JUVENILE JUSTICE SYSTEMS: GOOD PRACTICES
IN LATIN AMERICA

For every child
Health, Education, Equality, Protection
ADVANCE HUMATY

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PRESENTATION

Throughout the last decade, countries in Latin America and the Caribbean have ratified the Convention on the Rights of the Child. Practically all countries have adopted their national legislation to the principles stated in the Convention, either by integral codes of protection of children and adolescence, or by partial laws regulatory of the juvenile justice system, adoptions, paternity laws, or juridical protection of children and adolescence.

In matters related to justice, the Convention on the Rights of the Child establishes that children under 18 years accused of having committed a penal offense will be subject to a system respectful of their human rights and those of the victims. The main aim of this system is to facilitate the social recuperation and reeducation of adolescents who have infringed penal laws.

Democratic systems have defined the age of criminal responsibility between 13 and 17 years of age. This age bracket corresponds to the period of adolescence where they are considered to be evolving intellectually, emotionally, and morally, without having completed their formative process for adult life. It is precisely the fact that they are in their formative stage that may allow for the timely intervention and the recuperation of those adolescents who have infringed the law with higher success rates than adults.

All States Parties are bound by the Convention on the Rights of the Child to ensure that every child accused of having infringed the penal law has the guarantees to be presumed innocent until proven guilty according to the law, to be informed promptly of the charges against him, and to have legal defense. The Convention recommends that when an adolescent is found guilty through a fair trial, based on the principle of proportionality, the application of alternative socio-educative measures to the privation of liberty is put in place; and that this last measure be used only in cases of serious offenses.

The document I hereby present shows how UNICEF has been collaborating with various countries in Latin America through advocacy for the creation and functioning of specialized justice systems, and supporting technical assistance and capacity building of the various sectors involved. With this document we demonstrate that when there is a truthful commitment on part of the State to protect and fulfill the rights of the citizens, when technical knowledge of those who work in favor of children's rights is developed, and when society wants to be part of the development of a culture of rights **IT IS POSSIBLE TO MAKE THE CHANGE.** Thus, this document pretends to be an instrument for action that contributes to the protection of the rights and the development of the citizenship of children and adolescents.

There are excellent models of social reinsertion for adolescents in conflict with the law in our region. We hope that this document becomes a first approximation for the development of global experiences. Taken to scale, these experiences could set the pace for the reintegration to society of those adolescents who we as adults denied the opportunity of a good start in life.

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Regional Director for Latin America and the Caribbean

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INTRODUCTION

During the second half of the twentieth century, many Latin American countries experienced civil war (El Salvador, Guatemala) or lived under dictatorship (Chile, Argentina, Peru, Panama, Nicaragua, and Venezuela). As a consequence, many of the region's countries are only recently emerging as incipient democracies during the first decade of the 21st century. Given this social and political context, governments and entire societies alike have been slow to look at children as right holders. They are only very gradually recognising that all boys and girls are active citizens within a democratic system, endowed with the capacity to participate and express their opinions.

Latin America as a whole demonstrated a decisive inclination to ratify the Convention on the Rights of the Child (CRC hereinafter). As of December 1990, 13 countries of the region had ratified the Convention and all of the remainder of the region had done so by September 1991. Taking into account that the CRC had only just been approved by the United Nations General Assembly and made available for international approval and ratification on 20 November 1989, it is fair to characterise the entire region's move towards ratification as a rapid one. This in turn served to broadly affirm the commitment of Latin American countries to the legal recognition of children's rights.

Despite quick ratification of the CRC, the much longer process of enacting all of the legislative reforms mandated by the Convention became bogged down for years. The notable exception to the rule was of Brazil where the Statue on Children and Adolescents had already been passed by the time that the Convention entered into force[1]. It is important to understand that when an international treaty like the CRC enters into force, it goes well beyond just removing all domestic laws that are incompatible. Indeed, it means that each Latin American country needs to review and re-work all existing laws and statues that affect children and adolescents. In this sense, adhesion to the CRC required each country to carry out a virtual overhaul of its legal system. The CRC also introduced a significant process of cultural change in which individuals under the age of 18 must be taken out of the sphere of legally "incapable" persons in need of protection – characteristic of their social stigmatisation as minors ("minorismo" in Spanish) – and converted into social actors fully endowed with rights and actively engaged in the process of a progressive acquisition of autonomy.

In the aftermath of the CRC ratification and in following up on the obligation acquired by each state to adopt all of the legislative or other measures necessary for its full implementation, Latin America has continued to express its commitment at the international and regional levels for the effective realisation of child rights. This has specifically included the creation and development of juvenile criminal justice systems. When the United Nations General Assembly convened the Special Session on Children in 2002, it set out to evaluate the extent to which the targets established at the 1990 World Summit on Children had been accomplished. Participating governments reiterated their commitment to the development of non-punitive systems of justice for adolescents as well as to the eradication of inhuman or degrading punishment of children.[2] Similarly, the Millennium Summit held on September 6-8, 2000 saw the

1 The Statute on Children and Adolescents won approval on 13 July 1990. On that date, the CRC was not yet in force since it was still pending the necessary 20 ratifications.

2 See parts 44.7 and 44.8. of the document "A World Fit for Children" available at <www.unicef.org> in the section related to the Special Session for Children.

participation of practically all of the countries in the world (189 in total) at which time the Millennium Declaration was signed. The declaration formulated specific development objectives and states throughout the world once again committed themselves to respect and promote the principles of human dignity and fundamental human rights, including protection of the rights of children in accordance with the terms of the CRC.[3]

For its part, the Executive Board of the United Nations Children's Fund (UNICEF) in December 2001 approved its Medium Term Strategic Plan for 2002-2005. This plan set out UNICEF's priorities with respect to the Millennium Goals and highlighted ways that it can help support countries in reaching these and the other commitments mentioned above. It moreover showed how UNICEF intended to promote and support the application of laws, policies and programmes that, among other things, protect the rights of children in conflict with the law. The Strategic Plan provided for broadening alliances, compiling objective and reliable information for distribution, encouraging the participation of children in its projects, and striving for overall excellence in its programmes (results-based efficiency, co-ordination, measurement-based programming, rights-based approaches, and others). The ultimate aim was the creation of an environment that could provide real protection for boys and girls and this meant involving not only the state but also the family, the community and society as a whole.

In the area of criminal justice for adolescents accused of breaking the law, the CRC calls for the creation of a special system of justice. This system is completely novel in the way that it presupposes a separation between matters related to protection, i.e., the response to children whose rights remain vulnerable to violation such as children living on the streets, abandoned, etc., and matters of justice, i.e., the response to children accused of having broken the law and whose rights may or may not be adequately protected. These two issues have traditionally been mixed, resulting in the same treatment for children and adolescents who had suffered violations of their rights and those who had broken the law. In both cases, they were typically categorised as "at-risk" or as "in irregular circumstances".[4]

During the last ten years, nearly all Latin American countries have taken greater or lesser steps to incorporate these new approaches to juvenile justice into their legal orders, with Mexico, Columbia, Argentina, Chile and Uruguay remaining the furthest behind.

The establishment of these new systems inevitably implies the development of an institutional capacity that can make possible their application. Over and beyond the technical know-how, there needs to be a real commitment on the part of states to take the required measures for ensuring an adequate operation of the agencies and institutions provided for in the law. Moreover, it requires creating a culture of respect for children's rights, not only in the institutions involved but in the larger society as a whole. UNICEF has been working in collaboration with Latin American countries to advance this process, mostly by advocating on behalf of the creation and implementation of specialised juvenile justice systems and by providing support through technical assistance and training for the various sectors involved.

This document presents some of the best initiatives that have been developed in the field of juvenile justice. They are recognised as successful for having achieved exceptionally relevant results in fostering protective enviroment for the rights of adolescents, all in a manner consistent with the mandate and framework of the CRC.

[3] See part VI 26 of the document "Millennium Declaration" available at <www.un.org>.
[4] García Méndez, Emilio. "Infancia-Adolescencia. De los Derechos y de la justicia" (Childhood– Adolescence: On Rights and Justice). UNICEF and Distribuciones Fontamara, Mexico 2001.

The criteria used for selecting these practices were established by the Child Protection Section at UNICEF's Regional Office for Latin America and the Caribbean (TACRO). They included the following factors:

a) The positive impact of the practice on the targeted population;
b) The incorporation of the principles of non-discrimination, the best interests of the child, and the participation of adolescents;
c) The application of Articles 37 and 40 of the CRC, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
d) The development of alliances with civil society and the private sector;
e) The strategies employed in implementing programmes and in overcoming difficult obstacles; and
f) The sustainability of the practices.

The countries selected by the Child Protection Section of TACRO were Brazil, Costa Rica, Chile, Guatemala, Nicaragua and Panama. There have undoubtedly been other successful experiences producing similarly positive results, both in the selected countries as well as in other parts of the region. Nonetheless, the selected practices have been included by virtue of the important role that UNICEF programming has played in the success of each example.

In the course of preparing this document, all of the key people involved in each case were interviewed. This included officials from UNICEF as well as from judicial and executive branches of government, civil society organisations, and adolescents along with their families.[5] To complete the study, UNICEF also collected relevant statistical information and secondary documentation that could assist in the analysis of each selected experience.

The ultimate objective of this recompilation of examples is to demonstrate how programming based in a child rights and human rights approach, together with the commitment to comply with the CRC on the part of communities and states, worked to produce positive changes on behalf of children while having favourable repercussions on the larger society.

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5 The roster of questions used in the interviewing instrument is included at the end of this document as an appendix.

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LEGAL FRAMEWORK

The CRC is based on several basic legal principles which guide all policies affecting children. Three principles are of particular importance to juvenile justice, namely, those of non-discrimination, the participation of adolescents, and the best interests of the child.

The principle of non-discrimination. It is always very important to keep in mind that a juvenile justice system only comes into play when an adolescent has presumably committed a crime, regardless of his or her social or economic situation. For this reason, the special system of justice for adolescents cannot be used as a public policy instrument to deal with marginalised or socially excluded groups. Public policies of prevention and protection aimed at the restitution of rights come under a different rubric of state responsibility that belongs to the executive branch.

The right of children and adolescents to participate. This right is defined in Article 12 of the CRC and constitutes one of the most revolutionary aspects of this international treaty. The act of recognising that children and adolescents have the right to participate and to express their opinion, including in judicial and administrative proceedings, along with stating the obligation of adults to take into account their opinion, essentially implies the recognition of the progressive autonomy of persons under the age of 18 and their capacity to both exercise their rights and to answer for their actions. Therefore, in all proceedings conducted against adolescents, or in any other kind of formal action that could affect them, they must be given the opportunity to participate, to make statements in their own defence, and to be able to present evidence to that end.

The best interests of the child. This principle obliges us to consider all of the rights established by the CRC and seek to comply with them when making any kind of decision that affects children. This specifically means that we cannot utilise the principle of the best interests of the child to justify violating the rights of a child or adolescent under the guise of protecting another right of the same child. Rather, solutions to such dilemmas must be sought out that simultaneously respect all of the child's rights.

If we delve into the CRC more deeply, we can first consider that Article 37 obliges states to ensure that no child be subjected to torture or any other treatment or punishment that is cruel, inhuman or degrading, and it specifically prohibits the death penalty and the imposition of life imprisonment. It also establishes the obligation of the state to ensure that no arbitrary or illegal detentions take place, thus introducing the application of the principle of legality for children. This principle of legality serves in the first place to prevent the state from detaining a person if they have not committed an illegal act. Only the law can determine what kind of act can lead to the deprivation of liberty, thus avoiding the practice of an arbitrary decision against a person in a given moment.

Article 37 further establishes that the deprivation of liberty can only be applied as "a measure of last resort and for the shortest possible time." This is based on an acknowledgment that the deprivation of liberty constitutes a drastic restriction on a child's rights and harms the development of a person whose has not yet finished growing up. The Committee on the Rights of the Child has interpreted this principle by stating that "the Convention requires that the detention be a measure of last resort and for the shortest appropriate period of time. The institutionalization and detention of children must be avoided as much as possible and alternatives to

such practices must be developed and implemented...".[6]

With respect to the conditions related to any juvenile system involving the deprivation of liberty, Article 37 also requires states to ensure that adolescents be treated with dignity, that their rights be respected, and that their special needs in view of their age be met. This same Article likewise specifies the right of juveniles to be detained separately from adults and that they be permitted to remain in communication and visitation with their families.

Finally, Article 37 explicitly sets forth the right of adolescent to have prompt access to legal assistance and to appeal before an impartial and independent body the decision that led him or her to imprisonment, which means the extension of the guarantees to due process to children.

Similar to the way Article 37 refers to the punitive use of the deprivation of liberty, Article 40 deals with certain procedural aspects. Even though adolescents cannot be tried as adults, there should be a system in place so that they can receive judgement in the event that they are accused of breaking the law. In this sense, adolescents should enjoy the same guarantees that adults have for defending themselves, including the provision of evidence and contestation of charges made against them, etc. These procedures should moreover take into account that the accused is a person who is still in the process of growing up. For this reason, additional rights and guarantees must be in place that are not generally available for adults.

The first paragraph of Article 40 stipulates something that ought to be the ultimate objective of these kinds of proceedings, i.e., it recalls that the obligation of the state is to ensure that an adolescent's dignity be respected at all times while seeking to strengthen their sense of responsibility and teaching them to respect the rights of others. It establishes that throughout the proceedings, the age of the individual must be considered with the aim of ultimately promoting the adolescent's reintegration into society. This precept signifies that such proceedings should also constitute an educational tool for adolescents, teaching them respect for human rights and helping them develop a more positive image of society.

As shown earlier, these principles of legality acquire an extraordinary significance when it comes to the punitive power of the state. The legal process can only be initiated when someone is accused of having engaged in conduct that is codified as a crime in that country or of having failed to dutifully comply with existing legal obligations. This legal imperative carries the same force when the accused person is an adolescent, albeit in accordance with the principle of proportionality whereby sanctions are adapted to the conditions of a maturing person who is still in the course of development. For this reason, the CRC establishes a series of alternative sanctions that are better suited than the deprivation of liberty to the special status of adolescence, such as mandatory orientation and supervision, guidance, counselling supervised release or supervised probation, placement into foster homes, professional training and development programmes, and any other alternative to incarceration that is commensurate to the act committed and appropriate given the needs of the adolescent.

In this sense, care must be taken to ensure that all of an adolescent's rights are protected in spite of the applications of sanctions, including the obligation to keep the child in school, to receive occupational training, or to complete drug rehabilitation,

6 Committee on the Rights of the Child, Nigeria IRCO, Add. 61, paras. 21 and 40 13th Session Period, Minutes of the 323rd session (CRC/C/SR.323), paragraph 56.

all as part of efforts to facilitate the reinsertion of children back into society. Nevertheless, these requirements remain classified as sanctions due to their obligatory nature and can only be imposed when a crime has actually been committed and in a manner proportional to the seriousness of that crime.

As far as the system of juvenile criminal justice goes in Latin America and the Caribbean, we are only concerned here with adolescents since children are excluded from the procedures under consideration. Although the CRC does not establish a minimum age for criminal culpability, it does mandate that states establish such an age. For all those younger than the stipulated minimum age, children are completely excluded from any penal system regardless of the act committed. In general, the assumption is that prior to adolescence, children are not yet capable to fully reason and understand the consequences of their actions, and as such cannot be subjected to legal proceedings on account of violating criminal laws. In the event that children below the minimum age were to commit a criminal offence, they must remain under the control of either their families or civil protection services. Upon reaching 18 years of age, any person accused of committing a crime can be submitted to judgement and sanction under the adult criminal justice system.

There is a clear commitment established for all States Parties to the CRC to establish an entire system of justice -that is to say, the laws, special procedures, and organs, agencies and authorities that will put the deliberation of justice into effect. This goes back to the principle of legality with the aim of guaranteeing that everything is regulated and defined by the law while ensuring that there exists an institutional structure to place it wholly into force. Nevertheless, the Convention advises to exclude adolescents from the judicial system whenever possible in order to avoid the damaging effects that this process could have on their development.

This constitutes the special characteristic of a separate juvenile penal system derived from the state's obligation to seek alternatives to adult criminal proceedings while remaining under its control, all if judged more beneficial given the interests in play. An example of such an alternative is the suspension of the presentation of evidence against the accused, a process whereby the entire judicial proceeding is suspended and the young person is given the opportunity to forego a final judgement, agreeing not to further engage in the offending behaviour. If in turn the young person repeats the offending behaviour, the earlier legal process left pending then resumes and the likelihood of formal sanction becomes probable. Another alternative comes through the application of the principle of oportunidad reglado, a discretionary motion that permits the legal proceedings to be ended when it appears that the process will not have a desirable effect on the young person or if the seriousness of the offence does not warrant further action. Other alternatives exist such as conciliation or mediation which likewise try to avoid the formality and seriousness of a trial without eluding the responsibility of the adolescent. A resolution can be achieved through meetings with the victim and the respective lawyers for both parties so as to come to agreement on how the accused adolescent is to answer for their actions. While the idea in these cases is to avoid resorting to a formal trial, the legal guarantees of the accused are safeguarded by the fact that the application of all these kinds of measures remain under the protection and procedural control of a judge, not outside of it.

Since the possibilities for re-education and reinsertion of adolescents are greater than those of adults, legal proceedings need to be completed as rapidly as possible without reducing any of their rights. The legal rights of adolescents remain omnipresent, this regardless of the course a trial may take. For this reason, the principle of the presumption of innocence is at all times applicable. If held in detention, an adolescent always retains the

right to be considered innocent and treated as such until such time that the contrary has been sufficiently proven in the proper legal manner. An adolescent cannot be forced to admit guilt and should have the right to require their accuser to provide adequate proof as well as the right to mount any other defence on their own behalf. The alleged offender moreover has the right to be informed at all times concerning what is occurring and of what he or she is being accused of, this in a way that is understandable and appropriate for their age. In order to exercise those rights, the adolescent must have access to a lawyer who can competently act as a legal advisor and counsel on the best way to proceed. In the event that the youthful accused does not speak the language being used in the trial, a full translation must be provided of all relevant information.

The trial process must likewise respect the principle of the equity of both parties, i.e., adolescents can offer a defence to the charges put forth and speak to the evidence being presented against them, in what is called juicio contradictorio or adversarial system. The distinct parts of the process should moreover be well-defined and functionally differentiated. This is in contrast to so-called inquisitorial trials where little distinction is made between the various parts of the process, resulting in a blurring together of proceedings under the direction of the same person or agency. The kind of accusatory trials established for adolescents under the CRC are divided into stages, with different people involved at each stage. In the first stage, the adolescent is arrested under suspicion of having committed a crime. At this juncture, it is necessary to determine whether there is sufficient justification for being accused (establishing the identity of the suspect, their connection to the incident, and if the act could effectively be considered criminal). At this stage, the deprivation of liberty can be used as a precautionary or provisional measure only in cases of serious crimes or when there is a significant risk that the adolescent will seek to escape justice, hide relevant evidence, or cause additional harm to the victims or to third parties. If there is sufficient evidence to support the charges, the second stage begins where a different judge hears the case. It is during the second stage that the participation of the suspect in the crime must be proven, and if the juvenile defendant is found guilty, the judge will determine the appropriate sanction that will be applied. Once the sanction is being applied, another judge, the juez de ejecución (or enforcing judge), assumes responsibility for monitoring the adolescent and determining if the applied sanction or remedial measure is serving its purpose, if the adolescent is responding well, and if the rights of the child unaffected by the sanction are being respected. During this third stage, the judge overseeing the case may modify the sanction in favour of the child, making it lighter or reducing the time of its application if it can be proved that the adolescent is ready to leave judicial control.

As a human rights-based treaty, the CRC leaves little margin for discretion. Instead of merely putting forth general principles, the CRC establishes concrete obligations for States Parties by stipulating that when their respective systems of juvenile justice are organised, all supporting norms, precepts and procedures in the larger legal system be reformed accordingly.

The CRC, however, is not the only international convention that applies to these situations. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as "The Beijing Rules" of 29 November 1985)[7], the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (of 14 December 1990)[8],

[7] Resolution 40/33 of the General Assembly. Complete text of The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) is available at: http://www.unhchr.ch/html/menu3/b/h_comp48.htm
[8] Resolution 45/113 of the General Assembly. Complete text of United Nations Rules for the Protection of Juveniles Deprived of their Liberty is available at: http://www.unhchr.ch/html/menu3/b/h_comp37.htm

and the United Nations Guidelines for the Prevention of Juvenile Delinquency (hereinafter, the "Riyadh Guidelines", also of 14 December 1990)[9] also apply. In the context of Latin America, it is important to further consider the Inter-American Convention on Human Rights. While this Convention does not deal concretely with the penal responsibility of adolescents, it encompasses all of the rights of the human individual, including those persons who have not yet reached the age of 18.

All of these international norms treat different aspects of a common thematic and complement each other. Nevertheless, it needs to be taken into account that in certain aspects, the CRC surpasses the Beijing Rules which are the oldest of these sets of standards. In general terms, the CRC will be the instrument of reference used for interpreting the other three instruments insofar as it contains the essence of special consideration of adolescents as rights holders.

The Beijing Rules (or The United Nations Minimum Rules for the Administration of Juvenile Justice), in spite of being formulated well prior to the CRC, foresaw in 1985 the creation of a special regime of justice for adolescents in conflict with the law or accused of committing crimes. The Beijing Rules established the basic principles of juvenile criminal justice, coinciding on many aspects in what would later be stipulated in the CRC, but developing them a more detailed manner.

All aspects of the juvenile criminal process were treated, beginning with the initial detention, investigation and trial procedure, up through sentencing and subsequent treatment both in and outside of prison institutions.

In accordance with the Beijing Rules, all agencies responsible for ensuring compliance with the laws governing juvenile criminal responsibility, including the police, must have specialised units, i.e., personnel exclusively dedicated to juvenile matters and trained in matters concerning the protection of child rights. The Beijing Rules clearly established the exceptionality of preventive or definitive imprisonment, cataloguing various measures of resolution to be used as alternatives to the deprivation of liberty. Other guarantees were also set forth such as the right to a specialised legal defence, the right of the adolescent to participate in the trial process, and the confidentiality of juvenile criminal records, among others.

The Riyadh Guidelines (or The United Nations Guidelines for the Prevention of Juvenile Delinquency) do not directly refer to juvenile criminal procedures, but rather to an earlier and parallel moment, providing general policy guidelines for preventing juvenile delinquency. These directives are based on the fundamental premise that preventing delinquency requires the state to provide basic essential services, opportunities for employment, and the means to satisfy the needs of the population, thereby generating conditions for living in dignity while paying special attention to the needs of high risk social groups.

The Riyadh Guidelines make diverse recommendations to states, such as providing support for families in need, promoting sporting, cultural and recreational activities for young people, encouraging the participation of youth in the community and in the affairs of their families, and so on. The Guidelines also recommend that the state's public policies be organised with the broadest possible coverage so as to benefit all sectors of society, including those most marginalised, and they oblige all states to take into account the consequences of economic policies on those social sectors.

[9] Resolution 45/112 of the General Assembly. Complete text of The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) is available at: http://www.unhchr.ch/html/menu3/b/h_comp47.htm

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty refers to cases in which adolescents have been deprived of their liberty or subject to internment. As already stated, these practices should be viewed as the final recourse for any juvenile justice system. But this remains a very sensitive section in the human rights field, due to the increased vulnerability of those deprived of liberty. Since 1955, the Standard Minimum Rules for the Treatment of Prisoners[10] have been in existence but they did not sufficiently contemplate the case of minors.

It is very important to note the provision stipulated by Rule 11 b), Section b of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which states:

> *a) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which the person is not permitted to leave at will, by order of any judicial, administrative or other public authority.*

The traditional view has been that the internment of children and adolescents did not, strictly speaking, amount to a deprivation of liberty, despite the fact that on many occasions, minors were ordered into places variously called homes, treatment centres, shelters, places of protection, etc., where they were not able to leave of their free will and where some even had characteristics of a prison, including cells behind bars and areas under continuous guard.

Rule 11 b) provides a guideline for distinguishing between situations where children and adolescents are effectively deprived of their liberty and those where they are only under the protection of the State. It shows how the act of protection does not in any way justify limitations being placed on the fundamental right to freedom.

The Rules stipulate in detail the special conditions that pertain to under-aged inmates and how they are to be treated when deprived of their liberty. All such detention facilities must maintain a complete register of adolescents under their charge, specifying the conditions of each internment. They must also offer educational and professional training programmes to these minors and ensure that they are accommodated separately and that they be kept apart from adult personnel; that their accommodations be well-maintained, clean and dignified; that they are provided with healthcare and adequately fed; that they remain able to wear their own clothes; that they receive fair and equal wages for any kind of work performed; that academic recognition be given for any studies completed; that they be allowed contact with their family and community; that they remain free to practice their religion; that they be informed about any disciplinary measures; and that they remain under judicial control for the duration of their internment; all of above among other equally important provisions.

These three sets of legal norms, while they do not constitute treaties in the strict sense, should nonetheless be seen as exercising legitimate ethical authority. In this sense, they may be considered as guidelines that develop in greater detail some items that are obligatory once a state has ratified the CRC.

As mentioned earlier, the experiences and practices gathered together in this document have been chosen because they comply with the principles and dispositions that we have detailed above. Some of these examples, as will become evident, are especially meritorious for having been accomplished under extremely adverse circumstances, where the legal framework or institutional

[10] The complete text of this instrument can be found at: http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

structures in a particular country do not guarantee respect for children's rights, or where social and economic conditions are particularly difficult.

Also taken into account was the **impact** of these programmes on society and their overall **effectiveness,** both for the adolescents involved and for their communities. Compiling the information for these programmes, however, was not always an easy task. Follow-up information was not always available on adolescents, particularly in some countries where there are still no records kept on adolescents who have been processed and sentenced by the juvenile justice system. Nevertheless, it was possible to gather sufficient information to establish the positive impact of each experience and the larger relevance it holds for the region and elsewhere. Sometimes, it is not so much the quantitative indicator that gives us this kind of information but rather the quality of the work demonstrated by certain officials or other persons involved from civil society.

Further taken into account were the efforts made by the administrators of those projects in seeking out **alliances with civil society, the private sector and/or public agencies,** all with the objective of involving these sectors in a shared responsibility for adolescents and in the ongoing resolution of operational difficulties.

Special emphasis has been placed on analysing how **difficulties have been overcome,** taking into account that the conditions are never perfect for the application of these kinds of systems. There exists a whole host of factors that affect their implementation such as the characteristics of law, the level of training possessed by judges, lawyers, prosecutors and the police, the amount of participation on the part of civil society, the country's economic and social circumstances, and the real opportunities for reinsertion on the part of young people, etc.

This research has further taken into account not just the effectiveness of these practices but also their sustainability. Keeping in mind the difficulties confronted by many of these programmes, it is very noteworthy on occasion to point out the establishment of conditions for the long-term survival of programmes in spite of all the obstacles. Indeed, the support offered by UNICEF has normally consisted in helping to establish more solid foundations that can guarantee programme continuity into the future, well after the ongoing support being provided by UNICEF comes to an end.

The ultimate aim of this document is to highlight successful practices that have contributed to the reinsertion of adolescents in conflict with the law and to provide information about these experiences that can be replicated in other countries while also serving to help orient programmatic strategies within UNICEF itself.

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THE APPLICATION OF JUVENILE CRIMINAL LAW IN COSTA RICA

Background

Costa Rica is located to the south of Nicaragua and northwest of Panama, has an area of 51,100 km2 and a population of nearly 4 million, of which 40.3% are under 18 years.[11]

A civil war in 1948 lasted for forty days, resulting in the abolition of the country's armed forces later that same year and the adoption of a new Constitution in 1949. Given that the country has remained free of any major political upheavals since then, Costa Rica is often considered as an example in the Latin American region for its experience in democratic processes and respect for human rights. This kind of political stability in the context of Central America where the rest of the region has suffered dramatic examples to the contrary has among other things led to considerable immigration to Costa Rica. This influx has swelled the poorest sectors of society and has led to a variety of social conflicts as well as to tensions within the government.[12]

As a consequence of intense demands for increasing the security and safety of its citizens, and the clamour for stiffer criminal penalties, a Juvenile Criminal Justice Law (JCJL) was passed in 1996 which, in spite of public clamour, closely follows the guidelines of the CRC for the most part and likewise respects other existing international conventions *ad hoc*. However, the public demand for applying stiffer sentences to adolescents in conflict with the law did result in the provision for sentences of up to 10-15 years deprivation of liberty, something that directly contradicts Article 37, Section b. of the CRC. This provision in the JCJL broke the harmony of a law that was otherwise well-written in accordance with the international treaties that concerns us here.[13]

The JCJL entered into force on 1 May 1996, incorporating new principles and procedures into the judicial process. It also presented challenges for those professionals charged with administering the justice system who felt unprepared for the Law, having not yet created the kind of institutional structure necessary for its application.

The Process of Putting the Law into Application

Following the Law's approval and given the resulting need to effect institutional changes of both the structural and technical kind in order to assure its correct application, UNICEF incorporated a new initiative into its 1997-2001 Plan of Co-operation within the "Monitoring and Evaluation of Children's Rights" Programme. It was named the "Juvenile Criminal Justice" project and included an activity called "Systematisation of the Criminal Justice Law in Costa Rica and Support for its Implementation." Under this rubric, UNICEF's proposed goals were to systematise and disseminate information about the impact of the JCJL, support and advice with respect to

11 Data from the Census for the year 2000 carried out by the National Institute for Statistics and Census. http://www.inec.go.cr/

12 According to the 2000 Census, 7.78% of the total population in that year had been born outside the country, which was more than double the figure for 1999, the latter of which itself was double that of 1998, thus showing a steady increase of immigration into Costa Rica.

13 The original draft of the JCJL presented and debated in Congress had proposed maximum prison sentences of three years for adolescents between the ages of 12 and 15 years, and a maximum of five years for all other adolescents up to the age of 18. Nevertheless, social pressure was brought to bear upon the legislators to modify this initial proposal and to increase the sentences to the maxims indicated in the main text.

needed institutional changes, specifically in the area of sentencing involving both incarceration as well as alternative, non-incarceration sanctions, and to assist in the search for mechanisms which help make the installation of this new regime of sanctions both possible and sustainable.

UNICEF also decided to hold an annual follow-up seminar regarding the application of the Law on the part of all relevant institutions. These seminars constituted spaces where all achievements made to date with respect to the application of the new precepts could be discussed and compiled. The seminars also provided an opportunity to reiterate the importance of considering the adolescent as a subject of rights and responsibilities and to look for ways to infuse this principle into the everyday practice of the judicial organs and overall governmental affairs of Costa Rica. Beyond the seminars, but as a consequence of them, discussion workshops were in some cases held, focusing on more concrete topics or aimed at specific sectors of the juvenile justice system, such as the police or judges. All of the sectors involved in the operation of the juvenile justice system were always invited, including judges, public defenders, the public prosecutor's office, civil organisations, the Justice Ministry, members of the Programme for Alternative Sanctions, the National Children's Trust (PANI, from its spanish acronym), as well as academics in the field of criminal justice and observers from other countries. Each all of these activities, there was a combination of papers being presented while working in groups or workshops, seeking out the best possible way of enriching discussions, finding solutions and reaching agreements surrounding the application of the Law in all sectors where the juvenile judicial system operates. Recognised national and international experts in the field were invited to participate in the conferences, helping to generate an important academic discussion throughout the country. National authors from the field of criminal law and criminal justice joined in these discussions about the defence of children's rights and the need for guarantees in the penal system. As a result of these meetings and discussions organised and supported by UNICEF and ILANUD [14], a large number of publications and documents were produced. These documents and discussions have together helped to provide important follow-up to the process of the JCJL's application in Costa Rica. In addition, they have promoted a more general discussion on the doctrine of juvenile justice as well as a wealth of information for other countries in the region, including those still in the process of passing juvenile justice laws or those just beginning to apply laws that were recently passed.

All of these kinds of activities have been of great importance for the dissemination of a new culture of respect for judicial guarantees regarding adolescents in conflict with the law. New spaces of group discussion, training and monitoring of the Law were created like the "The Permanent Forum on the Application of the Juvenile Criminal Justice Law." Even if this forum no longer carries the same importance that it had earlier, it was at one time an important public space for discussing juvenile justice doctrine as well as the more specific needs in advancing the application of the JCJL and the challenges facing those judicial organs charged with carrying out the process. In attendance could be found officials from the judicial branch, the Ministry of Justice, the Legislative Assembly, non-governmental organisations, universities, UNICEF, ILANUD, and various national and international specialists.

As a result of these activities, many high quality publications were produced and various learning experiences were cre-

[14] ILANUD is the Latin American Institute of the United Nations for Crime Prevention and the Treatment of Delinquency.

ated. In one case, a visit to Brazil was sponsored by UNICEF, involving a diverse group of public officials and representatives of civil society with the objective of learning about Brazil's socio-educational policies. Courses of training offered to diverse groups of Costa Rican officials involved with the administration of the juvenile justice system were also of considerable importance. But above all, the greatest success of such activities was that they helped to create a culture of respect for the due process guarantees and rights of adolescents in conflict with the law.

In sum, the JCJL is a guarantor law for rights that permits the correction of abuses that can arise within judicial processes. In spite of the Law's provision, however, there are still no judges specialised in the area of juvenile justice outside of the capital city San José, leaving the task to family judges. This lack of specialisation has on occasion resulted in judges incorrectly applying the Law. Yet, these errors have in many cases been corrected through appeals provided for by law, thanks to a generalised culture in the judicial sphere that favours a commitment to compliance with the established legal guarantees.

In these activities put forward by UNICEF and other international agencies such as ILANUD, there was a special emphasis on developing alternative forms of sanctions to the deprivation of liberty. For UNICEF, this was one of the specific objectives included in its 1997 Annual Plan and during subsequent years. Following the mandate of Article 37(b) of the CRC, and considering alternative sanctions to incarceration as a fundamental element in the effective application of the Law, UNICEF has promoted training for those agencies responsible for applying the new sanctions as well as advice for their correct use. As a result of the various meetings and discussions already mentioned, an Interagency Commission was created, charted with the responsibility for discussing and putting into practice a system for the application of sanctions. Subsequently, the Permanent Forum assumed this role by establishing training activities and organising the production of materials. UNICEF worked to gain assurances that the relevant institutions would make available the human and material resources necessary to ensure that the deprivation of liberty would always be used as a last resort in the application of sanctions.

The impact of the Law was immediate. In 1995, there were 104 male and 14 female adolescents being held in detention centres. By June of 1996, one month after the Law entered into force, there were only 25 adolescents remaining in detention. Nevertheless, the process of discussing the Law and of training new professionals in how to apply it has produced very important results. In July 2003, there were a total of 34 adolescents being held in detention, only one of whom was female. Of these 34, 11 had specified periods attached to their sentencing and 23 were being held in precautionary detention. Thanks to the wide margin of discretion granted to judges by the JCJL, and their knowledge of the principles guiding its use as well as those of the CRC, only 3 of these adolescents had been sentenced to the 15 year maximum penalty. Most of the crimes committed by these adolescents were crimes against the lives of others and aggravated theft, thus remaining in compliance with the principle established in the CRC that reserves the practice of the deprivation of liberty only in those cases where no other possibility exists, allowing their application when only the most serious of crimes have been committed. For this reason, 429 (or 92.87%) of adolescents sentences had qualified for alternative sanctions.

Those adolescents given alternative sanctions were typically offenders convicted of the crimes of sexual assault, property damage, and simple or petty theft. The most utilised sanction (90% of the cases) was supervised probation, since community service programmes have not yet been sufficiently developed and because there is a scarcity of special

programmes for adolescents within drug treatment centres. Although it is different for every court and every municipality, there is often no reliable community support structure for the use of community service as a sanction. However, this is currently being worked on. Other types of therapies exist that are aimed at eradicating drug dependency, teaching adolescents how to manage boundaries, and other kinds of personal development activities. These have all provided good results, especially for adolescents who are not being deprived of their liberty. For a number of reasons, the use of therapy for adolescents who are being deprived of their liberty have not usually produced very positive results. Such adolescents typically have committed very serious crimes, often lack adequate family support, and in the end, the actual circumstances of imprisonment, rather than positively impacting the child, tend to have the opposite effect.

Looking back at the activities which took place between 1997 and 2000, it is possible to conclude that the diverse institutions involved in the implementation of the Law have fully assumed the role of discussion and follow-up of the process. They are taking responsibility for it as their own without the need for direct participation by UNICEF or other agencies that had earlier strongly supported it, including ILANUD.

The juvenile justice professionals in Costa Rica have themselves recognised the significant advances made through the application of this law, calling attention to those cases where the procedural guarantees provided for have not yet been applied. If indeed such cases continue to exist, they are increasingly less common and above all, there exist effective mechanisms in the law that permit these very same legal professionals to combat them. Two important pending issues alluded to by those interviewed are the lack of judges specialising in juvenile criminal matters in areas outside the capital city, as mentioned earlier, as well as the lack of a law for enforcing judgments. The latter would enormously assist in the efficacious applications of sanctions and help remedy the currently existing shortages such as the generally deficient structure of community services and the overall lack of specialised drug treatment centres. It would likewise help to reinforce the JCJL and help ensure the correct application of sanctions while eliminating possible deviations in the application of the Law that might encroach upon the rights of adolescents.

These issues notwithstanding, and in spite of the existing difficulties being confronted by the Costa Rican juvenile justice system, it can be concluded that the application of the JCJL favourably stands out by virtue of the commitment and participation demonstrated by all involved sectors, the results it has obtained in judicial practice and sentencing, and for the rich legal doctrine it has generated. The latter of which has already been used as a resource for other countries in the region in their own processes of passage and application of criminal justice laws covering adolescents.

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JUVENILE CRIMINAL COURTS IN NICARAGUA

Background

Nicaragua has a surface area of approximately 130,000 km2 and a population of 5,6 million people,[15] of which 53% are children.[16]

At the beginning of the 1940s, a period of almost 40 years of dictatorship began, interrupted in 1979 by the People's Sandinista Revolution. During the period of revolutionary government, the Political Constitution of the Republic was approved in 1987 with an essential democratic orientation. The Sandinista Government also sought the ratification of various international human rights treaties and their implementation.

Nicaragua ratified the CRC on the 19 April 1990. Following a very participatory process involving civil society and government agencies, along with the support of UNICEF and other international organisations, the National Assembly approved the Code for Children and Adolescents in May, 1998. Volume III of this Code set forth regulations for a specialised criminal justice system for adolescents. The Code entered into force on 23 November 1998.

The legal background of criminal justice as applied to adolescents prior to the enactment of the Code for Children and Adolescents is extremely relevant because it established a judicial tradition in Nicaragua, in contrast to many other Latin American countries, that later facilitated the process of putting the Code into practice. In this section, the practice of two District Criminal Courts for Adolescents will be profiled on account of the exceptional way that they adhere to the guidelines of the CRC.

Up until the time that the Code for Children and Adolescents entered into force, adolescents older than 15 years of age were tried as adults under the rules of the ordinary Criminal Code in effect since 1974. Those adolescents between the ages of 10 and 14 who committed a criminal act were generally considered to be immune from prosecution, unless they were judged to have the capacity to understand the seriousness of their actions, in which case they became sent over to the adult justice system. This penal disposition ran contrary to the Law for the Protection of Minors and its Regulation of 1975 that envisioned a separate jurisdiction in this area. This 1975 Law created a nationwide Court for the Protection of Minors based in the capital city of Managua but it only operated from 1975-1979. The new Revolutionary Government reformed the Law in 1979 and transferred jurisdiction from the judicial to the administrative realm, but without modification of either the age of penal responsibility at 15 or the mechanism that left often the possibility of trying adolescents between the ages of 10-14 as adults. As a result, the Court for the Protection of Minors became replaced by the Centre for the Protection of Minors under the Ministry of Social Welfare as it was then called.

So if prior to this change in jurisdiction, children and adolescents could indeed be tried as adults under the ordinary penal system, with all of the serious consequences which that carries with it, the Judge for the Protection of Minors in fact was left with a very limited number of criminal cases. Those cases remitted to the Court consisted more than often of state protective custody case for minors under the age of 18 who had not committed any crime and for children under the

[15] Data taken from Human Development Report Nicaragua 2002, Conditions for Hope, UNDP: http://hdr.undp.org/reports/view_reports.cfm?year=0&country=0&region=0&type=3&theme=0&start=111
[16] Data taken from UNICEF-Nicaragua Master Plan of Operations (MPO), 2002-2006.

age of 15 who had broken the law but were determined to have been not yet capable of understanding the seriousness of their actions, the latter portion of which probably involved very few cases given that the incidence of crimes committed at this age is invariably very low. If we take into account that the functional jurisdiction belonging to this court was transferred in 1979 and placed under ministerial administration controlled by the executive branch, there did not really exist any important precedent under judicial power for revising protection issues and at the same time, criminal justice for juveniles as had occurred in many other countries in Latin America.

In Nicaragua, there first existed a Judge for the Protection of Minors for the four year period of 1975-1979 who heard only a very few criminal cases. A second judge was seated under the new Revolutionary Government for only six months during the second half of 1979. At the same time, there were criminal court judges who made no distinction between the penal judgement of adults and adolescents, or even children. In that context, the system of juvenile justice created under the Code for Children and Adolescents was totally new both to Nicaraguan judicial authorities as well to prosecutors of the Public Ministry and legal defenders. While its novel aspects created certain difficulties for putting the Code into operation, the non-existence of a prior tradition of a tutelar system administered by professionals in some ways greatly facilitated the process of its implementation.

Another extremely important aspect that shapes these issues in the case of Nicaragua has to do with the acute economic crisis that this country has been unable to overcome for well over two decades. This has resulted not only in a decline in people's living standards as expressed by an annual, per capita GDP of US$500, but also in the implementation of short term policies that have adversely compromised the future, including large bond issuances and the emission of other instruments of public debt that have adversely affected the country's fiscal budget over the long term. Nicaragua's foreign debt crisis has received growing international attention and finally Nicaragua enhanced the Heavily Indebted Poor Countries (HIPC) Initiative. While this will probably contribute to improving the external debt situation, it will nevertheless leave pending a very serious problem associated with the domestic debt.[17]

All of these factors, coupled with an unemployment rate of more than 60% and an overwhelming incidence of school drop-outs,[18] has made it hard for Nicaragua to create any kind of institutional infrastructure, including one necessary for the operation of a juvenile justice system. The experiences compiled in this document are considered successful precisely for having achieved a working system of criminal justice for adolescents that displays a high level of guarantees and respect for the rights of adolescents in spite of the highly precarious structural context in which it has evolved.

The collaboration of UNICEF in the area of legislative reforms existed in co-operation programmes prior to the Plan currently in effect. The UNICEF 1996-1999 Country Programme Plan dedicated an entire area to legislative reforms that supported all of the processes of discussion that took place prior to the enactment of the Code for Children and Adolescents and provided technical and financial resources in support of its passage. The current 2002-2006 Co-operation Programme is divided into three programmes, with one dedicated to Public Policies, Legislation and Special Protection, along with two others that focus on Health and Healthy Environment, and Education and

[17] Human Development Report Nicaragua 2002, Conditions for Hope, UNDP. See also: http://www.imf.org/external/pubs/ft/scr/2004/cr0472.pdf 18 Ibid.
[18] Ibidem.

Citizenship. Three projects are included within the first programme, one of which is dedicated exclusively to supporting the activities of "Special Protection and Juvenile Justice" for Adolescents throughout the country.

This latter project has looked for the best way to facilitate the development and application of the law in the area of adolescent criminal justice, this while taking into account the enormous economic difficulties being experienced by the country. To that end, support has been given at various levels and resources have been made available for the training of new actors in the juvenile justice system, including the provision of induction materials, technical support, arranging visits to Nicaragua by foreign experts who specialise in adolescent justice so as to exchange experience and share knowledge, as well as other forms of timely support. In order to carry out this type of support effectively, written agreements have been entered into with the Nicaraguan Supreme Court. Efforts were also made to strengthen the network of services through which non-custodial sanctions can be applied, including provision of technical assistance to civil society organisations and to different levels of the Family Ministry so that they can be likewise collaborate in this area. UNICEF is also helping to raise funds by working through its National Committees in other countries and with foreign governments, helping Nicaragua to obtain the essential resources needed to make the new juvenile justice system fully operational in view of the government's lack of an adequate budget so far.

District Juvenile Courts: Managua and Ciudad Darío

Article 113 of the Code for Children and Adolescents establishes some requirements for a system of juvenile criminal justice. It specifically states that "there should exist at least one District Criminal Court for Adolescence in each Department and Autonomous Region… ." In the second paragraph, this Article goes on to state that "The Supreme Court of Justice is obliged to establish these courts no later than eighteen months after the publication of the present law". Article 113 also establishes that each court "will be comprised of a District Criminal Judge for Adolescence, three secretaries and a specialised interdisciplinary team as required to properly carry out their tasks".

Furthermore, Articles 122 and 123 of the Code require the state to ensure that the Public Defenders Office and the Office of the Attorney General (currently, the Public Prosecutor), each have public defenders and prosecutors that specialise in juvenile justice. Likewise, Article 208 of Code creates the Office of Operation and Supervision of Criminal Sanctions for Adolescents that as an agency operating under the Adolescent Criminal District Court is charged with controlling and supervising the sentences imposed by the Court on adolescents.

Under this provision of the law, there should be a criminal court for adolescents in every one of the 17 administrative Departments that make up Nicaragua. Each of these 17 courts should have at least the following personnel: three secretaries, an interdisciplinary team, an Office of Control and Supervision of Criminal Sanctions, a specialised defender and a specialised prosecutor.[19]

One week after the Code entered into force,[20] two specialised courts were created in Nicaragua, one in the city of Managua and the other in Ciudad Darío, a situation that remained unchanged for the following five years. The first court has jurisdiction

[19] The Code for Children and Adolescents refers to the General Attorney's Office, but in 2001, the Organic Law of the Public Ministry was passed, changing the name of that prior office to that of the Public Ministry, and changing the name from Attorneys to Prosecutors. This change took place in the framework of a broader reform package that modified the previous inquisitorial system and transformed it into an accusatory system.

[20] During the first week in which the Code of Childhood and the Adolescence was in force, all adolescents who became arrested had to be released as there did not yet exist any judicial agency to which they could be referred.

over the population of the Department of Managua while the second has jurisdiction over the five northern departments of the country. As for the rest of the country, this function had to be assumed by the ordinary criminal courts who handled juvenile cases as well as adult criminal proceedings.[21]

In addition to the country-wide lack of an adequate legal infrastructure specialised in adolescence, the courts that were initially established did not meet the minimum legal requirements specified by the Code. The court set up in Managua had to operate with one judge and five secretaries. Later, two people were named to form the interdisciplinary team, and after that, another person was appointed to make up the Office of Enforcement and Supervision of Criminal Sanctions. The court, did not, however, have either a specialised public defender or prosecutor. The public defender arrived a year later and the Adolescent Crimes Unit was subsequently set up in the Public Ministry in 2001. To date, the interdisciplinary team remains insufficiently established and does not have the resources necessary to carry out its duties. It likewise remains totally insufficient to have just one person in charge of the supervision of all adolescents under sanction.

The situation in Ciudad Darío is even more precarious, given that the Court is responsible for five separate Departments, occupying an area in which it takes 2-3 hours to cross by car, and must do so with an even smaller team than the one in Managua. The Ciudad Darío District Criminal Court for Adolescence started up with one judge and 3 secretaries.
A specialised prosecutor from the Public Ministry was appointed at the same time as the one in Managua, and the specialised public defender was named in 2002. At present, the Court in Ciudad Darío still lacks both an interdisciplinary team and an office for the control and supervision of sanctions.

An additional complication to the already fragile court structure is the fact that since the Code is completely new, court professionals had little knowledge either of the rights of children or of the accusatory procedure. Prior to the Code, not only had adolescents been subjected to the same criminal justice system as adults, but moreover, the country's adult criminal justice system was based on an inquisitorial system rather than accusatory system based in adversarial process. As such, the prior system did not allow for the role of the public defender nor the Public Prosecutor Office, at that point called the Attorney General's Office.

The great merit in having these new professionals, and what amounts to an excellent practice, has been their ability to overcome prevailing obstacles in achieving a separate criminal justice system for adolescents with all the necessary procedural and substantive guarantees. The limitations of the new system are to be found in the lack of economic and human resources rather than in the quality of their professional practice.

In light of the initial lack of experience with the new system, all of the parties involved had to remain in constant and fluid communication. While there were some differences at the onset, they were overcome by virtue of the mutual coordination established between parties. The presence of significant outside help was also of great assistance, such as the consultant that was contracted from the Checchi AID Company who directly advised the Public Defender's Office for a period of two years, providing instruction about the accusatory procedure. This also helped the rest of the professionals who through constant interaction and constant communication continued learning about the new techniques and new practices required by the new procedures as well as consolidating their specialisation in the rights that accrue to adolescents as

[21] In August 2003 three specialised judges were appointed in the Departments of Leon, Masaya and Granada.

opposed those pertaining to adults. The Checchi AID Company likewise financed a visit to Costa Rica that proved very valuable because it allowed professionals to see with their own eyes the practical day-to-day operations of another country's criminal justice system for adolescents. UNICEF also supported timely training on international law relating to juvenile justice and the legal rights of children and adolescents.

The precarious nature of existing conditions also generated an urgent need for co-ordination at other levels so as to make possible the socio-educational measures contemplated by the Code. To that end, both the Managua and Ciudad Darío Courts turned to the organisations of civil society, human rights agencies, mayoral offices, and other public institutions including the Ministry of the Family. In some of these cases, UNICEF acted as a liaison in the search for co-operating organisations or as mediator in the request for support. Given the lack of multi-disciplinary teams, these organisations have had to assist in performing medical examinations, interviewing the family and the adolescent, and by conducting the research necessary to prepare case reports for the judge concerning the personal circumstances of the young person involved. When the judge decides on a disposition involving an alternative type of sanction, the fact that there is only one person in charge of the Office of Enforcement and Supervision of Criminal Sanctions in Managua, and no one at all in Ciudad Darío, makes co-operation between public and private institutions especially vital for the assistance they can offer. In the case of Ciudad Darío, the lack of an Office for the Enforcement and Supervision of Criminal Sanctions meant that on many occasions, the secretaries of the court had to oversee compliance and ensure follow-up. This made the collaboration of organisations outside of the court extremely important in those regions located far away from the court, permitting an adequate follow-up for those adolescents under supervision.

In the case of the Court in Ciudad Darío, the judge personally visits remote communities on a periodic basis where travel is known to be difficult for victims, the accused and their friends and families. This allows the Court to respect the limits on provisional and precautionary detention, keeping watch over the need to ensure that the adolescent is judged as soon as possible.

Another example of the efforts made by these courts on behalf of the rights of adolescents rests in the fact that the prosecutors always seek to avoid asking the judge to incarcerate the youthful offender. Instead, they consult with the victim, except in the case of an extremely serious crime, asking if they would be in agreement to an alternative type of sanction. Prosecutors likewise seek to utilise mediation for a large part of cases under the control of the judge, thereby avoiding the need to submit many adolescents to the formal judicial process.

In the first years of the operation of these two juvenile courts, both assumed the task of searching through adult prisons for adolescents who had been sentenced according to the previous penal code, so that they could benefit from the new provisions established by the Code for Children and Adolescents. This search for youthful offenders in adult prisons, coupled with the backlog of cases which were pending when the Code came into force and further aggravated by the courts limited personnel meant that the courts were completely overwhelmed during their first year of operation. Nevertheless, many adolescents came to benefit once the Code was put into practice. Prior to the time the Code came into force, there were 250 adolescents incarcerated in Managua, including those in precautionary detention as well as those serving sentences. Presently in Managua, there are only 22

adolescents sentenced to the deprivation of their liberty and six being processed. In the five Departments that are under the jurisdiction of the Court in Ciudad Darío, there are only 2 adolescents being held in detention.

Although there are no official figures concerning the rate of recidivism, the Court in Managua expressed the opinion that utilisation of alternative sanctions has been quite successful and perhaps even more so than the use of detention. This was not the opinion of the Court in Ciudad Darío, however, which expressed that the impossibility to adequately monitor compliance with non-custodial sentences, given the lack of an enforcement office, is adversely affecting the rehabilitation of adolescents. This fact, however, has not resulted in the generalised use of the deprivation of liberty as a response to minor offences.

It can today be said that these two courts have a good knowledge of accusatory procedures and criminal law as it applies to adolescents, applying these principles in accordance with the relevant international treaties and the CRC. They faithfully follow the provisions of the Code for Children and Adolescents and have indeed resolved many of the omissions and ambiguities found as the code initially became applied. This is not the case with the courts throughout the rest of the country, neither for the newly created, specialised ones for adolescents or the adult courts that handle both types of cases. For this reason, the personnel of the courts in Managua and Ciudad Darío have sought out other institutions for facilitating training and the sharing of information with their colleagues in the remainder of the country's courts.

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LEGAL DEFENCE OF ADOLESCENTS IN CHILE

Background

Chile has an area of 756,626 Km2 spread across a narrow strip of land with an average width of only 177 Km.[22] Chile's geography means that the approximately 15 million[23] people that live in Chile (of which children make up almost one third), live in very different climates and are spread across a very diverse geographical landscape. It should also be noted that the 13 regions which make up the Republic of Chile also have highly diverse economies.

During the Chilean dictatorship of 1973-1990, a legal context was created that today can still be tangibly felt in the slow pace of legislative reform, the incipient introduction of the accusatorial system into adult criminal law, the failure to reconcile Chilean laws to the principles of the CRC, and the practical difficulties still faced when mounting a legal defence in criminal proceedings. Nevertheless, as we shall see shortly, Chile does have a legal defence system for adolescents which has to a large extent become adapted to the principles of the CRC. This system is the main topic of the present chapter.

Despite the fact that the CRC was ratified in Chile on 14 August 1990, the legislation which remains in effect is still governed by principles of tutelage, i.e., it clearly mixes issues of protective custody with those of criminal justice. For example, in accordance with the Law of Minors which dates back to 1967, children less than 16 years of age can be subject to judgement and disposition irrespective of whether or not they have actually committed an offence. Moreover, this practice results in the creation of an informal record of sentences which means that if a person commits a crime in the future, it is highly likely that the person will be treated as a repeat offender, this despite the fact that the original sentence had been imposed for the child's own protection. In other words, a 17 year old adolescent who at the age of 15 was sent by a judge to a state shelter due to family abandonment, would likely be treated as a repeat offender if detained for committing a first infraction. This could be one of the reasons for Mario's situation.[24] Now an adult, Mario had once been processed through the juvenile justice system. Initially, as he explains, he was under the protection of the state (living in shelters and foster homes) and later became a ward of the criminal system (detention centre), and he does not understand why he was imprisoned together with adults, because it was never actually proved that he committed any criminal offence, nor had any lawyer defended him, nor did he have the opportunity to be heard in the court proceedings. As he graphically put it, he was nothing more than "meat being processed by the system." This illustrates a common fate for adolescents who come under the protection of the state and end up in prison regardless of whether or not they have been convicted of any crime.

The Law of Minors provides for young people between the ages of 16 and 18 to be tried as adults if it is determined that they have the capacity to understand the seriousness of their actions. In many cases, unfortunately, this determination is based more on how dangerous the adolescent is deemed to be, rather than on

22 For these calculations, the Antarctic area has not been considered, which would add 1,250,000 Km2 to the land mass of Chile.
23 Based on estimate made in 2001, by the Chilean National Institute of Statistics: http://www.ine.cl/12-pobla/Ambosprisete.htm
24 This person's name has been changed to protect his identity.

his capacity to discern whether the actions are right or wrong,[25] all of which clearly violates the adolescent's rights such as the presumption of innocence and the right not to be subjected to an adult criminal process before the age of 18.

The Chilean code of criminal procedure was reformed in the year 2000 to replace inquisitorial procedures which had been in practice up until then with the procedural guarantees of an accusatorial system. Because of the institutional and structural challenges associated with the simultaneous introduction and implementation of the new system throughout all of the country's 13 regions, those reforms applied in year 2000 are taking place region by region. The reforms immediately established the Public Defence Office and the Chilean Public Ministry, two judicial organs that had not previously existed since both functions had been handled by the same judge. These changes were significant for adolescents since if at the age of 16 or more, an individual were to be determined to have been sufficiently conscious of their actions to stand trial as an adult, they would now be processed under the newly reformed criminal procedures. Following the 2000 reforms, the path that a juvenile's case follows depends on, among other things, whether or not a child has reached the age of 16, the severity of the alleged crime, whether the adolescent is considered to be competent to stand trial, and whether or not the case is being handled in a region of the country where the new criminal procedural code has come into effect. In each of the foregoing circumstances, an adolescent can be referred to a different court. To eliminate the complexity of the current regime and to bring Chilean law in line with the CRC and the due process guarantees for adults that were part of the 2000 reforms, a new juvenile justice system must be devised. To this end, a draft law was presented to the National Congress in August of 2002. Due to the slow pace of legislative changes in Chile, however, adoption of the proposed reforms cannot be considered imminent.

Faced with a legislative landscape clearly in violation of the rights of adolescents, the UNICEF Chile Country Office has since the early 1990s included specific objectives designed to encourage legislative and institutional reforms within its consecutive Plans of Co-operation, including the 2002-2004 Plan analysed closely in this survey.[26] Beginning back in 1991, workshops and seminars were organised for the purpose of discussing and bringing to light the inadequacies in Chile's child protection and justice systems as they relate to the CRC. With technical support from UNICEF, work commenced in 1994 on the preparation and discussion of a draft law on Responsibility for Juvenile Offences under the Criminal Law. A major national and international seminar on justice for adolescents was organised with significant support from the UNICEF Regional Office. Representatives of the Chilean national movement for the defence of human rights and justice were invited, as were academics specialising in criminal law, parliamentarians and a team of national and international jurists who worked on the text of the reform.

Two hundred people met for two days, generating a major public debate which brought the problem to national attention.

[25] The law does not define this capacity to discern, something which has given rise to various interpretations in the Chilean courts throughout history. Nevertheless, the interpretation based on the danger posed to society by the young person has normally prevailed. See Miguel Cillero Bruñol's article: "Comentarios al Artículo 10 numerales 2 y 3 del Código Penal Chileno: La Minoría de Edad como Causal de exención de Responsabilidad Penal" (Comments on Article 10, Sections 2 and 3 of the Chilean Criminal Code: The Status of Minor of Age as Cause for Exemption from Criminal Responsibility), published in "Justicia y Derechos del Niño" (Justice and the Rights of the Child), No. 4. UNICEF. Buenos Aires, 2002.

[26] Chile is considered by UNICEF to be a country "in transition", signifying that UNICEF support to the country is slated to move in the short and medium term to a self-funding programme office with alternative modes of presence. For this reason, its Plan of Co-operation is shorter than that of other countries in the region including the other countries analysed in this document.

Out of this meeting came a draft outline for establishing a system of criminal procedure for adolescents in accordance with both the CRC and other relevant international treaties. In 1997, a draft law was completed with the support of the Ministry of Justice and by the National Service for Minors (referred to as SENAME), placing it into legislative discussion. The text of the proposal underwent various changes over the course of the next few years, and the final version was presented to the Chilean Congress for further discussion and approval in August 2002.

Parallel to this work on the draft law, and as a way of ameliorating the negative effects of the existing law, UNICEF worked in support of the approval in 1994 of the Law for the Eradication of Minors from Adult Prisons. In the absence of a comprehensive juvenile justice law, the Law for the Eradication of Minors from Adult Prisons not only acted to remove adolescents from adult prisons but also provided some important elements for the legal defence of adolescents and children accused of breaking criminal laws. This law expressly prohibited the admission of adolescents into adult detention centres for the purposes of protection.

20% of those incarcerated within adult centres were adolescents at that time and some were as young as 14. For children and adolescents receiving a sentence for a criminal infraction, the new law meant that no one under the age of 16 could be imprisoned with adults, and those between the ages of 16 and 18 could be imprisoned in an adult prison or police station only if there were no specialised centres for adolescents available in the locality. Even in such cases, they were required to be held in a separate section within the facility. Finally, the law independently established two types of autonomous centres: Centres for Observation and Diagnosis (COD) for those accused of committing a crime and Centres for Transit and Distribution (CTD) for those needing help and protection, thereby making a formal distinction between penal sanctions and protective custody.

The most immediate effect of the law was a significant reduction in the number of adolescents in prison; reducing the number of children detained in police stations from 4,979 in the year 1994, to 2,459 in 1995.[27] It also prepared the way for the separate treatment of adolescents and the introduction of new procedural guarantees that could immediately be put to use in mounting a legal defence.

As part of its work in supporting institutional reforms, UNICEF collaborated in the creation and participated as member of a special department within SENAME known as "The Children's Rights Unit" whose mission was to advise SENAME on putting its practices fully in accord with the CRC.

Thanks to the work of this Unit, the development of ambulatory diagnostic systems was strengthened, facilitating the use of alternatives to incarceration during the period in which a decision was pending as to whether or not the accused youth would need to stand trial. Moreover, the enactment of the Law for the Eradication of Minors from Adult Prisons led to steps being taken to bring Chilean detention centres in line with international norms. Building off the successful prior experience of Hogar de Cristo (Christ's Home), a private institution working several years in this area, the Child Rights Unit of SENAME began a nationwide initiative to

[27] For reference material to assess the evolution of the application of the rights for adolescents accused of breaking the law in Chilean courts, see Miguel Cillero Bruñol and Martín Bernales Odino's article entitled "Derechos Humanos de la Infancia/Adolescencia en la Justicia 'Penal de Menores' de Chile: Evaluación y Perspectivas" ("Human Rights of Children/Adolescents in Chile's Juvenile Criminal Justice System: Evaluation and Perspectives"), published by the Revista de los Derechos del Niño (Journal on the Rights of the Child), No. 1/2002, of the Programa de Derechos del Niño (Child Right's Programme) of the Centre for Legal Research of Diego Portales University in conjunction with the UNICEF Area Office for Argentina, Chile and Uruguay.

strengthen the process of legal defence for adolescents. In 1995, the same year that the Law for the Eradication of Minors from Adult Prisons[28] went into effect, SENAME signed agreements with non-governmental organisations and public agencies in all 13 regions of the country, to help defend the rights of adolescents and to provide psychosocial support for adolescents accused of violating the criminal law. These measures helped to institutionalise the concept of an adolescent's right to mount a defence and the need for a separate juvenile justice system.

The 2002-2004 Co-operation Plan implemented by UNICEF-Chile was designed to include cross-cutting issues that would span across its two main programmes: "Making Rights Work" and "Communicating and Mobilising for Rights," each of which are divided into various projects. One of these cross-cutting issues focuses on strengthening the "Mechanisms for Rights Protection" which includes juvenile justice. In the framework of this cross-cutting issue, the Plan set out to implement training and development in children's rights for judicial professionals, advising and mediation to promote legislative reforms, and the promotion of public policies to improve the juvenile justice system. Although in Chile, this sort of activity has taken place since the beginning of the 1990s, these activities are of particular importance, given the serious consequences to children and adolescents that result from not having fully revised its juvenile justice in accordance with the provisions of the CRC.

In the context of the actions undertaken under the auspices of the 2002-2004 Plan of Co-operation, UNICEF managed to link children's issues with other ongoing social reform debates in Chile, giving these important issues the attention that they deserve within the national priorities, including the reform of the criminal justice system in general and the reform of SENAME. Given the slow pace of legislative reform processes in Chile, UNICEF decided to support initiatives that strengthened the legal defence of adolescents as a strategic tool for fulfilling the rights of adolescents in spite of the difficulties posed by existing laws.

A Legal Defence Programme: El Hogar de Cristo

Legal defence for adolescents, as we have seen earlier, was introduced nationwide by SENAME in the year 1995 through agreements signed with NGOs and public defence agencies. In spite of the fact that the legal defence of adolescents did not formally fall under the jurisdiction of SENAME, the Child Rights Unit understood that acting in this direction was the most strategic way of protecting the rights of children under an obsolete legal framework while at the same time introducing into practice the kinds of guarantees that will form part of a future juvenile justice system for adolescents.

The private agency El Hogar de Cristo had for quite some time been working on the legal defence of adolescents who had either been imprisoned or who were in the process of being sentenced to incarceration. Since 1944, this Jesuit institution has dedicated itself to helping people in extreme poverty. El Hogar de Cristo projects can be found in every region of the country where they run guest houses, health centres for terminally ill patients, therapeutic communities for the treatment of drug addiction, nurseries and other services for children and adults in extreme poverty. With regard to young people, El Hogar de Cristo provides services to adolescents detained in adult prisons, offering access to lawyers, psychologists and social workers. Even during the continuing period of dictatorship in the 1980s, El Hogar de Cristo was able to gain unrestricted access to detention centres, providing social and

[28] The Law for Removing Minors from Adult Prisons became effective on the 31st December, 1994.

religious services to imprisoned adults as well. Through an unprecedented provision of emergency services, adolescents were given basic information about both their substantive and procedural rights, and they were given legal advice specific to their cases along with psychological and other forms of support. Through these means, a support programme for adolescents accused of breaking the law was gradually established. Additionally, El Hogar de Cristo created activity-based programmes that provided the courts with an alternative to imprisonment. In an informal way, El Hogar de Cristo also began to carry out tasks which are today performed by administrative or legal personnel, such as multidisciplinary investigations and diagnostic family visits, all with the objective of speeding up the judicial process and reducing periods of detention for adolescents.

The Child Rights Unit of SENAME, with technical advice provided by UNICEF, decided to formalise and fund a structure to carry out these kinds of activities, taking advantage of existing field experience and building on positive results previously obtained as a way to most efficiently comply with the right of adolescents to mount a legal defence.

In 1998, UNICEF and the Chilean Ministry of Justice organised a seminar and invited all public organisations and civil agencies that collaborate with SENAME in legal defence work, along with academics and institutions from Argentina and Uruguay, and other lawyers, with the objective of establishing networks and mutual assistance groups among the various actors involved in doing defence work within each country. The seminar provided opportunities for participants to discuss the directives and criminal defence strategies which were most consistent with the guidelines and principles of the CRC and international norms. Based on these criteria, SENAME now produces an annual document called the "Technical Guide to Legal Defence Projects for Adolescents Accused of Breaking Criminal Laws" which acts as a guide for the work of these legal defence agencies.

Once organisations had been designated for each of the country's 13 regions, SENAME shifted its focus to supervision and follow activities for the defence work of these organisations. Currently there are 15 signed agreements in Chile for the defence of juveniles. In Chile, non-governmental organisations involved in the defence of adolescents, have to be legally constituted as non-profit institutions and registered as a "SENAME Co-operant." In order to be selected, the organisation must prepare, among other things, a project plan, setting out defence objectives, strategies, targets, with performance indicators, a list of the services they anticipate providing, methodologies, expected results, follow-up systems, co-ordination plans with other agencies, and a budget.

UNICEF has provided direct support to these non-governmental organisations through specialised training courses in juvenile justice as well as sponsoring visits for personnel to observe and learn from the experience other countries. Public defenders who were interviewed recognised that the training has been of great value in their professional practice.

The work of these NGO's, despite the difficulties created by an archaic law lacking guarantees for the rights of juveniles, has been outstanding. Given all of the obstacles inherent in the Chilean legal system, to which must be added the complicated process of determining whether an adolescent must stand trial as an adult and the overall co-mingling of adult and adolescent justice systems, Chilean defenders were led to move into various directions over and above the established legal procedures order to provide Chilean adolescents with all of the benefits, due process guarantees and rights established by the CRC. In the course of defending adolescents,

the defence not only argues in recourse to the Chilean Constitution and other international treaties, but also carries out activities which complement the functions of the judge. In that sense, lawyers working in defence of adolescents can keep the child's family informed and protect the adolescent's rights in the proceedings while working along with the judges and the Centre for Observation and Diagnosis authorities in order to speed up the determination process (concerning whether the young person must be tried as an adult), all this while exploring alternative sentencing options with SENAME and private institutions. The lawyer for El Hogar de Cristo uses the strongest legal arguments available to prevent the adolescent from being declared fully conscious of his action and thus obligated to stand trial as an adult, and advocates alternatives such that the use of imprisonment remains a sanction of last resort. In the face of reluctance on the part of Chilean judges to accept that the CRC is a binding treaty upon Chilean justice and given the persistent inertia from the past for judges to remain inclined to send adolescents to prison, it falls upon the defending lawyer to identify alternative options in residential or activity-based programmes offered by either the same institution or by other public or private agencies, and to present them to the judge for consideration. This predictably leads to a tremendous increase in the lawyer's workload, far in excess of what it would be for a lawyer representing adults. Defence lawyers also try to use the Chilean constitution for defending the rights of adolescents, applying for "habeas corpus" and other constitutional guarantees in cases where the rights of adolescents have not been duly protected. These kinds of actions are extremely important because they go about creating a greater awareness on the part of judges about the importance of due process guarantees as well as to consider children as rights bearers, thereby achieving a better separation between justice and protection issues.

The value of El Hogar de Cristo's work has been recognised both from a legal and a humanitarian standpoint. El Hogar de Cristo provides support to adolescents within a system that is often hostile to their interests and this plays a significant role in the child's rehabilitation and in preventing future criminal behaviour. In many instances, the lawyers are their only source of support, legal as well as emotional. Once again, in the words of Mario, "all kids can change, but you have to give them something to latch on to, you have to believe in them and you have to be straight with them… the lawyers of El Hogar de Cristo were different, they came forward without being paid, they got involved with the children without demanding anything in return ... and this giving without condition sets things off and begins to create openings for rehabilitation…".[29]

During 2002, El Hogar de Cristo defended 3,571 adolescents, including hearings to determine status for trial as an adult, in protective custody hearings, and in criminal cases. El Hogar de Cristo also filed 8 motions for constitutional protection (recursos de amparo). From January to May of 2003, they handled a heavy volume of 1,634 cases[30] with a team of only five defence lawyers and seven procurators (law students legally qualified to appear in court) in the metropolitan region.

According to data provided to SENAME by El Hogar de Cristo, 85% of the cases taken on by El Hogar de Cristo resulted in the adolescents becoming declared exempt at their hearings from being tried as adults. From January to September of 2002, 1,731 young people were subjected

[29] It is worth noting that staff lawyers receive modest remuneration from El Hogar de Cristo (beginning in 1995, with the support of SENAME), but that the defence they offer is still absolutely free of charge to the adolescent client.
[30] Data provided by SENAME.

to such hearings and defended by El Hogar de Cristo. Of these, 831 were provisionally discharged before the end of the process, which is a significant achievement given how infrequently Chilean judges have historically given non-custodial alternative sentences.

Other laudable civil organisations exist in addition to El Hogar de Cristo, such as the OPCION Corporation that works in defence of adolescents in Santiago for those between the ages of 14 and 16 who due to their age are not subject to the determination hearings for trial as an adult, but to whom a judge can nevertheless apply a protection measure that can include the deprivation of liberty if determined to be responsible for committing a crime. The work of this organisation has helped to significantly reduce the number of adolescents who come under the charge of the Centre for Observation and Diagnosis (COD) and detention centres.

It is important to recognise the merit of these organisations that carry out such essential work. Having only recently emerged from 17 years of dictatorship, respect for basic human rights in Chile has not yet fully permeated the civil society much less state institutions of justice or governance. Chilean citizens still have not been accorded full recognition of the right of all persons accused of a crime to a defence, and some sectors have been highly critical of those working to defend rights, whether the work is being done by private institutions or by the state itself. Even El Hogar de Cristo as an aid agency with a long tradition of providing social assistance throughout the country has been criticised. In this context, faced with courts steeped in a tradition of inquisitorial procedures for adults and a tradition of tutelary protection for minors, a society that often rejects the notion of defence for adolescents and who instead demand that adolescent offenders receive harsher penalties, and all this coupled with a law fraught with serious weaknesses, the achievements of El Hogar de Cristo have been especially hard fought and are worthy of the highest praise. Under such adverse circumstances, simply mounting a legal defence would be considered a significant achievement and El Hogar de Cristo has definitely managed to both decrease the number of young people imprisoned and reduce the number of young people subjected to adult criminal procedures.

UNICEF/HQ01-0420/Donna DeCesare

MUNICIPAL ALTERNATIVES TO THE DEPRIVATION OF LIBERTY IN SAO PAULO, BRAZIL

Background

Brazil is the largest and most populated country in Latin America[31] with almost 170 million inhabitants, of whom around 61 million (35.9 %) are under the age of 18, living over a land area that spans 8,547,403 km2. Brazil is a federal republic made up of 27 States. The city of Sao Paulo, located in the state of the same name, has a population of almost 10.5 million and about one third of the delinquency that occurs in Brazil is concentrated in the city of Sao Paulo. Consequently, it can be inferred that any kind of alternative rehabilitation or social re-insertion actions taken with respect to juvenile delinquency in the municipality of Sao Paulo will have the eyes of all the rest of the country, given the very significant repercussions which such programmes would have on the nationwide figures.

All of this helps explain why the municipality of Sao Paulo's statistics for incarcerated adolescents as well as for those serving alternative sanctions may seem surprisingly high. Currently, there are approximately 6,147 adolescents deprived of their liberty, and 3,516 in alternative, non-incarceration programmes.[32] The Statue on Children and Adolescents (Estatuto da Criança e do Adolescente, ECA hereinafter) refers to these alternative sanctions as "socio-educational measures".

The movement for legal recognition of children's rights in Brazil began before the CRC was adopted by the General Assembly of the United Nations. This has resulted in Brazil being recognised throughout the region as the best example of a dynamic national movement working on behalf of children,[33] with the Statue on Children and Adolescents approved on 13 July 1990 as a pioneering law of its time.

The Statue on Children and Adolescents is a comprehensive federal code which covers the protection of child rights as well as the procedures to be followed with children/adolescents once accused of breaking the law. Of primary importance under the Statue on Children and Adolescents is the education and reintegration into society of the adolescent offender. For this reason, the sanctions imposed by judges are not called "penalties" or "sanctions," but rather "socio-educational measures," including those which involve the deprivation of liberty.

UNICEF supported the development of the ECA from its inception. In the 2002-2006 UNICEF Co-operation Plan for Brazil, a programme was included called "Adolescent Citizenship." This programme seeks to promote public policies in the areas of health, education, professional development, justice, culture and sports, all of which will support a demographic sector that accounts for 13% of the country's population and which is particularly vulnerable to HIV/AIDS, sexual exploitation, drug use, violence and labour exploitation. In seeking to establish effective public policies in this framework, UNICEF is promoting programmes at the municipal level in Sao Paulo as a way to guarantee that children/adolescents

31 Data from the Demographic Census of 2000 provided by the Brazilian Institute of Geography and Statistics.
32 Data from May, 2003 by FEBEM, State Foundation for Youth Welfare, the state agency in charge of carrying out socio-educational interventions or sanctions.
33 It must be noted that UNICEF constantly pushed for and supported this national movement, contributing in an important way to the passing of the Statue on Children and Adolescents.

are able to fully exercise their rights. Concretely, this includes the utilisation of socio-educational measures for rehabilitation, organised at the municipal level, which UNICEF is convinced will strengthen them and make them more widely available, therefore making them more appealing to judges as opposed to the deprivation of liberty.

Municipal Establishment of Alternative Socio-Educational Measures and Other Public Policies for Prevention at the Municipal Level

Article 88, item 1 of the ECA establishes as a guideline that state treatment of children should be devolved to the municipal level. Following this mandate and convinced that the municipality possesses the most valuable resources to best respond to the needs of each and every adolescent, a number of civil associations[34] have been persistently petitioning the Sao Paulo Mayor's Office (known as the "Prefeitura") to recognise and act upon its municipal responsibility.

In the year 2000, UNICEF began working in concert with the demands being made by the Brazilian civil organisations, helping to set up meetings and discussions between the civil organisations involved, and other government and non-governmental sectors, such as private business associations, human rights organisations and international agencies, such as ILANUD. The outcome of these meetings was the creation of a single set of guidelines and principles, leading to the drafting of a formal joint proposal to the Mayor's Office. Toward the end of year 2000, these preparatory efforts and discussions resulted in a proposal signed by a total of 34 organisations that was submitted to the Mayor's Office for the municipal establishment of alternative, socio-educational sanctions.

The proposal benefited by substantial prior discussions and employed the legal principles contained within the Statue on Children and Adolescents and the Brazilian Constitution as the juridical basis for implementing the municipalisation of socio-educational sanctions. It contained an analysis of each type of socio-educational measure and the number of adolescents for whom it had been utilised during the previous five years in support of the efficacy of the municipalisation programme. We are basically talking here about the reparation for damages, probationary and community service measures. Other successful experiences which highlighted effective socio-educational sanctions employed in the past by civil organisations were also included, helping to establish some parameters for the design of a fully municipalised system. Finally, the proposal established various strategies for actually implementing the municipalisation project.

It is worth pointing out that, prior to the establishment of socio-educational sanctions at the municipal level, such measures were carried out by civil organisations, following the dispositions of a state agency, FEBEM, or sometimes directly by the FEBEM.[35] FEBEM's failure to produce positive results was another reason why civil organisations petitioned for the municipalisation of socio-educational sanctions.

Fortunately, the Mayor's office responded favourably to the proposal by making a commitment to act, and through the Secretary of Social Welfare, decided to support the project. Thanks to this approval and the legwork carried out by

[34] The civil associations or organisations mentioned throughout the text in the section concerning the Brazilian experience are NGOs dedicated to caring for children whose rights have been violated and/or those who are under socio-educational sanctions. It has been decided, however, not to refer to the organisations as NGOs in the text because this term is not widely used in Brazil.

[35] The FEBEM is a state agency which, according to ECA, is responsible for the exercise of prison sentences.

the group that had prepared the proposal, a Protocol of Intent was signed on April, 16th 2002, entitled "Municipalisation of Alternative Socio-Educational Sentences: A Proposal for the City of Sao Paulo." This memorandum was signed by the UNICEF Representative in Brazil, the President of FEBEM, the Secretary of Social Assistance of the Municipality of Sao Paulo, the Joint Secretary of Youth, Sports and Recreation of the Municipality of Sao Paulo, the President of the Municipal Council on Children and the Adolescent of the City of Sao Paulo, the Public Policy Manager of the Abrinq Foundation for the Rights of Children, the Area Manager for Children and Adolescence of ILANUD and the Representative of Civil Organisations. The signed Protocol established a formal commitment on the part of government institutions to establish the proposed municipal system of alternative sanctions and to articulate effective public policies in accordance with the parameters set out in the proposal presented in 2001.

Following the establishment of the Protocol, the Mayor's Office designated the Secretary of Social Welfare as the co-ordinator for the municipalisation project. The project objective was to define in a participatory manner, together with civil society and other public and private agencies, the best way to articulate actions necessary to implement the municipalisation project throughout the entire city.

It should also be noted that FEBEM, in its capacity as a state agency, was accustomed to delegating much of the responsibility for alternative sanctioning to civil organisations which were generally closer to the accused adolescent and seen as a more efficient avenue for disposition of referred cases. However, this practise of delegation to civil associations by agreement, as well as the direct application of alternative measures sometimes carried out by FEBEM itself, was not only inadequate but also failed to meet the requirements of Article 88 of the ECA.

Municipalisation involves transferring socio-educational sanctioning to the Mayor's Office, within the framework of a joint public policy activity, which includes civil organisations, government and legal agencies related to the matter, along with adolescents and their families. The objective is to bring together in a coherent fashion the diverse activities of the civil organisation, reorganising them and providing a wider political vision under the supervision of the Secretary of Social Welfare.

All the participants in the project are working together to create a common set of criteria, and have worked to establish a more co-ordinated relationships between public and private institutions which provide a steady follow-up to adolescents and their social environment. The ultimate beneficiaries of this public policy will be the adolescents ordered to comply with a socio-educational sanction, as well as those whose rights are being violated, or run the risk of having their rights violated, and who need the support of the State.

Apart from the agreements between FEBEM and civil organisations for the application of alternative socio-educational measures, the Social Welfare Secretariat of the City of Sao Paulo has signed its own agreements with civil organisations to develop systems of protection for children and adolescents. One of the objectives of municipalisation is to co-ordinate these protection efforts and to create a comprehensive, integrated service for adolescents so that they are never left without protection. This is something which also requires the integration of prevention, protection, and reintegration policies along with continuous follow-up of adolescents in each community, all with the aim of providing an environment

within which they will be continually protected.

One of the most significant benefits of this project was the collaboration between both public and private agencies in the municipalisation of public policy. This collaboration has been particularly valuable to civil organisations, whose participation in the meetings called forth by the Mayor's Office was fully accepted. The following points were discussed and defined during these meetings:

a. The common criteria that should govern the work of all involved institutions for developing protective and socio-educational measures for adolescents.
b. The socio-educational methodology which should be used by these institutions.
c. The management model for the municipalisation project, that is to say, the model of how it is going to operate.
d. The analysis of studies carried out to determine the range of resources existing within the civil organisations and the needs and experiences of Sao Paulo's adolescents.
e. The analysis of the criteria for monitoring and evaluation of the socio-educational measures.

It is important to provide a clear explanation of the management or operational model of the municipalised project as this is one of the keys to its success. The model defines three focal components that operate simultaneously. The first consists of a multidisciplinary team that serves to provide guidance to the adolescent, made up of people from the communities who are close to local adolescents and know their environment firsthand. These individuals are well-positioned to provide support and guidance and are seen as a source of help and as people that adolescents can trust. The second focal component consists of the professionals who will directly provide services according to each child's needs. These services could include, among others, legal advice, educational support, and psychological, cultural or recreational services. The multidisciplinary team has the option of referring adolescents to these professionals as required. It is in this second focalised area of the model where the direct implementation of the socio-educational measures takes place. The third focal component of this municipalised model consists of the entire range of available public services, including public health, education, and sports services as well as others. None of the three focalised areas can be disconnected since the objective of the socio-educational sanction is to establish a support network for the adolescent through which the adolescent can receive continuous help, this rather than creating a single point of service. In this way, solutions that meet the needs of adolescents can be defined in a co-ordinated way and they can receive attention at each point of contact within the network. The methodology used by this multi-pronged model draws on the successful experiences of the Centres for the Defence of Children and Adolescents (CEDECA).[36] The civil organisations also use recreational techniques, such as football, music or art, to stimulate and attract the attention of the adolescent, this while at the same time identifying weaknesses and needs in a more entertaining manner.

Once the management model was set up, presentation materials were prepared and shared with the 31 regions making up the municipality. As part of the co-ordination

[36] The CEDECA, or Centres for the Defence of Children and Adolescents, are civil organisations which follow common guidelines based on their view of children as having human rights, using methods which may differ, but which have the common objective of valuing the rights of children and adolescents in every case. In Brazil, there is a national network of CEDECA Centres which meet periodically.

and support provided by the Social Welfare Secretariat for the implementation of the Municipalisation project in each region, a geographical reference system was initiated to facilitate the identification and location of the nearest and most appropriate service centres for each adolescent.

Each municipal region discussed their respective specific social needs, the possibilities offered by implementing this management model, and how to put it into practice. Once these points were defined, a seminar was held in order for each region to share their conclusions. Also present at the seminar was a group of consultants from the Mayor's Office, together with other organisations such as UNICEF. Subsequently, a fourth seminar was slated to take place during which the regions will share best practice methodologies for working with adolescents, possibilities for the application of the management model and other support that could improve the Municipalisation project.

It is from these discussions that the parameters and indicators for future public policy will arise, enabling the Mayor's Office to contract the services of private institutions capable of applying these alternative measures of protection and socio-educational sanctions.

The difficulties encountered by the Mayor's Office during this municipalisation process can be divided into three main categories:

1. Difficulties associated with coming to agreement on common criteria for methodology and management, given that various public and private institutions have very different points of view. Even though they share the same common baseline in the Constitution, the ECA and the Convention on the Rights of the Child, there is plenty of room for disparity in the criteria deemed most adequate. That being said, considerable headway has been made and a huge amount of work that as gone into creating an environment for dialogue and the continuous search for consensus has resulted in a concrete definition of common parameters and indicators.
2. A lack of co-ordination between government agencies. This problem has been solved through constant dialogue and persistence in keeping the channels of communication open. All issues have been considered jointly, thereby creating a high degree of transparency and clarity in the process for all involved.
3. Resistance to change in some of the regions, particularly since this kind of work with adolescents had not been previously performed. Once again, meeting together, dialogue and persistence have all been instrumental in the effort to surmount this obstacle.

The Mayor's Office and civil organisations consider UNICEF's participation in the whole process to have been critical in stimulating dialogue, promoting follow-up, serving as an advisory agency, and facilitating dialogue and concerted actions. UNICEF also contributed to several studies that helped gather the information needed to successfully implement the project. The first study was carried out in collaboration with ILANUD and addressed methods, principles and tools used by the civil agencies that were managing the initial use of alternative, socio-educational sanctions under contract by FEBEM. This study identified the organisations engaged in this type of activity and helped them improve their own methodologies. A second study focused on the viewpoint of adolescents who had completed a socio-educational sanction, their experiences, both positive and negative, including those programmes that worked for them and those that had not. To

ensure the effectiveness of the whole process of municipalisation, UNICEF has subsequently funded research into ways of systematising, monitoring and evaluating socio-educational measures, with the objective of providing tools to enable follow up.

The Mayor's Office has demonstrated its serious commitment to the whole project, evidenced by its supplying of all the necessary human and financial resources, and by the speed with which the processes have been completed. By the end of 2003, the management model has been slated to be put into full operation, that is to say, all elements of the project were implemented in both the public and private sectors for three regions of the municipality. These three regions were Sapopemba, Brasilandia and Cidade Ademar, chosen because they have the highest number of adolescents under non-custodial socio-educational sentences.

In parallel, UNICEF has supported other types of activities linked to alternative, socio-educational sanctions. Such activities have also contributed to the identification of best practices in this field and UNICEF is convinced of the importance in recognising and sharing the contribution of such experiences. It was precisely with this objective in mind that a competition known as "The Socio-Educational Prize" had been established in August 1998, sponsored by ILANUD, UNICEF, and two other civil organisations, ANDI (News Agency on the Rights of Children) and the Educar DPaschoal Foundation. The competition rewards best practices in three categories: in Brazilian juvenile justice (which includes, among others, lawyers, judges and magistrates); in the implementation of socio-educational programmes; and for valuable research in the field of socio-educational activities. The competition has now been held various times and the criteria for judging are based on the key provisions of the Convention on the Rights of the Child and the ECA, i.e., active participation of the family; community support and participation in the judicial process; a strong focus on the adolescent being held responsible to society for his actions; priority on alternative sanctions as opposed to the deprivation of liberty; and the possibilities for replicating and sustaining the project. This prize has served as a useful tool in raising the profile of socio-educational sanctions and in encouraging the legal system to shift away from the deprivation of liberty in favour of adopting these best practices.

Some civil organisations have been successful in their work with adolescents, as shown by improvements in recidivism rates (12-13%, compared to 20% in general), and the high number of adolescents helped. For example, CEDECA in Interlagos administers alternative socio-educational sanctions for an average of 700 adolescents each year. CEDECA in Sapopemba (a winner of the Socio-Educational Prize, 2nd cycle) works in a region with a high rate of violence and 300,000 inhabitants and has experienced a notable success in its programming. Both organisations use techniques that are attractive to adolescents, based on play, artistic expression and active family and community participation as well as psychological and educational services. The Municipalisation project also facilitates the transfer of these successful experiences so that they can be applied to all adolescents throughout the entire municipality. The municipal approach favours a structured implementation of alternative practices as part of a pre-defined public policy that can transcend the once isolated efforts that invariably remained confined to the goodwill of those involved and subject to the sporadic availability of private financial resources.

It is also worth noting that these civil organisations have constantly struggled to protect the rights of children and adolescents. They are organisations that

have spoken out against injustice and the violation of the rights of adolescents.

This kind of commitment and the active role played by civil society has helped spawn the creation of other organisations like the association of mothers of imprisoned adolescents (AMAR), the winner of the First Socio-Educational Prize, recognised for playing an important role in helping to address the serious rights violations of adolescents that were taking place in the prisons of Sao Paulo. AMAR also made important contributions to the citizens of Sao Paulo by providing emotional, psychological and legal support for mothers of affected children.

In general, the civil organisations in Sao Paulo have shown an enormous commitment to working to ensure nationwide compliance with the ECA. These efforts, supported by international agencies and openly accepted by the Mayor's Office, have made it possible for this immense city to embark on a comprehensive municipalisation project that can eventually satisfy the provisions now established by Brazilian law.

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Premios Iberoamericanos de Comunicación 2003

UNICEF - TACRO/César Villar2003

SUPERVISED PROBATION IN GUATEMALA

Background

Guatemala is a country with a population of over 11 million, more than half of which are under the age of 18, and 62% of the total belong to indigenous communities.[37] It has a land area that encompasses 107,000 Km2.

Guatemala has endured more than 30 years of civil war which finally ended in 1996. Its Constitution dates from 1985. In 1990, Guatemala ratified the Convention on the Rights of the Child (CRC). In the following year, work began on reforming the Code of Minors which had been in effect since 1979 so that it could adequately reflect the provisions of the newly ratified CRC.[38] After many changes, and after presenting various drafts to three different legislatures, the Children and Adolescents Code was finally published in the Diario Oficial (Official Gazette) on 29 September 1996, the text of which incorporated the contents of the CRC into a national law. The law was to enter into force in one year of its passage so as to allow time for the new changes to be institutionally implemented. This implementation period was unfortunately exploited by various interests on the part of those not in agreement with the law, and in the end, they managed to prevent the law from being fully enacted. Fortunately, however, we have recently witnessed approval of a new Law for Integral Protection of Children and Adolescents, which although it contains some changes from the 1996 version, effectively incorporates the spirit and principles of the CRC. This most recent law was published in the Diario Oficial on 18 July 2003 and became effective the following day.

During the vacatio legis[39] which followed the approval of the Code of Children and Young People in 1996, agencies such as ILANUD, the European Union and UNICEF collaborated with various government institutions in order to align judicial and government procedures with the newly approved law slated to be put into effect. During this period, the new Public Defender's Office was created, and training was organised for the new public defenders in the professional requirements of the CRC and the recently approved Children and Adolescent's Code. Even though the law did not became effective in 1997 as planned, the process of institutional change had essentially begun in 1996, and from that year forward, government and legal institutions started to familiarise themselves with the new principles and began to modify their procedures.

As part of the process of institutional re-alignment, under the terms of an agreement signed with the Guatemalan Supreme Court of Justice in April, 2000, UNICEF provided technical support, consultancy and training for the legal

[37] According to the 2002 census prepared by the National Institute of Statistics, the population for that year was 11,237,196 of which 6,097,506 were under the age of 18, equivalent to approximately 52% of the total population.
[38] In order to more clearly understand the process of incorporating the provisions of the Convention on the Rights of the Child into legislation in Guatemala, it is worth reading the article written by Ana Raquel Tobar and Marilys Barrientos de Estrada (current Secretary of Social Welfare in Guatemala) entitled "Comentario al Proceso de Reforma Legislativa en Guatemala" (Commentary on the Legislative Reform Process in Guatemala), in García Méndez, Emilio and Beloff, Mary, Infancia, Ley y Democracia (Childhood, Law and Democracy). Ed. Temis. Santa Fe de Bogotá & Buenos Aires, 1999.
[39] Vacatio legis is a period provided for in the law in order to carry out any institutional changes needed for the law to be applied properly. During this period, the law is not yet in force but preparations are being made so that it can come into full effect at the end of the period. In the case of Guatemala, a period of one year vacatio legis was established, but by using a variety of legal recourses, the period was prolonged indefinitely until the impasse was resolved by the approval of a new law. The Law for the Integral Protection of Children and Adolescents approved on 15 July 2003 entered into force the following day.

sector. UNICEF's support during these years was key to disseminating the CRC guidelines to judges, prosecutors, public defenders, officials of the Public Prosecutor's Office and the police, and the guidelines for the creation of a separate justice system for adolescents in conflict with the law. The Children and Adolescents Code which was approved, but not yet effective as mentioned earlier, established a completely new juvenile justice system for those accused of breaking the law. For this reason, training was aimed at teaching justice department professionals how to operate under the new regime, and the significance and consequences of viewing adolescents as the subjects of legal rights and guarantees. As a result of the training given and the meetings held with judicial authorities, a document was signed by UNICEF and Guatemalan criminal justice professionals, laying out the structure of the new juvenile justice system and clearly recognising the rights and guarantees contained in the CRC and the Children and Adolescents Code (the latter not yet in force). This type of document was unprecedented in the country an indeed, the pending system of juvenile justice was now the only branch of the Guatemalan justice system that was instrumentalised in this manner. As such, this document was used as a tool for updating judges as well as offering them a practical guide during the period pending the law's entry into force. The achievements, both of UNICEF and of the judicial authorities in applying the principles of the CRC and international norms in the absence of a national law formally governing these issues, based instead almost exclusively upon the Guatemalan Constitution and the principle of pre-eminence of international laws over national laws, deserves considerable praise.

In 2001, UNICEF signed an agreement with the Social Welfare Secretariat that according to the law was given legal responsibility for monitoring sanctions or measures imposed on adolescents by judges. The agreement had the objective of providing judges with alternatives to the deprivation of liberty, and thereby to the greatest extent possible, eliminating the incarceration of adolescents. UNICEF also started to provide additional support to the established probation programme. The probation programme had been in operation for some time but at this juncture was not achieving its objectives not was it even working effectively. In 2003, however, the probation programme produced positive results and that is why it has earned a place in this study of good practices.

On the other hand, it is important to realise that UNICEF did not abandon its work in the area of dissemination and training for institutions on matters relating to the rights of children. These activities were included in the 2002-2006 Co-operation Plan under the "The Rule of Law and Citizen Participation" programme. This programme had among its aims the promotion of public policies and legislative reforms consistent with the CRC. Through this and previous Co-operation Plans, UNICEF helped incorporate children's rights into Guatemalan legislation. It should be noted, however, that the task of drafting a new law began eleven years after the CRC was approved during which time the circumstances in Guatemala changed enormously. These factors, coupled with other problems such as illegal international adoptions and a ferociously aggressive campaign against the new law, all served to reinforce the importance of UNICEF's support in legislative and public policy matters. The importance of this programming was placed into evidence with the passing of the new child protection law which opened up a whole new period of institutional reform.

The Reform of the Probation Programme

Although a Probation Programme was already in existence in Guatemala, UNICEF and the Social Welfare Secretariat decided to modify the programme in

order to achieve more effective results for adolescents by demonstrating the beneficial effects of alternative forms of sanctioning. Up to then, the institutional inertia that existed prior to the CRC coalesced with a general lack of alternatives, leaving judges to hand down sentences which usually included incarceration. The old Code of Minors did allow for alternatives to imprisonment, but in practice, the only alternatives that existed were those which operated within the Social Welfare Secretariat. As indicated earlier, these alternatives were not producing good results.

The success of UNICEF programmes becomes demonstrated precisely at the moment when its help can be withdrawn, implying that a programme has achieved its own autonomy and sustainability. In this case, UNICEF provided strong support for the probation reform programme by funding the Social Welfare Secretariat's project from its inception, ensuring that it had the people and materials necessary for its implementation. UNICEF has also looked to the private sector for those who were inclined to help adolescents, approaching schools, health centres and NGOs, and in the case of companies, seeking their co-operation in providing employment to adolescents who had been accused of breaking the law. Overcoming the natural resistance of companies proved difficult at first, but little by little thanks to the energetic and persistent efforts of the Secretariat in continuing with this search, and through efforts by UNICEF to mediate, today there is a network in place of 40 collaborators. Once the programme had obtained the necessary people and materials, UNICEF's continued to collaborate on the project by providing advice and training to the programme's operational personnel, i.e., social workers, psychologists and other members of the Secretariat team that were similarly involved. Presently, UNICEF helps provides follow up to young people who have completed the Probation Programme in order to evaluate its results, and it also provides occasional technical support and general advice. This notwithstanding, the reformed Probation Programme has been converted into a programme under the Social Welfare Secretariat that manages and finances the programme without external support.

The programme team is made up of a co-ordinator, two social workers, a psychologist and five social work students from the University of San Carlos. This public university in Guatemala agreed to make graduate students in Social Work continually available to the Social Welfare Secretariat. The students remain in the programme for six months, overlapping for one month with those that will replace them, and the time spent in the programme helps provides them with their own professional development. Importantly, this agreement also provides important economic relief for the Social Welfare Secretariat by continually providing an inflow of specialised personnel to the Secretariat.

Adolescents placed in the Probation Programme vary in age from 13 to 18 years.[40] These adolescents are sentenced by a judge, who simply sets the period of time during which the adolescent is to be placed on probation. It is up to the Social Welfare Secretariat, acting through the Probation Programme, to determine how the sentence will be served and to carry it out. Adolescents may also be referred following a review of a previous sentence that involved deprivation of liberty. The review is based on, among other things, the adolescent's good behaviour, the profile of the programme, and the

[40] The Children and Adolescents Code defined what is a child and what is an adolescent as a function of their age, with children being defined as those under the age of 13, while are those who over 13 but have not yet reached the age of 18. The Code excluded children from the system of criminal responsibility. Although the code never actually became effective, as a result of the training given, this concept was introduced into practice by judges, and the age limits mentioned above have generally been respected.

perceived possibility of rehabilitation. If the judge decides to modify the sanction, the adolescent is released from prison and admitted into the Probation Programme.

When the adolescent arrives at the Social Welfare Secretariat to be admitted to the programme, he or she is received by the team, and receives an explanation of what the programme involves. The adolescent must be accompanied by an adult who will be responsible for ensuring the adolescent's attendance in the programme, and compliance with its requirements. This responsible person is designated by the judge and normally it is the father, mother, teacher or another family member. At this stage, the adolescent talks to a psychologist, who then, together with the responsible adult, speaks with the social worker. These interviews are used to get to know the adolescent's profile, his personality, family circumstances and his educational and professional development needs. A plan is then worked out based on all of the above. The plan seeks to meet the needs of the adolescent, without putting too much emphasis on the crime committed, creating a general roadmap for reincorporation, where possible, into school or a job if older than 14 years, along with any indicated courses of therapy. Once the plan is completed it is presented to the judge for approval, and once that approval is obtained, the programme starts.

One positive aspect is that the backgrounds of participants are very diverse. The programme admits adolescents with or without problems of drug addiction as well as youthful offenders who have committed different kinds of crimes. Although it is required that persons admitted go through the programme only once, those who are repeat offenders following the application of other sanctions are not excluded. The only basic requirement to being admitted is to have some kind of support outside the programme, either by a family member or a close friend. These people form part of the programme itself, working with the adolescent, encouraging them to study and attend therapy sessions, committing to meetings with them every two weeks.

During interviews with the professionals in the team, they indicated that their objective in working with the adolescents was to identify the causes that lead to the commission of a crime, to work with adolescents on a psychological level, and to offer educational or employment opportunities that will allow the adolescents to re-enter the home and larger society as a productive and socially responsible being. Regarding the psychological aspect, the professionals do not pay much attention to the crime that was committed because according to them, the crime will have already been discussed numerous times since the time that the adolescent was first arrested. The professionals therefore prefer to leave the crime aside and to concentrate on making progress towards the emotional healing of the adolescent.

When they are re-admitted to school, neither the teachers nor the other students are told that they are under sanction, so that they will not be either discriminated against or over-protected by the teachers. The social workers provide follow-up, including monitoring of their grades and class attendance. In the event that they are employed by one of the companies associated with the programme, all involved have to comply with the same work regime as any other Guatemalan youth who is older than 14 but under the age of 18, receiving the minimum wage and enjoying the same number of holidays and social security protection. If any company does not comply with these conditions, the Social Welfare Secretariat, which is responsible for monitoring, will encourage the owner of the business to comply. It can be said that the best interests of adolescents are being put first in this programme, and that can be considered the main achievement of this experience. A reformed probationary

practice has been created where it is possible to apply the indicated sanction without infringing on any of the adolescent's other basic rights.

It is also interesting to observe that some of the co-operating business proprietors begin to take an interest in these adolescents, getting to know them and their circumstances, and in some cases even offering them training and employment after they have completed their sanctions. This is an important achievement, bearing in mind the difficulties often experienced in getting society and the private sector to take a genuine interest in re-integrating adolescents who have been in conflict with the law. This programme also complies with the Riyadh Guidelines through its preventive character, while encouraging a link with the private sector in the execution of these programmes.

With respect to the judges that handle the cases, it must be acknowledged that although they are obliged under the law to review the periodic progress reports that the probation case team prepares concerning the advances and difficulties of the adolescent, this does not always happen. While some judges are very committed to providing careful follow-up, others simply are not. In order to overcome this obstacle, and the fact that many judges effectively do not know that this type of alternative sentence exists, the Social Welfare Secretariat team members meet periodically with judges, informing them about the Probation Programme and the favourable results being obtained. Even though this information was already included in the training given to the judicial authorities, in many instances, the lack of co-ordination between institutions has led to a knowledge gap regarding the programme.

The results of this reformed probationary process speak for themselves. During 2001, the year that the programme started, 89 adolescents went through the programme. In 2002, this number increased to 112 and in the first half of 2003, a total of 103 adolescents participated in the programme. Only two adolescents, out of the 304 who participated in the first two and a half years of its operation, failed to attend the programmed activities, and two others were observed to have committed crimes during the same period. Some of the participants displayed positive changes in their behaviour during the six months that they spent in the Probation Programme, without showing any extra need for serving in the programme prior to full reintegration into society.

Due to the difficulty of obtaining statistics on juvenile justice in Guatemala, we do not know the total number of adolescents who have re-offended after the programme.[41] Nevertheless, an indication of the programme's success and of the reduction in the risk of recidivism can be seen by the fact that many of the adolescents completing the programme choose to remain in work, and some continue to attend therapy sessions. The Social Welfare Secretariat does not object when this happens, and if possible, continues to welcome the adolescents and their family members without charge. We interviewed one young man, now an adult, who after having spent six months in the Probation Programme, was subsequently hired by a detention centre for adolescents who have been ordered detained as precautionary measure, this in order to work with the incarcerated adolescents.

The statements that we collected speak volumes. Young people describe their situation before joining the Probation Programme, using expressions such as "nobody, but nobody would have given five cents for me…, I lived in the shadows…., I was involved in the very worst of the worst," and so on. Meanwhile, they describe their situations after the

[41] The courts do not have any effective systems for collecting and analysing this kind of data.

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programme by saying things like "Now I am going forward…, I'm no longer involved in that gang scene…, I have given up drugs and now I am going back to school…" Their families similarly indicate that they have received a great deal of support from the programme. Some families attend programme meetings from time to time, go on camping trips and attend therapy sessions, sometimes even after the adolescent has completed their time in the programme.

While recognizing the programme's success on the one hand, but also remaining conscious of the need to create even more alternatives to incarceration, the Social Welfare Secretariat is looking for ways to start a community services programme. This is presently in its initial phase of setting up infrastructure and training the people who will be in charge of the new programme. In order for this alternative new paradigm to be successful, the Social Welfare Secretariat relies heavily on the knowledge and experience of the people involved in the Probation Programme.

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TOCUMEN REHABILITATION CENTRE, PANAMA

Background

Panama became an independent country in 1903 after separation from Columbia. Given its key location at the intersection of Central and South America, seated on the isthmus that connects the Atlantic and Pacific Oceans and providing the site for the inter-oceanic canal, Panama is today a commercially strategic country that sustains significant flows of financial and human capital. The country has a population of over 3 million, more than 1 million of which (38.51%) are children or adolescents.[42]

After 21 years of military government, a period of democracy began in 1990 which probably due to its relative newness has not yet fully permeated all Panamanian social institutions and levels of society. A good case in point could be made around all of the difficulties that have been experienced by the Law on the Special Regime of Criminal Responsibility for Adolescents (Law 40). Beyond the difficulties in bringing the law about, as well as in developing it, a reform of the law was made even before all of the organisations and institutions necessary to implement it could be created.

Panama ratified the Convention on the Rights of the Child (CRC) on 6 November 1990, and by the end of 1994, had approved the Family Code. The Family Code was discussed for some 10 years prior to its approval and follows criteria not based on the CRC.

Nevertheless, the Code of the Family did opt to include some of the principles of the CRC, without fully embracing it, and did not manage to depart from its essential tutelary character. Shortly after the Family Code was passed, pressure mounted to reform it, including specialising it in the issues of children, and thereby de-linking it from those items contained in the code having to do with women and the family.

In 1997, a Study Commission was set up for the specific purpose of drafting an integrated proposal of a Law for Children and Adolescents. The Commission faced significant pressure from the larger Panamanian society, and from the Transport Association in particular, in favour of toughening the criminal system for adolescents and instituting more severe penalties to be applied at earlier ages. The Commission was asked to quickly produce a rational solution to the problems of public safety and juvenile delinquency. This resulted in the Commission prioritising public concerns, producing a draft law confined to the issues of criminal responsibility and therefore separate from a subsequent law which would appear later where the rest of the themes related to the rights of children would be addressed.[43]

Beginning with the 1992-1996 Plan of Co-operation, UNICEF has supported the institutions and legislative reforms needed to bring Panamanian laws in line with the CRC, although the actual tasks undertaken have differed depending on

42 According to the estimates of the General Comptroller of the Republic for the year 2003, the number of inhabitants is 3,116,277 of which 1,200,374 are adolescents.

43 "Comentario al Proceso de Reforma legislativa en Panamá" (Commentary on the Process of Legislative Reform in Panama), by Esmeralda Arosemena de Troitiño in. García Méndez, Emilio and Beloff, Mary, Infancia, Ley y Democracia (Childhood, Law and Democracy) Ed. Temis. Santa Fe de Bogotá, Buenos Aires, 1999.

the given moment and situation at hand. The 1992-1996 Co-operation Plan provided for the dissemination and promotion of the CRC. In the subsequent plan designed for the period 1997-2001, UNICEF joined the commission which was responsible for drafting the Law for Children and Adolescents, and also provided support to the group drafting the Law on the Special Regime of Criminal Responsibility for Adolescents (also known as Law 40), which was approved on 26 August 1999. During the 1997-2001 period, UNICEF also started training programmes and began to share information with relevant institutions about the recently approved law, while at the same time generating a significant number of useful materials and information.

Under the 2002-2006 Co-operation Plan, UNICEF has been advising Panama on the application and institutional development of the Law, and has started training the new professionals (judges, magistrates, prosecutors and public defenders) who are working in the juvenile criminal justice system. UNICEF also undertook an in-depth study of Law 40 and its budgetary and institutional implications, in order to develop a strategy for implementing said law. Specific courses specialised in this field have been held each year for the new legal actors involved, including the national police. UNICEF also participated in the controversial negotiations, discussions and debates which took place both prior to the approval of the law, and subsequently. Prior to the enactment of Law 40, UNICEF organised workshops, seminars and discussion forums with members of congress, personnel from the legal authorities, universities and members of civil society, and invited prestigious international experts in the field of juvenile criminal justice to come to Panama, as well as provided support and follow-up to the activity and programming of juvenile correctional centres.

One of the major problems that hindered the implementation process of Law 40, was that although the law was approved, it did not allocate sufficient budget to actually create the new justice system contemplated by the same law. Faced with this difficulty, the Supreme Court issued a regulation that permitted a delay in making appointments to the new positions created by the new administrative agencies.
On the basis of this request, Congress approved a law in 2000 that allowed these appointments to be delayed until January 2002. Yet, when this date arrived, once again, the President of the Supreme Court had still not been given the funds necessary to implement the changes, so he applied for an extraordinary credit from the national budget enabling him to comply with the requirements of the law. His request was approved in August, 2002. As a consequence, despite the fact that Law 40 was passed in 1999, the juvenile prosecutors in the capital city were not appointed until January 2003, and the appointment of the national enforcing judge, together with some criminal judges for adolescents, were all delayed until August 1st of 2003. The specialised juvenile public defenders for adolescents were not appointed until the end of the August 2003.

Fortunately, the delay in setting up the new institutions did not fully thwart the implementation of this law, and its provisions have been applied by the Child and Adolescent Judges. These judges, although their name had been changed from Tutelary Judges, nevertheless continued to receive all kinds of cases concerning children, irrespective of whether the children needed protection or had been accused of committing a crime, thus requiring the application of the Law on the Special Regime of Criminal Responsibility for Adolescents.
These Judges faced a difficult task because they were being forced to operate under two very different branches of laws, i.e.,

civil and criminal law, and thus could not count on the other legal instruments provided for by the law such as specialised prosecutors and defenders, or the newly named enforcing judge.

The delay in making appointments coupled with the combined functions of the Child and Adolescent Judges created a large backlog of pending cases, and put a large quantity of legal processes into arrears. Today, the recently appointed Adolescent Criminal Courts are facing the challenge of starting out with a very large number of cases to deal with.

As soon as Law 40 was passed, it encountered tremendous resistance on the part of Panamanian society due to the traditional tutelary focus of the previous system as well as the sensational way that the subject of adolescents in conflict with the law was being dealt with by the media. In the minds of parents and teachers, recognising the rights of adolescents simply acts to diminish their own authority and many felt that it was necessary to be stricter with adolescents. For society in general, adolescents represented a significant risk to the peaceful conduct and security of the streets. Some professional and business associations banded together to work for tougher sanctions and fewer due process protections for adolescents. For this reason, an additional law modifying various articles of the still to be fully implemented Law on the Special Regime of Criminal Responsibility for Adolescents was approved on 6 June 2003, aimed at making the law tougher and removing some of its due process protections. These changes occurred, despite the fact that Law 40 had not yet had the opportunity to show any results. It is worth mentioning that even though there was significant pressure both from society as a whole, including from business associations, there also were sectors of society which spoke out against the reforms and managed, with the support of UNICEF, to substantially limit the overall extent of reforms made by the Congress.

In order to overcome stiff resistance from a large part of Panamanian society, and aware of the important role played by the media in this regard, UNICEF established a strategic alliance with the National College of Journalists, to which 90% of the country's journalists belong. UNICEF provided them with quantifiable and objective, factual information on juvenile delinquency as well as training courses on the CRC and on the management of this subject in the media. Through this programme, UNICEF successfully transformed key members of the media into allies, sharing information prepared by UNICEF, and organizing debates and programmes addressing this problem, with an objective and respectful focus on the rights of adolescents.

Tocumen Rehabilitation Centre, Panama

In 2001, an agreement was signed with the Institute for Interdisciplinary Studies based on a study carried out by UNICEF that defined a strategy for institutional strengthening in preparation for the implementation of Law 40. The study established the structural and human resources needs of the various departments which would comprise the new justice system. Under the 2001 agreement, a work plan was prepared to help guide the re-organisation of the Institute for Interdisciplinary Studies which falls under the Ministry of Youth, the Woman, Children and the Family (MINJUMNFA).

The Institute is designated by Law 40 to be the agency responsible for carrying out sanctions, including the deprivation

of liberty as well as alternative sanctions. In this section, we will briefly examine the Tocumen Juvenile Correctional Centre in Tocumen, Panama. This facility is a place where young people serve judicially imposed sentences. Although adolescents of both sexes serve sentences at the Centre, our analysis focuses on the area dedicated to young men, given that the section dedicated to females remains behind in various respects.

Article 37 of the CRC provides for the use of detention only as a last resort, and for the shortest period possible. This is because incarceration is considered to be a restriction of a fundamental right that in the case of adolescents as persons still in formation results in harm to their unfinished development. In this sense, it is essential to be cautious in considering these measures as a "good practice" given that in every case, the best experiences are those which produce positive effects in an open, alternative setting.

Even though imprisonment is considered to be the sanction of last resort, it cannot be forgotten that some adolescents are deprived of their liberty, albeit as a last result, on account of the serious crimes they have committed and as provided for by law. For these adolescents for whom there is no other alternative to imprisonment, ways must be sought to avoid excessive restrictions on their freedom over and above those already imposed through incarceration. At the same time, individualised plans must be prepared with activities geared towards educating and re-integrating the offenders back into society. This was exactly what the Institute for Interdisciplinary Studies had in mind when they set out to define the policy for social re-integration of adolescents detained by sentencing centres, and more specifically, the Tocumen Centre.

When an adolescent enters the Tocumen Centre, a multidisciplinary team carries out a social, psychiatric and psychological evaluation and health check, in view of the sentence imposed by the judge and together with information obtained from interviews with the adolescent and members of his family, as well as from visits to the adolescent's community. Within three days, team members meet to draw up an individual action plan which satisfies the period of the sentence imposed by the judge. The activities must fit within the period of the sentence, as any extension of the sanction would violate the fixed term. The enforcement plan tries to embrace all areas of the adolescent's life (personal, educational, community, family) and sets out the activities which should be carried out during the sentence, with the objective of helping the adolescent to learn and become better socialised. The plans are very thorough as are the periodic reports sent to the judge concerning the way that the adolescent is developing.

The centre places special emphasis on providing adolescents with access to education in the grade which corresponds to their needs, as well as to providing any medical services which they may require. The adolescent may also stay with their family for a short time and take part in spiritual and religious activities as well as gain work experience and participate in sports and recreational activities. The centre tries to satisfy the adolescents right to education, health, family life, freedom of worship, access to work at an appropriate age, and recreation to the fullest extent possible.

Education is viewed by the centre to be fundamental to the development and reintegration of the young person. When the Ministry of Education cut the Tocumen Centre's budget in 2002, and stopped sending teachers to the centre,

despite the Ministry of Education's obligation to pay the teachers, the centre proceeded to pay the teachers directly. The centre also provides access to distance learning courses according to the young person's needs (for example, language courses, or specific courses on professional development) and constant encouragement is provided to the adolescents to help ensure that courses of study are followed. The centre also provides support for education at a post-secondary school level and will later help adolescents gain entry into university.

Within the centre, a reading club was organised which encouraged the exchange of books, both inside and outside the centre, comments, and debate. Through the club, young people are in contact from time to time with the Santa Maria La Antigua University, which initially only encouraged their students to visit the centre to give talks. Eventually, however, the young people at the centre began to visit the university and to make presentations themselves. Sometimes, the young people at the centre get the chance to meet writers and even to interview them in their homes or offices. This provides a powerful incentive to read and to take interest in new subjects and current events, which in turn opens their minds to other fields.

When the opportunity presents itself, activities outside the centre are undertaken. In 2001, the adolescents were volunteers at the World Youth Festival which was attended by 10,000 young people. They also helped out with various tasks, including accompanying the delegates and their assistants, preparing the meeting areas as well as attending the conference itself. Those attending the conference never knew that they were dealing with young people who were serving a sentence. The adolescents that we interviewed showed great satisfaction and enthusiasm for having taken part in this event.

Among the activities inside the centre are sports, religious and work activities. Some companies have indicated their willingness to collaborate with the centre by setting up places to work, such as mechanical work shops and chicken farms inside the centre's facilities. The centre also has a small garden which is used to cultivate crops. Work undertaken is paid for by the companies, and the income generated is managed by the centre, applied towards activities which directly benefit the young people, such as paying teachers, with the remainder going into an account opened for the adolescent that becomes available for their use upon release. The centre also encourages families to make a monthly deposit into this same account, which will be given to the adolescent when they leave the facility, but family matching payments have been hard to come by, due either to lack of interest on the part of the family or just a basic lack of economic resources. The Tocumen compound also has a gymnasium which is used for sports as well as an ecumenical chapel that the young people can attend regardless of their religion. Members of different religious denominations attend the centre in order to organise meetings, prayer groups and other similar activities.

Work with the family is an important aspect of a young person's social reintegration, and group therapy and talks are provided to the families to help them understand why the adolescent became involved in crime and the best ways to help him. It is not, however, always possible to have contact with families because the communities where the child's families live are often a long way from the centre, or the families may sometimes lack interest. Bearing this in mind, family members come out to the centre on a monthly basis at which time

they can eat together and participate in various activities, including attending talks together on subjects relating to reintegration. In between visits, the centre tries to ensure that families stay in touch, and efforts are always made to try to communicate to the family when any unusual occurrence or problem develops.

Here, a good recommendation could be that the interdisciplinary team visits the communities and works directly with the families, apart from the work carried out at the centre.

In accordance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, there is a complete separation between boys and girls, both in dormitories and in activities. Furthermore, the staff looking after the children are of the same gender as the adolescents they supervise. The female residents at the Tocumen Centre, however, do not enjoy the same wide range of activities as the boys, and are not separated into groups according to the reason for being there (e.g. as a precautionary measure or as a prison sentence, etc.).

In the part of the centre that we visited, the rooms occupied by the young people were spacious, clean and adequately ventilated. The internal walls were only half height, allowing easy visual and verbal contact with the other residents, and avoiding any sense of being shut in. The area available for each resident was sufficient to provide adequate conditions for the adolescents and for their development. Currently the Tocumen centre accommodates 32 males and 7 females.[44]

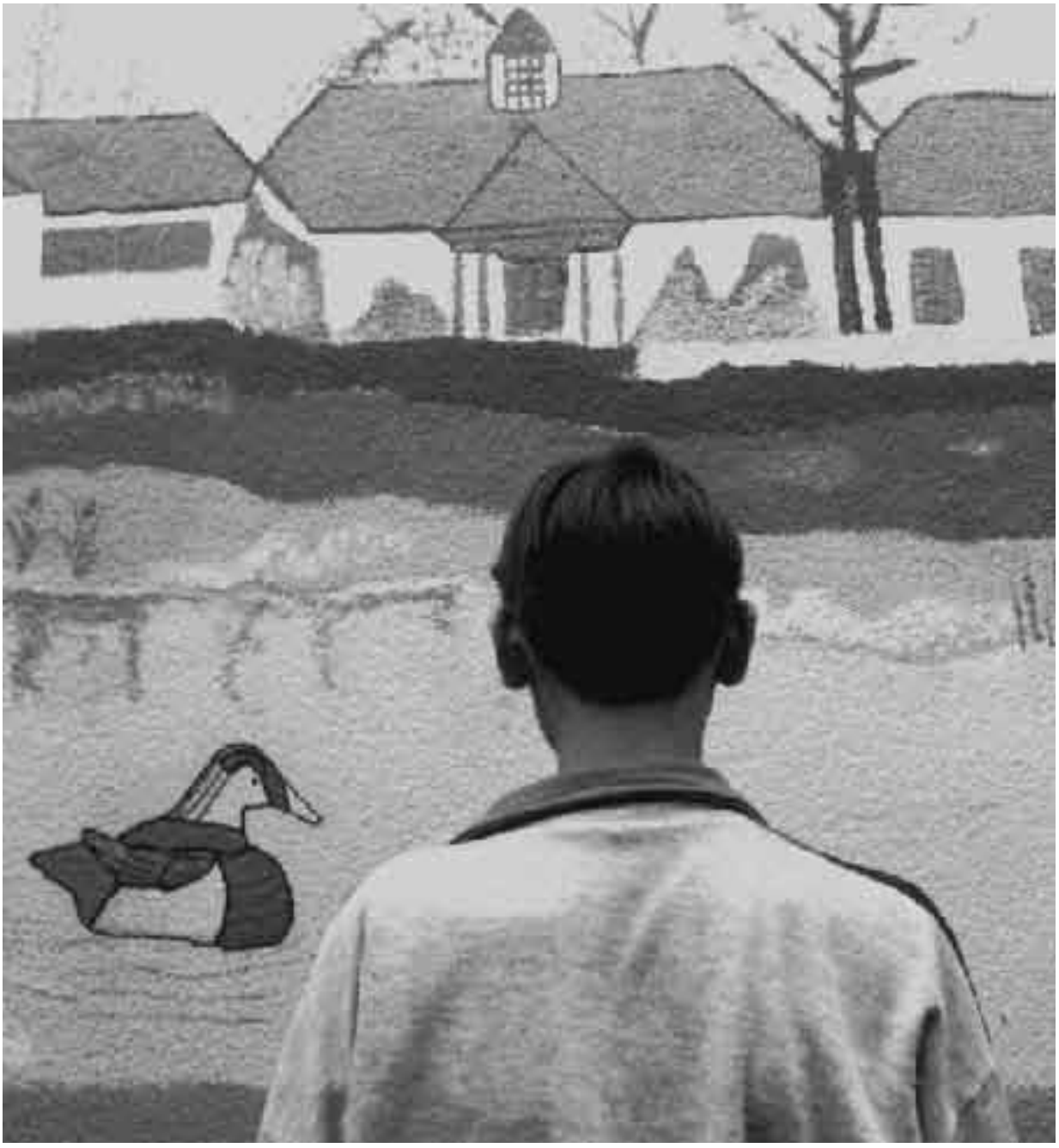
The personnel working at the centre have received training courses given by the judicial authorities in collaboration with UNICEF. The people at the Institute for Interdisciplinary Studies as well as the personnel at the centre are knowledgeable about the CRC and other international norms that govern prison conditions and the treatment of adolescents. The adolescents we interviewed mentioned that the centre's personnel were constantly encouraging them and remained in close contact with them. The adolescents also considered the staff to be trustworthy and helpful in resolving problems that the adolescents confronted before they started their sentences, such as, among other things, drug addiction, low self-esteem and having quit school.

Although there are no figures for reintegration or repeat offenders, you can get an indication from those interviewed of the efforts that the adolescents at the Tocumen centre are making on their own behalf. Many seem to have recognised the changes that they needed to make in their lives and the important tools that the adolescents acquired at the centre should enable them to continue progressing after their release. We also interviewed adolescents and their families who were subject to alternative sanctions, but also carried out under the auspices of the Institute for Interdisciplinary Studies. Once again, the commitment and quality of work undertaken with the young people was notable.

Beginning with the premise that the deprivation of liberty can never make a positive contribution to adolescent development, perhaps the main virtue of the Tocumen Centre stems from the attempts made by its staff to minimise the negative effects of incarceration on the adolescent. The staff of the centre look for external activities which enable the adolescent to enjoy their other rights, which include, among other things, the

[44] Report of the Institute for Interdisciplinary Studies to the Superior Court of Children and Adolescents, 4 August 2003.

right to education, health, family life, and sports. The centre also provides personnel who are trained in and committed to these rights, and who pay close attention to the adolescent's development. Notwithstanding the difficulties which have been encountered, such as shortages of financial and human resources, and some operational issues that could be improved upon, their work with imprisoned adolescents, with the objective of reintegrating them into society, has been outstanding and is producing satisfactory results.



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CONCLUSION

Effective implementation of the CRC requires complex changes both in the law and in institutional structures. However, of greatest importance is the need for everyone involved to view children as human beings with human rights and the capacity to demand that they be met. In addition to statutory changes that are necessary, countries also need to establish regulatory systems that address juvenile criminal responsibility in a manner in accordance with the CRC, and that include all the tools necessary for their application. Given that this is a continuous process, all the various countries of Latin America, and specifically those analysed in this document, are at different stages in this process of development.

These efforts grew out of initiatives which sometimes originated in civil organisations, such as in Sao Paulo and Chile, and in other instances, government agencies initiated the action such as in Guatemala and Panama. In Nicaragua and Costa Rica, it was the judicial authority itself that was the engine for change both in the system and in the establishment of the conditions required for it to function properly. Nevertheless, the common denominator in every case has been the level of goodwill and commitment that has been made for improving the conditions of adolescents who have committed criminal acts and for finding ways of supporting their social reintegration. As a rule, we have found that these actions have been taken by poorly paid public officials or by civil organisations, who have worked either without payment or for very little remuneration. Commendably, these individuals have not allowed the poor conditions that they operate under to at all diminish their interest in ensuring compliance with the rights of children and adolescents. Their actions on behalf of adolescents have often exposed them to much criticism, such as was the case with the legal defenders in Chile, or the judges in Nicaragua, given that in general, societies across the whole region question the need for a juvenile justice system.

In all the cases which we analysed, the people involved had an in-depth knowledge of the CRC, and promoted its application to the fullest possible extent. Another common factor in all of these situations is that the CRC was used as the basic framework for action, and adolescent human rights were at all times recognised. Finally, all of the programmes made it clear that not only do adolescents have responsibilities to society, but that society has the responsibility to recognise the rights of adolescents and to enforce due process guarantees.

Based on their knowledge of the CRC, the people and institutions profiled have sought to interpret the provisions of the CRC and have found ways to overcome the difficulties which they face while still keeping the best interest of the child foremost in their minds and working diligently to promote the entire range of adolescent rights. For example, neither scarcity of economic resources nor lack of alternatives have obstructed the use of alternative sanctions in Nicaragua. In the cases of Chile and Guatemala, ways have been found to apply the principles and guarantees within the procedures for establishing and carrying out sentences, even though the national laws did not recognise them, simply by applying the CRC. In Panama, ways have been found to reduce the negative impact of prison sentences by promoting outside activities, even though the adolescents have been deprived of their liberty. In Sao Paulo, civil organisations have used a right protected in the Statue for Children and Adolescents as a means of overcoming the state system's lack of effectiveness in administering penal sanctions, even

though the establishment of socio-educational sentencing at a municipal level has not yet been completed. In the case of Costa Rica, the number of adolescents in prison has been reduced, and the judges in Costa Rica work to ensure that prison is used as the last resource, even though the law gives judges a great deal of discretion to impose sentences of up to 15 years.

We cannot therefore say that deficiencies in economic resources, basic infrastructure, the level of training in some sectors, or the difficulties in enforcing laws which guarantee rights present insurmountable obstacles to implementing the provisions of the CRC. But we do have to recognise the enormous difficulties that have been encountered trying to implement the CRC, and we cannot give up the fight to overcome them. Notwithstanding the difficulties, we have been able to highlight a few examples in this study so as to demonstrate that respect for the rights of children and compliance with international commitments are not utopian dreams realisable only in wealthy countries. These dreams can be and are being realised through the commitment and energy of the people involved in each of the projects analysed.

The good practices we have looked at are being implemented in a permanent and sustainable way, notwithstanding the weakness or faults of each system. Even though these specialised criminal procedures are constantly questioned by society, and prove difficult to implement, they have achieved sufficient positive impact to assure their survival.

With a few specific exceptions, UNICEF's support in these countries has not consisted of direct financing of infrastructure or technical teams for the new institutions. UNICEF's approach has instead been to establish a culture of respect for the rights of the child in every social profession and sphere, thereby creating conditions which will support these kinds of practices in both the short and medium term, while also ensuring their long term viability. This means that that UNICEF has helped train the professionals responsible for the juvenile justice system, given direct advice on reform processes and specialised training programmes, as well as provided mechanisms for spreading a culture of respect for children's rights to other sectors by helping society understand their responsibilities towards young people.

One of UNICEF's strengths which was recognised many times in the interviews both with civil organisations and public institutions alike is its ability to respect the independence and individual responsibilities of each state agency and private institution. This has contributed to UNICEF's success as mediator and facilitator.

On some occasions, UNICEF has used its position as an international organisation to provide support to those who call for the provisions of the CRC to be complied with, and to ensure that these demands receive the consideration they deserve, reminding the authorities of their international and legal commitment to children and adolescents, while also recognizing each country's independence.

UNICEF does not take the lead in these movements, but instead provides support to leaders in each country. There have been specific sectors that have felt the need to begin the arduous process of establishing a separate juvenile justice system. These sectors may have been moved in part by the obligations set up by the CRC, but above all these pioneers have almost certainly been motivated by a serious commitment to the realisation of children's rights, and very specifically to the rights of adolescents in conflict with the law. UNICEF nurtures, encourages, feeds and promotes this type of activity, providing support in order to multiply their positive effects, but without at all diminishing the value of the people that actually make the changes happen.

APPENDIX
GENERAL GUIDELINES FOR INDIVIDUAL AND INSTITUTIONAL INTERVIEWS

Public Prosecutor's Office

1. Name and job title.
2. Role played in the project.
3. Type of contact with young people during criminal proceedings.
4. How long has the present law existed?
5. Do you consider this law to be a positive thing?
6. How many young people are referred to your office each year?
7. How many young people are remitted for trial? What alternative sanctions exist?
8. How long has this project been in existence?
9. How do the proceedings work? What are the various stages?
10. Is it an accusatory or inquisitorial system?
11. What legal arguments are used? (National, International, etc.).
12. How is the young person's right to a defence guaranteed?
13. What happens if they are from indigenous groups? Are there any special provisions?
14. What guarantees does the law provide?
15. Are the guarantees the same as the those for adults? Are there any additional ones?
16. Is there a limit to the use of prison as a preventive measure? What is it? Is it the same as provided for in the law?
17. Have you received any training? How and by whom was this done? What did you think of it?
18. Are you familiar with the CRC and the rules of the United Nations?
19. Are there prosecutors that specialise in children's matters?
20. What do you think of the project? Why?
21. Do you think things have changed? In what way?
22. Have you made any partnerships with any public or private sector organisation in order to secure additional assistance?
23. Do the families or the community participate in any way?
24. What do you do if the rights of children are violated?
25. What is your responsibility with respect to the existence of street children or the violation of children's rights? What do you do if the young person who enters the project has not committed a crime but is in need of the state's protection?
26. Are you connected with other institutions, NGOs or the private sector?
27. How much co-ordination is there between institutions?
28. What sort of attention is given to the family members?
29. Are young people listened to? How is their right to participate guaranteed?
30. Is there any communication between the young person and members of his family during the legal process?
31. How is the right to privacy guaranteed? (Media)
32. Is there anything lacking in the law in your opinion? Does anything prevent you from doing your job the way you would like to?
33. Do you think that the system is sustainable?

Public Defenders Office

1. Name and job title.
2. Role played in the project.
3. Contact with young people during the process.
4. How many young people do you defend each year?
5. How many young people are remitted for other measures?

6. Quantitative results of the project.
7. How long has the project been in operation?
8. How do the proceedings work? What are the various stages?
9. How long has the present law existed?
10. Do you consider the law to be a positive thing?
11. Is it an accusatory or inquisitorial system?
12. How is the young person's right to a defence guaranteed?
13. Does the family or the community participate at any point?
14. Have you received support from the public or private sector? Are there any partnerships?
15. What happens if they are from indigenous groups? Are there any special provisions?
16. What guarantees does the law contain?
17. Do the same guarantees apply to adults? Are there any additional ones?
18. Do you agree with this?
19. Is there a limit to the use of prison for preventive purposes? What is it? Is it in accordance with the law?
20. Have you received any training? How and by whom was this done? What did you think of it?
21. Are you familiar with the CRC and the rules of the United Nations?
22. What legal arguments are used in the defence?
23. Are there defenders specialised in children's matters?
24. What do you think of the project? Why?
25. Do you think things have changed?
26. What do you do when children's rights are violated?
27. What is your responsibility with respect to the existence of street children or the violation of children's rights? What do you do if the young person who enters the project has not committed a crime but is in need of the state's protection?
28. Are you connected with any other institutions, NGOs or the private sector?
29. How much co-ordination is there between institutions?
30. What sort of attention is given to the family members?
31. Are adolescents listened to? How is their right to participate guaranteed?
32. Is there any communication between the young person and members of his family during the proceedings?
33. How is the right to privacy guaranteed? (Media).
34. In your opinion, is there anything lacking in the law? Does anything prevent you from doing your job the way you would like to?
35. Do you think that the system is sustainable? Does it have a future?

Criminal Courts for Adolescents

1. Name and job title.
2. Role played in the project.
3. How long has the present law existed?
4. Do you consider the law to be a positive thing?
5. Contact with the young people during the process.
6. How many young people are processed each year?
7. How many young people are remitted to non-custodial sentences?
8. What proportion of sentences are custodial and what proportion is not?
9. What criteria are used to decide whether or not to use the sanction of deprivation of liberty?
10. Is the young person's cultural and socio-economic situation taken into account? In what way?
11. Quantitative results of the project. Has the situation improved?
12. Do you know the figures for repeat offenders for each type of sanction utilised? Do you take this into account when you decide which kind of sanction to use?
13. Do you use non-judicial remedies (conciliation, etc.)?
14. Are they used frequently? In which cases?

15. Have there been changes since the law was approved? What are they?
16. How long has the project been in operation?
17. Describe the proceedings. What are the various stages?
18. Is it an accusatory or inquisitorial system?
19. Does the family or the community participate at any point?
20. Have you made any partnerships with the private or public sector? Do they provide you with any support?
21. How do you guarantee the young person's right to a defence?
22. What happens if they are from indigenous groups? Are there any special provisions?
23. What guarantees does the law contain?
24. Are they the same guarantees as for adults? Are there any additional ones?
25. Do you agree with this?
26. Is there a limit to the use of prison for preventive purposes? What is it? Is it in accordance with the law?
27. Have you received any training? How and by whom was this done? What did you think of it?
28. Are you familiar with the CRC and the rules of the United Nations?
29. What legal arguments are used in sentencing?
30. Are there judges that specialise in children's matters?
31. What do you think of the project? Why?
32. Do you think that things have changed?
33. What do you do when children's rights are violated?
34. What is your responsibility with respect to the existence of street children or the violation of children's rights? What do you do if a young person who enters the project has not committed a crime but is in need of the state's protection?
35. Are you connected with any other institutions, NGOs or the private sector?
36. How much co-ordination is there between institutions?
37. What sort of attention is given to the family members?
38. Are young people listened to? How is their right to participate guaranteed?
39. Is there any communication between the young person and members of his family during the proceedings?
40. How is the right to privacy guaranteed? (Media).
41. In your opinion, is there anything lacking in the law? Does anything prevent you from doing the job in the way you would like to?
42. Do you think the system is sustainable? Does it have a future?

Specialised Technical Teams

1. Name and job title.
2. Role played in the project.
3. How long has the present law existed?
4. Do you consider the law to be a positive thing?
5. Contact with young people during the process.
6. Ages of the young people.
7. How many young people enter the process each year?
8. How many young people receive other types of sentences?
9. What proportion of sentences is custodial and what proportion are non-custodial?
10. What criteria are used to decide which type to use?
11. To what extent is the judge obliged to follow your recommendations?
12. In what percentage of cases does the judge completely follow your recommendation?
13. Is the young person's cultural and socio-economic situation taken into account? In what way?
14. Quantitative results of the project. Has the situation improved?
15. Do you know the figures for repeat offenders for each type of sanction utilised? Do you take this into account when you decide which kind of sanction to use?
16. Do you recommend the use of non-judicial remedies (conciliation)?
17. Are they used frequently? In which cases?

18. Have there been changes since the law was approved? What are they?
19. How long has the project been in operation?
20. Describe the proceedings. What are the various stages?
21. Is it an accusatory or inquisitorial system?
22. How is the young person's right to a defence guaranteed?
23. Do children receive legal advice? Who sits on the technical committee?
24. What happens if they are from indigenous groups? Are there any special provisions?
25. What guarantees does the law contain?
26. Are these the same guarantees as for adults? Are there any additional ones?
27. Do you agree with this?
28. Is there a limit to the use of prison for preventive purposes? What is it? Is it in accordance with the law?
29. Have you received any training? How and by whom was this done? What did you think of it?
30. Are you familiar with the CRC and the rules of the United Nations?
31. What arguments do you use in your recommendation or report?
32. Are there professionals that specialise in children's matters? What are their areas of specialization?
33. What do you think of the project? Why?
34. Do you think things have changed?
35. What do you do when rights of children are violated?
36. What is your responsibility in the face of the existence of street children or the violation of children's rights?
37. Are you connected with any other institutions, NGOs or the private sector?
38. How much co-ordination is there between institutions?
39. What sort of attention is given to family members?
40. Are young people listened to? How is their right to participate guaranteed?
41. Is there any communication between the young person and members of his family during the process?
42. How is the right to privacy guaranteed? (Media.)
43. In your opinion, is there anything lacking in the law? Does anything prevent you from doing the job in the way you would like to?

Rehabilitation Centres

1. Name and job title.
2. Role played in the project.
3. How long has the present law existed?
4. Do you consider the law to be a positive thing?
5. Contact with young people during the process.
6. What are the ages of the young people detained in this centre?
7. How many young people enter the centre each year?
8. Is a register kept?
9. Is there a set of internal disciplinary rules involving sanctions?
10. Do you have any communication with judges and the defence? How often?
11. What kind of treatment do they receive?
12. Do they have access to school? How?
13. Do they have the chance to work? Are they paid? What ages? Can they choose the type of work?
14. Is work considered a type of education or a disciplinary measure?
15. Are there any hierarchies among the adolescents themselves? Are any adolescents in charge of taking disciplinary measures against others?
16. Training of personnel.
17. Visitation regime, frequency, intimacy, spaces.
18. Is there a prohibition on guards carrying guns?
19. Access to medical services.
20. Conjugal visits.
21. Separation by sex.

22. What are the security measures like?
23. Physical conditions in the establishments including light, temperature, ventilation.
24. Adequate clothing, free of humiliation.
25. Right to exercise religious freedom.
26. Do the adolescents leave the centre at any time?
27. How many young people are remitted for other measures?
28. What is the proportion of custodial and non-custodial sentences?
29. Is the young person's cultural and socio-economic situation taken into account? In what way?
30. Quantitative results of the project. Has the situation improved?
31. Do you know the figures for rehabilitation?
32. Do the adolescents receive subsequent follow up?
33. Have there been any changes since the approval of the law? What were they?
34. How long has the project been in operation?
35. How is a young person's right to a defence guaranteed once they have entered prison?
36. What happens if they are from indigenous groups? Are there any special provisions?
37. What guarantees does the law contain?
38. Are these the same guarantees as for adults? Are there any additional ones?
39. Do you agree with this?
40. Is there a limit to the use of prison for preventive purposes? What is it? Is it in accordance with the law?
41. Are those in prison for their protection separated from those serving formal sentences?
42. Have you received any training? How and by whom was this done? What do you think of it?
43. Are you familiar with the CRC and the rules of the United Nations?
44. Are there professionals that specialise in children's matters? What are their areas of specialization?
45. Are the personnel of the same gender as those being detained?
46. What do you think of the project? Why?
47. Do you think things have changed?
48. What do you do when children's rights are violated?
49. What is your responsibility in the face of the existence of street children or the violation of children's rights?
50. Are you connected with any other institutions, NGOs or private sector?
51. How is the centre financed?
52. How much co-ordination is there between institutions?
53. What type of attention is given to family members?
54. Are the adolescents listened to? How is their right to participate guaranteed?
55. Does the young person have any communication with his family members during his imprisonment?
56. How is the right to privacy guaranteed? (Media.)
57. In your opinion, is there anything lacking in the law? Does anything prevent you from doing the job in the way you would like to?
58. In your opinion, should more adolescents be deprived of their liberty or less?

Community based alternatives to imprisonment

1. Name and job title.
2. Role played in the project.
3. How long has the present law existed?
4. Do you consider the law to be a positive thing?
5. Contact with the young people.
6. Ages of the young people.
7. How many young people enter the process each year?
8. Do you keep a register?
9. How is the specific measure decided? Procedures.
10. Does the young person participate in the decision about what sanction is going to imposed or its enforcement (choice of tutor,

opportunity to express his opinion, etc.)?
11. Is there any communication with the judge and the defence?
12. What type of treatment do they receive?
13. What is the normal length of time for these kinds of alternative sanctions?
14. What happens if the adolescent doesn't comply with the sanction?
15. Can the length of a sanction be reduced? How?
16. How does the community participate in the enforcement of a sentence?
17. How does the family participate?
18. Do other private or public sectors participate?
19. Do they have access to school? How are the rest of their rights guaranteed?
20. How is the daily life of the young person affected?
21. Are there opportunities for work? Is it paid? Ages. Can they choose the type of work?
22. Is work considered a type of education or a disciplinary measure?
23. Training of personnel.
24. What proportion of measures are custodial and what proportion are non-custodial?
25. Is the young person's cultural and socio-economic situation taken into account? In what way?
26. Quantitative results of the project. Has the situation improved?
27. Do you know the figures for repeat offenders? Do these vary according to age, type of crime committed or type of sentence imposed?
28. Have there been changes since the law was approved? What are they?
29. How long has this project been in operation?
30. How is the young person's right to a defence guaranteed once the enforcement of sanction has begun?
31. What happens if they are from indigenous groups? Are there any special provisions?
32. What guarantees are contained in the law?
33. Are the guarantees the same as the ones for adults? Are there any additional ones?
34. Do you agree with this?
35. Have you received any training? How and by whom was it undertaken? What did you think of it?
36. Are you familiar with the CRC and the rules of the United Nations?
37. Are there professionals that specialise in children's matters? What are their areas of specialisation?
38. What do you think of the project? Why?
39. Do you think things have changed?
40. What do you do when the rights of a child are violated?
41. Is the continuation of this type of alternative measures or treatment guaranteed? What does this depend on?
42. What is your responsibility with respect to street children or the violation of children's rights?
43. Do you have connections with any other institutions, NGOs, or the private sector?
44. How is this institution financed?
45. How much co-ordination is there between institutions?
46. What sort of attention is given to family members?
47. Are the young people listened to? How is their right to participate guaranteed?
48. Does the young person have any communication with members of his family during the sentence or treatment?
49. How is the right to privacy guaranteed? (Media).
50. In your opinion, is there anything lacking in the law? Is there anything which stops you from doing your job as you would like?

Adolescents and Young People

1. How old are you?
2. How do you feel?
3. How would you rate the treatment received from the institutions and agencies that have been involved in this process?

4. Would you change anything?
5. Were you able to say everything that you wanted to during the process and provide all the evidence that you wanted to?
6. Were you able to choose your own lawyer?
7. How were the relationships with your lawyer, the prosecutor, the judge, with those who enforced your sanction?
8. Were you able to be in contact with your family both by phone and in person?
9. Were you scared, did you feel alone or misunderstood at any time? Were you humiliated at any point?
10. What crime did you commit?
11. Did you commit it on your own or were you accompanied by others?
12. If there were accomplices, were they adults or adolescents? What sanctions did they receive, and what sanction did you receive?
13. Is this sanction helping you? Why?
14. Would you change it for another one?
15. Are you in contact with your family? How often?
16. Why do you think this happened to you?
17. Do you feel better now compared to when you committed the crime?
18. What do you want to do when the sanction has ended?
19. Do you have a boyfriend/girlfriend? Do they come to visit you?
20. Do they interfere with your private life?
21. How do you get on with the other inmates?
22. Are you going to school? What course are you receiving? Had you left school before coming here?
23. Are you working? Do you have a choice? Do you like what you are doing? Do you get paid?
24. What do you do if you feel sick?
25. Do you eat well?
26. What do you do if you have any complaints?
27. Do you know the centre's rules of discipline? Do you follow them?
28. How do you get on with the guards and those who supervise the sentence?
29. Do you know your rights? Who told you what they are?
30. Do you know about the CRC?
31. Do you know about UNICEF?

Family Members of the Adolescents

1. How many children do you have?
2. How old is your child?
3. Why was your child detained?
4. Did this seem fair to you?
5. What treatment did your child receive throughout the process?
6. Were you able to be in contact with your child during the process?
7. How did you feel?
8. Did the authorities, the prosecutor, the defender, the judge, explain what was going on?
9. Were you able to express your opinion and support your child throughout the process?
10. Do you feel your child and family are being helped?
11. Do you believe that this sanction is going to help your child?
12. What do you think your child expects when the sanction is ended?
13. Do you know what the rights of adolescents and children are?
14. Are you in contact with the authorities that are enforcing the sanction for your child? Do they keep you informed about what is happening?
15. Are you able to help your child in any way while he/she is serving completing the sanction that was imposed?
16. Do you know the law? What do you think of it?

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