

Within the whole juvenile justice system police come into contact with the greatest number of children in conflict or at risk of being in conflict with the law. As the first point of contact for the majority of children in conflict with the law the Afghan National Police has a critical role in protecting children and preventing juvenile offending and reoffending.

However, as is common in many countries, it is during and immediately after arrest that juveniles are most at risk of abuse or maltreatment in the justice system and it is police personnel who are most likely to be perpetrators. Common rights violations include arbitrary or illegal detention, physical punishment, and cruel and degrading treatment. It is also while children are in police detention that they are placed most at risk of abuse from adults with whom they are detained.

The recognition of juvenile justice as distinct from the adult criminal justice system was formalised with the adoption of the Juvenile Code in 2005 (see Box 1). However in practice this remains a transformation in process. The primary objectives of juvenile justice – the prevention of offending and the rehabilitation of children in conflict with the law into society – are recognised in varying degrees in different areas and institutions.

#### BOX 1: JUVENILE CODE (2005)

##### Circumstances for arrest

If there is grounded evidence of misdemeanour, felony, or crime, police has the authority to arrest a child under any one of the following circumstances: risk of flight, alteration of documents and evidence, and risk of repetition of a new crime

##### Notification of the arrest

Police are duty bound to report the arrest and place of detention of a child to child's legal representative and social services institutions within 24 hours of arrest.

The legal representative can demand immediately after apprehension of a child, his/her release on bail. The police and prosecutor are duty bound to declare their decision on the release request within 24 hours.

##### Detention place

The detention authority is obliged to provide access of the detained child to social, educational, vocational, psychological and health services considering the age and gender requirements of the child.

##### Preparing first investigation report

Police is duty bound to organize papers containing all required information about the suspected child and disposition of the case within 24 hours from the time of discovery and submit to the juvenile prosecutor's office.

#### BOX 2: UNDERLYING PRINCIPLES OF JUVENILE JUSTICE

- Emphasis on *prevention, rehabilitation* and *reintegration*
- Taking into account the *best interests of the child*
- *Deprivation of liberty* as a *measure of last resort*
- Special procedures for *protection* of the rights of the child
- Individual circumstances of the offender should influence the proportionality of the reactions – *principle of proportionality*



Photo: Shehzad Noorani/UNICEF AFG/2008

The Juvenile Code details basic responsibilities of police personnel in dealing with and investigating juvenile cases. While there have been steps to develop basic procedures to implement the Juvenile Code there remains limited institutional appreciation of the overall philosophy of juvenile justice. For many, juvenile justice represents taking a 'soft' approach to offending by children.

However, on the contrary, juvenile justice is the replacement of a punishment-based approach with an approach which supports children to become accountable for and take responsibility for their actions. Juvenile justice aims to encourage a process of behavioural change by helping the child to feel accountable for his or her actions and understand their impact on others. In contrast punishment-based justice often increases the alienation and resentment experienced by children, in particular marginalised children, and may even increase reoffending.

By taking into account the best interests of a child for his/her development in society *juvenile justice* works to prevent offending or reoffending by children who have come into conflict with the law.

# ABUSE OF CHILDREN IN CONFLICT WITH THE LAW

**Although there is no official data, it is estimated that every year thousands of children come into contact with the police through arrest or detention. Children who have been arrested or detained by police report widespread maltreatment or abuse.**

While juvenile rehabilitation centres now exist in 30 provinces a study in 2007 revealed that at least 59% of children will experience police detention before their referral to these centres. The study released by UNICEF/AIHRM also highlighted that children experienced maltreatment and abuse from police. In particular:

- 48% of children reported being beaten during arrest;
- 36% of children reported being maltreated in police custody (with a further 43% of children not wishing to answer the question – only 21% of children reported that they had not been maltreated);
- 62% of children reported being handcuffed during arrest although this is prohibited by the Juvenile Code apart from in exceptional circumstances;
- In 32% of cases parents/guardians were not informed of the child's arrest;
- 10% of children reported being actively denied from meeting their parents/guardians;
- 53% of children had been detained together with adults while in police custody;
- Children under 16 years of age and those over 16 years of age reported similar amounts of abuse or ill-treatment. However, male children reported more ill-treatment or abuse than female children.

As well as physical abuse and the denial of their rights to due process and protection, many children coming into contact with the police experience attacks on their dignity and self-respect. For these children this determines how they perceive the police – not as service for their protection but as a source of fear and oppression.



Photo: Shehzad Noorani/UNICEF AFG/2007

## BOX 3: ALIENATION AND RESENTMENT

A 14 year old boy who was a cattle grazer was detained on alleged charge of committing sodomy with another child. He was arrested from the village and battered by the police harming his left ear resulting in loss of hearing. The police did not communicate the charges against him and he was kept with adult inmates in police custody. During questioning he was beaten by the criminal investigation officer resulting him sustaining injuries to his legs.

The boy did not know the contents of the statement he was made to sign. He was transferred to the juvenile home after his case was registered with the prosecution office. It is the first time he has been arrested. He is afraid of the police and is concerned about his future.

A 13 year old boy who worked as a carpet weaver was accused of stealing and arrested by police from hospital after he had attempted suicide. Upon arrest he was handcuffed, slapped and beaten by police who intimidated and threatened him into making a confession statement. The boy also reported being beaten with the barrel of a gun.

After one day he was transferred to a juvenile rehabilitation centre after which he reported no ill-treatment. Asked about the police the boy said, *"I hate and fear the police because they have beaten me."*

The period of initial contact with the police is of great importance. It can profoundly influence a child's attitude towards the state and society. In addition the nature of this initial contact can be instrumental in determining the success of any further intervention.

International research has indicated that children who experience injustice at the hands of police are more likely to reoffend in the future. Juveniles processed in a respectful and professional manner are less likely to reoffend. Although data is not available it can be assumed that present policing practices in Afghanistan are likely to achieve little in preventing reoffending by children after they leave the juvenile justice system. A child's contact with the police will more often result in increased alienation and resentment.

**Physical abuse and maltreatment by police is a reality for a significant number of children coming in to contact or conflict with the law. This is not only a serious abuse of these children's rights and in breach of the Juvenile Code (2005) but fundamentally affects how these children will perceive the State and society as they become adults.**



# CHILD RIGHTS AND PREVENTING JUVENILE OFFENDING

**While many police may feel that child rights interfere with policing and even encourage juvenile offending by children who are treated ‘softly’, the reality is that protecting and promoting child rights and preventing juvenile offending are two sides of the same coin.**

The UN Convention on the Rights of the Child states that “in all actions concerning children... the best interests of the child shall be a primary consideration” (Article 3) and that “every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner... which reinforces the child’s respect for the human rights and fundamental freedoms of others... and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society” (Article 40).

By taking into account the age and circumstances of a child in conflict with the law and making decisions in the best interests of the child for his/her protection, survival and development, the juvenile justice system should work to rehabilitate and reintegrate children into society therefore preventing future offending.

This is particularly important as it is recognised that “youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood” (UN Guidelines for the Prevention of Juvenile Delinquency, No. 5). Inappropriate reactions to deviant behaviour can serve to reinforce these behaviours and even legitimise them in the eyes of the juvenile. Most children coming into conflict with the law will be first time offenders – with appropriate processing it is estimated that there is an 80% of chance of deterring these children from reoffending.

Much research has been conducted on what are effective responses for juvenile offenders. In particular it is agreed that in many cases:

- Attacks on the dignity of children in conflict with the law or abuse can increase their chances of reoffending
- Detention can increase the likelihood of reoffending
- Placing juvenile offenders together negatively affects their behaviour and can increase their chance of reoffending;
- Use of detention increases the chances of children in conflict with the law entering further into the juvenile justice system.

It has been identified that across diverse countries 3-7% of juvenile offenders will go on to become serious and persistent offenders when they are adults. These are the children who need the most support to prevent them from reoffending preventing future crime in society.

## BOX 4: GLOBAL TRENDS OF YOUNG OFFENDING

- Adolescence is the most common age period for law-breaking throughout the life span of an individual
- 80% of children in conflict with the law will commit only one offence in their lifetime
- 50-70% of crimes are committed by about 5-10% of the population (including 60-85% of violent crime)
- Majority of offending involves boys and consists of minor property offences
- Serious offending is infrequent – across many countries around 7% of young offenders are charged with violent offences
- There is an estimated 80% likelihood of deterring a “first-time offender” juvenile from reoffending, who represent 90% of children who come into conflict with the law.

(Source: *International Centre for the Prevention of Crime* based on studies in high and low income countries)



The juvenile justice system – police, courts, juvenile rehabilitation centres – should make best use of limited resources in targeting and supporting these children. Every child in conflict with the law should be treated differently according to his/her situation and needs – for this reason coordination between police and social workers is critical in the juvenile justice system. This is both the child’s right and the most effective way to prevent the child reoffending.

**Responses to children in conflict with the law which violate their rights and attack their dignity increase the likelihood of children who would not otherwise re-offend to do so. Good processing of young offenders, including fair and respectful treatment, make positive outcomes (reduced rate of reoffending) more likely.**

**As the first point of contact for children in conflict with the law, Afghan National Police has the opportunity to protect these children and to promote their rights. Not only should police protect children in their care from all forms of abuse (emotional, physical, sexual) they have a responsibility to ensure the child's access to due process.**

*Due process* is the recognised rights of any person accused of an offence to benefit from a fair trial. Many of the elements of due process come into force at the moment of arrest – presumption of innocent, the right to be informed of exact charges against him/her, right to legal assistance, and the right not to be forced to confess.

In a context where many services for juvenile justice are in the process of being developed, the police have a responsibility to facilitate access to these services. This requires proactive work in identifying available services and promoting children's access to them – whether to a lawyer, to a doctor, or in finding the child's family.

While many police do this at an individual level, this needs to be systematised to reduce the burden on individual police and to ensure children's access in all situations and contexts. This has already begun in provinces where local Child Protection Action Networks (CPAN) are active with positive results for both police and children. In 2008, a total of 670 cases of children in conflict with the law were reported to CPAN from 26 provinces. CPAN ensured that all children in conflict with the law have access to legal assistance and 413 of them also received various support services (social work, medical, psycho-social, family counselling support) through CPAN.

Increased interagency collaboration as well as support provided to police has motivated and enabled police in many cases to provide more appropriate interventions for children coming into conflict with the law or who come into contact with the police as they are in need of care and protection. However, these changes have come about largely as a result of the action of individuals rather than a systematic change in policing.

### BOX 5: POLICE CONTACT WITH CHILDREN

“Contact between law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.”

Involvement in the [juvenile justice system] itself can be “harmful” to juveniles. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. The success of any further intervention is largely dependent on such initial contacts.

*UN Standard Minimum Rules for the Administration of Juvenile Justice Rule 10.3 and Official Commentary*

### BOX 6: POLICE PERCEPTIONS

*From interactions with frontline and senior police*

**Nature of Juvenile Offending** – Children are mostly arrested for theft. There are some adult professionals who abuse children and involve them in many criminal activities. There are many children addicted to drugs who are used by criminal gangs for smuggling.

**Children in Conflict with the Law** – Orphans, poor children and those without a caregiver and in some cases children whose parents are involved in criminal activities.

**Juvenile Justice** – When a child commits an offence the behaviour of the child should be considered. Violent behaviour should be avoided as this will affect the feelings of the child and result in repeated offences. If offences are serious they should be referred to the relevant agency – for minor issues the parents should be contacted. When police come across a child under 12 years they take them to their parents and ask for a written guarantee that they will take better care of their child.

**Guidelines and Training** – Police do not have specific guidelines for dealing with children in conflict with the law nor is there specific training for police on how to treat children. There are no identified police to deal with children. Some police requested more training on child protection issues and to receive more guidance on the use of cautions and diversionary measures at police level.

**Challenges** – “A big problem is dealing with children that we find in the bazaar without their parents, especially those who have run away from home. We do not have a place to keep them while trying to locate their families. This is especially difficult when dealing with girls.”

In interactions with police many have identified the challenges that the police face in addressing the issues of children in conflict or at risk of coming into conflict with the law. These include the problems of children who have developed substance addiction, addressing the misuse of children by criminal gangs, as well as providing appropriate support to children who are outside of parental care.

Police have also recognized the need for training to work more effectively with these children as well as guidelines for processing juvenile cases. These should include the types of measures that police can adopt to address the case of juveniles, in particular diversionary measures.

**There are many positive examples of change in juvenile law enforcement. However these are often limited to cases where outside agencies (in particular CPAN) have supported the police in the resolution of cases. Afghan National Police as an institution needs to take a more proactive role to realise this change at a national level.**

## MONITORING OF CHILDREN IN DETENTION 2008

Daily monitoring of detention centres in 10 provinces was conducted from February to September 2008. This included juvenile rehabilitation centres, police detention facilities, and prisons. During this time a total of 812 children were encountered. Of these cases 30% of children were able to be released into family care after being contacted and assisted by detention monitors and lawyers.

During this period, a total of 130 children were encountered in police custody even though monitoring was limited to 10 provinces (less than 30% of the 34 provinces) in a total of 50 districts (only 42% of districts in these provinces). This means that each year there are hundreds of children who are detained in police custody.

Of those found in police custody, 61% were immediately reunited with their families after intervention from detention monitors and lawyers. This highlights that when **early detection and intervention** is made available many children can be released from detention and reunited with their families – protecting the children involved as well as ensuring police resources are focused on serious cases requiring more substantial interventions.

### BOX 7: MINIMUM GUARANTEES OF A CHILD IN CONFLICT WITH THE LAW

- To be presumed innocent until proven guilty according to law;
- To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not in the best interests of the child, in particular, taking into account his or her situation, his or her parents or legal guardians;
- Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- To have his or her privacy fully respected at all stages of the proceedings.

*(UN Convention on the Rights of the Child, Article 40b – Selected Guarantees)*

### BOX 8: PROCESSING OR JUDGING?

*The experience of a 13 year old boy in the Northern Region*

“I studied in school and could not continue because of economic problems in my family. So I started working as a vendor in the bazaar.

One day I was working and the police arrested me and took me into custody and kept me there with three adult inmates. The criminal officer explained nothing about my rights and at the end of questioning they got my fingerprint without letting me know about the contents of my statements. During this period I hardly came to know that I was detained on the charge of stealing a bicycle.”

**Police have a duty to ensure that ‘deprivation of liberty’ is used as a means of last resort against children. The Juvenile Code specifies that children can only be arrested when there is clear evidence of a crime *and* there is a risk of flight, alteration of evidence, or risk of repetition of a new crime. Police have different options to ensure that detention of children if a means of last resort and for the shortest period of time possible:**

### FACILITATE ACCESS TO LEGAL REPRESENTATION AND SOCIAL SUPPORT

Once provided with legal support many children are able to leave detention and be placed in the care and responsibility of their families. This can be on bail or if no charges are made against the child. In cases where families are not identifiable social workers can trace relatives or where necessary identify other temporary care solutions. By facilitating these contacts police minimise the number of children who are in detention and reduce the burden on police time and resources.

### USE OF CAUTIONS/WARNINGS WHERE APPROPRIATE

In minor cases (non-violent and first-time offences) children police may use formal or informal cautions for children in conflict with the law before placing children in the care of their families or a social service intervention when the family is not identifiable. In some cases where the charges are pressed by a member of the public the police should mediate with the victim to raise awareness of juvenile justice and the best interests of the child.

### TIMELY PROCESSING AND REFERRAL

In serious cases or where the child is a repeat offender police should ensure good and timely processing of the case as stipulated in the Juvenile Code. This means that once the case has been registered and in process the child can be referred to a juvenile rehabilitation centre where he or she has access to appropriate services and support. This minimises time spent in police custody.

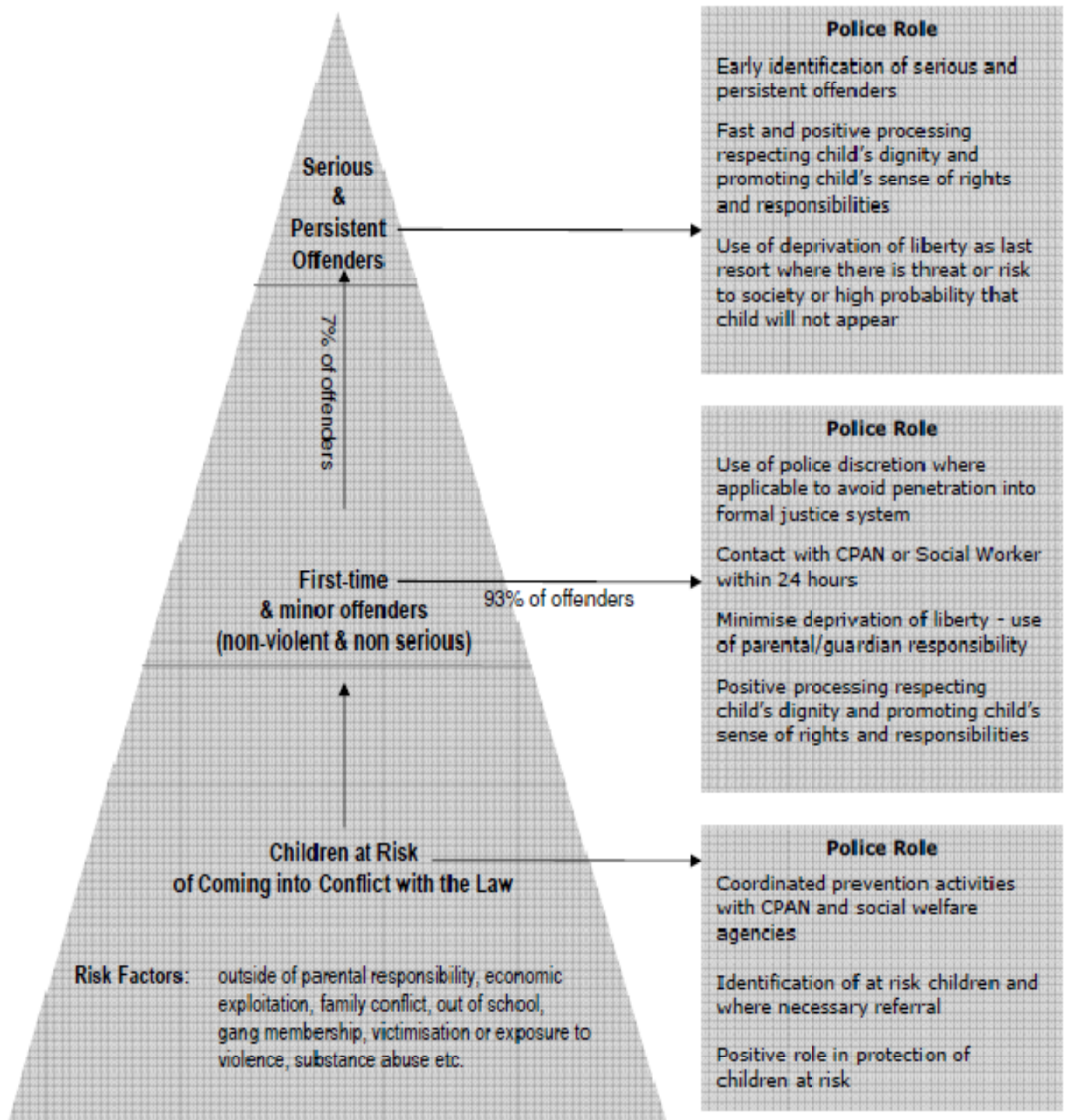


# THE ROLE OF POLICE IN PREVENTION

The police have a specific role in law enforcement in the prevention, detection and processing of children coming in to conflict with the law. These duties do not include that of judging culpability of a person who is accused of being in conflict with the law. In the field of juvenile justice the police have an important responsibility to work to prevent offending or reoffending by children. To be effective the police should focus clearly on the following objectives:

- To prevent reoffending by promoting and protecting the rights of all children and in particular those of children in conflict with the law;
- To prevent reoffending by practicing diversion with children in conflict with the law accused of first-time or minor offences;
- To prevent reoffending by identifying persistent offenders for early prevention interventions.

The following diagram summarises the role of police in prevention of juvenile offending:



# REALISING CHANGE: Afghan National Police

The Afghan National Police has enormous potential to transform into a positive actor for change within the juvenile justice system. Examples of positive practices already exist however change needs to be systematically promoted. In particular there is a need to:

- **Develop standard police procedures for dealing with children in conflict with the law:** Afghan National Police should develop clear internal procedures for working with children in conflict with the law and to ensure implementation of the Juvenile Code (2005). These procedures should provide a practical implementation framework for frontline police based on legal standards;
- **Provide training and professional education to establish and maintain professional competence of all police personnel dealing with children:** Preliminary and refresher training should be provided to all police coming into contact with children to ensure that police understand and respect child rights. In addition identified police from each district should be provided more specialised training in dealing with children in conflict with the law;
- **Establish specialised and trained police units for juvenile justice:** Afghan National Police should establish specialised police units for dealing with children in conflict with the law in major urban centres and areas where there are significant numbers of children coming into conflict with the law. These units should ensure an appropriate number of female police to make sure that all girls in conflict with the law are dealt with by female police personnel;

## BOX 9: POLICE SPECIALISATION

“In order to best fulfil their function, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.”

As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner. An increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialised police units would therefore be indispensable not only in the interest of implementing specific principles contained in the Beijing Rules but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

*UN Standard Minimum Rules for the Administration of Juvenile Justice Rule 12.1 and Official Commentary*

## BOX 10: POLICE AND CHILDREN: Positive Change

**Good Processing** – four boys aged between 11 and 13 years were arrested by police for stealing rice from a truck. Immediately the police informed the CPAN focal person who sent social workers to interview the children as well as facilitate a meeting with their parents and community members. The children accepted they had committed a crime and apologised. The parents and community members made commitments to supervise the children. Therefore the police gave the children a caution for having committed an offence and handed the children to the responsibility of their families. The total time the children spent with police was two hours.

**Protection and Reunification** – a 7 year old girl was accidentally separated from her family while visiting Jalalabad. After spending one night alone she was found by the police who contacted social workers. During this time the girl was housed in the juvenile rehabilitation centre for her protection. The social workers organized announcements through local radio and in the mosque to identify the child’s family. After two days her father came into contact and the girl was reunited with her family.

- **Improve documentation and data related to children coming into conflict with the law:** Afghan National Police should systematise documentation, data collection and analysis of children coming into conflict with the law. This will provide a clearer understanding of which children are at risk of offending or reoffending as well as providing greater understanding of juvenile offending for prevention;
- **Establish accessible and transparent complaints procedure:** In order to promote accountability, monitor progress, and respond to abuses Afghan National Police should establish an accessible and transparent complaints procedure for juvenile justice. This process should also have the aim of improving relations between police and organisations, communities, families and children;
- **Increase interagency collaboration:** To achieve all of these aims Afghan National Police should increase its engagement and collaboration with other agencies such as social services, legal representatives and prosecutors. This will ensure children in conflict with the law have access to their basic rights as well as support a process increasing diversion and prevention measures within the juvenile justice system.

**Protecting and promoting children’s rights, in particular those of children in conflict with the law or at risk of coming into conflict with the law, is the most appropriate and effective way for the police to prevent juvenile offending and future offending by alienated adults.**

# REALISING CHANGE: Juvenile Justice Stakeholders

Given that the police are at the frontline of juvenile justice all stakeholders should support Afghan National Police in realising change for children who come into contact with the law as well as increasing accountability. In particular national stakeholders (governmental and non-governmental) should work to:

- **Establish indicators and targets for juvenile justice at the police level:** In collaboration with Afghan National Police and other stakeholders, the government should establish key indicators and targets for juvenile justice at the police level. These should include targets and standards for processing of juvenile cases, use of appropriate diversion, facilities and services (child-friendly police stations). Annual targets should be incorporated into planning;
- **Expand and systematise monitoring of detention centres:** In order to promote accountability, monitor progress, and respond to abuse, external monitoring of police custody and juvenile rehabilitation centres at the provincial and district level should be increased. The monitoring system should be strengthened with greater coordination and sharing with regional and national governmental agencies;
- **Promote increased awareness of juvenile justice:** Awareness of the underlying principles of juvenile justice should be increased among communities and local stakeholders. Increased understanding of appropriate responses to juvenile offending will support the police in mediation, especially while responding to sensitive cases;
- **Develop Child-Friendly Notice of Rights and Entitlements for Children in Conflict with the Law:** Afghan National Police and national stakeholders should develop a child-friendly notice of rights and entitlements to be given or explained to all children upon arrest. In particular this notice should provide information on support services (such as legal aid) as well as detail the following information:
  - The juvenile justice process;
  - Right to legal support;
  - Right to contact parents/guardian;
  - Right to medical treatment;
  - Right to age determination;
  - Rights during investigation and detention;
  - Procedure to register a complaint.
- **Develop and promote practical alternatives to detention:** The Ministry of Interior and concerned line agencies should develop practical alternatives to detention to support the diversion of juveniles admitting minor offences at the police level. Guidelines for promoting the release of children into parental care pending investigation should also be developed and implemented;

## BOX 11: CHANGING PRACTICE

A 14 year old girl ran away from home with a 17 year old boy. Both children left the city and stayed together for one night in an unknown place before they were arrested by police. Upon arrest the police contacted the CPAN Technical Advisor to report the case and request for the support of social workers in the interview and documentation process. Two social workers from the CPAN contact list attended the police interviews and assisted in collecting information from the children.

Police behaviour with the two children was positive. The police involved had participated in several trainings regarding child rights. Police did not use any force or intimidation and maintained confidentiality.

The police involved identified the priority to obtain family support for the children and the commitment to protect their safety. The police were concerned that the children involved should return to their families and continue their education. The social workers involved met with the relatives of the children and through close cooperation with the police the children were reunited with their families. The police took written commitments from the families concerning the safety of the girl and boy. The case file was closed with no charges made.

- **Expand Child Protection Action Network (CPAN):** the Child Protection Action Network should be expanded to all provinces and districts to ensure that the police have access to support from trained social workers as well as appropriate services for referral and diversion. These services should include:
  - Legal services for children;
  - Social support and assessments of children;
  - Alternatives to detention in police custody;
  - Support for counselling and family reintegration.

**Afghan National Police have a challenging role in juvenile justice working in direct contact with children, families and communities. In this role the police bear responsibility for crime prevention as well as the protection of children in conflict with the law in the communities in which they work. The police should be actively supported by all stakeholders to ensure the positive development of juvenile justice.**

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