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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Summary of the full-day meeting on the rights of the child

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 19/37 on the rights of the child, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a summary of the full-day meeting on the rights of the child. The report contains a summary of the discussions held on 8 March 2012 during the annual full-day meeting, the theme of which was children and the administration of justice.

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## **I. Background**

1. In its resolution 7/29 on the rights of the child, the Human Rights Council decided to dedicate, at a minimum, an annual full-day meeting to discuss different specific themes on the rights of the child, including the identification of challenges in the realization of the rights of the child. In its resolution 16/12 on the promotion and protection of the rights of children working and/or living on the street, the Council decided to focus its next annual full-day meeting on children and the administration of justice.

2. The annual full-day meeting on children and the administration of justice took place on 8 March 2012, and was aimed at raising awareness about the situation faced by children in conflict and in contact with the law, reaffirming existing standards and commitments undertaken by States Members of the United Nations, and highlighting good practices and lessons learned from work undertaken by different actors, as well as identifying key challenges and recommending a way forward. The full-day meeting consisted of two panels: the morning panel, which focused on children in the judicial process, worrying trends and good practices, and the afternoon panel, which was devoted to the protection and realization of the rights of children deprived of liberty and children of incarcerated parents.

3. At the full-day meeting, a panellist who had been in conflict with the law as a juvenile shared his views about deprivation of liberty and suggested ways to help youth in conflict with the law.

4. The organization of the meeting was a joint effort by the Permanent Mission of Uruguay in Geneva (on behalf of the Group of Latin American and Caribbean Countries) and the Permanent Mission of Denmark (on behalf of the European Union), with the support of Austria, the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF), the Interagency Panel on Juvenile Justice and a number of non-governmental organizations (NGOs), including the NGO Group for the Convention on the Rights of the Child and the Quaker United Nations Office.

## **II. Children in the judicial process: worrying trends and best practices**

### **A. Introductory remarks and statements by panellists**

5. The morning panel was moderated by the President of the Human Rights Council. The High Commissioner for Human Rights opened the panel, followed by presentations by Antonio Caparros Linares, a panellist who had been in conflict with the law as a juvenile; Susan Bissell, Chief of the Child Protection Section and Associate Director of the Programme Division at UNICEF in New York; Jorge Cardona Llorens, member of the Committee on the Rights of the Child and professor of public international law at the University of Valencia; Julia Sloth-Nielsen, Dean of the Faculty of Law at the University of Western Cape and member of the African Committee of Experts on the Rights and Welfare of the Child; Constance de La Vega, professor and Director of the Frank C. Newman International Human Rights Clinic at the University of San Francisco; and Renate Winter, judge at the Appeals Chamber of the Special Court for Sierra Leone.

6. In her opening statement, the High Commissioner for Human Rights said the theme of children and the administration of justice focused on the harsh reality of millions of children who were in conflict with the law. Their rights were often violated from the first contact they have with the justice system. She referred to articles 37 and 40 of the

Convention of the Rights of the Child as well as the numerous international standards and norms in the field of juvenile justice, including general comment No. 10 (2007) of the Committee on the Rights of the Child, which provide clear guidelines for States to establish juvenile justice systems in compliance with the Convention on the Rights of the Child. Those entail the use of alternative measures, such as diversion and restorative justice, and options to respond to children in conflict with the law effectively.

7. The High Commissioner stated that one alarming concern was a growing public perception that juvenile delinquency was increasing. Such a perception, not grounded upon evidence but based on media reports of a few serious cases, influenced the political discourse and too often led to the adoption of legislation on the treatment of young offenders that weakened children's rights. In particular, she expressed concern at the trend towards lowering the minimum age of criminal responsibility and stressed the need to maintain the age of 12 as the absolute minimum, concurring with the Committee in urging countries with a higher minimum age of criminal responsibility not to lower it, and applauding those who set it at a higher age, such as 14 or 16. She said that in certain countries, children may spend months or even years in pretrial detention, which constituted a serious violation of article 37 (b) of Convention of the Rights of the Child. Concerning forms of legalized violence against children, such as capital punishment, life imprisonment without parole and corporal punishment as a sentence for a crime, the High Commissioner stated that they were clear violations of the rights of the child.

8. Antonio Caparros Linares, who had been in conflict with the law as a juvenile, explained that his childhood and adolescence had been unstable and that he had been involved with groups that initiated him into substance use, which led him to enter into conflict with the law. He indicated that the relationship with his family and those who loved him had been very affected by his behavior. He explained that he had committed his first offence when he was 16 and spent several years in a rehabilitation center. He made extensive reference to the time he had spent in Centro Reeducativo La Villa, in Villena, Alicante, Spain, run by Fundación Diagrama Intervención Psicosocial, where he received help and was made to see the consequences of his behaviour and the impact of his actions on his loved ones. At the centre he participated in workshops on construction and gardening, which helped him obtain a job afterwards. He thanked the Human Rights Council for seriously considering the situation of juveniles in difficult situations and helping them in their social reintegration.

9. Susan Bissell, Chief of the Child Protection Section and Associate Director, of the Programme Division at UNICEF in New York, explained that "justice for children" referred to policies and programmes that aimed to ensure that children were better served and protected when they came into contact with justice systems—as victims/survivors, witnesses and alleged perpetrators, or for other reasons where judicial intervention is needed, for example, regarding their care, custody or protection. She explained that justice for children went beyond juvenile justice—beyond children in conflict with the law—to include all children in contact with any justice system, for whatever reason. She emphasized that that was an important shift, as it recognized that children did engage with legal systems for many reasons. She indicated that UNICEF placed justice for children within the overarching child protection systems approach, which actualized a protective environment. A child protection system was comprised of a set of laws, policies, regulations and services that were organized to prevent and respond to protection-related risks—the risks of violence, abuse and exploitation. Such a system pushed the justice-for-children agenda to recognize that a child might be in contact with the law for different reasons, and that those different reasons might apply to the same child. A child who was on the street might also be suffering from mental health difficulties and might also be a migrant child. Approaching children holistically was an important part of a child protection

system. Placing justice for children within that context allowed for both prevention and comprehensive responses, such as easy access to all services.

10. Ms. Bissel indicated that more than 1 million children were in detention, more than 2 million children in residential care, and 1.2 million children were trafficked yearly. Of the estimated 215 million international migrants in the world, it was estimated that some 33 million (15 per cent) were under the age of 20. Tens of thousands of children currently formed part of various armed forces and armed groups in at least 16 countries. She concluded by saying that one of the principal issues in the area of justice for children was to look at preventive and supportive responses for children who were at risk.

11. Jorge Cardona Llorens, a member of the Committee on the Rights of the Child and professor of public international law at the University of Valencia, said there were public perceptions of increased juvenile violence and delinquency which were not based on real data. Real data on juvenile delinquency would dismantle the myths and the fears that children were committing serious crimes. He mentioned the trend of criminalizing young people, including calls for increasing sanctions and lowering the minimum age of criminal responsibility. He stressed the need for juvenile justice policies to be based on real data and not on sensational opinions that circulated through the media. He stated that situations and/or behaviours which were not violations of penal law should not be criminalized and that the principle of legality had to be applied with strict compliance. Children in irregular situations, in need of protection, and children working and/or living on the street should not be criminalized solely because of their situations.

12. According to Mr. Cardona Llorens, specialized justice systems for children should be based on the principles of the Convention on the Rights of the Child and should use new approaches and alternative measures; they should be adapted to young people. Judicial proceedings and incarceration should be used only in extreme cases, and instead States should resort to other measures, such as mediation between victims and offenders or community-based approaches, and provide appropriate training for professionals dealing with children. He stated that children must not be treated worse than adults in the juvenile justice system, but that unfortunately in many countries the juvenile justice system did not have the same procedural guarantees as adults. The main objective of the juvenile justice system should be to promote the child's reintegration in society.

13. Julia Sloth-Nielsen, Dean of the Faculty of Law at the University of the Western Cape and member of the African Committee of Experts on the Rights and Welfare of the Child, said that on the African continent the majority of children grew up under the umbrella of customary law systems, with justice administered by elders and chiefs. She indicated that important gains had been made in a number of countries regarding the special needs of child victims and witnesses, including hearing children's voices; establishing child-friendly methods for giving testimony; and reinforcing the right to privacy of child victims and witnesses. In addition, the diversion of children away from formal justice processes and alternatives to custodial sentencing and detention as desired objectives had become internationally recognized, and domesticated in a large number of legal frameworks (including, in the African continent, Malawi, Botswana, South Africa, Kenya and Lesotho).

14. Experience and research showed a prevailing insensitivity to the child's right to dignity, privacy, prompt assistance, information in a language and format that the child understands, and conclusion of the matter in a time frame appropriate to the child's age and maturity. Furthermore, despite evidence-based international guidance in relation to the treatment of children in conflict with the law, the situation on the ground remained dire: there was often a very large gap between the law and practice, with children being mixed with adults in the justice system, failing to secure due process guarantees such as prompt legal assistance, and being unnecessarily deprived of their liberty. She concluded by saying

that the political will of States to bring international instruments to life and make their implementation a reality was a key element in promoting and protecting the rights of the child.

15. According to Constance de la Vega, Professor and Director of the International Human Rights Clinic at the University of San Francisco, the two most inhuman sentences that were still imposed on juvenile offenders were the death penalty and life imprisonment without the possibility of parole. International standards clearly prohibited these sentences for children. A great deal of progress had been made on eradicating the death penalty and in practice only one country, the Islamic Republic of Iran, reportedly executed juvenile offenders in 2010 and 2011, down from three countries in 2009.

16. Ms. de la Vega pointed out that while 13 countries had laws allowing the sentence of life imprisonment without the possibility of release to be imposed on juvenile offenders, this was practiced only in the United States, where over 2,500 juvenile offenders were serving life imprisonment without parole for crimes committed when they were under 18. In addition to the death penalty and life imprisonment without the possibility of release, juvenile offenders faced the possibility of being sentenced to corporal punishment in at least 42 countries. These practices include caning, flogging, stoning and amputation. The Committee on the Rights of the Child repeatedly emphasized that those sentences violated international law, and had expressed concern about such sentencing of children. Several States were considering draft legislation that would prohibit sentencing children to corporal punishment, while some had adopted such legislation recently. For instance, Pakistan adopted in 2000 the Juvenile Justice System Ordinance, which prohibited corporal punishment in the penal system. Ms. de la Vega urged the Council to continue to address those issues both through the thematic procedures and country procedures, including the universal periodic review. She hoped that with such continued attention the almost universal compliance with the specific prohibitions against extreme sentencing of juveniles would become universal.

17. Renate Winter, a judge at the Appeals Chamber of the Special Court for Sierra Leone, said that bringing a child into contact with the juvenile system had consequences and it was important to decide whether that contact was indeed needed. The most important issue for the justice system dealing with a child was that of proportionality and how it was balanced with appropriate responses to an act of the child. She indicated that alternative measures to deal with conflict were needed and that many times restorative justice rested on a triangle composed of the victim, the offender and the community. Restorative juvenile justice could be used in all phases of a child's contact with the judicial system: before, during and after. Although many said that the development of alternative measures had serious financial implications, some alternative measures, such as receiving a warning by the police, community service or giving the child a particular responsibility, had no financial costs. What was needed to implement juvenile justice systems were alternatives to court proceedings, sentencing and punishment, as well as training and capacity-building for all those involved in the justice system.

## **B. Plenary discussion**

18. During the interactive discussion, the following delegations spoke: European Union, Australia, Qatar, Thailand, Pakistan (on behalf of the Organization of Islamic Cooperation), Paraguay, Mauritania (on behalf of the Arab Group), Guatemala, the Islamic Republic of Iran, Cuba, Sudan, Austria, Sri Lanka, Uruguay (on behalf of the Latin American and Caribbean Group), Hungary, Poland, Ireland, France, India, Honduras, Namibia, Nepal, Saudi Arabia, Belgium, United Arab Emirates and Malaysia. The following NGOs also

took the floor: International Juvenile Justice Observatory<sup>1</sup>, Amnesty International, Human Rights Advocates and the Consortium for Street Children.

19. Issues raised during the interactive dialogue included the need to abolish the death penalty and life imprisonment without parole for those who committed crimes while under the age of 18 and apply the best interests of the child in all circumstances affecting them. Reference was made to ensuring the proportionality of a sentence to the offence committed and the importance of raising the minimum age of criminal responsibility to 12 years, where it is lower, in accordance with international guidelines. Many speakers referred to the positive impact of the promotion of alternative measures to detention, such as community service, and the fact that the juvenile justice system should be oriented to the reintegration of the offender with his family and in society. It was also noted that the lack of birth certificates and age determination processes put children at risk of being treated as adults and that that could lead to human rights violations.

20. Public awareness-raising, national capacity-building, creating a culture of respect for children, and supporting the family could contribute to the promotion and protection of the rights of the child. Prevention of juvenile delinquency was a priority, as was the training of judges and judicial personnel. Some speakers referred to poverty, family breakdown and economic difficulties as causes leading children to become involved in criminal activities and in conflict with the law. It was important to invest in education and rehabilitation programmes. Repressive systems were not appropriate for juvenile offenders, and imprisonment should be used only as a last resort.

21. The International Juvenile Justice Observatory requested the United Nations to work on a global report on mental health of juveniles in contact with the criminal justice system. Amnesty International called on the Human Rights Council to ensure universal compliance with the universal prohibition of imposing death sentences on juvenile offenders. Human Rights Advocates requested that juveniles serving life in prison be given a chance to be heard by a parole board, and called upon States to commute life sentences to other sentences. The Consortium for Street Children indicated that street children were often victims of violence, police brutality and round-ups and called upon States to repeal legislation prohibiting begging, loitering, vagrancy and running away. They emphasized that children in street situations should not be criminalized, a recommendation that was also presented in the report of the High Commissioner for Human Rights on children working and/or living on the street (A/HRC/19/35) recently presented to the Council.

22. A number of questions were posed by States: What preventive measures would be crucial for lowering the number of children in conflict with the law? What measures could the Human Rights Council take to ensure that the imposition of the death penalty and life imprisonment on children was ended once and for all? How to ensure that such inhuman sentences become a thing of the past? What measures could States take to ensure that there was no violence in closed institutions and that rehabilitation really served its intended purpose? What were the costs of diversion compared to the costs of sending children to prison? How would a juvenile offender deal with the stigma of having been in prison? What could help in overcoming social prejudices? How to ensure the rendering of the necessary legal and psychological assistance for young victims, young witnesses and their families after crime? What were good practices in disseminating juvenile justice principles? What could be the role of the international community in supporting the reform of national juvenile justice systems to ensure respect for the rights of the child?

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<sup>1</sup> Joint statement with the Open Society Justice Initiative and Penal Reform International.

### C. Concluding remarks

23. Mr. Caparros Linares referred to the important role that schools have in prevention and in teaching young people not to consume drugs. He also referred to the important supportive role played by educators in centres where young people in conflict with the law were held, particularly in teaching them self-esteem, discipline, dialogue, and providing at the same time the psychosocial support they needed with respect, dignity and affection.

24. Ms. Bissell stressed the importance of taking a holistic approach to justice for children, interlinking justice systems with social and educational systems. She referred to birth registration as a fundamental aspect of a child protection system. Birth registration and age determination were essential to ensure the protection of children; there were currently 220 million children under the age of 5, particularly in the South, who did not have birth certificates. She also said that a critical part of the child protection work done by UNICEF was family strengthening and support as part of its prevention strategies—early detection of vulnerability in families was critical to strengthen social protection measures.

25. Mr. Cardona Llorens said that many States asked for guidance on how to respect the rights of the child in juvenile justice and that it was important to think about restorative justice. Specialized justice systems for children should be based on the principles of the Convention on the Rights of the Child and should use new approaches and alternative measures. Juvenile justice systems should be adapted to young people and should steer them away from criminal proceedings for small crimes. Judicial proceedings and incarceration should be used only in serious cases, and instead States should resort to other measures, such as mediation between victims and offenders or community-based approaches. It was necessary to think about new realities; children were clearly showing qualitative and quantitative reduction in “traditional” offences. New forms of offences were emerging, such as cybercrime and crimes committed in families, which judicial systems were generally not well prepared to deal with.

26. Ms. Sloth-Nielsen said that introducing a floor of basic social security protection was the most important measure to prevent children from falling into vulnerability due to extreme poverty. The identification of children most at risk of social exclusion was also an important preventive measure, as those children were disproportionately represented in all forms of detention centres. She indicated that the biggest progress in juvenile justice had been made in terms of legislative reform. The role of international cooperation was vital to developing capacity and sound justice systems worldwide. There was also a wealth of academic, practical and programmatic information available which would be useful to adapt—much on restorative justice, but also educational programmes—and encouraged international cooperation in enhancing justice systems for children.

27. Ms. de la Vega said preventive measures were needed to protect children from childhood onwards, particularly from abuse by parents. It was important to have support for psychological problems as well. Children with psychological problems or suffering from abuse were more likely to be sentenced to extreme punishments. Legislative reform was a requirement to ensure that extreme penalties could not be applied to minors. A prohibition of extreme penalties should not only be applied at the federal level, but also at the level of states, provinces and regions in the case of federal systems. When the death penalty is abolished the option must not be to sentence children to life in prison without the possibility of parole.

28. Ms. Winter referred to the principles of the entrance door (avoiding detention as much as possible) and of the exit door (using probational parole as soon as possible and to the greatest extent possible). In most countries, recidivism of children in detention was as high as 80 per cent. Where diversion mechanisms were used there was a maximum rate of recidivism of 20 per cent. The costs of diversion were much lower than the cost of maintaining prisons, which, taking into account the costs associated with employees, food and education, would amount to the cost of a four-star hotel. Once the child came out of prison costs were also involved, as most likely that child would need to be on social welfare. Inappropriate and stigmatizing language relating to children could easily be avoided, and such language adaptation was cost free. Stigmatizing a child, even if by language, was harmful to the child. Ms. Winter pointed out that States could address the Interagency Panel on Juvenile Justice for technical assistance, if necessary.

### **III. Children deprived of liberty and children of incarcerated parents: protection and realization of their rights**

#### **A. Introductory remarks and statements by panellists**

29. The afternoon panel was moderated by the President of the Human Rights Council, and focused on children deprived of liberty and children of incarcerated parents. Introductory remarks were made by Sandeep Chawla, Deputy Executive Director of the United Nations Office on Drugs and Crime. Panellists included: Marta Santos Pais, Special Representative of the Secretary-General on violence against children; Rani D. Shankardass, Secretary-General of the Penal Reform and Justice Association–India; Luis Pedernera, Latin American and Caribbean Network for the Defence of the Rights of Boys, Girls and Adolescents; Dainius Puras, Head and Professor of the Centre of Child Psychiatry and Social Pediatrics at Vilnius University; and Abdul Manaff Kemokai, Executive Director of Defence for Children International, Sierra Leone.

30. Mr. Chawla said that the United Nations Office on Drugs and Crime had at the core of its mandate the promotion of efficient, fair and humane criminal justice systems that protect the vulnerable and respect human rights. A common challenge faced by many countries was the lack of data and statistics available on children in contact and in conflict with the law, which, in fact, was a prerequisite for the development of sound policies and programmes aimed at promoting justice for children. In many countries, the legal and policy framework was simply inadequate to deal with children in contact with the law as alleged offenders, victims or witnesses. Moreover, criminal justice systems in many countries did not provide for mechanisms and institutions to enable children to benefit from diversion and alternative measures, leading to overreliance on deprivation of liberty of children in trouble with the law. It was estimated that over 1 million children worldwide were deprived of liberty, and not much was known about the profile of children in detention. Most of those children were charged with petty crimes and very few had committed violent offences. Many had been rounded up for homelessness and vagrancy and had committed no offence at all. The vast majority of children in trouble with the law never met with a lawyer prior to their trial.

31. Mr. Chawla emphasized that the consequences of violating children's rights in the administration of justice could not be underestimated. Such violations seriously pre-empted the development and the ability of the child to grow into a functioning adult. The promotion and protection of children's rights in the administration of justice was a matter of priority that could no longer be neglected by States and societies. It was also an obligation undertaken by countries ratifying the Convention on the Rights of the Child. In addition, a

number of United Nations international standards and norms in crime prevention and criminal justice offered guidance to States on how that should be done. The panellist referred, inter alia, to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules, 1990) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, 1990). He concluded by stating that violations of children's rights in the administration of justice called for a multifaceted response. Although States had the primary responsibility, the role of non-State actors was also essential. The international community had also a key role to play in this regard.

32. Ms. Santos Pais, Special Representative of the Secretary-General on violence against children, said that a juvenile justice system framed by the rights of the child was critical for the prevention of incidents of violence against children; unfortunately, juvenile justice remained an area where children's rights were often put at risk and where violence remained a serious challenge. Thousands of children were still deprived of liberty, not as a measure of last resort, and in many cases were awaiting trial for endless periods of time. A large proportion of those children were held for minor offences, detained in inhuman conditions, without education and vocational training and/or options for a genuine rehabilitation. Countless children endured violence and humiliating treatment by staff in detention centres, as a form of control, discipline or punishment; they risked torture, rape and abuse, including when placed in facilities with adults. It remained difficult to access data on the numbers of children deprived of liberty and on the reasons that led to their placement in detention centres or in care institutions.

33. The Special Representative noted that, similarly, there was a lack of independent mechanisms to safeguard children's rights in the justice system and to address any complaints presented by child victims, which led to a culture of impunity and tolerance of violence. She referred to the Expert Consultation on the prevention of and responses to violence against children within the juvenile justice system and shared some recommendations from the meeting. It was critical to promote strong and cohesive national child protection systems to prevent the involvement of children in the criminal justice system, and to secure children's protection from violence. It was necessary to minimize the cases of children in contact with the juvenile justice system. Similarly, it was urgent to set the minimum age of criminal responsibility in line with international standards, and it was vital to reduce the use of deprivation of liberty to truly as a measure of last resort and for the shortest period of time. Banning all forms of inhuman sentencing was of utmost urgency, and investing in restorative justice, diversion mechanisms and alternatives to deprivation of liberty was a critical component of that process.

34. Ms. Shankardass, Secretary-General of the Penal Reform and Justice Association–India, said that the issue of children of incarcerated parents was a universal one, yet it had been universally neglected. The State had obligations to children of incarcerated parents because it had interfered with their family life by separating the children from their parents. In South Asia, home to one fifth of the world's population, the most basic quantitative information about children who had parents in prison was lacking. The only obtainable figure was that of children accompanying mothers to a prison on any given day when the statistics were recorded in the registers. She explained that the lack of an all-inclusive socioeconomic development in the South Asian region acutely affected the delivery of human rights for those "left behind". Families of incarcerated persons were usually poor and powerless, with neither the means nor the know-how to address the issue of rights. National acts and international documents relating to child rights existed in each of the countries of South Asia, but the special category "children of incarcerated parents" was conspicuous by its absence in the criminal justice system. The effects of parental incarceration on children should be addressed by bringing the subject onto the national

agenda, tackling the absence of data and reconsidering incarceration of women in the light of the damage it brought to families. She concluded by stating that children of prisoners were not offenders and their development as children may not be hindered under any circumstances.

35. Mr. Pedernera, Latin American and Caribbean Network for the Defence of the Rights of Boys, Girls and Adolescents, said that Latin America and the Caribbean continued to be the most unequal region in the world and that the inequality was getting worse every year. Boys, girls and adolescents were the poorest of the region and also the most criminalized. There was a trend of accusing children of threatening security, which was leading to lowering the age of criminal responsibility in the region. Very little had been done to ensure that the Convention on the Rights of the Child became a reality in Latin America and the Caribbean. While deprivation of liberty should be used as a measure of last resort, it continued to be the most usual penalty. He raised a number of serious concerns for the region, including the fact that it included places where children were still convicted and sentenced to life imprisonment and where torture and ill-treatment still prevailed. Plans had not been developed to handle the trauma of children who were victims of torture and ill-treatment. He also referred to the situation of children in residential care, who were not part of the juvenile justice system, but did suffer deprivation of liberty.

36. Mr. Puras, Head and Professor of the Centre of Child Psychiatry and Social Pediatrics at Vilnius University, focused on how modern public health interventions could be effective in protecting the rights of children in detention, thus increasing their chances for a healthy development. He said that States needed to make investments in health that were based on the combination of a human rights-based approach and a child-centred orientation. Children in the juvenile justice system were extremely vulnerable to health issues, and had often unmet physical, developmental and mental health needs. In this regard, high rates of physical injuries, tuberculosis, dental problems, sexually transmitted diseases and HIV, as well as other problems relating to reproductive health, needed particular attention. High rates of suicide attempts and suicides among children deprived of liberty indicated the vulnerability of that group of adolescents and the urgent need to address the mental health and emotional well-being of those children in an adequate way.

37. Mr. Puras reiterated that children in detention may have different emotional, behavioural and mental disorders. Sometimes they may need psychotropic medications, but the main focus should always be on a wide spectrum of psychosocial interventions based on respecting their dignity. He indicated that one of the most important components was what mental health professionals called therapeutic environment, which was a powerful alternative to replace the culture of violence and mistrust and may help troubled children to understand the rules of non-violent relations and the consequences of appropriate or inappropriate behaviour. Investment in good mental health and emotional well-being was an important component in breaking vicious circles of violence, social exclusion, intolerance and hopelessness. In general, any institutional placement of children, whether for those in conflict with the law or for any other reason, could become a place for systemic violations of child rights if basic human rights principles were not observed. Mental health services for children could be effective only if basic human rights principles enshrined in the Convention on the Rights of the Child were fully respected. He concluded by recalling three words that had been chosen by the Committee on the Rights of the Child as a title for the event commemorating the twentieth anniversary of the Convention: “Dignity, Development and Dialogue”.

38. Mr. Kemokai, Executive Director of Defence for Children International, Sierra Leone, said that under the African Charter on the Rights and Welfare of the Child, the essential aim of the treatment of child offenders was the child’s reintegration into the family as well as his or her social rehabilitation. He explained that rehabilitation was the

process of helping child offenders become law abiding and behave in conformity with the norms and values of society. Reintegration was the process of taking back children from the street or institutions to their families and communities. Rehabilitation required positive psychological and physical changes in the child. Achieving the offender's reconciliation with the victim was a crucial milestone in the process of rehabilitation and reintegration of a child offender. In many cultures in Africa, traditional or cultural methods of rehabilitation included traditional ceremonies that were performed to cleanse the offence and ask for forgiveness. He explained that reintegration was more difficult when a child had been taken out of his or her home because the link and trust with the family had been broken. Juvenile justice should examine not only the crime committed by the child but also the broader social and economic injustices within the family and society that were crucial for prevention, rehabilitation and reintegration.

39. Mr. Kemokai stated that child reintegration required a competent facilitator, able to facilitate the child's access to social services and provide continuing psychological support. In playing such role it was advisable for the social worker to fully involve the child and family if available. The family could also require support to be able to keep the child. An important component of a child's reintegration was to address the underlying problems that led to the delinquency of the child, which could include neglect, deprivation, poverty, abuse and/or social exclusion. He concluded by stating that the child and family should be given the opportunity to play an active role throughout the process of rehabilitation and reintegration.

## **B. Plenary discussion**

40. During the interactive dialogue, the following delegations spoke: Norway, United Kingdom of Great Britain and Northern Ireland, Mauritania (on behalf of the Arab Group), United States of America, Switzerland, Brazil, Belarus, Azerbaijan, Algeria, Germany, Argentina, Armenia, Slovenia, Turkey, Democratic Republic of the Congo, Uruguay, Indonesia, China, Republic of Korea, Tunisia, Georgia, Chile, Cuba, Russian Federation, Morocco, Portugal and Maldives. The International Labour Organization also took the floor. The following NGOs also intervened: Friends World Committee for Consultation – Quakers<sup>2</sup>, Union of Arab Jurists<sup>3</sup> and Defence for Children International.

41. During the discussion concern was expressed by some countries about the overuse of deprivation of liberty, including pretrial detention, and the fact that youth of colour were at disproportionate risk of being in contact/in conflict with the justice system. Reference was also made to the millions of children around the world that were affected by the incarceration of their parents and the fact that parental absence due to incarceration could leave lasting consequences on the physical and emotional well-being of children, especially young children and toddlers. Several speakers emphasized that juvenile justice systems had to be adapted to children's needs and had to ensure the participation of the child. States provided examples of what they were doing in respect of juvenile justice in complying with the Convention on the Rights of the Child.

42. Speakers made reference to efforts made to establish restorative justice systems, as well as the need for wide-ranging programmes at the level of prevention. The importance of

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<sup>2</sup> Joint statement with the International Catholic Child Bureau, the International Baby Food Action Network and SOS Children's Villages International.

<sup>3</sup> Joint Statement with the International Organization for the Elimination of All Forms of Racial Discrimination, Arab Lawyers Union, General Arab Women Federation, North-South XXI, the United Towns Agency for North-South Cooperation, and the International Educational Development.

diversion measures as well as alternatives to detention that built on reconciliation, restoration and reintegration of juveniles was repeatedly mentioned. In some countries, alternative measures, such as warnings, parental supervision and reduction of leisure time, were applied to juvenile offenders. Some speakers mentioned the role of the media in avoiding or developing discriminatory stereotypes against children who had committed crimes, and stressed the importance of awareness-raising campaigns. Speakers also referred to the efforts being made in their countries in favour of reintegration rather than punitive strategies. Some States indicated the importance of looking at root causes, as sometimes offences committed by a child were the result of a whole set of problems, including extreme poverty. One State expressed concern at the increase in children involved in gang violence.

43. The Friends World Committee for Consultation-Quakers welcomed the increasing attention given to the rights and needs of children of incarcerated parents and mentioned the implications of that situation for children's well-being, asking what additional guidance was needed in relation to children of incarcerated parents. Defence for Children International said that despite the need to end the detention of child migrants, many children remained in immigration detention centres in unacceptable circumstances, resulting in mental and physical health concerns, social isolation and educational disadvantage. The International Labour Organization called on States to ratify ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and drew attention to the World Day against Child Labour 2012 (12 June) on human rights and social justice in connection with child labour.

44. The afternoon session was rich in questions posed to the panellists, both by States and NGOs. Speakers asked panellists to highlight examples of best practices in the area of the administration of justice for children; examples of policies that were suitable to prevent and eliminate all forms of violence against children deprived of liberty; and examples where restorative justice and other non-formal responses from the justice system had a beneficial impact on the numbers of youth under 18 in custody. Other questions included how to overcome the problem of discriminatory stereotypes; what was the best way for children to participate in the judicial procedure in order to guarantee their best interests; and how to tackle the root causes of the behaviours and/or events that bring children in conflict with the law.

45. Other questions asked were: whether the number of children in conflict with the law could be reduced by promoting education and awareness-raising campaigns; whether good practices in awareness-raising and training to prevent violence and abuse of children could be shared; how international mechanisms could support effectively efforts made by States in the area of children and the administration of justice; how to strike a balance between the lack of resources in the administration of justice and the importance of providing child-friendly correctional facilities; how the right to education could be guaranteed for child detainees; what additional guidance was needed for children of incarcerated parents; what health effects, particularly as regards mental health, children experienced when a parent was in prison; and what support should be given to children leaving prisons after having lived with incarcerated parents and to children of incarcerated parents outside.

### **C. Concluding remarks**

46. **Mr. Chawla emphasized that one of the main problems was the lack of data concerning children in conflict with the law. He referred to the current tendency to adopt punitive approaches when dealing with child delinquency and the need to strengthen crime prevention policies, as investing in prevention was far more cost-**

effective. He stressed that the primary purpose of a juvenile justice system should be the rehabilitation and the reintegration of the child. States had to shift from a punitive to a child-sensitive approach. Conditions of detention and access to services for children deprived of liberty had to be improved. There was a need for a multifaceted response and coordination between the criminal justice system and social welfare, education and public health institutions, as well as coordination among the international organizations. The only way to know what were the best practices in the area was to have better data and information on the number of children in conflict with the law, so programming could be enriched.

47. Ms. Santos Pais said that juvenile justice could not be perceived as a second-class justice system for youth in conflict and that it had not been designed to marginalize or to punish children. Most of the children who were in the criminal justice system should not be there in the first place, and prevention and alternative measures should be the priority. Strong legislation was needed to give children the confidence that the system was appropriate and able to deal with them in the best way. She stressed that in order to fight impunity, strong accountability systems were needed, together with independent monitoring mechanisms, ombuds for children and the need to change social perceptions. Capacity-building for law enforcement and ethical guidance on the role of the media was indispensable. She explained that there was also a need for resources, and that this should be perceived as an investment, not as expenditure. Finally, problems could not be solved without taking young people's views and recommendations into consideration. Concerning children of incarcerated parents, she said that they were not offenders and should not be punished implicitly. She said they were stigmatized, ill perceived by society, bullied, pressured to hide their story and isolated, all of which could have emotional consequences. It was important to work with the extended family and community professionals to promote the inclusion of those children in school and sports.

48. Ms. Shankardass referred to prisons as an uncivilized way of punishment. More research on individuals inside institutions and those released after being in prisons would show how uncivilized that punishment was. Concerning guidelines for children of incarcerated parents, she indicated that she could not suggest any, given that those children should not be in prison. To facilitate their development, the incarceration of mothers should be avoided, as they were not dangerous criminals. She said that the possibility of creating a child-friendly atmosphere in a prison was very slim. The regime of a prison was not healthy for a child. Children did not belong in prisons, and more research was required to know how those left outside could come to terms with being left without a parent.

49. Mr. Pedernera said working from the State level more proactively and ending the criminalization of children was essential. He said that in order to prevent the discriminatory treatment of children by the press, in certain Latin American countries they had established observation centres for the media, which monitored such discriminatory coverage. Police officers needed to be trained to deal with children. Best practices in the educational sphere for children deprived of liberty involved ensuring that children continued to go to school outside of prison. Concerning children of incarcerated parents, he stressed that children were not deprived of liberty but were in prison because of their parents. It was important for a child to be able to have opportunities to get out of the prison and reduce his or her distance from the outside world. Completely closed institutions for children that provided all services within their walls should not be encouraged. They needed to be able to leave and interact in the public sphere. The distance between the situation of children left outside and those inside institutions should be minimized as much as possible. He reiterated that deprivation of liberty for children was a bad response; it

was expensive and generated more crime. He emphasized, like other panellists, that children deprived of liberty had about a 70 per cent chance of committing recurring offenses, while the recidivism rate of those who received other types of sanctions that did not include deprivation of liberty was only 20 per cent.

50. Mr. Puras explained that, from a public health perspective, there were many best practices at the level of primary and secondary prevention, such as the training of parents on non-violent disciplining methods of children, so the cycle of violence could be broken. He also mentioned the importance of prevention of bullying in schools. He said that political will was needed to increase social investment in secondary prevention to lower the number of children deprived of liberty—not only the 1 million in detention, but also the 2 million deprived of liberty in other types of institutions. Concerning the children of incarcerated parents, he stressed that the effects of separation in early childhood were harmful and that this was backed not only by social science, but also by neuroscience. He said that the worst case scenario was when a mother was imprisoned and her baby was placed in institutional care. Extensive evidence and studies had shown that the mental health and emotional well-being of the child would be harmed if he or she was put in institutional care and separated from the mother at a young age.

51. Mr. Kemokai referred to the reintegration of children who had been in prison with their parents. He said that, most often, it was young babies or children under 5 years of age who were allowed to remain with their mothers in prison. It was uncommon to find older children or children living in prison with their fathers. However, at a certain age, children had to leave the prison and the State had the responsibility to find an appropriate person to care for that child. In Sierra Leone, grandmothers or aunts were the ones often targeted to provide support for the child when he or she was taken from the mother in prison. Follow-up was required with social workers so that the family could be assisted in providing the child with support and the child's progress integrating into school and the community could be followed.

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