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‘The best interests of the child’

Human rights and the juvenile justice system

‘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, “No age of innocence: Justice for children”,

The Progress of Nations, United Nations Children’s Fund (UNICEF), 1997

Children who commit violent

crimes make front-page news. Their actions seem to run counter to everything which childhood represents. In recent years public shock and outrage at violent crimes by children have increasingly been expressed in calls for tougher punishments to stop the perceived menace of spiralling juvenile crime.

What receives far less attention is the way justice systems the world over are violating the basic human rights of children who come into contact with the law. Children are tortured and ill-treated in police custody. They are held in prisons in inhuman and degrading conditions. They are denied due process which should guarantee them fair trials. They are given sentences which disregard the key principles of juvenile justice — rehabilitation and the primacy of the well-being of the child.

Children at risk

Most children who come into conflict with the law do so for minor, non-violent offences and in some cases their only “crime” is that they are poor, homeless and disadvantaged. Factors such as poverty, ethnicity and gender compound children’s vulnerability to abuse at the hands of the law.

Edith (not her real name) is a 13-year-old Aboriginal girl living in the Northern Territory, Australia. In 1997, when she was 12 years old, she was arrested for stealing food for herself and for other neglected children she was caring for, including a baby. She was kept overnight in an adult cell in the local police station and then released, but served with a court order. When she broke the court order, by running away to visit the baby in hospital and to see her family, she was rearrested and imprisoned for 21 days in a juvenile detention centre 1,500 kilometres from her home. Her case prompted the welfare authorities to start supplying emergency food to Edith’s family.

Although Aboriginal children make up only one third of the child population of the Northern Territory, they make up about 90 per cent of its juvenile detainees.

Children who are forced to live on the streets are particularly vulnerable to arbitrary arrest and ill-treatment. Their poverty brings them into the path of the law as they are forced into begging, petty crime or prostitution in order to survive. Some are arrested under laws which make destitution, vagrancy and begging criminal offences. Others are detained and ill-treated simply because they are easy prey.

Rajesh, a 14-year-old ragpicker, was dragged into a jeep by several policemen in Trivandrum, Kerala state, India, in May 1996. No reasons were given for his arrest. Police officers reportedly pierced his finger nails with pins, banged his head against the wall, forced him to sit on an imaginary chair for long periods, and beat the soles of his feet. The police denied that Rajesh was in their custody and transferred him between police stations to conceal his whereabouts. When he was finally released on bail on 10 June, he needed hospital treatment for injuries sustained while in police custody. Amnesty International knows of no inquiry into the illegal detention and torture of Rajesh.

Others face stiffer penalties for the crime of being poor. Some 50 children sleeping on a church porch, were attacked and shot in Brazil in July 1993. Eight died and others were wounded. The scale of the massacre at Candelária drew the world's attention to the killing of street children in Brazil. Several police officers were charged in connection with the massacre — one of the rare instances when members of a death squad have been held accountable. However, their trials exposed serious flaws in the investigation of human rights violations in Brazil.

The particular vulnerabilities of girls and women are exploited by the very forces which are meant to protect them.

Police in Bangladesh frequently take young girls into “safe-custody” during investigations into allegations of rape. Many girls in “safe-custody” are then raped and sexually abused.

Yasmin Akhter from Bangladesh was 14 years old in August 1995 when she was raped and killed by three police officers. She was picked up by the police in their patrol car on the pretext of giving her a lift home as she was on her way to her mother's house in Dinajpur. They later dumped her body by the roadside. The police tried to cover up the crime by claiming that Yasmin was a prostitute who had died jumping out of the van while it was moving. The policemen were eventually tried and found guilty in 1997.

The children of political detainees may also be at risk of unlawful detention because of their parents' suspected political activities. They may be held as hostages to put pressure on relatives to give themselves up to the authorities, or else viewed as guilty by association.

Fourteen-year-old 'Ali Mustapha Tubeh was detained in October 1997, shortly after the arrest of his father. He was reportedly arrested by members of the Israeli security forces, and taken to Khiam detention centre in South Lebanon. The centre is run by the South Lebanon Army, an Israeli-backed militia, with the cooperation of Israel. Until July 1998 his family outside the prison was not allowed to visit him. His mother was able to see him three times while she too was held in Khiam in October and November 1997. 'Ali Tubeh reportedly told her that he had been tortured by being put in a container of water connected to the electricity supply. 'Ali Tubeh is still detained without charge in Khiam where he is held alone in a cell which he is allowed to leave for only two hours a day. More than 100 Lebanese detainees, including children, are believed to be held without charge or trial in Khiam. Amnesty International believes they are being held as hostages in exchange for information about Israeli soldiers missing in action. Amnesty International has received frequent allegations of torture from former Khiam detainees.

### Children's rights

The UN Convention on the Rights of the Child (CRC) sets out the fundamental principles which should guide the treatment of all children, including those who come into contact with the law.

The Committee on the Rights of the Child is responsible for monitoring the performance of states in respecting the rights of children. The Committee has identified four fundamental principles which underpin the CRC: the best interests of the child must be a primary consideration in all actions concerning children; children have a fundamental right to life which includes promoting their survival and development to the maximum extent possible; children's rights must be recognized without discrimination of any kind; and children have the right to have their views respected in all matters affecting them.

The Committee has shown just how far-reaching its understanding of the best interests of the child is, by asking governments to provide information on how they give consideration to the best interests of children in family life, school life, social life and areas such as budgetary allocations, planning and development policies, adoption, immigration, social security and the administration of juvenile justice.

The CRC reiterates and expands on the rights of adults and children who come into contact with justice systems set out in earlier instruments, such as the International Covenant on Civil and Political Rights.

The CRC prohibits torture and cruel, inhuman or degrading treatment or punishment; sentencing people convicted of crimes committed when they were under 18 to death or to life imprisonment without the possibility of release; and unlawful or arbitrary detention. It states that children should only be deprived of their liberty as a last resort and for the shortest appropriate period; that they should be held separately from adults, and have the right to maintain contact with their families and to legal assistance; and guarantees the right to a fair trial. It also obliges governments to promote laws, procedures, institutions and policies specifically applicable to children, such as using alternatives to judicial proceedings and institutional care where appropriate to the child's well-being.

Other international rules and guidelines offer guidance to states on how they can better protect the rights of children in conflict with the law. These include the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

#### A question of age

The CRC is applicable to all persons below the age of 18, unless "under the law applicable to the child, majority is reached earlier". The minimum age of criminal responsibility — that is the age below which children are deemed too young to be legally responsible for their actions and to face criminal charges — varies greatly from country to country. International standards do not prescribe a particular age, but require governments to take account of children's physical and mental maturity and their need for special care in establishing a minimum age. The Committee on the Rights of the Child has expressed concern at ages set as low as seven. The new International Criminal Court will not try children under the age of 18.

In at least 33 US states, children who are tried and convicted as adults may be sentenced to imprisonment in adult prisons and housed with adult inmates. In September 1998, more than 4,000 such children were in custody. Their welfare was of grave concern because of their extreme vulnerability to physical and sexual abuse by adults.

#### Failing to protect

Children should only be detained as a last resort and for the shortest appropriate period of time. If children are detained, they have the right to have contact with their families, to be held separately from adults, and to be treated with due respect to their age. They also have the right to freedom from cruel, inhuman or degrading treatment or punishment.

In reality, key safeguards to prevent abuses against children in detention are regularly flouted.

Children are detained without charge or trial, denied access to lawyers and relatives, and tortured and ill-treated to obtain confessions. Where children are held outside any legal framework and without access to relatives or legal counsel, the risk of physical abuse increases dramatically.

Sixteen-year-old Luiris Elena Flores was three months pregnant when she was arrested in March 1996 in Miranda state, Venezuela. She was separated from her family for several hours during which she was interrogated by police who reportedly beat and threatened her to try and get her to confess to robbery. Three days after her arrest Luiris Elena Flores miscarried. To Amnesty International's knowledge no investigation has been conducted into her allegations of torture and ill-treatment.

Because 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. For example, in many countries the authorities appear to have used the fact that the number of young female offenders is comparatively low as a justification for not providing adequate custodial facilities. As a result girls are more likely to

be detained a long way away from their families and to be held together with boys or adults, putting them at risk of sexual abuse.

#### Prohibited punishments

International standards state that children who are found guilty of a criminal offence should be imprisoned only as a last resort. There is an increasingly impressive body of evidence that non-custodial sentences are far more likely to lead to rehabilitation of the child – one of the main goals of juvenile justice. Alternatives to imprisonment can include guidance and supervision orders, foster care, probation, counselling and victim reparation programs. In South Africa, for example, initiatives have been taken in the juvenile justice process to combine international standards with traditional methods of conflict resolution.

Sentencing people to death for crimes committed when they were under 18 is prohibited by international law. Yet in the 1990s juvenile offenders are known to have been executed in Iran, Nigeria, Pakistan, Saudi Arabia, the USA and Yemen.

In the USA, more than 65 people are on death row for crimes committed when they were under 18 years old. Many have suffered from mental impairment, social and economic deprivation and mental and physical abuse during childhood. Robert Carter and Joseph Cannon were executed in Texas in mid-1998 for crimes committed when they were 17 years old. Both had been seriously abused as children. Both suffered from brain damage.

Mandatory sentences cannot take into account the specific circumstances of the child and adapt the punishment to facilitate the child's development. They, therefore, violate the fundamental principle that all decisions relating to children should be guided by the best interest of the child.

Sentencing children to life imprisonment without the possibility of release — a denial of all possibility of rehabilitation and reintegration — is also explicitly prohibited by international law.

Corporal punishment is prohibited by international law, as are all other forms of cruel, inhuman or degrading treatment or punishment. It is explicitly banned in international instruments relating specifically to children and the Committee on the Rights of the Child has called for its abolition. Yet such punishment are still imposed by justice systems in countries such as Pakistan and Zimbabwe. Prison conditions which are intolerable for adults can pose an even more acute threat to children's health. When an Amnesty International delegation visited Zomba Central prison in Malawi in late 1996, 179 boys, some as young as 12, were held in overcrowded and insanitary conditions. Blocked open-air toilets were overflowing with excrement and the only water supply was a single tap. The boys were suffering from an epidemic of scabies, lice and fleas.

#### Justice — every child's right

The "best interests of the child" must be the guiding principle behind all procedures and justice systems affecting children. Their overriding aim 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.

Juvenile crime has specific causes. Tackling these causes through social policy before children come into contact with the law is clearly in the best interests of the child, and indeed of society as a whole. The principles of juvenile justice, therefore place great emphasis on the importance of preventive measures such as alleviating the social and economic exclusion of children; providing educational opportunities; and ending race and gender discrimination.

The rights of children in custody and before the law are inextricably and indivisibly linked to other basic rights set out in the CRC, such as the right to education, to the highest standard of health and well-being, and to protection from abuse and exploitation, among others. Any meaningful attempt to prevent juvenile crime must involve promoting and protecting all rights for all children.

Amnesty International believes that a separate system of juvenile justice, adapted to the special needs of children and adolescents and respecting their fundamental rights as set out in the CRC, is needed to achieve these aims.

Such a system must include: a realistic age of criminal responsibility which takes into account the maturity of the child; a juvenile law based on children's rights; sanctions adapted to juveniles which prioritize education and training over detention and retribution; a separate court system with specially trained judges and lawyers who are aware of the particular needs of children and the different stages of their development; special training for the police and military; separate detention facilities for children, including rehabilitation centres; and proper follow-up and coordination with social services. International standards for the treatment and protection of juveniles in contact with the law and for the administration of juvenile justice are clear and well-defined. Yet these are being flouted on a massive scale.

Ultimately, this reflects a lack of political will on the part of governments to ensure that international standards are integrated into national legislation, policy and practice. It is vital that national and international non-governmental organizations and UN agencies continue to monitor the status of juvenile justice systems and to put pressure on governments to promote and enforce international standards of juvenile justice.

## BOX

### INTERNATIONAL PRINCIPLES OF JUVENILE JUSTICE

The following principles are drawn from the International Covenant on Civil and Political Rights the CRC, the Beijing Rules and the Riyadh Guidelines.

- \* Decisions shall be taken based on the principle of non-discrimination and the best interests of the child, taking into account his or her age and circumstances and promoting a sense of worth and dignity.
- \* The primary aim of juvenile justice is rehabilitation and the reintegration of the child into society .
- \* A child in conflict with the law is entitled to basic legal guarantees and legal and other forms of assistance and representation.
- \* Arrest, detention and imprisonment of a child shall be avoided where possible and used only as a last resort and for the shortest appropriate time. A range of alternatives to judicial proceedings and institutional care should be made available to ensure the child's best interests are safeguarded.
- \* If children are detained, they shall have contact with their families; be segregated from adults; and treated with due respect to their age.
- \* Cruel, inhuman or degrading treatment, including corporal punishment, capital punishment and life imprisonment without possibility of release, are prohibited.
- \* Separate juvenile justice systems should be established, with specially trained staff and separate institutions aiming at the rehabilitation of the child.
- \* Children have a right to prompt access to legal assistance and a prompt decision on their case.
- \*The child's right to privacy must be respected.

### AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO GOVERNMENTS FOR A JUVENILE JUSTICE SYSTEM BASED ON HUMAN RIGHTS

1. Ensure that all children who come into contact with the justice system are subject to a separate system of juvenile justice based upon the fundamental principles set out in the Convention on the

Rights of the Child and are treated in a way that promotes their sense of dignity and worth and helps to reintegrate them into society.

2. Ensure that the worldwide ban on the use of the death penalty for crimes committed when the defendant was under 18 years of age is enforced.
3. Protect children from cruel, inhuman or degrading punishments, including corporal punishment and solitary confinement.
4. Ensure that children are detained only as a last resort and for the shortest possible time and develop non-custodial measures aimed at rehabilitating juvenile offenders.
5. Ensure that any detained child is brought before a judicial authority without delay and is given immediate access to relatives, legal counsel and medical assistance. Relatives or guardians should be informed immediately of the child's whereabouts.
6. Protect children in custody from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees.
7. Put in place special protective measures to safeguard the rights of girls in police or prison custody.
8. Develop independent mechanisms to monitor juvenile detention centres.
9. Ensure that all staff involved in the administration of justice for juveniles receive training on international standards, children's rights and the principles of child development.
10. Ratify, implement and promote international standards relevant to juvenile justice.

#### What you can do

Support this campaign by helping to raise awareness of children's rights and international standards of juvenile justice. Write to your government calling on them to ensure that juvenile justice in your country is based on international human rights standards and to take steps to implement Amnesty International's recommendations (see right). Send appeals on behalf of the children featured in the leaflets which accompany this article.

(AI Index: ACT 76/04/98).

#### Captions

Prison du Fort National, a prison for children and women in Port-au-Prince, the capital of Haiti. According to UNICEF, some 50 per cent of children in Haiti are malnourished

© UNICEF/Nicole Toutounji

Street children in Nepal © CWIN

Children detained in Tangerang Detention Centre, Jakarta. © Agus Budarbudar/Dok Forum

Girl at the Vardashan Children's Institution, a juvenile detention centre in Yerevan, the capital of Armenia. At the Institute UNICEF-trained staff provide education, training, medical and psycho-social services.

© UNICEF/Roger Lemoyne

'Ali Mustapha Tubeh ©.private

The juvenile section of Zomba Central Prison in Malawi

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