



Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Salvador, Brazil, 12-19 April 2010

Distr.: General
15 February 2010

Original: English

Item 3 of the provisional agenda*
Children, youth and crime

Children, youth and crime

Working paper prepared by the Secretariat

Contents

| | <i>Page</i> |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------|
| I. Introduction | 2 |
| II. International standards on children, youth and crime: a detailed body of principles and guidelines. | 2 |
| A. Children, youth and crime at the previous 11 United Nations congresses on crime prevention and criminal justice | 2 |
| B. The Convention and Committee on the Rights of the Child | 3 |
| C. United Nations standards and norms on children, youth and crime | 4 |
| D. Other policy documents at the international and national levels. | 4 |
| III. Children, youth and crime: reality and perceptions in 2010 | 6 |
| A. Public perceptions, statistical data and the role of the media | 6 |
| B. Children in conflict with the law | 7 |
| C. Child victims and witnesses of crime | 14 |
| IV. Technical assistance on children, youth and crime. | 16 |
| A. Coordinating technical assistance | 16 |
| B. The experience of the United Nations Office on Drugs and Crime in providing technical assistance in juvenile justice | 18 |
| V. Conclusions and recommendations | 18 |

* A/CONF.213/1.



I. Introduction

1. As highlighted in the discussion guide (A/CONF.213/PM.1), the Twelfth United Nations Congress on Crime Prevention and Criminal Justice provides the international community with an ideal opportunity to take stock of the work undertaken in the area of crime prevention and criminal justice and to chart the way forward. It offers an opportunity to set in motion a critical review of the body of standards and norms developed over the past 60 years and to reflect on how those standards and norms have worked, and in so doing to examine the specific challenges posed by new global criminal threats and sophisticated forms of crime. This approach has the potential to identify possible gaps and practical obstacles, and to explore ways to overcome them. Such efforts could pave the way for a more coherent and comprehensive strategic approach in establishing, re-establishing or strengthening crime prevention and criminal justice systems that could serve as a basic framework and provide a solid basis for the delivery of technical assistance and criminal justice education. Such an approach could strengthen the nexus between normative and operational work and help ensure effective enforcement and enjoyment of a just national and international order.

2. Item 3 of the provisional agenda, Children, youth and crime, provides an opportunity for Congress delegates to take stock of international normative developments as well as their implementation in national systems in 2010 in a broad number of substantive areas. The agenda item also provides an opportunity to prioritize key issues and future action to ensure a healthier and secure development for future generations. Indeed, in 2010, many children and youth are confronted with crime, including violent and serious crime, whether directly as offenders, victims or witnesses or because of the impact of family or community involvement in crime and victimization. Yet, while most adults are sensitive to the suffering of children and youth victims, the response to children and youth who offend is often not up to international standards in this area.

II. International standards on children, youth and crime: a detailed body of principles and guidelines

A. Children, youth and crime at the previous 11 United Nations congresses on crime prevention and criminal justice

3. The question of children, youth and crime has been at the forefront of the United Nations Crime Prevention and Criminal Justice Programme since 1947. Indeed technical assistance activities started in 1947 under the Secretariat's programme in the fields of child welfare and welfare administration. At the end of 1948 they were extended to all other fields mandated by the Social Commission. This happened even before the adoption by the General Assembly of resolutions instituting technical assistance for economic development (resolution 200 (III) of 4 December 1948), public administration (resolution 246 (III) of 4 December 1948) and social welfare (resolution 418 (V) of 1 December 1950). Thus one may say that the United Nations crime programme has not only spearheaded technical assistance in general, but has also been a forerunner in promoting the concept of sustainable

development, reflecting the fact that children's welfare is indeed critical to preserving and expanding the developmental rights of succeeding generations.

4. Although some of the terminology may have changed since 1955, the United Nations congresses on crime prevention and criminal justice have repeatedly addressed research and responses to causes and consequences of the involvement of children and youth in illegal (criminal) activities. For instance the First Congress on the Prevention of Crime and the Treatment of Offenders addressed the issue of prevention of juvenile delinquency; the Second Congress examined new forms of juvenile delinquency: their origin, prevention and treatment; the Sixth Congress reviewed juvenile justice: before and after the onset of delinquency; and the Seventh Congress had before it a working paper entitled "Youth, crime and justice" and reviewed the draft United Nations standard minimum rules for the administration of juvenile justice. At the Eighth Congress, under the agenda item on prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions, the Secretariat submitted a report on the implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex), and at the Ninth Congress, the Secretariat submitted a working paper on crime prevention strategies, in particular as related to crimes in urban areas and juvenile and violent criminality.

B. The Convention and Committee on the Rights of the Child

5. In 2009, child rights organizations, Governments and international organizations celebrated the twentieth anniversary of the adoption of the Convention on the Rights of the Child.¹ The Convention, which has reached almost universal adherence, marked an important evolution in the recognition of the rights and needs of children, defined as all persons under the age of 18. While national legislation and procedures have been adopted in many countries to ensure compliance with the Convention in many aspects, the Committee on the Rights of the Child, has recognized (CRC/C/GC/10, para. 1) that:

"Many States parties still have a long way to go in achieving full compliance with the Convention on the Rights of Child, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort."

For this reason, in 2007, the Committee adopted general comment No. 10, entitled "Children's rights in juvenile justice", with the objective to encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the Convention, and to seek in that regard advice and support from the Inter-Agency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (NGOs), established by the Economic and Social Council in its resolution 1997/30.

¹ United Nations, *Treaty Series*, vol. 1577, No. 27531.

6. In its general comment, the Committee outlines leading principles: non-discrimination (art. 2 of the Convention); best interests of the child (art. 3); the right to life, survival and development (art. 6); the right to be heard (art. 12); and dignity (art. 40, para. 1); and the core elements of a comprehensive juvenile justice policy. The latter include the importance of prevention and diversion; the need to set a minimum age of criminal responsibility not lower than 12 years and to continue to increase that age, to avoid dealing with persons aged 16 or 17 in the adult criminal justice system, to ensure guarantees for a fair trial; the need for measures for children, including alternatives to imprisonment, pretrial detention and post-trial incarceration; the organization of the juvenile justice system; awareness-raising and training, as well as the need for data collection, evaluation and research. The details of the guidance of the Committee are derived from the provisions contained in the United Nations standards and norms on crime prevention and criminal justice while providing an authoritative interpretation of the relevant articles of the Convention.

7. In addition, in 2009, the Committee adopted general comment No. 12, entitled “The right of the child to be heard”, which should be referred to with regard to the right to be heard of children in contact with the criminal justice system.

C. United Nations standards and norms on children, youth and crime

8. The 11 prior congresses and, since 1992, the Commission on Crime Prevention and Criminal Justice, have succeeded in developing a detailed body of rules relating to youth crime prevention, juvenile justice and child victims and witnesses:

(a) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985;

(b) United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990 (General Assembly resolution 45/112, annex);

(c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (resolution 45/113, annex);

(d) Guidelines for Action on Children in the Criminal Justice System, 1997 (Economic and Social Council resolution 1997/30, annex);

(e) Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005 (resolution 2005/20, annex).

9. These standards are all based on the principles outlined in the Convention on the Rights of the Child, in particular articles 37, 39 and 40, as well as the guiding principles mentioned in paragraph 6 above.

D. Other policy documents at the international and national levels

10. In September 2008, the Secretary-General, recognizing that children are yet to be viewed as key stakeholders in rule-of-law initiatives, issued a guidance note on the United Nations approach to justice for children aimed at ensuring that relevant provisions of the Convention on the Rights of the Child and other international legal instruments related to child justice were reflected in broader policy reform and implementation efforts. The common approach is meant to help United Nations

entities to leverage support through partners working on broader agendas around rule of law, governance, security and justice sector reform into which justice for children can easily be integrated. It is also expected to increase cost-effectiveness and to maximize results of respective efforts. It will serve as a basis for programming, including joint programming, in the area of justice for children.

11. Since the Eleventh Congress the General Assembly has adopted resolution 62/158, entitled “Human rights in the administration of justice”, and the Economic and Social Council has adopted two resolutions in the area of child justice reform, resolutions 2007/23 and 2009/26. In both resolutions States are urged to implement the binding and non-binding instruments in this area through a comprehensive approach to child justice and the adoption of national action plans.

12. The Commission on Crime Prevention and Criminal Justice has also adopted resolution 16/2, on effective crime prevention and criminal justice responses to combat sexual exploitation of children.²

13. In 2008, Member States were requested to report on their implementation of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council in its resolution 2005/20. In his report to the Commission (E/CN.15/2008/11), the Secretary-General highlighted that, from the 27 responses received, it could be concluded that most of the respondent countries had taken measures to implement, at least to a certain extent, the rights set forth in the Guidelines. Some countries had established special laws for children in line with the Guidelines, while others had introduced specific measures for children in their general procedural acts and codes. In addition, some countries had laid down special rules for witnesses that were applicable to children. Most of the respondent States had provided information on existing legislative measures in line with the provisions contained in the Guidelines, but only very few had submitted information on court decisions and judgements, which could have provided a more comprehensive overview of effective implementation of the rights set forth in the Guidelines. Of the 10 rights listed in the Guidelines, the right to receive reintegration and rehabilitation assistance seemed to be one of the least established in national legal frameworks. A few countries reported having established relevant programmes. The information received highlighted the different degrees of implementation of the Guidelines from country to country. While some countries had developed comprehensive measures dealing with child victims and witnesses, others had adopted only basic or general provisions regarding the rights of the child.

14. At the regional level, several initiatives have also been observed, such as, within the Council of Europe, the adoption by the Committee of Ministers on 5 November 2008 of recommendation CM/REC (2008) 11, on European Rules for Juvenile Offenders Subject to Sanctions and Measures, and, within the programme “Building a Europe for and with children”, the current work to develop European guidelines on child-friendly justice.

15. In 2009, the Secretary-General appointed Marta Santos País as his Special Representative on violence against children. That decision was prompted by the

² The report of the Executive Director on the subject (E/CN.15/2009/14) contains details of implementation of the resolution by Member States and UNODC.

study by the independent expert for the United Nations study on violence against children issued in 2006 (A/61/299). The complementary *World Report on Violence against Children*, also prepared by the independent experts, had painted a bleak picture of children in care and justice institutions in its chapter 5:

“Children deprived of their liberty and placed in detention are at extreme risk of violence. As in residential care, violence against children in detention often comes from staff or peers. In addition, children may be subject to violence from adult detainees, from police or security forces while in their custody, or may receive violent sentences as a judgement from the courts.”³

16. The last five years have also seen extensive international efforts to combat certain crimes that affect children in particular. This is the case for trafficking, with the adoption in 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;⁴ child prostitution and sexual exploitation, which is covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;⁵ and in Europe the Council of Europe Convention on Cybercrime,⁶ which includes action against child pornography on the Internet, as well as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.⁷

17. It can thus be said that the international normative base for juvenile justice, crimes against children and child victims and witnesses is rather detailed. In spite of this, international institutions recognize that many countries are still far from implementing these standards and norms in their national legislation and practice.

III. Children, youth and crime: reality and perceptions in 2010

A. Public perceptions, statistical data and the role of the media

18. As in the case for many crime-related subjects, there is in many countries a strong discrepancy between reality (as reflected in statistical data, criminological studies and research) and perceptions (by the general public and often presented in the media) of children and youth and their relation to crime. It can be argued that the media often give voice to beliefs and fears concerning younger generations, thus prompting among the public and politicians an inclination towards repression of youth deviant behaviours, although these are in many cases merely passing symptoms of adolescence and growing up. Often children and young people are wrongly blamed for being responsible for increases in violent crime for instance, whereas in reality their contribution to crime may, albeit increasing, still represent only a small proportion of crime in general.

³ Paulo Sérgio Pinheiro, *World Report on Violence against Children* (Geneva, United Nations Secretary-General's Study on Violence against Children, 2006), p. 196.

⁴ United Nations, *Treaty Series*, vol. 2237, No. 39574.

⁵ Ibid., vol. 2171, No. 27531.

⁶ Council of Europe, *European Treaty Series*, No. 185.

⁷ Ibid., No. 201.

19. Several studies have demonstrated the inaccuracy of media reports on children and youth involved in crime, in particular as offenders, as well as the inaccuracy of perceptions among the general public of children and youth and their role in crime. Typically, mainstream adults, even well-educated ones, will have a perception that most violent and non-violent crime can be attributed to young people from disadvantaged backgrounds (whether immigrants, minorities or indigenous or socially deprived youth), while they rarely realize that more often than not children and youth are the victims of such crime, rather than the perpetrators. This observation, however, does not preclude the fact that certain countries do have serious problems with groups or individual youths who commit very serious crimes, with in some cases an increase in such crimes and a lowering of the age of commission of the first crime. Box 1 provides an example of the limited knowledge of crime among the general public. Other research has focused on showing the overrepresentation of minority groups in media reports on crime.⁸

Box 1

Limited knowledge of the involvement in crime of youth among the general public

People were ill-informed about youth crime trends. For example 75 per cent of those polled believed that the number of young offenders had increased in the previous two years — when numbers coming to police attention were actually falling.

Most people also overestimate the proportion of all crime for which young offenders are responsible, and the proportion of youth crime involving violence. They also overestimate the proportion of young offenders who will be reconvicted of a criminal offence.

*Source: Mike Hough and Julian V. Roberts, *Youth Crime and Youth Justice: Public Opinion in England and Wales* (Bristol, Policy Press, 2004).*

B. Children in conflict with the law

1. Children in detention: the observations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

20. In September 2009, the Special Rapporteur of the Human Rights Council on torture, Manfred Nowak, submitted in accordance with General Assembly resolution 63/166 an interim report (A/64/215 and Corr. 1) that included specific information on children in detention and in which the Special Rapporteur highlighted issues confirmed by many sources (see paras. 63-76):

“Twenty years after the adoption of the Convention on the Rights of the Child, and in spite of the many voices defending the rights of children, children remain particularly vulnerable in detention; according to cautious estimates, currently more than one million children are deprived of their liberty and held in police stations, pretrial facilities, prisons, closed children’s homes and

⁸ See, for instance, Lori Dorfman and Vincent Schiraldi, *Off Balance: Youth, Race and Crime in the News*. Available from www.buildingblocksforyouth.org/media/exec.html.

similar places of detention (see A/61/299, para. 61). The vast majority of these children are accused of or sentenced for a petty offence; contrary to popular belief, only a small fraction is held in relation to a violent crime. Most of them are first-time offenders.

“Reviewing the experience of his fact-finding missions, the Special Rapporteur has come to the conclusion that too many children are deprived of their liberty, in violation of the above outlined standards. In many countries, the juvenile justice system, if it exists at all, is rudimentary and does not live up to human rights standards. Extrajudicial interventions or non-custodial measures are more often than not underdeveloped or not considered seriously enough, all of which makes the detention of children a regular procedure instead of a matter of last resort. Furthermore, in many countries the criminal justice system functions as an ill-suited substitute for a lacking or dysfunctional welfare system, resulting in the detention of children who have not committed a crime but who actually require welfare assistance, such as street children. In general the Special Rapporteur is alarmed by the very low age of criminal responsibility in many countries. To many children deprived of their liberty, the above norms, with their envisaged protection and conditions, must sound as if they are out of touch with reality. Too many of the children whom the Special Rapporteur met on his visits were held in severely overcrowded cells, under deplorable sanitary and hygienic conditions. This was particularly true during the pretrial detention period, despite the intention that pretrial detention should be exceptional for children. Generally speaking, the Special Rapporteur has found children deprived of their liberty to be at a very high risk of ill-treatment. In addition to being at risk of being subjected to torture in order to extract a confession or other information, such children are particularly prone to falling victim to corporal punishment or abuse by fellow detainees.

“In some countries, however, national laws explicitly allow the beating or caning of young offenders as a disciplinary measure. Even in countries where corporal punishment is prohibited by law, it is often administered on persons deprived of their liberty, particularly on children and often for minor misbehaviours. In some of the special juvenile detention institutions visited, corporal punishment appeared to be a routine practice.

“Methods of corporal punishment reported to the Special Rapporteur ... included stress positions, such as being forced to crouch for one or more hours with bent knees and arms sprawled out; handcuffing to beds for a prolonged period of time; slaps on the head or in the face and beatings with bare hands or instruments, such as truncheons; administering a certain number of strokes with a wooden baton on backs or buttocks; and suspension from window bars. As a means of intimidation, those sanctions were often applied in the presence of other children.

“A significant part of the abuse of child detainees is inflicted by other detainees, mainly by adults but also by other children. The forms of abuse can be verbal and psychological but also physical, including rape. Reasons for inter-prisoner violence can be competition for scarce resources or factual delegation of powers to privileged detainees by the authorities. The lack of separation was particularly disturbing with regard to police custody and

pretrial detention, stages in which children found themselves in an environment characterized by tension, fear, abuse and violence.”

21. The observations of the Special Rapporteur regarding abuse in detention conditions are confirmed by various sources. In 2010, the United States Office of Justice Statistics of the Department of Justice carried out the first national survey of youth in custody, representing 26,550 adjudicated youth held nationwide in state-operated and large locally or privately operated juvenile facilities, which examined, among other issues, sexual victimization. Among other results, the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice highlighted the fact that about 12 per cent of youth in state juvenile facilities and large non-state facilities (representing 3,220 youth nationwide) reported having experienced one or more incidents of sexual victimization by another youth or facility staff in the past 12 months or since admission, if less than 12 months.

22. Beyond its results the survey represents good practice in addressing difficulties posed by juvenile detention with an evidence-based and transparent approach. Another attempt at collecting data on violence against children in conflict with the law was made by Defence for Children International in its 2008 study *Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands*.⁹

2. Global data on children in conflict with the law: key issues and responses

23. UNICEF carried out a global estimate of children in detention in 2007-2008 and produced an estimate of more than 1.1 million children detained through justice systems worldwide at any one time, although this is likely to be a significant underestimate given the difficulties in obtaining data about the many unreported children in custody. Not only are data collected inconsistently, they often do not include children awaiting trial, young children detained with their parents or children held temporarily by the police. Among 44 countries for which data were available, around 59 per cent of children in detention had not been sentenced. UNODC collects data on juvenile justice through its surveys of crime trends and on victimization through the victimization surveys. Fifty-two countries provided data on juvenile justice in the Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems carried out in 2005-2006.

24. From available data worldwide it is difficult to establish whether there is a global increase or decrease in children coming into conflict with the law. According to the International Centre for the Prevention of Crime (ICPC), a review of information drawn from official statistics, comparative international analyses and national or international victimization surveys suggests a global trend towards the stabilization of crime. Despite marked regional disparities, that trend is evident worldwide with regard to property and drug offences. There are, however, some striking disparities with regard to violent offences such as homicide and robbery. Africa and Latin America and the Caribbean still experience very high levels of these types of crime. ICPC also reports that young men of 15 to 24 are the age group with the highest rate of offending and victimization worldwide.

⁹ Sharon Detrick and others, *Violence against Children in Conflict with the Law: A Study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands* (Amsterdam, Defence for Children International, 2008), p. 144.

3. Girls and crime: is there a significant increase in girls' involvement in crime?

25. In many countries reports have been issued about a perceived increase of violent crime committed by girls, including girls' gangs.¹⁰ While there is in many developed and some developing countries evidence of an increase of reported crime committed by girls, this does not necessarily mean an increase in actual crime committed by girls, as it can also reflect an increase in reporting and zero-tolerance policies towards violence in schools or in the community. Self-reporting surveys can provide more accurate data. Both in the United States of America,¹¹ the United Kingdom of Great Britain and Northern Ireland¹² and Denmark,¹³ researchers have shown that increases in reported violent crime have not been confirmed by increases in self-reported violent crime by girls. In the United States the data from national crime victimization surveys confirm that there was no significant increase in girls involvement in violent crime between 1980 and 2003.¹⁴ According to the Danish researchers this is due to the fact that violence by girls was more "excused" before. Also in Sweden, the self-report studies carried out every year since 1995 among ninth-grade pupils show an unchanged low level of girls reporting that they have hit or hurt somebody (see box 2).

¹⁰ A *Time* report in 1972 stated that London police had currently counted some 30 gangs of "bovver birds", including a quartet who attacked a 55-year-old baker walking home in south London in July. "It was suddenly like having banshees wailing in my ear", the baker recounted. "They kept screaming while two of them took my arms and one jabbed my back with what felt like a knife blade. They made me kneel down with the side of my face against the pavement, and they took everything I had. Then one of them took her foot and crushed my head against the pavement." "The girl gangs", *Time Magazine*, 16 October 1972. Available from www.time.com/time/magazine/article/0,9171,906576,00.html.

¹¹ See Darrell Steffensmeier and others, "An assessment of recent trends in girls' violence using diverse longitudinal sources: is the gender gap closing?" *Criminology*, vol. 43, No. 2 (2005), pp. 355-406.

¹² United Kingdom, Youth Justice Board for England and Wales, *Girls and Offending: Patterns, Perceptions and Interventions* (London, 2009). Available from www.yjb.gov.uk/Publications/Scripts/prodView.asp?idProduct=439&eP=.

¹³ See Flemming Balvig and Britta Kyvsgaard, "An analysis of the increasing tendency to report violence to the police", *Scandinavian Journal of Criminal Law and Criminology*, vol. 96, No. 1 (April 2009).

¹⁴ For a comparison of the three data sources see, for instance, Margaret A. Zahn and others, *Violence by Teenage Girls: Trends and Context*, United States, Department of Justice, Office of Justice Programs, OJJDP Girls Study Group Series NCJ 218905 (Washington D.C., May 2008). Available from <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=240649&ti=6&si=&sei=91&kw=&PreviousPage=PubResults&strSortby=&p=&strPubSearch=Y>.

Box 2**Girls and crime in Sweden**

In the mid-1990s, around 13 per cent of 15-17-year-olds were being investigated for assault. In 2008 the proportion had increased to 18 per cent.

Between 1995 and 2001 there were in total 5 per cent girls out of a total of 468 youth convicted for serious assault. Between 2002 and 2008 that proportion increased to 8 per cent of the 752 15-17-year-olds convicted.

Source: Apropå, Swedish National Council for Crime Prevention, January 2010.

4. Girl gangs: myth or reality?

26. In countries affected by gang violence there have been various reports on the increased involvement of girls in gangs, either within female gangs or as part of predominantly male gangs. In both cases there are indications that involvement in gangs can be the only or preferred coping strategy to ensure protection against violence perpetrated by gang members, in particular sexual violence, in the community. Girls become the partner of a male gang member to be protected against other gang members. In this context, girls are also often used as drug carriers. However, while reports exist on increased female involvement in gangs, there is limited evidence and data, mainly because this is a particularly difficult area on which to collect reliable data and information.

5. Youth gangs

27. As described by ICPC:¹⁵

“The phenomena of youth gangs has caused public concern and mobilised authorities worldwide. Cities, national governments and international agencies have sought to understand and respond to gangs in an appropriate manner. However, doing so has not proven to be easy. Discussion of youth gangs in an international context is a challenge because of a lack of common definition, a lack of general agreement about the best way to respond, and unique contexts that can sometimes limit transferability of learning. Despite these challenges, some consensus has been reached on how we should think about gangs, where they operate, and what can be done to best address them. Finding a common definition of the term ‘gang’ is a challenge for both the research community and policymakers, precipitating a growing collection of synonyms and words that represent significant regional differences. In Anglo-Saxon countries, ‘street gangs’ and ‘youth gangs’ are used interchangeably with relative ease. In France, ‘bandes de jeunes’ and ‘regroupements de jeunes’ are used, while in Quebec, ‘gangs de rue’ is quite common. In parts of francophone Africa, one will find ‘groupes de justiciers’ as well as ‘vigilantes’. Spanish-speaking

¹⁵ The *International Compendium of Crime Prevention Practices to Inspire Action Across the World* contains crime prevention and community safety practices gleaned from Africa, the Caribbean, Central and Latin America, Europe, North America, Oceania and South Asia. (International Centre for the Prevention of Crime, *International Compendium of Crime Prevention Practices to Inspire Action across the World* (Montreal, 2008). Available from www.crime-prevention-intl.org/publications/pub_202_1.pdf.)

countries have used words ranging from the relatively benign ‘grupos de jóvenes’ (youth groups), to ‘pandillas juveniles’ (gangs), to Central American ‘maras’. The notion of children in organized armed violence is a term more recently developed to describe the situation of young people engaging in groups perpetrating violence in Brazil and elsewhere.”

It is clear that some groups described as gangs are part of organized crime, transnational in some cases, while others are more of a social gathering of young people, who do not necessarily harbour any criminal intent. In several countries introduction of legislation to address the first group has resulted in so-called “net widening”, targeting young people.¹⁶

28. ICPC continues:

“A recent review of Australian and international literature on youth gangs documented the most effective anti-gang strategies. The report noted that most interventions fall under a coercive or developmental approach. Although general coercive approaches primarily focus on sanctions and law enforcement responses without addressing causes of the behaviour, developmental approaches focus on enhancing opportunities for young people, through activities that reflect their needs, and support within their communities. From this perspective, best forms of intervention are those based upon participation and social inclusion, including young people themselves. Many researchers put forward the importance to involve young individuals who are excluded from social processes to participate in local movements, in order to quit violence.”

Effective interventions include community collaboration; reinforcement of individual skills; creating a role for youth participation in prevention; and integration of gang-affiliated youth.

6. The right to participation of children in juvenile justice

29. In November 2009, a Defence for Children International symposium was organized on the occasion of the twentieth anniversary of the Convention on the Rights of the Child and of the thirtieth anniversary of Defence for Children International, entitled “Child participation and juvenile justice”.¹⁷ On that occasion experience was shared of child and youth participation in advocacy and lobbying for children’s rights and juvenile justice, as well as experience in promoting the right to participation of children in the juvenile justice system. The symposium also addressed ways and means of creating a culture of child participation and sharing tools and tips for advocacy and lobbying on child participation in juvenile justice. The symposium showed that good practices do exist of participation of children and youth in lobbying and advocacy, as well as in juvenile justice institutions, including of children from extremely vulnerable and deprived social circumstances and children formerly in conflict with the law.

¹⁶ Anecdotal evidence of this is, for instance, cases of children and young people held for long periods of pretrial detention on the charge of *association de malfaiteurs* (criminal conspiracy) after having been found standing in the street next to another youth who was smoking and/or in possession of a small amount of cannabis.

¹⁷ Defence for Children International, “Defence for Children International: 30th Anniversary Symposium, ‘Child Participation and Juvenile Justice’”, report of the symposium held in Geneva on 19 and 20 November 2009.

30. This is particularly important as child and youth participation in relation to crime prevention and juvenile justice can only be considered significant if it is inclusive of those children and youth who have been or are at high risk of coming into contact with the juvenile justice system. It also provided some elements of conditions for such participation to be efficient and significant while protecting the rights of those children. In the area of crime prevention, youth participation has been more widely recognized as an essential tool for efficient policies, as shown for instance by the United Nations Human Settlements Programme (UN-HABITAT) International Youth Crime Prevention and Cities Summit, held in Durban, South Africa, from 17 to 21 June 2008.¹⁸

7. Restorative justice and children

31. While it can be claimed that the objective of any juvenile and criminal justice system established according to international standards should be the rehabilitation and reintegration of offenders and victims into society, few criminal justice systems can be qualified as restorative justice programmes using a restorative process as defined in the United Nations basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex).¹⁹ However, in most jurisdictions, restorative justice processes are most extensively developed for use with youth in conflict with the law. These programmes have often provided the basis for the subsequent development of programmes for adult offenders. Restorative programmes offer some very real and effective alternatives to more formal and stigmatizing youth justice measures. In particular, because of their educational value, they are particularly useful in promoting diversionary measures and in providing alternatives to measures that would deprive a youth of his or her liberty.

32. Many such programmes offer unique opportunities to create a community of care around youth in conflict with the law. Public support for restorative justice programmes for youth is usually relatively easy to raise. In many countries, juvenile justice legislation provides specifically for the creation of diversion programmes for youth. Many of these programmes can be developed in line with restorative and participatory justice principles. Furthermore, many programmes developed completely outside the criminal justice system, in schools or in the community, can provide an opportunity for the community to define an appropriate educational response to minor offences and other conflicts without formally criminalizing the behaviour or the individual. A number of programmes already exist in schools that facilitate a response (peer mediation, conflict resolution circles, etc.) to minor youth crime (e.g. fights, violent bullying, minor theft, vandalism of school property or extortion of pocket money) that might otherwise have become the object of a formal criminal justice intervention.²⁰ Restorative justice, when implemented with due

¹⁸ Report available from <http://yourcitysummit.co.za/>.

¹⁹ The basic principles define a “restorative process” as “any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator”.

²⁰ See the *Handbook on Restorative Justice Programmes* (United Nations publication, Sales No. E.06. V.15).

respect for safeguards concerning in particular consent, should therefore benefit children and youth in conflict with the law.

33. Less attention has been paid to the use of restorative justice in juvenile or adult criminal justice systems in cases relating to child victims and witnesses of crime.²¹ While restorative justice is considered one of the most positive ways to address the needs and rights of victims in general, in terms of recognition and reparation, more research will be necessary to address issues relating to undue influence and consent for child victims in restorative justice processes. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime include a reference to the possibility of applying them in restorative justice processes.

34. In November 2009, the First World Congress on Restorative Juvenile Justice was organized by the Terre des Hommes International Federation, the Public Prosecutor of Peru, the Pontifical Catholic University of Peru and the association Encuentros — Casa de la Juventud in Lima. The nearly 1,000 participants represented 63 countries and various NGOs and professional groups working with children. Five objectives guided the deliberations of the Congress:

(a) To reflect upon the concept of restorative juvenile justice and to undertake a critical viability analysis;

(b) To examine the methodology and instruments of restorative juvenile justice;

(c) To evaluate the situation of the victim in restorative juvenile justice and the need for her or his protection and reparation of damages;

(d) To exchange experience and lessons learned and good practices of restorative juvenile justice worldwide;

(e) To formulate recommendations for the development and implementation of restorative juvenile justice.

35. The Lima Declaration on Restorative Juvenile Justice adopted by the Congress made recommendations to Member States, the Committee on the Rights of the Child, the Inter-Agency Panel on Juvenile Justice, UNICEF and UNODC.

C. Child victims and witnesses of crime

36. According to UNICEF estimates, between 500 million and 1.5 billion children experience violence annually, and as many as 275 million children worldwide witness domestic violence. Although some violence is unexpected and isolated, most violence against children is carried out by people the children know and should be able to trust and look to for protection and support, such as parents, step-parents or parents' partners, extended family members, caregivers, boyfriends, girlfriends, schoolmates, teachers, religious leaders and employers.

²¹ With the exception of a PhD thesis. See Tali Gal, "Victims to partners: child victims and restorative justice", PhD dissertation, Australian National University, 2006.

37. While the family should be the natural environment for protection of children, the home can also be a place where children experience violence in the form of discipline. Data from 37 countries show that 86 per cent of children 2-14 years old experience physical punishment and/or psychological aggression. Two out of three children are subject to physical punishment.

38. Recent years have seen increased attention to crimes committed against children, including new types of crime committed mainly against children, such as trafficking in human beings, online sexual exploitation and cyber-bullying.

39. However, while these acts of violence are not always considered criminal acts in many countries, it is clear that most of those which would qualify as criminal acts do not reach the criminal justice sphere. Even when children are willing to report crimes committed against them or that they have witnessed, many national systems are not designed to take into account the special needs of these particularly vulnerable children. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime were adopted cognizant that millions of children throughout the world suffered harm as a result of crime and abuse of power and that the rights of those children had not been adequately recognized and that they might suffer additional hardship when assisting in the justice process. As the first rights-based United Nations standard adopted in this area, the Guidelines have been successful in bridging the gap between human rights standards and criminal justice standards. The Guidelines, which are used as a benchmark by the Committee on the Rights of the Child when reviewing State party reports, enshrine the following rights for child victims and witnesses of crime:

- (a) The right to be treated with dignity and compassion;
- (b) The right to be protected from discrimination;
- (c) The right to be informed;
- (d) The right to be heard and to express views and concerns;
- (e) The right to effective assistance;
- (f) The right to privacy;
- (g) The right to be protected from hardship during the justice process;
- (h) The right to safety;
- (i) The right to reparation;
- (j) The right to special preventive measures.

40. With the support of the Governments of Canada and Sweden, UNODC, UNICEF and the International Bureau for Children's Rights have implemented a global project to develop tools and provide training on the Guidelines, which has raised considerable interest in international forums. The project draws on international best practice and has since 2006 developed: (a) a child-friendly version of the Guidelines, available in all six official languages of the United Nations;

(b) a set of model legislative provisions and related commentary,²² available in English, French and Spanish; and (c) a *Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime*,²³ available in all official languages. The final tool is an online training package that includes 12 general modules and 7 special modules for the following professional groups: social workers, health professionals, law enforcement professionals, prosecutors, judges and informal justice providers. All the tools have been developed through a broad consultative process bringing together expertise and good practices from all regions and legal systems. In 2010-2011 it is planned to hold 10 regional training-of-trainer events in all major regions of the world based on the above-mentioned tools. In addition, both UNICEF and UNODC are providing technical assistance to Member States in adapting their legislation and procedure to the rights of child victims and witnesses.

IV. Technical assistance on children, youth and crime

A. Coordinating technical assistance

41. As requested by the Economic and Social Council in its resolution 1997/30, UNODC, UNICEF and other United Nations bodies and international NGOs set up the Inter-Agency Coordination Panel on Juvenile Justice (now the Inter-Agency Panel on Juvenile Justice) to coordinate technical assistance efforts in 2000. In 2007 the Panel established a secretariat in the offices of the Defence for Children International secretariat in Geneva. With the support of UNODC, UNICEF, the Defence for Children International secretariat and Terre des Hommes Foundation for Child Relief, the Panel recruited a permanent secretariat coordinator, who took up her functions at the end of May 2007.

42. Between May 2007 and March 2009, the objective of the Panel's secretariat was to develop, strengthen and support the work of the Panel. As decided at the annual meetings of the Panel held in New York in June 2007 and in Geneva in 2008, the following activities were undertaken: raising the visibility of the Panel; making information, tools and resources on juvenile justice available; developing common tools, including a roster of juvenile justice experts; coordinating the Panel's representation at key events and organizing events and common statements; and informing members of the Panel about technical advice and assistance requests. The establishment of the secretariat has had a significant impact on the efficiency and outreach of the Panel.

43. The first version of the Panel's juvenile justice expert roster was finalized in December 2007, then revised in 2008 and published online in early 2009. The Panel's website, in English, French and Spanish (www.juvenilejusticepanel.org) contains information on the members of the Panel and their activities all over the world, international standards on justice for children, a calendar of events, good practices, a newsletter, links, a site map and a database of resources containing more

²² See UNODC, *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary* (New York, 2009). Available from www.unodc.org/documents/justice-and-prisonreform/Justice_in_matters...pdf.

²³ United Nations publication, Sales No. E.10.IV.1.

than 5,000 documents. The number of visits to the website increased from 2,854 in November 2007 to 5,233 in October 2008. In 2006, the Panel produced a publication entitled *Protecting the Rights of Children in Conflict with the Law*, which provides examples of members' experience in implementing programmes and advocacy.²⁴ Also in 2006, UNODC and UNICEF published the *Manual for the Measurement of Juvenile Justice Indicators*²⁵ and have been offering regional trainings courses on the use of the indicators since 2008, in the Middle East, North Africa and South Asia.

44. Conscious of the fact that no common definition existed for good practices in juvenile justice and that the impact of reform efforts was often difficult to assess, in 2009 the Panel started developing a set of joint criteria for evaluating juvenile justice programmes and programming technical assistance activities. It is hoped that those criteria will allow for a more thorough programming process and impact assessment. Indeed, while the 14 members of the Panel and other international organizations do provide many and varied forms of technical assistance in juvenile justice reform, there are surprisingly few comprehensive reform efforts that are in conformity in all their elements with the Convention on the Rights of the Child and the United Nations standards and norms on juvenile justice. The underlying tension between on the one hand the international standards and on the other the trend towards a more punitive approach is observable for instance in Europe and Latin America, where many countries have seen debates around the lowering of the age of criminal responsibility or decisions to allow for children to be tried by adult courts.

45. At its annual meeting in May 2009, the Panel decided to focus on joint programming at the field level, in line with the various United Nations and donor policies regarding Delivering as One and the Paris Declaration on Aid Effectiveness and Accra Agenda for Action (A/63/539, annex). In line with that decision, various members of the Panel have started implementing joint activities and coordinating technical assistance in specific countries and regions.

46. As a result of the guidance note of the Secretary-General of September 2008 on the United Nations approach to justice for children (see also para. 10 above), United Nations entities are now requested to take children into account in their rule-of-law initiatives. The United Nations approach to justice for children was developed by United Nations entities that are members of the Rule of Law Coordination and Resource Group, at the initiative and under the leadership of UNICEF. In 2009, UNICEF led the work of developing an inter-agency operational guide to translate the United Nations approach into policies and programmes at the country level.

47. In the Russian Federation, based on discussions between OHCHR and stakeholders, especially with judges and juvenile justice experts from the Rostov area, where a pilot programme has made much progress, joint OHCHR/UNICEF/UNODC projects were started in 2009. The *Manual for the Measurement of Juvenile Justice Indicators* will be translated into and printed in

²⁴ Inter-Agency Coordination Panel on Juvenile Justice, *Protecting the Rights of Children in Conflict with the Law: Programme and Advocacy Experiences from Member Organizations of the Inter-Agency Coordination Panel on Juvenile Justice* (2006). Available from www.juvenilejusticepanel.org/resource/items/1/P/IPJJProtectRightsChildConflictLaw06EN.pdf.

²⁵ United Nations publication, Sales No. E.07.V.7.

Russian, and use of the *Manual* in the Russian Federation and the subregion will be promoted; a study of the financial implications of the creation of a juvenile justice system will be carried out; and existing pilot projects in the area of juvenile justice will be continued.

48. In Indonesia, OHCHR and UNICEF have been providing advice on draft legislation on juvenile justice matters. In Panama, they organized a high-level regional seminar in San José and provided support to the Inter-American Commission on Human Rights in the organization of subregional consultations in preparation for a regional study on juvenile justice. Since 2006, the human rights component of the United Nations Stabilization Mission in Haiti has been working with UNICEF to train members of the Haitian police in the protection of minors in conflict with the law. The programme is also aimed at establishing specialized police units outside the capital.

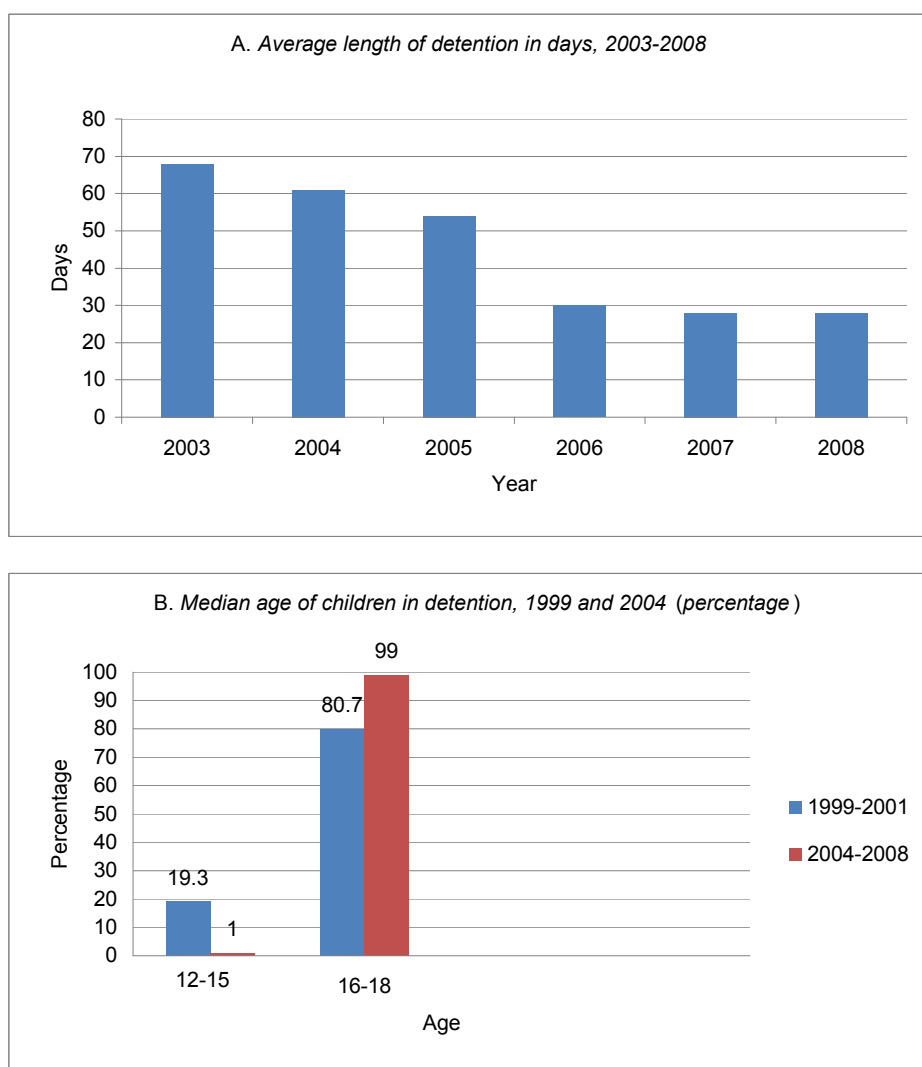
B. The experience of the United Nations Office on Drugs and Crime in providing technical assistance in juvenile justice

49. UNODC has been providing technical assistance to Member States in the area of juvenile justice since 1999. All its projects have been comprehensive in nature and have been independently evaluated. Lessons learned from over a decade of UNODC technical assistance in juvenile justice and child victims indicate that it takes considerable time and resources for such reform to yield results and that national ownership can be built through day-to-day implementation mechanisms. Box 3 below shows some examples of the impact over time of reform of key aspects of juvenile justice in Lebanon. The data are derived from official Ministry of Justice figures compiled through a data collection system set up as part of the projects. In addition to the *Manual for the Measurement of Juvenile Justice Indicators*, UNODC is currently updating the model law on juvenile justice developed in 1993.

Box 3

Impact of juvenile justice reform — Lebanon

The figures below illustrate: (a) the reduction in length of detention of juveniles in Lebanon over the period 2003-2008; and (b) the median age of children in detention in 2004 compared with 1999.



V. Conclusions and recommendations

50. The Twelfth Congress may wish to consider the following conclusions and recommendations:

- (a) **In 2010, the rights of children and youth are still not respected in many national justice systems. On the occasion of the twentieth anniversary of the adoption of the Convention on the Rights of the Child, the Congress**

may wish to recall that the language contained in the Convention is unambiguous when it comes to the detention of children. No child should be detained unless as a last resort. Detention should be only for the shortest appropriate time and should be imposed only if no other alternative measure contributes to the reintegration and rehabilitation of the child;

- (b) The Congress may also wish to call upon Member States to put the best interest of the child at the centre of their juvenile justice systems. Furthermore, it may wish to remind Member States of the United Nations expert study on violence against children and the recommendations contained therein and to call for their full implementation;
- (c) Further, the Congress may wish to recall that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. States are under an obligation to implement this prohibition fully, to hold perpetrators accountable and to provide victims with reparation. Domestic legislation providing for corporal punishment cannot be considered compatible with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;²⁶
- (d) The Congress may wish to recommend to Member States that they step up their efforts to adopt a comprehensive approach to juvenile justice and child victims and witnesses and take the necessary measures to integrate restorative processes as a means of dealing with children in conflict with the law at all stages of the administration of juvenile justice;
- (e) The Congress may also wish to recommend to Member States that they adopt a participatory approach to all reform efforts in the area of children, youth and crime, as well as give effect to the right to be heard of all children in contact with the criminal justice system, regardless of their involvement in crime or victimization;
- (f) The Congress may wish in addition to welcome the work of the Inter-Agency Panel on Juvenile Justice and recommend that the Panel further strengthen its technical assistance in support of Governments in their efforts to develop and implement a restorative juvenile justice approach, while referring to Economic and Social Council resolution 2009/26, in which the Council encouraged Member States to provide the Panel with the necessary resources to cooperate fully with it;
- (g) The Congress may wish to request UNODC to increase its technical assistance capacity and programming in the area of children and youth in criminal justice systems, including through efforts to promote the use of restorative justice approaches in dealing with offences committed by children and against children, and special measures to address the needs of child victims and witnesses of crime;
- (h) The Congress may also wish to recommend to Member States that they establish or strengthen the systematic collection of data on the nature of

²⁶ United Nations, *Treaty Series*, vol. 1465, No. 24841.

and the responses to juvenile delinquency in order to inform their policies in that regard with a view to adjusting them as necessary and to conducting or supporting research on the nature and impact of the various responses to juvenile delinquency.
