

BACKGROUND DOCUMENT ON THE TWENTY-FIRST PAN AMERICAN CHILD CONGRESS

THEMATIC FOCUS: JUVENILE JUSTICE SYSTEM

1. INTRODUCTION

The Inter-American Children's Institute (IIN) is the Specialized Organization of the Organization of American States (OAS) responsible for promoting and contributing to the protection of the rights of children in the Americas, and for generating technical instruments which will strengthen the States' capacity to design and implement public policy in this field.¹ As the body responsible for enabling regional efforts to fulfil children's rights, it included the issue of juvenile justice system in its Action Plan for 2011-2015 as one of its principal lines of action, with the purpose of contributing technically to addressing the subject in the States in the region, as well as raising awareness and developing a sense of social responsibility in its regard.

The adoption of the Convention on the Rights of the Child² (CRC) led to changes in the regulatory situation of children, which were significant in view of the legally binding nature of the Convention for its ratifying States. The mandatory nature of the CRC gave rise to extensive and comprehensive legislative reforms, or reinterpretations of current regulations. Pursuant to Articles 37 and 40, this process could not fail to include the matter of juvenile justice system and systems for the administration of this specialized justice. Similarly, in the context of rights-based approaches to criminal law, it is particularly important to incorporate both substantive and procedural laws which are consistent with existing international human rights instruments.

¹Statutes of the Inter-American Children's Institute, adopted by the Directing Council of the IIN during its 79th Regular Meeting, held on 25 and 26 October 2004 in Mexico, D.F., CD/RES. 06 (79-04). Available from:

http://www.iin.oea.org/IIN2011/english/documentos/ESTATUTO_ingl_aprob_79_CD-2.pdf

²Adopted and opened to signature and ratification by the General Assembly of the United Nations in its resolution 44/25, of 20 November 1989.

For their part, the Inter-American Commission and Court have recognized the existence of a corpus juris in relation to the rights of children. They have indicated that the corpus juris of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations), as well as decisions adopted by international human rights agencies³. In this regard, the Court has determined:

*[t]his evolutive interpretation is consequent with the general rules of the interpretation of treaties embodied in the 1969 Vienna Convention. Both this Court [...] and the European Court [...] have indicated that human rights treaties are living instruments, the interpretation of which must evolve over time in view of existing circumstances.*⁴

The international community of States has clearly established its position with regard to acknowledging that children are holders of rights and deserving of special protection by adopting a large number of resolutions and different kinds of international instruments related to various aspects of child rights.⁵ The practically universal ratification of the Convention on the Rights of the Child is a clear measure of this solid consensus. For the purposes of interpreting the American Convention, both the Commission and the Court have indicated that the integration of the regional system with the universal human rights system is underpinned by Article 29 of the American Convention and the repeated practice of the Court and the Commission in this area.⁶

³ I/A Court H.R., “The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law”. Advisory Opinion OC-16/99 of 1 October 1999. Series A, No. 16, par. 115; IACHR, The Rights of the Child in the Inter-American Human Rights System, OAS/Ser.L/V/II.133 Doc.34, 29 October 2008, par. 39; IACHR, Juvenile Justice and Human Rights in the Americas, OAS/Ser.L/V/II., doc. 78, 13 July 2011, par. 16.

⁴ I/A Court H.R. Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits. Judgement of 19 November 1999. Series C No. 63, par. 193, and, I/A Court H.R., “The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law”. Advisory Opinion OC-16/99 of 1 October 1999. Series A, No. 16, par. 114.

⁵ For example, every year the General Assembly of the United Nations adopts an “Omnibus Resolution” devoted to the rights of the child. At present, the Human Rights Council adopts a yearly Resolution on the Rights of the Child and the Security Council of the United Nations adopts resolutions on children affected by armed conflict. At the same time and in relation to the special proceedings of the United Nations system, of particular note are its mandates regarding child rights. To carry out these mandates are: the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on the right to education; the Special Rapporteur on trafficking in persons, especially in women and children. Other special proceedings have also addressed child rights within their thematic areas of competence; for example: the Special Rapporteur on contemporary forms of slavery including its causes and consequences; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on the human rights of internally displaced persons. In addition, the existence of a Special Representative of the Secretary-General of the United Nations on Violence against Children and a Special Representative of the Secretary-General of the United Nations for Children and Armed Conflict should also be noted.

⁶ IACHR, Report Nº 41/99 Case 11,491 Minors in detention, Honduras, of 10 March 1999, paragraph 72. I/A Court H.R., Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgement of 31 August 2011. Series C No. 232, paragraph 112.

Further to this concept, the IACHR has determined that pursuant to Article 19 of the American Convention on Human Rights and Article VII of the American Declaration of the Rights and Duties of Man, the American States should create an exceptional and specialized juvenile justice system, which should respect and ensure that children enjoy all of the same rights recognized for other persons, and, in addition, provide them with the special protection they merit in view of their age and stage of development.⁷

During the course of the Congress, there will be a focus on the efforts made with regard to applying the Convention on the Rights of the Child, as well as following the recommendations of the World Report on Violence against Children. (WRAC) In the case of the workstream on juvenile justice system, efforts were consistent with the United Nations joint report on the prevention of violence against children in juvenile justice systems and how to respond to it, of 2012⁸ (UNRP) and the The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, adopted in april 2014 by the Commission on Crime Prevention and Criminal Justice pursuant General Assembly Resolution No. 68/189 of 18 December de 2013⁹(UNMS) in relation to the following recommendations and strategies:

⁷ IACHR, Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc 78, 13 July 2011. Available from www.cidh.org. Par. 3.

⁸ Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system; 2012. http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/web_juvenile_justice_final.pdf.

⁹ <http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/>

UN_Model%20Strategies_%20on_Elimination_of_Violence_against_Children_in_Crime_Prevention_and_Criminal_Justice_EN.pdf

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(WRAC)	(UNRP)	(UNMS)
<p>Recommendation 1</p> <p>The creation of national means of coordination for non-violence towards children, and public policies, strategies and comprehensive plans in this area.</p> <p>Recommendation 2</p> <p>Legislative reform to ensure the protection of all children against all forms of violence.</p> <p>Recommendation 11</p> <p>The creation of information and data system in support of public policies, strategies and comprehensive plans in this area</p>	<p>“Preventing children from becoming involved in the juvenile justice system”</p> <p>The fewer children there are in the criminal justice system, the lower the risk of their exposure to violence in that system. It is important for States embarking on measures to prevent and respond to violence in the juvenile justice system to ensure that an appropriate environment exists for the primary prevention of children coming into the criminal justice process.</p> <p>There is an urgent need to strengthen national child protection systems that can effectively ensure that children’s rights are safeguarded instead of perpetuating the criminalization of children. The States should act to prevent the criminalization and penalization of children and reduce the number of children in detention [...]</p> <p>Similarly, States must raise the age of criminal responsibility to a minimum of at least 12 years, continue to increase it, and ensure non-custodial options for children below that age.</p> <p>“Protecting children from all forms of violence within the juvenile justice system and integrating this dimension into the national agenda”</p> <p>States are urged to revise their laws, policies and procedures to ensure compliance with international standards and ensure that the process of juvenile justice reform is framed by a child- and gender-sensitive approach, promoting a juvenile justice system that is fair, effective, efficient, and established as a core dimension of the national child protection system.</p> <p>In this light, States are urged, through their national legal frameworks, to ensure that the Constitution, or its equivalent, contains key child rights principles and safeguards including the consideration of children’s deprivation of liberty only as a measure of last resort and for the shortest necessary period of time, [...]</p> <p>Legislation should contain specific measures to prohibit all forms of violence and effectively protect children.</p> <p>“Ensuring the use of diversion and alternative non-custodial measures as priorities within the juvenile justice system”</p> <p>States are urged to develop and use effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, such as restorative justice, mediation, and community-based programmes, including treatment programmes for children with substance abuse problems.</p> <p>It is urgent to ensure effective coordination between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors in order to promote the use of diversion and alternative non-custodial measures. Pretrial diversion and alternative, community-based sentences in conformity with children’s rights should be introduced where they do not exist, and where they do, their scope and application expanded.</p>	<p>XI. Reducing the number of children in contact with the justice system</p> <p>29. Recognizing the importance of avoiding the unnecessary criminalization and penalization of children, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments, to ensure that any conduct not considered a criminal offence or not penalized if committed by an adult is also not considered a criminal offence and not penalized if committed by a child, in order to prevent the child’s stigmatization, victimization and criminalization.</p> <p>30. In this regard, Member States are encouraged not to set the minimum age of criminal responsibility at too low an age level, bearing in mind the emotional, mental and intellectual maturity of children, and, in this respect, refers to the recommendations of the Committee on the Rights of the Child to increase the lower minimum age of criminal responsibility without exception to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level. 31. Recognizing that an important and highly effective way of reducing the number of children in the justice system is through diversion measures, restorative justice programmes and the use of non-coercive treatment and education programmes as alternative measures to judicial proceedings, as well as the provision of support for families, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments: (a) To consider diversion to community-based programmes and to provide police and other law enforcement officers, prosecutors and judges with options for diverting children away from the justice system, including warning and community work, to be applied in combination with restorative justice processes; (b) To foster close cooperation among the justice, child protection, social welfare, health and education sectors, so as to promote the use and enhanced application of alternative measures to judicial proceedings and to detention; (c) To consider designing and implementing restorative justice programmes for children as alternative measures to judicial proceedings; (d) To consider the use of non-coercive treatment, education and assistance programmes as alternative measures to judicial proceedings and the development of alternative non-custodial interventions and effective social reintegration programmes.</p> <p>XIII. Ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time</p> <p>35. Recognizing that limiting the use of detention as a sentence and encouraging the use of alternatives to detention can help reduce the risk of violence against children within the justice system, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments:</p>

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“Ensuring that the deprivation of liberty is a measure of last resort”

Every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of this deprivation of liberty within 24 hours. Pretrial detention should be reviewed regularly, preferably every two weeks. States should introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

“Promoting data collection, analysis and dissemination, and developing research and reporting schemes to assess, prevent and respond to incidents of violence against children within the juvenile justice system”

States should develop data gathering, analysis and reporting schemes to monitor youth crime prevention and measure the performance of the juvenile justice system. To this aim, juvenile justice indicators should be developed and applied regularly to measure the performance of the juvenile justice system. A system for establishing juvenile justice statistics, comprised of disaggregated data, should be developed and implemented in order to assess, prevent and respond to incidents of violence against children.

Data collection should include children’s views and experiences, as well as information on incidents of violence against children in the juvenile justice system. It should also include information on regular independent inspection of places of detention, access to complaints mechanisms by children in detention, specialized standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty, and the existence of standards and norms concerning disciplinary measures and procedures with respect to children deprived of their liberty.

Enhancing effective coordination mechanisms and cooperation between different services in charge of law enforcement, justice and social welfare.

States are urged to review law, policy and practical measures to ensure effective coordination and cooperation between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors. To this aim, it is important to clearly delineate the responsibilities of different actors and institutions, to develop mechanisms for formal cooperation between stakeholders, and properly allocate resources.

- (a) Not to deprive children of their liberty unlawfully or arbitrarily and, in cases of deprivation of liberty, to ensure that it is in conformity with the law and used only as a measure of last resort and for the shortest appropriate period of time;
- (b) To ensure that children have continued access to government-funded legal aid during all stages of the justice process;
- (c) To ensure that children can exercise their right to appeal a sentence and obtain the necessary legal aid to do so;
- (d) To provide for the possibility of early release and make available aftercare and social reintegration programmes and services;
- (e) To facilitate professional specialization, or at least specialized training, for criminal justice professionals dealing with children alleged as, accused of or recognized as having infringed criminal law.

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On the basis of the above recommendation and strategies, discussion during the Congress will focus particularly on:

- a) Legislative reform for the effective application of
- b) Interinstitutional coordination as a key element for the effective application of
- c) Investigation, data and information gathering, as necessary tools for the appropriate operation of specialized juvenile criminal liability systems (SERPA, in Spanish) and the design of policies and programmes for

Alternative diversion measures in criminal proceedings

and

Non-custodial penalties

During the various events and debates that will take place during the Congress, we shall attempt to stress the efforts made by the States and by civil society, which have led to significant developments in many aspects, and have shortened the gaps that still exist between regulation and the actual extent of fulfilment of child rights in the hemisphere.

In this respect, the IIN and the IACHR have recognized the efforts made by the States to make their legislations consistent with the stipulations of the CRC and the American Convention. However, they have also expressed their concern at the possibility of legislative reforms that represent a regression as regards international standards on specialized justice for adolescents, such as lowering the minimum age for the application of juvenile justice, lowering the minimum age to enter the regular criminal justice system for adults and increasing penalties.¹⁰

It is our purpose to contribute not only to generating a situation report, but also to achieving a solid position regarding juvenile justice, with a view to promoting and protecting the rights of children, who are the protagonists of the system.

¹⁰ IIN, "Juvenile Criminal Liability Systems in the Americas" and Resolution CD/RES 03 (87-R/12) "JUVENILE CRIMINAL LIABILITY SYSTEMS", available from www.iinoea.org.

IACHR, Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc 78, 13 July 2011. Available from www.cidh.org.



In keeping with our methodology, we consider it appropriate to provide a detailed analysis of the rights-based developments observed in the region, as well as of the challenges that still exist. To confront these, we suggest applying guidelines, which should be agreed by participants at the 21st Pan American Child Congress.

2. BACKGROUND DOCUMENTS

The 1989 United Nations Convention on the Rights of the Child was the first binding international instrument to take child rights into account in an international regulatory framework on the administration of justice for children who have committed criminal law violations and on the deprivation of children's liberty used as a last resort.

It has been complemented, consistently and in accordance with the cross-cutting features that are necessary in the application of human rights regulations, by international treaties and conventions that regulate the criminal status of minors. Some of these instruments are:

- Convention on the Rights of the Child (20/11/1989)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (28/11/1985) (the Beijing Rules).
- United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines. (14/12/1990)
- United Nations Standard Minimum Rules for Non-Custodial Measures, the Tokyo Rules (14/12/1990).
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Havana Rules (14/12/1990).
- General Observation Nº 10 "Children's Rights in Juvenile Justice" (25/04/2007). The rules for the protection of juveniles deprived of their liberty should not only apply when incarceration takes place in specialized juvenile justice institutions, but also when detention occurs for health reasons or for the well-being of the child.
- Joint Report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system; 2012.¹¹

¹¹ http://srsrg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-21_25_EN.pdf



- United Nations model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice, adopted in April 2014 by the Commission on Crime Prevention and Criminal Justice, pursuant to General Assembly resolution 68/189 of 18 December 2013.¹²
- IACHR, Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc 78, 13 July 2011.¹³

3. NON-CUSTODIAL PENALTIES and DIVERSION FROM CRIMINAL PROCEEDINGS: DEVELOPMENTS AND CHALLENGES

Non-custodial penalties

After the ratification of international instruments related to the human rights of children, all of the OAS States parties that have ratified these instruments have, in general, made acknowledged efforts both to adjust their national laws to the precepts they ratified and to develop public policies tending to create means to prevent and address violence in juvenile criminal systems. These means can be manifested in a variety of ways. Among them we shall focus on restricting children's right to freedom of movement through the implementation of legal measures such as alternatives to incarceration or the promotion of schemes that tend to strengthen the social reintegration of juveniles, such as, specifically: Mechanisms of diversion from formal criminal proceedings, or non-custodial penalties.

In this context, in 1990, Brazil became the forerunner in adapting its legislation to Article 40 of the CRC, which establishes procedural safeguards and a specialized care model for juveniles who have committed criminal law violations. Subsequently, the remaining States in the region have followed suit by different means, such as by ratifying the Convention on the Rights of the Child, or by enacting specific laws, or in other cases, including them in comprehensive child rights statutes. All of which was evidence of the legislative and ideological developments taking place in the hemisphere.

¹² http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/UN_Model%20Strategies_%20on_Elimination_of_Violence_against_Children_in_Crime_Prevention_and_Criminal_Justice_EN.pdf

¹³ Available from www.cidh.org



The IACHR has underscored the fact that achieving the goals of juvenile justice demands that the States take into consideration the best interest of the child before regulating the system, or when applying a punishment or penalty. In addition, in the case of penalties, the States must do everything within their power to ensure the rehabilitation of juveniles in the juvenile justice system, in order to foster their self-esteem and sense of dignity, enable their effective reintegration into society and allow them to play a constructive role in it.¹⁴ For its part, the IIN has urged “the States to adopt, or if appropriate, consolidate and strengthen their Juvenile Justice Systems considering the principle of specialization in light of international human rights principals in general and particularly those that refer to the subject. Consideration should be given to the minimum standards and conditions according to which these systems should be designed.” Further, it suggested that “the consolidation and strengthening process should contemplate the implementation of alternative measures that promote the integration of adolescents subjected to these measures to fully exercise their rights and to use the deprivation of liberty as a last resort”.¹⁵

In the matter we are addressing, it is of the first importance to consider the specific personal conditions of the individual regarding whom the law, as well as established policy actions will be applied, particularly the ad hoc application of the general principles compiled in legal frameworks, such as, for example, the principle of best interest. At this level of analysis, the cross-cutting features of human rights should be underscored; acknowledging that human rights have cross-cutting contents and goals implies seeking social consensus. These cross-cutting features are an integral part of public policy in many States; education in human rights is assumed in public policies to be a key element in the process of democratization and its basic goal is to achieve equality in access to resources and benefits. Human rights should be mainstreamed across public policies involving juvenile criminal issues, thus tending to ensure equality of opportunities for socially vulnerable children.

¹⁴ IACHR, Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc 78, 13 July 2011. Available from www.cidh.org. Par. 35.

¹⁵ and resolution CD/RES 03 (87-R/12), “JUVENILE CRIMINAL LIABILITY SYSTEMS”.



The specific characteristics of children who are the object of criminal proceedings should be acknowledged, as they mark them as subjects of protection. It should be borne in mind that the law should be applied on the basis of the comprehensive protection doctrine (grounded in the Convention on the Rights of the Child), and, therefore, considering the best interest of the child, which should be understood as the effective fulfilment of each and every one of his or her human rights.

There is no doubt that international human rights regulations establish that a Juvenile Criminal Justice system that intervenes in offences committed by people under the age of 18, should be specialized.¹⁶ In other words, by incorporating the CRC into their national regulatory frameworks, the States have undertaken to apply a legal system and, should they not exist, create, in order to apply it, a number of institutions acting specifically in the investigation and punishment of offences committed by juveniles, in keeping with their best interest.

According to the Inter-American Court and in light of international regulations, special jurisdictions for children in conflict with the law, as well as their respective laws and procedures, should include, inter alia, the possibility of adopting measures to deal with those children without resorting to judicial proceedings. *“... the right to personal liberty cannot be examined without taking into account that most of its alleged victims are children. In other words, a child’s right to personal liberty must of necessity take the best interests of the child into account; it is the child’s vulnerability that necessitates special measures of protection”.*¹⁷ Alternative or substitute measures for deprivation of liberty are, in fact a way to safeguard the rights of children who have committed criminal law violations.

In response to this precept and in keeping with the principle of exceptionality, which mandates the restriction of deprivation of liberty for children, the use of alternative measures in the region is noteworthy, but not yet sufficient.

¹⁶ American Convention on Human Rights (Pact of San José), Art. 5.5; CRC, Art. 40 par. 3; Beijing Rules, Rule 2.3.; Guidelines for Action on Children in the Criminal Justice System, Guideline 13.d and 14 a and d

¹⁷ I/A Court H.R. Preliminary Objections. Merits, Reparations and Costs. Judgement of 02 September 2004. Series C, No. 112, par. 225. http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_ing.pdf



In this respect, the General Assembly of the United Nations has also given its opinion in its resolution adopted on 18 December 2013, number 68/189:¹⁸

“3. Urges Member States to pay particular attention to the issue of child rights and the best interests of the child in the administration of justice, in accordance with applicable United Nations standards and norms for all children who come into contact with the criminal justice system as victims, witnesses or alleged offenders, in particular children deprived of liberty, taking into account the age, gender, social circumstances and development needs of such children;

4. Also urges Member States to take all necessary and effective measures, including legal reform, where appropriate, to prevent and respond to all forms of violence against children in contact with the criminal justice system as victims or witnesses or as children alleged as, accused of or recognized as having infringed criminal law;

5. Encourages Member States to promote, inter alia, the use of alternative measures, such as diversion and restorative justice, to comply with the principle that deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, and to avoid, wherever possible, the use of pretrial detention for children;”

UNLIKE PENALTIES APPLIED TO ADULTS, PENALTIES APPLIED TO CHILDREN SHOULD BE PREVENTIVE AND NOT EXECUTIVE, OR MERELY REPRESSIVE OF CONDUCT DEEMED TO BE WORTHY OF REPROACH.

IT IS ADVISABLE TO ESTABLISH STATE POLICIES IN ORDER TO GIVE PRIORITY TO A CRIMINAL JUSTICE SYSTEM WHICH EDUCATES, INFORMS AND PREVENTS CRIME OR OFFENCES COMMITTED BY MINORS.

The aim should be to foster consensus with regard to criteria for determining liability and objectives for compliance, with a focus on prevention rather than repression when confronting the conduct of those who find themselves unprotected with regard to their rights. Penalties involving

¹⁸ Resolution adopted by the General Assembly on 18 December 2013 - 68/189. Model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice - A/RES/68/189 A_RES_68_189_s.doc (Spanish).



incarceration should be a measure of last resort and these and other penalties should be endowed with features that promote reintegration. In cases where penalties involving the deprivation of liberty of children are decided, the measure should be endowed with socio-educational purpose and the special features of the individual should be borne in mind. In addition, the degree of freedom enjoyed by the individual when self-determining his or her conduct should be assessed. The deprivation of liberty penalty should be used as an exceptional measure and a last resort in very serious cases and implemented in a specialized centre. Socio-educational penalties should prevail; for example: reprimands and cautions, probation, community service and reparation to victims. All possible measures should be taken to ensure the incorporation of these criteria in the region's legislation, including the enhancement of alternative penalties policies (alternative penalties to deprivation of liberty or socio-educational measures) and measures for the reintegration of child offenders.

The Inter-American Court has indicated that as an alternative to the judicialization of the problems that affect children, *“alternative means to solve controversies are fully admissible, insofar as they allow equitable decisions to be reached without detriment to individuals’ rights. Therefore, it is necessary to regulate use of alternative means in an especially careful manner in those cases where the interests of minors are at stake.”*¹⁹ We have no doubt that the trend that is most in keeping with a rights-based vision is to avoid putting minors through judicial proceedings as far as possible and that deprivation of liberty should be used as a last resort. This should be coordinated with a substitute system of penalties, which will enable incarceration to be replaced by non-custodial socio-educational measures, whose general provisions can be applied to children who have been deemed to engage in criminal acts.

At the same time, in cases in which deprivation of liberty measures have been imposed, there should be a system of alternative measures in place, which could be accessed during the execution of the penalty itself. Furthermore, the design of procedures which protect human rights should aim at establishing and applying solutions that provide alternatives, even to justice, and alternatives to

¹⁹ I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of 28 August 2002. Series A, No. 17, par. 135.

the penalties already imposed, which will make it possible to reduce the last option – deprivation of liberty as a punitive response.

A juvenile criminal system unarguably implies the coordination of a number of stakeholders, as well as of public and private resources, in addition to a general commitment to support the implementation of policies and social inclusion mechanisms.

The States on the whole have fulfilled their obligation to establish alternatives to deprivation of liberty as a penalty for children found guilty of infringing criminal laws, in consideration of the nature of deprivation of liberty penalties as measures of last resort. This is referred to by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In view of this, deprivation of liberty follows the principle of subsidiarity.

With regard to developments, specifically, the most notable are in relation to legislation, we refer to the IIN’s paper of 2013, Technical institutional guidelines for the implementation of non-custodial penalties and measures for juvenile offenders, page 33 and ff.

“We describe below some of those that appear in the legislations in the hemisphere:

3.1. Reprimand. This is a formal warning issued by a judge to a child offender. It should be verbal, clear and direct, in an attempt to make the child realize the seriousness of his or her actions and their consequences. The child is admonished to collaborate in respecting legal and social regulations.

Families, guardians or persons responsible for the child’s care should be present while this takes place and they should be advised that the reprimand is in the nature of a penalty. If they are not present, they should be notified of the contents of the reprimand.



Reprimands imply that children have previously acknowledged their responsibility with regard to the offence.

3.2. Caution. A firm admonition issued by a judge to a juvenile offender for a single offence. Its basic contents, as well as the child's undertaking to modify his or her behaviour are recorded in a document – a Declaration – and signed by the judge and the child, who is given a copy of the declaration.

Family members, guardians or persons responsible should be present and should also receive a copy of the signed declaration. Should none of these persons be present, they should be sent a copy of the declaration.

Cautions imply that children have previously acknowledged their responsibility with regard to the offence.

3.3. Prohibition from driving a motor vehicle. Whenever the conduct that led to an offence involves driving a motor vehicle, and so long as no person's life, physical integrity or health has been affected, children may be prohibited from driving a motor vehicle.

This penalty may be imposed as an accessory penalty and can be extended until the child has reached the age of 20.

If the prohibition is violated, the same procedures governing any violation as stipulated by juvenile justice legislation will come into force.

3.4. The reparation of harm. The obligation, agreed by the parties and with the approval of the judge, to find a way to compensate the victim. This can take the form of the direct provision of work, monetary compensation, restitution or replacement of the object of the offence.

This socio-educational measure involves conciliation or mediation, in line with what was indicated under alternative measures, but in this case, they operate as criminal penalties.

The judge determines when the penalty is deemed to be fulfilled, in compliance with the terms of the agreement.



3.5. *Community service. This involves the free performance of tasks for the general benefit of the community or of persons living in precarious circumstances. These services may be rendered in public or private care agencies, hospitals, schools community programmes, national parks or any similar institutions.*

This penalty should be controlled, or supervised in some way, in order to monitor its fulfilment, and reports should regularly be submitted to the judge.

A basic criterion is that these tasks should be compatible with the educational and/or labour-related activities of the child offender. In view of this, there should be a strict monitoring of the duration of the labour involved. Some legislations provide for eight hours per week, which can also be served on weekends and holidays.

3.6. *Guidance and socio-family support. In some legislations,²⁰ this involves providing children with guidance and support to ensure that they receive the care they require within their family settings and natural environment.*

Implementation of this measure implies links being formed between the body and the programme that monitors and provides socio-family support and the child's family and environment. Generally, this implies providing the family with support services available from the child protection area.

The public or private agency responsible for executing the penalty should report to the judge.

3.7. *Supervision orders and rules of behaviour.²¹ According to the legislation, this involves obligations or prohibitions imposed on the child by the judge, with a view to regulating ways of life, guiding conduct, and producing adaptation to the environment and to family life in the child offender. For example, children may be prohibited from attending certain venues restricted to persons over 18, prohibited from attending sporting events, obliged to devote their free time to pre-established programmes, obliged to go to school, work or both, obliged to attend training or educational programmes, prohibited from consuming alcohol, drugs or substances that lead to addiction.*

²⁰ This occurs in El Salvador and in Ecuador. In Brazil, this corresponds to the referral provided for in Article 112, to Article 101 of the Statute.

²¹ This is not included in Chile's act, nor in Brazil's statute. In El Salvador and Ecuador, it appears separately from "Guidelines". It is explicitly mentioned in Costa Rica and Colombia, although it also recovers in part the sense of "Guidelines".



Fulfilling these orders and rules requires monitoring and support provided by specific programmes, which will report developments to the judge.

The duration of this penalty is between one month (in Ecuador, where according to the amendments to the Childhood Statute included in the Comprehensive Criminal Statute, rules of conduct can be imposed from one to six months for offences punished by incarceration for over one month to five years) and two years (Costa Rica and Colombia).

3.8. Probation or Supervision. This is the best-known and most widely used non-custodial penalty. The judge grants children their freedom, on the condition that they submit to supervision, assistance, guidance, motivation, participation in programmes and evaluation, with a view to encouraging their social integration.

Fulfilling this penalty implies submitting to the control of a court representative, as well as receiving any support necessary from experts. The court will supervise the fulfilment of the penalty and receive the reports of its representatives.

Duration varies from a minimum open-ended period, as stated in Costa Rican law, to a maximum of three years, as stipulated in Chilean legislation.

Probation is one of the principal developments in the Juvenile Criminal Justice process in legislations in the region. However, even at national levels and in general terms, the most widely used penalty for children is deprivation of liberty; only a very limited percentage of cases are benefited by the application of probation. Chile has provided encouraging data with regard to the application of this non-custodial measure, which show evidence of developments in this area. Only about 10% of the children sentenced are incarcerated; the rest receive non-custodial penalties.

While there are in general underlying deficiencies still remaining in Latin America with regard to the development and implementation of probation, in recent years, significant progress has been made.

The study on national legislations in force in the region compiled in an IIN paper in 2013 – *Recopilación comparativa de Legislación sobre Responsabilidad Penal Adolescente* [“Comparative compilation of legislation on juvenile justice system in the region”], page 39 – revealed the following

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features that show evidence of one of the developments in the field in relation to the purposes of intervention in juvenile criminal systems:

“In general terms, we have observed in the legislations we have examined that the aims pursued when imposing criminal penalties in the case of child offenders should be primarily educational. In punishment or sentencing theory, this is related to special or positive prevention. It is not entirely excluded that other preventive factors may come into operation, such as labour inclusion or returning to life within society, but they are secondary in relation to their educational features, which must operate as factors that place the boundaries on the penalty.”

IT IS SUGGESTED THAT THE APPLICATION OF NON-CUSTODIAL MEASURES BE PROMOTED, EVEN BY PROVIDING GREATER FINANCIAL SUPPORT. IT IS THE STATE’S RESPONSIBILITY TO PROMOTE AND FOSTER THESE PROGRAMMES APPROPRIATELY, BUDGETING FOR THEM, IN ORDER TO GENUINELY FULFIL THE MANDATES OF THE INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD.

These basically resocializing measures would have no valid effects without the gradual and progressive reintegration of child offenders in the social environment that surrounds them. For this reason, measures such as “community service” or “probation”, etc. cannot ensure the achievement of a real impact on the modified conduct of children who are the object of the intervention without the participation of an organized community in receiving and caring for these young people.

It is in this framework that communities and families assume a preponderant role and where public agencies must deploy their capacity for intervention in order to safeguard this role, as established in international legislation and, in particular, in the Riyadh Guidelines (Guidelines 11-19).”

On the whole, legislations include the creation of non-custodial socio-educational programmes that answer directly to agencies that implement the non-custodial measures. Specifically, in most cases this involves taking part in a socio-educational intervention programme, or the execution of a

service for the benefit of the community, with the supervision of the corresponding governing body for childhood. This answers to the need to create certain basic conditions, which should consider and incorporate the special features of each national situation. This involves developing socio-educational activities that provide alternatives to the deprivation of liberty of children in conflict with criminal law, promoting the full enjoyment of their rights, either by shortening their terms of incarceration (replacing the measure) or by preventing the deprivation of liberty (probation, mediation, reparation of harm).

As a form of preventing violence within the criminal system, all legislations that are party to international conventions submit reports on their progress in the matter of violence prevention. There is evident concern with regard to separating child offenders from the rest of the criminal system, by incarcerating them in specialized centres. This implies developing and applying special plans and designing a special system devoted to addressing the specific needs of the juvenile population, as well as socio-educational and integration goals to incorporate children into the social system and the community in general, in accordance with the international legal system for the protection of child rights and, specifically, international recommendations regarding the juvenile criminal system. In this respect, there have been specific actions taken in order to improve detention centres, with the implementation of interinstitutional measures and the installation of programmes in support of socio-educational reintegration, according to different plans, depending on the State involved.

This increases outings with educational, labour and training purposes, among other measures.

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In fact, however, although regulations have evolved in this sense, the number of children who have been deprived of their liberty is not necessarily lower, despite the fact that there are other alternatives when applying criminal sentences, which are more interesting, educational and constructive. These alternatives are not used sufficiently, which not only implies ignorance of the law, but also leads to very negative consequences, both personal and social, as it is a practice based on a deprivation of liberty system characterized by idleness and overcrowding, which strengthen the negative effects of incarceration.

The principal aspect pertaining to the rights of children who have been deprived of their liberty is that the aim should be to prepare them for a responsible life in society. Art. 40 of the CRC establishes the importance of these reintegration goals. Programmes should focus on developing formal and non-formal educational activities. Non-formal activities are conceived as those that tend to foster values and citizen skills, the peaceful resolution of conflict, autonomy and self-management, and the exercise of rights in general. In addition, institutions should strive to relate formal education to the level every child has reached, so that they can continue or return to their academic paths.

We are aware of and wish to highlight the development of the outlook that has been gaining ground in the States, regarding the fact that children should be held responsible for their criminal conduct, but that in the process of determining liability, the same level of blame applied when punishing adults cannot and should not be assigned to them. Specifically, the establishment of guilt acquires a special dimension when it concerns children, in view of the particular characteristics of this population, which distinguish them from adults.

In view of this, in the IIN's study on the *Comparative compilation of legislation on juvenile justice system in the region*, mentioned above, it was concluded that:

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“To this end, all of the States taking part in this project have included in their legislations a catalogue of socio-educational, non-custodial measures. Although their application is recommended or indicated to be preferable, even from a regulatory point of view, the length of their description or the manner in which they are addressed are far removed from the depth and detail with which deprivation of liberty measures for children in conflict with criminal law are described.

The application of measures proportionate to the offence is described in general terms, and any relevant aggravating, mitigating or exempting circumstances should be taken into account, as well as the needs of the child and of society.

In this sense, socio-educational measures are the expression of the State’s response to offences committed by children under the age of 18. The aim of their application is to reduce recidivism by incorporating mechanisms with an educational purpose that enable children to cognitively and emotionally handle the factors that have an impact on their conduct and to foresee the consequences of this conduct.”

“Together with unemployment, corruption, poverty and low income, violence is one of the greatest concerns of the citizens of Latin America in this new century, according to public opinion polls”: Mayra Buvinic, *Un balance de la violencia en América Latina: los costos y las acciones para la prevención* [The situation of violence in Latin America: cost and preventive action”] in *Pensamiento Iberoamericano*, a twice-yearly journal, 2008/1. Although accurate measurement is difficult, there is no doubt that as the most vulnerable population, it is children who are the main victims of violence in Latin America. According to the World Report on Violence against Children, the environments where violence is particularly prevalent are: in families, schools, communities and State institutions.

And the epicentre of institutional violence is, without a doubt, to be found within juvenile criminal justice systems, associated with the action of the State and its repressive policies when confronting offences or crimes committed by children.



With regard to the creation of systems of indicators or the measurement of social and State action, the most significant contributions have been developed by international agencies such as UNICEF, IACHR, DCI and UNHCR, as well as non-governmental organizations such as Save the Children. In general, the studies conducted by the States address the analysis of criminal delinquency indices, or recidivism, or escape, and their effects on society.

The IACHR has received information in this regard from judges in the region, in relation to the difficulties encountered when attempting to apply alternative measures, owing to the lack of control and follow-up in their execution, as well as the lack of means of implementation.

Uruguay has been a forerunner in this respect. It has put in place a single system of indicators with which to monitor the Juvenile Criminal Justice System. This study will make it possible to control the system appropriately, with the purpose of using the resulting statistics to help establish public policies on the subject; a significant piece of information in view of the many approaches in this area. The chart of indicators agreed includes areas related to regulations, the police, the justice system, as well as the execution of measures established by juvenile justice, which contain different indicators. They will make it possible to evaluate the alternatives to deprivation of liberty that have been considered, the reasons for decisions involving deprivation of liberty, the length of the period of incarceration before sentencing, the number of children

RESEARCH AND STATISTICAL ANALYSIS MAKE IT POSSIBLE TO BECOME AWARE OF THE SITUATION OF THE CHILD POPULATION DEPRIVED OF LIBERTY AND THE POSSIBLE DIFFERENT VIOLATIONS OF RIGHTS THAT THEY MAY BE SUFFERING. THIS WILL LEAD TO ACCURATE DIAGNOSES ENABLING ACTION WITH POLITICAL IMPACT, DISSEMINATING THE PROBLEM AND GENERATING ACTION WITHIN CIVIL SOCIETY AND STATE INSTITUTIONS, IN ADDITION TO ACTIONS ARISING FROM FORMAL COMPLAINTS THAT IT MAY BE DETERMINED TO RESOLVE INTERNATIONALLY. THEY ALSO PROVIDE INPUT FOR A COMPARATIVE STUDY INVOLVING DIFFERENT STATES ON THE REALITY OF THE CHILD POPULATION DEPRIVED OF LIBERTY AND THE CHANCES OF HARMONIZING REGIONAL POLICIES. IN TURN, THESE WILL ALLOW FOR GREATER LEVELS OF ACTION BEFORE THE JURISDICTIONAL AGENCIES THAT SAFEGUARD HUMAN RIGHTS, SUCH AS THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS.

deprived of their liberty by age and sex, the number of appeals lodged by the defence against the definitive sentence, among other items



In the area of civil society, the Fundación Justicia y Derecho (Justice and Rights Foundation) has formed an observatory on the justice system, which has provided a tool for study and intervention on the administration of justice and public policies. It operates by controlling a statistically representative sample of judicial records and a selection of significant cases.

To this end, Chile has implemented a system to provide regular measurements of the incidence of children and youth who have been through the juvenile justice system, which provides valuable indicators on the effectiveness of the sentence execution system in the juvenile system.

At the same time, the Unified Public Security Statistical Information System makes it possible to obtain regular measurements of the national delinquency situation and security issues. Among other aims, this represents an opportunity to obtain highly significant data for the analysis of reality, which can be used for planning action programmes, strategic plans, etc.

The generation and subsequent monitoring of programmes involving non-custodial socio-educational measures should be part of a strategic plan designed and administrated by the public service responsible for the juvenile justice system.

We understand a national programme to be a framework of general and specific principles and technical guidelines (depending on the criteria of the authorities), with the support of the corresponding budget allocation, which should be part of the relevant financial envelope of the country's respective budget. Similarly, it should be designed to include institutional responsibilities at territorial and administrative levels appropriate to each State and in keeping with the established levels of decentralization.

MEASURES FOR DIVERSION FROM CRIMINAL PROCEEDINGS

There are forms of diversion from criminal prosecution measures which can be used as a way to discourage judicialization and the use of deprivation of liberty. Some criminal penalties are endowed with a sense of alternative resolution to the conflict, inasmuch as once criminal proceedings have been deployed, they seek to include others in the intervention when the time comes for the penalty. They also take into consideration the fact that the reason for the judicial prosecution of children for criminal offences is to make them understand the seriousness of their actions, acknowledge their guilt and as far as possible, repair the harm done to their victims. Community service is a case in point. It is a measure which can also be taken as a result of decisions involving alternatives to deprivation of liberty (conciliation and mediation, for example), since its meaning and practical implementation explicitly seeks to incorporate the victim and the community in its execution.

However, it is not necessary to set up formal and prolonged judicial proceedings in order to implement it. If the principle of the best interest of the child is applied, alternatives to trials should be preferred, or forms of diversion, which will allow issues to be resolved quickly, by means of agreements reached by the parties involved, without submitting children to extensive judicial litigation which may be counter-productive as regards their development. These forms of diversion may include conciliation, suspension of evidentiary period, referral, mediation, etc.

The use of alternative methods of justice can lead to arriving at an understanding between victims and perpetrators, as well as helping to reincorporate children into the community.

At present, owing to the evolution of juvenile criminal law, restorative justice should be particularly noted as a possible and effective response to an act deemed to be an violation of criminal law. It promotes the reparation of the harm caused to the victim, of the harm caused to society and, at the same time, the rehabilitation of the alleged offender. This means replacing punishment with the

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restoration of damage. Alternative measures such as conciliation and mediation make it possible to include all stakeholders participatorily in the judicial process, by re-establishing relations between the victim, the offender and the community and reaching agreements that all parties undertake to respect.

Making restorative justice programmes a priority facilitates the resolution of conflict and ensures appropriate protection for children by providing an alternative measure to judicial proceedings. Restorative justice is applied regardless of whether a child is an offender, victim or witness. The principal goal of restorative justice programmes is to re-establish justice in families, schools, communities, civil society organizations and the State.²²

Some of the benefits of Restorative Justice are:

Benefits for Children

- Keeps them away from gangs
- Reduces the chance of their being victims of armed violence
- Reduces the chance of their being victims of domestic violence
- Reduces recidivism among children*

Benefits for Society

- Reduces the expense of judicial proceedings
- Reduces the expense of keeping children in detention centres
- Children who keep their restitution agreements are more likely to return to school and becoming productive members of society*

* The restorative justice programmes promoted in the Americas show very positive outcomes with regard to rates of compliance. Studies conducted in the United States of America show that 80% of offenders fulfilled their restitution agreements, while in Brazil, 90% fulfilled their agreements.²³

²² Special Representative of the Secretary-General of the United Nations on Violence against Children, Promoting Restorative Justice for Children, New York, 2013, page 1.
http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/srsgvac_restorative_justice_for_children_report.pdf

²³ Special Representative of the Secretary-General of the United Nations on Violence against Children, Promoting Restorative Justice for Children, New York, 2013, page 27.



* According to one estimate, the cost to society of the loss of a single young person to a long cycle of delinquency and drug abuse in the USA is between 1.7 and 2.3 million US dollars. To a great extent, reducing recidivism among children will reduce costs.²⁴

To make these measures possible, it is necessary to provide (this has in fact already been put into practice) assistance and support in proceedings involving children and youth participating in programmes. The aim is to help them assume a protagonist role in managing their lives autonomously outside of the detention system, promoting the child's progressive autonomy and fostering responsibility and decision-making.

The process includes the participation of both the administrative authorities responsible for the execution of the penalty and the judicial authorities responsible for monitoring this execution and its conditions, as well as a technical team formed by a coordinator, social trainers, psychologists and an expert in social and labour training.

In the region, efforts to adapt national legislation to international child protection treaties have reflected the general – almost unanimous – consideration of alternative measures, as well as of diversion from juvenile criminal intervention processes. We refer to decisions made by the prosecutor or the judge, or both, which seek to prevent the resolution of the conflict within the criminal justice arena, promoting a response outside the system or closing the case. In some cases, they refer the matter to other systems (the family, protection systems), in order to give the child the support required and which will not be found within the criminal justice system. These decisions are known as alternatives to deprivation of liberty or others involving diversion from criminal intervention, and are distinct from criminal penalties themselves.

Among the measures of diversion from criminal prosecution, the following are the most frequently used:

²⁴ Special Representative of the Secretary-General of the United Nations on Violence against Children, Promoting Restorative Justice for Children, New York, 2013, pages 32-33.



Referral is a mechanism that seeks to accelerate judicial proceedings. It can operate at the initiative of the public prosecutor, when children are channelled away from the proceedings, or when the proceedings have been initiated, the judicial authorities can suspend or extinguish the process. It can be accompanied by other measures, which can only be non-custodial. These measures may be reviewed at any time at the request of the child, his or her legal representative, or of the public prosecutor.

The continuity of the process is examined at the initiative of the public prosecutor or of the judge, on the basis of certain considerations. In sight of and in the presence of the parties and by prior agreement with them, the child is referred to protective support programmes, under the supervision of his or her family and the institution providing the support (this can imply, for example, referral to “Socio-Family Guidance and Support”, but under the leadership and supervision of a protective body.

Referral can be used at any time during the process and should not be restricted to minor criminal offences.

Equally, this measure requires the consent of the child and/or of the adults responsible for his or her care and does not imply that the child has recognized the offence.

Decision not to pursue a case. In consideration of the circumstances of the event, the causes that gave rise to it and/or the reparation of the harm, the public prosecutor can decide not to pursue a case in an act deemed to be an offence.

In a suspension of evidentiary provisions or “Conditional Stay of Proceedings”, once issues related to the charge have been resolved, the judge can determine, on his or her own initiative or at the request of the parties, the stay of evidentiary provisions, when the conditional execution of the penalty is appropriate. Any of the non-custodial penalties provided for by law can then be established, providing grounds in fact and in law for the stay and stipulating the agreements reached, as well as the conditions and terms established. In this case, the supervision of compliance

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continues to be under the court's control (or the public, municipal or private service that the court should appoint).

Regulated criterion or principle of opportunity. The Public Prosecutor has an obligation to conduct public criminal prosecutions; nonetheless, he or she can request the judge to dispense with criminal prosecution (entirely or in part), to restrict it to one or several offences, or to some of the persons who participated in the act, on the basis of certain criteria regulated by law. In any case, the judge must ratify the public prosecutor's decision.

Conciliation is a voluntary jurisdictional act conducted between the victim or his or her representative and the child; these parties are necessary to the agreement. Once the charge has been determined, the judge convenes the parties to a conciliation hearing. A conciliation agreement can be reached at any stage of the process, so long as a resolution of the first instance has not been issued.

Mediation is a mechanism that includes a neutral third party. Parents, legal representatives or persons responsible for the child should participate in the mediation, together with the persons involved in the judicial proceedings. Also present is a mediator, who intervenes to facilitate a route towards agreement, finding equitable solutions and proposing them to the court, where this agreement shall have the same effect as a final judgement.

Community service, as part of either a conditional stay or an agreement of reparation, implies that children are referred to a community venue for a clearly stipulated number of hours, where they will perform voluntary services under conditions that fully safeguard their integrity and rights. Supervision of these services must also be stipulated in the agreement.

Cautionary Non-Custodial Measures (or cautionary personal measures). These involve a court decision that places children under the surveillance of a specific person or institution, within their own habitual living environment, in order to facilitate investigation, protect the victim, ensure the



appearance of the accused at hearings during the proceedings and ensure that the child continues to engage in his or her routine activities (school, family, etc.) during the process.

Reparation of harm. A reparation agreement includes agreements between the accused and the victim, which are approved by the supervisory judge. It is of the first importance that the parties should have consented freely and in full awareness of their rights. Agreements are only valid when they refer to events under investigation that involve available legal assets and property, and include minor bodily harm or negligence.

Referral services or programmes, as established in The Beijing Rules, number 11, imply redirecting cases that could be dealt with through formal judicial proceedings to community support services, so that these programmes can address the assumption of criminal liability on the part of children without recourse to the formal justice system and its proceedings, which can be very lengthy, despite the fact that the principle of procedural celerity has been specifically included in specialized procedural legislation for children in conflict with criminal law. Thus, children are dissociated from conventional criminal justice processes and, after having secured their consent, they are assigned to fulfilling certain measures, such as: a) community services; b) supervision by a social worker or probation officer; c) offering compensation to the victim; d) offering an apology (public or privately), and others.

4. CONCLUSIONS AND RECOMMENDATIONS

An examination of the problem of violence in the region, and in particular, violence linked to the criminal intervention system for children, shows a high level of disconnection between legal discourse or intentions and effective or material responses to the issue. In practice, a semantic shift in relation to objectives and means is necessary: citizen security, repression, or democratic integration of all individuals in a community.

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The principal challenge that the States must confront is, no doubt, to generate and ensure the effective implementation of legislation, in accordance with international legal instruments relating to child rights, as well as to strengthen responses, plans, projects and public policies from a rights-based perspective, giving coherence and technical credibility to non-custodial measures.

To generate knowledge, explore reality by means of social research and data compilation and analysis, pinpoint good practices among the experiences of others, generate social and gender-based intervention with technical experts who are not only qualified, but committed to the problem and, of course, strengthen the participation of the whole child population in the process, not just those who are involved in the criminal system, but of all children, thus avoiding the selective features of the criminal system and the stigmatization of some sectors, leading to social and democratic participation and the solidarity of the whole community.

Identify the principal causes that lead children to commit criminal law violations and confront those causes with programmes to prevent such crimes.

In addition, special consideration should be given to attitudes to the social phenomenon and the image and subliminal messages generated with regard to children by the media, as well as how children are reflected in the media and how they are publicly profiled as being dangerous.

On the basis of several of the IIN's documents, such as: *Technical institutional guidelines for the implementation of non-custodial penalties and measures for juvenile offenders*, or the *Policy Position Paper of 2012, Juvenile Criminal Liability Systems in the Americas*, and bearing in mind the guidelines adopted by the United Nations, such as their Model Strategies and Practical Measures on the elimination of violence against children in the field of crime prevention and criminal justice,²⁵ we have been able to arrive at a number of guidelines based on a compilation of the necessary conditions for the effective implementation of alternatives to deprivation of liberty and non-

²⁵ <http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/Model%20strategies%20and%20practical%20measures%20on%20the%20elimination%20of%20violence%20against%20children%20in%20the%20field%20of%20crime%20prevention%20and%20criminal%20justice.pdf>

custodial penalties. A working guide or action plan in support of the authorities involved in juvenile criminal proceedings, which will make it possible to incorporate the rights-based approach and the gender perspective in the design of plans, programmes and actions should contain the following points:

- The States should promote the need to establish or strengthen general laws and public policies for the comprehensive protection of the human rights of children, which include the subject of children in contact with criminal law. If necessary, a general policy should be designed in this regard, which should be comprehensive and ensure that the content of principles and international standards reaches operational levels and encompasses special care and the gender perspective. Likewise, it should include actions and objectives in connection with prevention, the procedural stage, the enforcement of penalties and support subsequent to the penalty, through targeted social policy programmes, making the general policy as comprehensive as necessary.
- Promote the participation of community stakeholders, each of them assuming their role in the celebrated phenomenon of citizen security and the social coercion mechanisms that ensure it, by means of preventive and social reintegration policies based on education and the personal development of individuals. This should be on the basis of multi-disciplinary plans or projects and not merely depend on the proceedings of courts of justice that stigmatize a certain sector of the population. In this regard, State mechanisms in support of family and community life should be strengthened, with particular attention paid to the integration and participation of children in community activities viewed positively by the community.
- Promote the appointment of responsible officials who, in addition, have a reliable executive and supervisory apparatus under their control. It is a basic requirement that the States should appoint a public authority, with clearly defined responsibilities, to be in charge of managing the implementation of the measures in the juvenile criminal system. These authorities should be enabled to provide effective leadership in these issues and be

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CONFERÊNCIA ESPECIALIZADA INTERAMERICANA DA OEA

L' ENFANCE ET L' ADOLESCENCE: EN CONSTRUISANT ENVIRONNEMENTS DE PAIX

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accountable for their actions to the corresponding governmental directors, as well as to the citizens' own accountability bodies.

The demands arising from international treaties, which make it necessary to give priority to alternative measures to deprivation of liberty and make deprivation of liberty a measure of last resort, should not only be expressed in legal texts, but also in specialized institutional structures that should be set in motion in order to take responsibility for declared principles and transform them into concrete action. These structures should consider having multi-disciplinary teams and involving the protagonist participation of children, as well as the gender perspective.

One of the roles these authorities should undertake is the leadership of a working system for the whole non-custodial system in juvenile justice. Some of their functions should be the design, general management (diagnosis, planning, supervision and feedback) and regular evaluation of outcomes and impacts of the implementation of the system. Also included among their tasks should be to provide and manage the system's administrative support.

- Generation of specialized programmes for alternative measures to criminal proceedings and non-custodial penalties. National programmes that shed light on non-custodial measures, clearly showing their requirements, forms of work and basic rules of operation.

That is, for the effective implementation and efficient development of non-custodial measures, for them to be actively assimilated by prosecutors and judges and acquire social legitimacy, it is essential for the States to create two technical instruments. A National Alternative Measures Programme and a National Penalties Programme, under the direction of a public authority and administration. The design and implementation of these programmes would facilitate the overall administration of measures and penalties, in relation to both the specific allocation of resources (making them visible), and their recovery and technical strengthening.



- Coordination with the courts. It should also be remembered that accountability before the courts should clearly devolve upon a responsible public body, regardless of whether the execution is conducted by private agencies, or by public or municipal services. In other words, the search for solutions to conflicts outside criminal court proceedings (in the case of alternative measures to deprivation of liberty), or within them, in no way minimizes public responsibility in the implementation of both measures and penalties. The relevant court or prosecutor should be kept informed, as established in the agreements and/or records or the corresponding ruling regarding the penalty.
- Developing capacity in network administration for implementation implies that all non-custodial measures and penalties require the support of others, be they public services, ombudsmen, municipalities, NGOs, companies, religious groups, humanitarian or philanthropic organizations and community groups. It is important to keep in mind that some of the measures are simply impossible to carry out if others are not willing to take in, and even supervise the child. Therefore, network management becomes a major requirement. Public or private institutions responsible for implementation should also produce and implement active promotional policies, particularly to encourage fidelity to the network.
- Keeping records and promoting knowledge of alternative measures to deprivation of liberty constitute a significant innovation in the field of justice in general and juvenile justice in particular, as is the need for further scientific research in order to justify the solutions to the problems that are being discussed with regard to this issue. Equally important is the need to be aware of the fact that if complementary support is required for the implementation of measures and penalties, it will be provided or, if information is needed, it will be compiled, systematized and submitted to the relevant authorities.
- Strengthen means of active participation for the community and families in the prevention of violence.



- Regular monitoring and evaluation mechanisms for deprivation of liberty centres; their operation and safeguards. Ensure the existence of means of complaint for children who wish to report ill-treatment or make other reports of violations of their rights. Clearly define the role of independent human rights institutions, such as child rights ombudsman offices, in the monitoring and evaluation of detention centres for persons under the age of 18.

In short, and with reference to resolution CD/RES 03 (87-R/12) - JUVENILE JUSTICE SYSTEMS (adopted during the fourth plenary session held on 28 September 2012), encourage the States to intensify their efforts to fulfil the resolutions reached at that time, and in particular:

- 4 To urge the States to adopt, or if appropriate, consolidate and strengthen their Juvenile Justice Systems considering the principle of specialization in light of international human rights principles in general and particularly those that refer to the subject. Consideration should be given to the minimum standards and conditions according to which these systems should be designed.*
- 5. Propose that the consolidation and strengthening process should contemplate the implementation of alternative measures that promote the integration of adolescents subjected to these measures to fully exercise their rights and to use the deprivation of liberty as a last resort.*
- 6. Reaffirm the importance of public policies to promote the full enjoyment of rights as an essential measure in addressing this problem.*
- 7. To promote cooperation between the States of the Inter-American System in order to strengthen their capacity to design and implement juvenile justice systems and social policies in keeping with these guidelines.*



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- Working Group on Adolescent Criminal Responsibility (Members States: Antigua and Barbuda, Argentina, Brazil, Colombia, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru)
- Special Rapporteur on the Rights of the Child-American Commission on Human Rights
- Office of the High Representative of the Secretary General of United Nations on violence against children.