

## WHO ARE CHILDREN IN CONTACT WITH THE LAW?

Any person under the age of 18 who has come into contact with the justice system as a result of being suspected or accused of committing an offence is referred to as being “in conflict with the law”. However, other children who are victims or witnesses to a crime are defined as being “in contact with the law”. The rights of both groups should be upheld through the juvenile justice system.

Most children in conflict with the law have committed petty crimes or such minor offences as vagrancy, petty theft, truancy, begging or alcohol use. Some of these are known as ‘status offences’ and are not considered criminal when committed by adults. In addition, some children who engage in criminal behaviour have been used or coerced by adults.<sup>1</sup>

Too frequently, prejudice related to race, ethnicity or social and economic status may bring a child into conflict with the law even when no crime has been committed. Children are often dealt with in largely the same way as adults, and may receive harsh treatment by law enforcement officials under systems which fail to consider their needs and best interests and which effectively address the root causes such as poverty, lack of education, peer pressure, and lack of parental guidance.<sup>2</sup>

Confrontation with the justice system can have destructive consequences for children, their families and communities. Children deprived of liberty are at a heightened risk of abuse, violence, exploitation, and of injuries and HIV infection. For child victims, lengthy formal procedures can prolong and worsen their trauma, further isolating them and diminishing their chances of ever fully reintegrating back into society.

Globally, the number of child offenders deprived of liberty is estimated to be at least 1 million. The global number of children victims of violence and abuse that come into contact with the justice system remains unknown.<sup>3</sup>

According to Articles 37 and 40 of the UN Convention on the Rights of the Child (1989) children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, takes into account their age and aims at their reintegration into society. Also, placing children in conflict with the law in a closed facility should be a measure of last resort, to be avoided whenever possible. The Convention prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18.

The UN Beijing Rules on the Administration of Juvenile Justice in which States are called on to create specialized justice systems to suit children’s needs, emphasizing prevention, diversion programmes, promoting child-friendly procedures and ensuring proper reintegration. The creation of a child-friendly justice system strengthens democracy and the rule of law, and is critical for the development of nations.

Legal systems that ignore children’s age and fail to promote reintegration into the community increase the likelihood of their marginalization and poverty – thus impeding the achievement of MDG 1 to eradicate extreme poverty and hunger. Achieving universal primary education (MDG 2) is hindered as children in detention are often denied quality education. Due to the high rates of transmission in prisons, children are vulnerable to HIV infection, obstructing efforts to combat AIDS (MDG 6).

## THE SITUATION IN INDONESIA

According to the Indonesia government’s Directorate General for Corrections, there are some 5,000 children incarcerated either pre- or post-trial at any one time. Many of them are imprisoned for petty crimes such as small theft, or minor offences such as vagrancy, truancy, begging or drug misuse. Some of these are known as ‘status offences’ and are not considered criminal when committed by an adult.

<sup>1</sup> UNICEF Children in Conflict with the Law Fact Sheet [www.unicef.org/protection/files/Conflict\\_with\\_the\\_Law.pdf](http://www.unicef.org/protection/files/Conflict_with_the_Law.pdf)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

Current law in Indonesia still allows parents and law enforcers to request the judge to send the child to prison for behaviours that break local customs but not the penal code, leaving it open to the judge's personal interpretation of the local traditions. Those children are called State children and Civilian children and usually remain in prison until attainment of the age of majority, sharing cells and activities with adults even though they are not convicted of a crime.

Also according to current law, children as young as 8 can be formally processed and held responsible for their acts. However, the Committee for the Rights of the Child has stated that the present minimum age of criminal responsibility is too low for the child to fully understand the consequences of their actions or the objectives of the formal justice system.

According to a 2006 situation analysis undertaken by the University of Indonesia, it is estimated that 96 per cent of child cases that come to court result in custodial sentences, with 60 per cent of those sentences exceeding one year. Of those detained, an estimated 85 per cent either awaiting trial or having been convicted are mixed with adult inmates. Only 11 per cent of them are housed in special juvenile centres. There are currently only 16 of those centres in Indonesia. The situation is even worse for girls, where less than 1 per cent of them are placed in a special detention centre for girls. There is only one centre for girls and it is actually used also to house adult female inmates as well<sup>4</sup>.

Officially under Indonesia law, only children over 12 years old can be legally detained and sent to prison. Based on observations by UNICEF staff, there are also reported cases where children younger than 12 have been detained by the police and even sent to prison.

The fact that children are incarcerated with adults leaves these children highly vulnerable to violence and sexual abuse on the part of adults, and the possibility of their becoming hardened criminals after "learning" from the adults around them. In many police stations, children shared cells with adults, while in adult prisons children are often housed in the same blocks as adults as a result of severe overcrowding. In some instances children have been placed in the same cells as adults. In all cases, children are mixed with adults during daily activities.

While Indonesia has not yet fully developed a specialized child justice system, the Government of Indonesia has made several critical steps towards building a comprehensive specialized justice system for children as offenders, victims and witnesses in line with international standards.

Indonesia adopted the Juvenile Court Law in 1997 to respond to the special needs of children in the justice system.<sup>i</sup> In 2002 Indonesia adopted the Child Protection Law enshrining most of the international principles on justice for children and in 2006 a special law was adopted for the protection of witnesses and victims. A juvenile court has been established in Aceh province, presided over by judges that have received special training supported by UNICEF. Provincial police authorities have also adopted a process of referring juvenile offenders to the child's family and community for rehabilitation. Nationally, there are also more than 300 special protection units established by the Indonesia police, bringing together specially trained police officers and social workers to handle child cases and investigate domestic violence. Integrated medical and legal services have been developed, enabling more victims of violence to come forward.

A new draft of the current Criminal Justice System for Juvenile Delinquency Law is currently under preparation. The Indonesian President recently requested its finalized for deliberation by parliamentarians in 2010.

The new draft law will raise the minimum age of criminal responsibility from eight to 12 (though UNICEF recommends at least 14 years of age), make diversion to the community mandatory for police, prosecutors and judges and at all stages of the process for all non-serious cases, decriminalize simple misbehavior (status offenses), make detention a last resort, recognize restorative justice as a fundamental objective of the system and will call for special units and specialized personnel in all agencies dealing with child cases.

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<sup>4</sup> University of Indonesia, *Situation Analysis of the Juvenile Justice System in Indonesia*, UNICEF 2006

## UNICEF'S ROLE

UNICEF is supporting the Government of Indonesia in bringing national legislation and its enforcement in line with international standards, ensuring that procedures are appropriately reviewed and changed, that sufficient funds are allocated so that proper child-sensitive services are provided, and that action plans with concrete steps to create a specialized justice system for children in conflict with the law are developed. A special emphasis is being placed on supporting proper cooperation and coordination between the relevant agencies. The over-arching goal of these strategies is to ensure the creation and implementation of an integrated justice protection system for all children who come into contact with the law.

More specifically, UNICEF is supporting the Ministry of Law and Human Rights to draft a new law on corrections, specific regulations and training manuals for penitentiary workers to ensure proper rehabilitation and reintegration programmes for children in prisons, and early release and proper care for children of inmate mothers in line with international standards.

Overall, in the area of juvenile justice, UNICEF aims to reduce incarceration while protecting children from violence, abuse and exploitation. It promotes diversion to the community and alternatives to imprisonment as a first option in dealing with child delinquency and defines detention as a measure of last resort, separation of adults compulsory, and reintegration into the community the main goal of any rehabilitation programme where the best interest of the child must be the primary consideration.

## WHAT MORE NEEDS TO BE DONE?

If the efforts made to date in Indonesia to improve the safeguards provided for children and the juvenile justice system are to be fully effective, a number of key steps must be made.

The legal and policy frameworks at national and sub-national levels must address justice for children, whether as offenders, victims or witnesses.

Legal and policy reform must be supported to enforce existing laws and policies for the protection of children against abuse, violence and exploitation. This must include implementation of the Indonesian National Plan of Action on the Prevention and Response to Violence against Children and mandatory reporting of cases of violence by health professionals.

The capacity of social workers, police and the justice system at sub-national levels must be strengthened to ensure age and gender appropriate handling of children who come into contact with the law.

The principle of diversion for first time offenders should be incorporated into traditional mediation and other community care practices.

There must be more focus on prevention, with social workers addressing needs of vulnerable families and carrying out efforts to reduce violence, exploitation and abuse of children, along with causal factors for children to come in conflict with the law.

The capacity of families and communities to protect children must be increased, along with awareness raising and social mobilization efforts that lead to lasting behavioural change amongst families and communities.

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<sup>i</sup> Juvenile Court Law, No3 ,1997, Child Protection Law No 23,2002, Articles 16c and 64 and Human Rights Law No. 39, 1999, Article 66