evaluation. A total of 28.6% of juveniles were awaiting trial for more than three months and never met with the Prosecutor. The majority of juveniles complained about the length of time that it took to get their case heard before a court.



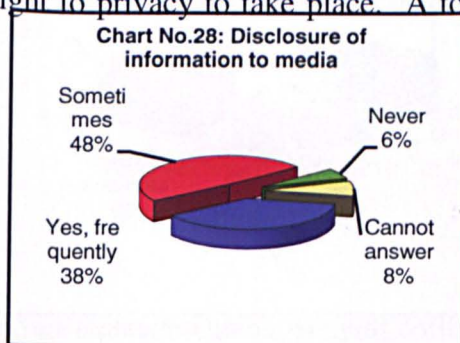
In many cases, the courts depend on the work of the local

Prosecutors' Office. As most of these offices are loaded with criminal investigations and trials, little attention is given to offences committed by juveniles. While 22% of judicial actors did not provide any comment, 24% affirmed that hearing sessions could be conducted without the presence of their legal defender (Chart No.27).

Some 2.4% of juveniles affirmed to have been sentenced in their absence, clearly violating the international standards, which imply as essential knowledge of a juvenile's personality by the proceeding authority in order to define the appropriate measure of punishment.

**3.3.3 Right to privacy.** Article 103, paragraph 4 of the CCP prohibits the publishing of generalities and photographs of defendant minors accused of an offence. However, the provision does not make a specific reference to 'all stages of proceeding' and does not contain any restriction on the publication of the details of the offence. In addition, if it is considered that such access would be in the interests of the child concerned, or the child is over 16 years, the court may lift the ban on publication. Furthermore, Article 340 (1)(ç) of the CCP provides that a hearing should only be held behind closed doors when the court considers it necessary during the questioning of minors. While for the publication there is a specific restriction, children are left vulnerable to public scrutiny once the trial stage is reached and proceedings take place.

Indeed the formulation of the provision is vague and leaves open the door for violation of the right to privacy to take place. A total of 38% of judicial actors affirmed that disclosure of



information leading to the identification of juveniles in conflict with the law is part of the administration of juvenile justice (Chart No.28); 48% of judicial actors opted for a soft version confirming that such disclosure sometimes takes place. The media presence either during apprehension or arrest, and reporting on court

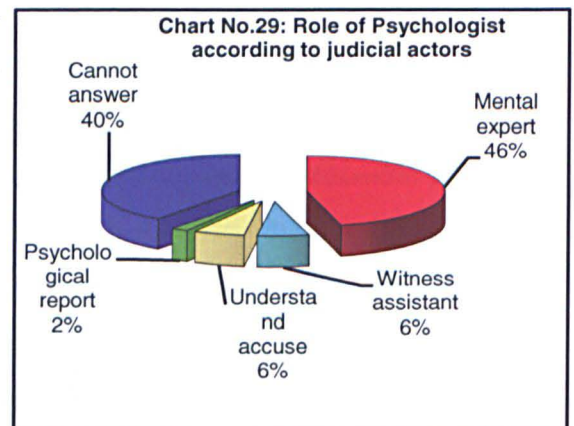
proceedings, is practically unlimited. A total of 14.3% of juveniles reported to have been obliged by police to show their face on camera. Although the law provides that trials of juveniles must be conducted behind closed doors, in practice 2.4% of juveniles confirmed that all processes, from their arrival to attend the session, the conducting of the session itself, statement and procedures followed by prosecutors, judges, and witnesses were all filmed and



recorded.<sup>1383</sup> Thus, the media is given easy access to the date and time of trials as schedules of courts are published via the internet and displayed on computers in the entrance halls of court buildings. Some 64.3% of juveniles affirmed that their ‘resentful’ relationship with the media derived from the fact that their names or pictures appeared in newspapers or TV while 21.4% of juveniles affirmed to have been nicknamed by the media and to have ‘played’ with them.

**3.3.4 Psychological support.** Despite Article 35 of the CC, which guarantees the psychological support of children in all stages of proceedings, the juvenile justice system in Albania rarely provides any kind of psychological support to children on trial. Only 6% of judicial actors describe the role of a psychologist as a person who assists the juvenile to understand accusations and processes or assists the juvenile as a witness (Chart No.25). To 46% of judicial actors, the role of psychologist consisted of the psychological expertise summoned at the request of parties. However, this was done on an individual basis as the court did not possess a list of psychologists or social workers experienced in the subject. Despite Article 42 CC stating that this is mandatory, only 64% of judicial actors acknowledged that psychological information about a juvenile might be sometimes requested. Even when it is provided, there is a high probability that it would not be taken into account.

The provision of psychological support from a social worker and psychologist was introduced recently to prisons. Therefore, 50% of juveniles were having sessions with a social worker while being in pre-trial detention and 61.9% of juveniles had sessions with a psychologist while in pre-trial detention or female prisons. Although a social worker and psychologist were attached to the structure of imprisonment institutions, the juveniles identified them as being educators rather than being in their professional capacities. Only the girls admitted to have spoken to a psychologist while awaiting trial.



<sup>1383</sup> 4.8% of juveniles reported that the media had followed their judicial processes intensively.

### 3.3.5. Sentence

In cases where a juvenile is found guilty, the court passes a sentence. The death penalty was abolished by Albania in December 1999.<sup>1384</sup> According to Article 31 of the CC, life imprisonment is not imposed on women or persons who at the time of committing a crime had not yet reached the age of 18. In addition, Article 29 of the Constitution affirms that no child can be charged of an offence that was not considered as such by law at the time of its commission. Exceptions to the principle of no retroactive juvenile justice are the offences that at the time of their commission, according to international law, constitute war crimes or crimes against humanity.<sup>1385</sup> Furthermore, no child is punished with a heavier penalty than the one applicable.<sup>1386</sup> Finally, the juvenile is entitled to benefit from the retroactive effect of a favourable penalty.<sup>1387</sup> The court is required to deliver a sentence which compliments the type and time limit of sanctions provided in the CC.<sup>1388</sup> To strike a proper balance between type and time limit, the court is required to take into account factors such as the dangerousness of the offence, the dangerousness of the person who committed the offence, and the level of guilt, as well as both mitigating and aggravating circumstances.<sup>1389</sup> Such requirements presume that the court deals differently with adults and juveniles in conflict with the law.

However, when considering the sanctions to be applied and the time limit for offences provided by law, it is observed that the Criminal Code differentiates juveniles from adults with regard to imprisonment sentences.<sup>1390</sup> However, such treatment is not observed with regard to other sentences and contraventions. Therefore:

- a. A fine is imposed at the same level with an adult. In case of crime a juvenile may be fined between 100 thousand and 10 million Leke.<sup>1391</sup> The only benefit might be the payment through rates;

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<sup>1384</sup> The Albanian Constitutional Court, following the example of the Ukrainian Constitutional Court declared the death penalty to be unconstitutional. The abolishment of death penalty from the Constitutional Court opened the way for Albania to sign the Protocol No.6 to the European Convention of Human Rights on 4 April 2002.

<sup>1385</sup> Article 29 paragraph 1, Constitution

<sup>1386</sup> Ibid paragraph 2

<sup>1387</sup> Ibid paragraph 3

<sup>1388</sup> Article 47 CC

<sup>1389</sup> Ibid

<sup>1390</sup> Article 51 explicitly provides that an imprisonment sentence must not exceed the half period of sentence set for offence.

<sup>1391</sup> Article 34 CC. Leke is Albania currency

- b. Exclude from punishment.<sup>1392</sup> The court, based on the level of danger of the criminal act, circumstances, prior behaviour of the juvenile, can dismiss them from sentence. In such cases, the court decides to send juveniles to an educational institution. However, the absence of one of the prerogatives renders invalid the application of this type of sentence.<sup>1393</sup>
- c. Educative measures are applied to a juvenile excluded from punishment or to a juvenile than does not bear legal responsibility. The educative measure intend for the placement of a juvenile in an educational institution.<sup>1394</sup>
- d. Imprisonment. The juvenile justice system in Albania gives to children the same type of adult imprisonment sentences, but in a short version. The maximum sentence that can be imposed on a juvenile is 12.5 years. The minimum sentence is 2.5 days.<sup>1395</sup> The formulation of Article 51 emphasizes the age element without taking into consideration other factors that might reduce the sentence further. Such an approach 'represents a fundamental misunderstanding of the international standards for juvenile justice'.<sup>1396</sup>

The sentencing process is, in fact, more complex. Article 53 of the CC may be invoked by a court in order to exercise discretion while sentencing juveniles, or deciding a punishment milder than the one provided for the offence.

A new system of alternative measures to imprisonment could provide a new component of sentencing either for adults or juveniles. In addition to introducing a new philosophy in sentencing, the alternative sentences incorporated to the CC in 2008 require that an infrastructure, such as probation service, be established in order to ensure their effective application and desired effect upon adults and especially juvenile offenders. It should be noted that there is no direct prevalence to apply these measures to juveniles. However, the

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<sup>1392</sup> Article 52 CC

<sup>1393</sup> Halimi et al. p.602

<sup>1394</sup> Article 46 CC

<sup>1395</sup> Article 32 CC provide imprisonment in terms from 5 days to 25 years for crimes and from 5 days to 2 years for contraventions.

<sup>1396</sup> While pointing out that halving the sentence is common approach adopted in region, Calivis observes that this 'lenient' approach is a fundamental misunderstanding of international standards. (Moestue 2008 p. 5) As previously noted the implicit presumption of juvenile justice system is that juvenile should be dealt with differently from adults. This implies that the well-being of the juvenile and the desirability of promoting the juvenile's reintegration and the juvenile's assuming a constructive role in society takes priority when deciding about the sanction to be imposed.

formulation of measures gives them a certain degree of priority towards the juveniles. Thus the court may impose alternative measures such as:

- a. Semi-liberty order implies that a person deprived of liberty may leave the prison to perform activities such as work, education, vocational training, and fundamental parental responsibilities or to follow medical treatment and rehabilitation.<sup>1397</sup>
- b. Probation consists of putting a convict on probation while suspending execution of the sentence.<sup>1398</sup> The primary condition is that during the probation period, which lasts from 18 months to five years, the juvenile must not violate or commit another offence of the same scale or more serious than the previous (Article 59 and 60). Conditions such as guaranteeing to attend school or vocational courses, to refrain from visiting certain premises, to refrain from being in the company of certain persons, and to remain at home according to a timetable, might bring positive effects in terms of their reintegration into society, correction, and education.
- c. A stay-at-home order features a restriction on leaving home premises.<sup>1399</sup> The court will lift the ban only when the juvenile needs to perform very necessary errands, work, and educational activities, attend school or follow rehabilitative programmes.
- d. Work on public interest consists of 40 to 240 hours of work performed without remuneration on behalf of the community. The sentence is considered done upon the completion of the work. The weakness of this measure lies in the fact that it does not differentiate between adults and juveniles. While the court determines the amount of hours to be performed, the discretion to determine type of work, days, and working hours lies with the probation service. It seems that the limit for the completion of work has taken into account the fact that the Labour Code imposes certain conditions on children performing work.
- e. Parole can be applied where a juvenile has been given a sentence of imprisonment and through behaviour and efforts demonstrates that the sentence has achieved the aim of education.<sup>1400</sup> However, the decision to apply parole is subject to certain time limits being served. The measure does not, again, distinguish juveniles from adults. The second issue to note is the fact that the provision refers to educative aims rather than rehabilitative aims.

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<sup>1397</sup> Article 58 CC

<sup>1398</sup> Article 59 CC

<sup>1399</sup> Article 59/a CC

<sup>1400</sup> Article 64 CC

In order for such measures to be applied, a fundamental reform of the penitentiary system is required, as an open IEDP must be established to respond to the semi-liberty conditions. In addition, the philosophy of treatment of juveniles as well as adults deprived of liberty needs to be oriented towards rehabilitation rather than education. Whether such reform is going to be achieved remains to be seen.

Finally, one issue that has not yet been tackled by the Albanian legislation is the automatic removal of criminal records of child offenders once they reach 18 years of age. Indeed, Article 483 provides on removal of criminal records in certain conditions, but does not establish juveniles as a beneficiary group. Even in the case of contravention, the time limit of 10 years from the date of a sentence's execution compromises the future of a juvenile.

The use of deprivation of liberty as a punishment is apparent in the judgments passed by the courts. A total of 24 of the juveniles had been tried and were aware of the duration of their sentence; 54% of 24 juveniles were sentenced to between three years and five years for a property related offence (theft or robbery); 79 % of juveniles had been sentenced to more than one year with deprivation of liberty<sup>1401</sup>; 25% of juveniles were sentenced to between five years and 10 years, as the majority of them had committed a murder. Although Rule 17 (c) Beijing Rules considers the use of the deprivation of liberty suitable only 'unless there is no appropriate response'<sup>1402</sup>, 54% of judicial actors admit that there is an unnecessary use of deprivation of liberty as a preliminary measure or as a sentence. In addition, 54% of judicial actors were aware of alternative measures to the deprivation of liberty. However, when asked on concrete alternative measures, the judicial actors were able to enumerate only the order to appear before judicial police and house arrest. No reference was made to bail or curfew orders.

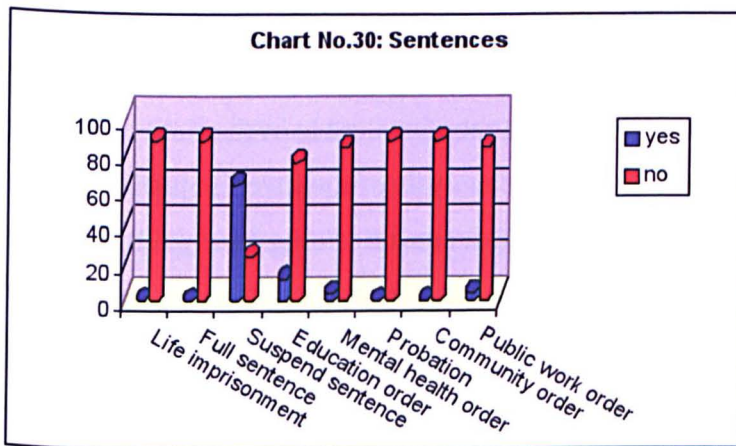
Children in conflict with the law in Albania are sentenced to full duration for the act as stated by law with 88% of judicial actors admitting to having requested/defended/ordered a sentence to the full duration (Chart No.30).

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<sup>1401</sup> This percentage and the following one in this paragraph are calculated based on the figure of juveniles already tried (24 juveniles).

<sup>1402</sup> Rule 17 (c) Beijing Rules provides the use of deprivation of liberty only for serious acts involving violence against another person or for persistence with other serious offences.





The explanation behind this lies in the procedural practice. The full duration sentence is followed by a second phrase stating that a tariff to halve the duration must be applied as the defendant is a juvenile. Therefore, this practice clearly indicates that deprivation of liberty is used purely as a

punitive measure rather than as a measure of last resort and for the shortest appropriate time. Moreover, this practice demonstrates that the requirements of the CRC is interpreted as a call simply to be less severe as the person in question is a child, rather than making an objective assessment on the suitability of the sentences. Thus, this practice clearly does not comply with the principles of proportionality which requires a sentence to be balanced not only to the gravity of offence, but also to the personal circumstances of the offender and the needs of society. A total of 64% of judicial actors have requested/defended/ordered the suspension of a sentence in the case of small offences or offences committed under special circumstances while 12% have requested/defended an educational measure. However, the judge cannot deliver an education order because of the absence of an institution to enforce such a measure. Similarly, 4% have requested/defended an order to work a number of hours in the interest of the public, which cannot be delivered by the judge because of the absence of structures to supervise such an order and 88% of them would like to assign a juvenile under probation or to order a community sanction. However, these alternatives are rendered impossible due to the absence of a body that creates, implements and monitors them.

#### **4. A system specifically applicable to a juvenile in conflict with the law.**

**4.1 Policy.** Almost four years after the first report was presented to the Committee, Albania seems to remain in the position of not having an overall strategic vision for the future of juvenile justice. The National Strategy for children does not provide a specific plan on juvenile justice.

However, the Albanian government has affirmed to have a policy, which is drafted in cooperation with UNICEF in Albania. Indeed the Committee recommended that the Albanian

government should seek technical assistance in the area of juvenile justice from UNICEF.<sup>1403</sup> However, the recommendation emphasises assistance as opposed to policy drafting by UNICEF. The contribution of UNICEF in Albania has been invaluable in the field of juvenile justice, as it has been the first institution to provide an analysis of the juvenile justice system, has continuously provided support to Albanian authorities in reforming the system, and has directly assisted the Albanian authorities with the 'On the Rights Track Programme'.<sup>1404</sup> In realistic terms, UNICEF's assistance cannot cover every single component of juvenile justice. Thus, as far as choice of activities is concerned, UNICEF has channelled support on advocacy for policy and legislative reform, institutional capacity building and establishment of alternatives to detention, protection of children deprived of their liberty, and prevention of juvenile delinquency. This derives from the fact that 'UNICEF's institutional culture emphasizes programmes, which are of limited duration ... of two or three years'.<sup>1405</sup>

Although it might be considered that Albanian authorities have been adopting the UNICEF programme as a policy in juvenile justice, there is no indication that the Albanian government has put into place any mechanisms or allocated financial resources to ensure the continuation of activities supported by UNICEF. In addition, the overall goal of UNICEF's programme is 'the establishment of a juvenile justice system based on children's rights that offers alternative measures to detention at the pre-trial, trial and post-trial stages and promotes prevention of juvenile delinquency and social reintegration of offenders'.<sup>1406</sup> Therefore, UNICEF's programme attains features of a welfare system. However, the system analysis (Chapter Five) and modalities of system operation in practice (this chapter) provide evidence that juvenile justice in Albania remains a punitive system.

The absence of a national juvenile justice policy is reflected in:

- o ***The current status and number of personnel in the Office of Juvenile Justice and Family Rights*** at MJ demonstrate the priority of this law given by the Albanian authorities to juvenile justice. Furthermore, the vagueness and broad obligations obstruct

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<sup>1403</sup> UN Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention: Concluding Observations: Albania* CRC/C/15/Add.249, 28 January 2005, para. 77(c)

<sup>1404</sup> 'On the rights track: Establishment of a preventive and restorative juvenile justice system in Albania', UNICEF Tirana, 2003

<sup>1405</sup> Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) 'Thematic evaluation of UNICEF's contribution to Juvenile Justice System Reform in four countries: Montenegro, Romania, Serbia, Tajikistan', UNICEF, March 2007, p.11

<sup>1406</sup> UNICEF 2003, paragraph 1.5

OJJFR when seeking to provide adequate coordination among specific systems, to follow the trends and patterns of juvenile offences, to coordinate the activities of systems dealing with juveniles in conflict with the law and to monitor the implementation of the juvenile justice system.

- **Overall legislation.** The system analysis and system operation in practice highlighted that the legal provisions, which constitute the juvenile justice system, are diffused in various laws. This does not constitute a problem per se, as Article 4 of the CRC gives to State Parties discretion in 'undertaking all the appropriate legislative measures ... for implementation of the rights recognised in the CRC'. The particularity of this relates to the fact that juveniles are not distinguished separately, making all stages of juvenile justice system equal with the main criminal justice system, (i.e. trials are conducted in the same modalities as for adults, maintaining family contacts are governed by the same regulation as for adults). Secondly, when a special requirement is applied to juveniles by these laws, its content does not sufficiently take into account the international standards and norms set by the CRC framework (i.e. halving the length of adult sentences for juveniles, legislation on the treatment of prisoners, and authorising the use of 'isolation' as a disciplinary measure). In some cases, the legislation provides a special requirement to be applied to juvenile '*de jure*', while '*de facto*' is not applicable (i.e. educational measures, or psychological reports). Finally, the legislation does not address the recommendation of the Committee<sup>1407</sup> on the middle status based on legal responsibility (14 years for crimes, 16 years for contravention).
- **Data Collection and analysis.** Although the Committee assigned to 'INSTAT institute to establish a comprehensive system of data collection incorporating all the areas ... and make possible disaggregating analyses of data',<sup>1408</sup> there was no indication that Albanian authorities have complied with such a request. In fact, one of the major obstacles encountered in this thesis was the lack of data regarding juvenile justice. The obstacles encountered were outcomes of a poor and partial data collection system and the lack of transparency from all systems involved with children in conflict with the law, which prevented the data from being shared and properly analysed. The data was partial, and there was little indication on followed indicators. The current functioning of data collection systems means that little is known about the juvenile justice in Albania, beginning from the number of children apprehended with charges not pressed; the number

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<sup>1407</sup> CRC/C/15/Add.249 para.21

<sup>1408</sup> CRC/C/15/Add.249 para.18



of children arrested and released; and the number of children deprived of liberty. In addition, the lack of data means that OJJFR is not in a position to monitor current juvenile justice system as the number of cases of juveniles prosecuted, the number of juveniles given custodial and non-custodial sentences, the percentage of cases handled within applicable time limits, and many other indicators, are simply not available. This leads to the general conclusion that the policy on juvenile justice in Albania is made in a vacuum as there are no means to evaluate policies and programmes adopted, to track progress towards stated targets for reform, and to track tendencies and patterns of juvenile offending.

- **Monitoring system.** There is no body or agency to ensure co-ordination, enforcement, and adherence to principles within all the systems dealing with juveniles in conflict with the law. Indeed, establishment of the temporary Sub-section on Child Rights within the structure of the People's Advocate helped to compensate for the lack of a central administrative structure and contributed to law reform by providing children with a voice and promoting child rights. However, the Albanian authorities failed to comply with the Committee's recommendation in allocating the 'adequate human and financial resources to ensure its full enforcement and subsequently the continuity of activity of sub-sections'.<sup>1409</sup>
- **No adequate programmes of reintegration** The organisation of the penitentiary system seems designed to keep juveniles away from society, rather than investing financial and human resources into their rehabilitation. The lack of acceptable conditions during detention, overcrowding, deterioration of items for personal use, housing of juveniles and adults within the same facility, inadequate sanitation, and poor hygiene are problems throughout all three facilities. The centralization of facilities designed for juveniles, restrictions of visits to one per week, timing only during the morning and during weekdays, make it difficult for juveniles to maintain contact with their families through visits. In addition, having children deprived of liberty is not only a major emotional and psychological burden, but also a financial one to the families. The families are obliged to provide food, clean clothes and bedding for juveniles on a regular basis, as the facilities are not in a position to provide good quality food and other essentials for adequate living conditions. The penitentiary system is designed to make life easier for those running the centre, rather than having in mind the best interests of juveniles. Many other recreational

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<sup>1409</sup> CRC/C/15/Add.249 para.18

activities are timed to coincide with outdoor exercise, preventing juveniles from engaging in as much exercise in the open air as international standards require, including the JDLs.<sup>1410</sup> In addition, juveniles remain locked within their cells for most of the day and must make efforts to entertain themselves. The level of education provided is lower than in regular school, while vocational training lacks any elements that would provide enough skills for the juvenile to later draw on to develop a profession. There is no contact with the community, making it extremely difficult for juveniles to be rehabilitated in the community upon release. Overall, the underlying design of penitentiary systems already prevents any success in reintegration of juvenile offenders.

- ***The vulnerable situation of girls in the penitentiary system.*** As a result of the small number of girls in conflict with the law, there are no juvenile facilities for females. Consequently, girls are housed with adult female prisoners. This solution renders them more vulnerable as there is more likelihood that they will be held at long distances from their families and home communities. While benefiting from being housed in a low security system, they are less likely to access the educational programmes to which boys are entitled.

**4.2 Professionalism and remuneration.** Two patterns were observed regarding training of the personnel involved with juvenile offenders, which implies non-compliance with the Rule 22.1 of the Beijing Rules. Firstly, knowledge about international and domestic legislation and their implication in practice by a large number of professionals dealing with juvenile justice issues is very basic. This is because of the absence of an official publication of international instruments. The judicial police, prosecutor, judges, lawyers, and prison police had barely received training on psychological-pedagogical elements of communicating with juvenile offenders. Secondly, all professionals had received training on an ad-hoc basis according to the projects of NGOs and UNICEF. No forum exists among the social workers, psychologists and educators at facilities to evaluate the programme used or to generate new ways to respond to the needs of juveniles deprived of liberty. Social workers and psychologists are relatively new professions in Albania. Thus, in the absence of proper teaching curricula, the entire professional involved either with the juvenile or adult deprived of liberty would benefit from the exchange of information on the modalities of planning and following an individual programme. No forum exists among legal professionals to either discuss the cases or provide solutions. There is a necessity to introduce all categories of professional to the basic

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<sup>1410</sup> Rule 47 JDLs, Rule 21 paragraph 1 SMR. In addition, Rule 21 paragraph 2 SMR especially provides on physical and recreational training during the period of exercise to juveniles.

psychological-pedagogical elements of communicating with juvenile offenders. In addition, ongoing training of personnel and prison staff is needed to implement a new attitude towards deprivation of liberty based on respect for human rights and awareness of socio-psychological needs of juveniles. Currently, re-education rather than reintegration of juvenile offenders guides the work of prison staff. However, the efforts made with regard to specialised training risk being of limited practical effect, as the majority of personnel considered that they were not being adequately remunerated. The majority of facility personnel were not satisfied with their current employment.

More precisely, more than 94% of judicial actors need child psychology and psycho-social training to respond to all aspects of dealing with the juvenile in conflict with the law. Some 66% of judicial actors need to acquire the necessary communication skills for engaging with the children. This is of importance as the way in which a question is posed has a direct impact on their efforts to elicit the information required for proof of the case (judiciary police, prosecutor and judge) or acquire the trust and co-operation of the juvenile (lawyers).

A total of 32% of judicial actors confirmed to have attended the training courses two years ago. However, none of them commented on the necessity of ongoing training in this field. No training manual on how to deal with children in conflict with the law is available.

In addition, 66% of judicial actors identified the CRC as an international instrument that set up legal standards for juveniles deprived of liberty, but only 4% of judicial actors were able to identify ECHR, JDLs, and the Beijing Rules. Consequently, the information on other international instruments relevant to juvenile justice was extremely limited.

Although Article 122 of the Constitution establishes the relationship of international treaties within domestic jurisdiction, more than 34% of judicial actors were unable to distinguish which of the comments were true; 58% of judicial actors also affirmed that international treaties are legally binding for the Albanian government. However, the rate drops to 38% in clarifying the position of international treaties on the domestic legal system.

The lack of reference to other international instruments or a clear understanding of their hierarchy with the domestic legal system, provided evidence of the gap in the professional training of legal actors, such as judiciary police, prosecutor, judges, solicitors, and prison

staff, regarding international law, particularly international human rights law. Indeed, 46% of judicial actors were not satisfied with the level of their knowledge on international standards applicable to juvenile justice.

The suitability of personnel at institutions for the deprivation of liberty is closely related to training as a way of obtaining further professional knowledge and adequate remuneration.<sup>1411</sup> Thus, 70.8% of the personnel at the institutions did not receive upon appointment any training on the general and specific requirements of their position. A total of 29.2% of personnel were trained from three days up to four months while 54.2% affirmed to have improved their professional skills on child's rights, juvenile prisoner needs and in service training through training received at a later stage. Apparently, all negative publicity on the failure of the penitentiary system as a whole has influenced channelling of training resources in the right directions; 4.2% of personnel have attended training during their own time on the treatment of victims from domestic abuse and found it invaluable in their work. More than 70.8% of personnel refer to the GPR and the regulations of the facility to guide their training and govern their ethics.

Compared to judicial actors, the level of awareness about international treaties enhances the capability of the personnel of institutions. More than 50% of them identified the major international instruments, which set standards for the deprivation of liberty, such as the CRC, European Rules on Prison, SMR, JDIs and the Beijing Rules. In addition, there is a certain degree of responsibility by 33.3% in acknowledging their weaknesses and calling for more measures to enhance professional skills on rehabilitative work.

Although 83.3% of personnel believed that they did not receive fair financial compensation for their work, 75% were positive on continuing to hold their position for the foreseeable future, as they were satisfied with their work.

##### **5. Intervention without resorting to judicial proceedings: Diversion and restorative justice**

No legal provision explicitly empowers the judiciary police or prosecutor to dispose of the processes without resorting to a formal trial while dealing with juveniles in conflict with law. However there is some legal basis, which might give ground to a diversionary process.

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<sup>1411</sup> Rule 83 and 85 JDLS

Thus, Article 284, paragraph 1 provides that the prosecution office or judicial police may not start criminal proceedings for certain crimes or contraventions without a complaint filed by the injured party. However, the list of crimes and contraventions contain only the so-called criminal offences against health; battery, intentional non-serious injury, accidental serious injury, assaulting the family of a public official and penal offences against morals; insult and defamation (of various types).<sup>1412</sup> Clearly they do not include any property crimes or crimes of violence (robbery) to which juveniles in Albania are more prone.<sup>1413</sup> The prerogative, which allows for a diversion to take place, is the right reserved to the injured party to withdraw a complaint at any phase of penal proceedings. The diversion process provided in this case adopts a feature of restorative justice, as mediation and reconciliation are followed in resolution of criminal cases provided by Article 284 of CCP.<sup>1414</sup>

Mediation and reconciliation are already extra judiciary activities formalised by the Albanian legislation.<sup>1415</sup> The use of mediation is expanded in all civil, commercial, familiar disputes, subject to court consideration.<sup>1416</sup> The mediation process is regulated in professional and operational aspects. Thus, the profession of mediator is recognised as a professional activity that must be licensed by the MJ.<sup>1417</sup> Furthermore, the professional activity of a mediator is exercised off-court as an alternative to conflict resolution while respecting the equality between the parties and their individual values.<sup>1418</sup> From the operational aspect, the mediation service must be requested and accepted by the parties, prior to or after the dispute has arisen,<sup>1419</sup> when it is obligatory by law, and in the cases when it is required by the court, arbitral tribunal or the respective state institution according to law.<sup>1420</sup> The mediation recognises the individualities of parties as the procedure and modalities are determined and remain confidential throughout all the process to the parties taking part in it.<sup>1421</sup> The result of the process is the settlement agreement, which brings about juridical effects for the parties.

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<sup>1412</sup> The jurisdiction of Article 284 paragraph 1 is expanded over the offences foreseen in articles 89, 102/1, 105, 106, 130, 239, 240, 241, 243, 264, 275 and 318 CC.

<sup>1413</sup> Previously noted on Data analysis

<sup>1414</sup> Law No. 9090, Article 2

<sup>1415</sup> Ibid Article 1

<sup>1416</sup> Ibid Article 2

<sup>1417</sup> Ibid Article 3 and 4, while Article 3 covers the issue of whom can exercise the mediation, Article 4 obliges the mediator to register their activity as natural or legal personality, to deposit their data in the mediator's register by the MJ and tax office.

<sup>1418</sup> Ibid Article 1 paragraph 2 prohibits the mediator to order or oblige the parties to accept the reconciliation of the dispute.

<sup>1419</sup> Ibid Article 5

<sup>1420</sup> Ibid Article 2 paragraph 2

<sup>1421</sup> Ibid Article 8 paragraph 1 and 11 paragraph 1

However, certain situations might render the agreement invalid.<sup>1422</sup> The invalidation of the mediation as the 'dispute, according to law should be settled only by going to the court', represents incompliance between the practice with the criminal procedure. Thus, the judiciary is not yet prepared to incorporate diversionary procedures, which might transfer a case from the judiciary bodies to the intermediation service.

## 6. Conclusion

The CRC promotes a number of rules and principles which constitute the basis of the juvenile justice system and provide for the juvenile in conflict with law a large amount of protection and guarantees throughout different stages of administration of juvenile justice. As to the CRC, State Parties are under obligation not only to adopt these standards into their domestic legislation, but also to put measures in place to observe and ensure that children in conflict with the law are treated in compliance with these principle and standards.

Despite the efforts and initiatives taken by the Albanian government to improve the administration of the juvenile justice system in the country, legal analysis reveals that there are still problems in the system that need to be improved in order to achieve minimum standards set by the international human rights treaties.

First and foremost to be observed is the weaknesses of the legal framework, which governs juvenile justice matters. The legal framework is designed to support criminal justice for adults. The provision incorporated with regard to juveniles in conflict with law only touches on this area, and does not provide a common framework for how a juvenile should be treated. The juvenile justice system, built on this legal framework, targets only the juvenile in conflict with the law and not the rights and justice of the system as a whole.

The overall approach is to punish juveniles rather than giving weight to the best interests of children or their special needs. A priority for the current juvenile justice system is re-education rather than rehabilitation, physical and psychological recovery and social reintegration. Therefore, the current juvenile justice system fails to comply with the principal

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<sup>1422</sup> Ibid Article 19. As to article 19 there are five situations which render invalid the mediation process: the mediator is not licenced to perform this activity, the agreement contains obligations assessable in money and it is not formulated in writing, contains obligations for subjects that have not participated in mediation, there is simulation and consequently does not present the real conflict and finally the dispute according to law should be settled only by court.

aim of juvenile justice, which is reintegration of the juvenile in conflict with law into a community as a legitimate member of society with the rights and responsibilities of a citizen.

The non-compliance with CRC of standards and norms at the domestic level highlights the fact that the fundamental basis of systems such as juvenile policy is not present in Albania. All the core elements of juvenile justice from investigation and trial processes, to rehabilitation and reintegration, are hampered and sometimes crippled by the lack of juvenile policy, structures, juvenile criminal procedures, specific juvenile sentence options and a national philosophy of dealing with children in conflict with the law.

## CHAPTER SEVEN

### TOWARDS FULL IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD: CONCLUSIONS AND RECOMMENDATIONS

#### 1. Introduction

This thesis aims to provide a systematic and comprehensive analysis of the implications of the UN Convention on the Rights of the Child (CRC) regarding the administration of juvenile justice and its enforcement in Albania, without the ambition of being exhaustive. As pointed out in the introduction, the initial objective of the thesis was to assess how the Republic of Albania has disseminated, implemented, and monitored the international standards and norms set out by Articles 37 and 40 of the CRC regarding juvenile justice.

The thesis might suggest that it has been assumed that the CRC's standards are those to which the Albanian juvenile justice system should aspire. Contrary to this assumption, it has aimed critically to review the CRC. The assessment, in theory and practice, of the juvenile justice system in Albania, the general conclusions of which will be addressed below, has enabled Albania to serve as an example of the difficulties and resistance encountered in implementing international legal standards for children in conflict with the law. More precisely, the thesis has sought to highlight the capacity of the CRC's juvenile justice framework to drive and sustain progressive juvenile justice reform in practice.

It is important to acknowledge that, in referring to the CRC and UN Minimum Standards and Norms in Juvenile Justice, the intention was not to overplay the power of these instruments, and that the international juvenile justice framework presents limitations as noted in Chapters 3 and 4. However, as Kilkelly, Goldson and Hughes, Muncie,<sup>1423</sup> acknowledge, CRC and UN Minimum Standards and Norms in Juvenile Justice are the only existing benchmark for a common global language. In this respect, the CRC and UN Minimum Standards and Norms in Juvenile Justice are considered as a 'model whose inspiration might provide some

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<sup>1423</sup> Ursula Kilkelly. 'Youth justice and children's rights: measuring compliance with international standards, *Youth Justice: An International Journal*, Vol.8, Issue 3, 2008, pp. 187-192, Barry Goldson, and Gordon Hughes, 'Sociological criminology and youth justice: comparative policy analysis and academic Intervention', *Criminology and Criminal Justice*, Vol.10, Issue 2, 2010, pp. 211-230, John Muncie, 'The United Nations, children's rights and juvenile justice' in *Youth Justice Handbook: Theory, Policy and Practice eds: W. Taylor, R. Earle, R. Hester, Willan Cullompton*. 2010



counterbalance to some of the current fads', <sup>1424</sup> and used as one basis for rethinking juvenile justice.<sup>1425</sup>

To conclude, it was thought that the thesis, in analysing the Albanian juvenile justice system in the light of the CRC, would deepen understanding within policy-making and juvenile justice circles of the limited implementation of the CRC within national boundaries. It was thought that the thesis would also enable these groups to identify ways that the discourses which take place at the national or international level can fit into local realities, thus ensuring that strategies which may be developed in the future might be able more effectively to protect children in conflict with the law. Moreover, the thesis aims to ensure that Albanian laws that emerge as a result of harmonising national legislation with the CRC are not simply imitative of its contents, but also take into account cultural values, traditional methods of tackling problems, and, importantly, the capacity of the existing structure of Albanian government to enforce the law.

The thesis has been concentrated around two central questions:

- What are the current theories, policies and practices of juvenile justice adopted by the Republic of Albania?
- How far does juvenile justice in Albania fall short of the UN Convention of the Rights of Child in relation to children in conflict with the law?

The conclusions drawn in each chapter are not repeated here. Rather, this concluding chapter summarises and highlights the key points of juvenile justice in Albania that fall short of the CRC and the United Nations Minimum Standards and Norms in Juvenile Justice. As well as identifying key areas in need of intervention, the conclusions are followed by recommendations to be undertaken at a domestic level by the Albanian legislator, competent authorities (i.e. Ministry of Justice, Prosecutor, and General Directorate of Prisons) and local NGOs to facilitate the process of dealing with the identified shortcomings. The primary aim of the recommendations is the close alignment of the juvenile justice system in Albania with that advocated by international norms and standards.

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<sup>1424</sup> Jean Trépanier 2007, p.259

<sup>1425</sup> Goldson and Muncie, 2006

Almost six years have elapsed since the Committee's recommendations in paragraph 76 and 77 of Concluding Observations, which were the starting point of this thesis. In drawing conclusions, particular attention is paid to the extent to which Albania has addressed these recommendations.

In light of the systems analysis conducted in Chapter 5 (Albania and children in conflict with law: Overview of juvenile justice system) and Chapter 6 (Compliance with UN Convention on the Rights of Child), this Chapter starts with the premise that Albania fails to comply with the requirement to establish a comprehensive juvenile justice system to respond to children in conflict with the law in the manner advocated by international standards. Reference is made to the key problems for the Albanian juvenile justice system and the absence of an overall juvenile justice policy. Without a comprehensive policy, the duties and obligations to be followed by various arms of juvenile justice vary. This renders difficult the coordination of their activities, which leads to failure of the system to respond to children in conflict with the law as provided by article of the CRC. The absence of this key element is present throughout this final Chapter.

The conclusions presented herein point toward a possible way forward. The clarification of key points of intervention, combined with measures undertaken at top level of juvenile justice system emanating from the pressure of international community and little inputs at bottom level of system, will facilitate Albania in undertaking a substantial programme of reform. Such reform is necessary to establish a comprehensive juvenile justice system that is compliant with the CRC provisions.

## **2. Key issue of concern**

The research conducted on the current criminal justice system for dealing with children in conflict with the law in Albania concludes that this system presents major obstacles in implementing and complying with the UN CRC or the UN Minimum Standards and Norms of Juvenile Justice. There have been some attempts at reform by the Albanian government. However as discussed in Chapter 5, this reform was mainly a result of UNICEF activities. The reform of the juvenile justice system, according to the recommendation of the Committee, has been a 'salami approach', intervening at the points where UNICEF has got funds and programmes. The Albanian political willingness to deal with children in conflict with the law is a phenomenon recognised by UNICEF, which chooses to advocate with other

representatives of the international community present in Albania, and with local NGOs lobbying on children's rights, rather than the Albanian government. Lack of political willingness led UNICEF to gather information on intervention points from different NGOs and to use informal resources based on social marketing models with Albanian juvenile justice stakeholders.<sup>1426</sup>

**Policy.** Rather than benefiting from having a low rate of children in conflict the law, giving the possibility to focus on reviewing and reforming the way in which the system deals with this category of children, Albania's government has chosen to ignore the recommendation of the Committee. Currently no juvenile justice policy has been adopted in Albania. The consequences of this are manifested in the absence of coordination of activities from all parties with a vested interest, as well as in a lack of guiding principles for the activities of stakeholders participating in the system.

**Legal Framework.** The absence of a comprehensive policy means that the current system of juvenile justice, affords no priority to international standards, too little discretion to deal with juveniles in conflict with the law without resorting to judicial proceedings, little room for flexibility and alternatives to strictly limit the use of deprivation of liberty and in particular pre-trial detention, and no reintegration possibilities for a child to become a full, constructive member of society. In practical terms, once a child is alleged, accused, or recognized as having infringed the penal law, he or she will be subjected to a criminal justice system designed to deal with adults, rather than a system designed to primarily consider the best interest of the child. Such a conclusion is drawn in light of the legal framework, leniency presented by the justice system in dealing with juvenile offender and lack of diversionary measures. More precisely, the legal framework for juvenile justice is set up in scattered provisions of the Criminal Code, the Code of Criminal Procedure and legislation governing penitentiary institutions, and legislation regulating the activity of state police. Despite being written during the last decade,<sup>1427</sup> majority of the provisions apply to both juveniles and adults, and might be considered as a 'patchwork' to improve the system rather than bringing the legislative framework into full conformity with the CRC. The system shows leniency to

<sup>1426</sup> 'The Development of Juvenile Justice Systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine', *UNICEF Regional Office for CEE/CIS*, Geneva, 2009, [www.essex.ac.uk/armedcon/story\\_id/developmentofjuvenilejusti.pdf](http://www.essex.ac.uk/armedcon/story_id/developmentofjuvenilejusti.pdf) (Accessed 09/09/11), p.44 According to UNICEF social marketing model consisted in the informal outreach to judges and prosecutors through personal contact aimed to change behaviour through activities such as luncheons and dinners.

<sup>1427</sup> The provisions were discussed in Chapter 5.

children while entitling them only to a reduced sentence of deprivation of liberty. Such leniency is particularly evident in dealing with the juvenile within the context of judicial proceedings. The sentence emphasises the length according to what is provided for the act in the Criminal Code (designed for adults), which is diminished due to an offender being a juvenile, rather than the circumstances of the offence and an estimation on the time necessary to reintegrate the juvenile into society. Currently there is no system of diversion in place. Once arrested, the juvenile is 'caught' in the net of judicial proceedings. The current legal framework does not acknowledge the power of the police to exercise discretion in referring the child out of the criminal system for a broad range of minor offences, and neither does the prosecutor. Despite the legal framework providing alternatives to the use of deprivation of liberty prior to trial and non-custodial sentences, there is an over reliance on use of detention, which is in contradiction with the principle of last resort and shortest appropriate time. In compliance with international standards, the legal framework empowers judges to exercise discretion and impose 'educational measures'. However, if delivered by the court such sentences are rendered null and void in the first instance due to the non-existence of programmes and facilities to enforce such sentences.

***Capacity building of the juvenile system and training (police, prosecutor, courts and prisons).*** In addition to the 'special juvenile section' established in the six district courts having the largest number of cases, as discussed in Chapter 5, no other juvenile structure is present in Albania. Consequently, the occupational systems of police, prosecutor, penitentiary and probation services are not in a position to deal with the child in conflict with law in an appropriate manner due to lack of juvenile specialists within the staff. Such practices lead to the marginalizing of juvenile cases, as not all the judicial actors might be in a position of giving due weight to the best interests of children or their special needs. The judicial actors might be generally trained in the handling of a juvenile case, the absence of an evaluation on impact of training leads to the argument that a specially trained or designated juvenile actor dealing on a daily basis with juvenile cases would provide appropriate assistance to the child.<sup>1428</sup> Indeed, the Committee expressed great concern with regard to this issue.<sup>1429</sup> The lack of knowledge and understanding of the CRC and other international instruments relevant

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<sup>1428</sup> Various international provisions, such as Rule 12(1) and Rule 21(2) of the Beijing Rules, Rule 85 of the JDLs, recognise the importance of interdisciplinary training for the judicial actors dealing with juvenile cases. In addition, the Committee explicitly emphasises the requirement to establish specialised units in all levels of juvenile justice system. (General Comment No.10 para. 30)

<sup>1429</sup> DC I-Albania/CRCA 2009, p. 3, People's Advocate 2008 Report, p.254

to the administration of juvenile justice is alarmingly low even among officials that work with juveniles on a regular basis. A solution to such a problem might involve the incorporation of training in juvenile justice and child's rights into academic curricula or magistrate schools. Such a process is currently absent in Albania.

**Data collection.** As discussed throughout the thesis, the systematic collection of disaggregated data relevant to the information on the administration of juvenile justice is non-existent. Despite the Committee's recommendation, data collection is decentralised. Each juvenile justice stakeholder - police, prosecutor, courts and prisons - collect relevant data. However, none of these data are published on a regular basis. There is no consistency on data as the stakeholders use different counting rules, methodology and templates in recording and reporting the data, rendering it difficult to compare the trend either at the country, regional, and international level. Moreover, data are absent on important indicators, leaving no room for monitoring effectively the administration of juvenile justice. Such a statement is particularly relevant with regard to indicators on the length of pre-trial detention, the number of adult prisoners sentenced as juveniles, and number of juveniles deprived of liberty. Overall deficiency leads to the conclusions that data are not used to formulate comprehensive national policies on juvenile justice systems and respond effectively to children in conflict with the law.

**Monitoring of the juvenile justice system.** Beside the High Council of Justice monitoring the performance of judges and People's Advocate monitoring the performance of administration, no specific institution or programme monitors the administration of juvenile justice system. As concluded in Chapter 6, the complaint mechanisms are weak and are not fully recognized by children deprived of liberty. There is no complaint mechanism within the justice system. Furthermore, the violators of child rights are rarely held accountable, increasing ill-treatment and vulnerability of children within the system. The system is not receptive to hearing children's views. Overall performance of the current juvenile justice system is rendered impossible to measure due to a deficiency in collection and segregation of data (as previously discussed).

**Coordination between juvenile justice institutions.** No coordination between juvenile justice stakeholders, including the police, prosecutors, the courts, the penitentiary system, and others, on the local or national level, exists. Nor is there a permanent interministerial or

intersectoral body to co-ordinate overall administration of juvenile justice. UNICEF has performed the role of co-ordinator until at least 2009. Besides the co-operation, communication across the entire juvenile justice system in Albania is insufficient and each stakeholder acts with the framework of its institution.

### 3. Recommendations

Following the discussions in Chapters 5 and 6, and the key points highlighted in this chapter, a set of recommendations can be drawn to facilitate the juvenile justice system in Albania in regard to the effective implementation of CRCs standards. Therefore it would be advisable for the following points to be acted upon:

- A policy on juvenile justice, encompassing the guiding principle of the system, should be developed. The drafting of such policy should give due weight to and reflect the opinion of all concerned within occupational systems, civil society, and including the juveniles themselves.
- The Albanian legislation should reinstate the functioning of the Directorate of Juvenile Justice, including in the description of jobs to be performed:
  - a. A clear definition of the duties to be performed;
  - b. A broad mandate for development of policy;
  - c. A monitoring role for all systems involved with the juveniles in conflict with the law.
- A comprehensive legal package amending current domestic legislation and expanding the range of juveniles in conflict with the law should be drafted and adopted. As an alternative, juvenile justice should be contained as a section of Children's Code, setting clear and strong obligations for all involved with children in conflict with the law. The Albanian authorities should clarify the legal status of children in conflict with the law. All the standards set by law should be preceded by a mechanism, which ensures 'de facto' implementation.
- Establishment of a comprehensive inter-ministerial database developed by INSTAT which should be the authoritative source of data on indicators. The database should be available not only to government officials and policy makers, but also to those who analyse juvenile justice systems, such as NGOs, academics and, importantly, the general public. Establishment of an effective data reporting system ought to be enacted by law. As a common way of measuring and presenting information, the database should be built upon the set of 12 indicators, including six juvenile justice

indicators previously developed by UNICEF and the UN Office on Drugs and Crime.<sup>1430</sup>

- Establishment of a permanent body, representing all the systems dealing with children in conflict with the law, with a broad mandate to contribute to the development of policy, to coordinate the activities of different systems and to monitor the implementation of relevant laws, policies and programmes of juvenile justice. Establishment of a sub-section on Child Rights, or, alternatively establishment of a People's Advocate for Children.
- Albanian legislation should provide clear guidance and instruction regarding:
  - a. the duty to inform the child of the reason for their apprehension and arrest;
  - b. the duty to explain in language that the child understands all the rights he/she is entitled to and the consequences of not remaining silent;
  - c. Definition on ill-treatment and adequate punishment for law enforcement personnel who commit acts of torture and ill-treatment, especially towards children;
  - d. Mandatory psychosocial assistance for children at police stations;
  - e. Mandatory presence of a social worker or psychologist, defence lawyer and parents upon the questioning of the child;
  - f. Separation of juveniles while held in police stations;
  - g. Establishment of a child-friendly room at police stations and prosecutor offices for questioning, holding and taking statements from juvenile offenders or witnesses;
  - h. Thresholds and time limits in questioning or taking a statement from a child.
- Albanian authorities in cooperation with the Albanian National Bar Association should establish special modalities on running legal aid services for children.
- The Albanian legislation should provide procedures for diverting the juvenile offender away from the criminal justice system.
- The Albanian legislation should:
  - a. Introduce the necessary legal framework to render restorative justice available in all stages of criminal proceedings, particularly when a child is involved.
  - b. Expand the range of criminal offences to be resolved through reconciliation and mediation.
  - c. Entitle the prosecutor to use discretion and refer for mediation.

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<sup>1430</sup> 'Manual for the Measurement of Juvenile Justice Indicators' *United Nations Office On Drugs And Crime* Vienna (UNODC) Vienna, [http://www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf), 2006 (Accessed 25/08/11)

- d. Set and regulate legal procedures to make available restorative justice at any stage in proceedings, especially when a child is involved.
- The Albanian legislation should set legal requirements that deprivation of liberty must be used only as last resort and for the shortest appropriate time.
  - Raising awareness on the availability of non-custodial measures and restorative justice processes among prosecutors, while advocating for juvenile referral if appropriate; judges, while encouraging referrals of a juvenile; and lawyers, while encouraging the defence of a referral for a juvenile.
  - The legislative reform should be directed toward amendments of the Criminal Code of Procedure in Albania with regard to:
    - a. Setting procedural time limits as recommended by the Committee:
      - -A child should be brought before a competent authority to examine the legality of arrest and police custody within *24 hours*;
      - -A child should be formally charged with the alleged offences and be brought before a court not later than *30 days* after pre-trial detention took effect;
      - A final decision on the charges must be taken not later than *six months* after they have been presented.
    - b. Making mandatory a periodic review of a child's pre-trial detention every *14 days*, regardless of whether the child has been heard or not.
      - The CCP should set procedures for conducting the hearing in an atmosphere of understanding with less formal procedural rules that would allow the juvenile to participate and express himself freely.
      - The juvenile section should conduct the hearing in a courtroom designed in a child-friendly manner, which allows the juveniles to communicate with the defence lawyer and parents without physical obstacles, or alternatively in a less formal venue such as a judge's office or family court.
      - The psychosocial assistance should be mandatory to juveniles during the hearing.
      - The CCP should set guidelines to include the psychosocial report on the sentence.
      - The CCP should build in special safeguards for fast track trial to ensure that a juvenile is fully aware of the consequences of using such procedure.
      - The CCP should prohibit the conduct of a trial against a child in abstenia.
      - The CCP should set a special procedure to ensure that the hearing takes place behind closed doors for any case involving a child.



- The Albanian legislation should set a procedure to regulate the rights of the media to participate in a hearing, and to sanction any violation arising from the breach of data protection and personal security.
- The CCP should be modified to determine constructive measures, which would enable for a tailored response around the individual child's specific needs and circumstances, aiming to take the best interest of the child into consideration and avoid their future recourse to behaviour resulting in conflict with the law.
- The Albanian legislator should develop standards and infrastructure to:
  - Reflect the international standards regarding the treatment of juveniles deprived of liberty;
  - Facilitate contact with family through the frequency of visits and the flexibility of visiting hours;
  - Promote the involvement of family and community in the rehabilitative process;
  - Increase the contact between juveniles and the community;
  - Prohibit the use of disciplinary measures relating to solitary confinement;
  - Support and provide services which would assist the juvenile's reintegration into the community upon release;
  - Shift towards the rehabilitative work;
  - Establish an independent complaint mechanism.
- Raise awareness among governmental and non-governmental institutions, civil society, media and the public on the importance of the reintegration processes for juveniles in conflict with the law.

#### **4. Ways Forward**

As noted in the previous discussions, it could be argued that Albania still has a long way to go towards addressing how it can improve its juvenile justice system. The need to undertake legislative reform, draft policy programmes, and develop institutions to achieve the minimum standards set by the CRC and other relevant international instruments remains urgent. Building a comprehensive juvenile justice system in compliance with the CRC's standards will demand substantial effort over an extended period of time.

So how can the current Albanian juvenile justice system be changed? The recommendations presented in the previous chapter are neither the first nor the last. It is essential to understand

the appropriate mechanism to move forward such a reformative process. In other words, it is necessary to think about factors that affect the ability of the Albanian institutions to translate the CRC's standards into policy and translate such standards into practice.

Researchers point out that there is no resistance to the adoption of international standards into the legal framework, but the problem lies in the implementation and law enforcement.<sup>1431</sup> Bogani and Loughlin identify 'a weak bureaucracy and insufficient resources' as factors affecting implementation and law enforcement in Albania.<sup>1432</sup> In addition, the researchers refer to another factor, the political environment, in which the politicisation and control of state administration by each ruling majority of the day results in a lack of administrative capacity, responsibility, and political commitment to get things done.<sup>1433</sup> To all these aspects, it must be added that the elitist aspect of policy making, deriving from the use of authoritative positions by the political elite in power, in making key decisions, affects national political outcomes regularly and substantially.<sup>1434</sup> Kajsiu et al. expands further on the impact of elitist policy-making by asserting that 'Albania has been caught in the vicious circle of weak institutions that produce authoritarian leaders, who in turn sustain and promote institutional weakness'.<sup>1435</sup>

Given the features mentioned above, naturally it might be asked whether there is a way to make the Albanian political elite implement and enforce international human rights standards in Albania, including the juvenile justice standards. The answer to this question comes from the behaviour of the political elite itself. As the majority of researchers assert, the very survival of the political elite in power depends on the 'blessing' of the international community and international organisations.<sup>1436</sup> The involvement of the international

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<sup>1431</sup> Mirela Bogdani, John Loughlin, 'Albania and the European Union. The Tumultuous Journey towards Integration and Accession', I.B.Tauris, London/New York, 2007, p.165, Blendi Kajsiu, Aldo Bumçi, Albert Rakipi, 'Albania: A Weak State, a Weak Democracy', Albanian Institute for International Studies, Tirana, 2002  
<sup>1432</sup> Arolda Elbasani, 'Democratisation Process in Albania: Manipulation or Appropriation of International Norms?' *South East European Politics Journal*, Volume V, Number 1, 2004, pp 24-44, Gjergji Vurmo, 'Relations of Albania with the EU' in 'Integration Perspectives and Synergic Effects of European Transformation in the Countries Targeted by EU Enlargement and Neighbourhood Policies' eds, Balazs Szent-Ivanyi, Centre for EU Enlargement Studies, Central European University, June 2008, p.79

<sup>1433</sup> Bogdani and Loughlin 2007, p.165  
<sup>1434</sup> Ibid. In addition Vurmo concludes in similar terms while referring to implementation. (Vurmo 2008,p.79)

<sup>1435</sup> Bogdani and Loughlin 2007, p.169 Bogdani and Loughlin dedicate a whole chapter on the role of elite and the domestic actors in Albania, defining in details the features of Albanian political elite.

<sup>1436</sup> Kajsiu et al. 2002, p.19 Similarly, Bogdani and Loughlin (2007) dedicate a whole chapter (Chapter 8) on the role of elite and the domestic actors in Albania, defining in details the features of Albanian political elite. They conclude that political elites in Albania are not always capable of carrying through the reforms.

<sup>1436</sup> Bogdani and Loughlin 2007, p.224-225, Kajsiu et al. 2002, p. 7, Elbasani 2004, Vurmo 2008, p.60

community in dealing with political or other domestic issues has become a predominant feature in Albania. As the political elite in Albania seems increasingly incapable of finding common ground and negotiating with one another, it has become increasingly prone to relying on interventions, mediation and arbitration from the international community. As a result, the international community has become increasingly involved in Albanian domestic politics. The Albanian elite may consider the involvement of the international community convenient, since it relieves them from being politically accountable either to the international community or the Albanian public. To this end, the international community has been engaged to 'fulfil the role of honest broker and facilitator that the state institutions have been unable to perform'.<sup>1437</sup> As the Albanian political elite is more willing to bend to pressure from the international community, its interventions are one of the key strategies for persuading the Albanian political elite to adopt the CRC's standards in juvenile justice. The 'international community', within the Albanian framework, refers to foreign governments, development partners and the European Union (EU). The development partners, especially the financial ones such as the World Bank, which fund most projects in the country, might advise and exercise pressure upon the Albanian government to engage in reforms it would otherwise not do. In referring explicitly to the EU, reference is made to eventual EU accession. Such accession initially has been conditioned to contractual obligations set out in the *Stabilization and Association Agreement* (SAA), and upon submitting the application for membership to the twelve priorities identified in the 2010 Commission Opinion.<sup>1438</sup> The twelve priorities are additional to the Copenhagen criteria, which bring clear measurable benefits for citizens and include, among others, the respect for human rights.<sup>1439</sup> The EU's ability to impose

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<sup>1437</sup> Bogdani and Loughlin 2007, p.224.

<sup>1438</sup> A history of key dates in Albania's path toward EU, as well as the text of all principal documents is available at [http://ec.europa.eu/enlargement/potential-candidates/albania/relation/index\\_en.htm](http://ec.europa.eu/enlargement/potential-candidates/albania/relation/index_en.htm) (Accessed 09/09/11), In June 2006 Albania signs the SAA at the General Affairs and External Relations Council in Luxembourg. Albania submits its application for EU membership in April 2009, refereed to European Commission for opinion in November 2009, which adopted its opinion in November 2010.

<sup>1439</sup> 'The Copenhagen criteria' refers to a set of rules, defined at the 1993 European Council, which make the membership to EU subject to satisfaction of the economic and political conditions. The criteria that a state must meet before it can join EU include stability of institutions which preserve democracy, the rule of law, human rights and respect for minorities, a functioning market economy, and taking on board all the *acquis* (see above) and support the various aims of the European Union. In addition, it must have a public administration capable of applying and managing EU laws in practice. [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm) (Accessed 09/09/11)

conditions to accession provides it with leverage to influence the Albanian political elite and to drive domestic reforms, including juvenile justice in Albania.<sup>1440</sup>

Intervention from the international community is an outside force exercising pressure at the top level of juvenile justice administration in Albania. However, intervention from the international community loses its effectiveness when not combined with improvements to the terms of implementation at the lower levels, which refers to judicial actors and civil society. In these terms Braithwaite asserts that 'evidence and innovation from below instead of armchair pontificator from above should be what drives the hopes ...to replace our existing injustice system with one that ... does more to promote justice...'<sup>1441</sup>. This would demand, within the Albanian context, training activities directed to the judicial actors currently involved, as well as the development of a new generation of professionals, equipped with knowledge of human rights principles and values and a of international standards for juvenile justice. Such intervention might be considered short term, and needs to be supplemented by long term solutions involving the incorporation of the CRC into educational curricula. In using educational curricula, reference is made not only to the teaching curricula of academic institutions from which the judicial actors are recruited, such as Law Schools, Magistrate Schools, Social Work and Psychology Schools, and Police Academies, but also including primary and secondary education, in order to make them aware of children's rights. Only in this way will new ideas be brought forward, including the participation of children in transforming and reforming the juvenile justice system in line with the CRC standards.

## 5. Conclusion

The system of juvenile justice in Albania is in a process of change following the first report to the UN Human Rights Committee on the Rights of the Child in 2005. The aim of this thesis was to feed into that reform in a constructive way by presenting a comprehensive picture of the juvenile justice system in Albania, and to find out what it means to be involved in it. This thesis has brought together the international human rights standards relating to juvenile justice and examined the way these are implemented in Albania.

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<sup>1440</sup> Bogdani and Loughlin 2007, p.241, Vurmo 2008, p.76, Arolda Elbasani, 'EU Administrative Conditionality and Domestic Downloading: The Limits of Europeanization in Challenging Contexts', KFG Working Paper (4), September 2009, Freie Universität Berlin, p.19

<sup>1441</sup> John Braithwaite, 'Setting Standards for Restorative Justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, 563-77, p.576.

It is regrettable to find that children are being dealt with by a system designed to respond to adults and which frequently fails to uphold their rights. Legislation governing the treatment of children in conflict with the law fails to embrace international juvenile justice standards and norms, in establishing separate laws, procedures and institutions that are specific to children, as demanded by the CRC. All aspects of reforming the juvenile justice system, from apprehension or arrest, through the investigation and trial process, to rehabilitation and reintegration, are held back by the absence of a clear vision of where reform would lead. It is worrying that many reforms seem to have occurred without proper analysis and direct consultation of those involved in the system, and certainly without any evaluation of how changes have been implemented throughout the country and their outcome.

It is my hope that this thesis will make some contribution to the upcoming debates regarding evaluation of reforms undertaken to implement international human rights, in terms of its findings and its methodology. On this latter point, it is hoped that this thesis will help demonstrate the usefulness and applicability of the mixed methods approach used in implementation research.

This investigation offers neither the first nor the last word on the issues under examination. The thesis closes by expressing the hope that it will contribute to the acceptance of the proposition that there is a need in Albania to respond to children in conflict with the law, aiming for rehabilitation rather than locking them away from the community. This aim must be inspired by compliance with international standards and grounded in the principles of restorative justice.

## REFERENCES

## Books

- Abramson, B. 'Article 2: The Right of Non-Discrimination', in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F Ang. E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff Publishers, 2008
- Alder, C. and Wundersitz, J. 'New Directions in Juvenile Justice Reform in Australia', in *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* eds. C. Alder, and J. Wundersitz. Canberra: Australian Institute of Criminology. 1994
- Alston, P. 'The Best Interest Principle: Towards a Reconciliation of Culture and Human Rights', in *The Best Interests of the Child: Reconciling Culture and Human Rights*, eds P. Alston, Oxford: Clarendon Press 1994
- Alston, P., Goodman R. and Steiner. H. J. *International Human Rights in Context: Law, Politics, Morals*, 3<sup>rd</sup> eds, Oxford University Press, 2008
- Arai-Takahashi, Y. *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Antwerp: Intersentia, 2002
- Archard, D. *Children: rights and childhood*, 2<sup>nd</sup> ed, London: Routledge, 2004
- Ariès, P. *Centuries of Childhood* London: Jonathan Cape, 1962
- Ashworth, A. *Human Rights, Serious Crime and Criminal Procedure*. London: Sweet & Maxwell, 2002
- Bazemore, G. and Walgrave, L. Introduction: Restorative Justice and the International Juvenile Justice Crisis, in *Restorative juvenile justice: Repairing the harm of youth crime*, eds G. Bazemore and L. Walgrave, Monsey, NY: Criminal Justice Press, 1999
- Bianku, Ledi, 'Jurisprudence of the Court of Strasbourg', European Center, Tirana. 2005
- Bogdani, M. and Loughlin, J. *Albania and the European Union. The Tumultuous Journey towards Integration and Accession*, I.B.Tauris, London/New York, 2007
- Boyden, J. 'Childhood and Policy Makers, in *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* eds. A. James, and A. Prout, London: Routledge/Falmer, 2001
- Braithwaite, John. *Restorative justice and response regulation*. New York: Oxford University Press, 2002
- Brems, E. 'Children's rights and universality' in *Developmental and autonomy rights of children* eds J. Willems. Antwerp: Intersentia, 2002
- Bryman, Alan. *Social Research Methods*. Oxford: Oxford University Press, 2008

- Cappelaere, G., Grandjean, A., and Naqvi, Y. *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005
- Cavadino, M. and Dignan, J. *Penal systems: A comparative approach*. London: SAGE, 2006
- Chinkin, C. 'Normative Development in the International Legal System', in *Commitment and compliance: the role of non-binding norms in the international legal system* eds D. Shelton, Oxford University Press, Oxford, 2003
- Christoffersen, Jonas. *Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights*. Boston, Mass: Brill Academic Publishers, 2009
- Cipriani, D. *Children's Rights And The Minimum Age Of Criminal Responsibility: A Global Perspective*. Farnham: Ashgate, 2009
- Corsaro, W. A. *The Sociology of Childhood*. Thousand Oaks [u.a]: Pine Forge Press, 2006
- Crawford, A. and Newburn, T. *Youth offending and restorative justice: implementing reform in youth justice*, Cullompton: Willan Publishing, 2003
- Creswell, J. W. *Research design: Qualitative, quantitative and mixed methods approaches*. Los Angeles: Sage, 2009
- Cunningham, H. *Children and Childhood in Western Society since 1500*. 2<sup>nd</sup> ed., London: Longman, 2005
- Detrick, S. *A commentary on the United Nations Convention on the Rights of the Child*, M. Nijhoff Publishers, The Hague, 1999
- Detrick, S. *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht: Nijhoff, 1992
- Dignan, J. 'Restorative justice and the Law: The Case for an Integrated, Systemic Approach', in *Restorative Justice and the Law: The Case for an Integrated, Systemic Approach*, eds L. Walgrave, Cullompton: Willan Publishing, 2002
- Dignan, J. *Understanding victims and restorative justice*, Maidenhead: Open University Press, 2005
- Dünkel, F. 'Diversion: A Meaningful and Successful Alternative to Punishment in European Juvenile Justice System', in *Reforming Juvenile Justice* eds. J. Junger-Tas, and D. Frieder, Dordrecht: Springer-Verlag, 2009
- Eide, A. 'Article 27: the Right to an Adequate Standard of Living' in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang. E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff Publishers, 2006
- Farson, R. *Birthrights*, Collier Macmillan, 1974

- Fass, P.S. *Encyclopaedia of children and childhood: in history and society*, New York, Macmillan Reference USA, 2004
- Fottrell, D. 'Bringing Rights All the Way Home – Some Issues of Law and Policy in International Law and Juvenile Justice', in *Youth Justice, Theory and Practice*, eds. J. Pickford, Routledge-Cavendish, 2000
- Frank, H. G. *The barbaric Punishment, Abolishing the Death Penalty*. The Hague/London/New York, Martinus Nijhoff Publishers, 2003
- Franklin, B. 'Children's rights and media wrongs', in *The New Handbook of Children's Rights: Comparative Policy and Practice*, Second eds. B. Franklin, Routledge, 2001
- Freeman, M. 'Article 3: The Best Interests of the Child' in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F Ang. E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff, 2007
- Freeman, M. *The Moral Status of Children: Essays on the rights of the child*. Netherlands, Kluwer Law International 1997
- Gelsthorpe, L. and Padfield, N. *Exercising discretion: Decision-making in the criminal justice system and beyond*, Willan Publishing, 2003
- Gerda F., Treib O., Hartlapp M., and Leiber, S. *Complying with Europe. EU Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press, 2005
- Gerda, F., Treib, O., Holzleithner, E., Causse, E., Furtlehner, P., Schulze, M. and Wiedermann, C. *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate, 2008
- Gjoleka, A. 'Nje veshtrim I shkurter mbi sistemin penitenciar;arritjet, sfidat, nevojat dhe plani I veprimit per kete fushe' in *Komiteti Shqiptar I Helsinkit (eds) Sistemi penitenciar ne Shqiperi dhe roli I Shoqerise Civile ne permiresimin e tij*, Kristalina-KH, Tirane 2002
- Goldson, B. 'Childhood': An Introduction to Historical and Theoretical Analyses' in *Childhood' in 'Crisis'?*, eds P. Scraton, London: UCL Press, 1997
- Goldson, B. and Muncie, J. *Comparative Youth Justice: Critical Issues*. 2<sup>nd</sup> eds London: SAGE, 2008
- Goldson, B. and Muncie, J. *Comparative Youth Justice: Critical Issues*. London: SAGE, 2006
- Goldson, B. *The Dictionary of Youth Justice*. Cullumpton, Willan. 2008
- Harris, D. J., O'Boyle, M., Bates, E. P. and Buckley, C. *Law of the European Convention on Human Rights*, 2<sup>nd</sup> ed., Oxford University Press, 2009
- Harris, R. and Webb, D. *Welfare, Power and Juvenile Justice*. London Tavistock. 1987



- Haxhiymeri, E. *Juvenile Delinquency in Albania Analysis of Factors and Causes of Juvenile Delinquency in Albania*, Children's Human Rights Centre of Albania (CRCA), Visi Design Tirana, 2007
- Hendrick, H. 'Constructions and Reconstructions of British Childhood: An Interpretative Survey, 1800 to the Present' in *Constructing and reconstructing childhood: contemporary issues in the sociological study of childhood*, 2<sup>nd</sup> Eds, A. James, and P. Alan, London: Routledge/Falmer, 2001
- Holt, J. *Escape from Childhood*, Boston: E. P. Dutton, 1974
- Hysi, V. and Saliu, E. *Juvenile Justice System in Albania: Consideration on its present and future*, Albanian Helsinki Committee, Peci 2005
- Hysi, V. *Kriminologjia*, Kristalina, Tirana, 2005
- Ingelse, C. *The UN Committee against Torture: An Assessment*. The Hague: Kluwer Law International, 2001
- Islami, H., Hoxha, A., Panda, I. *Koment I Procedures Penale*, Morava, Tirane 2003
- Jacques, E. E. *The Albanians: An ethnic history from prehistoric times to the present*, McFarland & Co Inc, 1994
- James, A. and James, A. 'Introduction: the Politics of Childhood – An Overview' in *The Politics of Childhood: International Perspectives, Contemporary Developments* eds. J. Goddard, S. McNamee, A. James, and A. James. Basingstoke: Palgrave Macmillan, 2004
- James, A. and James, A. *Constructing Childhood: Theory, policy and social practice* Hampshire and NY, Palgrave, 2004
- James, A. and Prout, A. *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. London: Routledge/Falmer, 2001
- Jenks, C. *Childhood*, London: Routledge, 1996
- Johnson, D. 'Cultural and Regional Pluralism in the Drafting of the UN Convention on the Rights of the Child', in *The Ideologies of Children's Rights*, eds. M. Freeman and P. Veerman, Dordrecht: Martinus Nijhoff Publishers, 1992
- Johnstone, G. *Restorative Justice: Ideas, Values, Debates*. Cullompton: Willan, 2002
- Junger-Tas, J. 'The juvenile justice system: Past and present trends in Western Society', in *Punishing juveniles: principle and critique*, eds I. Weijers & A. Duff, Oxford: Hart, 2002
- Junger-Tas, J. and Decker, S.H. *International Handbook of Juvenile Justice*. Dordrecht: Springer, 2006
- Kunder, J. and Nylund, B.V. 'Protecting the Rights of Displaced Children: Some Suggestion for Enhanced Monitoring and Reporting', in *Human Rights and Forced Displacement*, eds.

- A.F. Bayefsky, J. Fitzpatrick, The Hague: Nijhoff, 2001
- Leary, V. 'International Labour Conventions and National Law' in. *International Human Rights in Context: Law, Politics, Morals*, eds. Alston, P., Goodman R. and Steiner H. J 3<sup>rd</sup>, Oxford University Press, 2008
- LeBlanc, L. *The Convention on the Rights of the Child: United Nations lawmaking on human rights*. Lincoln: University of Nebraska Press, 1995
- Liefwaard, T. *Deprivation of liberty of children in light of international human rights law and standards*. Intersentia, 2008
- Mandela, Nelson, *Long Walk to Freedom*, Little Brown, London, 1994
- Mandro, A., *Juvenile Justice in Albania*, Children's Human Rights Centre of Albania (CRCA), Visi Design Tirana, 2007
- Matthew, H. *Child Soldiers in International Law*. Manchester: Manchester Univ. Press, 2005
- Mayall, B. 'Conversations with children: Working with generational issues' in *Research with Children: Perspectives and Practices*, 2<sup>nd</sup> eds. P. Christensen and A. James London: Routledge, 2008
- McCold, Paul. Primary Restorative Justice Practices, in *Restorative justice for juveniles: conferencing, mediation and circles*, eds A. Morris, and G. Maxwell, Oxford: Hart, 2001
- Michael, F. *The Rights and Wrongs of Children*, Frances Pinter, 1983
- Muncie, J. 'The United Nations, children's rights and juvenile justice' in *Youth Justice Handbook: Theory, Policy and Practice* eds: W. Taylor, R. Earle, R. Hester, Willan Cullompton. 2010
- Muncie, J. and Goldson, B., 'States of Transition: Convergence and diversity in international youth justice', in *Comparative Youth Justice: Critical Issues*, eds J. Muncie and B. Goldson, London: Sage, 2006
- Muncie, J. *Youth & Crime*. 3<sup>rd</sup> eds Los Angeles (Calif.): Sage, 2009
- Nightingale, D. and Cromby, J. *Social Constructionist psychology: a critical analysis of theory and practice*, Buckingham: Open University Press, 1999
- Nowak, M. 'Article 6: The right to life, survival and development', in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang. E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff Publishers, 2005
- Nowak, M. *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd rev. ed., Kehl am Rhein: Engel, 2005
- O'Donnell, J. *A coming of age Albania under Enver Hoxha*, Boulder: East European

- Monographs; New York: Distributed by Columbia University Press, 1999
- O'Leary, Z. *The Essential Guide to Doing Your Research Project*. London etc: Sage, 2010
- Oosterveld, V. and Merali, I. *Giving Meaning to Economic, Social, and Cultural Rights*. Philadelphia: Univ. of Pennsylvania Press, 2001
- Pitts, J. 'Youth Justice in England and Wales', in *The New Politics of Crime and Punishment*, eds R. Matthews and J. Young, Cullompton, Devon: Willan Publishing, 2003
- Pupavac, V. 'The International Children's Rights Regime' in *Rethinking Human Rights: Critical Approaches to International Politics*, eds D. Chandler, Palgrave Macmillan Ltd, Basingstoke, 2002
- Qvortrup, J., Bardy, M., Sgritta, G. and Wintersberger, H. *Childhood Matters: Social theory, practice and politics*. Aldershot: Avebury, 1994
- Raustiala, K. and Slaughter, A. 'International Law, International Relations and Compliance,' in *Handbook of International Relations*, eds W. Carlsnaes, Th. Risse and B. A. Simmons, Thousand Oaks, CA: Sage, 2002
- Rodley, Nigel S. *The Treatment of Prisoners Under International Law*, Second Edition, Oxford University Press, Oxford, 1999
- Schabas, W. and Sax, Ht. in *A Commentary on the United Nations Conventions on the Rights of the Child*, in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang. E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff Publishers, 2006
- Scott, E. S. 'The legal Construction of Childhood' in *A Century of Juvenile Justice*, eds. M.K. Rosenheim, Chicago: University of Chicago Press, 2002
- Scott, E.S. and Steinberg, L. *Rethinking Juvenile Justice*. Cambridge, Mass: Harvard University Press, 2008
- Scott, G. 'Towards the Institutional Integration of the Core Human Rights Treaties' in *Giving Meaning to Economic, Social and Cultural Rights* eds. V. Oosterveld and I. Merali, Philadelphia: University of Pennsylvania Press, 2001
- Shaw, M. N. *International Law. 5<sup>th</sup> eds*, Cambridge University Press, 2003
- Shelton, D. 'Law, Non-Law and the Problem of 'Soft Law'', in *Commitment and compliance: the role of non-binding norms in the international legal system* eds D. Shelton, Oxford University Press, Oxford, 2003
- Shumaker, D. and Heckel, R. *Kids of Character: A guide to Promoting Moral Development*, Greenwood Press Praeger Publishers Inc, 2007
- Singer, S. 'Juvenile court and its systems of juvenile justice', in *Handbook of Youth and Justice*, eds S. O. White New York: Kluwer Academic/Plenum Publishers, 2001

- Snyder, F. 'General Course on European Community Law: Constitutional Law of the European Union: Principles, Processes and Culture', in *Collected Courses of the Academy of European – La Recueil Des Cours De L'académie De Droit Européen: 1995*. The Hague: M. Nijhoff, 1998
- Steiner, H and Alston, P. *International Human Rights in Context: Law Politics and Morals*, Oxford University Press, 2000
- Tanenhaus, D.S. *Juvenile Justice in the Making*. Oxford: Oxford University Press, 2004
- Tashakkori, A. and Teddlie, C. 'The past and future of mixed methods research: From data triangulation to mixed model designs', in *Handbook of mixed methods in social & behavioral sciences* eds. A. Tashakkori & C. Teddlie. Thousand Oaks, CA: Sage, 2003
- Tashakkori, A. and Teddlie, C. *Handbook of mixed methods in social & behavioral research* (Eds.). Thousand Oaks, CA: Sage, 2003.
- Trépanier, J. 'Children's rights in juvenile justice: a historical glance', in *The Un Children's Rights Convention: Theory Meets Practice: Proceedings of the International Interdisciplinary Conference on Children's Rights, 18-19 May 2006, Ghent, Belgium*, eds. A. Alen et al, Antwerpen: Intersentia, 2007
- Tridimas, Takis.' Proportionality in Community Law: Searching for the Appropriate Standard of Scrutiny', in *The Principle of Proportionality in the Laws of Europe*, Hart Publishing, Oxford, 1999
- Van Bueren, G. 'Children's rights: balancing traditional values and cultural plurality', in *Children's rights and traditional values* eds. G. Douglas and L. Sebba Hants: Dartmouth Publishing Company, 1998
- Van Bueren, G. *The international law on the rights of the child*, M. Nijhoff Dordrecht, London, 1998
- Van Bueren, Geraldine. 'Article 40: Criminal Justice' in *A Commentary on the United Nations Conventions on the Rights of the Child*, eds. A. Alen, J. Vande Lanotte, E. Verhellen, F Ang, E. Berghmans and M. Verheyde, Leiden: Martinuss Nijhoff, 2006
- Van Ness, D., Morris, A. and Maxwell G. 'Introducing Restorative Justice', in *Restorative justice for juveniles: conferencing, mediation and circles*, eds A. Morris, and G. Maxwell, Oxford: Hart, 2001
- Van Ness, DI. 'Restorative Justice and International Human Rights' in *Restorative Justice: International Perspectives*, eds B. Galaway and J. Hudson Monsey, NYL: Criminal Justice, 1996
- Vickers, M. *The Albanians: A Modern History*, I.Ib Tauris & Co Ltd, London, 1999
- Vurmo, Gj. 'Relations of Albania with the EU' in *Integration Perspectives and Synergic Effects of European Transformation in the 'Countries Targeted by EU Enlargement and*

*Neighbourhood Policies* eds. Balazs Szent-Ivanyi, Centre for EU Enlargement Studies, Central European University, June 2008

Walgrave, L. 'Restorative Justice and the Law: Socio-Ethical and Juridical Foundations for a Systemic Approach', in *Restorative Justice and the Law: The Case for an Integrated, Systemic Approach*, eds L. Walgrave Cullompton: Willan Publishing, 2002

Walklate, S. *Understanding Criminology: Current Theoretical Debates*. Maidenhead: McGraw-Hill/Open University Press, 2007

Weijers, I. 'The Moral Dialogues: a Pedagogical Perspective on Juvenile Justice, in *Punishing juveniles: principle and critique*, eds I. Weijers & A. Duff, Oxford: Hart, 2002

Weijers, I. and Duff, A. 'Introduction: Themes in Juvenile Justice', in *Punishing juveniles: principle and critique*, eds I. Weijers & A. Duff, Oxford: Hart, 2002, p.11

Weijers, I. and Grisso, T. 'Criminal responsibility of adolescents Youth as junior citizenship', in *Reforming Juvenile Justice* eds. J. Junger-Tas, and F. Dünkel. Dordrecht: Springer-Verlag, 2009

Winterdyk, J.A. 'Juvenile Justice in the International era', in *Handbook of Transnational Crime and Justice* eds. R. Philip. Thousand Oaks: Sage, 2008

Wolf, J. 'The Concept of the 'Best Interests' in terms of the UN Convention on the Rights of the Child', in *The Ideologies of Children's Rights*, eds M. Freeman, and P. Veerman, Dordrecht: Martinus Nijhoff Publishers, 1992

Wolfson, S. A. 'Children's Rights: The Theoretical Underpinning of the 'Best Interest of the Child'', in *The Ideologies of Children's Rights*, eds M. Freeman, and P. Veerman. Martinus Nijhoff, Dordrecht, 1992

Wyness, M. G. *Childhood and Society: An Introduction to the Sociology of Childhood*. New York: Palgrave Macmillan, 2006

Wyse, D. *Childhood Studies: An Introduction*. Oxford: Blackwell, 2003

Zimring, F. E. *American Juvenile Justice*, Oxford University Press, 2005

## Journals

Alston, P. 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights', *International Journal of Law and the Family*, Vol.8, Issue 1, 1994, pp.1-25

Ashworth, A. 'Responsibilities, rights and restorative justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, pp. 578-595

Bal, P. 'Discourse ethics and human rights in criminal procedure', *Philosophy and Social Criticism* Vol.20, Issue 4, 1994, pp.71-99

Barrett, S. M., 'Implementation studies: time for a revival? Personal reflection on 20 years of

- implementation studies', *Public Administration*, Vol.82, Issue 2, 2004, pp.249-262
- Bayefsky, A. 'The Principle of Equality or Non-Discrimination in International Law', *Human Rights Law Journal*, Vol. 11, Issue 1 - 2, 1990, pp. 1-34
- Bazemore, G. and Senjo, S. 'Police encounters with juveniles revisited: An exploratory study of themes and styles in community policing', *Policing: International Journal of Police Strategies and Management*, Vol. 20, Issue 1, 1997, pp.60-82
- Ben-Porath, S. 'Autonomy and vulnerability: On just relations between adults and children' *Journal of Philosophy of Education* Vol. 37, Issue 1, 2003, pp.127-145
- Besson, S. 'The Principle of Non-Discrimination in the Convention on the Rights of the Child', *The internal Journal of Children's Rights*, Vol.13, Issue 4, 2005, pp.433-461
- Bhattacharyya, O., Reeves, S., and Zwarenstein, M. 'What Is Implementation Research?: Rationale, Concepts, and Practices', *Research on Social Work Practice* September 2009 vol. 19 no. 5 491
- Braithwaite, J. 'Setting Standards for Restorative Justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, pp. 563-77
- Bryman, A. 'Barriers to Integrating Quantitative and Qualitative Research', *Journal of Mixed Methods Research*, Vol.1, Issue 1, 2007, p.8-22
- Campbell, T. D. 'The Rights Of The Minor: As Person, As Child, As Juvenile, As Future Adult' *International Journal of Law, Policy and Family*, Vol. 6, Issue 1, 1992, pp.1-23
- Coker, R. and McKee, M. 'Ethical approval for health research in central and Eastern Europe: An international survey', *Clinical Medicine* Vol. 1, Issue 3, 2001, pp.197-199
- Crow, G., Wiles, R., Heath, S. and Charles, V. Research Ethics and Data Quality: The Implications of Informed Consent, *International Journal of Social Research Methodology*, Vol.9, Issue 2, 2006, p.83-95
- De la Vega, C. and Leighton, M. 'Sentencing Our Children to Die in Prison: Global Law and Practice'. *University of San Francisco Law Review*, Vol. 42, Issue 4, 2008, pp.938-1044
- Eekelaar, J. 'The importance of thinking that children have rights', *The International Journal of Law and the Family*, Vol.6, Issue 1, 1992, pp.221-235
- Elbasani, A. 'Democratisation Process in Albania: Manipulation or Appropriation of International Norms?' *South East European Politics Journal*, Volume V, Number 1, 2004, pp.24-44,
- Feld, B.C. Juvenile and Criminal Justice Systems' Responses to Youth Violence. *Crime and Justice*, Vol 24, 1998, pp.189-261
- Ferdinand, J. P., Rowe, M. and Worthington, F. 'A Different Kind of Ethics', *Ethnography* Vol.8, 2007, p.519

- Ferreira, N. 'Putting the age of criminal and tort liability into context: A dialogue between law and psychology.' *International Journal of Children's Rights*, Vol. 16, Issue 1, 2008, pp. 29-54
- Finlay, L. Negotiating the swamp: the opportunity and challenge of reflexivity in research practice, *Qualitative Research*, Vol.2, Issue 2, 2002 p.209-230
- Freeman, M. 'The Sociology of Childhood and Children's Rights', *The International Journal of Children's Rights* Vol.6, Issue No.3, 1998, p.433-444
- Freeman, M. 'Why it remains important to take children's rights seriously', *The International Journal of Children's Rights*, Vol. 15, 2007, pp.5-23
- Gjonca, A., Aassve, A. and Mencarini, L. 'Albania: Trends and patterns, proximate determinants and policies', *Demographic Research*, Vol. 19, Article 11, pp 261-292 (Publication is part of Special Collection 7: Childbearing Trends and Policies in Europe) <http://www.demographic-research.org/special/7/> (available on 21/08/2009)
- Glenn, J. G. 'Some Aspects of Roman Law in the World Today', *The Classical Weekly*, Vol. 47, No. 13 (Apr. 26, 1954), pp.196-199
- Goldson, B. 'Counterblast: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility', *The Howard Journal of Criminal Justice*, Vol.48, Issue 5, 2009, pp.514-521
- Goldson, B. 'Children in need or young offenders?', *Child and Family Social Work*, Vol.5, Issue 3, 2000 pp.255-265
- Goldson, B. and Hughes, G. 'Sociological criminology and youth justice: comparative policy analysis and academic Intervention', *Criminology and Criminal Justice*, Vol.10, Issue 2, 2010, pp. 211-230
- Greene, J. C. 'Is Mixed Methods Social Inquiry a Distinctive Methodology?' *Journal of Mixed Methods Research* 2008; Vol. 2, Issue 1, pp.7-22
- Hamilton, C. and Harvey, R. 'The Role of Public opinion in the implementation of international juvenile justice standards', *The international Journal of Children Rights*, Vol. 11, Issue 4, 2004, pp.369-390
- Hammarberg, Th. 'Juvenile Justice Approach Built on Human Rights Principles', *National Association for Youth Justice*, Vol. 8 Issue 3, 2008, pp.193-196
- Hammarberg, Th. 'The UN Convention on the Rights of the Child - and How to Make It Work', *Human Rights Quarterly*, Vol. 12, Issue 1, 1990, pp.97-105
- Hertz, R. and Imber, J. B. 'Fieldwork in elite settings: Introduction', *Journal of Contemporary Ethnography*, Vol.22, Issue 3, 1993, p.3-6
- Kilkelly, U. 'Youth justice and children's rights: measuring compliance with international

- standards, *Youth Justice: An International Journal*, Vol.8, Issue 3, 2008, pp. 187-192
- King, M. 'Children's Rights as Communication: Reflection on autopoietic theory and the United Nations Convention', *The Modern Law Review*, Vol. 57, Issue 3, 1994, pp.385-401
- Lawson, C.W. and Saltmarshe, D.K. 'The Psychology of Economic Transformation: the Impact of the Market on Social Institutions, Status and Values in a Northern Albanian Village' *Journal of Economic Psychology*, Vol. 23, Issue 4, 2002, pp.487-500
- Lester, J. P. and Goggin, M.L. Back to the Future: The Rediscovery of Implementation Studies, *Policy Currents*, Vol.8, Issue 3, p.1-9
- Livingstone, S. 'Prisoners' Rights in the Context of the European Convention on Human Rights', *Punishment & Society*, Vol. 2, No. 3, 2000, pp.309-324
- Mayall, B. 'The Sociology of Childhood in relation to children's rights', *The International Journal of Children's Rights*, Vol.8, Issue 3, 2000, pp.243-259
- Mertens, D. M. 'Transformative Paradigm: Mixed Methods and Social Justice', *Journal of Mixed Methods Research*, Vol.1 Issue 3, 2007; pp.212-225
- Morris, A. 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice', *British Journal of Criminology*, Vol. 42, Issue 3, 2002, pp.596-615
- Nowak, M. 'What Practices Constitute Torture?: US and UN Standards' *Human Rights Quarterly* Vol. 28, 2006, pp.809-841
- Ochaita, E. and Espinosa, A. M. 'Children's participation in family and school life: A psychological and development approach' *International Journal of Children's Rights* Vol.5, Issue 3, 1997, pp.279-297
- Onwuegbuzie, A. J. and Johnson, B. R. Mixed Methods Research: A Research Paradigm Whose Time Has Come Source, *Educational Researcher*, Vol. 33, Issue. 7, 2004, pp.14-26
- Ostrander, S. A. 'Surely you're not in this just to be helpful": Access, rapport, and interviews in three studies of elites, *Journal of Contemporary Ethnography*, Vol.22, Issue 1, 1993, pp.7-27
- Prout A. and Christensen, P. 'Working with ethical symmetry in social research with children', *Childhood*, Vol 9, Issue 4, 2007, pp.477-497
- Quennerstedt, A. 'Children, but not really humans? Critical reflections on the hampering effect of the '3 p's'. *International Journal of Children's Rights*, Vol. 18, Issue 4, 2010, pp. 619-635
- Reynaert, D., Bouverne-de-Bie, M. and Vandeveld, S. 'A Review of Children's Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child, *Childhood*, Vol.16, Issue No.4, 2009 pp.518-534
- Rivers, J. 'Proportionality and Variable Intensity of Review', *The Cambridge Law Journal*, 2006, Vol. 65 Issue 1, pp.174-207



- Roberts, K. 'The Contribution of the ICTY to the Grave Breaches Regime', *Journal of International Criminal Justice*, Vol.7, Issue 4, 2009 pp.743-761
- Rodriguez, N. 'Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism', *Crime & Delinquency*, Vol.53, Issue 3,2007, pp.355-379
- Shah Alam, M. 'Enforcement of International Human Rights Law by Domestic Courts: A theoretical and practical study', *Netherlands International Law Review*, 2006, Vol. 53, Issue 3, pp.399-438
- Shapland, J., Atkinson, A., Atkinson, H., Colledge, E., Dignan, J. Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. 'Situating restorative justice within criminal justice', *Theoretical Criminology*, Vol 10, Issue 4, 2006, pp.505-532
- Smith, C. 'The Field Trial of a Policy Analysis Framework for the Convention on the Rights of the Child', *International Journal of Children's Rights*, Vol. 6, Issue 4, (1998), pp.407-31.
- Tallberg, J. 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organization*, Vol. 56, Issue 3, 2002, pp.609-643
- Tashakkori, A., and Creswell, J. W. 'The new era of mixed methods', *Journal of Mixed Methods Research*, Vol. 1, Issue 1, 2007, pp.3-7
- Teddle, C. and Yu, F. 'Mixed methods sampling: A typology with examples', *Journal of Mixed Methods Research*, Vol., Issue 1, 2007, pp.77-100
- Thomas, R. J. 'Interviewing important people in big companies' *Journal of Contemporary Ethnography*, Vol.22, Issue 1, 1993, pp.80-96
- Traja, K. 'Legal Nature of decision of the Supreme Court', *Revista Juridike*, Vol. 1, 2005, pp.5-26.
- Trépanier, J. 'Juvenile Courts After 100 years: Past and Present Orientations', *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp.303-327
- Van Bueren, G. Child-oriented Justice – An International Challenge for Europe, *International Journal of Law and the Family* Vol.6, Issue 1, 1992, pp.381-399
- Van Bueren, G. Opening Pandora's Box: Protecting children against Torture or Cruel Inhuman and Degrading Treatment or Punishment, *Law & Policy*, Vol.17, Issue 4, 1995, pp.377-396
- Van Zyl Smit, Dirk, Outlawing Irreducible Life Sentences: Europe on the Brink? *Federal Sentencing Reporter* Vol. 23, No. 1, 2010, pp.39-48
- Varuhas, J. N. E. 'Keeping Things in Proportion: The Judiciary, Executive Action and Human Rights', *New Zealand Universities Law Review*, Vol 22, Issue 2, 2006

Vindzio, M. 'Is there a deterrent effect of pains of imprisonment? The impact of 'social costs' of first incarceration on the hazard rate of recidivism', *Punishment Society*, Vol 8; Issue 3, 2006, pp.341-364

Walker, A.E., Grimshaw, J., Johnston, M., Pitts, N., Steen, N., and Eccles, M. PRIME – Process modelling in Implementation research: selecting a theoretical basis for interventions to change clinical practice. *BMC Health Services Research* 2003, 3:22doi:10.1186/1472-6963-3-22, <http://www.biomedcentral.com/1472-6963/3/22> (accessed 4/07/2011)

Weijer, I. 'The Double Paradox of Juvenile Justice', *European Journal on Criminal Policy and Research*, Vol. 7, Issue 3, 1999, pp.329–351

Weijers, I. 'Requirements for Communication in the Courtroom: A Comparative Perspective on the Youth Court in England/Wales and The Netherlands', *Youth Justice*, Vol. 4, Issue 1, 2004, pp.22-31

Westman, J. C. 'Children's rights, parents' prerogatives, and society's obligations' *Child Psychiatry & Human Development*, Vol 29, Issue 4, 1999, pp.315-328

## UN and Agencies

'Children, Youth and Crime: Working Paper Prepared by the Secretariat' *Twelve United Nations Congress on Crime Prevention and Criminal Justice (12-19 April 2010, Salvador, Brazil)*, UN, 15 February 2010, [www.unodc.org/unodc/en/crime-congress/crime-congresses.html](http://www.unodc.org/unodc/en/crime-congress/crime-congresses.html) (Accessed 09/09/11)

'Handbook on restorative justice programmes', *UNODC* Vienna, [www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf), 2006 (accessed 11/07/2011)

'Human Development Report 2007/8', *UNDP*, <http://hdrstats.undp.org/en/indicators/42.html>, 2008 (Accessed 21/08/09)

'Innocenti Digest: Juvenile Justice', *UNICEF International Child Development Centre Florence- Italy*, <http://www.unicef-irc.org/publications/105>, 1998 (accessed 11/07/2011)

'Juvenile justice experts from 10 countries (Eastern and South-Eastern Europe) created a sub-regional network', *UNICEF*, [http://www.unicef.org/ceecis/media\\_2873.html](http://www.unicef.org/ceecis/media_2873.html) (Accessed 11/07/2011)

'Juvenile Justice Training Manual', *Penal Reform International/UNICEF*, 2007, <http://www.penalreform.org/publications/juvenile-justice-manual> (Accessed 11/07/2011)

'Logical Framework' *UNICEF* Tirana, <http://www.ceecis.org/juvenilejustice/new/countries.html>, (Accessed 30/11/09)

'Manual for the Measurement of Juvenile Justice Indicators' *United Nations Office On Drugs And Crime* Vienna (UNODC) Vienna, [http://www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf), 2006 (Accessed 25/08/11)

'Manual on Human Rights Reporting under Six Major International Human Rights Instruments', *Office of the Higher Commissioner for Human Rights/United Nations Institute for Training and Research/United Nations Staff College Project*, UN Publication: Geneva 1997

'No age of innocence: Justice for children' *The Progress of Nations*, UNICEF <http://www.unicef.org/pon97/protect1.htm> 1997 (Accessed 11/08/09)

'On the rights track: Establishment of a preventive and restorative juvenile justice system in Albania', UNICEF Tirana, <http://www.ceecis.org/juvenilejustice/new/countries.html> (Accessed 30/11/09)

'The Development of Juvenile Justice Systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine', UNICEF Regional Office for CEE/CIS, Geneva, 2009, [www.essex.ac.uk/armedcon/story\\_id/developmentofjuvenilejusti.pdf](http://www.essex.ac.uk/armedcon/story_id/developmentofjuvenilejusti.pdf) (Accessed 09/09/11)

'Toolkit on Diversion and Alternatives to Detention', UNICEF, 2009, [http://www.unicef.org/tdad/index\\_55653.html](http://www.unicef.org/tdad/index_55653.html) (Accessed 20/05/2011)

'UNICEF helps build a child-friendly justice system in post-tsunami Aceh', UNICEF, [http://www.unicef.org/infobycountry/indonesia\\_42219.html](http://www.unicef.org/infobycountry/indonesia_42219.html) (Accessed 11/07/2011)

Albania Young Voices: National Study Report, UNICEF/ Institute for Development of Research and Alternatives, 2008 <http://www.unicef.org/albania/web-Albanian-Young-Voices.pdf> (Accessed 04/09/11)

Concept and strategy paper for juvenile justice activities in Albania – (manuscript), UNICEF 2004

Country programming and related matters, Country programme document for Albania 2006-2010, UNDP [www.undp.org.al/download/cpd/cpd.pdf](http://www.undp.org.al/download/cpd/cpd.pdf) (Accessed 24/04/08)

Day of General Discussion, Working Group 1: The child's right to be heard in judicial and administrative proceedings "Some difficulties arising from Article 12 CRC", UN Committee on the Rights of the Child [http://www.crin.org/docs/GDD\\_2006\\_IAP\\_Discussionpaper\\_1.doc](http://www.crin.org/docs/GDD_2006_IAP_Discussionpaper_1.doc), 2006 (Access on 25/08/2011)

Guidelines On Compliance With And Enforcement Of Multilateral Environmental Agreements (MEAs), United Nations Environment Programme, [http://www.unep.org/dec/MEA\\_Manual.html](http://www.unep.org/dec/MEA_Manual.html), 2006, (accessed 31/07/2011)

Hanson, K., Hanna C. 'Project Title: Strengthening legislative and institutional capacity for juvenile justice and Support to the juvenile justice system in Lebanon', United Nations Office on Drugs and Crime, (Project Number:LEB/98/R72 and LEB/02/R30) Vienna July 2005 [http://www.unodc.org/pdf/criminal\\_justice/Juvenile\\_Justice\\_Lebanon.pdf](http://www.unodc.org/pdf/criminal_justice/Juvenile_Justice_Lebanon.pdf)

Innocenti Digest: Juvenile Justice, UNICEF International Child Development Centre Florence – Italy, <http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=105>, 1998 (Accessed 25/07/11)

Moestue, H. *Lost in the justice system: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF, 2008 [www.unicef.org/russia/Lost in the Justice ENG.pdf](http://www.unicef.org/russia/Lost_in_the_Justice_ENG.pdf) (Accessed 25/11/09)

Office of the United Nations High Commissioner for Human Rights, *Dignity and Justice for Detainees* Week: Information Note No.6: Children [http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention\\_infonote\\_6.pdf](http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_6.pdf) (accessed 10/08/2011)

Office of the United Nations High Commissioner for Human Rights, *Human Rights FactSheet: No. 4 Combating Torture*, at 34 (May 2002)

Pais, M. S. 'The Convention on the Rights of the Child', in *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, eds. Office of the High Commissioner for Human Rights, Geneva; United Nations Institute for Training and Research (UNITAR), United Nations Staff College Project, Turin, United Nations, Geneva, 1997

Pais, M.S. Innocenti Essay No 9, 'A Human Rights Conceptual Framework for', *UNICEF International Child Development Centre Florence – Italy*, 1999

Palme, L. 'No age of innocence: Justice for children', *UNICEF*, 1997, <http://www.unicef.org/pon97/protec1.htm>, (Accessed 27/10/09)

Photo Essay: Supporting Juvenile Justice in Albania, UNICEF Tirana, Albania [www.unicef.org/ceecis/9302.html](http://www.unicef.org/ceecis/9302.html), 2008, (Accessed 20/11/09)

Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) 'Thematic evaluation of UNICEF's contribution to Juvenile Justice System Reform in four countries: Montenegro, Romania, Serbia, Tajikistan', *UNICEF*, March 2007 [www.juvenilejusticepanel.org/.../UNICEFCEECISEvaluationReportJJSytemReform07EN.pdf](http://www.juvenilejusticepanel.org/.../UNICEFCEECISEvaluationReportJJSytemReform07EN.pdf) (Accessed 23/12/09)

Skelton, A., Asquith S., Cappelaere, G. and La Greca, G. 'Towards a Comprehensive Juvenile Justice System for Albania - Final Report of an Expert Group Mission', UNICEF Tirana, Albania, [http://www.unicef.org/albania/juv\\_justice\\_albania.pdf](http://www.unicef.org/albania/juv_justice_albania.pdf), 2000 (Accessed 20/11/09)

UN – Human Rights Council, Universal Periodic Review – Human Rights Council, UNICEF Input – Albania, *UNICEF*, Tirana Albania, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/AL/UNICEF\\_ALB\\_UPR\\_S06\\_2009.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/AL/UNICEF_ALB_UPR_S06_2009.pdf) (Accessed 05/12/09)

UN Commission on Human Rights, *Civil and Political Rights, including the Question of Torture and Detention; Torture and other cruel, inhuman or degrading treatment or punishment*: Report of the Special Rapporteur on the question of torture, Theo van Boven, E/CN.4/2005/62, 15 December 2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/104/83/PDF/G0510483.pdf?OpenElement> (accessed 23/11/09)

UN Commission on Human Rights, Question of the Human Rights of All Persons Subjected

to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35 9 January 1996,

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/691b21854d334918802566aa005d5209?OpenDocument> (accessed 01/09/2009)

UN Committee against Torture, *Consideration of reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture: Albania*, ComCAT/C/CR/34/ALB 21 June 2005  
<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CAT.C.CR.34.ALB.En?OpenDocument>  
 (Accessed 28/11/09)

UN Committee on the Rights of Child, *General Comment No. 10: Children's rights in Juvenile Justice*, CRC/C/GC/10, 2 February 2007  
<http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 14.02.2008)

UN Committee on the Rights of Child, *General Comment No. 10: Children's rights in Juvenile Justice*, CRC/C/GC/10, 2 February 2007  
<http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 14.02.2008)

UN Committee on the Rights of Child, *General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*, CRC/GC/2002/2, 15 November 2002,  
<http://www2.ohchr.org/english/bodies/crc/comments.htm> (Accessed 14/09/11)

UN Committee on the Rights of Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts.4, 42 and 44, para.6)*, CRC/GC/2003/5, 27 November 2003  
<http://www2.ohchr.org/english/bodies/crc/comments.htm> (Accessed 14/09/11)

UN Committee on the Rights of Child, *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*, CRC/C/GC/8, 21 August 2006  
<http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed on 14.02.2008)

UN Committee on the Rights of Child, *Report on the tenth session of the Committee on the Rights of the Child*, CRC/C/46, 18 December 1995,  
<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/24b13ed424177d4ec1256333004b0e0e?OpenDocument> (accessed 26/04/2011)

UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Initial Periodic Report of State Parties due in 1994: Albania*, CRC/C/11/Add.27, 5 July 2004  
<http://daccessdds.un.org/doc/UNDOC/GEN/G04/425/60/PDF/G0442560.pdf?OpenElement>  
 (Accessed 27/01/05)

UN Committee on the Rights of the Child, *Consideration of reports submitted by State Parties under Article 44 of the Convention: Concluding Observations: Albania* CRC/C/15/Add.249, 28 January 2005

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/408/44/PDF/G0540844.pdf?OpenElement>  
(Accessed 09/02/05)

UN Committee on the Rights of the Child, *Consideration of reports submitted by State Parties under Article 44 of the Convention: Concluding Observations: Denmark*, CRC/C/DNK/CO/3 23 November 2005  
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.DNK.CO.3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.DNK.CO.3.En?OpenDocument) (accessed 23/11/2009)

UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Initial Periodic Report of State Parties due in 1994: Albania*, CRC/C/11/Add.27, 5 July 2004  
<http://daccessdds.un.org/doc/UNDOC/GEN/G04/425/60/PDF/G0442560.pdf?OpenElement>  
(Accessed 27/01/05)

UN Committee on the Rights of the Child, *Consideration of reports submitted by State Parties under Article 44 of the Convention: Concluding Observations: Albania* CRC/C/15/Add.249, 28 January 2005  
<http://daccessdds.un.org/doc/UNDOC/GEN/G05/408/44/PDF/G0540844.pdf?OpenElement>  
(Accessed 09/02/05)

UN Committee on the Rights of the Child, *General Comment No. 7: Implementing child rights in early childhood* (2005), CRC/C/GC/7/Rev.1, 20 September 2006,  
<http://www2.ohchr.org/english/bodies/crc/comments.htm>, (accessed 24/08/2011)

UN Committee on the Rights of the Child, *General Comment No.12: The Right of the Child to Be Heard*, CRC/C/GC/12, 20 July 2009,  
<http://www2.ohchr.org/english/bodies/crc/comments.htm>, (accessed 24/08/2011)

UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, 2002/12, <http://www.unhcr.org/refworld/docid/46c455820.html> (Accessed 11/07/2011)

UN General Assembly, *A world fit for children*, Adopted by General Assembly Resolution, A/RES/S-27/2 of 11 October 2002 <http://www.un.org/documents/resga.htm> (accessed 11/08/2011)

UN General Assembly, *Note by General- Secretary transmitting: the Report of the independent expert for the United Nations study on violence against children, Paulo Sérgio Pinheiro, submitted pursuant to General Assembly resolution 60/231, A/61/299*, 29 August 2006

UN General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Rights to Development: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Addendum – Summary Of Information, Including Individual Cases, Transmitted To Governments And Replies Received*, A/HRC/10/44/Add.4 17 February 2009  
[http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44.Add.4\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44.Add.4_EFS.pdf) (accessed 25/10/2009)

UN General Assembly, *Question of torture and other cruel, inhuman or degrading treatment or punishment: The interim report on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, in accordance with paragraph 29 of General Assembly resolution 54/156A, A/55/290, 11 August 2000, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/febadbe1a38503adc125697a0037786d/\\$FILE/N0060508.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/febadbe1a38503adc125697a0037786d/$FILE/N0060508.pdf) (Accessed 23/11/09)*

UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 62/148, A/63/175, 28 July 2008 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/440/75/PDF/N0844075.pdf?OpenElement> (accessed 01/09/2009)*

UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 63/166, A/64/215, 3 August 2009, para.63 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/440/75/PDF/N0844075.pdf?OpenElement> (accessed 09/09/2011)*

UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: the interim report of the Special Rapporteur of the Commission on Human Rights Sir Nigel Rodley, submitted in accordance with paragraph 30 of General Assembly resolution 55/89, A/56/156, 3 July 2001 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.56.156.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.56.156.En?Opendocument) (accessed 01/09/2009)*

UN Human Rights Committee, *General Comment 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7) CCPR/C/21/Rev.1/Add.3, 7 April 1992 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (accessed 5.05.2008)*

UN Human Rights Committee, *General Comment No. 18: Non-Discrimination. CCPR General Comment No.18, 10 November 1989 <http://www2.ohchr.org/english/bodies/hrc/comments.htm>, (accessed 24.08.2011)*

UN Human Rights Committee, *General Comment No. 21: Article 10 (Humane treatment of Persons Deprived of Their Liberty), 10 April 1992, <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (accessed 25/07/2011)*

UN Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before the courts and tribunals and to a fair trial. CCPR/C/GC/32, 23 August 2007 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (accessed 5.05.2011)*

UN Human Rights Committee, *General Comment No.6: The right to Life (art.6). CCPR General Comment No.6, 30 April 1982,*

<http://www2.ohchr.org/english/bodies/hrc/comments.htm>, (accessed 24.08.2011)

UN Office of the High Commissioner for Human Rights, *The Death Penalty in Relation to Juvenile Offenders*, Resolution 2000/17, adopted Aug. 17, 2000. E/CN.4/Sub.2/RES/2000/17 (2000) [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=8178](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=8178) (accessed 20/04/2011)

United Nations Children's Fund (UNICEF). *Progress for Children, A report card on child protection, No. 8*, September 2009, [http://www.unicef.org/publications/index\\_50921.html](http://www.unicef.org/publications/index_50921.html) (accessed 31/07/2011)

*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Adopted by General Assembly resolution 45/113 of 14 December 1990. <http://www.un.org/documents/ga/res/45/a45r113.htm> (accessed 12/10/1009)

United Nations Treaty Collection, Databases, Chapter IV: Human Rights – Status of the Convention on the Rights of the Child, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) as at 06/09/2011, (Accessed 6/09/11)

United Nations, Economic and Social Council, *General Comment No.9: The domestic application of the Covenant*, E/C.12/1998/24, CESCR, Adopted by 03/12/1998, <http://www.unhchr.ch/tbs/doc.nsf/0/4ceb75c5492497d9802566d500516036?Opendocument> (Accessed 26/11/09)

### **Council of Europe and European Union**

Commission of the European Communities, *Albania 2008 Progress Report*, SEC (2008) 2692, final, 5 November 2008, [http://www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf), (Accessed 17/02/08)

Commission of the European Communities, *Albania 2009 Progress Report*, SEC (2009) 1337/3, 14 October 2009, [http://mie.gov.al/skedaret/1256019592-AL\\_Rapport.pdf](http://mie.gov.al/skedaret/1256019592-AL_Rapport.pdf), (Accessed 05/12/09)

*Communication from the Commission to the Council and the European Parliament 'Enlargement Strategy and Main Challenges 2010-2011'*, COM (2010) 660, Annex [http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm) (Accessed 24/08/11)

Council of Europe, Committee of Ministers (1999) 'Mediation in Penal Matters' Recommendation No. R (99) 19, adopted 15 September 1999 <https://wcd.coe.int/ViewDoc.jsp?id=420059&Site=CM> (Accessed 11/07/2011)

Council of Europe, Committee of Ministers, *Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies) <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75> (accessed 30/05/2009)



Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Albanian Government on the visit to Albania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 16 to 20 June 2008*, CPT/Inf (2009)6, Strasbourg 21 January 2009, <http://www.cpt.coe.int/documents/alb/2009-06-inf-eng.htm> (Accessed 16/12/09)

Council of Europe, European Committee on Crime Problems, Explanatory Memorandum on Draft Recommendation (99) on Mediation on Penal Matters, CM (99) 118add2 / 02 August 1999, (Accessed 28.05.2008)

<https://wcd.coe.int/ViewDoc.jsp?id=420059&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

Council of Europe, Human Rights and Legal Affairs, *Space I (Annual Penal Statistics of the Council of Europe)*,

([http://www.coe.int/T/E/Legal affairs/Legal co-operation/Prisons and alternatives/Statistics SPACE I](http://www.coe.int/T/E/Legal%20affairs/Legal%20co-operation/Prisons%20and%20alternatives/Statistics%20SPACE%20I)) (Accessed 23/11/09)

European Commission Enlargement, *Accession Criteria* – (online) [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm) (Accessed 24/08/11)

Hammarberg, Th. "Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007", Council of Europe, Strasbourg, 18 June 2008, Doc. CommDH(2008)8 <https://wcd.coe.int/ViewDoc.jsp?id=1327977&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

OSCE 'Preliminary Comment on Albania's Draft Amendment to Legislation Concerning Juvenile Justice', *OSCE Opinion-Nr.: FAIRTRIAL – ALB/005/2004* [www.legislationline.org/.../action/.../126867259bb3da2a2b5d8a6146a0.pdf](http://www.legislationline.org/.../action/.../126867259bb3da2a2b5d8a6146a0.pdf), 2004 (Accessed 01/07/06)

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, adopted on 3/5/2002, entered in force 1/07/2003 text and commentary available at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>, accessed 30/4/2011

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, adopted on 28/4/1983, entered in force 1/3/1985, text and commentary available at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>, accessed 30/4/2011

Stabilisation and Association Agreement Between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part (SAA), Council of European Union, 8164/06, [http://eeas.europa.eu/delegations/albania/eu\\_albania/political\\_relations/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/political_relations/index_en.htm)

(Accessed 24/08/11)

### General Reference

'Albania: Alternative Report "For the situation of children's rights and the implementation of the Convention on the Rights of the Child in Albania', [http://www.crin.org/docs/resources/treaties/crc.38/Albania\\_ngo\\_report.pdf](http://www.crin.org/docs/resources/treaties/crc.38/Albania_ngo_report.pdf), 2004 (Accessed 15/08/09)

'Annual Report 2007', Albania Ombudsman, [http://www.avokatipopullit.gov.al/Raporte/Raporti\\_2007.pdf](http://www.avokatipopullit.gov.al/Raporte/Raporti_2007.pdf) (Accessed 01/12/09)

'Annual Report 2008', Albania Ombudsman, [http://www.avokatipopullit.gov.al/Raporte/Raporti\\_2008.pdf](http://www.avokatipopullit.gov.al/Raporte/Raporti_2008.pdf) (Accessed 01/12/09)

'Easy Targets: Violence Against Children Worldwide'. *Human Rights Watch*, <http://www.hrw.org/sites/default/files/reports/violence2001.pdf>. 2001 (accessed on 20/4/09)

'Forum on alternatives measures approach for juveniles in conflict with the law', *Terres des Hommes*, Tirana, 10-11 April 2006

'Forum on restorative justice and mediation approach', *Albanian Foundation for Conflict Resolutions*, Tirana 7-8 June 2006

'From Legislation to Action? Trends in Juvenile Justice Systems Across 15 Countries', *Geneva: Defence for Children International*, <http://www.dci-is.org> ("Resources"), 2007 (Accessed 22/11/09)

'Hidden Scandal, Secret shame', *Amnesty International*, 2000,

'Legjislacioni Shqiptar dhe Konventa e te drejtave te Femijes', *Qendra e Sherbimeve dhe Praktikave Ligjore te Integruara /Save the Children Tirana Albania*, <http://www.scalbania.org/1.pdf> (available only in Albanian language) (Accessed 04/09/11)

'Preventative and Restorative Juvenile Justice Reform Starts in Albania' – (online), One World Southeast Europe (Oneworld), <http://see.oneworldsee.org/article/view/124163/1/>, 27 May 2007, (Accessed 27/05/07)

'Professional training for Albanian officials' the International Institute for the Rights of the Child – Institut International des Droits des Enfants (Sion Seminar 2006)

'Special Report No.1 'On Publication of ratified international agreements at Official Gazette', *Albania Ombudsman*, <http://www.avokatipopullit.gov.al/Raporte/RV12008.pdf> 2008 (Accessed 01/12/09)

'Special Report No.3 'On activity of Ombudsman to protect the children's rights', *Albania Ombudsman*, <http://www.avokatipopullit.gov.al/Raporte/RV32008.pdf>, 2008 (Accessed 01/12/09)

- 'Violence against children in juvenile justice system', *World Organization Against Torture, Geneva*, 2006
- 'Violence Against Girls in Conflict with the Law', *Human Rights Watch*, <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm>, 2007, (Accessed 20/10/09)
- 'Violence against girls in detention - Submission to the United Nations Study on Violence Against Children', *Quaker United Nations Office, Geneva*, 2005 <http://www.quno.org/geneva/pdf/humanrights/women-in-prison/20050329violence-against-girls-in-detention.pdf> (accessed 26/05/2009)
- 'Violence against women and girls in prison – Submission to the Study of the Secretary-General of the United Nations on Violence against Women'. *Quaker United Nations Office, Geneva*, 2005 <http://www.quno.org/geneva/pdf/humanrights/VAW-SG-study2005.pdf> (accessed 26/05/2009)
- 2010 Freedom of Media Index, *Reporters Without Borders*, <http://en.rsf.org/press-freedom-index-2010,1034.html> (Accessed 04/09/11)
- Abramson, B 'The Right to Diversion: Using the Convention on the Rights of the Child to turn juvenile justice rights into reality' in *Proceeding of the 1<sup>st</sup> International Conference on 'Juvenile Justice and the Prevention of Juvenile Delinquency in a Globalized World'*, 27-29 October, International Juvenile Justice Observatory, Valencia, 2004
- Abramson, Bruce. 2005 'Juvenile Justice: The 'Unwanted Child': Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it' – (manuscript) in International Network on Juvenile Justice/Defence for Children International, 'Violence Against Girls in Conflict with the Law'. *Human Rights Watch*, <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm> (accessed 20/10/2009)
- Albania Statistics visit the website [www.instat.gov.al](http://www.instat.gov.al)
- Albanian Helsinki Committee, <http://www.ahc.org.al/kshh/eng/prison/prison.html>
- Annual Report 2009, *Amnesty International*, <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2009&c=ALB> (Accessed 15/12/09)
- Annual Review, *General Directorate of Police*, <http://asp.gov.al/2008/dhjetor/analiza-vjetore-prezantimi.pdf>, (Accessed 15/12/09)
- Avokati I Popullit: Drafti per buxhetin, antikushtetues', Shekulli 19.11.2009
- Children's Human Rights – The Future Starts Here, *Amnesty International USA*, [www.amnestyusa.org/children/future](http://www.amnestyusa.org/children/future), (Accessed 09/09/11)
- Children's Human Rights Centre of Albania (CRCA) <http://www.crca.org.al/faqja> (Accessed 01/12/09)
- Death Sentences and Executions 2010, *Amnesty International*, March 2011,

<http://www.amnesty.org/en/library/info/ACT50/001/2011/en> (accessed 31/03/2011) (AI Index: ACT 50/001/2011)

Detrick, S. Abel, G., Berger, M., Delon, A. and Meek, R. *Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands*, Defense for Children International - The Netherlands, 2008, <http://www.defenceforchildren.org/files/Violence-Against-Children-in-Conflict-with-the-Law-EN.pdf> (accessed 31/07/2011)

Doek, J. Children's Rights fundamental to well-being, and under threat, *Keynote at the ACWA Conference August 14-17 2006 Sydney* (2006), available at <http://www.jaapedoek.nl/publications/keynote.php> (accessed 12/05/2011)

Drejtoria e Pergjithshme e Burgjeve, Investimet, Kavaje, <http://www.dpsh.gov.al/?fq=brenda&gj=gj1&kid=64>> no date (Accessed 30/11/09)

Field, B.C. 'Juvenile Justice: History and Philosophy' *Encyclopaedia of Crime and Justice*. 2002. *Encyclopedia.com*. 25 Jun. 2011 <http://www.encyclopedia.com> (accessed 22/06/2011)

Freedom House 2007 Albania Report, *Freedom House*, <http://www.freedomhouse.org/template.cfm?page=47&nit=443&year=2008> (Accessed 02/12/09)

Frieder D. and Stando-Kawecka, B. 'Juvenile Imprisonment and Placement in Institutions for Deprivation of Liberty--Comparative Aspects' *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. Monchengladbach: Forum Verlag Godesberg, 2010

General Prosecutor Office Republic of Albania, Structure, as review by 26.12.2008 <http://www.ppgov.al/sq/home/PP/struktura.html> (Accessed 15/12/09)

Geneva Convention of August 12, 1949 Relative to the Protection of Civilians 1950 available at <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView> (accessed 20/04/2011)

Gjipali, S. and Ruci, L. 'The Albanian Women: Hesitations and Perspective' in *Gains and Losses: Women and Transition in Eastern and Central Europe*, eds. L. Barrow and L. Grünberg, UNESCO/European Network for Women Studies, Bucharest, 1994

Hamilton, C., Malby, S. and Ross, G. 'Analysis of the Child Protection System in Albania', Children Legal Centre UK, <http://www.childrenslegalcentre.com/International+programmes/Countries/Albania.htm>, 2007 (Accessed 04/09/11)

Hazizaj, A. 'Thoughts and suggestions on the proposed changes regarding Albanian legislation on juvenile justice' - (Manuscript), CRCA, 2005

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

<http://www.ahc.org.al/kshh/eng/prison/prison.html>)

<http://www.albanian.com/main/history/independ.html> (Accessed 01/12/09)

<http://www.justiceinitiative.org/activities/foifoe/adv/albania2> (Accessed 20/4/09)

Imholz, K. 'Recommendation about transposing international commitments into domestic legislation', EURALIUS – European Assistance Mission to the Albanian Justice System, 2005 <http://www.euralius.org.al/php/index.php?lang=1&page=10#> (Accessed 05/12/09)

Imholz, K. 'Recommendation on translation of the *Acquis Communautaire* for the purposes of facilitating of international agreement and other documents', EURALIUS – European Assistance Mission to the Albanian Justice System, 2006 <http://www.euralius.org.al/php/index.php?lang=1&page=10#> (Accessed 05/12/09)

Index Mundi <http://www.indexmundi.com/albania/population.html> (accessed 13/01/2011)

Kajsiu, B., Bumçi, A. and Rakipi, A. 'Albania: A Weak State, a Weak Democracy', *Albanian Institute for International Studies*, Tirana, 2002

Kiessl, H. 2001 'United Nations standards and norms in the area of juvenile justice in theory and practice: An empirical study on the use and application of UN rules for the protection of juveniles deprived of their liberty in South African practice' – (manuscript) at Max Planck Institute for Foreign and International Criminal Law, Germany

Kotherja, H. 'Proposals for amendments in the legal package on juvenile justice accused juvenile' – (Manuscript), Legal Clinic for Minors, 2005

Ksера: Gati Ligji per garantimin e te drejtave, Shqip 20/10/2009

Lindemann-Proetel, Christine 'On the assignment of judges I connection with the establishment of sections for penal cases against juveniles' *EURALIUS*, – European Assistance Mission to the Albanian Justice System, 2007, <http://www.euralius.org.al/recommendations/eng/Microsoft Word ON THE ASSIGNMENT OF JUDGES JUVENILE SECTIONS.pdf> (Accessed 16/12/09)

Map of Press Freedom 2010 Edition: Albania, *Freedom House*, <http://www.freedomhouse.org/template.cfm?page=560&year=2010> (Accessed 04/09/11)

Marshall, T. *Restorative Justice: An Overview* London: HMSO <http://rds.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf> 1999 (Available on 10.05.2008)

Martin, F. Parry-Williams, J. *The Right Not to Lose Hope*. London, Save the Children UK, 2005.

*Media Sustainability Index (MSI) – Europe and Eurasia, Albania 2011*, IREX – International Research & Exchange Board, <http://www.irex.org/resource/albania-media-sustainability-index-msi>, (Accessed 04/09/11)

Meuwese, S. 'Kids behind bars. A study on Children in conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards', *Amsterdam: Defence for Children International*, <http://www.kidsbehindbars.org/english/materials.htm>, 2003 (Accessed 20/4/09)

- Miers, David. 'An International Review of Restorative Justice, Crime Reduction Research Series Paper 10', *Home Office London (U.K.)*  
<http://www.homeoffice.gov.uk/rds/prgpdfs/crrs10.pdf> 2001 (available on 1/06/2008)
- Minister of Justice, Report at Law Commission of Assembly on 9.11.2009  
<http://www.justice.gov.al/?fq=brenda&m=news&lid=7759> (Accessed 30/11/09)
- Ministria e Drejtësisë, Zyra e Drejtësisë për të Mitur dhe të Drejtës Familjare,  
<http://www.justice.gov.al/?fq=brenda&kid=168> (Accessed 01/12/09)
- Muscroft, S. *Children's Rights: Reality or Rhetoric: The United Nations Convention on the Rights of the Child: The First 10 years*, London: The International Save the Children Alliance, 1999
- Nation Strategy 2001-2005 – (manuscript), National Committee on Women and Family, 2001
- National Membership of the League of Nations,  
<http://www.indiana.edu/~league/nationalmember.htm> (Accessed 01/12/09)
- Nejad, A. 'How does the Current Definition of Torture apply to Children?' in *Association for the Prevention of Torture, The Definition of Torture. Proceedings of an Expert Seminar*, APT, Geneva, 2001
- Papandile, Jani. 'Pse s'ka Institut Riedukimi për të mitur?!, Albania, <<http://www.gazeta-albania.net/news.php?id=2189>> 4 March 2008, (Accessed 20/09/09)
- Pata Ylli, 'Qeveria I pret drejtësisë 'rubinetin' e parave', Shqip 19.11.2009
- Pata, Ylli 'Withers dhe Topi: Pavaresia e institucioneve, e paprekshme: Dy ambasadore dhe kreu i shtetit paralajmërojnë ekzekutivin dhe mazhorancën' Shqip 11.12.2009
- Paulo, Sérgio Pinheiro. "World Report on violence against children". United Nations Secretary -General's Study on Violence against Children, Geneva, Switzerland,  
<http://www.unviolencestudy.org/> 2006 (Accessed 23/11/09)
- Rama, Ina General Prosecutor Speech on 15 April 2008.  
<http://www.ppgov.al/sq/home/Njofitime/marveshja%20me%20ministrine%20e%20brendshme.pdf> (Accessed 15/12/09)
- Round table: Juvenile justice: Current situation and future prospects', Ministry of Justice, UNICEF and Albanian Helsinki Committee 18 January 2005
- Serious Crime Court, Justice Institutions, Courts, <<http://www.gjkr.gov.al/>> (Accessed 15/12/09)
- Stop Child Executions! Ending the death penalty for child offenders, *Amnesty International*, January 2004, <http://www.amnesty.org/en/library/info/ACT50/001/2004/en> (accessed 29/03/2011)

The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008, *Human Rights Watch*, May 2008, <http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives> (accessed 4/04/2011)

United Kingdom Foreign and Commonwealth Office, Travel and Living Abroad, Europe, *Albania* – (online), <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/albania> Last update 15 July 2011, (Accessed 20/08/11)

United States of America, Department of State, Bureau of European and Eurasian Affairs, *Country Profile Albania* – (online), <http://www.state.gov/r/pa/ei/bgn/3235.htm> Last update 30 August 2011, (Accessed 04/09/11)

[www.askoxford.com](http://www.askoxford.com)

[www.shekulli.com.al](http://www.shekulli.com.al)

Zermatten, J. 'Children Rights and Juvenile Justice' in *'18 Candles - The Convention on the Rights of the Child Reaches Majority'*, eds. J. Connors, J. Zermatten, and A. Panayoditis, Institut international des Droits de l'Enfant (IDE), Sion, 2007

## Cases

*A v UK*, 1999, EHRR 611

*Gillick* decision [1986] AC112

*Greek case*, Report of the European Commission on Human Rights, 5 November 1969, 12 Yearbook of the European Convention on Human Rights 1, p. 186.

*Hussain and Singh v UK*, 1996, 22 EHRR 1

*Ireland v. UK, Judgment*, 2 EHRR 25

*Michael Domingues v. United States* Inter-American Court of Human Rights, Case No 12.285, Rep 62/02

*Osborne v Jamaica* UNHRC Comm. No. 759/1997

*Polay Campos v Pery*, UNHRC Comm. No. 577/1994

*Tyrer v UK*, 1979, 2 EHRR 1

*V v United Kingdom*, 1999, 30 EHRR 121

*Villagran-Morales et al. v Guatemala*, Inter-American Court of Human Rights, Ser. C, No. 63 (1999)

*Weeks v. United Kingdom*, 1987, 10 EHRR 293

*Z v. The United Kingdom*, 34 EHRR 3

*Zheludkov v Ukraine* Human Rights Committee (HRC Comm. No. 726/1996)



**APPENDIX 1  
DEFINITIONS<sup>1</sup>**

TERM	DESCRIPTION
<b>acquitted</b>	A child is acquitted where he or she is found not guilty of an offence by a competent authority
<b>administrative detention</b>	A child is held in administrative detention where he or she is held specifically under the power or order of the executive branch of government and is not subject to the usual juvenile justice or adult criminal justice system procedure.
<b>adult criminal justice system</b>	The adult criminal justice system consists of the laws, procedures, professionals, authorities and institutions that apply to witnesses and victims, and to adults alleged as, accused of, or recognized as having committed a criminal offence.
<b>aftercare</b>	Means the arrangements in place that are designed to assist children released from detention in returning to society, family life, education or employment after release.
<b>arrest</b>	A child is arrested where he or she is placed under the custody of the police, military, intelligence or other security forces because of actual, perceived or alleged conflict with the law.
<b>at risk of delinquency</b>	Although it may not be an offence under the law in question, children may come into contact with the juvenile justice or adult criminal justice system as a result of being considered to be in danger by virtue of their behaviour, or, through association by the behaviour of others.
<b>category of offence</b>	Means the categories of offence listed in Table 2.2 on page 9 of this manual and as defined in this definitions section. Although the categories of at risk of delinquency and 'irregular situation' may not strictly be offences under the national law in question they are included in Table 2.2 due to their frequent occurrence.
<b>charged</b>	A child is charged with an offence where the police, a law enforcement authority, the public prosecutor or a competent authority formally accuses him or her of having committed a specific offence.
<b>child</b>	A child is any person below the age of eighteen years.
<b>child population</b>	A child population is a particular group of children, such as 'all children in detention on a particular date' that must be counted in order to measure a particular indicator.
<b>competent authority</b>	The competent authority is the part of the juvenile justice or adult criminal justice system that is responsible for making procedural or disposition decisions regarding a child's case.
<b>complaints mechanism</b>	A complaints mechanism is any system that allows a child deprived of liberty to bring any aspect of the treatment that child has received, including violations of his or her rights, to the attention of the authority responsible for the place of detention, or any other official body established for such purpose.
<b>conflict with the law</b>	A child is in conflict with the law where he or she has committed or has been accused of having committed an offence. Depending upon the local context, children may also be in conflict with the law where they are dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.
<b>convicted</b>	A child is convicted where he or she is found guilty of having committed an offence by the decision of a competent authority.
<b>customary norms</b>	Means widespread consistent norms in the state in question, including long standing tribal or indigenous rules that may be known by a large part of the population.
<b>deprivation of liberty / detained</b>	A child is deprived of liberty where he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.
<b>diversion</b>	A child is diverted where he or she is in conflict with the law but has their case resolved through alternatives, without recourse to the usual formal hearing before the relevant competent authority. To benefit from diversion, the child and/or his or her parents or guardian must consent to the diversion of the child's case. Diversion may involve measures based on the principles of restorative justice.
<b>drug-related offence</b>	Drug-related offence may be understood to mean intentional acts that involve the cultivation, production, manufacture, extraction, preparation, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation, exportation and possession of internationally controlled drugs.

## Appendix 1 Definitions

<b>information source</b>	Information sources are single institutions or individuals that form part of the juvenile justice or adult criminal justice system. They are usually responsible for taking key decisions that affect children in conflict with the law, and they often have direct contact with such children. Information sources supply information for measurement of the juvenile justice indicators.
<b>immigration/migration offence</b>	An immigration/migration offence is an offence relating to the legality of the entry and/or continued presence of the child and/or his or her family in the country in question, or to the legality of the current place of residence of the child and/or his or her family following internal displacement.
<b>information systems</b>	Information systems are internal methods or structures that enable bodies or institutions that deal with children in conflict with the law to systematically record, update and retain information about those children.
<b>irregular situation</b>	Although it may not be an offence under the law in question, children may come into contact with the juvenile justice or adult criminal justice system as a result of being considered to be in danger from the environment in which they live.
<b>juvenile justice system</b>	The juvenile justice system consists of the laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law.
<b>laws</b>	Means all national legislation in force pertaining to children in conflict with the law, including criminal laws, criminal procedure laws, penal sanctions laws and juvenile justice laws, together with decisions of competent authorities and courts or tribunals having binding legal effect.
<b>non-custodial measure</b>	A non-custodial measure is a measure to which a child may be sentenced by a competent authority that does not include deprivation of liberty.
<b>offence</b>	A child commits an offence where he or she commits any act punishable by the law by virtue of the legal system in question.
<b>place of detention</b>	A place of detention is any public or private facility where a child is deprived of liberty.
<b>policies</b>	Means all national policy instruments pertaining to children in conflict with the law, including executive orders and ministerial documents.
<b>pre-sentence detention</b>	A child is held in pre-sentence detention where he or she is deprived of liberty and is awaiting a final decision on his or her case from a competent authority.
<b>prevention</b>	Prevention involves the active creation of an environment that deters children from conflict with the law. Such an environment should ensure for the child a meaningful life in the community and foster a process of personal development and education that is as free from crime as possible.
<b>probation</b>	Probation is a non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation. Probation may be employed as a measure on its own, or following a custodial sentence.
<b>probation officer</b>	A probation officer is the government official responsible for supervising a period of probation. He or she is often in charge of conducting an assessment of the child and referring him or her to appropriate counselling, education and reintegration programmes.
<b>public disorder offence</b>	A public disorder offence is an offence involving a breach of the peace or causing a public nuisance.
<b>restorative justice programme</b>	A programme which uses any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.
<b>sampling</b>	Sampling is the collection of information from part of the whole population. Information about that part is used to make inferences about the whole population.
<b>sentence</b>	A competent authority passes a sentence when - notwithstanding any right of appeal - it makes a final decision about a child's case and rules that the child shall be subject to certain measures.
<b>serious offence against a person</b>	A serious person offence can be homicide, non-intentional homicide, kidnapping, rape, sexual assault or abuse, assault or an attempt to carry out any of these acts.

## Appendix 1 Definitions

<b>serious property offences</b>	A serious property offence can be burglary, robbery or arson, or an attempt to carry out any of these acts. Burglary is the unlawful entry into someone else's premises with the intention to commit a crime. Robbery is the theft of property from a person, overcoming resistance by force or the threat of force.
<b>status offence</b>	A status offence is an act or behaviour that is only punishable if the person committing it is aged under eighteen, or is believed to be aged under eighteen.
<b>system map</b>	The system map is a map of the juvenile justice or adult criminal justice system in a particular country that shows the relevant laws, systems and the connections between them.
<b>theft</b>	Theft is the removal of property without the consent of the owner. Theft excludes burglary and housebreaking.

<sup>1</sup> These are definitions to the terms used in this Manual. Definitions might need to be adapted to each legal system.

**APPENDIX 2**  
**POLICY MAKER INTERVIEW**

1. How does the Albanian criminal justice system seek to ensure that the responses to children who are accused of having committed a crime are always proportionate to the circumstances of child and the offence? How successful is it in this respect in your opinion? Are there any additional reforms that you consider necessary in order to achieve this objective?
2. How does the Albanian system seek to guarantee the rights of these children when being questioned/detained by the police; during the trial; at the time of sentence; and while they are serving their sentence? How successful is it in this respect in your opinion? Are there any additional reforms that you consider necessary in order to achieve this objective?
3. Does the Albanian system place any limitations on their rights? Are these restrictions justifiable in your view?
4. What are the alternatives to deprivation of liberty offered by the Albanian system?
5. Have you undertaken any study to judge their effectiveness?
6. Have any steps been taken in order to prevent and reduce the use of pretrial and other forms of detention and to make this detention as short as possible? Please give examples. Please say how effective you think they are.
7. Do you think there is need for further improvement?
8. What is the latest state of play with regard to the proposed package for legislative amendment? What is your opinion on the proposal? Do you think that the package it is necessary? Do you think its is likely to be effective? Do you think it is likely to be applicable?

9. What is your opinion on the need for a separate juvenile court? What more needs to be done in order to establish one? What do you consider the main obstacles in to this coming about?
10. Does your institution have established independent and impartial child-centred procedures for direct complaints and communications to be made by children you are involved with?
11. Do you hold any figure about the numbers of complain you receive?
12. What is the budget allocated to the juvenile justice system for this year?
13. Do you hold the budget figures for the last five years?
14. What is the number of detention facilities for juvenile offenders and their capacity?
15. Do you (or does your department) receive regular updates on the number of children kept in pre-trial detention? How often?
16. Do you (or does your department) monitor the average length of children in pre-trial detention?
17. Are children treated and kept in separate places in district police stations, detention rooms and prison cells?
18. Do you have any figures of reported cases of abuse and maltreatment of the children during their arrest and detention/serving of sentence?
19. Does your institution adopt policies to promote compliance with the National Strategy for Children 2005?
20. Do you have any Albanian version of the following rules?
  - a) UN Standard Minimum Rules for the Treatment of Prisoners      Yes     No

- b) UN Standard Minimum Rules for the administration of Juvenile Justice Yes  No
- c) UN Rules for the Protection of Juveniles Deprived of their Liberty Yes  No
- d) European rules on Prisons Yes  No
- e) The UN Convention on the Rights of the Child Yes  No

21. Do you think that setting up of Ombudsman for Children would empower to monitor the Convention's and especially the rights of children in conflict with the law?

22. What is your opinion in restorative justice? In your view could restorative justice offer an alternative to custody or prosecution in Albania? Have you heard any case of "restorative justice" in practice?

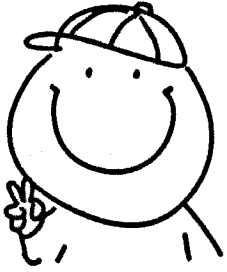
**THANK YOU VERY MUCH FOR YOUR PARTICIPATION**

### Appendix 3

Information about the condition and composition of detainees for November 2006  
(Source of Information: General Directorate of Prison, Scan version)

#### INFORMACION MBI GJENDEJN DHE PERBERJEN E TE DENUARVE MUAJI NENTOR 2006

I.E.D.P.	Nen 18vje	18<21vje	21<30 vje	30<40 vje	40<50 vje	50<60 vje	60> vje	SH.	Vjeddhune	Vjedh	Vras.	Plag.	Mard Sex dhune	K/ vajtje	drog	Te tjer.	Mepak se l vit	1<2vjet	2<5 vjet	5<15 vjet	15<20 vjet	20<25 vjet	Per Jete.	Aktiv me pane
313			7	3	2			12	2		2	1	2		5				3	8	1			3
325 (Burra)	24	32	31	26	9	18		140	14	35	26	8	9	8	12	28	31	28	32	37	9	3		29
325 (gra)	12	23	16	15	10	2		78		4	48				4	22	6	7	20	23	20	2		37
302			5	11	5	2		23		3	19		1					1	1	2	5	12	2	1
Vaqarr	21	9	52	49	31	6		168	28	18	62	3	13		32	12	5	5	33	86	30	9		41
Rrogozh.	26	182	131	57	22	4		422	91	15	128	7	21		54	106	3	10	80	265	43	21		103
Lushnje	13	128	106	44	15	6		312	40	27	106	13	10		68	48	7	12	60	166	28	39		75
Tepelen	2	25	54	14	8	3		106		22	65		6		1	12			1	23	14	39	29	11
Burrel	1	71	59	36	13	18		198	58	1	129		3		5	2			6	78	48	33	33	33
Lezhe	30	180	100	42	28	7		387	100	86	130	30	6	4	20	11	10	49	80	185	20	43		60
Peqin	27	351	228	115	43	6		770	76	97	391	17	21		82	86	7	9	76	369	144	118	47	122
Kruje	5	51	64	21	24	42		207	28	5	137	5	8	1	14	9	1	7	20	119	42	17	1	26
SHUMA	21	149	1107	852	408	180	106	2823	437	313	1243	84	100	13	297	336	70	128	412	1361	404	336	112	540



in England!

**HI!!** My name is Eva Manco, I am a student and I am studying

I would like to invite you to take part in a research project that I am conducting. Before you decide whether or not you wish to take part in it, I would like to explain briefly to you why the research is being conducted and what it will involve. Please feel free to stop me at anytime if there is anything that is not clear or if you would like more information. Thank you!

I would like to ask you questions relating to the way you have been dealt with since the moment you were stopped by the police. I would especially like to learn from you what it is like for you to be here in this facility, and also about your everyday life.

Adults have written some rules about how the police, judges, prosecutors and your educators here must behave. I am studying if these rules are really followed in practice. I will be asking you and your friends here and other ones in other centers. Once I have finished the research I hope to be in position to suggest ways of reforming the system.

In order to do so I hope you will be willing to take part in this research, but it will be entirely up to you whether you agree to take part or not. Nobody will know whether you agree to take part or not, so nothing will happen to you either way. If you do decide to take part you will be given this information sheet to keep and will be asked to sign the consent form. The interview will take more or less 60 min to be completed. If you decide to take part you are still free to withdraw at any time. Again, no one will know and so nothing will happen either way.

I alone, will read and listen to your answers; no one else. I would ask your permission to record the interview in case I will miss any of your answers. I will lock the tapes. Everything will be destroyed once the research is complete. To protect you I will not require either your name or your date of birth!! No one will be able to identify you from the report I will write.

Do you understand all of this? Is there anything you are not clear about?

Are you willing to take part?

I am happy that you have decided to give me a chance with my interview.

Thank you very much!

I will guide you with explanations throughout the interview.

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**PLEASE, LET US START NOW!**



II. Appendix 5  
III. Consent Form

**Title of Project:** *Hear Our Voice! Albanian Children in Detention*

**Name of Researcher:** *Miss. Eva Manco*

**Participant Identification Number for this project:**

**Please initial box**

1. I confirm that I have read and understand the information sheet dated: *[insert date]* for the above project and have had the opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason.

3. I understand that my responses will be anonymised before analysis. I give permission for the researcher to have access to my anonymised responses.

4. I give permission to the researcher to tape-record the interview. I am aware of the fact that the researcher will take all reasonable steps to safeguard the security of any records they make. Audiotapes will be kept in a locked filing cabinet that may only be accessed by the researcher and the tapes will be destroyed once the research is complete

5. I agree to take part in the above project.

\_\_\_\_\_  
Name of Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Person taking consent  
(if different from researcher)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Researcher

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Copies:

One copy for the participant and one copy for the researcher.

**APPENDIX 6**  
**Young People Interview and Results**

I would like to hear more about you

**1. How old are you?**

14 years	15 years	16 years	17 years	18 years	18+ years
0-0%	0-0%	12-28.57%	20-47.6%	4-9.5%	6-14.28%

**2. Gender:** Male 40-95.24% Female 2-4.76%

**3. Where do you come from?**

a) **Area:** City 24-57% Village 18-42.86%

b) **Region:** North Albania 9-21.4% Tirana 22-52.38% Central Albania 4-9.5%  
South Albania 7-16.67%

The following questions aim to provide a better understanding of the reasons why you are here

**4. Why you are here?** Awaiting trial 21-50% Serving an sentence 21-50%

**5. When did your period of detention begin?** Month \_\_\_\_ Year \_\_\_\_

2002	2003	Jan-Jun'04	Jul-Dec'04	Jan-Jun'05	Jul-Dec'05	Jan-Jun'06	Jul-Dec'06
1-2.38%	1-2.38%	6-14.29%	2-4.76%	4-9.52%	2-4.76%	9-21.4%	17-40.5%

**6. What is the offence for which you are charged or for which you have been convicted?**

Homicide (including attempts)	8-19.05%
Assault	0-0%
Rape	0-0%
Robbery	5-11.9%
Other types of Theft	20-47.6%
Drug Offences	6-14.29%
Other Offences	1-2.38% kidnapping, 1-2.38% women traffic, 1-2.38% intentional injury

**7. How much longer do you expect to be in detention?**

0-6 months	6m-1year	1-2 years	2-3 years	3-4 years	4+ years	Don't know
5-11.9%	7-16.67%	5-11.9%	1-2.38%	3-7.14%	3-7.14%	18-42.86%

**8. What is the length of your sentence?**

One month to less than three months	1-2.38%	1-3 months
Three months to less than six months	3-7.14%	3-6 months
Six months to less than one year	1-2.38%	1 year
One year to less than three years	4-9.52%	1-1.5 years, 1-2.5 years,
Three years to less than Five years	9-21.4%	6-3y 4m sentenced for robbery, 1-4y
Five years to less than ten years	6-14.29%	3-8y, 2-6y
Ten Years to less than Twenty Years	0-0%	

More than Twenty years	0-0%	
Life Imprisonment	0-0%	
Do not know	18-42.86%	<i>reprimand</i>

Now I will make some questions relating to the period between your initial arrest by the police and your first appearance before a judge. You may choose to answer or not.

9. When you were 'caught' by the police did any one of them asked for your:

a) Date of Birth

Yes	No	Cannot remember
38-90.48%	3-7.14%	1-2.38%

b) Address

Yes	No	Cannot remember
36-85.7%	3-7.14%	3-7.14%

10. Did they permit you to call your parents?

Yes	No	Cannot remember
12-28.57%	30-71.43%	0-0%

11. Did they notify your parents?

Yes	No	Cannot remember
26-61.9%	13-30.95%	3-7.14%
<i>2-presented to police station by themselves, 1-knowing that I was wanted I called on the phone the police to come at the hiding place, 2-arrested at home, 1-parents come along with me at the police station</i>	<i>1-we were stopped together</i>	

12. Did any one clearly explain to you that you have the right to remain silent?

Yes	No	Cannot remember
6-14.29%	35-83.3%	1-2.38%
	<i>3-sentenced in absence</i>	

13. Did they explain to you that you were entitled to free access to a lawyer?

Yes	No	Cannot remember
23-54.76%	14-33.3%	2-4.76%

14. Did you ask to see a lawyer?

Yes	No	Cannot remember
15-35.7%	27-64.29%	0-0%

15. Did the police permit this?

Yes	No	Cannot remember
16-38.09%	31-73.8%	0-0%
	<i>once the charges were pressed lawyer was called</i>	

16. Did your parents/relative pay the lawyer?

Yes	No	Don't know
29-69%	9-21.4%	1-2.38%
	<i>7-state, 2-minor legal clinic</i>	

17. Did the police inform why you had been stopped?

Yes	No	Cannot remember
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Appendix 6  
Young People Interview & Result

<b>28-66.67%</b>	<b>14-33.3%</b> <i>1- I told by myself</i>	<b>0-0%</b>
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**18. How long did the police question you in total?**

1-2hr	2-3 hr	3-4 hr	4-5 hr	5-6 hr	6+ hr	12 hr	24 hr	don't remember
<b>12-28.57%</b>	<b>10-23.8%</b>	<b>0-0%</b>	<b>1-2.38%</b>	<b>1-2.38%</b>	<b>7-16.67%</b>	<b>5-11.9%</b>	<b>2-4.76%</b>	<b>4-9.5%</b>

**19. How would you describe the manner in which the police questioned you?**

Was it calm and polite	Threatening and abusive	Forceful or violent	Cannot remember	Other (explain please)
<b>12-28.57%</b>	<b>8-19%</b>	<b>22-52.38%</b>	<b>0-0%</b>	<b>0-0%</b>

**20. How long did you wait to see:**

a. Your parents? did not get to see them  Cannot remember

1-6 hr	6-12 hr	12-24 hr	24 hr	48 hr	72 hr	Didn't	Cannot
<b>1-2.38%</b>	<b>1-2.38%</b>	<b>1-2.38%</b>	<b>1-2.38%</b>		<b>4-9.5%</b>	<b>33-78.57%</b> <i>4-after 10 days, 16-court room, 1-after 4 days</i>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

b. Your lawyer? Hours \_\_\_\_\_ did not get to see him/her  Cannot remember

1-6 hr	6-12 hr	12 hr	24 hr	48 hr	Didn't	Cannot
<b>8-19%</b>	<b>3-7.14%</b>	<b>6-14.28%</b>	<b>6-14.28%</b>	<b>7-16.67%</b>	<b>11-26.14%</b> <i>1-after 10 days, 7-court room, 1-after 7 days</i>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

c. A judge?

72 hr	4 days	5 days	6 days	6 months	Didn't	Cannot
<b>31-73.8%</b>	<b>2-4.76%</b>	<b>2-4.76%</b>	<b>2-4.76%</b>	<b>1-2.38%</b>	<b>3-7.14%</b>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

**21. Did your lawyer explain to you:**

a) the legal position

Yes	No	Cannot remember
<b>26-61.9%</b>	<b>15-35.7%</b>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

b) What might happen in court

Yes	No	Cannot remember
<b>23-54.76%</b>	<b>18-42.86%</b>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

c) the fact that you are innocent until proven

Yes	No	Cannot remember
<b>11-26.14%</b>	<b>30-71.43%</b> <i>12-suggested to accept and get 1/3 reduced, 1-accepted by myself, 4-were caught acting</i>	<b>1-2.38%</b> <i>(sentenced in absence)</i>

d) what might happen to you if convicted

Yes	No	Cannot remember
<b>12-28.57%</b>	<b>28-66.67%</b>	<b>2-4.76%</b>

**22. Was it easy for you to understand what the lawyer was saying?**

Yes	No	Cannot remember
-----	----	-----------------

26-61.9%	12-28.57%	4-9.5%
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Now I will ask some more questions relating to the court

**23. During you trial were you also seen or spoken to by:**

a) Social Worker

Yes	No	Cannot remember
21-50%	20-47.6%	1-2.38%
<i>21 from reprimand project run by minor legal clinic</i>		

b) Psychologist

Yes	No	Cannot remember
26-61.9%	16-38.09%	0-0%
<i>21 from reprimand project run by minor legal clinic</i>		

**24. When you moved to and from the detention centre did the police use the handcuffs?**

Yes	No	Cannot remember
41-97.6%	1-2.38%	0-0%
<i>29 hands tight behind</i>	<i>(reprimand –compulsion to present before judicial police</i>	

Now let's talk about the accommodation and the conditions in this facility

**25. How many people – if any - do you share room with?**

2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	9 persons	10 persons
1-2.38%	2-4.76%	9-21.43%	2-4.76%	15-35.7%	3-7.14%	8-19%	2-4.76%

**26. If you share a room with another/others, how old are they?**

Under 18	Over 18	Both categories
33-78.56%	9-21.43%	0-0%

**27. Have they been sentenced or not?**

Sentenced	Unsentenced	Both categories
21-50%	21-50%	0-0%

**28. For how many hours each day are the cells unlocked?**

12 hours	Locked all day
4-9.5%	38-90.48%
<i>(women &amp; lower prison)</i>	<i>(vaqar &amp; reprimand)</i>

**29. Are you satisfied with the functioning/conditions/number of toilets?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
0-0%	23-54.76%	17-40.48%	2-4.76%	0-0%
		<i>12 in reprimand</i>	<i>in reprimand</i>	

**30. How many showers per week are you entitled to?**

anytime there is water – 40-95.24%; 3 per day – 1-2.38%; 2 x week -1-2.38%

**31. Are you satisfied with washing facilities?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
0-0%	22-52.38%	16-38.09%	4-9.5%	0-0%
		<i>12 in reprimand</i>	<i>in reprimand</i>	

**32. Are you provided with bed linen?**

Yes	No	Cannot remember
23- 54.76%	18-42.86% <i>12 in reprimand, 3-blanket only, 1-blanket &amp; old mattress</i>	1-2.38% <i>my family already brought to me</i>

**33. How satisfied are you with the quantity and cleanliness of the bed linen?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
2-4.76%	40-95.24% <i>38-cleam by family</i>	0-0%	0-0%	0-0%

**34. Are you allowed to wear your private clothes?**

Yes	No	Cannot answer
42-100%	0-0%	0-0%

**35. Do you have access to adequate storage space?**

Yes	No	Cannot answer
41-97.62% <i>37 -not locked</i>	1-2.38%	0-0%

Now I would like to hear more about what your food and drinking water in this facility

**36. How many meals (breakfast lunch dinner...) do you get per day?**

3 meals x day – 4-9.5% at women & lower prison; 2 meals and for breakfast only tea – 38-90.48% vaqar & reprimand

**37. Do you have any special dietary requirements (e.g. vegetarian, vegan, Halal etc)**

Yes	No	Cannot answer
0-0%	42-100%	0-0%

**38. Does the food that is provided meet these requirements?**

Yes	No	Cannot answer
1-2.38%	41-97.62%	0-0%

**39. How satisfied are you eat with the type/quality/quantity of food provided by the facility?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
1-2.38%	1-2.38%	13-30.95%	27-64.29%	0-0%

**40. Are you allowed to receive food from outside?**

Yes	No	Cannot answer
40-95.24%	0-0%	2-4.76% <i>parents don't know where we are</i>

**41. Are you allowed to purchase additional food (or other items) within the facility?**

Yes	No	Cannot answer
18-42.86% <i>order 1 x week</i>	22-52.38% <i>reprimand</i>	2-4.76%

**42. Is drinking water available whenever you need?**

Yes	No	Cannot answer
35-83.3% <i>14 -timed with the city, 21 to much chlorine</i>	7-16.67% <i>7 - we buy to much chlorine</i>	0-0%

The next question concerns the medical services that are available in this facility

**43. Did a doctor check you at the time you arrived at this facility?**

Yes	No	Cannot remember
33-78.56%	9-21.4% <i>just asked at the admission commission</i>	0-0%

44. Have you ever received medical treatment in this facility?

Yes	No	Cannot remember
20-47.6%	22-52.38%	0-0%

- a. If yes, what was the reason? 6-14.29% for headache; 3-7.14% for broken leg; 3-7.14% for flue; 2-4.76% for kidneys problem; 2-4.76% for dental problems; 1-2.38% for cold; 1-2.38% for acnes; 1-2.38% for lack of sleep; 1-2.38% – physically abused by special forces

- b. If yes, where you satisfied with medical treatment?

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
1-2.38%	4-9.5%	10-23.8%	5-11.9%	0-0%

45. Do you have dentist check ups?

Often	Rarely	Never	Don't know
8-19%	10-23.8%	21-50% <i>there is but not seen</i>	1-2.38%

The following questions concern your relationships with the facility staff and also the way discipline is maintained

46. Do have a copy of the facility's rules or a description of your rights here?

Yes	No
33-78.57% <i>12 -copy hang on the wall</i>	9-21.4% <i>7-reprimand</i>

47. Did any member of staff explain them to you on your arrival?

Yes	No	Cannot answer
23-54.76%	18-42.86% <i>18 -explain by my roommates -vaqar</i>	1-2.38%

48. How often are you searched for prohibited "weapons" and articles ?

Daily	Weekly	Monthly	Never	Cannot answer
4-9.5% <i>vaqar</i>	33-78.56% <i>21-reprimand</i>	3-7.14%	0-0%	2-4.76% <i>vaqar</i>

49. Has any staff member used physical force (such as smacking, kicking, punching) against you?

Often	Rarely	Never	Cannot answer
0-0%	12-28.57% <i>8 special force-reprimand</i>	30-71.43%	0-0%

50. Have you seen a staff member using physical force against anyone else?

Often	Rarely	Never	Cannot answer
0-0%	17-41.48% <i>13-reprimand</i>	25-59.5%	0-0%

51. Do staff members use disciplinary measures such as:

- a. Removal of privileges (like no spare time activities, TV removal) Yes 4-9.5% No 38-90.48%
- b. Lock up in cells during the day Yes 6-14.28% No 36-85.7%
- c. Solitary confinement/isolation Yes 38-90.48% No 4-9.5%

- d. Exclusion from individual/group activities more than 5 days Yes **10-23.8%** No **32-76.2%**
- e. Exclusion from group walking in fresh air for more than 10 days Yes **9-21.4%** No **34-80.95%**
- f. Exclusion from all the group activities for more than 10 days Yes **6-14.28%** No **36-85.7%**
- g. Individual reprimand Yes **23-54.76%** No **19-45.24%**
- h. Reprimand in front of all inmates Yes **1-2.38%** No **41-97.62%**

**52. Have you been subject to any of these disciplinary measures?**

- a) Removal of privileges (like no spare time activities, TV removal) Yes **3-7.14%** vaqar No **39-92.85%**
- b) Lock up in cells during the day Yes **1-2.38%** vaqar No **41-97.62%**
- c) Solitary confinement/isolation Yes **15-35.7%** vaqar No **27-64.29%**
- d) Exclusion from the individual/group activities more than 5 days Yes **3-7.14%** vaqar No **39-92.85%**
- e) Exclusion from the group walking in fresh air for more than 10 days Yes **1-2.38%** vaqar No **41-97.62%**
- f) Exclusion from all the group activities for more than 10 days Yes **1-2.38%** vaqar No **41-97.62%**
- g) Individual reprimand Yes **6-14.28%** vaqar No **36-85.7%**
- h) Reprimand in front of all inmates Yes **1-2.38%** vaqar No **41-97.62%**

**53. Would you know how to complain about the use of physical force and disciplinary measures or any other grievances?**

Yes	No	Cannot answer
<b>20-47.6%</b>	<b>21-50%</b>	<b>1-2.38%</b>
	<i>10 – vaqar, 9-reprimand</i>	

**54. To whom do you think you would have the right to complain to?**

*First choice:* Director **8-19%** –3 he doesn't do anything; chief police –**6-14.28%**; ombudsman **4-9.5%** –2 they do not reply to us; educator **2-4.76%**; minor legal clinic – **1-2.38%**; family – **1-2.38%**; none listen – **3-7.14%**

*Second choice:* Director **2-4.76%**; chief police –**10-23.8%**; ombudsman-**1-2.38%** –they do not reply to us; Helsinki Committee – **1-2.38%**;

*Third Choice:* Director **1-2.38%**; minor legal clinic –**1-2.38%**; educator-**1-2.38%**

**55. Do the staff facility ever carry any weapon?**

Yes	No	Cannot answer
<b>13-30.95%</b>	<b>29-69%</b>	<b>0-0%</b>
<i>7 – vaqar, 6-reprimand</i>		

**56. What kind of weapon? Baton – asked to specify as the guard had nothing they specified it is used and seen to special police – the one who intervened on special situation**

Now I would like to know more about relationships with your fellow inmates. You may choose at any time not to answer to the questions.

**57. Have you experienced any of the following problems caused by other juvenile inmates:**

a) **Nicknaming you**

Always	Sometimes	Never	Not at all
<b>0-0%</b>	<b>0-0%</b>	<b>12-28.57%</b>	<b>30-71.43%</b>



**b) Hiding or damaging your possessions**

Always	Sometimes	Never	Not at all
0-0%	2-4.76% <i>women</i>	12-28.57%	28-66.67%

**c) Taking food or other belongings away from you**

Always	Sometimes	Never	Not at all
0-0%	2-4.76% <i>reprimand</i>	13-30.95%	27-64.29%

**d) Physically assaulting you**

Always	Sometimes	Never	Not at all
0-0%	5-11.9% <i>reprimand</i>	12-28.57%	25-59.5%

**e) Sexual assault**

Always	Sometimes	Never	Not at all
0-0%	0-0%	13-30.95%	29-69%

**58. Do you encounter any adult inmates in this facility?**

Yes	No	Cannot answer
24-57% <i>20 – vaqar, when we go outside; 4- reprimand, during transport</i>	18-42.86%	0-0%

**59. Have you experienced any of the following problems caused by adult inmates:**

**a) Nicknaming you**

Always	Sometimes	Never	Not at all	Not applicable
0-0%	0-0%	9-21.4%	15-35.7%	18-42.86%

**b) Hiding or damaging your possessions**

Always	Sometimes	Never	Not at all	Not applicable
0-0%	0-0%	6-14.28%	18-42.86%	18-42.86%

**c) Taking food or other belongings away from you**

Always	Sometimes	Never	Not at all	Not applicable
0-0%	0-0%	6-14.28%	18-42.86%	18-42.86%

**d) Physically assaulting you**

Always	Sometimes	Never	Not at all	Not applicable
0-0%	0-0%	6-14.28%	18-42.86%	18-42.86%

**e) Sexual assault**

Always	Sometimes	Never	Not at all	Not applicable
0-0%	0-0%	6-14.28%	18-42.86%	18-42.86%

**60. If you have experienced any of the above, have you ever complained about it to the personnel of facility?**

Yes	No	Cannot answer	Not applicable
7-16.67%	1-2.38%	0-0%	34-81.95%

**61. If yes, how satisfied were you with the way your complaint was handled?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all	Not applicable
5-11.9%	2-4.76%	12.38%	0-0%	0-0%	34-81.95%

I am now interested in your contact with the outside world

**62. How far away does your family live from the facility?**

0.5 hr	0.75 hr	1 hr	1.5 hr	2 hr	4 hr	5 hr	7 hr	8 hr
14-	3-	8-19%	7-	2-	4-	1-	1-	2-

33.3%	7.14%		16.67%	4.76%	9.5%	2.38%	2.38%	4.76%
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Distance is expressed in travelling time. Even it looks short in km or miles with the road condition and traffic it takes time to reach the facility, especially vaqar institute that it is located outside the city and uninhabited area.

**63. Do you receive regular visit from your family?**

Yes	No	Cannot answer
40-95.24%	2-4.76%	0-0%
	<i>1 - my father doesn't know where I am; 1-just arrived</i>	

**64. How often do they visit you each month?**

Daily	Weekly	Monthly	other	Cannot answer
0-0%	27-64.29%	10-23.8%	2-4.76%	3-7.14%
		<i>especially those who families where far away</i>	<i>once x 2-3 month no financial means</i>	<i>2-excluded see above question, 1- girl crime happen within family</i>

**65. Does this facility provide a special room for you to meet with:**

a) Your familiars

Yes	No	Cannot answer
40-95.24%	0-0%	2-4.76%

b) Your lawyer

Yes	No	Cannot answer	Not applicable
20-47.6%	0-0%	4-9.5%	18-42.86%

**66. Do you share the visiting areas with adult inmates?**

Yes	No	Cannot answer
38-90.48%	2-4.76%	2-4.76%

**67. How long last the meeting?**

*Family or guardian*

10 min	0.5 hr	1 hr	4 hr	Not applicable
1-2.38%	25-59.5%	13-30.95%	1-2.38%	2-4.76%
		<i>reprimand</i>		

The 10m min guy explained that he lost the "privileges" of juvenile as soon as reach 18 years old. He was moved to adult section at reprimand facility and no longer even enjoy the experience of going outside everyday or play games with other youngster as before.

*Legal representative*

No limit	Not applicable
23-54.76%	19-45.24%

**68. Does this facility permit you to communicate with:**

*Relative*

Yes	No	Cannot answer
41-97.62%	0-0%	1-2.38%

*Representatives of organisations*

Yes	No	Cannot answer
36-85.7%	3-7.14%	3-7.14%

*Friend*

Yes	No	Cannot answer
27-64.29%	6-14.28%	9-21.4%

*Journalist*

Yes	No	Cannot answer
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27-64.29% <i>permitted but we don't want them especially at court room,</i>	7-16.67%	8-19%
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Others \_\_\_

Yes	No	Cannot answer
		42-100%

69. Do you have access to any telephone facility here to call your family?

Yes	No	Cannot answer
41-97.62%	0-0%	1-2.38%

70. How often are you able to call home?

1 x week depending on police & money	2 x week	2-3x week	3x week	Other
14-33.3% <i>vaqar</i>	16- 38.09%	8-19%	2- 4.76%	2-4.76% <i>I call only once by myself my mother get really upset, 1 Don't know the number</i>

71. Are there any restrictions on the number or length of letters you are able to write home?

Yes	No	Cannot answer
0-0%	40-95.24%	2-4.76%

72. How often each month do you send receive letters to and from your family?

1 x week	2-3 x week	1 x month	No regularly	No writing
1-2.38%	1-2.38%	5-11.9%	9-21.4%	26-61.9% <i>21 - reprimand</i>

Let's talk about the schooling in the facility and the way you spend your spare time here

73. Is there an school/education classes in this facility?

Yes	No	Cannot answer
22-52,38% <i>17- vaqar, 5 reprimand</i>	12-28.57% <i>4-women, 8-reprimand</i>	8-19% <i>reprimand</i>

74. Do you participate?

Always	Sometimes	Never	Cannot answer
8-19%	2-4.76%	24-57% <i>16 wants secondary education, 3-not interested,</i>	8-19% <i>reprimand</i>

75. What kind of training is available?

Hairdresser	sewing	computer	english	italian	none	Don't know
2-4.76% <i>women</i>	2-4.76% <i>women</i>	15-35.7%	14-33.3%	12- 28.57%	15-35.7% <i>reprimand</i>	5-11.9% <i>vaqar</i>

76. Do you attend the training?

Always	Sometimes	Never
12-28.57%	3-7.14%	27-64.29% <i>9 - not interested at all</i>

77. How long are you allowed to associate with other inmates each day?

24 hr	3 hr out & 24hr with roommates	24hr roommates & 1 hr at school	with & 1	0.5 hr	1hr	3 hr	4 hr
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<b>8-19%</b> 4 women, 4 reprimand	<b>12-28.57%</b> vaqar	<b>5-11.9%</b> vaqar	<b>1-2.38%</b>	<b>4-9.5%</b>	<b>1-2.38%</b>	<b>11-26.14%</b> reprimand
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**78. Do you have access to:**

a) Religious services

Yes	No	Cannot answer
<b>41-97.62%</b>	<b>0-0%</b>	<b>1-2.38%</b>

b) Library

Yes	No	Cannot answer
<b>30-71.43%</b> <i>timed with going outside 17-vaqar; 6 -reprimand</i>	<b>0-0%</b>	<b>12-28.57%</b> reprimand

c) Arts

Yes	No	Cannot answer
<b>26-61.9%</b>	<b>1-2.38%</b> women	<b>15-35.7%</b> reprimand

d) TV/Radio

Yes	No	Cannot answer
<b>42-100%</b>	<b>0-0%</b>	<b>0-0%</b>

e) Newspaper/Magazines

Yes	No	Cannot answer
<b>38-90.48%</b>	<b>0-0%</b>	<b>4-9.5%</b>

f) Gym or playing field

Yes	No	Cannot answer
<b>36-85.7%</b> <i>timed with going outside 17-vaqar; 16 -reprimand</i>	<b>6-14.28%</b> <i>timed with going outside reprimand</i>	<b>0-0%</b>

**79. What kind of sport activity do you do?**

football	Football 2 x week	Volleyball	basketball	No practice	Don't like
<b>24-57%</b>	<b>10-23.8%</b>	<b>2-4.76%</b>	<b>10-23.8%</b>	<b>6-14.28%</b>	<b>1-2.38%</b>

**80. How often/how many hours each day are you allowed to take exercise in the open air?**

12 hr	1 hr	4 hr limited to 45 min	Mon-fri 3 hr Sat -2 hr, Sun 1 hr	None
<b>4-9.5%</b> women	<b>4-9.5%</b> reprimand	<b>16-38.09%</b> reprimand	<b>17-40.48%</b> vaqar	<b>1-2.38%</b>

**81. How often do you take part?**

Every day	If permitted to play	Every time we got to big yard	Not participate	When I used to go out
<b>15-35.7%</b>	<b>5-11.9%</b>	<b>15-35.7%</b>	<b>6-14.28%</b>	<b>1-2.38%</b>

**82. What other activities do you do here?**

Working **4-9.5%** not permitted to work **38-90.48%**

If you work, what kind of work do you do? *construction, artisan, cleaning the garden*

a) Are you obliged to work?

Yes	No	Cannot answer
<b>0-0%</b>	<b>4-9.5%</b>	<b>0-0%</b>

b) How long are you required to work per day? 3-4 hours

- c) Do you receive payment (or other benefits) for any work you do? If yes, please give details. *Loose 4 days from the sentence*

**Attending religious services 2-4.76%**

- a) Are you permitted to have your Koran or Bible?

Yes	No	Cannot answer

**Playing cards 28 – with roommates**

**Discussion group general with roommates –26**

**Other reading –14; sleeping 4; coffee 3, writing poems – 2, listen to music 4, watching TV 36, 38 playing board games**

Finally

**83. Have you ever heard about the United Nation Convention on the Rights of the Child?**

Yes certainly	Yes a little bit	No	Not at all
<b>0-0%</b>	<b>9-21.4%</b>	<b>33-78.56%</b>	<b>0-0%</b>

**84. If you have any further comments, please write below**

27- we have been on newspaper. We do not want to meet journalist.

1 - were stopped as family including my sister 13 y old after they decided to proceed against me was called a state lawyer, her actions were just formal and she just assisted them to prepare the arrest documents and did not consulted me. I am transferred with adults and media is present in every proceeding despite the request to have the hearing with closed doors. I lost the "privileges" of juvenile as soon as reach 18 years old. He was moved to adult section at reprimand facility and no longer even enjoy the experience of going outside everyday or play games with other youngster as before.

22 - no where to complain, phone surveyed, letters open

6 - we called ombudsman but they did not come, any time we behave badly intervene the intervention group which sometimes shouts and can slap

35 - transfer with adults to attend proceedings

1 -problem with bed line, he received them only after 3 days

4 - they asked for help due to health condition of their roommate instead police got angry with them since was late night and requested the assistance of emergency group. They complain to director and he issue a rule to not "touch" them anymore

1 - lawyer not permitted until you confess, police come at my house at 3 o'clock morning, I was transferred only after 27 days at current institution, kept at the police prison with adults and no conditions

1 - I met my lawyer after police decides to press charges against me. Initially my case was considered from the tribunal of high crimes. After the request of my lawyer the case was transfer to district court

21 – here not but in police station yes, we were with adults.

6 - I was forced to show my face to the cameras by the police as they press the charges against me

1- I was nicknamed by media and followed by them every time. One day I decided to play with them by telling that I was going to immigrate in Greece.

1 - more they think for adults than little ones, I moved to many prisons until established here and shared place with adults. I requested to educators to notify my father for being here. None of them listen to you and nothing has been done. Thank to my new friends I am feeling being ok here.

**THANK YOU VERY MUCH FOR YOUR PARTICIPATION**

**APPENDIX 7**  
**Interview with the director of institutions**

In the following questions I would like to ask about your personal/professional background

**1. Your Age**

20-30      31-40 - 1-33.3%      41-50 -2-66.7%      51-60      61+

**2. Your Gender:**      Male 2-66.7%      Female 1-33.3%

**3. Your length of service (in this post):**

5 years	7 years	10 years
1-33.3%	1-33.3%	1-33.3%

**4. Your overall length of service working with children/juveniles:**

2 years	10 years
1-33.3%	2-66.7%

**5. What type of inmates do you work with primarily?**

a. Under 18 years old      Over 18 years old      Both categories 3-100%  
b. Person with remand      Sentenced person      Both categories 3-100%

**6. Your post (position you hold)**

a) Director of Facility      2-66.7%  
b) Vice Director      1-33.3%

**7. In what kind of facility do you work?**

Pre-detention	<b>1-33.3%</b>	Supreme Security Prison	<b>1-33.3%</b>
Prison for Female	<b>1-33.3%</b>	Ordinary Prison	<b>1-33.3%</b>
Juvenile Section of a Prison area	<b>1-33.3%</b>	Lower Security Prison	<b>1-33.3%</b>
Institute for Juvenile Offenders	<b>0-0%</b>	Psychiatric Institute	<b>0-0%</b>

Admission and classification procedure

8. What kind of accommodation is provided in this facility and what is their size?

Single cell rooms not applicable

Shared cell room/dormitory 3-100% yes 5 m x 5 m – reprimand, 4m x 6m vaqar

9. How many people share a cell room (on average?) 8 reprimand, 4 vaqar, 10 women

10. Are separate facilities provided for adults and children/juveniles?

Yes 3-100% No  Cannot answer

11. Are children/juveniles mixed with adult inmates in the exercise yard or elsewhere within the facility? Yes 1-33.3% women No 2-66.7%

Cannot answer

12. Are children/juveniles likely to come into contact with adult inmates while they are being transferred to another institution/court?

Yes 2 -66.7% No 1-33.3% Cannot answer

13. When juvenile inmates are moved to and from the facility do you ever use handcuffs or restrictions measures such as handcuffs or chain?

Yes, routinely 3-100% Yes, but only occasionally  No  Cannot answer

14. Does this facility maintain a register of inmates? Yes 3-100% No  Cannot answer

15. What kind of registration system do you use?

card file system  files 3-100% computerized files 2-66.7% individual files 1-33.3% register

16. Do the prisoner data include:

- a) the identity of inmate 3-100%
- b) fact, reason and authority for commitment 3-100%
- c) day & hour of admission 3-100%
- d) details of notification to parents or guardians 3-100%
- e) medical records 3-100%
- f) court attendance 3-100%
- g) disciplinary proceedings 3-100%
- h) the treatment programme 3-100%
- i) details of progress on the treatment programme 3-100%
- j) special information relating to vulnerability (e.g. suicide risk)? 3-100%
- k) Other \_\_\_\_\_

17. Who has access to the records?

- a) Only senior prison staff
- b) all prison staff 1-33.3%
- c) Any authorised persons 2-66.7%
- d) Accessible to an appropriate third party for consultation on request 3-100%
- e) Others \_\_\_\_\_

18. Are the prison authorities entitled to pass on details of a juvenile inmate or his/her case to media?

Yes  No 3-100% Cannot answer

19. If so, does the inmate's consent have to be obtained before this is permitted?

Yes 3-100% No  Cannot answer

20. Do the prisoners receive a printed copy of the:

- a) facility rules Yes 3-100% No  Cannot answer
- b) general prisons regulation Yes 3-100% No  Cannot answer
- c) address and contact telephone number of complain bodies Yes 3-100%  
No  Cannot answer

21. Do these rules include a description of their rights and obligations? Yes 3-100%  
No  Cannot answer
22. Are they provided in a language, which can be understood by the children/juveniles prisoner? Yes 3-100% No  Cannot answer
23. When and how does the educational service communicate these rules to those who are illiterate?  
after meeting with facility's director  within 24 hours 3-100% within the first days

In this section I am interested in accommodation and conditions of this facility

**24. How many children/juveniles share a cell in this facility with:**

- a) Un-sentenced person less then 18 years old

Reprimand	Vaqar	Women
27-900%	0-0%	0-0%

- b) Un-sentenced person over 18 years old

Reprimand	Vaqar	Women
3	0-0%	0-0%

- c) Sentenced person less then 18 year old

Reprimand	Vaqar	Women
0-0%	15-500%	0-0%

- d) Sentenced person over 18 years old

Reprimand	Vaqar	Women
0-0%	0-0%	0-0%

- e) No one else

**25. For how many hours each day are the cells unlocked?**

Reprimand	Vaqar	Women
4 hours	4-6 hours	12 hours

**26. Are you satisfied with the functioning/ conditions/number of toilets provided within your facility?**

- Very satisfied  Satisfied  Fairly satisfied 2 -66.7% Very dissatisfied 1-33.3%

**27. How many showers are available on your facility?**

Reprimand	Vaqar	Women
9	One for each room	9

**28. How often are juvenile inmates entitled to a shower? 1 x day**

**29. Does this facility provide prisoners free-of-charge with personal toiletry?**

- Yes 1-33.3% No  Cannot answer

**30. Does this facility provide young inmates with**

- a. Clothes according to the season Yes 1-33.3% No 2-66.7%  
Cannot answer
- b. Nightclothes Yes 1-33.3% No 2-66.7%  
Cannot answer
- c. Underclothes Yes 1-33.3% No 2-66.7%  
Cannot answer
- d. Bedding sets Yes 3-100% No  Cannot answer
- e. Educational items Yes 3-100% No  Cannot answer

**31. How often does this facility provide young inmates with a clean change of each of the following:**



- a. Clothes 0-0% families usually brings to them or they wash by themselves
- b. Nightclothes 0-0% families usually brings to them or they wash by themselves
- c. Underclothes 0-0% families usually brings to them or they wash by themselves
- d. Bedding sets 0-0% families usually brings to them or they wash by themselves

32. Are the inmates entitled to retain their own personal items?

- Yes 3-1--% No  Cannot answer  Other \_\_\_\_\_

Now I would like to hear more about the food and drinking water in this facility

33. How much is spent per each inmate on food? \_\_\_Leke (Albanian Currency) per day - only vaqar gave the figure at 69 leke for uncooked products.

34. Does the budget cover any special diets (e.g. vegetarian, Halal etc) that an inmate may require? Yes  No 2-66.7% Cannot answer 1-33.3%

35. Does the facility allow inmates to receive food from outside?

- Yes 3-100% No  Cannot answer

36. Is drinking water available whenever you need in this facility?

- Yes 3-100% No  Cannot answer

The next questions relate to the medical services that are available in this facility

37. What kind of medical service do you provide?

- in-house 3-100% external provider

38. Does a medical officer see and examine every prisoner as soon as possible after admission? Yes 3-100% No  Cannot answer

39. Do you offer dentist check ups with the facility? Often 3-100% Rarely  Never

40. In case of emergency where do you take the ill inmates?

- Provincial Hospital  Prisons Hospital 3-100% Offer service within facility

41. Does the medical staff regularly inspect and advise the administration of this facility on:

- food 1-33.3% sanitation 1-33.3% heating 3-100% lighting 3-100%

- ventilation 1-33.3% hygiene 3-100% cleanliness of institution 3-100% suitability

if the inmates clothing & bedding 1-33.3%

special diet requirement for inmates 2-66.7% health of an individual inmate before a disciplinary penalty is imposed 3-100%

In the following question I would like to know more about the way discipline and order are maintained in this facility

42. How often do you carry out searches for unauthorised" weapons" and articles?

- Daily  Weekly 3-100% Monthly  On suspicion  Cannot answer

43. Do staff members ever use physical or psychological force over the prisoners?

- Often  Rarely 1-33.3% Never 2-66.7% Cannot answer

44. Are cases of staff members assaulting prisoners followed up?

- Often 1-33.3% Rarely 1-33.3% Never  Cannot answer  Not applicable 1-33.3%

45. Which of the following methods of restraint are used against violent or recalcitrant prisoners?

- a. batons 1-33.3%
- b. neuro-paralysis pistols
- c. and lachrymose gas
- d. arm-locks
- e. head locks
- f. handcuffs 3-100%
- g. restraining jackets or belts 2-66.7%

46. Do staff members use disciplinary measures such as:

- a. Removal of privileges (like no spare time activities, TV removal) Yes 3-100%  
No  Cannot answer
- b. Lock up in cells during the day Yes 1-33.3% No 2-66.7%  
Cannot answer
- c. Solitary confinement/isolation Yes 1-33.3% No 2-66.7%  
Cannot answer
- d. Exclusion from the individual/group activities more than 5 days Yes 3-100%  
No  Cannot answer
- e. Exclusion from the group walking in fresh air for more than 10 days
- f. Yes 3-100% No  Cannot answer
- g. Exclusion from all the group activities for more than 10 days Yes 1-33.3% No 2-66.7%  
Cannot answer
- h. Individual reprimand Yes 3-100% No  Cannot answer
- i. Reprimand in front of all inmates Yes 1-33.3% No 2-66.7%  
Cannot answer

47. Is it possible for prison staff to impose additional days of detention for misbehaviour? Yes  No 3-100% Cannot answer

48. Are children/juveniles subject to the same disciplinary measures as adult inmates?

- Often  Rarely  Never 3-100% Cannot answer

49. To whom do the inmates have the right to complain to about the disciplinary measures ?

- a) Director -2-66.7%, Chief of Section -1-33.3%
- b) General Director of Prison - 2-66.7%, Director - 1-33.3%
- c) Ombudsman 2-66.7%
- d) Prosecutor 2-66.7%
- e) I do not know

50. Do you provide inmates with the address, telephone number of:

- a. Lawyer Yes 3-100% No  Cannot answer
- b. Prosecutor Yes 2-66.7% No 1-33.3% Cannot answer
- c. Supervision Commission for the execution of Penal Decision Yes  No 3-100%  
Cannot answer
- d. Ombudsman Yes 3-100% No  Cannot answer
- e. NGO Yes 3-100% No  Cannot answer

51. Do you hold a complaint book in this facility? Yes 3-100% No  Cannot answer

52. Do the staff facility carry any weapon? Yes  No 3-100% Cannot answer

53. What kind of weapon \_\_\_\_\_  
54. Are there concerns about gang activities in this facility?  
Often 1-33.3% Rarely  Never 2-66.7% Cannot answer

I am now interested with inmates contact to the outside world

55. How often can inmates receive visit by:  
*Family or guardian* 4 x month – 3-100%  
*Legal representative* any time

56. Does this facility provide a special room for inmates to meet with:  
a) Their familiars Yes 3-100% No  Cannot answer   
b) Their lawyer Yes 3-100% No  Cannot answer   
57. Do child detainees share the visiting areas with adult inmates? Yes 2-66.7% No 1-33.3% Cannot answer

58. How long last the meeting?  
a) *Family or guardian* ½ hours – 2-66.7%, 1 hour – 1-33.3%  
b) *Legal representative* no limit

59. Are inmates informed right away of death, seriousness or injury or any immediate family member? Yes 3-100% No  Cannot answer

60. Are inmates entitled to visit the sick family member or attend the funeral? Yes 3 No  Cannot answer

61. Do you provide families of inmates with an emergency contact number for the facility? Yes 3-100% No  Cannot answer

62. Do you hold the telephone number of inmates' familiars in this facility? Yes 3-100% No  Cannot answer

63. Do you offer any telephone facility for inmates? Yes 3-100% No  Cannot answer

64. Are there any restrictions on the number or length of letters that inmates could write home? Yes  No 3-100% Cannot answer

65. Does this facility allow an inmate to communicate with her/his:  
Representatives of organisations 3-100% relatives 3-100% friends 2-66.7%  
journalist 1-33.3% – with permission, 2-66.7% yes others diplomatic corpus, women

organisations

I am now interested in any educational and vocational training programs and work provided for inmates in this facility (if you are not familiar with this subject please continue ...)

66. Does this facility have a school? Yes 1-33.3% No 2-66.7% Cannot answer

67. Do you allow the children/juveniles to take part in education provided by communities outside this facility?

Often  Rarely 1-33.3% Never 2-66.7% Cannot answer

68. What proportion juveniles attended class? 80% \_ Not applicable 2-66.7%

69. Are vocational/educational programmes for inmates in this facility provided by:  
non-governmental organisations 3-100% prison program 1-33.3%  
educational institutions

none  others

70. In what field do you provide training? , Italian, English, computer, illiterate , hairdressing, tailor,

71. What proportion juveniles attended training programs? 50% at vaqar, 100% at women \_\_\_\_\_ Cannot answer 1?

72. Are children mixed with adults for educational training? Yes 1-33.3% No 1-33.3% Cannot answer

73. Do the inmates, including children, have access to:

- |                         |            |                             |  |
|-------------------------|------------|-----------------------------|--|
| g) Religious services   | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |
| h) Library              | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |
| i) Arts                 | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |
| j) TV/Radio             | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |
| k) Newspaper/Magazines  | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |
| l) Gym or playing field | Yes 3-100% | No <input type="checkbox"/> | Cannot answer <input type="checkbox"/> |

74. Do you provide outdoor exercise for children in this facility? Yes 3-100% No  Cannot answer  \_\_\_\_\_

75. How often/how many hours each day are young inmates allowed to take exercise in the open air?

Reprimand	Vaqar	Women
4 hours x day	4 hours x day	12 hours x day

76. Do inmates have free access to other cells during the entire day? Yes 2-66.7% No 1-33.3% Cannot answer

77. Do adult inmates have free access to children/juveniles cells? Yes 1-33.3% No 2-66.7% Cannot answer

78. Are the inmates, including the children, allowed to work in this facility? Yes 1-33.3% No 2-66.7% Cannot answer

- If yes, what kind of work are they permitted to do? Tailor, artisan – women
- How long are they required to work per day? How long they want
- Do they get any benefit? From the sale of products Other benefits \_\_\_\_\_
- Are they forced to work? Yes  No 1-33.3% Cannot answer
- Do the inmates have the possibility to working the community? Yes  No 3-100% Cannot answer

Now I would like to know more about training opportunities for you and about your understanding of your job

79. Did you receive training on your general and specific duties of your position?

Yes 2-66.7% No 1-33.3% How much training were you given? 6 months

80. Do you have access to training courses organised by Penitentiary Police School in Vaqar (Vaqar- location of School)? Yes 2-66.7% No 1-33.3%

81. What kind of training is provided to you?

- |  |             |                             |
|--|-------------|-----------------------------|
| a) courses in service training                                 | Yes 2-66.7% | No 1-33.3%                  |
| b) technical training to enable to restrain aggressive inmates | Yes 2-66.7% | No 1-33.3%                  |
| c) psycho-social training                                      | Yes 3-100%  | No <input type="checkbox"/> |
| d) training on prisoner rights                                 | Yes 3-100%  | No <input type="checkbox"/> |
| e) training on child rights                                    | Yes 3-100%  | No <input type="checkbox"/> |

- f) training to better understand the prisoner needs Yes 3-100% No
- g) training to better understand the juveniles prisoners needs Yes 2-66.7% No 1-33.3%
- h) case management Yes 2-66.7% No 1-33.3%
- i) acquisition and development of inter-personal communication skills Yes 2-66.7% No 1-33.3%
- j) others \_\_\_\_\_
- 82. Do you know what the following rules are?**
- a) UN Standard Minimum Rules for the Treatment of Prisoners Yes 3-100% No
- b) UN Standard Minimum Rules for the administration of Juvenile Justice Yes 3-100% No
- c) UN Rules for the Protection of Juveniles Deprived of their Liberty Yes 3-100% No
- d) European rules on Prisons Yes 3-100% No
- e) The UN Convention on the Rights of the Child Yes 3-100% No
- 83. What is the aim of your work?** 2-66.7%- rehabilitation, reintegration 1-33.3% - coordination, human management
- 84. Do you have a training manual on prisoner treatment in this facility?**  
Yes 3-100% No  Cannot answer
- 85. Do you have an Ethical Code?** Yes 3-100% No  Cannot answer
- 86. Will you continue to work here for the foreseeable future?** Yes 3-100% No  Cannot answer
- 87. Are you satisfied with your work?**  
Very satisfied  Satisfied 2-66.7% Fairly satisfied 1-33.3% Dissatisfied  Not at all
- 88. Do you think that you are fairly financially compensated for your work?** Yes  No 3-100% Cannot answer
- 89. If you have any further comments, please write below**
- 

**THANK YOU VERY MUCH FOR YOUR PARTICIPATION**

**APPENDIX 8**  
**Educational-Social Custody Services Interview**

In the following questions I would like to ask about your personal/professional background

**1. Your Age**

20-30	31-40	41-50	51-60	61+
<b>6-54.5%</b>	<b>1-9.1%</b>	<b>1-9.1%</b>	<b>3-27.3%</b>	<b>0-0%</b>

**2. Your Gender:** Male **3-27.3%** Female **8-72.7%**

**3. Your length of service (in this post):**

Less 6 months	1 years	2 years	3 years	5 years	6 years
<b>3-27.3%</b>	<b>3-27.3%</b>	<b>1-9.1%</b>	<b>1-9.1%</b>	<b>1-9.1%</b>	<b>2-18.2%</b>

**4. Your overall length of service working with children/juveniles:**

Less 6 months	1 year	2 years	4 years	25 years
<b>1-9.1%</b>	<b>4-36.4%</b>	<b>3-27.3%</b>	<b>1-9.1%</b>	<b>2-18.2%</b>

**5. What type of inmates do you work with primarily?**

c.

Under 18 years old	Over 18 years old	Both categories
<b>1-9.1%</b>	<b>0-0%</b>	<b>10-90.9%</b>

d.

Person with remand	Sentenced person	Both categories
<b>2-18.2%</b>	<b>9-81.8%</b>	<b>0-0%</b>

**6. Your post (position you hold)**

- c) Educator **3-27.3%**
- d) Legal Service **1-9.1%**
- e) Social Worker **6-54.5%**
- f) Psychologist **1-9.1%**

**7. In what kind of facility do you work?**

Pre-detention	<b>2-18.2%</b>	Supreme Security Prison	<b>2-18.2%</b>
Prison for Female	<b>4-36.4%</b>	Ordinary Prison	<b>5-45.5%</b>
Juvenile Section of a Prison area	<b>5-45.5%</b>	Lower Security Prison	<b>4-36.4%</b>
Institute for Juvenile Offenders	<b>0-0%</b>	Psychiatric Institute	<b>0-0%</b>

Admission and classification procedure

**8. How many people share a cell room (on average?)**

6 persons	8 persons
7-63.6%	4-36.4%

**9. Are separate facilities provided for adults and children/juveniles?**

Yes	No	Cannot answer
10-90.9%	1-9.1%	0-0%

**10. Are children/juveniles mixed with adult inmates in the exercise yard or elsewhere within the facility?**

Yes	No	Cannot answer
6-54.5%	5-45.5%	0-0%

**11. Who has access to the records?**

- f) Only senior prison staff 3-27.3%
- g) all prison staff 0-0%
- h) Any authorised persons 8-72.7%
- i) Accessible to an appropriate third party for consultation on request 3-27.3%
- j) Others who treat the prisoners 2-18.2%

**12. Are the prison authorities entitled to pass on details of a juvenile inmate or his/her case to media?**

Yes	No	Cannot answer
1-9.1%	763.6%	3-27.3%

**13. If so, does the inmate's consent have to be obtained before this is permitted?**

Yes	No	Cannot answer
8-72.7%	0-0%	3-27.3%

**14. Do the prisoners receive a printed copy of the:**

**d) facility rules**

Yes	No	Cannot answer
10-90.9%	0-0%	1-9.1%

**e) general prisons regulation**

Yes	No	Cannot answer
5-45.5%	5-45.5%	1-9.1%

**f) address and contact telephone number of complain bodies**

Yes	No	Cannot answer
11-100%	0-0%	0-0%

**15. Do these rules include a description of their rights and obligations?**

Yes	No	Cannot answer
11-100%	0-0%	0-0%

**16. Are they provided in a language, which can be understood by the children/juveniles prisoner?**

Yes	No	Cannot answer
8-72.7%	1-9.1%	2-18.2%

**17. When and how does the educational service communicate these rules to those who are illiterate?**

after meeting with facility's director **2-18.2%**    within 24 hours **1-9.1%**    within the first days **8-72.7%**

The next questions relate to the medical services that are available in this facility

**18. What kind of medical service do you provide?**

in-house **11-100%**                      external provider                      **0-0%**

**19. Does a medical officer see and examine every prisoner as soon as possible after admission?**

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

**20. Do you offer dentist check ups with the facility?**

Often	Rarely	Never
<b>10-90.9%</b>	<b>1-9.1%</b>	<b>0-0%</b>

**21. In case of emergency where do you take the ill inmates?**

Provincial Hospital **0-0%** Prisons Hospital **11-100%** Offer service within facility **0-0%**

**22. Does the medical staff regularly inspect and advise the administration of this facility on:**

food **8-72.7%** sanitation **9-81.9%** heating **654.5%** lighting **8-72.7%**

ventilation **654.5%** hygiene **10-90.9%** cleanliness of institution **6-54.5%**

suitability if the inmates clothing & bedding **8-72.7%**

special diet requirement for inmates **10-90.9%** health of an individual inmate before a disciplinary penalty is imposed **10-90.9%** not applicable **1-9.1%**

In the following question I would like to know more about the way discipline and order are maintained in this facility

**23. Do staff members ever use physical or psychological force over the prisoners?**

Often	Rarely	Never	Cannot answer
<b>0-0%</b>	<b>0-0%</b>	<b>9-81.8%</b>	<b>2-18.2%</b>

**24. Are cases of staff members assaulting prisoners followed up?**

Often	Rarely	Never	Cannot answer	Not applicable
<b>3-27.3%</b>	<b>3-27.3%</b>	<b>0-0%</b>	<b>1-9.1%</b>	<b>4-36.4%</b>

**25. Do staff members use disciplinary measures such as:**

i. Removal of privileges (like no spare time activities, TV removal)

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

j. Lock up in cells during the day

Yes	No	Cannot answer
<b>7-63.6%</b>	<b>4-36.4%</b>	<b>0-0%</b>

k. Solitary confinement/isolation

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

l. Exclusion from the individual/group activities more than 5 days

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

m. Exclusion from the group walking in fresh air for more than 10 days

Yes	No	Cannot answer
<b>8-72.7%</b>	<b>3-27.3%</b>	<b>0-0%</b>

n. Exclusion from all the group activities for more than 10 days

Yes	No	Cannot answer
<b>9-81.8%</b>	<b>2-18.2%</b>	<b>0-0%</b>

o. Individual reprimand



Appendix 8  
**Educational-Social Custody Services**  
**Interview & Result**

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

p. Reprimand in front of all inmates

Yes	No	Cannot answer
<b>4-36.4%</b>	<b>7-63.6%</b> <i>3-27.3% from women prison stated as undignified procedure</i>	<b>0-0%</b>

**26. Is it possible for prison staff to impose additional days of detention for misbehaviour?**

Yes	No	Cannot answer
<b>0-0%</b>	<b>10-90.9%</b>	<b>1-9.1%</b>

**27. Are children/juveniles subject to the same disciplinary measures as adult inmates?**

Often	Rarely	Never	Cannot answer
<b>1-9.1%</b>	<b>0-0%</b>	<b>9-81.8%</b>	<b>1-9.1%</b>

**28. To whom do the inmates have the right to complain to about the disciplinary measures?**

- f) Discipline commission – 4-36.4%, Director –5-45.5%, whom they consider reasonable –1-9.1%
- g) Director – 4-36.4%, Chief of Police – 2-18.2%, Doctor – 1-9.1%, Ombudsman –1-9.1%
- h) Director of Prison-5-45.5%, Chief of Education -1-9.1%
- i) Ministry of Justice – 2-18.2%, Ombudsman –1-9.1%, specialist of Education – 1-9.1%
- j) I do not know **1-9.1%**

**29. Do you provide inmates with the address, telephone number of:**

f. Lawyer

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

g. Prosecutor

Yes	No	Cannot answer
<b>5-45.5%</b>	<b>5-45.5%</b>	<b>1-9.1%</b>

h. Supervision Commission for the execution of Penal Decision

Yes	No	Cannot answer
<b>1-9.1%</b>	<b>8-72.7%</b>	<b>2-18.2%</b>

i. Ombudsman

Yes	No	Cannot answer
<b>11-100%</b>	<b>0-0%</b>	<b>0-0%</b>

j. NGO

Yes	No	Cannot answer
<b>9-81.8%</b>	<b>2-18.2%</b>	<b>0-0%</b>

**30. Do you hold a complaint book in this facility?**

Yes	No	Cannot answer
<b>9-81.8%</b>	<b>0-0%</b>	<b>2-18.2%</b>

**31. Are there concerns about gang activities in this facility?**

Often	Rarely	Never	Cannot answer
<b>0-0%</b>	<b>5-45.5%</b>	<b>5-45.5%</b>	<b>1-9.1%</b>

I am now interested with inmates contact to the outside world

32. How often can inmates receive visit by:  
*Family or guardian* 4 x month -11-100%  
*Legal representative* any time -11-100%

33. Does this facility provide a special room for inmates to meet with:

a) Their familiars

Yes	No	Cannot answer
11-100%	0-0%	0-0%

b) Their lawyer

Yes	No	Cannot answer
11-100%	0-0%	0-0%

34. Do child detainees share the visiting areas with adult inmates?

Yes	No	Cannot answer
8-72.7%	2-18.2%	1-9.1%

35. How long last the meeting?

c) *Family or guardian* 9-81.8%- ½ hours, 2-18.2%- 1 hr (from reprimand)

d) *Legal representative* 7-63.6% – no limit, 4-36.4% –1 hr

36. Are inmates informed right away of death, seriousness or injury or any immediate family member?

Yes	No	Cannot answer
11-100%	0-0%	0-0%

37. Are inmates entitled to visit the sick family member or attend the funeral?

Yes	No	Cannot answer
10-90.9%	0-0%	1-9.1%
2-18.2% – reprimand with prosecutor permission		

38. Do you offer any telephone facility for inmates?

Yes	No	Cannot answer
11-100%	0-0%	0-0%

39. Are there any restrictions on the number or length of letters that inmates could write home?

Yes	No	Cannot answer
0-0%	10-90.9%	1-9.1%

40. Does this facility allow an inmate to communicate with her/his:

Representatives of organisations 8-72.7% relatives 11-100% (1 should be verified)  
 friends 6-54.5% (2-18.2% should be verified) journalist 7-63.6% others

I am now interested in any educational and vocational training programs and work provided for inmates in this facility (if you are not familiar with this subject please continue ...)

41. Does this facility have a school?

Yes	No	Cannot answer
5-45.5% (vaqar)	654.5%	0-0%

42. Do you allow the children/juveniles to take part in education provided by communities outside this facility?

Often	Rarely	Never	Cannot answer
0-0%	3-27.3%	6-54.5%	2-18.2%

	(2-18.2% – reprimand)	
--	--------------------------	--

43. What proportion juveniles attended class? 70-80% Cannot answer  Not applicable 6-54.5%

44. Are vocational/educational programmes for inmates in this facility provided by:  
 non-governmental organisations 10-90.9% prison program 6-54.5%  
 educational institutions 2-18.2%  
 none 1-9.1% others

45. In what field do you provide training? Tailoring, hairdressing, computer, English, Italian, and illiterate children learning the basics (reprimand)

46. What proportion juveniles attended training programs? All, 50% at reprimand  
 Cannot answer 3-27.3%?

47. Are children mixed with adults for educational training?

Yes	No	Cannot answer
2-18.2% (women)	8-72.7%	1-9.1%

48. Do the inmates, including children, have access to:

- m) Religious services Yes 11-100% No  Cannot answer
- n) Library Yes 6-54.5% No 5-45.5% timed with going out  
 Cannot answer
- o) Arts Yes 10-90.9% No 1-9.1%  
 Cannot answer
- p) TV/Radio Yes 11-100% No  Cannot answer
- q) Newspaper/Magazines Yes 11-100% No  Cannot answer
- r) Gym or playing field Yes 6-54.5% No 5-45.5% timed with going out  
 Cannot answer

49. Do you provide outdoor exercise for children in this facility?

Yes	No	Cannot answer
11-100%	0-0%	0-0%

\_\_football, volleyball, basketball\_\_

50. How often/how many hours each day are young inmates allowed to take exercise in the open air? all day – 4-36.4% at women, mon-fri 3-27.3% hr, sat 2-18.2%, sun 1 – 5-45.5% at vaqar, 4 hr – 2-18.2% at reprimand

51. Do inmates have free access to other cells during the entire day?

Yes	No	Cannot answer
5-45.5% 4-women, 1 vaqar	6-54.5%	0-0%

52. Do adult inmates have free access to children/juveniles cells?

Yes	No	Cannot answer
1-9.1% women	10-90.9%	0-0%

53. Are the inmates, including the children, allowed to work in this facility?

Yes	No	Cannot answer
4-36.4% women	9-81.8%	0-0%

f) If yes, what kind of work are they permitted to do? Artisan, tailoring

g) How long are they required to work per day? How many they want

Appendix 8  
**Educational-Social Custody Services**  
**Interview & Result**

h) Do they get any benefit? **Depends on sale of products** Other benefits\_\_\_\_\_

i) Are they forced to work?

Yes	No	Cannot answer
<b>0-0%</b>	<b>4-36.4%</b>	<b>0-0%</b>

j) Do the inmates have the possibility to working the community?

Yes	No	Cannot answer
<b>0-0%</b>	<b>11-100%</b>	<b>0-0%</b>

Now I would like to know more about training opportunities for you and about your understanding of your job

**54. Did you receive training on your general and specific duties of your position?**

Yes **0-0%** No **11-100%** How much training were you given?

**55. Do you have access to training courses organised by Penitentiary Police School in Vaqar (Vaqar- location of School)?** Yes **2-18.2%** *vaqar* No **9-81.8%**

**56. What kind of training is provided to you?**

- k) courses in service training Yes **5-45.5%** No **6-54.5%**
- l) technical training to enable to restrain aggressive inmates Yes **3-27.3%** No **8-72.7%**
- m) psycho-social training Yes **8-72.7%** No **3-27.3%**
- n) training on prisoner rights Yes **8-72.7%** No **3-27.3%**
- o) training on child rights Yes **8-72.7%** No **3-27.3%**
- p) training to better understand the prisoner needs Yes **9-81.8%** No **2-18.2%**
- q) training to better understand the juveniles prisoners needs Yes **7-63.6%** No **4-36.4%**
- r) case management Yes **3-27.3%** No **8-72.7%**
- s) acquisition and development of inter-personal communication skills Yes **7-63.6%** No **4-36.4%**
- t) others **1-9.1%** – victim treatment, **1-9.1%** teacher experience, **HIV**

**57. Do you know what the following rules are?**

- f) UN Standard Minimum Rules for the Treatment of Prisoners Yes **8-71.7%** No **3-27.3%**
- g) UN Standard Minimum Rules for the administration of Juvenile Justice Yes **6-54.5%** No **5-45.5%**
- h) UN Rules for the Protection of Juveniles Deprived of their Liberty Yes **7-63.6%** No **5-45.5%**
- i) European rules on Prisons Yes **4-36.4%** No **7-63.6%**
- j) The UN Convention on the Rights of the Child Yes **10-90.9%** No **1-9.1%**

**58. What is the aim of your work?**

- 4-36.4%** - reintegration, rehabilitation
- 2-18.2%** – Human treatment & respect the law
- 1-9.1%** – Human treatment and re-education
- 1-9.1%** - increased professionally
- 1-9.1%** - offer what they miss
- 1-9.1%** - psycho-social care to the reprimand minors, assisting them in all directions
- 1-9.1%** - stress relief, reintegration to society

**59. Do you have a training manual on prisoner treatment in this facility?**

Appendix 8  
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 Interview & Result**

Yes	No	Cannot answer
<b>7-63.6%</b> <i>regulation of prison</i>	<b>4-36.4%</b>	<b>0-0%</b>

**60. Do you have an Ethical Code?**

Yes	No	Cannot answer
<b>9-81.8%</b> <i>regulation of prison</i>	<b>2-18.2%</b>	<b>0-0%</b>

**61. Will you continue to work here for the foreseeable future?**

Yes	No	Cannot answer
<b>9-81.8%</b>	<b>2-18.2%</b>	<b>4-36.4%</b>

**62. Are you satisfied with your work?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
<b>6-54.5%</b>	<b>2-18.2%</b>	<b>3-27.3%</b>	<b>0-0%</b>	<b>0-0%</b>

**63. Do you think that you are fairly financially compensated for your work?**

Yes	No	Cannot answer
<b>1-9.1%</b>	<b>9-81.8%</b>	<b>1-9.1%</b>

**64. If you have any further comments, please write below**

2 - separate minor into institution specially designed for helping them, professional training the staff who will work with them

I consider important psycho-social training for this category, supervising of psychologist work and share the experience women treatment

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**THANK YOU VERY MUCH FOR YOUR PARTICIPATION**

**APPENDIX 9  
Custody Officers Interview and Results**

In the following questions I would like to ask about your personal/professional background

**1. Your Age**

20-30	31-40	41-50	51-60	61+
2-20%	3-30%	2-20%	3-30%	0-0%

**2. Your Gender:** Male 9-90% Female 1-10%

**3. Your length of service (in this post):**

Less 1 year	6 years	8 years	10 years
2-20%	2-20%	2-20%	4-40%

**4. Your overall length of service working with children/juveniles:**

Less 1 year	1 year	3 years	4 years	5 years	6 years	35 years
1-10%	1-10%	3-30%	1-10%	1-10%	2-20%	1-10%

**5. What type of inmates do you work with primarily?**

e.

Under 18 years old	Over 18 years old	Both categories
0-0%	0-0%	10-100%

f.

Person with remand	Sentenced person	Both categories
1-10%	6-60%	3-30%

**6. Your post (position you hold)**

- g) Custody officer 5-50%
- h) Chief Custody Officer 5-50%

**7. In what kind of facility do you work?**

Pre-detention	4-40%	Supreme Security Prison	4-40%
Prison for Female	2-20%	Ordinary Prison	4-40%
Juvenile Section of a Prison area	4-40%	Lower Security Prison	2-20%
Institute for Juvenile Offenders	0-0%	Psychiatric Institute	0-0%

Admission and classification procedure

**8. How many people share a cell room (on average?)**

4 persons	6 persons	8 persons	10 persons
1-10%	7-70%	1-10%	1-10%

**9. Are separate facilities provided for adults and children/juveniles?**

Yes	No	Cannot answer
9-90%	1-10%	0-0%

**10. Are children/juveniles mixed with adult inmates in the exercise yard or elsewhere within the facility?**

Yes	No	Cannot answer
5-50%	5-50%	0-0%

**11. Are children/juveniles likely to come into contact with adult inmates while they are being transferred to another institution/court?**

Yes	No	Cannot answer
4-40%	6-60%	0-0%

**12. When juvenile inmates are moved to and from the facility do you ever use handcuffs or restrictions measures such as handcuffs or chain?**

Yes, routinely	Yes, but only occasionally	No	Cannot answer
4-40%	5-50%	1-10%	0-0%

**13. Are the prison authorities entitled to pass on details of a juvenile inmate or his/her case to media?**

Yes	No	Cannot answer
8-80%	2-20%	0-0%

**14. If so, does the inmate's consent have to be obtained before this is permitted?**

Yes	No	Cannot answer
10-100%	0-0%	0-0%

In the following question I would like to know more about the way discipline and order are maintained in this facility

**15. For how many hours each day are the cells unlocked?**

2 hours	3 hours	4 hours	10 hours
3-30%	3-30%	2-20%	2-20%
1-10% - vaqar, 2-20% reprimand	vaqar	reprimand	women

**16. How often do you carry out searches for unauthorised" weapons" and articles?**

Daily	Weekly	Monthly	On suspicions	Cannot answer
0-0%	10-100%	0-0%	5-50%	0-0%
			2-vaqar, 3 reprimand	

**17. Do staff members ever use physical or psychological force over the prisoners?**

Often	Rarely	Never	Cannot answer
0-0%	0-0%	10-100%	0-0%

**18. Are cases of staff members assaulting prisoners followed up?**

Often	Rarely	Never	Cannot answer
4-40%	3-30%	1-10%	1-10%

**19. Which of the following methods of restraint are used against violent or recalcitrant prisoners?**

- h. batons 5-50%
- i. neuro-paralysis pistols
- j. and lachrymose gas

- k. arm-locks
- l. head locks 4-40%
- m. handcuffs 9-90%
- n. restraining jackets or belts 1-10%

**20. Do staff members use disciplinary measures such as:**

q. Removal of privileges (like no spare time activities, TV removal)

Yes	No	Cannot answer
10-100%	0-0%	0-0%

r. Lock up in cells during the day

Yes	No	Cannot answer
5-50%	5-50%	0-0%

s. Solitary confinement/isolation

Yes	No	Cannot answer
10-100%	0-0%	0-0%

t. Exclusion from the individual/group activities more than 5 days

Yes	No	Cannot answer
10-100%	0-0%	0-0%

u. Exclusion from the group walking in fresh air for more than 10 days

Yes	No	Cannot answer
5-50%	5-50%	0-0%

v. Exclusion from all the group activities for more than 10 days

Yes	No	Cannot answer
5-50%	5-50%	0-0%

w. Individual reprimand

Yes	No	Cannot answer
10-100%	0-0%	0-0%

x. Reprimand in front of all inmates

Yes	No	Cannot answer
9-90%	1-10%	0-0%

**21. Is it possible for prison staff to impose additional days of detention for misbehaviour?**

Yes	No	Cannot answer
0-0%	10-100%	0-0%

**22. Are children/juveniles subject to the same disciplinary measures as adult inmates?**

Often	Rarely	Never	Cannot answer
0-0%	0-0%	10-100%	0-0%

**23. To whom do the inmates have the right to complain to about the disciplinary measures?**

- k) 3-30% - director, 2-20% - Discipline Commission, 1-10% - Chief of Police
- l) 4-40% - General Director of Prison, 1-10%- Director, 5-50%-None
- m) 3-30% - Ministry of Justice, 2-20% - Ombudsman
- n) I do not know

**24. Do you hold a complaint book in this facility?**

Yes	No	Cannot answer
10-100%	0-0%	0-0%

**25. Do the staff facility carry any weapon?**

Yes	No	Cannot answer
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0-0%	10-100%	0-0%
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26. What kind of weapon \_\_\_\_\_

27. Are there concerns about gang activities in this facility?

Often	Rarely	Never	Cannot answer
0-0%	0-0%	10-100%	0-0%

I am now interested with inmates contact to the outside world

28. How often can inmates receive visit by:

*Family or guardian* 10-100% – 4 times x month

*Legal representative* 10-100% - anytime

29. Does this facility provide a special room for inmates to meet with:

c) Their familiars

Yes	No	Cannot answer
10-100%	0-0%	0-0%

d) Their lawyer

Yes	No	Cannot answer
10-100%	0-0%	0-0%

30. Do child detainees share the visiting areas with adult inmates?

Yes	No	Cannot answer
8-80%	2-20%	0-0%

31. How long last the meeting?

e) *Family or guardian* 10-100% – ½ hours

f) *Legal representative* 3-30% – ½ hours, 7-70% – no limits

Now I would like to know more about training opportunities for you and about your understanding of your job

32. Did you receive training on your general and specific duties of your position?

Yes 5-50% No 5-50% How much training were you given? 4-40% – 1 month, 1-10% – 3 days

33. Do you have access to training courses organised by Penitentiary Police School in Vaqar (Vaqar- location of School)? Yes 5-50% No 5-50%

34. What kind of training is provided to you?

u) courses in service training	Yes 6-60%	No 4-40%
v) technical training to enable to restrain aggressive inmates	Yes 7-70%	No 3-30%
w) psycho-social training	Yes 5-50%	No 5-50%
x) training on prisoner rights	Yes 7-70%	No 3-30%
y) training on child rights	Yes 5-50%	No 5-50%
z) training to better understand the prisoner needs	Yes 5-50%	No 5-50%
aa) training to better understand the juveniles prisoners needs	Yes 4-40%	No 6-60%
bb) case management	Yes 3-30%	No 7-70%

- cc) acquisition and development of inter-personal communication skills Yes 7-70% No 3-30%  
dd) others 2-20% - on drugs

**35. Do you know what the following rules are?**

- k) UN Standard Minimum Rules for the Treatment of Prisoners Yes 10-100% No 0-0%  
l) UN Standard Minimum Rules for the administration of Juvenile Justice Yes 5-50% No 5-50%  
m) UN Rules for the Protection of Juveniles Deprived of their Liberty Yes 5-50% No 5-50%  
n) European rules on Prisons Yes 5-50% No 5-50%  
o) The UN Convention on the Rights of the Child Yes 4-40% No 6-60%

**36. What is the aim of your work?**

- 3-30% - Respect of law  
2-20% - Secure life and activity of prisoners  
2-20% - Treatment of prisoners respecting the general regulation of prisons  
1-10% - Know better prisoners and help them re-educated  
1-10% - Treatment and re-education

**37. Do you have a training manual on prisoner treatment in this facility?**

Yes	No	Cannot answer
7-70%	3-30%	0-0%

**38. Do you have an Ethical Code?**

Yes	No	Cannot answer
9-90%	1-10%	0-0%

**39. Will you continue to work here for the foreseeable future?**

Yes	No	Cannot answer
6-60%	0-0%	4-40%

**40. Are you satisfied with your work?**

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
5-50%	5-50%	0-0%	0-0%	0-0%

**41. Do you think that you are fairly financially compensated for your work?**

Yes	No	Cannot answer
2-20%	8-80%	0-0%

**42. If you have any further comments, please write below**

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**THANK YOU VERY MUCH FOR YOUR PARTICIPATION**

**APPENDIX 10**  
**Staff & Legal Services Information Sheet**

Dear participant,

My name is Eva Manco, I am a student currently studying at University of Sheffield, in England.

I would like to invite you to take part in a research project that I am conducting. Before you decide to take part or not I would like to explain shortly to you why the research is being done and what it will involve. Please feel free to stop me anytime if there is anything that is not clear or if you would like more information. Thank you! I am an independent researcher, and would like to ask you questions related to your work in this facility (department, as state attorney, as barrister). I am not working on behalf of any third party.

- The aim of this questionnaire is to explore the use and application of United Nations Standards and Norms in the area of juvenile justice. In particular those relating to children deprived of their liberty.
- A second aim is to examine the opportunities and problems with regard to the imprisonment of children and juveniles in the current Albanian justice system.
- By the end of research I hope to be able to recommend changes/reforms that will improve the system of juvenile system in Albania.

This questionnaire is directed at all relevant staff, dealing with children/juveniles deprived of their liberty in prisons and places of safety, including state attorneys, lawyers, barrister and policymakers. So it is possible that not all the questions will be applicable to you, in which case let me know and we will move on to the next questions

It will be up to you to decide whether or not to take part. No one will be informed. If you do decide to take part you will be given this information sheet to keep and will be asked to sign this consent form. The questionnaire will take more or less 40-50 min to complete. If you do decide to take part you are still free to withdraw at any time without any come back, and to require that your data be destroyed.

All your answers will be kept anonymous. Only my supervisor and I, will read your answers; no one else. Please do not fill in your name anywhere!! The survey will omit data, which could identify a person, or section of a facility and therefore, these will not be published.

You have the right to read to your responses should you wish and I should provide with a copy of the information on request.

You are more than welcome to contact us if you have any further questions or comments. I will guide you with explanations throughout the questionnaire.

Sincerely  
Eva Manco

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***PLEASE, LET US START NOW!***

**APPENDIX 11  
Legal Services Interview and Results**

**1. Your Age**

20-30	31-40	41-50	51-60	61+
<b>8-16%</b>	<b>21-42%</b>	<b>12-24%</b>	<b>9-18%</b>	<b>0-0%</b>

**2. Your Gender:**

Male	Female
<b>30-60%</b>	<b>20-40%</b>

**3. Your length of service (in this post):**

1-5 years	5-10 years	10-15 years	15-20 years	20-25 years	25 +
<b>8-16%</b>	<b>13-26%</b>	<b>12-24%</b>	<b>7-14%</b>	<b>6-12%</b>	<b>4-8%</b>

**4. Your overall length of service working with children/juveniles:**

1-5 years	5-10 years	10-15 years	15-20 years	20-25 years	25 +
<b>17-34%</b>	<b>12-24%</b>	<b>8-16%</b>	<b>5-10%</b>	<b>4-8%</b>	<b>4-8%</b>

**5. What type of inmates do you work with primarily?**

a.

Under 18 years old	Over 18 years old	Both categories
<b>4-8%</b>	<b>0-0%</b>	<b>46-92%</b>

b.

Person with remand	Sentenced person	Both categories
<b>17-34%</b>	<b>0-0%</b>	<b>31-62%</b>

**6. Your post (position you hold)**

- |                                      |        |
|--------------------------------------|--------|
| a) <b>Judicial Police</b>            | 15-30% |
| b) <b>Prosecutor</b>                 | 10-20% |
| c) <b>Judge first instance court</b> | 13-26% |
| d) <b>Judge appeal court</b>         | 0-0%   |
| e) <b>Attorney</b>                   | 12-24% |

**7. When the juveniles are caught by police are they always asked:**

a. Birthday

Always	Sometimes	Never	Cannot answer
<b>44-88%</b>	<b>6-12%</b>	<b>0-0%</b>	<b>0-0%</b>

b. Address

Always	Sometimes	Never	Cannot answer
<b>42-84%</b>	<b>8-16%</b>	<b>0-0%</b>	<b>0-0%</b>

c. Telephone contact of his/her parent or guardian

Always	Sometimes	Never	Cannot answer
<b>21-42%</b>	<b>21-42%</b>	<b>1-2%</b> (clarify contacted by parents)	<b>7-14%</b> (majority judges)

**8. Do you always asked these questions?**

Always	Sometimes	Never	Cannot answer
<b>43-86%</b>	<b>5-10%</b> (they were judicial police officer based on police station and they explained sometimes they know because of being "problematic")	<b>0-0%</b>	<b>2-4%</b> (barrister – contacted by parents)

9. Does Albanian legislation guarantee for children suspected of a crime:

- a) The right to remain silent *Art 38/3 Albanian Criminal Procedural Code was mentioned by 15 persons (It is the right answer but I wanted to hear even about the art 28 of Constitution)*

Yes	No	Cannot answer
50-100%	0-0%	0-0%

- b) The right to privacy *Art 340 Albanian Criminal Procedural Code was mentioned by 9 persons (which refers to closed hearings); Art 37 Albanian Criminal Procedural Code was mentioned by 6 persons (which refers to self-incriminating)The right answer it is Article 35-70% of Constitution and Article 340 of Albanian Criminal Procedural Code*

Yes	No	Cannot answer
42-84%	2-4% (prosecutor)	6-12% (prosecutor, judicial police)

- c) The right to legal counsel *Art 49/2 and 35 Albanian Criminal Procedural Code was mentioned by 9 persons (art 35-70% refers to assistance provided to juvenile defendant, art 49/2 appointed defence lawyer for juvenile); Art 6, 38, 39 Albanian Criminal Procedural Code was mentioned by 6 persons (Art 6 refers to provision of defence, art 38 refers to general rules applying to interrogation, art 39 refers to interrogation on merits).The right answer it is Articles 6 ,35, 255 Albanian Criminal Procedural Code and Article Constitution*

Yes	No	Cannot answer
50-100%	0-0%	0-0%

- d) The right to the presence of parents/guardians at all stages in proceedings *Art 255/4 Albanian Criminal Procedural Code was mentioned by 9 persons (art 255 refers to duties of judicial police in cases of arrest or detention); Art 35 Albanian Criminal Procedural Code was mentioned by 6 persons (Art 35 refers to assistance provided to juvenile defendant).The right answer it is article 35 Albanian Criminal Procedural Code*

Yes	No	Cannot answer
45-90%	4-8% (1 lawyer, 3 judicial police)	1-2% (judge)

10. Do you or have your juvenile clients been:

- a. Inform the juvenile why he/she has been stopped or Informed why he/she has been stopped

Always	Sometimes	Never	Cannot answer
37-74%	10-20% (lawyer)	2-4% (lawyer)	1-2% (judge)

- b. Explain to juvenile offender the right to remain silent or Told that they have the right to remain silent

Always	Sometimes	Never	Cannot answer
21-42% (prosecutor, judicial police)	14-28% (10 lawyer, 4 judicial police)	2-4% (lawyer)	13-26% (judge not involved at interrogation procedure)

c. Explain to juvenile offender he/she is entitled to free access to a lawyer or Informed that he/she is entitled to free access to a lawyer

Always	Sometimes	Never	Cannot answer
41-82% (25 of them added the phrase it is obligatory)	6-12% (3 lawyer, 3 judicial police)	3-6% (lawyers)	0-0%

d. Offer to juvenile offender legal representation or Offered free legal representation

Always	Sometimes	Never	Cannot answer
42-84%	7-14% (3 lawyer, 4 judicial police)	1-2% (lawyers)	0-0%

e. Offer to juvenile offender psychological support or Offered psychological support

Always	Sometimes	Never	Cannot answer
5-10% (prosecutors)	17-34% (3 lawyer, 14 judicial police)	20-40% (15 lawyer, 5 judicial police)	8-16% (judge)

11. Are you trained in child-friendly interview techniques and procedures

Yes	No	Cannot answer
24-48%	26-52%	0-0%

12. Do police officers/prosecutors ever use physical or psychological force while interviewing children?

Always	Sometimes	Never	Cannot answer
4-8% (lawyer)	21-42%	18-36% (2 judges, 19 judicial police)	7-14% (judge)

13. Are cases of police officers/prosecutors using physical or psychological force followed up?

Always	Sometimes	Never	Cannot answer
13-26%	18-36% (7 judges, 4 lawyer, 7 judicial police)	8-16% (lawyer)	11-22%

14. In your experience when are the following individuals notified that a child has been arrested?

a. The parents/guardian of the juvenile offender

ASAP	12 hours	24 Hours	48 hours	Cannot answer
10-20% (prosecutors & judicial police)	9-18% (4 lawyer, 3 prosecutors & 2 judicial police)	6-12% (3 lawyer, 2 prosecutors & 1 judicial police)	5-10% (3 lawyer, 2 judicial police)	20-40% (13 judges & 3 judicial police)

b. The legal representative

ASAP	12 hours	24 Hours	48 hours	Cannot answer
8-16%	7-14%	5-10%	14-28%	16-32%



*Legal Services Interview & Results*

b) Sentence to full duration foreseen by law for the committed offence	Yes 0-0%	No 44-88%	Cannot answer 6-12%
c) Suspend the execution of a court decision in case of petty offences, circumstance leading to the commitment of the offence prior behaviour	Yes 32-64%	No 12-24%	Cannot answer 6-12%
d) Order the placement of the juvenile offender in a re-education institution (44 -no such institution available)	Yes 6-12%	No 38-76%	Cannot answer 6-12%
e) Order the placement of irresponsible offenders in mental health institution	Yes 15-30%	No 29-58%	Cannot answer 6-12%
f) Assign offenders under probation (44 -no such institution available)	Yes 0-0%	No 44-88%	Cannot answer 6-12%
g) Order community sanctions (44 -no such institution available)	Yes 0-0%	No 44-88%	Cannot answer 6-12%
h) Order the offender to work a number of hours in the interest if the public (foreseen by law but not operating in practice)	Yes 2-4%	No 42-84%	Cannot answer 6-12%

The 6 cannot answer are judicial police Based at Police station

24. In what type(s) of courts are the cases of juvenile offenders adjudicated?

- Penal section of district court
- Penal section of appeal courts
- Supreme court
- Cannot answer 6-12% - judicial police based at police stations

25. In your experience, is a psychologist likely to be involved during the judicial hearing of juvenile cases and in what position?

Always	Sometimes	Never	Cannot answer
1-2%	31-62%	12-24%	6-12% (judicial police)

Role:

Mental expert	Witness assistant	Understand accuse	Psychological report	Cannot answer
46-92%	6-12%	6-12%	2-4%	40-80%

26. Does the court have a list of psychologist or social worker expert in the subject matter?

Yes	No service available	Cannot answer
10-20%	31-62%	6-12% (lawyers, prosecutors)

27. Have you known proceedings involving a child to be conducted without the presence of his/her legal defender?

Always	Sometimes	Never	Cannot answer
0-0%	12-24% 6 lawyers, 5 judicial police, 1 judge	27-54%	11-22% (judges, prosecutors)

28. Have you ever encountered cases in which the media disclose information leading to the identification of children in conflict with the law?

Yes, frequently	Sometimes	Never	Cannot answer



<b>19-38%</b> <i>8 lawyers, judicial police</i>	<b>24-48%</b> <i>judge, prosecutors, 3 lawyers</i>	<b>3-6%</b>	<b>4-8%</b>
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**29. Does your institution have established independent and impartial child-centred procedures for direct complaints and communications to be made by children you are involved with?**

Yes	No	Cannot answer
<b>0-0%</b>	<b>34-68%</b>	<b>16-32%</b> <i>12 lawyers</i>

**30. Did you receive any training on:**

- |  |     |        |           |
|--|-----|--------|-----------|
| a) <i>child psychology</i>   | Yes | 3-6%   | 47-94%    |
| b) <i>psycho-social training</i>   | Yes | 1-2%   |           |
| c) <i>raining on prisoner rights</i>   | Yes | 32-64% | No        |
| d) <i>training on child rights</i>   | Yes | 26-52% | No        |
| e) <i>training to better understand the juveniles prisoners needs</i>        | Yes | 19-38% | No        |
| f) <i>case management</i>  | Yes | 29-58% | No        |
| g) <i>acquisition and development of inter-personal communication skills</i> | Yes | 9-18%  | No 41-82% |
| h) <i>communication skills for speaking to and involving children</i>        | Yes | 17-34% | No 33-66% |

**31. Did your colleagues receive any training on:**

- |  |     |       |    |       |           |
|--|-----|-------|----|-------|-----------|
| a) <i>child psychology</i>   | Yes | 0-0%  | No | 8-16% | Cannot 42 |
| b) <i>psycho-social training</i>   | Yes | 0-0%  | No | 8-16% | Cannot 42 |
| c) <i>training on prisoner rights</i>  | Yes | 7-14% | No | 1-2%  | Cannot 42 |
| d) <i>training on child rights</i>   | Yes | 6-12% | No | 2-4%  | Cannot 42 |
| e) <i>training to better understand the juveniles prisoners needs</i>        | Yes | 4-8%  | No | 4-8%  | Cannot 42 |
| f) <i>case management</i>  | Yes | 3-6%  | No | 5-10% | Cannot 42 |
| g) <i>acquisition and development of inter-personal communication skills</i> | Yes | 3-6%  | No | 5-10% | Cannot 42 |
| h) <i>communication skills for speaking to and involving children</i>        | Yes | 2-4%  | No | 6-12% | Cannot 42 |

**32. Were the training courses provided to you within:**

last 6-12% months 3 last year 6-12% two year ago 16-32% more than three years ago 11-22% none 14

**33. Could you tell me any of the international treaties setting up legal standards for the juveniles deprived of their liberties?**

- a) 33-66% mentioned CRC as first choice; 1-2% European Convention of Human Rights
- b) 2-4% mentioned Beijing; 1-2% European Convention of Human Rights; 31-62% none
- c) 2 JDL, 32-64% none
- d) \_\_\_\_\_
- e) Cannot 16-32%

34. As far as you are aware, which of the following remarks is the most accurate in respect of the status of international treaties once they have been ratified by the Albanian parliament?

a) not legally binding but an ideal to work towards (*right answer is no*)

Yes	No	Cannot answer
<b>10-20%</b> <i>(3 prosecutors, 3 judicial police, 4 lawyer)</i>	<b>23-46%</b>	<b>17-34%</b> <i>(2 prosecutors, 4 lawyer, judicial police)</i>

b) not legally binding but strongly persuasive (*right answer is no*)

Yes	No	Cannot answer
<b>11-22%</b> <i>(5 judges, 2 judicial police, 4 lawyer)</i>	<b>19-38%</b>	<b>20-40%</b> <i>(5 prosecutors, 12 judicial police, 3 lawyer)</i>

c) legally binding on Albanian government (*right answer is yes*)

Yes	No	Cannot answer
<b>29-58%</b>	<b>3-6%</b> <i>(2 judicial police, 1 lawyer)</i>	<b>18-36%</b> <i>(2 prosecutors, 12 judicial police, 4 lawyer)</i>

d) part of Albanian legislation (*right answer is yes*)

Yes	No	Cannot answer
<b>19-38%</b>	<b>13-26%</b> <i>(5 judges, 2 prosecutors, 3 judicial police, 4 lawyer)</i>	<b>18-36%</b> <i>(2 prosecutors, 12 judicial police, 4 lawyer)</i>

35. Do you have a training manual on how to deal with children in conflict with the law?

Yes	No	Cannot answer
<b>0-0%</b>	<b>50-100%</b>	<b>0-0%</b>

36. How satisfied are you with the degree of your knowledge on international standards applicable to juvenile justice? (*I am writing down the answers according to first categories due to the fact that those persons were struggling to or could not mention any of international treaties*)

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
<b>2-4%</b> <i>(2 judges)</i>	<b>14-28%</b> <i>(3 judges, 4 prosecutors, 3 judicial police, 4 lawyer)</i>	<b>23-46%</b>	<b>7-14%</b>	<b>0-0%</b>

37. How satisfied are you with the way the Albanian criminal justice system deals with the children in conflict with the law?

Very satisfied	Satisfied	Fairly satisfied	Dissatisfied	Not at all
<b>2-4%</b> <i>(2 judges)</i>	<b>4-8%</b> <i>(1 judges, 2 prosecutors, 1 judicial police)</i>	<b>17-34%</b> <i>(5 judges, 3 prosecutors, 9 judicial police)</i>	<b>25-50%</b> <i>(5 judges, 5 prosecutors, 11 lawyers, 4 judicial police)</i>	<b>2-4%</b> <i>(1 lawyer, 1 judicial police)</i>

38. Could you suggest any improvement?

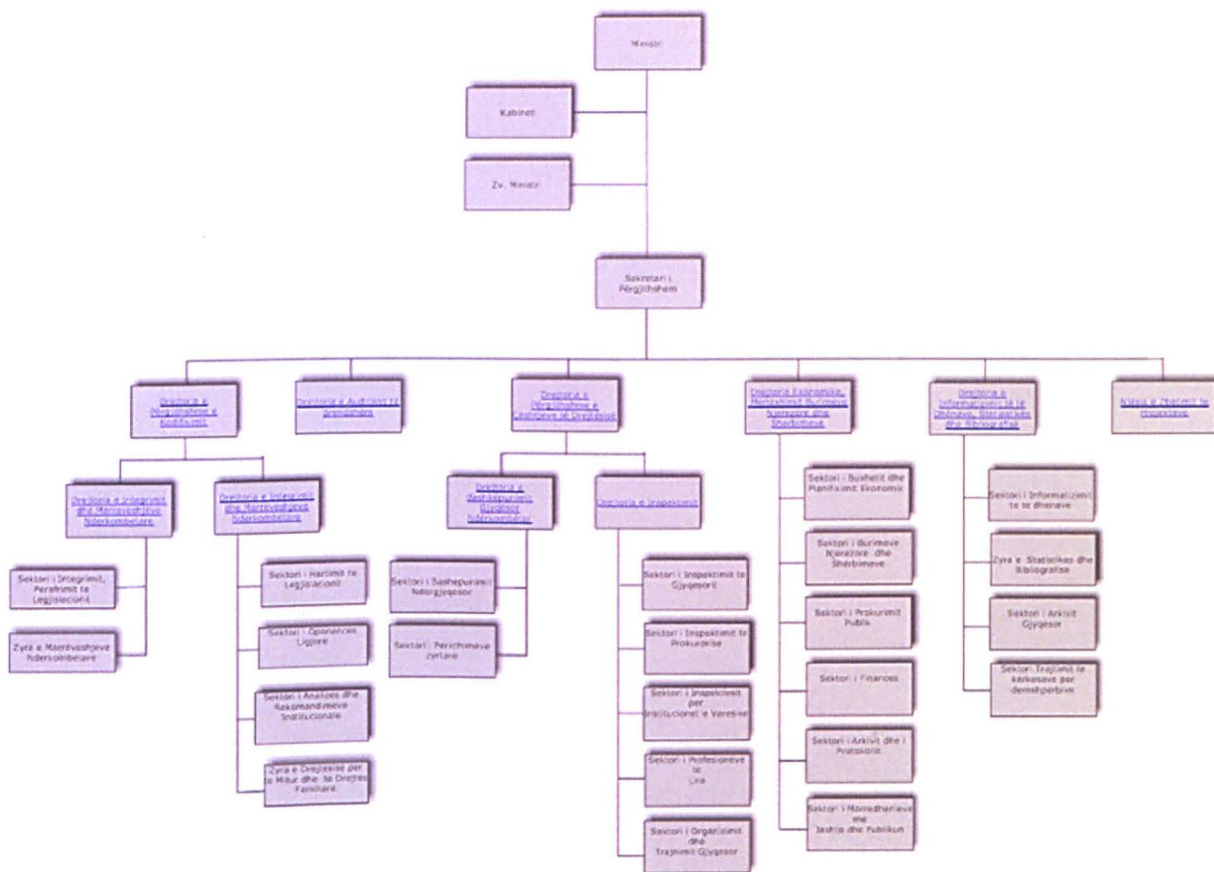
25 - Establishing juvenile court

- 18- Establishing re-education institutions
- 6 - Establishing juvenile court and the entire infrastructure to support the cases presented to it
- 18 - Minimum to respect the Albanian Code of Penal Procedure
- 10 - Using other coercive measures as alternative to jail arrest (related to precautionary measures)
- 6 - Setting up reprimands and prisons institution only for juveniles not sections separated by doors
- 15 - Reform introducing alternative measures to imprisonment
- 4 - Strengthen the community support for judicial police in order to prevent juvenile committing crimes
- 24 - Law infrastructure for juvenile less then 14
- 10- Regulating Legal Aid Service regarding quality and professionalism
- 8 – limiting the use of fast track trial
- 8 – regulating further the trial in abstenia
- 5 - No comments

**39. Do you have any further comments on the operation of the Albanian juvenile justice system?**

- 15- Improve the entire legal and institutional infrastructure related to juvenile justice
  - 12 - Currently not working at all, even ignored by the court
  - 10 - It is inquisitional and extremely punitive system
  - 16 - Defence is not effective (presenting the case and really defend the juveniles, most require accelerated trial – *the court commutes the punishment by imprisonment to one third*)
  - 10 - Priority to alternative measures foreseen by law as precautionary measures and sentence
  - 24 - Setting up reprimands and prisons institution only for juveniles not sections separated by doors
  - 5 - Challenge the way in which juvenile in conflict with the law is approached
  - 8- Psychologist should be part of structure (sometimes we are obliged to approach them in private way)
  - 4 - Law infrastructure for juvenile less then 14
  - 6 - Media and school should be speak up more on rule of law
  - 8 – overuse of fast track trial
  - 7- No comments
- 

THANK YOU VERY MUCH



Source <http://justice.gov.al/organigrama.php?gj=gj2>