



# A VOICE FOR THE FUTURE OF JUVENILE JUSTICE IN ASIA-PACIFIC

INTRODUCTION TO THE ASIA PACIFIC COUNCIL FOR JUVENILE JUSTICE  
AND LEADING JUVENILE JUSTICE REFORMS IN THE REGION





THE ASIA PACIFIC COUNCIL FOR JUVENILE JUSTICE  
IJJO BANGKOK 2013

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## WORDS BY IJJO CHAIRMAN

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The situation of children in conflict with the law, child victims and witnesses of crime has become an increasing concern for most of the countries of the Asia-Pacific region. Even if significant reform initiatives are currently underway in response to issues of violence against children, child trafficking and children rights, a lack of specific guarantee of protection of the rights of children in conflict with the law and juvenile justice systems still persists in some countries.

In order to assist countries in the region in the implementation of international standards and the development of reforms, the International Juvenile Justice Observatory – (IJJO) has established the Asia-Pacific Council for Juvenile Justice - APCJJ to formulate recommendations on juvenile justice in Asia-Pacific, as well as to gather quantitative and qualitative information on the situation of children, adolescents and young people in conflict with the law.

In 2012, the International Juvenile Justice Observatory together with the Department of Juvenile Observation and Protection of the Ministry of Justice of Thailand organised the first meeting of the Asia Pacific Council of Juvenile Justice - APCJJ. The objective of the APCJJ meeting was to develop solid strategies to ensure the respect for the rights of children and adolescents in conflict with the law and to promote crime prevention policies toward Asia-Pacific institutions, such as the ASEAN, based on existing initiatives and programmes.

One year after the meeting, the IJJO issues the regional report '*A voice for the Future of Juvenile Justice in Asia-Pacific ; Introduction to the Asia-Pacific Council for Juvenile Justice and Leading Juvenile Justice Reforms in the Region*'. With this report, the IJJO wants to explore the key outcomes of the first meeting of the Council in 2012 in Bangkok and of the priorities for action identified by members states represented at that meeting. This publication also aims to showcase promising aspects of juvenile justice reform initiatives across the Asia Pacific region, thus identifying the potential for further reforms on a regional level.

Previous to the APCJJ first meeting, the IJJO and the DJOP of the Ministry of Justice of Thailand organised the National and Regional Conference '*Towards comprehensive and effective Juvenile Justice System in Thailand and the Region*', with the aim of promoting the exchange of knowledge and experiences among neighbour countries. This Conference was also the opportunity to share good practices as a result of lessons learned concerning the promotion of juvenile crime prevention and diversion, evaluation of juvenile justice sanctions and residential programme, as well as the preparation for release and aftercare programmes, and finally regional mechanisms and initiatives on children rights. In this sense, the recent reforms and initiatives carried out in Thailand have drawn attention because of its strong interest on the improvement of its JJ system through concrete initiatives as the research of benchmarking models.

With the APCJJ and this first report on Juvenile Justice in Asia-Pacific, the IJJO continues working for a better protection of the right of children in conflict with law at international level. Indeed, the APCJJ is part of a global framework of interconnected regional Council for Juvenile Justice. These think-tanks on juvenile justice, which are composed of experts in the field and representatives of public administrations, universities and civil society, will continue analyzing the situation of children in conflict with the law and developing strategies and recommendations in favour of a fair juvenile justice.

**Dr. Francisco Legaz**

Chairman

International Juvenile Justice Observatory





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Many professionals have contributed in this research, sharing their national and regional experience and knowledge. Mainly experts from the ground, the APCJJ members work on a daily basis with children and young people at risk of social exclusion, in order to protect their rights. All of them have shared generously their expertise for this publication, coordinated by the International Juvenile Justice Observatory.

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- Mr. Alasdair Roy. Children & Young People Commissioner Act Human Rights Commission. Australia.
- Mr. Inshik Sim. Criminal Justice Researcher. United Nations Office on Drugs and Crime. Regional Centre for East Asia and the Pacific. Thailand.
- Mr. Tawatchai Thaikyo. Deputy Permanent Secretary. Former Director General of the Department of Juvenile Observation and Protection (DJOP). Ministry of Justice. Thailand.



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## **PREFACE**

# **VOICE FOR THE FUTURE OF JUVENILE JUSTICE IN ASIA-PACIFIC**

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The establishment of the Asia-Pacific Council for Juvenile Justice (APCJJ) by the International Juvenile Justice Observatory (IJJO) in 2012 marks a milestone for the protection of children in conflict with the law in the Asia-Pacific region. The APCJJ aims at fostering the implementation of international standards and norms in the area of juvenile justice in this region, playing a key role in protecting children from unfair treatment within the juvenile justice system.

Over the past years, the Asia-Pacific region has experienced vast economic growth and steady social development while at the same time facing a number of challenges in promoting and protecting the rights of children in conflict with the law.

With the first report released following its first meeting in June 2012 in Bangkok, Thailand, the APCJJ gives an impressive overview of leading practices in the area of juvenile justice in the Asia-Pacific region and formulates a progressive approach towards reform efforts in the region.

The report sheds light on crucial areas of juvenile justice and leading practices in this regard, including prevention, diversion, restorative justice, improving conditions of detention and promoting social reintegration. The United Nations Office on Drugs and Crime (UNODC) welcomes the efforts of APCJJ to promote the implementation and application of diversionary measures and restorative justice programmes for children in the Asia-Pacific region. This report serves as an excellent basis for future juvenile justice reform endeavors in the Asia-Pacific region. It will help to find innovative responses to protect children in conflict with the law from harm and strengthen juvenile justice systems in the region.

Having at the core of its mandate the promotion of efficient, fair and humane criminal justice systems that protect the vulnerable and respect human rights, UNODC supports the committed work of the APCJJ in area of juvenile justice and encourages the translation of its first report into concrete actions in the Asia-Pacific region.

UNODC shares with APCJJ the goal to ensure that children are better served and protected by the justice system. In particular, UNODC aims to ensure the full implementation and application of international standards and norms regarding children in contact with law, whether as suspects or offenders or victims and witnesses.

UNODC wishes to express its great appreciation for the APCJJ's assuming a key role in this regard and congratulates the APCJJ on its first report that will not only be of great value for Member States of the Asia-Pacific region, but also for UNODC's reform efforts and technical assistance delivery in the area of juvenile justice.

**Jeremy Douglas**

Regional Representative

Regional Office for Southeast Asia and the Pacific

United Nations Office on Drugs and Crime



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# 1. INTRODUCTION TO THE APCJJ

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“...Children occupy the core of my heart. It pains me to see their plight in a society riddled with poverty and strife. It pains me even more to see the attitude of the rest of society who sit comfortably in their homes with a jolly scene of a perfect family with beautifully kempt and well-behaved children around them. But how much do we care about the hapless children who are driven by uncaring parents and a neglectful society into despair, destitution and crime (?” Justice Ali, a participant in the APCJJ meeting June 2012 – Bangladesh<sup>1</sup>

The Asia Pacific region has experienced rapid social and economic development in recent decades. It is home to great diversity and tremendous opportunities, and many young people and their families have managed to benefit from such social and economic improvements. As cities and urban centres continue to grow, so does the youth population. The youth population in the Asia Pacific region amounts to 700 million people and represents 45% of the world’s youth population.<sup>2</sup> At the same time as consumer economies are developing quickly traditional culture, language, and practices remain intact for many of the region’s inhabitants. Many children are left behind and do not benefit from development. We must pay attention to the needs of these ‘hapless’ children and young people who come from generations of poverty, poor education. The protection networks within the family and the state are often weak. Among them are those children who come into conflict with the law or are “at risk”. What is the response of the countries of the region and the region as a whole to this vulnerable segment the community?

## A. A Brief Background

In June 2012, representatives of 19 states from the Asia Pacific region came together in Bangkok, Thailand, for the first Meeting of the Asia Pacific Council for Juvenile Justice (APCJJ) and a conference titled “Towards comprehensive and effective Juvenile Justice System in Thailand and the Region” convened by the International Juvenile Justice Observatory (IJJO). Representatives of State governments, UN bodies, civil society and academia came together to share their experience on successful and innovative reforms taking place across the region and discuss the priorities for action in the area of justice for children<sup>3</sup>.

The IJJO, created in 2003, is an international organisation committed to addressing the needs of children and young people who are in need of care and protection when they come into conflict with the law – where it offers an inter-disciplinary system of information, communication, debates, analysis and proposals concerning different areas relating to the development of juvenile justice in the world. The IJJO receives support and sponsorships from a variety of academic institutions, civil society organizations and government departments, as well as from the divers Institutions such as the European Commission.

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1 Ali, Justice Imman (2010). Towards A Justice Delivery System for Children in Bangladesh, A guide and Case Law on Children in conflict with the Law”, UNICEF Bangladesh 2010, p. xiii.

2 <http://social.un.org/youthyear/docs/ESCAP> - This definition of youth pertains to the UN definition, with an age range between 15 to 24 years.

3 Please note that the term ‘child’ and ‘youth’ will be used interchangeably throughout this report unless it pertains to specific provision of a law or international instrument.

The IJJO is committed to the promotion of a holistic and interdisciplinary concept of juvenile justice, based on three fundamental axes:

- Prevention of juvenile crime
- Juvenile justice laws, proceedings and intervention
- Educational measures and socio-professional inclusion

Its main goal is to create a permanent international community and center of excellence for juvenile justice professionals from all over the world, as well as entities concerned by the situation of children and youth at risk of social exclusion and reclusion.

The IJJO has created regional branches in Europe, Africa, Latin-America and now, in the Asia-Pacific. On each continent, the IJJO has established a Council for Juvenile Justice. The Asia Pacific Council is the latest one of them. These regional Councils respond to the need for assistance in the implementation of international standards on the protection of the rights of the child and young people in conflict with the law. The Councils also act as think-tanks on juvenile justice. They are composed of experts in the field and representatives of public administrations, universities and civil society, who analyse the situation of children in conflict with the law and develop relevant strategies and recommendations. Each Council has developed its own Declaration to define and its specific goals and priorities for action.<sup>4</sup>

## B. Objective of the Report

This report explores the makeup and function of the APCJJ as well as the key outcomes of the first meeting of the Council in 2012 in Thailand and of the priorities for action identified by members states represented at that meeting. The report also aims to showcase promising aspects of juvenile justice reform initiatives across the Asia Pacific region, thus identifying the potential for further reforms on a regional level.

There is still much room for improvement in the ways in which States of the region adhere to international standards and apply successful evidence-based practices. However, this report aims to showcase the “good news” stories that emerged from the first APCJJ meeting in Bangkok as well as other examples, particularly from Asia-Pacific states with which the Council hopes to engage more fully in future APCJJ endeavours.

Finally, a number of recommendations and proposed “next steps” are suggested in order to ensure that the activities of the APCJJ have a lasting impact on the juvenile justice reform agenda in the Asia Pacific region.

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4 [www.ijjo.org/en/presentation](http://www.ijjo.org/en/presentation)

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## 2. THE GLOBAL CONTEXT

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### A. The Asia Pacific Council for Juvenile Justice – A Regional Response to Juvenile Justice

The issues and challenges associated with children in conflict with the law and child victims and witnesses of crime have become a concern for most of countries of the Asia-Pacific region. Significant reform initiatives are underway in many countries of the region to respond to r issues with respect to violence against children, child trafficking, and the rights of children in conflict with the law.

The first meeting APCJJ brought together representatives of public administrations in juvenile justice, universities or academic centers, and NGOs with expertise in legislation, project implementation and supervision, research and evaluation, and methods of intervention in the field of juvenile justice from 19 countries<sup>5</sup>.



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<sup>5</sup> Countries present at the APCJJ inaugural meeting included: Australia, Bangladesh, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Singapore, South Korea, Thailand and Vietnam.

The goals of APCJJ are to: assist in the development and evolution of juvenile justice in Asia Pacific; gather quantitative and qualitative information on the situation of children, adolescents and youth in conflict with the law; propose coordinated actions between public administrations, non-governmental organizations and academic and training centers in countries of the region.

In particular, the Asia Pacific Council for Juvenile Justice assumes the following functions:

- The promotion of sustainable collaboration and coordination among all parties and stakeholders in the development of juvenile justice policies for the successful social integration of young people and children in conflict with the law.
- The development of strategies to ensure the respect for the rights of children and adolescents in conflict with the law.
- Ensuring that social inclusion of children in conflict with the law is at the heart of juvenile justice systems.
- The development of juvenile justice policies that can contribute to the effective prevention of juvenile crime, the implementation of alternatives to detention for children in conflict with the law, and the implementation of educative measures and programs to support the social reintegration of children and juvenile offenders.

In organizing the inaugural meeting of the Asia Pacific Council for Juvenile Justice, the IJJO and the Department of Juvenile Observation and Protection of the Thai Ministry of Justice, wanted to ensure that the know-how and conclusions coming out of the meeting could be translated into concrete actions and documents that could be used for advocacy purposes and as training materials for justice and law enforcement officials as well as members of civil society and community based organizations.

As a result of the meeting, conclusions were drawn by members of participating States and five key reform areas were identified in which the APCJJ could provide coordination and support regional collaboration. The five areas are:

- Prevention
  - Administration of juvenile Justice with special emphasis on:
    - Diversion
    - Restorative Justice
    - Probation and leading community based sentencing practices
- Policy and Legislative Reform
  - Emphasise recent guidance adopted by the United Nations in some areas (i.e., Bangkok Rules for Treatment of Women Prisoners)
- Rehabilitation and Reintegration
- Advocacy



The APCJJ was very fortunate to be able to hold its first meeting in Bangkok. Thailand's Department of Juvenile Observation of the Thai Ministry of Justice is one of the strong leaders of the region in the areas of juvenile justice reform and programmes. Historically, Thailand was an early leader in juvenile justice reform in the region. It has carried out sweeping changes that included the abolition of highly punitive sentencing practices for juveniles and various institutional reforms. It was one of the first countries to introduce community-based penalties and sophisticated 'child-sensitive' procedures for children involved in the justice system.<sup>6</sup> Today, the Department of Juvenile Observation and Protection counts on 77 Observation and Protection Centres in all of the provinces to "observe" the juveniles involved in the juvenile justice system (pre-trial and post-trial) and they operate a further 17 Vocational Training Centres for sentenced children who are ordered to undergo treatment and rehabilitation.<sup>7</sup> Advanced rehabilitative and restorative programmes (such as those based on the family group conferencing model) are now enshrined in national legislation<sup>8</sup> and are practiced throughout the juvenile justice system. Conflict resolution interventions drawing upon traditional Thai conflict resolution methods are practiced in which the restoration of centrality of family and community is paramount.<sup>9</sup> APCJJ members were exposed during the course of the meeting to the success of these methods and other reforms through presentations and field visits.

## B. Juvenile Justice within a Human Rights Framework

### a. Guiding International Standards

While reflecting on the progress accomplished in the Asia Pacific region with respect to juvenile justice programmes and practices, one must remember that all the work to advance the rights of children across the justice sector falls under the wider human rights obligations of the States and institutions involved. International standards exist which provide guidance on how to respond to juvenile crime while protecting the rights of the child and achieving society's public safety objectives. Since 1989, the Convention on the Rights of the Child (CRC) is a binding international treaty and the most widely ratified human rights instrument currently in existence. It sets out an internationally agreed upon definition of a "child" as any person under the age of 18 years. Each of the rights enshrined in the Convention applies equally to all individuals under this age without discrimination. The Convention provides the overarching framework for a child rights approach to State led reforms. It specifically affirms the rights of children who come into conflict with the justice system and offers some general guidance with respect to justice response to juvenile crime. All member states to the APCJJ are parties to the CRC and each one of them therefore has the obligation to undertake all necessary steps, including legislative, administrative and other measures to implement the rights contained in this instrument.<sup>10</sup>

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6 *Justice for Children: Detention as a Last Resort - Innovative Initiatives in the East Asia Pacific Region* (UNICEF) 2004, p. 17.

7 *Department of Juvenile Observation and Protection Annual Report 2011: Case Statistics* (Department of Juvenile Observation and Protection) 2011, p. 2.

8 The *Juvenile and Family Court and Procedure Act* was enacted in 2010.

9 Roujanavong, Wanchi "Restorative Justice: Family and community Group Conferencing (FCGC) in Thailand", Paper presented to first meeting of the APCJJ, June 2012, Bangkok, Thailand.

10 *Convention on the Rights of the Child*, Article 4.

The guiding principles enshrined in the CRC that must be reflected in all juvenile justice programmes include:

- the recognition of the child's right to life survival and development (article 6);
- the best interests of the child as a guiding principle in all interventions(article 3);
- the principle of non-discrimination (article 2); and,
- the right of every child to be heard and to be able to form and express their views (article12).

The most relevant provisions of the Convention with respect to the administration of justice are included in articles 37, 40 and 39. However, most articles of that Convention are relevant to juvenile justice in the sense that respect for children's rights extend to the right to education, to protection against abuse and exploitation, the right to adequate information, the right to an adequate shelter, to health and access to family. These are all factors that are directly relevant to the social adaptation of children and the prevention of juvenile crime. We know now that any meaningful attempts to prevent juvenile crime must involve promoting and protecting all the rights of children.

In relation to the administration of juvenile justice the CRC requires States parties to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who come into conflict with the penal law as provided for in articles 37 and 40.

Article 37 reaffirms that children must be protected from torture, cruel punishment and unlawful arrest. It also stipulates that deprivation of liberty should only be used as a last resort and for the shortest possible time. It makes it clear that, when a child must face detention, it must be in a manner that takes into account the child's particular needs and respects his/her dignity.

Article 40 more specifically covers the rights of all children accused of infringing the law and asserts the fundamental 'due process' rights of child offenders, including; the presumption of innocence, the right to be informed of his/her charges, the right to legal assistance to prepare a defence, the right to silence and the right to an interpreter. It also reinforces a restorative approach to dealing with young people in this context rather than punitive measure – it includes the principles of alternatives to judicial proceedings and institutional placement and the principle of proportionality, as well as emphasising that a child should be treated in a way that promotes his/her reintegration into playing a meaningful role in the community.

In addition, article 39 of the Convention recognizes the right to rehabilitation and social reintegration for children victims of neglect, exploitation and abuse. .

Consequently, increasing attention is being given to the CRC and other international human rights standards as the accepted common framework in juvenile justice reform. The CRC as a whole can support a holistic approach where the indivisible rights of children guide juvenile justice reforms.

In addition to the CRC many other international standards have been recognized over the last few decades by the international community to improve the administration of juvenile justice (see Diagram 2).

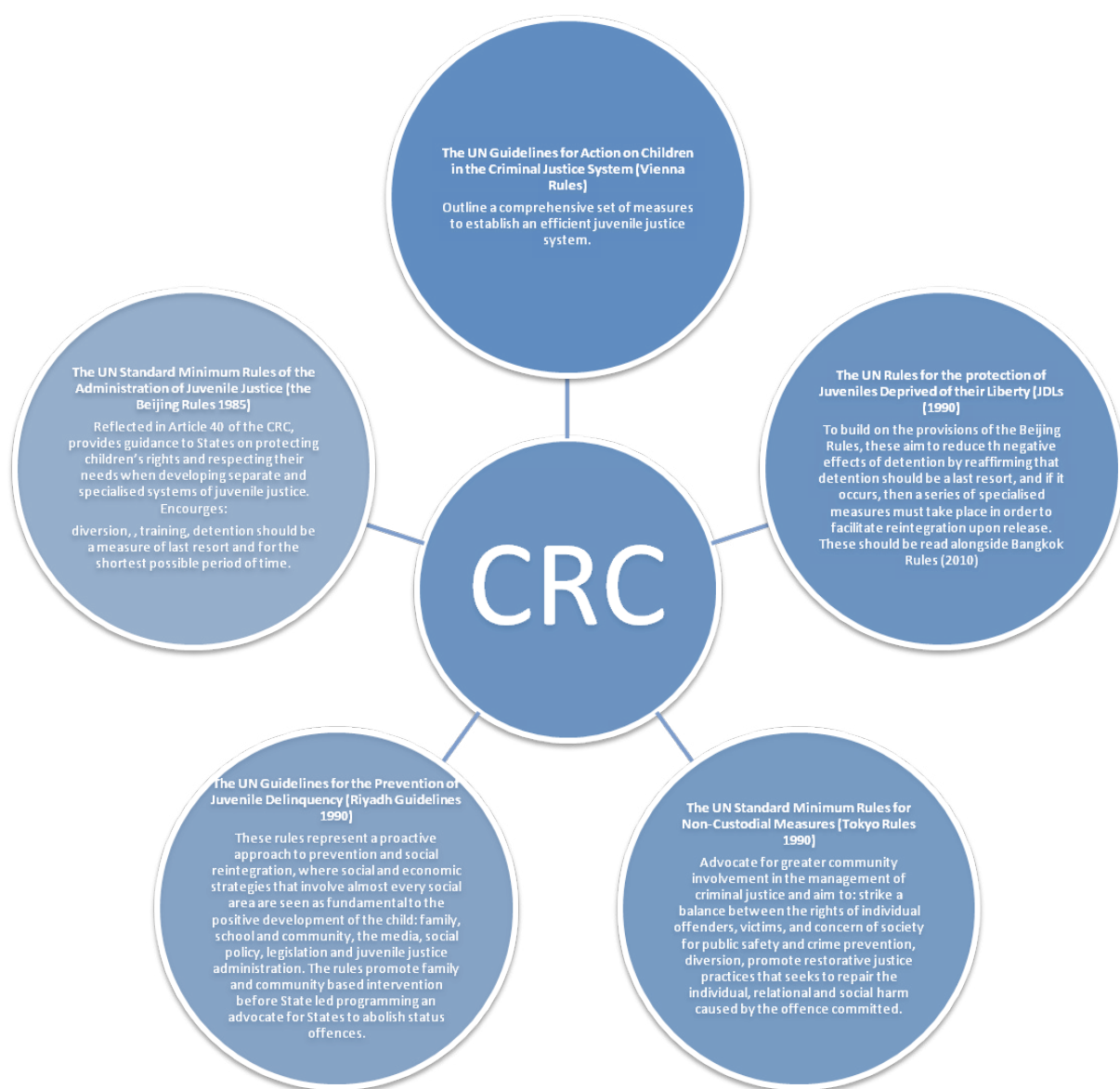


Diagram 2: SUPPORTING INSTRUMENTS FOR THE ADMINISTRATION OF JUVENILE JUSTICE

These standards are still very relevant to juvenile justice reforms being implemented or considered by APCJJ States, as are the new United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules). For ease of reference, Annex 1 to this report contains a list of all applicable international human rights instruments that relate to children in the justice setting.

## b. Guiding Regional Human Rights Frameworks

Members of the APCJJ will also be interested in the relevant regional human rights instruments. For example, the Association of South Eastern Nations (ASEAN) is a key body in the region today. ASEAN

consists of three pillars (political-security, economic, and socio-cultural) with emphasis on need to strengthen coordination on key cross-cutting issues that affect all three pillars. Strong ASEAN cohesiveness and effective ASEAN Community are key to having responsive regional architecture and, while its original aims did not encompass human rights, its profile in this area has been raised in recent years with the development of the ASEAN Inter-governmental Commission on Human Rights.<sup>11</sup> Under this initiative, various sectoral human rights bodies now play a role in the protection of human rights in the region, notably in this case the ASEAN Commission for the Promotion and Protection of women and children (ACWC). Dr Chiam Heng Keng, the Malaysian Representative to this Commission presented the ACWC to members present at the Council's first meeting.<sup>12</sup>

A major milestone reached recently was this Commission's cooperation with the UN which resulted in the development of a Joint Statement on the Promotion and Protection of Women and Children by the ACWC and the Special Representative of the UN Secretary General on Violence against Children.<sup>13</sup> Further, the Thai Department of Juvenile Observation and Protection Ministry of Justice, as requested by the Thai Government is undertaking a review of juvenile justice practice across the region under ASEAN's Political Security Community Pillar. This could be a helpful contribution to the work of APCJJ as well.

Other bodies exist which aim to address violence against children in the region, including the South Asia Initiative to End Violence Against Children (SAIEVAC), established as an outcome of the regional consultation on the 2006 UN Study on Violence against Children . It currently has a Regional Secretariat to coordinate initiatives amongst the eight Member States.<sup>14</sup>

While it may be difficult for all countries of the region to benefit from regional vehicles such as ACWC, given the geographical, economic, and political delineations that can exist (particularly between Asian and Pacific States), bodies do exist to promote high level collaboration within a human rights framework both among Asian and Pacific countries. Collaborations have also occurred within the region that stretched across the Asia Pacific divide, including the 'High Level Meeting for South-South Cooperation for Child Rights' in the Asia Pacific Region<sup>15</sup>, where the Beijing Declaration was signed by 28 participating countries in 2010 to provide interregional communication and policy development, with the assistance of agencies such as:

- The Secretariat of the South Pacific Community (SPC),
- The Asian Development Bank (ADB)
- The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP).<sup>16</sup>

APCJJ member states could be encouraged to work in concert with these initiatives to promote regional reforms for juvenile justice across throughout the Asia Pacific region, ensuring also that the voice of the smaller Pacific Island states can be heard, in spite of the dramatic geographical, economic, political, social and population differences among these countries.

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11 Muntarbhorn, Vitit "Development of the ASEAN Human Rights Mechanism" Briefing Paper for the Directorate General for External Polices, European Parliament, 2012 at 13

12 Dr Keng, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) Malaysia's Representative for Children, presentation to the APCJJ 14<sup>th</sup> June 2012.

13 <http://srsg.violenceagainstchildren.org/story>

14 <http://www.saievac.org>

15 [www.unicef.org/eapro/beijing\\_declaration](http://www.unicef.org/eapro/beijing_declaration)

16 *Ibid.*

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### 3. JUVENILE JUSTICE IN ASIA PACIFIC TODAY AN OVERVIEW OF LEADING PRACTICES IN PREVENTION AND DIVERSION

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#### A. Prevention of Youth Crime and “At Risk” Behaviour

A key focus of the APCJJ meeting was on juvenile crime prevention and the need for programs focussing on early interventions and engagement with young people. The ‘Riyadh Guidelines’ (see diagram above) provide a positive, pro-active and comprehensive articulation of young people’s rights in regard to the prevention of juvenile delinquency, with a specific focus on early intervention for those “at risk”. The measures referred in the guidelines encompass key social areas such as the family, the school, the community, and the media, as well as guidance for social policy, legislation and juvenile justice administration. In addition, the United Nations Guidelines for Action on Children in the Criminal Justice System articulates an operational framework for upholding these rights in relation to juvenile crime prevention.

The APCJJ meeting included a dialogue around the importance of the centrality of family and the need to strengthen this unit to ensure positive outcomes not only for crime prevention but throughout the justice spectrum. Clearly more work is required in this particular area

APCJJ members also agreed that collaborative and coordinated regional responses have the potential to address the urgent need to reduce the number of children in conflict with the law and, indeed, the number of children in detention. The number of children in detention, globally, is estimated at approximately 1 million.<sup>17</sup> The total number of children in detention in the Asia Pacific region has not yet been estimated.

The recently released Joint Report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against children on prevention of and responses to violence against children within the Juvenile Justice System (the “Joint Report”<sup>18</sup>), which builds on the 2006 United Nations Study on Violence Against Children, reminded States of the urgency of measures to promote crime prevention without necessarily institutionalizing children.

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17 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, (A/HRC/13/39/Add.5), p. 63, para. 236.

18 “Joint Report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against children on prevention of and responses to violence against children within the Juvenile Justice System” A/HRC/21/25, p. 5, para14.

Australia's legislation, policy and practice recognize that juveniles are more vulnerable than adults and need to be handled differently. Compared with adults, juveniles lack maturity, are more likely to take risks and are more easily influenced by peers. They are also more likely to "grow out" of offending and become more law-abiding as they acquire some maturity. A sentence in prison may entrench a criminal mind-set and set a path for an adult life of crime.<sup>19</sup> Australian authorities have adopted a restorative justice model to guide the development of innovative juvenile justice programmes. This has contributed to the prioritization and the development of prevention programmes. Prevention occurs on several levels:

- primary, to stop offending before it starts;
- secondary, to deal with young people particularly at risk of offending; and,
- tertiary, with interventions to prevent or reduce the risks of reoffending.<sup>20</sup>

Research shows that the most promising form of prevention is "developmental prevention", which is the organised provision of resources to individuals, families, schools or communities to prevent the later development of crime or other problems; a philosophy echoed in instruments such as the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). This approach involves early interventions before crime or serious behavioural problems emerge or become entrenched, modifying social arrangements through the organized provision of resources to individuals, families, schools or communities. Intervention methods that have been proven to be effective in high quality experiments, such as parent training programs or home visits by health professionals to teenage mothers, are especially valued at this level.

### A PREVENTION SNAPSHOT: AUSTRALIA

In 2001, the Australian Government introduced a Pathways to Prevention Project based on the recognition that a "system wide" approach is necessary for effective crime prevention. The Pathways project recognised that problem behaviour by young children is one of the strongest indicators of both adolescent delinquency and later adult offending. The project aimed to involve family, school and community in a broad set of planned interventions to prevent anti-social behaviour among this group of children. The project targeted four to six year old children who were in transition to school and focused on enhancing their communication and social skills and empowering their families, schools and community to provide a supportive environment for positive development.

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19 Freiberg K and Homel R 2011. "Preventing the onset of offending". In A Stewart, T Allard and S Dennison (Eds) Evidence Based Police and Practice in Youth Justice. Annandale: The Federation Press, pp. 82-99.

20 Ibid.



## A PREVENTION SNAPSHOT: JAPAN

Public relations activities in public places. For example; campaign parades, various kinds of events such as music concerts, exhibitions, distributing various kinds of campaign goods, crime prevention campaign slogans on TV spots, radio commercials, newspapers (public commercials), billboards and electrical bulletin boards in downtown areas and sports stadiums.

- Public symposiums or forums about juvenile delinquency problems.
- Small discussion meetings in local neighbourhoods.
- Support activities in the community. For example; support activities in child rearing for young mothers, opening ad hoc child /clinics, organizing community service activities.
- Fund raising activities for rehabilitation aid. For example; charity concerts, charity bazaars, asking for donations.

The Volunteer Probation Officers play an important role in these activities. Their experience and networks provide resources to help sensitize people to these issues. Based on their own experience with the rehabilitation of offenders. they make the best of their capacity and contacts in the community.

Japan is also home to regional think tanks concerned with regional strategic development and responses to crime. They include the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), in Tokyo, established in 1962 to promote the sound development of criminal justice systems and mutual co-operation among countries of the Asia and Pacific Region. UNAFEI activities focus on training courses and seminars for personnel in crime prevention and criminal justice administration, and the research and study of crime prevention and the treatment of offenders. This regional think tank potentially offers a platform for the APCJJ to develop further regional linkages in support of future work for juvenile crime prevention.

## B. Diversion

Diversion is increasingly used in various countries of the Asia Pacific region. Some of the new programs are inspired by the early initiatives in the region New Zealand and Australia. In short, diversion is the channelling away of the offender from the justice system, often to other more appropriate forms of intervention, in order to help the offender return to a normal and productive life in the family and community. It can include diverting the child away from the formal justice system at the pre-trial stage (by police), or juveniles may be directed to diversionary programs by the courts.

## DIVERSION SNAPSHOT: New Zealand and Papua New Guinea

In New Zealand this feature of modern juvenile justice programming is firmly embedded in legislation which states that “unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is alternative means of dealing with the matter...”.<sup>21</sup> This is based on the assumption that the act of entering formal proceedings in itself can have a negative impact on young people.<sup>22</sup>

The focus on the role of police and the ability to sensitize and empower police with the authority to resort to diversion is gaining momentum across the Asia Pacific. If we look to the Pacific states as an example, countries such as Papua New Guinea (PNG) have instituted a specialised Police Juvenile Policy and Diversion Protocol, supported by a specialised Juvenile Policy Monitoring Unit within PNG Police. This unit monitors the effective diversion and juvenile processing practices carried out by police.<sup>23</sup>

## DIVERSION SNAPSHOT: EXPLORING DIVERSION IN VIETNAM

In Vietnam, the Ministry of Justice in collaboration with UNICEF conducted a wide study of diversion as it existed informally in the country, as well as a review of existing laws and the extent to which they allowed diversion. A draft set of guidelines have been developed for use by juvenile justice officials in implementing various diversion schemes on a pilot basis.

The CRC states that the arrest and detention of a child must be in conformity with the law, and should be used only as a measure of last resort, where children have the right to be informed promptly of the charges against them, and to have the assistance of their parents and a legal representative at all stages of the proceedings. Children must never be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and their right not to be compelled to give testimony or to confess guilt must be guaranteed.<sup>24</sup> It is a sad reality, as highlighted by the recently released “Joint Report” mentioned above in this report<sup>25</sup>, that in many instances police and security forces can act violently towards children and this can be a common theme in apprehension and arrest practices, where, in some cases, even legally sanctioned “use of force” does not comply with internationally recognised standards. Therein lays the importance of police reform and capacity building programs. The police have a very difficult task because they usually are the first point of contact with children in come into conflict with the law.

The United Nations Standard Minimum Rules for Non-Custodial Measures state that the development of new non-custodial measures should be encouraged and closely monitored (Rule 2.4). It is also stated that

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21 Section 15 of the Children Young Person and their Families Act 1989...

22 Becroft J, (2009). “How to Turn A Child Offender into an Adult Criminal – 10 Easy Steps”, International Law Conference Paper, Prato, Italy.

23 [http://www.unicef.org/eapro/Juvenile\\_justice\\_reform\\_in\\_Papua\\_New\\_Guinea.pdf](http://www.unicef.org/eapro/Juvenile_justice_reform_in_Papua_New_Guinea.pdf)

24 Convention on the Rights of the Child, Articles 39 and 40(2).

25 Convention on the Rights of the Child, Article 4.



consideration should be given to dealing with offenders in the community, avoiding as far as possible the use of formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law (Rule 2.5). The development of a wide range of community-based measures is also advocated. The Bangkok Rules advocate the same for women offenders.

In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible (Rule 2.3).

With respect to young offenders, the CRC, the Guidelines for the Prevention of Juvenile Delinquency and the Standard Minimum Rules for the Administration of Juvenile Justice promote the use of diversion to resolve children's violations of the law as an alternative to processing them through the formal juvenile justice system. In particular, the CRC requires States Parties to promote the establishment 'wherever appropriate and desirable' of measures for dealing with JICWL without resorting to formal judicial proceedings, provided that human rights and legal safeguards are fully respected (Article 40(3)(b)).

The UN Guidelines for the Prevention of Juvenile Delinquency emphasises the importance of community-based services and programmes to prevent and respond to juvenile crime. They insist that 'formal agencies of social control should only be utilised as a means of last resort'.<sup>26</sup>

The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) also directly promote the use of diversion. They require that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. Diversion may be used at any point of the decision-making process. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings. In order to facilitate the discretionary disposition of juvenile cases, community programmes must be provided, such as temporary supervision and guidance, restitution, and compensation of victims.<sup>27</sup> The use of diversion need not necessarily be limited to petty cases, thus rendering diversion an important strategy for responding to, and addressing the needs of the young offenders. The merits of individual cases can make diversion appropriate even when a more serious offence has been committed.

Any diversion involving referral to appropriate community or other services requires the consent of the juvenile or her/his parents or guardian, and must be subject to review by a competent authority, upon application. The consent of the juveniles or their parents or guardian is a precondition for the application of diversion measures. The Beijing Rules require that any diversion involving referral to appropriate community or other services must have the consent of the juvenile or his/her parents or guardian. They stress that care should be taken to minimise the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not be pressured into consenting to diversion programmes, for example, in order to avoid having to appear in court.<sup>28</sup>

In its General Comment No. 10 (2007) on Children's rights in Juvenile Justice, the Committee on the Rights of the Child expressed the opinion that States parties should make diversion measures an integral part of the juvenile justice system and ensure that the rights of these young offenders and legal safeguards are thereby fully respected and protected.

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<sup>26</sup> UN Guidelines for the Prevention of Juvenile Delinquency, Guideline 6.

<sup>27</sup> Standard Minimum Rules for the Administration of Juvenile Justice, Rule 11.1 to 11.4.

<sup>28</sup> Standard Minimum Rules for the Administration of Juvenile Justice, Rule 11.3 and Commentary.

## A DIVERSION SNAPSHOT: SOLOMON ISLANDS

While clear directives may not always be provided by national child protection or justice legislative framework, we are nevertheless seeing the emergence in many countries of the region of policy directives to guide key justice actors regarding the discretionary powers of police to dispose of minor matters at the earliest possible opportunity. As an example, the recently adopted Prosecution Policy of Solomon Islands states that: “It is the role of the Royal Solomon Islands Police Force to fairly and transparently dispose of matters involving minor offending by young first time offenders by means other than prosecution (...)”.<sup>29</sup> Public awareness campaigns are also being used to promote a “child friendly” image of the police to the community.

The APCJJ meeting also facilitated a dialogue around the types of referrals and interventions that can be made possible through diversion programmes in order to address the special needs of young people with mental health issues or other groups of young offenders with special needs.

Some countries of the region have invested considerable resources in developing alternative programmes to which children can be referred as part of the diversion process. Other countries, such as Bangladesh, have developed and implemented pilot with the assistance and collaboration of NGOs and UN organizations. Some have been actively involved in advocacy and in developing legislation to formally initiate or authorize these mechanisms.<sup>30</sup>

## SNAPSHOT: SINGAPORE

Singapore is a leading example of a State which is willing to commit resources for the longer term and offer intensive programme at the diversion stage. For example, Singapore’s Guidance Programme (GP) is a six-month counselling and rehabilitative programme which helps first-time juvenile offenders referred by the Police to recognise the severity of their actions and the consequences of a repeat offence. The GP also aims to educate young people and their families on how to prevent such occurrences through counselling, group work and constructive activities and ensuring programs are tailored to fit the individual therapeutic and developmental needs of the young person.

Activities also include “Moot Court” – simulated court proceedings – to help youths in the GP to understand the juvenile justice system which offers an opportunity to empathise with victims and parents by seeing the consequences of their offences through simulation. Further, steps have been taken to accommodate offenders who have intellectual disabilities and mental health issues. In 2006, a pilot on extending GP to intellectually disabled young offenders was introduced (GP-ID) where young offenders in this category are directly referred to the guidance Program (a specialised arm of the program is in place to cater for this group).<sup>31</sup>

The involvement of the family is particularly important and the cognitive, social, emotional and motivational needs of intellectually disabled youth offenders are assessed and programs are tailored accordingly.<sup>32</sup>

29 Article 22.3, Prosecution Policy, Office of the Director of Public Prosecutions, Solomon Islands, 14 May 2009.

30 Ali, Justice Imman (2010). *Towards A Justice Delivery System for Children in Bangladesh, A guide and Case Law on Children in conflict with the Law*, UNICEF Bangladesh, p. 224.

31 Singapore Children’s Society, Annual Report 2010, p. 37.

32 Committee on the Rights of the Children, Singapore State Report, 2010, p. 442.

Another phenomenon encountered specifically in countries of the Asia Pacific region is the informal diversion measures operating parallel to state-led initiatives.<sup>33</sup> It is widely acknowledged amongst juvenile justice scholars in the Asia Pacific region that traditional, community and family based conflict resolution mechanisms are also used to resolve offences, particularly those which are minor in nature, and they can also reduce the strain on formal systems.<sup>34</sup> There are many reasons for this, including the lack of access to state-led justice mechanisms and the fact that, at least for some people or in some remote communities, traditional forms of justice carry more legitimacy culturally.<sup>35</sup>

We know that informal (family, community and traditional) forms of “diversion” and conflict resolution, particularly when they are inspired by restorative justice principles and are respectful of children’s rights, offer a valuable alternative to the formal justice system. However, there remains a risk in those cases that the rights of children may be compromised.<sup>36</sup> The United Nations Guidance Note of the Secretary General “UN Approach to Justice for Children” (2008) goes some way to address this phenomenon.<sup>37</sup> The Guidance Note states that informal justice mechanisms can in fact be preferable to involving state authorities such as police, as they are “less intimidating and closer to children both physically and in terms of their concerns”.<sup>38</sup> The notes emphasizes the responsibility of the State and the importance of protecting children from any hardship that may result from their being involved in these community led processes. The Note urges justice programmers to remember that these considerations should be applied to ensure that informal justice actors adhere to the same juvenile justice safeguards as the formal system.<sup>39</sup> We see examples, such as in the case of East Timor, where traditional practices have now been integrated into domestic legislation to align them with the obligations of the State under the CRC.<sup>40</sup> This paves the way for some interesting regional dialogue amongst APCJJ member states on how to synergise state led child-centred programming with informal diversion efforts – which is a vibrant feature in the justice landscape across many jurisdictions of the region.

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33 UNICEF (2006). *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, p. 47.

34 Ibid.

35 Save the Children U.K. (2006). *Indigenous Administration of Justice and its Impact on the Protection of Children: The Tagabawa-Bagobo and Subanen Experience*, Save the Children UK, Philippines.

36 Wojkowska, Eva. 2006. *Doing justice: How informal systems can contribute*. UNDP and Oslo Governance Programme, p. 9.

37 United Nations (2008). *United Nations Guidance Note of the secretary General: “UN Approach to Justice for Children”*.

38 Ibid, p. 4.

39 Ibid, p. 3.

40 Cyndi Banks, *Protecting the Rights of the Child: Regulating restorative Justice and Indigenous Practices in Southern Sudan and East Timor*, *International Journal of Children’s Rights*, vol. 19 (2), (2011).

## DIVERSION AND CHILDREN'S RIGHTS

With respect to the protection of children's rights and the presence of necessary legal safeguards with respect to the use of diversionary measures, far as full respect for human rights and legal safeguards is concerned, the Committee on the Rights of the Child referred States parties to the relevant parts of article 40 of the CRC and emphasised the following:

- Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognised as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;
- The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is below the age of 16 years;
- The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;
- The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;
- The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorised to deal with children in conflict with the law.

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## 4. JUVENILE JUSTICE IN ASIA PACIFIC TODAY AN OVERVIEW OF LEADING RESTORATIVE JUSTICE PRACTICE AND POLICY REFORM

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### A. Restorative justice

For diversion to take plea, viable alternatives to formal justice processing must exist in the form of community-based programmes and treatment facilities. Some of these programmes may involve a restorative justice approach or restitution, and to the extent that they seek to help the offender avoid future conflicts with the law they can be quite relevant and beneficial.

The concept of Restorative Justice (RJ) has emerged as leading "way to work" in relation to administration of juvenile justice across the world and formed a large part of the dialogue during the first meeting of the APCJJ. There is no universally agreed upon definition of restorative justice, and the term has been used to encompass a large range of different practices. It is an evolving concept that has given rise to different interpretation in different countries and socio-cultural contexts. In general, it emphasises the repair of harms and of ruptured social bonds caused by crime; rather than the punishment of offenders.<sup>41</sup>

Restorative justice approaches seek to:

- Denounce criminal behaviour as unacceptable and reaffirm community values;
- Support victims, enable their participation and address their needs;
- Encouraging all parties to take responsibility, particularly the offenders;
- Identify restorative, forward looking outcomes;
- Prevent recidivism by encouraging change in individual offenders and facilitating their reintegration into the community.

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41 United Nations Office On Drugs & Crime (2006) Handbook on Restorative Justice Programmes . New York: United Nations. [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf) Public Safety Canada (2008). A Little Manual of Restorative Justice. Ottawa: Public Safety Canada. [http://www.publicsafety.gc.ca/res/cor/rep/\\_fl/2008-03-lit-ma-res-eng.pdf](http://www.publicsafety.gc.ca/res/cor/rep/_fl/2008-03-lit-ma-res-eng.pdf)

## Restorative Justice – Appropriate Safeguards

The *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* refer to the following necessary and fundamental safeguards in applying a restorative justice approach.

*The right to consult with legal counsel:* The victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation.

*The right of minors to the assistance of a parent or guardian:* Minors should, in addition, have the right to the assistance of a parent or guardian.

*The right to be fully informed:* Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision.

*The right not to participate:* Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes. Their consent is required. Children may need special advice and assistance before being able to form a valid and informed consent.

*Participation is not evidence of guilt:* The participation of an offender in a restorative justice process should not be used as evidence of admission of guilt in subsequent legal proceedings.

*Agreements should be voluntary and be reasonable:* Agreements arising out of a restorative process should be arrived at voluntarily and should contain only reasonable and proportionate obligations.

*Confidentiality of proceedings:* ‘Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law’.

*Judicial supervision:* ‘The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements’.

*Failure to reach an agreement:* Failure to reach an agreement should not be used against the offender in subsequent criminal justice proceedings.

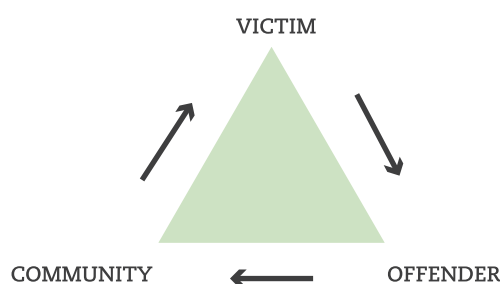
*No increased punishment for failure to implement an agreement:* Failure to implement an agreement made in the course of a restorative justice process (other than a judicial decision or judgement) should not be used as justification for a more severe sentence in subsequent criminal proceedings. Restore community order, peace and repair damaged relations;



The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters were adopted in 2002 to inform and encourage Member States to adopt and standardise restorative justice measures in the context of their legal systems. The core part of these principles deals with setting the parameters for the use of restorative justice and the measures that should be adopted by Member States to ensure that participants in restorative processes are protected by appropriate legal safeguards. More specifically, parts II and III of the Basic Principles deal respectively with trying to define the appropriate use of restorative justice (e.g. when there is sufficient evidence against the offender to justify an intervention and when the offender and the victim consent) and the nature of the legal safeguards that should be set in place.

The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters provide the international standards for the use of Restorative Justice (RJ).<sup>42</sup>

RJ can be implemented in many ways throughout the juvenile justice process, including methodologies related to diversion etc., but in essence it increases the involvement of the offender, the community and recognises more the effects of the crime upon the victims and the need for this to be restored. Restorative justice principles are reflected in many informal (non-State) dispute resolution mechanisms in societies across the whole Asia Pacific region. This may suggest a way forward for some of the future activities of the APCJJ (see: Chapter 7 on Recommendations).



In the context of juvenile justice, that approach helps the police, the courts and other institutions act also as healing agents for the offenders, the victims and their families, and the community. Based on this foundation, fresh programming insights into the role of key actors in the juvenile justice process can be developed.

This restorative approach also acknowledges the highly stressful conditions within which all justice actors must work when dealing with juveniles. Young people who offend are often the most vulnerable people within the community - and working with this group can be difficult. The first meeting of the APCJJ not only showcased emerging RJ models in State led justice programming, participants also explored idea for the future to ensure that the needs of actors themselves, be they judges, police, lawyers and social workers (from a psycho social and stress management perspective) are addressed in reform programming and planning (see Recommendations). It is hoped that this focus on the needs of the actors themselves (judges, police, detention staff etc.) will further encourage key drivers of change to apply an 'ethic of care' that promotes the positive wellbeing of children where this ethic should be central to all adjudication/ judgment/ sentencing processes.

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<sup>42</sup> United Nations Economic and Social Council (2002). Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. No. 2002/12. 24 July. In Resolutions and decisions adopted by the Economic and Social Council at its substantive session of 2002.

Workshop discussions during the first meeting of the APCJJ touched upon efforts by States to draw on culture and heritage, and positive aspects of traditional conflict resolution mechanisms to stimulate State led restorative justice programming.

### **SNAPSHOT: Australia**

One example presented to the APCJJ that has had lasting results is that of the Galmabany Circle Sentencing Court in Australia which responds to the needs of Aboriginal offenders – who are significantly overrepresented in the criminal justice system (young indigenous juveniles are 28% more likely to be placed in juvenile detention<sup>43</sup>). Mr Alasdair Roy, the Children and Young People’s Commissioner of ACT, Australia presented Galmabany restorative sentencing model to the APCJJ where indigenous offenders upon a plea or after being found guilty, chose to sit before elders and respected community members who are included onto a special sentencing panel to assist the magistrate in his or her deliberations.<sup>44</sup> This court aims to:

- Involve Aboriginal and Torres Strait Islander communities in the sentencing process;
- Increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process;
- Reduce barriers between Courts and Aboriginal and Torres Strait Islander communities;
- Provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander offenders, including young offenders;
- Provide offenders with support services that will assist them to overcome their offending behaviour;
- Provide support to victims of crime and enhance the rights and place of victims in the sentencing process; and,
- Reduce repeat offending in Aboriginal and Torres Strait Islander communities.<sup>45</sup>

The case study below depicts the holistic and restorative nature of this unique sentencing process which is also replicated in other adult and juvenile jurisdictions across the country.

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43 Regional committee on Regional and Remote Indigenous Communities (2010). Indigenous Australians, Incarceration and the Criminal Justice System, Senate Paper prepared by the Regional committee on Regional and Remote Indigenous Communities”, Australia, p. 1.

44 Roy, Alasdair “The Galambany Circle Sentencing Court: Catering to the cultural needs of Aboriginal & Torres Strait Islander young people in Australia - A snapshot by the Act on Children & Young People Commissioner”, Paper presented at the first meeting of the APCJJ, p. 1.

45 Ibid, p. 1.



## Case Study

One matter involved a young offender appearing for his first time before the Court (however, he was not a stranger to the criminal justice system). The defendant presented himself with little, if any, interest in the process until prompted by one of the Aboriginal Elders to pay attention and participate in the hearing of his matter. The defendant came to court with his grandmother but little other support was present, as the offender had not previously been engaged with the Indigenous community.

A representative of a local community organization advised the court that the defendant was a talented artist and that his grandfather had made a significant contribution to local football. After seeking advice from the Aboriginal Elder or Respected Person, the court adjourned the sentence for two months to allow development of a case management plan. The plan involved a full assessment to ascertain appropriate support for the defendant and programs that could become part of a Community Based Order.

On the return date, there was significant change in the appearance of the defendant; he willingly participated in the process and had several support people with him. The court heard that the assessment had identified intellectual disabilities and alcohol and drug problems, and appropriate support services were recommended.

The defendant was linked up to Aboriginal service providers and demonstrated a commitment to his own rehabilitation. He had tackled his drug abuse and regularly participated in football training and matches.

The defendant was linked up with other role models in the Aboriginal community and has been invited to act as a role model for younger persons in the community. Before completing the hearing, the Magistrate asked if the defendant wanted to say anything to the Aboriginal Elder or Respected Person. The defendant thanked the Aboriginal Elder or Respected Person for taking the time to listen and giving him the opportunity to gain the support he is now receiving.

(\*): For privacy protection reasons, this case study involves a young offender appearing before a Circle Sentencing Court elsewhere in Australia, and not the Galambany Circle Sentencing Court. Most Circle Sentencing Courts in Australia operate on a similar model.<sup>46</sup>

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<sup>46</sup> Roy, Alasdair “The Galambany Circle Sentencing Court: Catering to the cultural needs of Aboriginal & Torres Strait Islander young people in Australia - A snapshot by the ACT Children & Young People Commissioner”, paper prepared for the first meeting of the APCJJ, p. 1.

## SNAPSHOT: The Philippines

The Philippines is also a leader in juvenile justice reforms. In 2006, the State made a legislative commitment to include restorative justice as an integral part of the justice complex for children in Philippines. The Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344) calls for the application of restorative justice in all programmes for juvenile offenders. However, some commentators also highlight the challenges associated with the resourcing of restorative justice programmes and how this has stifled implementation in Philippines to date.<sup>47</sup>

There are concerns about the public reaction to these developments. The population sometimes criticizes the community based sentencing processes which favours non-institutional penalties as a way letting the offender 'getting off lightly'. In some parts of the community, that perception has negatively affected public support for these restorative justice programmes..<sup>48</sup>

The lack of public support for diversion measures and alternatives to detention is a common problem in the region as in other parts of the world.

The Tokyo Rules suggest the following in that regard:

### 18. Public understanding and cooperation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposiums and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

The APCJJ could perhaps play an important role here in this respect by supporting advocacy and other actions to inform the population and increase its support for restorative justice approaches and other alternatives to institutionalization (see: Recommendations in Chapter 7).

## B. Implementation of Community-based Sentences

Both the CRC, in articles 37 and 40 together with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) provide a framework for developing specialised measures for children in conflict with the law.

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47 Tabios, Elnora C. (2012). "Juvenile Justice System in Philippines", President of Philippine Action for Youth and Offenders.

48 Idem, p. 47.

Further, the CRC clearly sets out that alternatives to institutional placements for juvenile offenders shall be sought wherever possible. The Beijing Rules recommend that a large variety of dispositions measures be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible (Rule 18.1) and lists a number of examples such as probation, community service orders, care or supervision orders, compensation, restitution, or treatment. The United Nations Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines) (art15) recommend that any alternative sanctions should comply with all principles as set out in the CRC, the international juvenile justice minimum standards instruments, and additionally, the Tokyo Rules.

### SNAPSHOT: BANGLADESH

“Probation officers” as we know them in the juvenile justice sector play one of the most vital functions within the formal juvenile justice system, at all stages of the juvenile justice process. They play an important role in providing information to the courts and in assisting and supervising offenders in the community. Probation is alive in Bangladesh. Probation officers are recruited to serve within each of the 64 districts within Bangladesh, under the Department of Social Welfare of the Ministry of Social Welfare.<sup>49</sup> Their services commence at the arrest stage and are required in pre-sentencing and post sentencing stages. Their functions are defined in the *Probation of Offenders Ordinance 1960* as well as in the *Children Act 1974*. These include:

Visiting the child regularly and inquiries about his home and school conditions, conduct, mode of life, character, health, environment

Ensuring the relatives of the child are assisting the child to observe any conditions of a bond to which the child has been subjected

Reporting to the court as to the behaviour of the child

Advising/assisting and, where appropriate, help the child to source schooling opportunities or employment, engagement with social organisations

Dissuading the child from engaging with negative peer/social groups

Reporting to the court of any breaches to the community based sentence.<sup>50</sup>

However, in spite of these legislative dispositions, resource allocation to support these functions remains a problem. For instance, only 23 of the 64 districts in Bangladesh are currently staffed by probation officers and overburdened social workers from the same Ministry are often called upon to act as probation officers. In his analysis of Bangladesh’s juvenile justice system, Supreme Court Judge Justice Ali noted that this resource issue was in stark contrast with the 50,000 volunteer probation officers (VPO) currently active across Japan as mentioned earlier in this report.

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49 Children’s Act 1974, s. 31.

50 Children’s Act 1974, s. 31 (2) and (3), and Children’s Rules 1976, Rule 21.

The use of volunteers in support of community-based programmes is not only a way to compensate for a lack of professional resources, but also a way to encourage the participation of the community, as suggested by the Tokyo Rules:

## 17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

The Japanese long tradition of relying on volunteer probation officers provides an interesting and successful model. A large scale volunteer recruitment drive was launched in September 2012 and is currently taking place across major cities in Japan to boost the number of volunteer probation officers in urban areas.<sup>51</sup>

Papua New Guinea has also adopted the volunteer probation officer model and is tailoring it to meet the needs of juvenile offenders. Provincial Juvenile Justices Committees are assisting in the training of VPOs. This scheme which now operates across the country helps ensure that services are decentralised to cater for young people who live outside urban areas.<sup>52</sup>

In India, where capacity deficiencies within state instituted bodies, such as the Juvenile Justice Boards and the Child Welfare Committees<sup>53</sup>, a willing volunteer base and a vibrant NGO network are working to help fill this void and achieve options for positive community-based alternatives to institutionalization.

Countries of the Asia Pacific region have yet to formally introduce community-based sanctions for juvenile offenders. Many of them, however, are endeavouring to overcome existing obstacles to the development of community-based responses to youth crime.

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51 <http://www.yomiuri.co.jp/dy/national/T120916002600.htm>

52 *Juvenile Justice Report 2009*, Department of Justice and Attorney General, Papua New Guinea, 2010

53 Kumari, Ved "Juvenile Justice System in India", presented for the 1<sup>st</sup> meeting APCJJ, Bangkok 11<sup>th</sup> - 15<sup>th</sup> June 2012

## SNAPSHOT: Nepal

In Nepal, prison regulations have been amended to introduce a community service scheme where people who have been sentenced to imprisonment for three years or less can apply to a judicial authority to carry out their sentence in the community and conduct community service instead of prison. However, resource constraints have prevented so far the successful implementation of this scheme, especially due to the fact that in Nepal there remains a considerable lack of social workers and other professionals to produce assessments and offer supervision and assistance. Ensuring appropriately trained personnel to monitor community based sentences remains central to achieving justice reforms across many countries in the Asia Pacific. However, Nepal is one country which can, like Japan, boast a long tradition of using volunteers to support juvenile justice reforms. The strong NGO network that is so alive in Nepal demonstrates that these reforms are possible.<sup>54</sup>

The Government of Malaysia has also acknowledged that the need to implement serious community based reforms, with the recent moves by the Minister of Women, Family, Community and Development to institute a formal Community Service Order Programme.<sup>55</sup>

## C. Policy and Legislative Reforms

Legislative reforms are often required in a country in order to bring national law into compliance with the requirement of the CRC and other international standards. <sup>56</sup> Such reforms usually go beyond mere amendments to existing laws. They include the following:

- Consultations
- Legislative action
- Implementation planning;
- Alignment of operational and administrative policies
- consideration of budgetary and human resources requirements;
- training and development of institutional capacity;
- alignment of professional practices;
- Public information and education
- Transitional arrangements.<sup>57</sup>

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54 Prison (10th amendment) Regulations 2005: Community Service and Open Prisons.

55 Phang Rachel, "Juvenile Remand in Malaysia", Voice of the Children, 2011.

56 CRC, Article 4.

57 Hamilton, Carolyn (2011) *Guidance for Legislative Reforms for Juvenile Justice*. New York: UNICEF, p. 3.

States may find guidance in the advice provided by the Committee on the Rights of the Child General Comment No. 10, which sets out the leading principles and the core elements that should be contained in such a policy.<sup>58</sup>

Not only are States called upon to follow through with legislative reform efforts and the introduction of new laws and policies, States are also asked to allocate budget resources towards meeting objectives and fulfilling children's rights within the juvenile justice arena. This means embracing at the same time the critical inter-linkage between the health, education, economic, social and cultural rights of children from an inter-disciplinary perspective - and that the 'whole of State' approach to ensure the realisation of children's rights is advised<sup>59</sup>.

The APCJJ meeting in June began a dialogue around the current improvements that are taking place within countries of the region to achieve formal legislative compliance with international human right norms and standards. Globally the process of formalised legislative development can be slow (some processes take over a decade or even longer), which can cause frustration and confusion amongst justice actors. Meanwhile, policy development has its challenges also and advocating for Governments to give time, resources and energy to addressing children's rights, whilst competing with other government priorities can be a challenge in itself.

This is perhaps where the APCJJ has leverage on a regional scale to highlight the critical importance of children's rights as a reform priority.

### SNAPSHOT: Malaysia

Malaysia offers an example where it embraces a multi-pronged approach to improving justice for children through legislative reform. Firstly, in order to try and overcome critical staff shortages and competency levels amongst social workers in Malaysia, the Ministry of Women, Family and Community Development has developed a Social Workers Bill that aims to improve the competency of social workers in Malaysia.<sup>60</sup>

It is hoped that this will improve the quality of service provision within the juvenile justice arena. Further, whilst much of the Child Act 2001 has been amended to reflect its commitment to the CRC and guiding principles, on the ground challenges to the application of restorative justice mechanisms remain. The Ministry of Women, Family and Community Development is developing practical steps to develop policy to improve this.<sup>61</sup>

Most countries of the region are still on the 'path' towards realising formal legislative compliance with international norms and standards. They are still working to establish a specialised and separate juvenile justice system that is compliant with international norms and standards, where prevention, diversion, non-custodial penalties and fluid transition of children in to productive and fulsome lives is highlighted.<sup>62</sup> The APCJJ could offer a useful platform for identifying good practices, sharing the lessons that learned, and generating supporting policy development and law reform activities in the region.

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58 Committee on the Rights of the Child (2007), *General Comment No. 10*, para. 4.

59 Perrault, Nadine (2009). *Comprehensive and Holistic Legislative Reform on Behalf of Children's Rights*. New York: UNICEF, p. 2.

60 UNICEF (2006). *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*.

61 Idem.

62 Idem, p. 69.

We see also examples of good law reform practice in various Asia Pacific countries, some examples including

- In Thailand, the Amended Criminal Procedure Code (1999) allows for better treatment of children in a non-threatening judicial environment, which includes provisions for children to be interrogated in a private setting, separate from adults, in the presence of psychologists or social workers and other persons requested by the child.
- In Cambodia, a juvenile justice law, complying with international standards, has been drafted by the Cambodian National Council for Children and is being finalized by the Ministry of Justice.

In the Philippines the Juvenile Justice Bill raises the age of criminal responsibility from 9-years-old to 12-years-old, explicitly prohibits the detention of children with adults, and calls for offenders of petty or victimless crimes to be redirected from the courts to diversion programmes<sup>63</sup>.

- In Vietnam, in 2012, the National Assembly adopted a new Law on Handling Administrative Violations which contains some new dispositions concerning the sanctions and administrative measures that can be imposed on juvenile offenders and the process for determining these measures.

In recent years, a new set of standards has been adopted which deals more specifically with the special needs and circumstances of women and girls facing the justice system. The UN Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules 2010) is a newly introduced set of standards which speaks to legislators, policy makers, law enforcement, prison and probation authorities, social agencies, health and agencies and NGOs to recognise and respond in a practical way to the gender specific treatment needs of women and girls in the criminal justice system.<sup>64</sup> These rules do not necessarily involve additional or costly measures..<sup>65</sup> The Bangkok Rules relate to juvenile offenders in the following areas:

### Rule 65

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making”

This provision echoes the intent of the CRC and the provisions contained in article 37 (2) and the rights contained throughout the Beijing Rules where, in Rule 26.4 female juvenile offenders , some explicit guidance to ensure that girls are not discriminated against and that their special needs are taken into account in their treatment. The Bangkok Rules add more detailed provisions. Further explicit provisions are also detailed to spell out the minimum requirements for juvenile female prisoners - as they remain the most vulnerable of any prison population – due to age gender and small numbers:

### Rule 36

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

### Rule 37

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

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63 Examples presented by Dr Heng Keng, Malaysia Delegate, APCJJ Meeting Bangkok 12<sup>th</sup> 14<sup>th</sup> June 2012.

64 Atabay Tomris, *UN Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) a Guidance Document (Working Paper)*, Penal Reform International, July 2012 , p. 1.

65 *Idem*, p. 2.



### Rule 38

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

### Rule 39

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age (...)."

Implementation of these rules has begun with pleasing results in some Ratchaburi Central Prison in Thailand, where activities for adult woman offenders have commenced such as holistic therapy, legal literacy, the creation of the path to good life, the linkage of inmates to the outside world, education provision, health care, and the building of morale for the officials.<sup>66</sup>

This is perhaps another foundation for further reforms to be considered by the ACPJJ, given that the Rules are newly conceived and require 'practical' examples to guide states in program planning and legislative development.

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<sup>66</sup> "Inspiration for Change: New Directions for Research on Women in Prisons", Asian Criminological Society, 4<sup>th</sup> Annual Conference, August 20-22, 2012, Seoul, Korea.



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## 5. JUVENILE JUSTICE IN ASIA PACIFIC TODAY AN OVERVIEW OF CONDITIONS OF DETENTION, REINTEGRATION PRACTICE

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### A. Conditions of Detention and Reintegration Practices

If we reflect on the statistic that no less than 1 million children are in prison across the world<sup>67</sup>, and read this against emerging scholarship from the United Nations Human Rights Council “Joint Report” which aims to address issues related to violence against children, and more specifically, the potential for increased exposure to violence within the juvenile justice system<sup>68</sup>, it is fitting that APCJJ members, at the First meeting shared experiences around the reforms taking place in relation to the social reintegration of young offenders and their rehabilitation.

The minimum conditions and special rights protections as set out pursuant to the leading standards set out in the UN Rules for the Protection of Juvenile Deprived of their Liberty (JDLs) and the CRC include such matters as the juvenile’s health, safety and access to medical care; transfers and admission; access to legal advice and family; education and spirituality; and access to meaningful education, vocational skills training and leisure activities.

The APCJJ was exposed to various rehabilitation initiatives that are taking place across the region currently. On 15<sup>th</sup> June, the Thailand’s Department of Observation and Protection conducted a field tour to a selection of detentions facilities where state of the art rehabilitative, educational and vocational programming for male and females was witnessed in operation by APCJJ members.

Social reintegration programmes are still relative rare in countries of the region. The CRC states that States Parties should recognise “the desirability of promoting the child’s reintegration and the child’s assuming constructive role in society”.<sup>69</sup> The United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasises the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitation process. They state that efforts must be made “to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process”.<sup>70</sup> The promotion of the well-being of the juvenile offender being of paramount importance, the Rules emphasize the importance of providing services and assistance to further the best interests of the juvenile throughout the rehabilitative process. According to these Rules, the objective of the training and treatment offered to young offenders placed in institutions is “to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society”.<sup>71</sup>

Mentions in such statements of “law abiding behaviour” and “socially constructive roles” as objectives of

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67 Above n1n2

68 Above n18

69 Convention on the Rights of the Child, Article 40(1).

70 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 24.1

71 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 26.1.

treatment obviously refer to the prevention of recidivism (reoffending) as an overarching objective of the criminal justice intervention. The United Nations Guidelines for the Prevention of Crime acknowledges that crime prevention encompasses a wide range of approaches, including very specifically measures to “prevent recidivism by assisting in the social reintegration of offenders and other preventive mechanisms (reintegration programmes)”.<sup>72</sup> International standards on the prevention of juvenile delinquency also refer to the importance of measures to facilitate the socialization and integration of all children and young persons.<sup>73</sup> The measures advocated by these standards to facilitate the social integration of children are also relevant to their social reintegration after a period of detention or while they are serving a community-based sentence.

The Rules for the Protection of Juveniles Deprived of their Liberty refer to education and vocational training as two of the main means of preparing a juvenile for a successful reintegration into the community. Rule 38 explains that every juvenile of school age has the right to education suited to his/her needs and abilities and designed to prepare him/her for the return to society. The rules further specify how this education and relevant vocational training should be offered. Similarly, the European Rules for Juvenile Offenders Subject to Sanctions and Measures stipulate that program activities in institutions should aim at education, personal and social development, vocational training, rehabilitation and preparation for release and aftercare.<sup>74</sup> On the matter of education of juvenile offenders in detention, the latter rules stipulate that: “Juveniles in detention should be integrated into the educational and vocation training system of the country so that after their release they may continue their education and vocational training without difficulty”.<sup>75</sup>

A good way to facilitate the reintegration of offenders after a stay in an institution is to minimise the length of their stay in the institution and make use of mechanisms for their early release as soon as they can demonstrate their ability and readiness to function normally in the community. Once in the community, the offenders can benefit from various forms of supervision, assistance and, if necessary, treatment to ease up their re-entry and facilitate their social reintegration.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice encourages the frequent and early recourse to conditional release of young offenders. They state that “conditional releases from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time”.<sup>76</sup> They add that “juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community”.<sup>77</sup>

Early release programmes allow a juvenile justice system to release young offenders as soon as they are ready to return to society. They provide an important mechanism for countries to ensure that young offenders only stay in institutions for the shortest possible period of time and only as long as

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72 *Guidelines for the Prevention of Crime*, Guideline 6(d).

73 *United Nations Guidelines for the Prevention of Juvenile Delinquency*, Guideline 10.

74 Rule 77, *European Rules for Juvenile Offenders Subject to Sanctions and Measure* (2008). See: Council of Europe (2009). *European Rules for Juvenile Offenders Subject to Sanctions and Measure*. Strasbourg, Council of Europe Publishing.

75 Rule 78.5, *European Rules for Juvenile Offenders Subject to Sanctions and Measure* (2008).

76 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, Rule 28.1

77 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, Rule 28.2.

absolutely necessary, as dictated by their obligations under the Convention on the Rights of the Child.<sup>78</sup> For these mechanisms to function properly and for young offenders to be released as soon as possible, the progress they make while in the institution must be periodically assessed so as to determine their readiness to function in the community and the prospects for the social reintegration.<sup>79</sup>

Whether offenders are released at the end of their sentence or earlier under some early or conditional release programmes, there often is a need for programmes to facilitate their re-entry (or resettlement) and to provide various forms of aftercare support or supervision. In recent years, much of the discussion concerning the reintegration of offenders has been centred on the development of better means to manage the offenders' re-entry into the community by providing an effective and balanced mix of supervision and assistance and finding ways to do so through effective collaboration between corrections, law enforcement and community-based agencies.

The importance of care following a period of institutionalisation should not be underestimated, particularly when dealing with young offenders or other vulnerable groups. International criminal justice standards may not have much to say about the need for aftercare services for juveniles released from institutions and the role of the community in facilitating the juveniles' reintegration, but they are not exactly silent either.

the United Nations Rules for the Protection of Juveniles Deprived of their Liberty stipulates that "community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist".<sup>80</sup> They add that "A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasise care, counselling, assistance and therapy-oriented interventions".<sup>81</sup> According to the same Rules, "all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end."<sup>82</sup> Specifically, they require competent authorities to provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles:

"These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community."<sup>83</sup>

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78 *Convention on the Rights of the Child*, Article 37(b): "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". See also: *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 1: "Imprisonment should be used as a last resort".

79 UNODC (2012). *Introductory Handbook on the Prevention of Recidivism and the Social reintegration of Offenders*. New York: United Nations. [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Prevention\\_of\\_Recidivism\\_and\\_Social\\_Reintegration\\_12-55107\\_Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Prevention_of_Recidivism_and_Social_Reintegration_12-55107_Ebook.pdf)

80 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 32.

81 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 35.

82 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 79.

83 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 80.

Similarly, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasise the need for a diverse range of services and facilities designed to meet the different needs of young offenders re-entering the community and to provide them with guidance and support as an important step towards their successful reintegration into society. They call for efforts to “provide semi-institutional arrangements such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society”.<sup>84</sup>

The community must be involved in the social reintegration of offenders, but there are few programmes in the region that have focused on this particular aspect of crime prevention and the prevention of recidivism. The Standard Minimum Rules for the Administration of Juvenile Justice emphasise that the cooperation of the community in the rehabilitation of young offenders is indispensable. They promote the mobilization of volunteers, local institutions and other community resources “to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit”.<sup>85</sup>

Plan Vietnam, in collaboration with the Vietnamese Ministry of Public Safety has implemented a very promising demonstration project on juvenile crime prevention and youth reintegration which built on both community involvement and institutional programmes to prepare juvenile offenders for the successful return to the community.<sup>86</sup>

### SNAPSHOT: Thailand

The Thai detention centre Baan Karnchanapisek is one of 17 detention centres throughout Thailand. It carries the philosophy that it is a “Home for young adults who have made mistakes in their lives...(it is place) to *reach*, to *understand*, to *heal*, to reunite with their family... and the community..”.<sup>87</sup> Linkages are made with traditional Thai conflict resolution methodologies where offender-victim reconciliation is also included as part of rehabilitation programming, and where an emphasis on life skills development, education, employment skills development and meaningful family reintegration is paramount.

During the meeting of the APCJJ, member states including Japan also showcased leading reforms across the country. Japanese representative made particular reference to its training schools and exemplary correctional education initiatives.<sup>88</sup>

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84 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 29.1.

85 Standard Minimum Rules for the Administration of Juvenile Justice, Rule 25.1.

86 Dandurand, Y. (2011). *Final Review and Development Assessment of the Juvenile Crime Prevention and Reintegration Project*. Hanoi: Plan Vietnam, Ministry of Public Safety of Vietnam.

87 Information, Education and Awareness material distributed to APCJJ members on field visit.

88 Yamamoto, Yoshihiro, “System of Correctional Education in AICHI Juvenile Training Centre”, Presentation delivered at the APCJJ meeting, 13 June 2012, Bangkok, Thailand.

### SNAPSHOT: Japan

In Japan Juvenile training schools are classified into the following four types according to the age and physical or mental conditions of juveniles:

1. Primary Juvenile Training School
2. Middle Juvenile Training Schools
3. Special Juvenile Training School
4. Medical Juvenile Training School.

Family courts determine the type of the juvenile training school to which a Juvenile should be committed and specialised programs are tailored accordingly to the type of issue the young person is facing, the length of their sentence and if any pre-existing psychological or mental health issues require addressing. An emphasis on academic advancement is also placed on the training regimes developed by the Training Schools.<sup>89</sup>

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<sup>89</sup> Idem,



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## 6. JUVENILE JUSTICE IN ASIA PACIFIC TODAY AN OVERVIEW OF ADVOCACY MEASURES

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The CRC guides state parties to use advocacy and awareness to accompany programming that underpins the principles enshrined within the CRC.<sup>90</sup> First and foremost it is important that children and families are aware of their rights within the justice process and positive advocacy and awareness development can better assist individuals moving through the justice system. On a larger scale, this paper already includes various areas where advocacy measures on a regional scale by APCJJ member states would advance the interest of children across the Asia Pacific that have the potential to underpin the collaboration, coordination and strategic development initiatives that that APCJJ aspires to achieve in its objectives. The Paper presents the regional collaboration bodies that already exist in the criminal justice and child rights arena (see part 2), and the potential that exists for APCJJ member states to play a strong role in regional collaboration.

However, the APCJJ itself is uniquely devoted to justice issues affecting children - it has the capacity to work a number of areas to promote not only law reform efforts as previously outlined but to raise awareness on a grand scale and influence domestic attitudes and actions towards children. This is very powerful. In order to do this, effective use of tools available to promote advocacy and awareness raising efforts need to be addressed – such as effective use of the Media.

The 2006 global UN Study on Violence Against Children noted that whilst most of the crime committed by children globally are rather minor in nature, political pressure and adverse media reporting results in distorted public perception that offending amongst children is not only prolific but often serious, and that it is ever increasing- even if the evidence base does not support this trend<sup>91</sup>. APCJJ members voiced that this is a key contributing factor to much needed reforms being stalled. Useful guidance tools generated by agencies such as the UNDOC help states effectively use media and public information vehicles for positive awareness raising campaigns.<sup>92</sup> As such, this leads also to the emerging focus on the need to improve data collection methodologies within states and that a window exists to perhaps promote regional comparative analyses as an advocacy and awareness platform. If we take the simple example of Age of Criminal Responsibility within jurisdictions across the Asia Pacific – many justice advocates are endeavouring to pursue reforms agendas to meet international best practice guidelines<sup>93</sup> the APCJJ is a vehicle through which such comparative analyses could be channelled perhaps.

It is widely acknowledged that detention of children is a costly exercise- and the good news is that measures such as prevention, diversion and alternative sentencing cost less.<sup>94</sup> An emerging trend amongst justice advocates and UN organisations across the world has been to develop exercises which address the cost saving benefits of alternative to detention. UNICEF has worked with States and other organisations have developed costing exercises to help states understand the financial effects of best practice legislative reforms - where detention based remand and sentencing options are reduced and

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90 C.R.C., Article 42.

91 Above n10 at para 9

92 UNODC (2010). *Handbook on the United Nations Crime Prevention Guidelines - Making Them Work*” Vienna United Nations

93 See *United Nations General Comment Number 10* <http://www2.ohchr.org/english/bodies/crc/comments.htm>

94 UNICEF (2009). *Toolkit on Diversion and Alternatives to Detention* see [http://www.unicef.org/tdad/index\\_56399.html](http://www.unicef.org/tdad/index_56399.html)



community based options are increased.<sup>95</sup> However, recent scholarship suggests that current ‘costing’ methodologies can sometime be rather complex to apply and States can be reluctant to undertake this exercise. With this in mind however, examples exist from the Asia Pacific region including Thailand’s 2005 exercise where it measured the cost/benefits of “Restorative Justice: Family and Community Group Conferencing (FCGC) in Thailand” and it was found to be

“...very inexpensive compared to formal judicial proceedings.<sup>96</sup> Countries such as Australia have begun also to develop more sophisticated programming such as large scale ‘Justice Reinvestment’ initiative<sup>97</sup>. This is a new approach which redirects money spent on prisons to community-based initiatives in order to address the underlying causes of crime.<sup>98</sup> APCJJ members would do well to reflect on this emerging practice and could also create thinking on regional tools to promote effective costing exercises for States led justice reform initiatives.

Like other countries in the world, countries of the region must commit themselves to evidence-based programming and ensure that the limited resources available are invested in programmes and reforms that have a chance to succeed. Evidence-based programming requires that programme outcomes be monitored and evaluated in order to determine whether the programme’s objectives have been achieved. It also requires that evaluation findings be reviewed and integrated into future programming and that good practices and lessons learned through the conduct of previous programmes be identified and taken into account in designing future interventions. Some criteria have already been developed for the planning of such evaluations<sup>99</sup> The APCJJ can play a role in facilitating the evaluation of existing programmes and disseminating the results of these evaluations throughout the region.

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95 Ibid.

96 Restorative Justice: Family and Community Group Conferencing (FCGC) in Thailand. [http://www.realjustice.org/library/man05\\_roujanavong.html](http://www.realjustice.org/library/man05_roujanavong.html) [http://www.iirp.org/pdf/man05\\_roujanavong.pdf](http://www.iirp.org/pdf/man05_roujanavong.pdf)

97 [www.jsuticereinvestment.org](http://www.jsuticereinvestment.org)

98 Ibid.

99 UNODC (2011). Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes. New York: United Nations. [http://www.unodc.org/pdf/criminal\\_justice/Criteria\\_for\\_the\\_Design\\_and\\_Evaluation\\_of\\_Juvenile\\_Justice\\_Reform\\_Programmes.pdf](http://www.unodc.org/pdf/criminal_justice/Criteria_for_the_Design_and_Evaluation_of_Juvenile_Justice_Reform_Programmes.pdf)

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## 7. CONCLUSIONS

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At the outset of this report the vital question was posed: “What of the hapless children?” of the Asia Pacific and how are States, NGOs, communities, UN organisations, media and individuals to help change the lives of these children to ensure their inclusion as productive contributors to society? Whilst significant reforms are still needed at State and community levels across the region, APCJJ member states remain committed as a regional forum to pursue the areas of reform and these commitments are demonstrated during the APCJJ meeting. The following recommendations help answer the ‘HOW’ question so the Council and States can begin to convert the aspirations of the APCJJ into action driven initiatives:

- Regional Communication, Information Sharing and Strategic Coordination

If we reflect to on the snapshots provided in this report that relate to prevention, diversion, administration of justice, policy and legislative reform as well as reintegration and rehabilitation, world leading reforms are taking place across APCJJ member states and an opportunity for knowledge sharing on regional scale presents itself. Integrated communication mechanisms where information about leading reforms is collected, compared and circulated can assist states who are still progressing with reform agendas. A wealth of resources exist not only within state and regional APCJJ networks, but also within the international domain through the International Juvenile Justice Observatory (IJJO) and its associated continental Justice Councils (ECCJ, AJJC, LAJJC) sitting as partners to the APCJJ. Further the paper has highlighted the Asia Pacific bodies which are already in existence including the ASEAN, ACWC, SAIEVAC and Pacific instruments such as SPC. Through effective coordination and collaboration these can help reforms in the region, and with this it is important to highlight the profile of smaller states, particularly in the Pacific region who have not yet perhaps engaged in regional dialogue of this nature.

The domain of crime prevention sits as a clear example where regionally led efforts can advance the reforms currently taking place at a state level. Many states remain without definitive domestic guidance or strategic plans to address crime prevention and through the regional platforms (ie. UNAFEI and UNODC for example) that exist as well as the knowledge that exists within APCJJ, the potential for regional strategic planning development, where ‘justice reinvestment’ strategies also remains an exciting and live option for development within in the APCJJ. Meaningful sharing of modern diversion, community based restorative justice and reintegration programming models is another key feature of the future life of APCJJ.

- Policy Reform

This report explored the evolution of emerging instruments such as the United Nations Rules the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders “The Bangkok Rules”(2010) and the APCJJ is a sound platform to advance policy instruments such as this. Further, regional guidelines related to the treatment of children within the juvenile justice system that also explore new and emerging phenomena such as the potential for merging traditional and formal justice mechanisms, addressing and the rights of victims and witnesses of crime could also be effective to develop a comprehensive approach and give smaller countries with perhaps less developed reform agendas an ability to leverage domestic improvements for children.

- Advocacy

APCJJ's chief role will be to advocate for advancement of children's rights in the juvenile justice system across the region – and the overview set out in this paper provided examples of good practice as well as potential entry points for APCJJ to guide regional improvements. Necessary elements for expansion include:

- Understanding better and responding to, and using the MEDIA - where a set of regional guidelines could be developed to drive a consolidated approach.
- Developing regional advocacy tools such as user friendly 'costing' and 'justice reinvestment' tools and advance the message of detention 'as a last resort'.
- Finding out ways of prioritising budgeting and governance for independent juvenile justice systems within the member countries, based on known and tested methods used in other member countries.
- Preparing for future trends in juvenile justice - such as increased emphasis on responses to victims and witnesses of crime, creating regional thinking of developments for mental health issues facing children in the justice system as integrating juvenile justice priorities into broader justice reforms programming occurring for adults (ie UNDP, World Bank led Justice for the Poor (J4P) initiatives that address state versus non-state reform programming)<sup>100</sup>.

- Next Steps for the APCJJ

After the first meeting and regional conference in Bangkok, the APCJJ with this publication is looking for translating the conclusions obtained into concrete actions and documents which can be used for advocacy purposes, as well as for the training of the judiciary and law enforcement officials, civil society and community based organizations and finally bringing technical assistance where it is required.

The Asia-Pacific Council for Juvenile will continue assuming the following functions:

- The Promotion of a sustainable collaboration and coordination among all parties and stakeholders in the development of JJ policies for social inclusion of young people and children in conflict with the law.
- The development of strategies to ensure the respect of the rights of children and adolescents in conflict with the law and to promote crime prevention policies toward regional institutions, based on existing initiatives and programs.

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100 [www.worldbank.org](http://www.worldbank.org)

The following set out recommended steps for future action in the immediate future by the APCJJ:

1. To formalise the APCJJ – with at least one representative from each Asia Pacific country.
2. To periodically organise meeting of the Asia Pacific Council for Juvenile Justice.
3. To elaborate a broad overview of national laws and good practices in each of the APCJJ countries in order to obtain a comparative tool to build on legislative and policy reforms.
4. To define key ‘innovative and promising practices’ in juvenile justice procedures in an effort to set the foundation of a common understanding.

Finally, as result of this present publication on the situation of juvenile justice in the Asia-Pacific Region, the following activities and initiatives will be developed:

- The Bangkok Joint Declaration on Juvenile Justice

Main findings, results, recommendations and actions proposed by experts at the first Meeting have been issued as the “Bangkok Declaration on Juvenile Justice”. A specific campaign, calling for signatures, is launched in 2013.

- The basis for definition of Guidelines for juvenile Justice in Asia and Pacific Region

In order to foster the implementation of reforms in child justice systems in Asia-Pacific, the APCJJ will work on the development of Guidelines for juvenile justice in Asia. These guidelines are aimed at supporting Asian States in protecting children’s rights at all stages of judicial and extrajudicial procedures and promote the rights of information, representation and participation of children.

- Promotion of the message and recommendations of the present report towards International and Regional Institutions, as well as national bodies.  
As part of the IJJO and APCJJ Asian Strategy on juvenile justice, the outputs of this publication will be presented in different assemblies in order to foster the development of a fair and inclusive juvenile justice in the region.



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## 8. RECOMENDATIONS

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The IJJO and APCJJ members **RECOMMEND** to:

- Improve **Prevention measures** throughout the region. In order to do this Member states, regional organisations and non government actors are called upon to:
  - Build on the State led work in designing and developing holistic crime prevention programming and increase the partnership with non government crime prevention actors. Justice agencies are encouraged to engage with sectors outside the traditional criminal justice forum such as health, education, social welfare and sports and recreation
  - Plan for increased State budget allocations in order to facilitate effective crime prevention programming
  - Increase focus on decentralised programming – where the needs of a particular community are identified and addressed and programming models are tailored to these needs and local networks within government, civil society, youth etc are involved in the design and implementation.
  - Build on the regional network that already exists to promote crime prevention and to build on the specialised juvenile justice network that the APCJJ creates – this regional platform could provide an effective lobbying vehicle for governments and donors to prioritise prevention programming, and contribute to regional prevention ‘think tanks’.
- Improve the **Administration of Juvenile Justice**, where specialised juvenile justice systems across the region can be realised. In order to do this, Member states and justice professionals are called upon to:
  - Ensure that the fundamental principle of ‘presumption of innocence’ forms the foundation for juvenile justice reform programming.
  - Advocate for the minimum age of criminal responsibility to be raised in line with international best practice standards.
  - Include reform measures for child victims and witnesses of crime as well as offenders in national juvenile justice programming.
  - Improve age determination practice across states and share leading interventions.
  - Deal with children separately from adults in juvenile justice system.
  - Abolish status offences such as truancy, running away from home, possession of alcohol and cigarettes etc that would not attract a penalty if they were adults – rather states should improve child protection mechanisms to address this behaviour

- Improve measures for diversion of children out of the formal justice systems and share best practice methodologies across the region.
- Improve restorative justice practices that suit the cultural, social, and economic landscape of the community also and share regional learning to promote widespread use of best practice methodologies.
- Detention of children should only be used in exceptional circumstances, and as a measure of last resort. States are called upon to review discretionary powers of police upon arrest, especially for children who are suspected to have committed minor offences.
- Improve and expand training and capacity building for juvenile justice actors to promote 'attitudinal' change and create champions for change across all disciplines of juvenile justice.
- Decentralise justice administration to address the social and legal needs of children outside of the major city capitals.
- Improve access to legal aid mechanisms for children involved in the juvenile justice systems
- Improve social background reporting for children who are in the justice system - adequate and accurate profiling of the child and family needs is central to developing effective programming for children.
- Improve community based sentencing practices that adopt a model of care, effective behavioural monitoring and social and vocational development for the children, such as probation and community service mechanisms.
- Improve State led allocation of human resources to juvenile justice programming. Volunteer programming has met with great success across many Asia Pacific countries where idea sharing between state and NGO service providers could be shared across the region
- Improve Monitoring and Evaluation mechanism across states and develop regional 'think thank' on continuous improvements to current tools.
- Mainstream of issues of mental health and drug use into administration of cases – these issues are growing in the community and members states can share leading practices on how young people can be better treated if as part of the juvenile justice system.
- Ensure that children who are used by adults to commit crimes, for example as couriers of drugs/ arms or even used to break into properties to facilitate theft by the adults etc., are not treated as criminals, rather as 'children needing care and protection'
- Improve efforts to bring about Policy and Legislative Reform. Member states, regional organisations and non-government bodies are called to:
  - Reinforce the leading juvenile justice UN international minimum standards in programming and work to ensure the inclusion of these fundamental principles into domestic legislation. Member states and justice professionals are called to embrace and understand emerging



juvenile justice instruments that offer guidance and incorporate these also into the policy and legislative reform dialogues, especially, 'UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)' – the first instrument to address the specific needs of females in detention, as well as children in custody with their mothers.

- Improve **Rehabilitation and Reintegration** Programming. States, regional organisations and non-government service providers are called on to:
  - Create a regional dialogue on best practice across APCJJ member states – effective care and management plans for children require improved state resources but also a willingness of key justice actors to create plans that involve improvements to the children's family and community environment – community buy-in is essential.
  - Improve coordination across the sectors so that holistic approach to rehabilitation and reintegration is adopted.
  - Increase and meaningful participation of the juveniles is key to the success of devising rehabilitation and reintegration plans.
- Improve **advocacy** measures. Member states are called on to:
  - Develop tools to promote the realisation of reforms set out in this declaration. The APCJJ is an effective platform for regional collaboration to give weight to domestic reforms.
  - Improve data collection and analysis can be clearly linked to effective advocacy initiatives- accurate information is crucial to effective advocacy.
  - Improve use of the media for both regional and domestic advocacy initiatives – we can improve the media's role in promoting children's rights clearly, effectively and sensitively
  - Improve use, development and dissemination of Information, Education and Communication (IEC) materials to compliment advocacy campaigns.



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# ABOUT THE INTERNATIONAL JUVENILE JUSTICE OBSERVATORY

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The International Juvenile Justice Observatory (IJJO) is an international organisation recognised as a Belgian Foundation of public interest (2003) with consultative status with UN-ECOSOC. The Observatory promotes a holistic and interdisciplinary approach to issues related to juvenile justice -the prevention of juvenile crime, intervention and educational measures and socio-professional inclusion-. The IJJO provides a permanent forum for sharing information and analysis on topics related to juvenile crime, justice and children's rights. As a network of juvenile justice experts and observers, the IJJO has a benchmarking function, establishes good-practice criteria and disseminates information on efficient strategies related to policies and interventions. It also helps to generate research and offers technical assistance to those working in the field.

The IJJO disseminates information in English, French and Spanish through its online resources, and engages in awareness-raising with the general public and in advocacy activities to build support for the protection of young offenders' rights. Every two years, the IJJO organises an International Conference and on this occasion it awards the "Juvenile Justice without Borders" International Award as a recognition of the work carried out by institutions, experts and personalities in the defence of children's rights. With the aim of becoming closer to national realities and needs, the IJJO has set up the Councils for Juvenile Justice in every world region, as an advisory body composed by public administration, academia/ universities and NGOs representatives.

The IJJO provides technical assistance to support national public policies in several countries. In particular, the Observatory takes part at an important technical assistance programme the objective of contributing to an increase in social cohesion in the Latin American region. This programme is based on a strategy of capacity building, thereby offering support to national public policies that promote social cohesion and strengthening those institutions and organizations responsible for these policies. The programme encompasses several themes that reflect regional interests and priorities, including issues of Public safety, Rights, and Access to Justice.

The Observatory develops advocacy activities in the field of children's rights protection and juvenile justice covering many issues, such as for instance on mental health of young offenders, which are one of the IJJO high advocacy line, and on how to improve juvenile justice systems in time of crisis

Besides, the IJJO carries out inter-institutional developments with public authorities responsible for juvenile justice activities. This includes signing collaboration agreements with the Ministries of Justice of countries from different regions of the world. The aim of the collaboration agreement is to identify ways of developing strategies and public policies to guarantee a better future for minors at risk of social exclusion.

Committed to develop training activities concerning the defence and protection of children, adolescents and young people in situation of social exclusion and in contact with the law, the International Juvenile Justice Observatory continues expanding the scope of the International School for Juvenile Justice's activities, through on-line courses that address a wide range of issues from the international standards regulating child-friendly justice, the minimum age of criminal responsibility though pre-trial detention or diversion.



# ANNEX 1: INTERNATIONAL INSTRUMENTS

## I. Child-Specific Instruments:

### a) International

1. UN Convention on the Rights of the Child 1989, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, and its Three Optional Protocols

Available at: <http://www.oijj.org/en/docs/general/convention-on-the-rights-of-the-child>

- Optional Protocol on the Involvement of Children in Armed Conflict (2000),

Available at: <http://www2.ohchr.org/english/law/pdf/crc-conflict.pdf>

- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000),

Available at: <http://www2.ohchr.org/english/law/pdf/crc-sale.pdf>

- Optional Protocol on Communication Procedure (2011, not yet in force)

Available at: <http://oijj.org/es/docs/general/optional-protocol-to-the-convention-on-the-rights-of-the-child-on-a-communications-proc>

2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)

Adopted by General Assembly resolution 45/113 of 14 December 1990

Available at: <http://www.oijj.org/en/docs/general/united-nations-rules-for-the-protection-of-juveniles-deprived-of-their-liberty>

3. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) GA resolution 40/33 of 29 Nov 1985

Available at: <http://www.oijj.org/en/docs/general/united-nations-standard-minimum-rules-for-the-administration-of-juvenile-justice-the-be>

4. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

Available at: <http://www.oijj.org/en/docs/general/united-nations-guidelines-for-the-prevention-of-juvenile-delinquency-the-riyadh-guideli>

5. United Nations Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines) Available at: <http://oijj.org/es/docs/general/guidelines-for-action-on-children-in-the-criminal-justice-system-recommended-by-economi>

6. A United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) 6 October 2010, A/C.3/65/L.5,

Available at: <http://oijj.org/es/docs/informes/guidance-document-united-nations-rules-on-the-treatment-of-women-prisoners-and-non-cus>

7. General Comment No. 13: The right of the child to freedom from all forms of violence <http://oijj.org/es/docs/informes/general-comment-no-13-2011-article-19-the-right-of-the-child-to-freedom-from-all-forms>

8. General Comment NO. 12 (2009). The right of the child to be heard. <http://oijj.org/es/docs/general/observation-generale-no-12-2009-le-droit-de-l-enfant-d-etre-entendu>
9. General Comment No. 11 (2009). Indigenous children and their rights under the Convention. [http://www2.ohchr.org/english/bodies/crc/docs/GC.11\\_indigenous\\_New.pdf](http://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf)
10. General Comment No 10(2007) on Children's Rights in Juvenile Justice, issued by the Committee on the Rights of the Child.  
Available at : [http://www2.ohchr.org/english/bodies/crc/docs/GC10\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC10_en.doc)
11. General Comment No. 9 (2006) : The rights of children with disabilities. <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/9>
12. General Comment N° 8 (2006):The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) <http://oijj.org/es/docs/general/general-comment-no10-on-children-s-rights-in-juvenile-justice>
13. General Comment No. 7 (2005).Implementing child rights in early childhood. <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>
14. General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2005/6>
15. General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child. <http://oijj.org/es/docs/general/general-comment-no-5-general-measures-of-implementation-of-the-convention-on-the-rights>
16. General comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child. <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/4>
17. General comment No. 3 (2003): HIV/AIDS and the rights of the children. <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/3>
18. General Comment No. 2 (2002) The role of independent national human rights institutions in the promotion and protection of the rights of the child. <http://www.unhcr.org/refworld/type,GENERAL,,,4538834e4,0.html>
19. General comment No. 1: The Aims of Education. <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2001/1>

## a) Regional

1. African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

Available at: [http://www.africa-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

2. Council of Europe, European Convention on the Exercise of Children's Rights, 25 January 1996, ETS 160 (related to the participation of children but only in family affairs),

Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>

4. The Council of Europe Guidelines on child-friendly justice. Adopted 17.11.2010.

<http://oijj.org/es/docs/general/4th-draft-of-the-council-of-europe-guidelines-on-child-friendly-justice>

## II. Non-Child Specific Instruments:

1. Universal Declaration of Human Rights, 10 December 1948, 217 A (III),

Available at: <http://oijj.org/es/docs/general/declaracion-universal-de-derechos-humanos>

2. UN International Covenant on Civil and Political Rights (ICCPR), 2200A (XXI) of 16 December 1966,

Available at: <http://oijj.org/es/docs/general/international-covenant-on-civil-and-political-rights-adopted-by-the-general-assembly-of>

3. UN Covenant on Economic, Social and Cultural Rights (1966), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3,

Available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>

4. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984

Available at: <http://oijj.org/es/docs/general/convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment>

5. UN Convention on the Elimination of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195,

Available at: <http://www.unhcr.org/refworld/docid/3ae6b3940.html>

6. UN Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13,

Available at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html>

7. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 45/110 of 14 December 1990,

Available at: <http://www.oijj.org/en/docs/general/united-nations-standard-minimum-rules-for-non->



8. UN Standard Minimum Rules for the Treatment of Prisoners (ECOSOC Res. 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977)

Available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

### III. Regional Non-Child Specific Instruments:

1. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5,

Available at: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>

2. African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982),

Available at: <http://www.unhcr.org/refworld/type,MULTILATERALTREATY,OAU,,3ae6b3630,0.html>

3. American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969,

Available at: <http://www.unhcr.org/refworld/docid/3ae6b36510.html>

## ANNEX 2: APCJJ MEMBERS AND PARTICIPANTS OF THE FIRST MEETING

The IJJO would like to deeply thanks:

- **Alasdair Roy:** ACT Children & Young People Commissioner. Australia
- **Peter Hommel:** Principal Criminology-Crime Prevention. Australian Institute of Criminology. Australia
- **Alice McGrath:** Professional background as a lawyer for children and international advisor Capacity Building, Law Reform, Policy and Advocacy, Research, Monitoring and Evaluation. Australia
- **Imman Ali:** Supreme Court of Bangladesh. Bangladesh
- **Zahid Hossain:** Expert (Monitoring and Investigation) Bangladesh National Human Rights Commission Capacity Development Project (BNHRC-CDP), UNDP-Bangladesh. Bangladesh
- **Kazi Reazul Hoque:** Full Time Member. National Human Rights Commission. Bangladesh
- **He Sotheavy Chan:** Secretary of State Ministry of Justice. Cambodia
- **Vichuta Li:** Director Legal Support for Children and Women ( LCSW). Cambodia
- **Meas Bora:** Professor of International Law. The Cambodian University for Specialties (CUS). Cambodia
- **Catherine Phuong:** Human Rights Officer - Coordinator of the Rule of Law Unit. Office of the United Nations High Commissioner for Human Rights. Cambodia
- **Zhang Yu Xian:** Xi'an Philanthropic Child Abuse Prevention and Aid Center. China
- **Liu Huitong:** Xi'an Jiaotong University. China
- **Joseph Regis:** Convenor. Former National Coordinator, Juvenile Justice National Desk (JJND). Juvenile Justice Community of Practitioners (JJCoP), Tamil Nadu. India
- **Bharti Ali:** Co-Director HAQ: Centre for Child Rights. India
- **Ved Kumari:** Professor of Law Law Centre-I, Faculty of Law. India
- **R. Siva Kumar:** Treasurer, South Asian Society of Criminology and Victimology (SASCV). India
- **Diya Nag:** Programme Officer Access to Justice (Police Reform) Commonwealth Human Rights Initiative (CHRI). India
- **Prawoto:** Deputy Chairman of the Executive Board Yayasan Pusaka Indonesia. Indonesia

- **Ahmad Taufan Damanik:** Representative of Malaysia ACWC. Indonesia
- **Elfina Lebrine Sahetapy:** Faculty of Law. University of Surabaya. Indonesia
- **Naomi Matsuura:** School of Education, Tokyo University of Social Welfare. Japan
- **Yoshihiro Yamamoto:** Deputy Superintendent. AICHI Juvenile Training School, Ministry of Justice. Japan
- **Ketsone Philaphandet:** Country Program Director Friends International Lao. Laos
- **Andrew KHOO Chin Hock:** Chair of the Malaysian Bar. Council's Human Rights Committee. Malaysia
- **Nizam Bashir:** VOC Voice of the Children. Malaysia
- **Datuk Dr. Chiam Heng Keng:** Professor of Social Psychology. University of Malaya. Malaysia
- **Farah Nini Dusuki:** Malaysian Association for the protection of children. c/o Faculty of Law, University of Malaya. Malaysia
- **Yasmeen sheriff :** Member of the Committee of the Right of the Child. Malaysia
- **Lwin Lwin Aye Kyaw:** Regional Judicial Officer, High Court of Yangon Region Republic of the Union of Myanmar. (Birmanian) Myanmar
- **Samjhana Sharma:** Head of the Human Rights Promotion Division of Nepal. Nepal
- **Gita Kumari Dahal:** Gita Kumari Dahal . Nepal
- **Shaigan Shareef Malik:** Secretary Ministry of Human Rights. Pakistan
- **Fasihuddin:** President, Pakistan Society of Criminology Police Service of Pakistan. Pakistan
- **Akbar Ali Shah:** Programme Manager Juvenile Justice. Society for the Protection of the Rights of the Child (SPARC). Pakistan
- **Jack Kariko:** Deputy Secretary (Legal, Policy & Justice Administration) Department of Justice & Attorney General. Papua New Guinea
- **Benjamin Metio:** Deputy Secretary Corporate & Policy – former Chairperson of National Juvenile Justice Committee in PNG. Papua New Guinea
- **Chris Graveson :** Juvenile Justice advisor. New Zealand
- **Tricia Clare Oco:** Executive Director. Juvenile Justice and Welfare Council. Philippines
- **Elnora C. Tabios:** President. Executive Director. Philippines action for youth and offenders. Open Heart Foundation Worldwide. Philippines.

- **Braema Mathi:** MARUAH Singapore. Singapore
- **Wing-Cheong Chan:** Associate Professor. Faculty of Law, National University of Singapore. Singapore
- **Han Kyun Kim:** Associate Professor Korean Institute of Criminology (KIC). South Korea
- **Adalgisa Ximenes:** Commissioner for child right. Timor Leste
- **Kattiya Ratanadilok.** Director of the Juvenile Justice System Development Project. Department of Juvenile Observation and Protection (DJOP). Ministry of Justice. Thailand.
- **Tawatchai Thaikyo.** Deputy Permanent Secretary. Former Director General. Department of Juvenile Observation and Protection (DJOP). Ministry of Justice. Thailand.
- **Inshik Sim:** Criminal Justice Researcher. United Nations Office on Drugs and Crime. Regional Centre for East Asia and the Pacific. UN Secretariat Building. Thailand
- **Napaporn Havanon:** Associate Professor. Thailand.
- **Le Quynh Lan:** Program Unit Manager Plan international Vietnam. Vietnam
- **Hoang Thi Nghia:** Senior lieutenant colonel, Deputy Head of Department for Re-education and Reform School (MPS). Vietnam
- **Tran Ba Luan:** colonel, Head Master of Reform School. Vietnam
- **Bui Quang Minh:** Acting Project Manager – Social Reintegration for Juvenile Offenders from Reform Schools Project Plan in Vietnam. Vietnam















