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Terre des Hommes thematic policy on juvenile justice

Thematic policy. Terre des hommes – Child relief

Founded in 1960, Terre des hommes is a Swiss organization which helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow a better daily life for over one million children and their close relatives, particularly in the domains of health care and protection.

This engagement is financed by individual and institutional support, of which 85% flows directly into the programs of Tdh

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Summary

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1

Justice for children in conflict with the law

1. Assessments and analyses at a global level

A universal problem linked to global economic inequality

Whatever the validity of the figure, often cited, of *one million children deprived of liberty throughout the world*, children in conflict with the law are often dealt with by law enforcement authorities, as they have *committed an offence*. They are treated as offenders even if they have not caused any damage to other people: illegal immigration, administrative detention, etc. Children are also sometimes arrested as a preventative measure if they are considered to be «*at risk of coming into conflict with the law*» or for status offences such as vagrancy or begging, etc.

• The reasons why children come into conflict with the law are principally poverty, break-up of the family home, lack of education, unemployment, migration, substance abuse, pressure exerted by peers or adults, lack of parental supervision, violence, abuse and exploitation, etc. – in other words, situations in which the child has rarely taken the initiative or made a deliberate choice of getting into conflict with the law.

More than half of the world's population now lives in towns: for the majority of inland migrants, the motive for rural exodus is the necessity to survive, undermined in rural surroundings, or the operation of ancestral community solidarity.

• The increase in the number of children coming to conflict with the law in towns is a symptom of social exclusion: many families encourage their children to contribute to family survival (if the family link is maintained) or to survive by themselves (if the family link is broken).

• The feeling of exclusion creates a *survival psychology*, and the child's perception of the *border between legality and illegality becomes blurred*, particularly when they are *forced*, physically or psychologically.

Faced with urban displays of *inaccessible consumer* goods, and with the prospect of *fast profit* and in a kind of *solidarity* – sometimes forced, even by violence – within a *more or less organised group*, many children are led to commit offences, of which the vast majority are property-related offences. These offences are committed more from the *need to survive* rather than from deliberate criminality with a realisation of the risks run.

Moreover, from a wider viewpoint, in some countries, for reasons of *custom and traditional ideas*, the concept of «*Children's Rights*», *including the child's right to be heard or to be protected from harm*, are sometimes misunderstood: some public opinion here can be spontaneously hostile, accustomed to considering a child as the property of his family or community, which has total power and control over him.

In all the countries of the world, whatever their level of economic development, governments face the issue of an increase in children coming into conflict with the law and envisage dealing with the problem by a more repressive approach, thought to be more effective, *to respond to the demands and anxiety of public opinion*. These demands are sometimes *exacerbated by the media*, which takes pleasure in broadcasting *easily manipulated statistics* by experts, with the public ignorant of the precise definitions and methods.

In states without a specialised system of justice for children, children in conflict with the law are for the most part treated in the same way as adults. The system of criminal law – for adults as for children –currently uses deprivation of liberty as the first and only resort instead of as a measure of last resort: which confirms public opinion that the nature of some crimes committed by children require them to be sentenced like adults . .

When the system develops what it claims to combat

In some countries where training (initial and follow-up training) is conspicuously missing, *the judicial system continues in a way at once cursory and lax*: for a simple theft of livestock, children are placed in pre-trial detention for an indefinite period . . . sometimes due to the loss of their file . . . The fact of *holding a bit of authority - public, police or legal* – encourages some of the people involved *to act – or not to act* – and to commit, with complete *impunity and illegality*, real *abuse of power*, with no control or recourse possible. Faced with the increase in children coming into conflict with the law, many countries favour a short-term policy in the hope of immediate political gains, rather than long-term treatment: *punish quickly rather than educate slowly . . .*

The public authorities often react with an *escalation of legislation and of repressive attitudes* of police and officials: *lowering the age of criminal responsibility, increasing the length of prison sentences for children*, sometimes imprisonment together with adults (prison becoming «*the school for crime*»); spectacular actions of the

raid type; *criminalizing vagrancy and begging*; building *closed custodial institutions*, presented as an alternative measure to imprisonment but where the conditions of detention are the same as in a prison – all the time complaining of «*lack of funds*» . . .

Detention in a place not separated from adults, unacceptable lengths of pre-trial detention, non-respect of elementary rules for a fair trial, the choice of procedures belonging to a system of justice for adults, the lack of alternatives to unnecessarily destructive sentences, the continuing use of the death sentence and life imprisonment in some countries, as well as the continuation of a retributive rather than remedial logic, are the essential elements, in varying degrees, in the situation of children in conflict with the law. In addition to these denials of rights, children in conflict with the law are at a greater risk of becoming victims of *violence, sexual abuse, economic exploitation, humiliation*, and the spread of *diseases*, including HIV/AIDS.

Reforming juvenile justice is, in addition, severely limited by the *lack of objective, systematic and exact statistics on the number of offences committed by children* in many countries, especially in developing countries. *The absence of efficient tools for collecting data, consistent classification of offences, suitable training as well as the political manipulation of statistics*, all contribute to an inability to guarantee protection for children in conflict with the law.

Universal issues, «beyond North and South»

The problems posed by children coming into conflict with the law are universal. Juvenile Justice cannot be evaluated exclusively in terms of economic development («*North/South*») of the countries concerned: certain most wealthy countries have developped a more repressive approach, whilst some developing countries have traditional practices of highly effective mediation. There is no miracle solution «*from the North*» likely to be systematically considered applicable «*to the South*», on the pretext of different economic development. *There are traditions of community mediation in every society*, in force in the so-called «*developing*» countries, from which the «*developed*» countries could draw inspiration – regarding *procedures*, not punishments.

But in the countries which have sufficient economic means to allow the possibility of alternative treatment to imprisonment, «*curfew*» practices in some urban areas appeared, parallel to the announcement (finally quashed) of *the detection of children «predisposed to delinquency» in infant school* (France). Whilst in the sixties, marginal and anti-authoritarian behaviour was seen as an inevitable, not to say fulfilling, symptom of the revitalisation of the generations, today discussions appear on «*anti-social*» behaviour of children (UK). This goes, for example, up to government authorisation (Switzerland) for the sale of «*Mosquito*» devices to property owners in well-to-do areas (appliances emitting ultrasounds audible only to youngsters under 25 ... and animals ... with the sole aim of getting them to move away).

The growing phenomenon of migration

In a «*globalised*» world, the *growth of the migration phenomenon*, inland or abroad, legal or illegal, triggers off the *exile of a number of children*, prompted by their own families or under pressure from traffickers for illegal or criminal activities. The number of migrant children that come into conflict with the law often leads to the application, in the destination country, of marginal, arbitrary or illegal methods of the «*double-standard*» type, contrary to international standards.

The primary obligation of protection for these young people, cut off from their families, is often neglected in favour of arbitrary procedures, *whose sense the children concerned frequently do not understand*. Experience shows that, in addition, these unaccompanied migrant children are not treated the same as other children in the host country. United Nations Convention on the Rights of the Child (1989 – Articles 22, 37 and 40).

No emergency justice for children involved in armed conflicts

Lastly, the upheavals occurring during domestic or international armed *conflicts* have shown more clearly the phenomenon of *youths recruited* into armed forces, whether militia, guerilla or other armed groups formed more or less spontaneously. In this context, *states parties confronted with domestic unrest impose a legal emergency system*, a sort of «*military law*» which suspends the obligation to treat juveniles according to the usual criminal code. And yet, *the recruiting itself is a proven form of exploitation and abuse of power* – most often under duress – which should oblige one *to treat the child as a victim before being a criminal*, whatever he has done during the fighting.

Nothing can justify, even in wartime, arbitrary or violent procedures and the dereliction or contravention of elementary child rights, without referring to the

agreements appropriate to war situations (Geneva Convention, Human Rights).

2. What are «grounds for action»?

Work of justice and not «humanitarian aid»

Written in 1959, the Charter of the Foundation *Terre des Hommes* stated its will «*to exercise justice and not condescension*». Since then, quantities of legal instruments and international regulations have been enacted, particularly in the field of justice for children. The role of states parties, civil society and NGOs is thus double: *make national laws conform to international standards* and be able to apply them in police, judicial, disciplinary and social spheres.

The priority given to juvenile justice is justified by the fact that if, in all societies, *the consensus is relatively easy on actions to benefit child victims* (of violence, exploitation, sexual abuse, trafficking), but *the rights of children who have committed an offence against a third party is not the object of the same consensus* in public opinion. Juvenile justice is thus a field where public opinion should be «*worked on*» and those who represent them in the contrary sense of spontaneous collective emotions – often fed and maintained by politicians and the media. (cf. No. 9 –«*General Comments No.10*» – § 96)

The political people in charge are fond of presenting their laws and practices as being the expression of an «*inevitable realism*», whereas NGOs and fighters for child rights are idealists, self-proclaimed, irresponsible dreamers. *And yet it is the partisans of a restorative approach to juvenile justice who are the realists, and the partisans of a strictly repressive approach are idealists*, by making public opinion believe, amongst other things by statistics manipulation (invented or «*worked over*»), that only a repressive policy is effective in the fight against delinquency, a view universally held, in the developed countries as well.

Juvenile Justice is not indulgent justice which does favours or takes compassionate decisions: it works according to precise legal standards which attempt to avoid arbitrariness, by demanding respect for the right of *defence*, the *presumption of innocence*, the right to *appeal*, etc.

The best interest of the child in conflict with the law

The system of justice for children must be focussed on the best interest of the child which can be defined as follows: (...) «*The best interest of the child is a legal instrument aiming at ensuring the well-being of the child at a physical, mental and social level. It is based on the obligation of authorities and public or private organisations to examine whether this criteria is fulfilled at the moment when a decision must be taken in regard to a child, and it represents a guarantee to the child that his long-term interests will be taken into account. It should serve as a unit of measurement when several interests come into competition.*» *(...) In case of doubt in the difficult task of determining the best interests of the child when in conflict with other interests or interests of other persons or groups of persons (...), it can then be replaced by the notion of «the least harm».*[1]

- The best interest of the child may in no case be put in symmetry or in systematic opposition to the interests of the victim, institutions (e.g. school) or society. It never results from the mechanical reasoning of international norms, but on the contrary from a debate, even contradictory, between actors – including the child himself (according to his age and maturity). The fact of listening to a child – this is his *participation* – does not at all release the adults from the responsibility of taking the decisions relating to *benefits* and *protection*.

Denials of rights contrary to good sense

An overwhelming majority of children in contact with the criminal justice system should not be there: the procedures followed often put them into situations prejudicial to their needs and in violation of their rights, especially in terms of protection;

- *a large majority of imprisoned children are still waiting to come to court* (preventative or provisional detention); excessive or inappropriate use of detention as well as the lack of alternatives can also be considered as violence against children in conflict with the law
- to imprison children for minor offences *takes away their chances of becoming productive adults and coping with a constructive role* in society

Children are often held in deplorable, inhumane conditions, often together with adult prisoners. Physical and sexual abuse is common. These children have no access to schooling, play, psychological support, nor to health services. The detention facilitates the spread of various diseases and infections. In many cases, even the most fundamental principles of a fair and just trial are scorned.

The arrest, detention and prison sentence are often arbitrary, disproportionate and illegal. The youths can be encouraged to plead guilty, whether or not they have committed the offence, just to speed up the trial. Not to forget the refusal of the right to parental visits.

Many decisions – or absence of decision – are the real denials of rights for children *which would not be allowed with adults*: they merit *severe sanctions towards judges, the police or prison staff.*

In some prisons or «*custodial*» institutions in certain countries, the situation is totally scandalous, unacceptable and justifying emergency measures, in terms of *daily checking of physical and mental health*. Not perversity, but absence of training and control, as if «*children are the same as adults, just less . . .*»

The fact that a child is subjected to a judicial penal procedure may never be considered to abolish his human rights:
«*Prisons do not exist outside the law. On the contrary, they were created by the law. The detainees and the prison staff are subject to the laws, including those which create and protect the rights of the detainees. (...) Delinquents are sentenced to the punishment of prison and not to punishment in prison. One does not go to prison to be punished, it is the absence of liberty as such which constitutes the punishment.*»[2]

Justice for half the population justifies a specialised system

Good governance in juvenile justice presumes *specialisation of police, judicial, educational and social personnel*, at every stage of the process, trained in the minimum about rules of child rights as well as the implementation of elementary regulations for his *protection against all forms of arbitrariness and violence*. The implementation of true juvenile justice system is not primarily a problem of financial and budget means: a minimum of theoretical knowledge about alternative measures to imprisonment should easily convince that *these alternatives are more effective and far less costly than financing the building and running of prisons or «Centres for Re-education»* where the living conditions often seem to be purely and simply the same as in prison.

Juvenile Justice, an issue of «Human Safety»

In general, *the states parties responsible for human safety on the territory under their jurisdiction* should understand this responsibility as being beyond the safety of the sovereign sector of the state. *The sovereignty of a state does not merely consist of the safety of its own existence and its own functioning. A state which is not in a position to ensure the minimum of safety – and respect for their rights – for its own children in general is not sovereign over its land.*

The fight for «*human safety*» inevitably works through a legal system for children conforming to international standards. In a context of globalisation, and especially liberalisation of the world economy, sometimes reducing the role of state public services in the national economy, the emphasis the government puts on the *fight for «human safety»* finds expression in an internal governance which sometimes leads to the *criminalization of numerous forms of poverty.* In this, *they ignore the decisive character of juvenile justice in keeping with international standards, not only – and firstly – in the interests of the child's safety, but also for the safety of the population*, in view of the demands of public opinion.

The concept of human safety must always be in line with an approach of integration. Good governance, in willingness for democratic progress, presumes that the state works pedagogically on public opinion, through *information on child rights*, of which it is at one and the same time *the source and the guarantor*, and also by the implementation of *community procedures of punishment and reintegration of the child*: all decisions or punishments aggravating the exclusion of the youngster from the community are doomed to failure.

«*How can deprivation of liberty be a school for freedom?*» (J.P. Rosenczveig).

3. What is understood by «Juvenile Justice»?

Definition of a child

A child is a human being under 18 years of age, whose dignity is the same as that of other human being, but who has, at that stage of his life, a *relative capacity for judgement, expression and defence*. This definition is the basis for the existence of an autonomous system of justice for children, distinct from that for adults.

- Article 1 of the Convention of the Rights of the Child[3] specifies that: «*a child is agreed to be any human being under 18 years of age, even if civil majority is reached earlier by virtue of the legislation applicable*».

- Article 2.2 of the Beijing Rules[4] on the administration of justice for children adds: «*A juvenile is a child or young person who, under the respective legal*

systems, may be dealt with for an offence in a manner which is different from an adult».

Justice with disciplinary, educational and protective measures

The term «*Juvenile Justice*» refers to the legislation, norms, standards, procedures, mechanisms and institutions specifically designed for monitoring young persons who are alleged as or accused of infringing the criminal law. It can be a legislation for protection rather than of punishment, affecting children in conflict with the law as well as children at risk requiring a form of *protection*, or educational assistance for children below the age of criminal responsibility (this varies from country to country). It also includes the efforts taken to eliminate or at least to reduce through prevention the causes of children coming into conflict with the law.

Finally, the expression «*child in conflict with the law*» is now accepted and no longer «*juvenile delinquent*», an expression with suggests a value judgement favouring stigmatisation of the young person in question. The term «*delinquency*», as a social phenomenon, can be used, but without suggesting stigmatisation of the minor.

Juvenile Justice is based on four important points:

• Prevention: this aims at avoiding that children do not get into a situation of being in conflict with the law, and also avoids their having direct contact with the formal system of criminal law.

• Protection: this aims at avoiding that children in conflict with the law become victims of violations of human rights. Such protection takes their personal development into account, to dissuade them from committing future offences, to encourage their rehabilitation and to accompany their social integration.

• Participation: children are no longer the passive beneficiaries of adult intervention, but are recognised as *having rights and as being people capable of interceding in their own futures*. They develop the feeling of *belonging to the community*, rather than being excluded.

• Diversion: its purpose is to guarantee that the child, at any point in the procedure, has the possibility of an alternative to the formal legal system. This is about taking advantage of the principles of *restorative* justice, which considers the victim, involves the community, and which treats the causes of the behaviour effectively, by identifying strategies to prevent future offences.

• Cf. Beijing Rules: «*1.1 – Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.*» This also means that:
- *educational measures, non-custodial*, should be the *rule*, and *detention* should remain the *exception;*
- *pre-trial detention* is only an *act of procedure* and not a direct punishment;
- in cases of offences or *crimes committed by juveniles within a group of adults*, the s*eparation of cases is a binding rule of law*, during the entire proceedings.

Juvenile Justice assumes their hearing and participation.

Right from the first questioning, *interviewing the child* should be competent, suitable to his age and maturity, and take the *presumption of his innocence* into account. The approach should be *educational*, based on the *child's understanding of the consequences of his actions. The punishments and measures* must be applied, according to a procedure of *conflict resolution* particularly settlement by *victim restitution* and not a procedure that is strictly repressive. The *restitution* can be symbolic, practical or economic, and the *damages* can be physical, psychological or material.

A *restoration of balance* must be sought between the claims and needs of the victim on the one hand and the situation of the offending child on the other. Usually, more sympathy is given to the person who has suffered harm than to the one who caused it.

To restore this balance, the proceedings should be conducted in a way that, *depending on his age and maturity*, a child *understands*:
- that the procedure he is subjected to is related to a *breach in human and social relations*, and is not only due to the fact that he has breached a law or rule;
- that the legal procedure aims at *restoring the social links his/her action has breached, in his/her own present and future interest*, as well as that of the victim (an individual or society);
- that it is *his/her action that is punished and not him/her as a person* that is judged and stigmatised;
- that the aim of the procedure and the punishment is *to find his/her place in the community*, in the future, and that this depends *on his/her capacity to act responsibly* («*answer for his actions*») and not to stigmatise his guilt.

The future of a child in conflict with the law is in his/her community

The decisions taken in regard to children in conflict with the law must necessarily be educational and aimed at their integration: *juvenile justice should aim to use a restorative approach to justice, in its objectives, in its spirit and in its practice*. This corresponds to Clause 1.3 of the Beijing Rules: «*Sufficient attention shall be given to positive measures that involve the full mobilisation of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.*»

It can, however, happen that the conditions for applying *restorative justice* cannot always – or only partly – be met: if the child denies his/her responsibility, or if the victim refuses to meet the offender. A breakdown can also occur in the course of the proceedings. This does not at all mean a return to the strict approach of *repressive/retributive justice*. The basic standards of juvenile justice remain valid, which recommend, in every way, the use of *educational measures*, alternatives to deprivation of liberty. Detention, if inevitable, cannot be decided on except as a measure of last resort and for the shortest possible period of time, without the failure of a restorative approach being invoked. The standards established in the *Beijing Rules* for the administration of juvenile justice remain fully applicable and obligatory, even if the conditions for restorative justice cannot be met.

Justice, firm on principles, flexible in application

The system and procedures of juvenile justice are more flexible than those of the system of justice for adults, but this *necessary flexibility* does not justify any arbitrary practice . . . According to the «*the principle of proportionality*» the measures should be adapted to the gravity of the offence, but should also *take into account the circumstances of the personal and family life of the child*, as well as his/*her individual history.*

The Beijing Rules stipulate that:
«*6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions*». ." The disciplinary measures taken towards the child can be coupled – or not – to measures for educational assistance, even if he/she could have these educational measures without being disciplined, etc. . . . Furthermore, a specialized judge can, at any stage of the proceedings, including the enforcement of the measures after sentence, modify, revoke or supplement his decisions according to the development of the child's situation, if he/she believes this to be in the best interest of the child.

Juvenile justice: a tool for development

Juvenile justice cannot be confined to the dilemma «*humanitarian/development*»: *the promotion and application of law are the components of the development of a country.* Taking into account the scale of the problems of children coming into conflict with the law, the improvement of juvenile justice should be integrated as a *criteria for evaluation of the country's development process* (as much as nutrition, education or public health): an alternative measure to detention is decisive to the sustainable reintegration of a child.

Cf. Beijing Rules: Article 1.4 «*Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.*»

4. What is understood by «Restorative juvenile justice»?

The idea of *restorative juvenile justice* is often presented in terms of state of mind, attitude, sometimes of norms and principles, in contrast/symmetry to *repressive/retributive* justice. Restorative justice aims at restoring the balance of the damaged relationship between the victim, the offender, and the community. This approach favours solutions which repair damage, reconcile the parties involved and restore the harmony in the community, whilst *repressive/retributive* justice restricts itself to dealing with the offence through a disciplinary action provided by the law, without integrating, above all, the idea of the «*best interests*» either of the victim, the offender or the community.

In the *Final Declaration of the 1st World Convention on Restorative Juvenile Justice* ([5]), organised by *Terre des hommes*, this is defined as: «*Restorative juvenile justice refers to the treatment of children and adolescents in conflict with the law, whose aim is reparation of damage caused to the individual, to social ties and to society. This aim assumes the active, joint participation of the delinquent minor, the victim and other individuals and members of the community if need be, so as to resolve the problems caused by the offence. There is no single, unique model for implementation of this approach to restorative justice. (...) This process leads to responses and plans such as reparation, restitution, and community service, whose objective is to satisfy the responsibilities and personal and collective needs of the parties and to come to integration of the victim and the minor.*»

Extracts from «*Handbook for programmes of restorative justice*» (UNODC[6]):
(…) «*Restorative justice is a method of resolving problems which, in their various forms, bring together the victim, the offender, their social networks, judicial bodies and the community. (It) is based on the fundamental principle where criminal behaviour does not only violate the law, but also wrongs the victims and the community. (...) By restorative justice, a process is understood by which one combats delinquency by righting the wrongs done to the victims, by making the delinquents accountable for their actions and, often, bringing the community into the resolution of the conflict. The participation of the parties is an essential aspect of this process, which places emphasis on the establishment of a relationship, on reconciliation and on seeking an understanding between the victims and the offender. This method can be adapted to various cultures and the needs of different communities.*» (...)

Notes section I

[1] *In « L'Intérêt Supérieur de l'Enfant - De l'Analyse Littérale à la Portée Philosophique » - Jean Zermatten - 2003)*

[2] *(Penal Reform International).*

[3] *Convention on the Rights of the Child: http://www2.ohchr.org/french/law/crc.htm*

[4] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985) http://www2.ohchr.org/french/law/regles_beijing.htm*

[5] *http://www.congresomundialjjrperu2009.org/*

[6] *http://www.unodc.org/documents/justice-and-prison-reform/Programme_justice_reparatrice.pdf*

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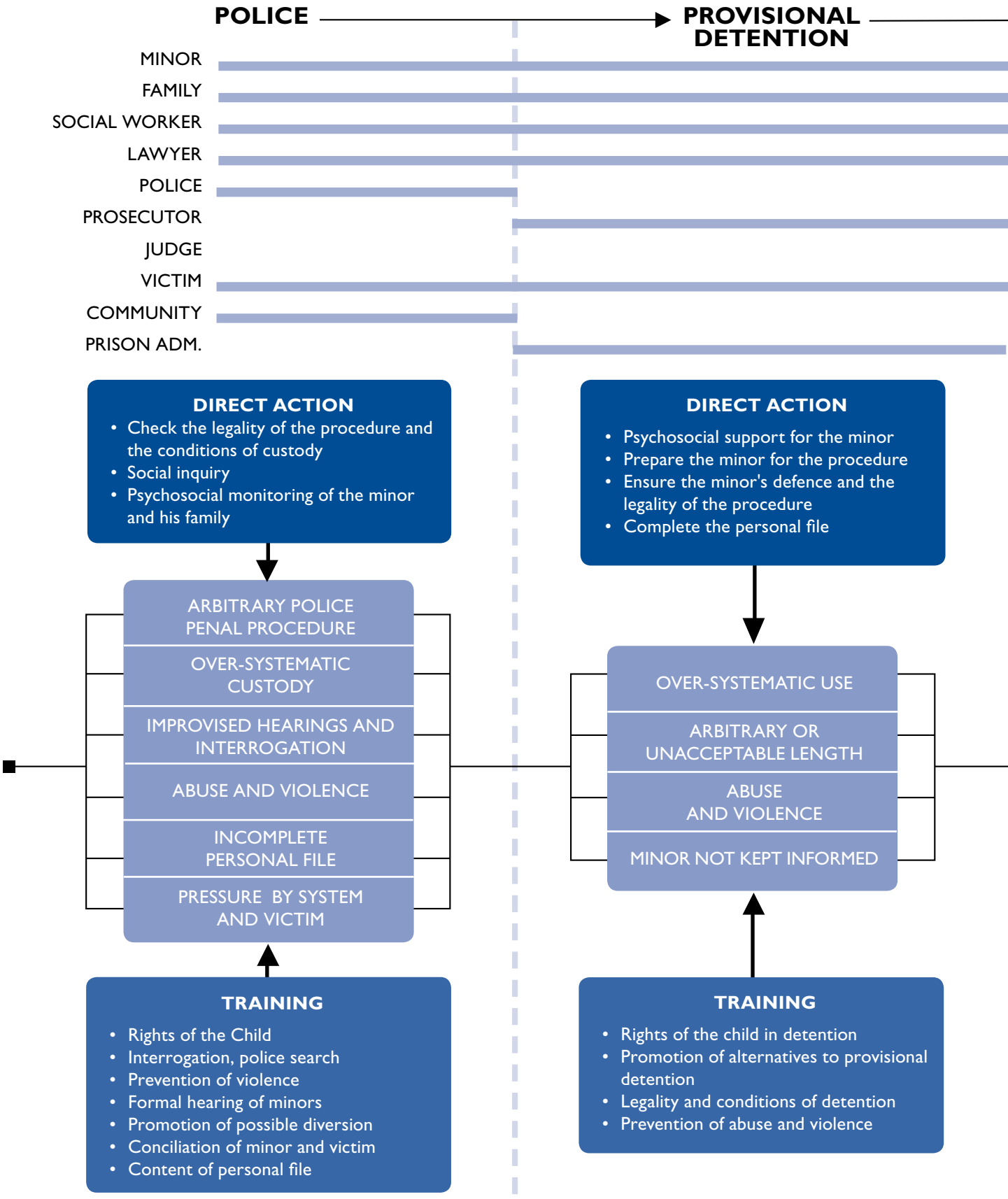
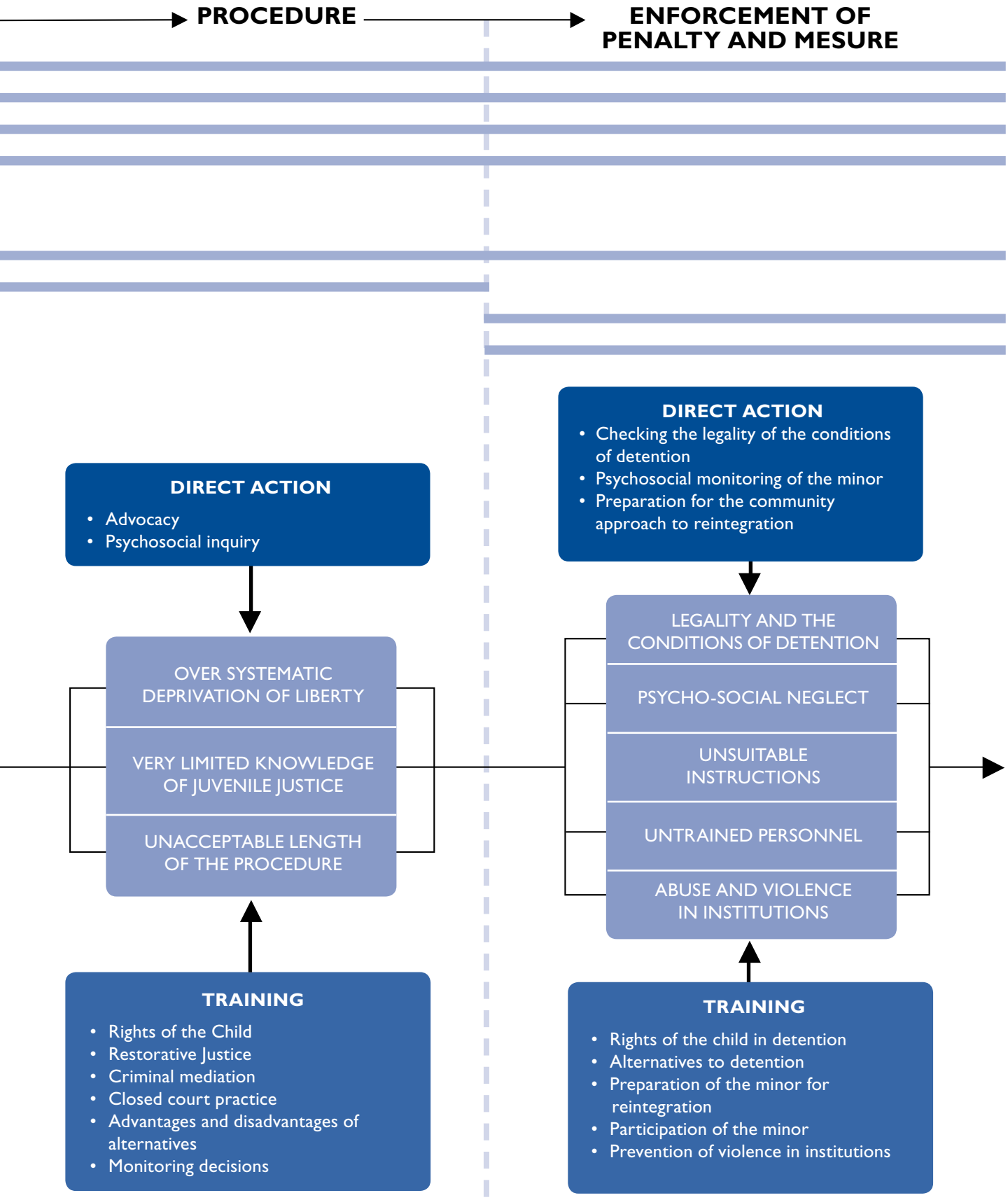
Intervention by Tdh

Model in action of Justice for Minors




PROCEDURE
ENFORCEMENT OF PENALTY AND MESURE
DIRECT ACTION
• Advocacy
• Psychosocial inquiry
OVER SYSTEMATIC DEPRIVATION OF LIBERTY
VERY LIMITED KNOWLEDGE OF JUVENILE JUSTICE
UNACCEPTABLE LENGTH OF THE PROCEDURE
TRAINING
• Rights of the Child
• Restorative Justice
• Criminal mediation
• Closed court practice
• Advantages and disadvantages of alternatives
• Monitoring decisions
DIRECT ACTION
• Checking the legality of the conditions of detention
• Psychosocial monitoring of the minor
• Preparation for the community approach to reintegration
LEGALITY AND THE CONDITIONS OF DETENTION
PSYCHO-SOCIAL NEGLECT
UNSUITABLE INSTRUCTIONS
UNTRAINED PERSONNEL
ABUSE AND VIOLENCE IN INSTITUTIONS
TRAINING
• Rights of the child in detention
• Alternatives to detention
• Preparation of the minor for reintegration
• Participation of the minor
• Prevention of violence in institutions

5. General principles

A rights approach based on the Convention on the Rights of the Child (1989):

«*The States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's integration and the child's assuming a constructive role in society.*» (Article 40 – cf. Article 37).

(...) «*States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognised as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice than can and should be used in most cases*». Cf. General comments No. 10 of the Committee on the Rights of the Child (OG10).

Justice is the expression of the sovereignty of the state

The *purpose* of a programme for children in conflict with the law is to *establish an operational culture of juvenile justice* outside and even beyond the permanent and active presence of *Terre des hommes*. This long-term strategy is both the *final objective* of the Foundation and the *only chance for the sustainability* of its action.

The Juvenile Justice Programmes are run by government parties: *Terre des hommes* only intervenes occasionally in the recruitment of social parties (social workers, psychologists, youth workers), either directly or through a national NGO if there is one. *Terre des hommes* also intervenes with payment to lawyers specialised in juvenile justice, even if understood, however, that legal aid, always provided for by national law, should be progressively ensured by the Ministry of Justice or the competent authority.

Direct aid to strengthen national structures

As in other constituents of its actions in the past, *Terre des hommes* started by initiating *direct activity on its own responsibility* in the framework of an agreement with the Ministry concerned. Then, progressively, the activity came to include the strengthening of national competencies, whether with national salaried personnel or with staff from the national partner-NGO, to lead to the strengthening of national structures, public or private, so as *to prompt the authorities to create the necessary services* and to train the officials concerned. This objective should be included *from the initial planning of the programme*.

Conditions for sustainability of a programme for juvenile justice

From the viewpoint of objectives, the sustainability of a programme for children in conflict with the law presupposes:

- that *the laws conform to international standards*
- that the *practice of defence* of children in conflict with the law be considered *necessary and effective*;
- that *magistrates and specialised officials* be *trained in child rights*:
- that *public services and/or national NGOs* implement *alternative measures*;
- that *inspections of the conditions of detention* be carried out *regularly and transparently jointly with government authorities*;
- that the final document of the programme's *strategic planning* be *realistic* and result from *joint discussions with all the participants*.

Sustainability through the stability of the network

In no country, one stakeholder alone can fulfill all the objectives. An *analysis of the situation* permits identification of the effective parties, on whom the intervention of *Terre des hommes* is *targeted, in agreement with the competent authorities* (Public prosecutor, Ministries of Justice, of the Interior, of Social Affairs).

Sustainability also depends on the *programme links between the state services* and the civil society: a form of sustainability consisting in urging the setting up of a «*National Association/Coalition/Consortium for juvenile justice*» whose «*corporate*» goal is to maintain contact between the persons and officials of the state concerned, through individual links which are often initiated during the repeated training courses hosted by Tdh. It is also desirable to include, by right, students from the National Schools of Magistracy and Police. Even in the case of the institutional withdrawal of Tdh from the country concerned, it is *always possible to keep in touch via an exchange network and expertise*, by maintaining permanent links with foreign programmes having similar objectives.

Sustainability should be considered only under various aspects:

- training given to national officials is «*definitive*» and should be thought of as an «*added value*». A series of training courses often leads to a *network of personal relationships* on a permanent basis between national actors and international experts, even if the former are often transferred.
- the contribution of *Terre des hommes* to the improvement of laws and procedures should be considered as a lasting benefit, particularly if *Terre des hommes* has created/inspired an action group of national NGOs involved in the monitoring of juvenile justice, especially in the provinces.

The sustainability of a programme also assumes that *all the stages and all the commitments be formalised by written covenants, agreements,* «*MoU*»(*Memorandum of Understanding*) including impact evaluation procedures. Ideally, a single framework agreement, signed jointly by one or more of the ministries concerned, would make it possible not to count exclusively on the informal good relationships formed with these persons in the exercise of their functions.

Sustainability through financial stability and diversity

The sustainability of a programme taken in hand by a national NGO is best assured if the NGO finds the means to *diversify its financial sources so as not to depend on the vagaries of a* «*single donor*». Withdrawal of the funding from *Terre des hommes*, however, runs the danger of encouraging the NGO to devote its time and energy to fundraising, to the detriment of daily monitoring and the quality of the programmes (*«less quality»* = «*less attractive*» for donors, etc.). One should also be alert that, within the national NGO, the management of the NGO programmes and the job of raising funds are not done by the same person. As well, it can happen that the sponsors of institutional funding are open to financing the activities of a national NGO, on condition that the foreign organisation offers a sort of «*guarantee*» of the quality and effectiveness of the actions. *Terre des hommes* can, at this level, play a temporarily fundamental role, with *dialogue between the three parties, with strengthening of the quality of institutional links*, without, however, considering itself to be indispensable.

Sustainability through deep-rooting in the community

It is furthermore important to *adapt ambitions in the cultural and technical context of the country*: the inputs of Tdh should not presume on too-sophisticated national abilities, unless to create a new dependency on outside help (for example in the field of computerization).

Restorative justice allocates an essential role to the community environment of the child, presupposes the suitable use of language, great patience in the ability to listen to community actors (non-state), knowledge of traditional customs, of the psychosocial part of child and family follow-up, of the «*translation*» of legal procedures among groups likely to favour the reintegration of the child; all these are essential. The superiority of Western social productivity as far as the integration of juveniles is concerned, remains to be seen.

6. Promotion of alternatives to deprivation of personal liberty

Alternatives can be considered three times in the course of the procedure:

- *at the outset of the procedure:* diversion allows extra-judicial resolution of the conflict. Trained police officers might be able to solve the problem without recourse to formal hearings.
- *during the procedure*: the legal procedure is then suspended to permit an alternative to be sought and if this succeeds, the judge might close the matter.
- *after the procedure*: even after the minor is sentenced, the judge might reverse his decision and permit an alternative.

The alternatives can be *combined in any way*, whether or not accompanied by measures of educational assistance, and *may at any time be reversed* by the decision-taking authority.

At the Police Station and during the investigation (1):

- Caution/reprimand
- Case closed or on conditions
- Criminal mediation/reparation
- Provisional release with or without placement
- Handing over to the parents
- Provisional family placement

- Provisional institutional placement
- Recall to law
- Judicial investigation.

The question of pre-trial detention

Pre-trial detention should not and may not ever be considered as a – de facto – disciplinary measure before judgement, even if the latter takes into account the actual length of the provisional detention submitted to. *Pre-trial detention is not a punishment but solely a procedural method*. It is not imposed except for the needs of the criminal inquiry. It aims to prevent collusion and the risk of flight, but *the child, before judgement, is on principle – in the right sense – presumed innocent*.

Cf. Beijing Rules: 13.1 *Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time*.

- *13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such a close supervision, intensive care or placement with a family or in an educational setting. (...)*
- *13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.*
- *13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.*
- *13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they many require in view of their age, sex and personality.*

At the stage of adjudication and disposition[7]

Cf. Beijing Rules:

- «*7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings*».

The alternatives, at this stage, are as follows:

- Admonition/warning/reprimand .
- Non-imposition or suspended sentence .
- Straightforward suspended sentence or probation
- Fine with or without suspended sentence
- Release on probation
- Release on parole
- Community service

7. Juvenile justice Indicators

Quantitative indicators

The Quantitative Indicators 1 to 11 require the *collection of numerical information* about children in conflict with the law. They measure features of the juvenile justice system that can be expressed with numbers. In order to allow easy comparison between countries, and so that changes over time can be followed, many of the Quantitative Indicators measure percentages or numbers of children per 100,000 of the country's total child population. The quantitative indicators also measure the duration that children spend in contact with the system

- Children in conflict with the law: number of children arrested in a 12-month period, per 100,000 child population
- Children in detention per 100,000 children.
- Children in pre-trial detention per 100,000 children
- Duration of pre-trial detention: : time spent in detention of children before sentencing
- Duration of detention after sentencing: time spent by the children in detention after sentencing
- Child deaths in detention: in the 12-month period per 100,000 children.
- Separation from adults: percentage of detained children not wholly separated from adults.
- Contact with parents and family: percentage of children who have been visited by a family member in the previous 3 months.
- Pre-sentence diversion: percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.
- Post-detention aftercare: percentage of children released from detention receiving aftercare .

Indicators of general policy

Indicators of general policy (measured by a system of levels, from 1 to 4) assess whether four features which are particularly important for effective juvenile justice are enshrined in national law or policy; the degree of specialisation of the juvenile justice system and what a country does for prevention.

The Policy Indicators also examine two important safeguards for children in detention: *whether such children are able to complain about the way they are treated to an independent body, and whether a system of independent inspections of places of detention exists.*

- Regular independent inspections: the existence of a system guaranteeing regular independent inspections of places of detention: percentage of places of detention having received an independent inspection during the past 12 months.
- Mechanism of complaint: the existence of a complaints system for children in detention;
- Existence of a specialised juvenile justice system: this is understood as a national legislative framework and the policies followed by this legal framework.
- Prevention: existence: of a national plan for prevention of child involvement in crime.

The indicators above enable a picture to be made of the overall situation of a national legal system at a given moment. But other indicators ensure understanding of the key factors needed to define objectives, methods of working and the content of training courses. They enable public and private parties to use the necessary tools for the assessment of their work.

Supplementary quantitative indicators

- respective percentages of juveniles receiving a decision
- of follow-up in an open environment;
- of placement outside own family;
- of placement in a closed institution;
- of imprisonment (distinguishing between pre- and post-sentence detention);

- percentage of the offences committed by children inrelation to the total of the criminal population
- comparative percentages of second offenders (duringthe year following the enforcement of disciplinarymeasures) depending on whether the minors
- were imprisoned or benefited from alternatives to deprivation of liberty;
- percentage of *suspended prison sentences* of the total of sentences pronounced;
- respective percentages of *first offenders* and recidivists sentenced to prison;
- respective percentages of *alternative measures, educational measures*, and non-juvenile-specific sentences (imprisonment, compensation, community service);
- number of *possibilities offered by the public services* for «*Community Service*»;
- number *of individual cases followed up of social workers over one year*;
- existence of a *collection and management system for data relevant to each individual case* ensuring that all the various parties can speedily find the information necessary, whilst respecting *confidentiality.*

- Supplementary general policy indicators principally aimed at fuelling advocacy arguments:

- *budgetary comparison between the cost of imprisonment of children and that of alternative, non-institutional measures*;
- nature and validity of the objections expressed by the authorities (including the law-makers)
  a) for the establishment of a specific system of juvenile justice;
  b) for the promulgation of a specific law-makers the alternatives to deprivation of liberty according to international standards;
- *existence of a coalition of NGOs and parties of the civil society* associated with a specific strategy for advocacy of juvenile justice to the authorities:
- existence of a *follow-up procedure of the general recommendations of the Committee of Child Rights* (General Comments No 10) as well as the specific recommendations to the country concerned:
- existence of a *training module for child rights* at the level of initial university training (Law Faculty, Social Studies, etc.), as in the specialised National Schools (Magistracy, Police, prison personnel);
- existence of a *regular training policy for parties involved in the law* concerning the treatment of juveniles in conflict with the law:
- *degree of collaboration between the Ministries concerned in juvenile justice*: the Ministries of Justice, the Interior, Social Affairs, Health, Education and, sometimes, Defence (e.g. multidisciplinary training);
- *degree of respect for the rights of children deprived of liberty* to health, education, the religious practice of their choice, vocational training, etc.

8. International positioning of Tdh

Regional coordination

Terre des hommes is firmly committed to developing *a regional approach in the matter of follow-up and support in juvenile justice*. The expertise accumulated in several African countries has made it possible to identify and train national professionals in juvenile justice, henceforth fully capable of assuming the role of resource person in strategic planning and in training courses for public and private persons active in juvenile justice in French-speaking Africa. The same step has been taken in South and Central America. The support of foreign international experts is, however, always useful and desired by the nationals, particularly to pass on the capitalisation of lessons learned in other continents and other cultures from the common international standards.

«Interagency Panel on Juvenile Justice»

Since 2004, *Terre des hommes* has been a member of the Interagency Panel on Juvenile Justice (IPJJ), a structure based on a Resolution of the Economic and Social Council of the United Nations (ECOSOC), which brings together agencies of the UN and NGOs active in the field of juvenile justice at an international level (or at least regional). It aims at *coordinating the interventions of its members in the field of juvenile justice in the countries of intervention, so as to avoid duplication and to strengthen the complementarities*. Where necessary, it keeps in constant touch with the key-persons in juvenile justice in the main specialised organisations.

The website of this group makes all the technical aid documents for juvenile justice available, in three languages (English, French, Spanish): www.juvenilejusticepanel.org

International advocacy

In the framework of its international network of contacts, institutions and experts, Tdh wishes to contribute to the *development of international advocacy for juvenile justice*, by particularly taking into account the general trend towards the criminalization of disadvantaged juveniles, the withdrawal of juvenile justice to benefit policies of strictly repressive approach, and the reduction of state budgets in this field, which public opinion does not consider to be a priority. It is essential for juvenile justice, as for all the other undertakings and objectives, to *work in an international network, for reasons of expertise, coordination and credibility towards governments*. A first *World Conference on Restorative juvenile justice*, organised in November 2009 by *Terre des hommes* in Lima, Peru, will be followed by a second world conference, presumably in 2013.

Notes section II

[7] *«Manual for the Measurement of Juvenile Justice Indicators» - UNICEF/UNODC 2008*
http://www.juvenilejusticepanel.org/resource/items/U/N/UNODCUNICEFManuelIndicateursJM08_FR.pdf

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3

Tdh in practice

9. Focus on legislation

«*Over the world, the legal status of programmes of restorative justice vary considerably, some sanctioned by the law, others having no official status. (...)* (Since) *the law on the determination of sentences* (authorises) *various sentences, suspended sentences and community service, the scope is there to allow recourse to restorative justice.*» (UNODC)

Even if regulations were not necessary to set up a number of restorative justice programmes, it is, however, desirable that the procedure be codified for children in conflict with the law – and would «*create a legal incentive to have recourse to restorative justice programmes*.» The situation must be avoided where diversion, even in good faith, leads to arbitrary procedures or undertakings making it possible to manipulate the minor or the victim. *Diversion – avoidance of criminal proceedings – does not consist of permitting arbitrary powers* (manipulating or forcing the child's consent) which would, a priori, be easier than when in the framework of restorative procedures between adults.

Meanwhile, in many countries, *improvement of the law is a political issue and the legal development is unpredictable*. First of all, before changing things, one must *work with what one has* and what already exists: *no shortcoming of the law may serve as a pretext or as a reason for not breaking new ground* in terms of alternatives to deprivation of liberty. The *pressure of public opinion* is too often used as a pretext for repressive measures, in particular for minor offences committed by first offenders, but a Ministry of Justice can initiate *pilot projects* with a view to possible modification of the law. In fact, national law always provides for, if only by certain formulations, the *possibility of developing alternative measures to detention*, which can also *inspire local or customary practices* which exist in this matter – which does not mean that customary punishments, especially corporal ones, are always acceptable today.

10. Focus on monitoring juvenile justice

The participation of the child

Article 12 of the Convention on the Rights of the Child states: «*States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*»

«*The child's participation strengthens the relevant and suitable character of the decisions taken on the issue concerning him: it obliges the adults to adapt themselves to his level of language and understanding, a necessary condition for all future integration.*»

The success of the integration of the convicted child is not the simple result of even the best actions implemented by people working in good faith for his interests. A *child in conflict with the law is like all human beings: he will not change unless he decides to change and considers that it is in his own interest.*

It is necessary to distinguish between various concepts: the *interest* of the child, the *wish* of the child, the *needs* of the child, the *rights* of the child. A child can have a need which he cannot express except as a wish, totally unaware of his rights, and incapable of seeing his long-term interests.

Not only should the concepts not be confused, but they are sometimes irreconcilable. The participation of the child may in no case be considered as a demagogic attitude, but there is no hope of integration if the child *does not understand* the why and wherefore of what is planned for him, with him (and with or without his family) if he cannot express himself and if he cannot defend himself from arbitrary or inappropriate decisions imposed on him (whether or not he is right to see them as such). *The participation of the child in the procedures concerning him does not remove the responsibility of the adults to take the decisions: yet any decision taken without integrating the stage of listening to and dialogue with the child is doomed to fail.*

The Committee on the Rights of the Child, in its General Comments No. 12, states in paragraph 34: «*A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child appropriate. Particular attention needs to be paid to the provision and delivery of child friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.*»

The coherence, credibility and effectiveness of a programme for children in conflict with the law presupposes that the *educational work starts with the first contact with the child and his questioning at the police*

station. The child's recognition of his actions and their consequences, and his agreement to discuss possible forms of compensation/reconciliation are determining factors at the inquiry, arguing for possible alternatives to the risk of pre-sentence detention.

Hearing at the stage of questioning and arrest

Apart from the police officer and the minor, a social worker and a lawyer will be present, possibly a parent and/or person of confidence (cf. national law). The police officer is free to decide how to place the participants during the hearing. It seems desirable that he sits opposite the child so as to have permanent eye contact with him. The child may talk to his lawyer and his parent before the hearing.

Role of the social worker

The social worker (SW) should watch that his/her presence at the police station, in court or in the prison, *should not immediately be considered by the child to be part of the repressive function of society*. Even if the relationship which is created is not a relationship of authority but of *listening*, the SW should make the young person aware of the *consequences of his actions*: parallel to the social investigation, *hearing him is essential to pinpointing the child's chances of rehabilitating himself* in his own eyes and becoming part

- of the *resolution of the conflict* at this moment;
- of his *long-term integration* – with, however, the risk of the child refusing all plans for integration or again to change his mind in an unpredictable way after initially having accepted to work collaborate with the social worker.

What matters is that the child comes, in time, to assess his own capacities and the possibilities of success in a different way than that of delinquency. During the monitoring of young people in prison, the social worker fills a determining role of improving their behaviour in a way to increasing the chances of early or conditional release.

Educational assistance

The educational approach is defined in a general way as follows: «(…) *Integration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatisation, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes integration requires that all actions should support the child becoming a full, constructive member of his/her society.*» (Ref. No. 9: General Comments No. 10 - § 29)

Educational assistance is defined more precisely: «*A measure passed by a judge for juveniles to protect a child whose health, safety or morals are in danger or whose conditions of education are severely compromised, for example, by mistreatment, violence, sexual abuse, truancy, prostitution, neglect or abandonment, drug addiction, etc. The child can be left with his family and monitored by a youth worker, entrusted to a trustworthy person or placed in an institution (home). (...) The child can be kept in his family, and a person or service charged with helping or counselling the child or his family. The judge can subject the keeping of a child in his surroundings to particular obligations (e.g. regular attendance at a medical or educational establishment.*» (Source: Ministère de la Justice - France[9])

Hearing the juvenile

In any procedure, *hearing a child cannot be extempore, whether he is a victim or in conflict with the law.* A child does not become «*in conflict with the law*» without having lived through situations where his rights were lastingly scorned in one way or another. The quality of hearing a child, stricto sensu, is essential, even if it is only one stage in the procedure. Cf. General Comments No. 12 of the Committee of Rights of the Child:

(…) «*44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue.* (...)

Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.»(…)

Professional responsibility and legal responsibility

The responsibility for implementing alternatives to detention does not at all signify that the social worker takes legal responsibility for the child concerned, this remains intact with the parents, guardians or public institutions in charge of him.

The social worker acts within the limits of the decisions defined by the judge, according to the agreement of work established between the Ministry of Justice and the NGO (national or international) who employs him: he does not receive *any delegation of legal power on the child,* neither parallel to nor conflicting with parental authority.

The social worker should not consider the child as «*the object*» of his work, but should listen to and reassure him/her. With an empathic attitude and in language appropriate to the age and maturity of the child, the child should «*go over*» the facts of the matter, their consequences and his responsibility («*can answer for*»). But the social worker should also *assess his abilities, his wishes, his blocked interpersonal skills, his capacity to understand his long-term interests, to re-build his future, and to negotiate a «contract»*, when often the only social relationship he knows (from the streets or in prison) is a struggle for power.

The social worker should know his limits and be able to appeal to external domains (psychological, medical, etc.) and possibly to accept or ask for supervision.

The exercise of the professional responsibility of the social worker should not lead to an extension of the legal procedure: it included the following tasks:

- *inform the child of his rights* and make certain of his identity, age, domicile and his living conditions, and of the ability of his family to participate in his integration;
- to *make certain that the lawyer has available all the factors for the child's defence* (and for the plea where necessary);
- *convey the social inquiry to the judge* (and make certain that he has received it);
- formulate an *individual integration plan* and analyse the objective conditions (network of external domains) in this plan, showing the child the possible options (it is perhaps the first time an adult has given such a child a choice concerning himself), it being understood that to listen to the words of a child does not automatically mean to agree with his opinion;
- to make sure that the *child presents himself at the hearings or appearances* and conforms to the instructions of the judge, presuming that he has *understood and taken them in*;
- give an account of the *monitoring of the measures decided on by the judge* and possible problems in their implementation;
- during the course of the alternative disciplinary measure decided on by the judge, to make sure that under no circumstances is the child exploited on the pretext of carrying out a decision of justice.

Especial difficulties of monitoring

The child's reintegration is much more difficult if the lawyer/social worker team cannot obtain an alternative to pre-sentence detention. The child, considering himself to be innocent (which is legally correct), can be hostile to any approach to reintegration. But he can also rebel, especially if the period of provisional detention (for a length of time he does not know) is felt to be an actual punishment before any judgement has been made.

The social worker can only with difficulty intervene in the conditions of detention, nor can he intervene with a request for conditional or early release, as this is the role of the lawyer.

The relationship between the social worker and the prison administration is important: prison staff should be trained to analyse and report on the child's behaviour in prison. The social worker should accept the exchange of experiences in a team, self-criticism and the possibilities offered of supervision, as well as discussions in a team on the assessment of the success of integration, of which the criteria can vary from country to country. It is also essential to evaluate what, in a «failed» integration, is seen to be, on the one hand, the child's own attitude, and on the other, the objective conditions, so as not to let the child bear the sole blame for failure.

One speaks of integration when the child is still in touch with his family, and they can play a determining role. One speaks of reintegration when the child no longer has contact with his family.

Cooperation between lawyers and social workers

The role of the lawyer starts with the questioning at the police station, even with a view to an amicable arrangement, conciliation, compensation or a simple fine.

The *lawyer* should pay attention to respect for the rights of the child:

- the right of a *presumption of innocence* until culpability has been legally established;
- the right of being *immediately and directly informed* of the accusations against him;

- the right to benefit from *legal assistance* or any other appropriate assistance;
- the right for his case to be heard without delay by a *competent, independent and impartial legal authority*;
- the right *not to be forced to admit to his guilt*, nor to give evidence;
- the right to question or have *the witnesses concerned questioned*;
- the right to have the *help of an interpreter if necessary, free of charge*;
- the right to *full respect for his integrity and private safety* at all stages of the procedure.

• The social worker can take over this role, on condition of being able to refer quickly, if needed, to the lawyer, in particular at the moment of a decision to extend custody.

• The presence of the lawyer and/or the social worker at the police station is decisive (even if procedure forces them into the part of «*silent witnesses*»), for three reasons:

- the child should *know his rights*, according to his abilities of discernment;
- cross-questioning has the best chance if taking place in conditions of *respect for the procedures and the person of the child* (no toleration of "tough" questioning);
- in many cases, an alternative to custody at the police station depends on the possibility of finding the family quickly.

The lawyer should watch that all *decisions of justice are given by the judge and that the length of a procedure does not, in fact, turn into a denial of justice*: if the maximum time of waiting for a decision is not respected, it should immediately lead to the release of the child concerned.

The lawyer should also watch over the application of *the laws relative to compensation and indemnity in the case of denial of justice*, which can include various forms of mistreatment or abuse during custody or detention, or the wrongful length of detention.

The lawyer also has the role of evaluating the *necessity of obtaining the closed hearing of the appearance before a judge or at the public hearing in court*, so as to avoid the psychological paralysis of the juvenile and the stigma on his own or his family's social surroundings. But care must also be taken that a *closed hearing is not used as a pretext for concealment of arbitrary or hasty procedures*, particularly when the situation has been given a lot of publicity in the media; there can be extreme situations where – paradoxically – a public hearing guarantees better respect for the procedures and for the rights of the child, although with the risk of stigmatisation mentioned above.

Place and role of the victim

The term victim means «*a person who is personally and directly subjected to physical, moral or material wrong.*» (French law).

A programme of restorative justice aiming at mediation or reconciliation between the child and his victim *presupposes the willing participation of the victim*, without «*re-victimising*» him/her by direct meetings with the child: indirect mediation by an ombudsman is as valid as direct mediation.

Mediation with the victim can take place before the pronouncement of judgement, as the outcome of the mediation can influence it, as it can after judgement or during the carrying out of any measures, with possibilities for adjustment, viz. reduction of the sentence, if the mediation is successful.

(…) «*The mediation process, to the greatest extent possible, leads to reparation and some form of compensation for the victim's losses. It does not always involve direct contact between the offender and the victim. When there is a direct contact, the victim is often invited to speak first during the mediation as a form of empowerment.*

The mediator assists the two parties in arriving at an agreement that addresses the needs of both parties and provides a resolution to the conflict. When the process occurs prior to sentencing, a conciliation agreement mediated between the offender and the victim can be forwarded to the court and may be included in the sentence or in the conditions of a probation order.» (…) - (UNODC – Restorative justice).

The *harm done to the victim* can be of various types: physical, corporal, mental, moral or economic. Logistic, medical, legal, social or psychological steps (singly or combined) are needed for a return to normal life. Although individuals have an ability to pick themselves up again (sometimes called *resilience*), the support of a third party or the sense of belonging to a community are factors facilitating the recovery of the victim. The initial reception a victim gets can be a determining factor for the good development of the spontaneous

recovery of his integrity and autonomy. The victim can be an individual or an identifiable *group of individuals*, but the *community* is always indirectly affected and suffers from this chronic situation.

Prevention of violence at all stages of the legal process

«*We call institutional violence any action or any absence of action committed in or by an institution which causes a child pointless physical or mention suffering and/or which impedes his subsequent evolution*». (Stanislaw Tomkiewicz, doctor of psychiatry).

The risks run by juveniles, whether in custody, presentence detention or in an institution as an alternative to prison, are all similar: risk of attacks on the physical or mental integrity of the child, with or without violence, sexual aggression, neglect, etc.

It is essential to implement an *open, receptive institutional culture of child protection and of support for the personnel*. The administrators work out a culture of openness and awareness in which employees can raise worries concerning child abuse and have the assurance of a positive reply from the administrators about the worry itself and about possible support. *This attitude gives protection to the child, to the staff and to the institution*. It makes it possible:

- to focus on the child, to listen to him, to respect his rights;
- to make occasions for talks /informal discussions;
- to observe and react to signs of anxiety and stress;
- to make regular, individual assessments / evaluations;
- to know how to receive and transmit information in a clear and honest way;
- to know how to take the decisions required;
- to manage confidentiality without covering up situations;
- to manage the relationships between the juveniles, with the staff, with the hierarchy, the courts and the police whenever necessary.

11. Focus on training the protagonists

An indispensable specialisation

One of the most lasting investments to promote long-term juvenile justice is to propose to the ministries the *planning of training modules for students at the National Schools for the Magistracy and/or the Police*.

If, in many countries, there is already juvenile justice and a police force trained in juvenile delinquency issues, there is no specific training for the profession of lawyers specialized in juvenile justice: *awareness-raising on juvenile justice amongst law students in the Universities and Faculties would allow* the awakening of a specific interest in the future lawyers. (Reference No. 9: *General Comments No. 10*, Committee on the Rights of the Child - § 28 and 92)

In areas at risk, *preventative action in schools*, through the teachers, is essential, on condition that it is designed and coordinated by pedagogic, social and national judicial persons, in a non-accusatory way for the schoolchildren and students (presentation of rights and laws).

Experience shows that *training courses for public protagonists in juvenile justice should also be multi-disciplinary*: there can be no progress made in juvenile justice unless the professionals involved *know both their respective limits and legal options*. This approach also enables *avoidance of misplaced interference* in the interventions of one with another: a lawyer may not be asked to do a social worker's function, nor vice versa. *Real cooperation is possible only when each profession knows his own place*.

Officers of the police and the courts dealing with children in conflict with the law should be careful that any decision on procedure does not constitute stigmatisation, a wrong, a nuisance or an additional trauma. They should therefore be trained:

- in the *reception* and *hearing of children*
- in the *legal definitions* and implementation of *alternatives to detention*
- in *collaboration with socio-educational services*
- in *respect for the rights of the defence*
- *in the protection of children* against all forms of deprivation, neglect, torture, violence, or of cruel, inhuman or degrading treatment, including sexual violence by adults in authority or by other detainees, adult or juvenile.

Amongst these protagonists, the *judge is the key person for the good functioning of juvenile justice*. All the other actors are subject to his decisions and his control, from the beginning of the process (unless there is the option of extra-judicial procedures such as diversion) until the end of the disciplinary measures. *There*

may, therefore, be no training of actors in juvenile justice without the active presence of the judges.

«Round Tables » and «awareness-raising workshops»

In some countries, it can be preferable to start with a short (one- or two-day) «*Round Table*» at *Terre des hommes*'s invitation, with or without the media: this allows meetings with the *main people responsible in the police, judicial, prison and social affairs systems*, and explains why and in which spirit *Terre des hommes* wishes to intervene: to improve the system of administration of justice in the best interest of juveniles, and to bring sustainable further training by appropriate national or foreign persons.

A Round Table is sometimes the preliminary stage needed to avoid the term «*training*» and to listen to the public authorities about their *priority requirements for training their respective officials and thus to adjust the offer as requested.*

Objectives of the training courses

A system of juvenile justice only functions and improves if all the professions concerned in the same geographic region are invited to meet and to *exchange ideas on the possibilities and limits of each profession, on the advantages and disadvantages of any improvements to the laws and procedures*. People in the professions concerned should be willing to leave «*trench warfare*» where everyone defends his or her own territory, and to collaborate in a natural way.

This course should be a chance to get an *improved knowledge of the concepts and definitions and to share the same technical and legal language* (sometimes probation is defined as an alternative to detention, elsewhere the probation service is located in a prison). A technical and legal document, with international standards, should be given to each participant in their own language.

The course programme should include a *visit to the prison* where children are deprived of liberty (pre or post-trial). Experience has shown that it is possible to schedule a full day of the course inside the prison walls – *which enables the warders and other staff to express themselves to the other professions.*

This visit is sometimes the only possibility of *meeting the children* who are the objective of the whole training course: this allows them to see how they are perceived by the magistrates and other protagonists, the latter also getting a chance to talk with the children in conflict with the law without having a direct role of authority.

The ideal finally is that, between the training courses, the team of *Terre des hommes* and people from the ministries, local NGOs and the UNICEF, are able to *visit all the prisons in the whole area on a regular basis*. Experience shows that considerable improvement at a low cost can be brought to the conditions of children deprivated of liberty, if the people who ensure the visits are the same ones who organise the training courses. These visits permit observation of any irregularities in the deprivation of liberty of children.

In such a sensitive field, the approach to the collaboration and training of government actors is essential: in some cases, *the media* should be invited to participate in the prison visits (which helps with the aim of awareness-raising of public opinion). It is not, however, desirable that the media take part in the whole training course: some contributors, judges, public prosecutors or policemen might feel ill at ease tackling practical questions or expressing their opinions on the improvement of the laws, in the presence of the media.

To whom are these training courses addressed?

The *training courses*, which should be included in a *long-term global strategy*, involving monitoring, in the field, the implementation of the standards and procedures learnt, are aimed at *low-level officials in direct, constant contact with children deprived of liberty* and who have to find – sometimes improvise – solutions. Training in the domain of juvenile justice should include courses in the National Schools for the Magistracy, Police and sometimes in barracks, when it is the military who ensures the safety of the detention centres where children are deprived of liberty.

The *training of prison staff* should be considered a priority: prison warders, often with very simplistic initial qualifications, recruited according to sometimes random criteria, should be offered *elementary training in juvenile rights* in a rewarding way, in terms of what they can contribute to juvenile detainees without infringing their obligations of duty.

Who runs the training courses?

The Tdh delegations are jointly responsible for running the training courses together with the Ministries and UNICEF or UNODC.

It is important that the *international experts* appointed by *Terre des hommes* have *international experience in training in a wide range of cultural and economic contexts*. They should *develop the existing national competencies*. Should it not be possible to find anyone available or competent, it is essential that the foreign experts come from a similar cultural, political and religious background to the country concerned.

Experience from courses already held has shown, indisputably and repeatedly, that:

- judges understand best the pressures of prison staff, and police understand what the lawyers and the social workers can do and offer them;
  - the police can give their opinion – for the first time – in court;
  - the public prosecutors get to know the social workers in their respective jurisdictions;
  - these courses are also a chance to *consult with the actors in the field, in an informal but useful way, on current projects for law reform*.

Practical organisation of the training courses

Experience shows that the success of a course or series of course presupposes:

- *prior written agreement* on the *objectives* of the course/s, the *content* of the training, the *criteria for selection of the participants*, and the general orchestration of the courses.
- d*eclared willingness for absolute equality between the partners in terms of visibility of the training* (ministries, UNICEF, Terre des hommes, local NGO) also towards the media;
- *balanced sharing*, in writing, of the *tasks and costs between the parties*.
- *representation of the various professions* at their respective *levels* should be balanced;
- programming «*role play*», is essential and has been shown to be both basically effective and useful for the general atmosphere of the courses: it allows the various professions, in situations presented as imaginary, to understand their interaction better;
- group analysis of the role play, led by the international experts who will find there a chance to comment on international standards, is a step which permits building up a team atmosphere for the people from the same courts.

Sometimes T*erre des hommes* is requested to *suggest a training curriculum on child rights and international standards of juvenile justice for the initial training* of students of law, magistrates and the police. Without being specialised at an academic level, Tdh has a network of contacts and experts capable of usefully advising university or government authorities requesting this.

It is desirable to use *all possible technical means* (video conferences, DVD recordings, etc.) to distribute the content of the tuition to anyone who is unable to take part in the courses.

12. Focus on advocacy

In the framework of the implementation of restorative juvenile justice: «*The introduction of participative procedures in the judicial system could easily be perceived as threatening the status quo. The error should not be made of under-estimating the resistance of this status quo, the strength of inertia of the system or the active and passive resistance which the proposed changes will probably meet. These changes, once introduced, will necessarily modify the professional spheres of influence, power and control, or encroach upon the territory of various persons. Any measures mainly designed to give the right to speak to victims and the community will, initially, doubtless be perceived by the professionals of the courts to be a threat. At the beginning, and unless these views are not well handled, the adoption of programmes for participative justice will be interpreted by many people to be a zero-sum game in which a part of their power will be lost to others.*» (...)

Any programme for children in conflict with the law must consist of an approach of *awareness-making for public opinion of the basic principles of juvenile justice*, to the advantages of alternatives to detention and the restorative approach (responsibility, compensation and restoration of the relationships affected, whether individual or social).

Juvenile justice is not secondary justice

Children in conflict with the law or who are dangerous are also children at risk, and juvenile justice is as much protective justice as disciplinary justice. It does not consist of taking measures «*in favour of*» or of making «*humanitarian exceptions*» under the pretext that juvenile delinquency is «*a social problem and not a legal one*», a principle presented as noble and «*humane*», but

which often only conceals totally arbitrary procedures and practices. The treatment of juvenile delinquency has been, for decades, the object of international norms ratified by all the States parties, with the obligation of adapting laws and national procedures to these universally approved standards, making the police, judicial and prison authorities promote an *approach with priority on education* over repressive methods.

The Committee on the Rights of the Child speaks very clearly on this point: «*The Committee recommends that States parties examine all the legislation applicable to ensure that all children under 18 years of age in need of protection are not considered to be delinquents (in particular legislation relative to neglect, vagrancy, prostitution, the migratory status, non-attendance at school, runaways, etc.) but treated in the framework of mechanisms for child protection.*»[10]

Prevention and speed of intervention

Prevention is crucial for tackling socio-economic and psychosocial problems which lead children to come into conflict with the law. Prevention, as component of a strategy to reform juvenile justice, is often neglected in favour of more visible policies of «*intransigence against crime*». An effective job of prevention aims at setting up policies of non-discrimination, of participation and of access to basic services, and also to lessen marginalization, exclusion, exploitation and other elements of social injustice which can engender behaviour repressed by the law.

The *United Nations Guidelines for the prevention of juvenile delinquency (the Riyadh guidelines)* handle both general and social prevention and that centred on the children at the greatest risk of coming into conflict with the law. These Guidelines encourage putting emphasis on socio-economic support and on quality of life, rather than a «*negative*» approach to crime prevention. They cover all the social domains such as the family, school, community, media, social politics, the legislation and administration of juvenile justice.

Reduce the period of provisional/preventative detention

- States parties shall ensure that: «*No child should be deprived of his liberty in unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only a measure of last resort and for the shortest appropriate period of time.*» - CDE, article 37(b)

All over the world, children and adolescents spend unacceptable periods in conditions of detention which are often dreadful, waiting for a hearing or judgement. In spite of some improvement in certain countries, delays at this stage are common, due to bureaucracy, a lack of means of transport, judicial errors, or a lack of communication between the parties in the judicial system.

Urgent action is needed to put a term to the practices of preventative detention, except in extremely serious cases where alternatives to deprivation of personal liberty could present danger to others or to the children themselves. This urgency could consist of sanctions *with regard to the judges, public prosecutors or police who keep juveniles in detention beyond the legal periods.*

Diversionary measures and alternatives to pre- and post-trial detention

- States parties shall seek «*whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*» - CDE, article 40.3 (b)
- «*A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*» - CDE, article 40.4
- States Parties shall ensure that «*no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*» - CDE, article 37(b)
- *Diversion consists of keeping children in conflict with the law out of the official penal system, and in particular away from formal judiciary procedures (kept away before trial, and alternative disciplinary measures). Together with alternatives to detention, diversion is an important component of «restorative justice».*

Advantages of diversion and alternatives to detention for the juvenile

Diversion tends to have a positive impact on the reduction of the rate of delinquency and recidivism. Diversion and alternatives to detention aim at breaking the vicious circle: stigmatisation, violence, humiliation, rupture of social links.

They avoid an increase in the criminal experience of the children concerned. They promote reintegration and the future development of the young person. Delinquent juveniles given sentences get to know more criminals (in prison), learn the techniques, language and culture most likely to increase their delinquent behaviour. Once identified as criminals in their own eyes and more widely in the eyes of society, it is far harder for them to change and to adapt themselves to the school world and family life. It is consequently recommended that the youngsters become guided towards alternatives to detention.

Advantages of diversion and alternatives to detention for society

These methods have advantages not only for individuals but also for the entire society. Whilst assisting children in conflict with the law, who are first offenders, trial costs and the consequences of being stigmatised by a court conviction, better restoration is offered to the community by integration than by isolating them away from social networks.

In nearly all countries, *traditions and customs of mediation and conciliation have existed*, sometimes for centuries, *for children breaking the laws of the community.*

It is now for the authorities and the civil society of a country (if possible jointly), to study how far traditional methods of mediation and conciliation are compatible with international standards.

Economic advantages of diversion and alternatives to detention

The cost-efficiency link of social and educational work in an open environment is more favourable than investing in costly penitential institutions, even if they are more visible and give a feeling of reassurance to the public. In certain countries, it would be useful to compare the cost of a child in detention per day with the cost of a day in a middle-class hotel in the same town . . .

The often-cited argument of a lack of budget is both true and false: true, because *juvenile justice is always the poor relation of the public budget for the law*; and false because implementation of good collaboration between trained professionals can obtain results with even minimal budgets. To which it should be added that in all countries, the *economic precariousness of a significant, whilst major, part of the population goes together with the fashionable themes of State disengagement and privatisation of the public services, sometimes under strong pressure from international financial institutions* – and so, in everyday life, there is a greater risk of juvenile delinquency.

Privatisation of building and running of penitential establishments can have a contrary effect to the one desired: if conditions of detention are improved, there is a danger of the number of prison sentences increasing due to the application of this penalty to less serious offences: in fact, if new private structures are «*put onto the market*», they must necessarily be *filled* in order to *be profitable* («*Prisons for profit?*»).

Research by different sources have demonstrated that, all over the world, systems of penal justice make use of limited resources which could be deployed by social programmes for greater benefit. Imprisonment stops individuals contributing to the local economy and to their families. Imprisonment is equally extremely costly.

For example, in the opinion of a former administrator of the Brazilian prisons, «*The annual cost of a prisoner in Brazil is US$ 4,440; but in certain states the sum is far higher . . . If the money spent on the upkeep of the 45,000 prisoners who did not commit violent or serious crimes could be used differently, one could build 18,163 houses for the poor, or 4,995 health care centres, or 391 schools.*»[11]

According to a study by *Terre des hommes* in Peru, models for rehabilitation of children in an open environment facilitate the social reintegration of the adolescents and gives them a greater potential for development. *Models in an open environment are more effective due to their lower working cost per youngster*: they require a simpler infrastructure and lower expenses to set up.

The cost per adolescent of a seven-month restorative justice socio-educational measure is far lower than that of an identical measure lasting 2 years in a closed environment. It is important to mention that this big difference in the cost is, up to a point, due to the fact that the programme promotes the reintegration of the youngster in society, where he can utilise the organisations he finds there, such as college, parish, sporting and cultural centres, centres for readjustment, etc. It is not, therefore, necessary to provide these services for the adolescent nor to go to the expense of giving him access to them. If the State applied this same methodology, it would have fewer expenses, and various social bodies as well.

A disciplinary measure in an open «environment» allows the "economy" to society of a large part of expenses linked to family violence and recidivism of offences. A disciplinary measure in an open environment also promotes more productivity, as it increases the chances of finding paid work (by creating greater motivation and by strengthening the creative abilities of the youngster). Moreover, an adolescent who has attended a programme in an open environment tends less to take drugs, which means less expense to society in terms of the costs caused by the taking of illicit substances.

There are marked differences as to the average cost to the families of children who have passed through one or the other of these models of justice (transport, procedures, etc.).

A real academic undertaking for sound information about public opinion

It is finally important that in academic circles, *real comparative statistics research, truly scientific, should be done to verify the political and media slogans* presumed to convince that the most repressive and excessive sentences have an impact – so-called «*guaranteed*» – on the reduction of delinquency and recidivism. Juvenile criminality is an extremely sensitive subject in the public opinion and so for politicians, particularly when electoral campaigns are approaching, when the question of public safety is a decisive one, where an extraordinary *fabrication/manipulation* of statistics based on various exceptionally striking events, is heard in public debates, with virtually no discussion about the best interests of children in conflict with the law.

Finally, capital punishment and life imprisonment

«*Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age» (CDE), article 37 (a)*.

• And to finish, violence in institutions in the context of judicial procedure:
«*States parties shall ensure that no child shall be subjected to torture or any other cruel, inhuman or degrading treatment or punishment.*» - CDE, article 37 (a)

«*States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has care of the child.*» - CDE, article 19.1

«*Such measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have care of the child, as well as other forms of prevention, and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*» - CDE, article 19.2.

13. References of international legal instruments

Instruments and standards concerning children in conflict with the law

1. Convention on the Rights of the Child (1989) - in particular Articles 22,37 and 40.
   http://www2.ohchr.org/english/law/crc.htm
2. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990).
   http:// www2.ohchr.org/english/law/juvenile.htm
3. United Nations Standard Minimum Rules for the Administration of JuvenileJustice («*The Beijing Rules*» -1985).
   http://www2.ohchr.org/english/law/pdf/beijingrules.pdf
4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).
   http://www2.ohchr.org/english/law/res45_113.htm
5. UNODC/ UNICEF - Manual for the Measurement of Juvenile Justice Indicators.
   http://www.juvenilejusticepanel.org/resource/items/J/J/JJIndicatorsManual.pdf
6. Guidelines for Action on Children in the Criminal Justice System - 1997/30.
   http://www2.ohchr.org/english/law/system.htm
7. Basic principles on the use of restorative justice programmes in criminal matters.
   ECOSOC Resolution 2000/14 (2000).
   http://daccess-ddsny.un.org/doc/UNDOC/GEN/N01/487/49/IMG/N0148749.pdf?OpenElement
8. GENERAL COMMENT No. 10 (2007) - Children's rights in juvenile justice.
   http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf
9. GENERAL COMMENT No. 12 (2009) - The right of the child to be heard.
   http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.doc
10. UN Resolution (A/HRC/10/L.15) Human rights in the administration of justice, in particular juvenile justice (20.03.2009).
    http://www.juvenilejusticepanel.org/mm/file/UNResolutionL15AdminofJusticeMarch09.pdf

Instruments and standards relative to the question of child victims and child witnesses to criminal acts

11. ECOSOC Resolution 2005/20 - Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.
    http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf
12. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power – UN Resolution 40/34 (1985).
    http://www2.ohchr.org/english/law/victims.htm

Instruments and standards on prevention of crime and on penal justice

13. International Covenant on Civil and Political Rights (1966) (Articles 6, 9,10,14).
    http://www2.ohchr.org/french/law/ccpr.htm
14. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
    http://www.hrweb.org/legal/cat.html
15. Standard Minimum Rules for the Treatment of Prisoners (1977).
    http://www2.ohchr.org/english/law/treatmentprisoners.htm
16. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990).
    http://www2.ohchr.org/english/law/tokyorules.htm
17. UN Code of Conduct for Law Enforcement Officials(1979).
    http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/377/96/IMG/NR037796pdf?OpenElement
18. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).
    http://www2.ohchr.org/english/law/firearms.htm
19. UN Guidelines on the Role of Prosecutors (1990).
    http://www2.ohchr.org/english/law/prosecutors.htm
20. UN Basic Principles on the Role of Lawyers (1990).
    http://www2.ohchr.org/english/law/lawyers.htm

Other regional instruments

21. African Charter on the Rights and Welfare of the Child (1990).
    http://actrav.itcilo.org/actrav-english/telearn/global/ilo/law/afchild.htm
22. INTER-AMERICAN CONVENTION ON INTERNATIONAL TRAFFIC IN MINORS (B-57) (1994).
    http://www.oas.org/juridico/english/treaties/b-57.html

www.juvenilejusticepanel.org

Notes section III

[9] *http://droit-finances.commentcamarche.net/faq/3994-assistance-educative-definition*

[10] *Extract from «The Violence of the State against children»; General Discussion Days of the Committee for the Rights of the Child - http://www.unhchr.ch/french/html/menu2/6/violence_fr.htm.*

[11] *Lemgruber, J. cited in Singh, W., Alternatives to Custody in the Caribbean: The Handling of Children who Come into Conflict with the Law, 1997*


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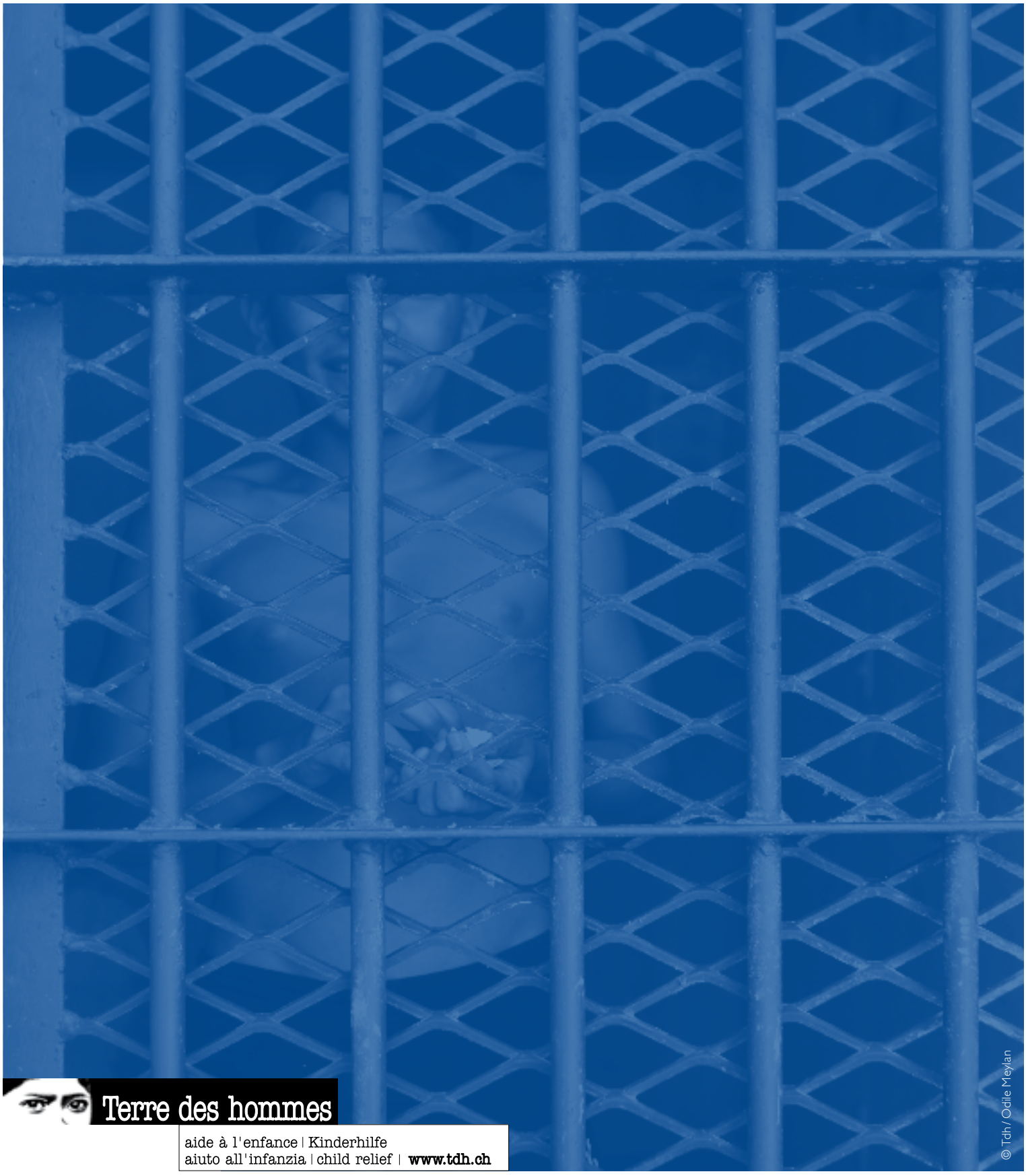

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HEADQUARTERS:
Avenue de Montchoisi 15, 1006 Lausanne, Switzerland
Tél. +41 58 611 06 66 | Fax +41 58 611 06 77
www.tdh.ch

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