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# **The Role of the Universal Periodic Review in Advancing Children's Rights in Juvenile Justice**

**May 2018**

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A report of the International Bar Association's Human Rights Institute



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## List of acronyms/abbreviations

Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
the Committee	United Nations Committee on the Rights of the Child
CRIN	Child Rights International Network
CSO	civil society organisation
CTA(s)	call(s) to action
EEG	Eastern European Group
GRULAC	Latin American and Caribbean Group (Group of Latin America and Caribbean Countries)
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
IBA	International Bar Association
IBAHRI	International Bar Association's Human Rights Institute
ICCPR	International Covenant on Civil and Political Rights
MACR	minimum age of criminal responsibility
NGO	non-governmental organisation
NHRIs	national human rights institutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency
SDG(s)	Sustainable Development Goal(s)
SMART	specific, measurable, achievable, realistic and time-bound
SRSO	United Nations Special Representative of the Secretary-General on Violence Against Children
UN CRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
UNHRC	United Nations Human Rights Council
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review
WEOG	Western European and Others Group

## Foreword by Professor Benyam Mezmur

The United Nations Convention on the Rights of the Child (UN CRC), the most widely ratified human rights instrument, recognises the rights of all children, including those in the context of juvenile justice. The overall impact of the UN CRC on the lives of children throughout the world is very positive, and indeed the world is generally a better place for children today than yesterday.

However, there are continuing challenges related to the realisation of children's rights. The answer to the vital question that the UN Children's Fund (UNICEF) posed in a 2014 publication to commemorate the 25th anniversary of the UN CRC, 'does a child born today have better prospects in life than one who was born in 1989?', is yes – but not every child. In general, there is evidence that 'not every child' who is in conflict with the law has better prospects to benefit from the protections provided in the UN CRC.

As early as 1995, in the context of the General Day of Discussion on juvenile justice, the UN Committee on the Rights of the Child (the 'Committee') has observed 'the increasing trend for juvenile justice to become the subject of social and emotional pressure' as a concern. Today, in a number of countries, in a fashion unmistakable in both clarity and intent, some bills and laws that do not advance the object and purposes of the UN CRC are being introduced. They often reduce the minimum age of criminal responsibility below an internationally acceptable standard, impose harsh penalties on children and/or deprive adequate substantive or procedural protection to all children below 18 years old. These trends are a very serious regression and should be a cause for concern for all States Parties, as well as those that work with and for children.

This report takes an approach that is, indeed, valuable. It analyses the juvenile justice-related recommendations that have emanated from the Universal Periodic Review (UPR) – a unique process allowing for peer-to-peer review of the human rights record of a state by all other UN Member States. The study also covers the first two cycles of the UPR process (2008–2016), helping to firm up the findings of the report on solid ground. The report also comes at an opportune time, as conscious efforts are under way to consolidate the synergy between various UN human rights mechanisms, including treaty bodies and the UPR mechanism, as well as when the Committee is embarking on a process to update General Comment No 10, *Children's Rights in Juvenile Justice*.

Quite a number of the findings of the report resonate well with, and reinforce, the experience of the Committee, that is mostly acquired through the review of State Party reports. A strong assertion in General Comment No 10 that the protection of the best interests of the child 'means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders' should be made central to all juvenile justice systems. Restorative justice, which promotes the dignity of victims and offenders, aims to repair the harm caused by certain acts through cooperative processes of stakeholders, and often leads to reconciliation and assisting the offender, including by taking measures to prevent recurrence.

Even today, the presence of inhuman sentencing for offences committed either at a time when a person is below the age of 18 or when it has not been possible to conclusively prove that the person was above 18 at the time of the commission of the crime, is a grim reminder of the serious shortcomings of the international community. Despite the obligation in the UN CRC, coupled with overwhelming evidence that the ‘use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society’, a large number of states also fail to treat restriction of liberty of children as ‘a last resort’.

As issues related to juvenile justice continue to evolve, and with a view to comply with the requirements of the UN CRC in a comprehensive manner, there are few additional areas in need of adequate attention by states, including through the recommendations of the UPR process. For instance, in tandem with the aim of the juvenile justice system, which is rehabilitation and reintegration, diversion and restorative justice options need to be made central. States should also place more emphasis on integrating health and education rights in juvenile justice systems. The treatment of children in situations of exploitation as victims and not offenders, the issue of children and military justice systems, especially in the context of the war on terror, and the interaction between formal justice systems on the one hand and informal justice systems (based on custom/religion) on the other, need to benefit from some focus in law, policy and practice.

Treating the UN CRC as a ‘living instrument’ also requires assessing its application to the lived reality of children today, and moving beyond the letter of the UN CRC, and more into the spirit of the UN CRC. Applied in the context of juvenile justice, fundamental questions such as ‘has the time not arrived that all forms of life imprisonment should be abolished for offences committed by under-18s?’ and/or ‘is it not possible to successfully argue that the deprivation of liberty of a child should only be appropriate when the child has been assessed as posing a serious threat to others’ or their own safety and the restriction of the child’s liberty is the only option to reduce the risk to an acceptable level?’ are timely. The UPR process, with its political traction, is a valuable platform to provide, through time, an impetus for the formation of state practice based on good examples, hopefully venturing into the spirit of the UN CRC more. Here for instance, notwithstanding the social, cultural and legal system in place, legal professionals, namely lawyers, judges and prosecutors, constitute the key stakeholders of any ‘small-r revolution’ in the protection and promotion of children’s rights in the justice system. This will require that legal professionals are efficiently equipped and trained to address children’s rights.

To conclude, the additional general thrust of this report is that this is not only about juvenile justice, deprivation of liberty, minimum age of criminal responsibility, diversion, and so on – it is about much more than that. Indeed, the whole is greater than the sum of its parts. Not getting it right in juvenile justice has serious ramifications beyond Articles 37 and 40 of the UN CRC. It has a cascading effect on other civil and political, as well as economic and social, rights of children, and severely limits the comprehensive implementation of the provisions of the UN CRC. As a result, this report constitutes a stimulating and useful resource for decision makers, bureaucrats, treaty bodies and practitioners that are interested not only in juvenile justice specifically, but also in other areas of children’s rights.

***Benyam Dawit Mezmur, Member of the UN Committee on the Rights of the Child (2012–present)***

# Executive summary

This report assesses the level of protection recognised at the Universal Periodic Review (UPR) to juveniles within the criminal justice system. It focuses on human rights of children alleged as, accused of or recognised as having infringed the penal law.

Notwithstanding the ratification by all states but one of the United Nations Convention on the Rights of the Child (UN CRC), most states are still lagging behind in the implementation of standards related to juvenile justice. In 2015, the Special Rapporteur on the Independence of Judges and Lawyers stated that ‘the treatment of children in judicial proceedings, both civil and criminal, is generally unsatisfactory’ and that ‘justice systems are too often not adapted to integrate adequate consideration of children’s rights’.<sup>1</sup>

Children’s rights are in the top five issues addressed by recommending states at the UPR and therefore the UPR could be strategically placed to enhance human rights within juvenile justice.<sup>2</sup>

The UPR is a unique international peer-to-peer mechanism, through which each state is reviewed by all other UN Member States. The UPR was created with the overall objective of complementing the other international human rights mechanisms. In that sense, though not legally binding, the UPR recommendations provide political traction for international obligations, standards and recommendations. A UPR ‘cycle’ encompasses the review of all 193 UN Member States over four years. This study covers the first two cycles of the UPR process, which took place between 2008 and 2016.

In 2016, alarmed by recurrent deficiencies in domestic systems, the International Bar Association (IBA) published a report prepared by the Bingham Centre for the Rule of Law on children’s access to justice.<sup>3</sup> Building on the responses to a worldwide survey pertaining to 22 countries, the 2016 IBA report paints a picture of the current challenges but also progress within some domestic jurisdictions.

This current report complements the previous analysis by providing an overview of the concerns and recommendations expressed at the UPR regarding juvenile justice by recommending states to states under review. UPR recommendations are assessed in light of the international legal framework governing juvenile justice, in particular the UN CRC. This report demonstrates that the UPR has so far been instrumental in supporting the core international principles protecting juveniles insofar as they address the punitive justice systems in place. Inhumane sentencing and detention, and the need for a specialised system backed by a specific minimum age of criminal responsibility have been at the core of the UPR over two cycles. However, the other key objectives established in the UN CRC and a number of UN rules and guidelines,<sup>4</sup> and relating to the prevention of juvenile delinquency, diversion, restorative justice, and rehabilitation have been overlooked. Similarly, too little attention has been paid to fair trial guarantees ensuring that children are empowered as subjects of rights and not only addressed as objects of protection.

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1 UNHRC, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaut’ (2015) UN Doc A/HRC/29/26, para 50.

2 A total of 10,112 recommendations addressed children’s rights over the two first cycles of the UPR, according to NGO UPR Info statistics, available online at [www.upr-info.org/database/statistics](http://www.upr-info.org/database/statistics) accessed 26 February 2018.

3 Julinda Beqiraj and Lawrence McNamara, *Children and Access to Justice: National Practices, International Challenges* (Bingham Centre for the Rule of Law Report 02/2016) (IBA 2016).

4 UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’) (1985); UN Guidelines for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’) (1990); and UN Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’) (1990).

## Key findings

Chapter 1 of the report highlights the key challenges encountered worldwide in the daily protection of juveniles within criminal justice systems. The key challenge for states is to realise a shift from the current punitive system to a restorative justice system. This shift requires a number of drastic changes, including the establishment of a specialised system adapted to the age and maturity of children; ending inhuman sentencing in all its forms, starting with the abolition of the death penalty; developing alternative measures to detention and turning to detention only as a measure of last resort and for the shortest time possible; encouraging diversion measures and restorative justice principles; and ensuring the empowerment of children as subjects of rights. Meeting these challenges will only be possible if key stakeholders, including legal and judicial professionals, traditional actors and the media, are engaged. Most states, all but one of whom are signatories to the UN CRC, are still lagging behind in the realisation of a justice system compatible with the UN CRC.

Chapter 2 goes on to provide an overview of the UPR recommendations in relation to juvenile justice over the two first cycles of the UPR (2008–2016). The chapter provides disaggregated statistics as to the number, specificity and focus of these recommendations. The calls to action (CTAs) made in each recommendation are classified in accordance with the list of topics addressed in the UN CRC and General Comment No 10 of the UN Committee on the Rights of the Child (the ‘Committee’). Statistics are provided by geographic region and UPR cycle. It results from the aforementioned that:

- 819 out of 10,000 child-related UPR recommendations (eight per cent) addressed juvenile justice;
- 174 out of 193 states have received at least one recommendation on juvenile justice during the first two cycles of the UPR. This clearly shows that juvenile justice is a topic relevant not only to all regions but also to almost every state;
- priority issues addressed at the UPR are the deprivation of liberty (350 CTAs), the establishment of a specialised juvenile justice system (223 CTAs), sentencing and inhuman sentencing imposed on children (167 CTAs), and the minimum age of criminal responsibility (162 CTAs);
- the classification of recommendations by region places deprivation of liberty as the first issue addressed in the recommendations made to four regional groups: Africa; Western European and Others Group (WEOG); the Group of Latin America and Caribbean Countries (GRULAC); and the Eastern European Group (EEG). With regard to the Asia Pacific group, the most common recommendation received relates to inhuman sentencing;
- three issues received a more moderate level of attention, namely the training of professionals working on juvenile justice (46 CTAs), the objective of reintegration as the rationale for the juvenile justice system (34 CTAs) and fair trial guarantees for children (31 CTAs);
- three topics were barely addressed, namely the diversion from judicial proceedings (14 CTAs), the issue of prevention (12 CTAs) and the evaluation of juvenile justice policies (six CTAs);

- most of the issues have been widely accepted with more than a 75 per cent acceptance rate. The establishment of juvenile justice systems has been the issue most accepted by states, with an 83 per cent acceptance rate. At the opposite end of the spectrum, the abolition of the death penalty, the prohibition of cruel punishment while in detention, the minimum age of criminal responsibility and fair trial guarantees for children have been the least accepted; and
- about half of the UPR recommendations can be considered to be specific, measurable, achievable, realistic and time-bound (SMART). Most noteworthy, in one-eighth of the recommendations, states have referred to one of the international human rights instruments relevant for juvenile justice, including the UN CRC (103 recommendations), the Beijing Rules<sup>5</sup> (eight recommendations), the Havana Rules<sup>6</sup> (two recommendations) and the Riyadh Guidelines (six recommendations).<sup>7</sup>

Deepening the analysis, Chapter 3 highlights where the UPR has consolidated or gone beyond the current level of protection afforded to juveniles by international instruments.

The UPR has consolidated some of the major principles of the UN CRC and, to a certain extent, additional principles from the Beijing and Havana rules. This is the case for the establishment of a juvenile justice system and of a minimum age for criminal responsibility. One hundred and twelve states received a recommendation addressing a specific justice system and 57 received a recommendation on the minimum age of criminal responsibility.

Regarding sentencing, 118 states received a recommendation related to the principles of deprivation of liberty as a last resort and for the shortest time possible, and of the separation in detention of children from adults. The language of Articles 37(b)<sup>8</sup> and (c) of the UN CRC has largely been used for the formulation of the UPR recommendations. Corroborating General Comment No 10,<sup>9</sup> a number of recommendations called states upon the abolition of life imprisonment with or without parole (18 CTAs). This constitutes a small but promising step towards addressing sentencing as a whole and drawing additional attention to all forms of inhuman sentencing, on which international condemnation is often limited. While more than 60 states still implement lengthy detention (15 years or more), this form of inhuman sentencing has still not been the subject of sufficient international attention.

The UPR has also been instrumental in consolidating the non-imposition of the death penalty for crimes committed by persons under the age of 18. Certain states on recommendation have introduced a legislation prohibiting its application to minors (Burkina Faso) or have taken measures to address general abolition (Kenya and Niger). Others have committed to doing so, and this in itself is sufficient to open a breach in the monolithic block of retentionist states.

The UPR has gone beyond the existing international legal framework by calling upon states to ban detention for children (11 CTAs).

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5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 Eg, during Cycle 2 Moldova recommended to Macedonia FYR, '[...] that [children] are deprived of their liberty only as a measure of last resort'. See [www.upr-info.org/database](http://www.upr-info.org/database) accessed 26 February 2018. Art 37(b) of the UN CRC states: 'The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'.

9 The Committee, 'General Comment No 10: Children's Rights in Juvenile Justice' (2007) UN Doc CRC/C/GC/10, para 77.

Chapter 4 addresses the shortcomings of the UPR recommendations until now. The UPR has hardly addressed the prevention aspect and the diversion process placed at the core of juvenile justice systems in the UN CRC. It also falls short of the guarantees of fair trial and procedural rights to which children are entitled when deprived of their liberty. After those calling for the abolition of inhuman sentencing, recommendations relating to fair trial rights were the least accepted. Within this, the fundamental role of lawyers in representing and defending children in judicial processes has been particularly overlooked. This chapter sheds light on the role of lawyers in supporting concrete advances in juvenile justice systems. Highlighted by Beijing Rule 22,<sup>10</sup> the training of professionals working on juvenile justice, and especially of lawyers, is essential to the adequate representation of children in the justice process. Children are specifically dependent on legal assistance in order to understand the juvenile justice process and be represented so that their rights are respected. Without such representation, it would be much more challenging for children to claim these rights within the juvenile justice system.

Chapter 5 goes on to provide recommendations aimed at improving the effectiveness of the UPR in relation to juvenile justice to recommending states, states under review and the legal profession. The objective is to encourage SMART recommendations addressing all key features of the juvenile justice system, namely the use of detention as a measure of last resort; the establishment of a specific system together with a minimum age for criminal responsibility; the prohibition of inhuman sentencing, including the death penalty and long sentences; the key objective of restorative justice together with measures of diversion; fair trial guarantees; and how better to engage the legal profession in juvenile justice through consultation and training.

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<sup>10</sup> See in particular Beijing Rule 22.1: 'Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.'

# Acknowledgements

The International Bar Association's Human Rights Institute (IBAHRI) would like to thank all those who contributed to the production of this report.

We are especially grateful to Laure Elmaleh for her extensive research on the subject and composing of the first draft of the report.

Elmaleh is a human rights lawyer with specific experience in international children's rights law. She holds an LLM in public international law and international human rights law from King's College London (London, 2011), and an LLM in private international law and family law from the University Panthéon Sorbonne (Paris, 2009). She obtained the Certificate of Aptitude for the Legal Profession of the French Bar in 2010.

Elmaleh has worked on international children's rights advocacy to the UN in Geneva for five years at Child Rights Connect, focusing on advocacy to the UN Human Rights Council (HRC), and on the ratification campaign of the third Optional Protocol to the UN CRC. She also has experience working for law firms on family law, and French human rights non-governmental organisations (NGOs).

Between June and September 2017, she worked as a Geneva-based legal consultant for the IBAHRI, undertaking advocacy to the UN HRC to advance human rights in the administration of justice.

The final draft of the report was prepared by the IBAHRI Senior Fellow and UN Liaison, Hélène Ramos dos Santos, who developed the research methodology and assisted with the development of the report. Dos Santos holds an LLM in criminal law and criminal science in Europe from the University Panthéon Sorbonne (Paris, 2003) and a PhD in international human rights law from the European University Institute (Florence, 2008). She has more than ten years' experience working in human rights in Geneva and Africa. Dos Santos has authored the IBAHRI report *The Role of the Universal Periodic Review in Advancing Human Rights in the Administration of Justice* (2016) and co-authored the ARC International-IBAHRI-International Lesbian, Gay, Bisexual, Trans and Intersex Association report *Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review* (2016).

The writing, development and publication of this report were overseen and supported by IBAHRI Senior Programme Lawyer Muluka Miti-Drummond and IBAHRI Director Phillip Tahmindjis.

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# Terms of reference, scope and structure of the report

The overall objective of this report is to foster international recommendations addressing the need for juvenile justice systems in accordance with international laws and standards. In order to achieve this, this report highlights the potential of the Universal Periodic Review (UPR) to advance children's rights in juvenile justice.

## 1. Terms of reference

The terms of reference of the report are to:

- develop a report on the level of protection recognised to juvenile justice and current gaps at the UPR, in light of international norms and standards;
- develop an overview of the legal challenges encountered across the different regions (Africa, Asia Pacific, Group of Latin America and Caribbean Countries (GRULAC), Eastern European Group (EEG), and Western European and Others Group (WEOG)) in ensuring that a juvenile justice system exists in conformity with international norms and standards. It is done in light of the recommendations made at the UPR;
- provide insights on the impact of the UPR recommendations and challenges in their implementation on the ground; and
- develop recommendations addressing recommending states, states under review, lawyers and lawyers' associations on making, implementing and monitoring recommendations on juvenile justice, which reinforce the international legal framework and address the role of the legal profession.

## 2. Methodology

The methodology used for the research project included a dual process of desk research and consultation through surveys and interviews.

- Desk research: UPR recommendations related to juvenile justice systems were extracted from the UPR Info database,<sup>11</sup> using both topic and keyword searches. More than 150 keywords were used in order to gather a comprehensive set of recommendations related to juvenile justice and assess ways in which the UPR has so far protected children. The UPR recommendations were classified by calls to action (CTAs) using as a reference framework: the United Nations Convention on the Rights of the Child (UN CRC); UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'); UN Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules'); and UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines'). The table in Annex 1 presents the list of CTAs addressed at the UPR and the corresponding international norms and standards.

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<sup>11</sup> Available online at [www.upr-info.org/database](http://www.upr-info.org/database) accessed 26 February 2018.

- Survey and interviews with lawyers and non-governmental organisations (NGOs): an online survey was conducted during August 2017. This survey complemented the one undertaken in preparation for the 2016 International Bar Association (IBA) report *Children and Access to Justice: National Practices, International Challenges*.<sup>12</sup> The two surveys received respectively 22 and 39 responses from expert lawyers based in 26 countries worldwide. A number of interviews were conducted with international NGOs (eight) and lawyers (ten) with expertise in children's rights.
- Consultations were held in Geneva with five of the states making the greatest number of recommendations on juvenile justice systems.

### 3. Scope and limitations

#### 3.1 Thematic scope

The report analyses the recommendations addressing the protection of children's rights within the justice system in the case of children alleged as, accused of or recognised as having infringed the penal law.<sup>13</sup> It specifically addresses the following topics, which were defined based on the UN CRC, the Beijing Rules, Havana Rules and Riyadh Guidelines:

- specific justice system adapted to children, including its objective of reintegration;
- minimum age of criminal responsibility;
- deprivation of liberty of children, including pre-trial detention;
- inhuman sentencing applied to children, with a special attention brought to the death penalty;
- fair trial guarantees applicable to juvenile justice processes;
- the prevention of juvenile delinquency;
- the diversion of children from judicial proceedings; and
- the training of juvenile justice professionals.

#### 3.2 Geographic scope

The report provides a quantitative and qualitative analysis of the UPR recommendations worldwide and as addressed and received by the regional groups: Africa, Asia Pacific, EEG, GRULAC and WEOG. It then provides an overview of the impact and obstacles encountered in their implementation in a sample of countries.

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<sup>12</sup> See n 3 above.

<sup>13</sup> See n 1 above.

### 3.3 Limitations

This report does not analyse the general international obligation to establish ‘child-sensitive justice’.<sup>14</sup> Nor does it consider the case of children in contact with the justice system as victims or witnesses.

The statistics on UPR recommendations on juvenile justice also exclude the situation of the detention of migrant children, as not pertaining per se to juvenile justice.

### 3.4 Definitions

Unless otherwise mentioned, the report adopts the definitions provided by the UN CRC.

The report refers in an interchangeable manner to ‘lawyers’ and the ‘legal profession’.

CHILDREN ALLEGED AS, ACCUSED OF OR RECOGNISED AS HAVING INFRINGED THE PENAL LAW (ALSO COMMONLY REFERRED TO AS ‘CHILDREN IN CONFLICT WITH THE LAW’)

The report focuses on children in contact with the criminal justice system, when, as defined under Article 40(1) of the UN CRC, ‘alleged as, accused of, or recognised as having infringed the penal law’. In accordance with the UN CRC, a ‘child’ refers to a person under the age of 18 years old.

The expression ‘children offenders’, although used in international instruments, is not used in this report. This expression tends to have a negative connotation and be used non-discriminately to refer to all children whether alleged as, accused of or recognised as having infringed the penal law. Furthermore, the objectives of reintegration and rehabilitation of the child should prescribe a departure from the punitive justice vocabulary.

#### DIVERSION

Diversion involves the removal of a child from criminal justice processing. A child is diverted when he or she is alleged as or accused of having infringed the penal law but the case is dealt with without resorting to formal trial by the competent authority. Diversion may involve measures based on the principles of restorative justice.<sup>15</sup>

#### JUVENILE JUSTICE SYSTEM

States Parties to the UN CRC shall seek to ‘establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system’ defined, as stated in Article 40(3) of UN CRC, by ‘the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law’.<sup>16</sup>

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14 For the Special Rapporteur on the Independence of Judges and Lawyers, the scope of ‘child-friendly’ or ‘child-sensitive justice’ should extend to ‘all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies’. See n 1 above, para 52.

15 Office of the SRSG, ‘Promoting Restorative Justice for Children’ (2013), v.

16 See n 9 above, para 90.

## REINTEGRATION

Reintegration is defined as the promotion of the child's sense of dignity and worth, and the child's respect for the human rights of others, with the aim of supporting the child to assume a constructive role in society. This goes hand in hand with the development of children's abilities to deal with risk factors so as to function successfully in society, thereby improving the quality of life of the person and community.<sup>17</sup>

## RESTORATIVE JUSTICE

Restorative justice means any process in which the victim and offender and, where appropriate, any other individuals or community members affected by the crime participate actively together in the resolution of matters arising from that crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.<sup>18</sup>

### 3.5 UPR cycles

The UPR is a peer-to-peer review mechanism of the UN Human Rights Council (HRC), by which the human rights record of all UN Member States is reviewed by all other Member States. It takes place in Geneva.

The UPR is cyclical in nature, repeating every four years. This report covers Cycle 1 (sessions one to 12) and Cycle 2 (sessions 13 to 26) of the UPR, from 2008 to 2016.

### The three stages of a UPR cycle

The UPR cycle encompasses three main stages: (1) the preparation for the review; (2) the review of the country during a UPR session; and (3) the implementation of the recommendations and monitoring for the following review.

#### Preparation for the review

Prior to a review, the Office of the UN High Commissioner for Human Rights (OHCHR) prepares three main reports: the national report submitted by the state under review itself; a summary prepared by the OHCHR of submissions by stakeholders, including civil society, academic institutions and national human rights institutions (NHRIs); and a summary of UN information on the state prepared by the OHCHR.

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17 See n 15 above, vi.

18 *Ibid.*

## **Review of the country**

The UPR Working Group is the body that conducts the human rights review of a state. In practice, all 193 UN Member States, as well as two non-Member States, that is, the Holy See and State of Palestine, are part of the UPR Working Group. Three times a year, the UPR Working Group holds a two-week session, where 14 countries are reviewed. During the review, the state under review presents its perspectives on the human rights situation in that country and holds an ‘interactive dialogue’ with its peers, going through a series of interventions by other states making recommendations to it. The recommendations received are compiled into a report and the state under review has until the adoption of the report to decide whether to ‘note’ or ‘accept/support’ the recommendations. In practice, ‘noting’ a recommendation equates to its rejection.

A few months later, the outcome of the review is adopted during a regular session of the UNHRC and the state under review publicly announces whether it ‘accepts/supports’ or ‘notes’ each of the recommendations received.

## **Implementation of the UPR recommendations and its monitoring**

This vital phase gives civil society and other stakeholders the opportunity to urge the government to fulfil its promises and monitor progress. Ideally, a state under review will have implemented some of the UPR recommendations before the next cycle begins and will have reported on it by presenting a voluntary mid-term report. However, practice has shown that too few states report on progress made on all recommendations in the voluntary mid-term report, and only report on the UPR recommendations in their next UPR report.

## 4. Structure of the report

This report provides an assessment of the current level of protection recognised to children in the ambit of the criminal justice system within the UPR mechanism.

Chapter 1 introduces the UPR, the international legal framework applicable to juvenile justice and the main human rights challenges encountered in juvenile justice systems worldwide, based on UN reports.

Chapter 2 provides an overview of the UPR recommendations in relation to juvenile justice. It provides disaggregated statistics as to the number, specificity and focus of these recommendations. Statistics are provided by geographic region.

Chapter 3 addresses the positive effect of the UPR recommendations on the international legal framework through their reinforcement of states' obligations to establish a specialised juvenile justice system and to apply international principles governing detention and sentencing, particularly inhuman sentencing and the death penalty. While the UPR recommendations are not legally binding, they are driven by states. As such, they have great potential to shape the development of international human rights law. This chapter provides a number of country examples in order to contextualise successes and challenges in the implementation of the UPR recommendations.

Chapter 4 addresses the shortcomings of the UPR, which still lags behind in responding to three challenges, namely empowering children as subject of rights; addressing juvenile delinquency prevention and diversion; and addressing the role of the legal community in upholding children's human rights and applying international human rights norms, standards and principles in domestic juvenile justice systems.

Chapter 5, in light of the findings of the report, identifies a number of recommendations addressed to states, civil society organisations (CSOs) and legal professionals in order to strengthen the impact of the UPR in the protection of children in justice systems.

# Chapter 1: Introduction

About 30 years ago, the United Nations Convention on the Rights of the Child (UN CRC) revisited a common vision of justice for children. Not least, the UN CRC requires States Parties to establish a juvenile justice system placing the rehabilitation and reintegration of children into society as core objectives.<sup>19</sup> For the 196 current States Parties,<sup>20</sup> this implies a clear departure from the treatment of children in the formal criminal justice system, mostly punitive, with detention at its core.

However, for too many children worldwide, the experience of justice has remained drastically different from the text of the UN CRC.<sup>21</sup> Children deprived of liberty are globally estimated to be more than 1 billion.<sup>22</sup> Countless of these face violent and degrading treatment throughout the criminal justice process.<sup>23</sup> Clear and disaggregated quantitative and qualitative data are needed to untangle the situation. The Sustainable Development Goals (SDGs), adopted in 2015, most specifically SDG 16 on promoting just, peaceful and inclusive societies, will be instrumental in assessing what can already be described as a major implementation gap.<sup>24</sup> In addition, a UN global study on children deprived of liberty is on its way.<sup>25</sup> Other important studies, which provide further elements of understanding, have been<sup>26</sup> and are to be<sup>27</sup> published.

Against this backdrop, this report intends to shed light on the role of the Universal Periodic Review (UPR) in triggering political pressure to enhance human rights in juvenile justice.

The UPR is a peer-to-peer human rights review mechanism among states. It was created in 2006 by the UN to ‘complement’ the work of the pre-existing human rights treaty bodies by improving and encouraging state adherence to human rights obligations through the implementation of recommendations. All 193 Member States are reviewed in an equal manner and the review covers all human rights.<sup>28</sup>

Over the past decade, the UPR has become a unique platform for addressing children’s rights. With more than 10,000 recommendations over two cycles, child rights constitute the third most-addressed topic at the UPR.<sup>29</sup>

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19 See Art 40 of the UN CRC; see n 9 above.

20 Four non-UN Member States (the Holy See, State of Palestine, Niue and Cook Islands) and all UN Member States but one (the United States) are party to the UN CRC.

21 See n 1 above, para 96. Final Declaration, World Congress on Juvenile Justice, 30 January 2015.

22 Office of the SRSG, ‘Prevention Of and Responses To Violence Against Children Within the Juvenile Justice System’ (2012).

23 See n 15 above, 1.

24 Julinda Beqiraj and Lawrence McNamara, *Children and Access to Justice in the Agenda for Sustainable Development* (Briefing Paper by the Bingham Centre for the Rule of Law) (IBA 2016).

25 UN General Assembly Resolution, ‘Rights of the Child’ (2015) UN Doc A/RES/69/157. The Resolution calls for a global study on children deprived of liberty. The lack of existing data on children deprived of liberty had also been mentioned in a number of official reports. See above n 9 above; ‘Special Representative of the Secretary-General on Violence Against Children, the Office of the High Commissioner for Human (OHCHR) and United Nations Office on Drugs and Crime (UNODC), *Joint Report on Prevention Of and Responses To Violence Against Children Within the Juvenile Justice System* (2012); Children’s Legal Centre, University of Essex and UNICEF, *Administrative Detention of Children: a Global Report* (2011); UNHRC, ‘Report of the UN Special Rapporteur on the Human Rights of Migrants’ (2012) UN Doc A/HRC/20/24.

26 CRIN, *Rights, Remedies and Representation: A Global Report on Access to Justice for Children* (CRIN 2016); Beqiraj and McNamara, *Children and Access to Justice* (2016) n 3 and n 24; UNICEF, ‘Children’s Equitable Access to Justice: Central and Eastern Europe and Central Asia’ (2015); UNODC, UNDP, UNICEF, ‘Child-Friendly Legal Aid in Africa’ (2011).

27 Terre des Hommes, research on customary justice to be published in 2018.

28 For a description of the UPR process, see para 3.5 above.

29 UPR Info statistics [www.upr-info.org/database/statistics](http://www.upr-info.org/database/statistics) accessed on 27 August 2017 ranks ‘Rights of the Child’ as the third-most raised issue at the UPR with 10,112 recommendations made.

Building on the analysis of two UPR cycles, this report aims to provide a clear picture of the level of protection of children's rights within the criminal justice system received at the UPR. It further aims to inform the stakeholders on ways of ensuring the mechanism is used in a more efficient manner to reinforce human rights in juvenile justice systems.

## 1.1 The international legal framework protecting the rights of children alleged as, accused of and recognised as having infringed the penal law

All general human rights instruments addressing, among others, the issues of justice, deprivation of liberty and the judiciary are applicable to all, regardless of age.<sup>30</sup> In that respect, the International Covenant on Civil and Political Rights (ICCPR) is applicable to the rights of children, with special attention to be paid to Article 6(5) on the prohibition of the death penalty imposed on children, and Article 14 on fair trial guarantees.

In addition, many international, regional and national instruments, guidelines, minimum rules and general observations have been drafted, negotiated and adopted in the field of juvenile justice.

Among them, the UN CRC occupies a particular place,<sup>31</sup> as the most ratified UN core human rights treaty, with the ratification of all states but one.<sup>32</sup> It was adopted in 1989 and entered into force in 1990.

Articles 37 and 40 of the UN CRC set up the core elements of a juvenile justice system and require State Parties to establish a system that:

- is respectful of the age and rights of the child and geared towards reintegration of the child (Article 40.1);
- is specific to children and includes, whenever appropriate and desirable, diversion measures for dealing with children without resorting to judicial proceedings (Article 40.3);
- precludes life imprisonment without parole, torture and the death penalty (Article 37(a));
- restricts detention to a measure of last resort, for the shortest time possible (Article 37(b)) and in detention centres separated from adults (Article 37 (c)); and
- ensures the child's right to legal assistance and appeal (Article 37(d)) and other fair trial guarantees (Article 40.2).

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30 See Terre des Hommes International Federation, *Compendium of International Instruments Applicable to Juvenile Justice* (2014). See, eg, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); Basic Principles on the Independence of the Judiciary (1985); UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') (1985); Basic Principles on the Role of Lawyers (1990); Guidelines on the Role of Prosecutors (1990); UN Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') (1990) UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines') (1990); UN Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules') (1990); Guidelines for Action on Children in the Criminal Justice System (1997); Bangalore Principles of Judicial Conduct (2002); Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002); UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules') (2010); the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012); and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2004). At the regional level, see the African Charter on the Rights and Welfare of the Child (1990); the European Rules for Juvenile Offenders Subject to Sanctions or Measures (2009); and the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice (2010).

31 See n 1 above.

32 The US remains the only state not to have ratified the UN CRC, after the recent ratification by Somalia in October 2015. South Sudan ratified in January 2015. Source: UN Treaty Collection Website, 2017.

These legal provisions should be read in light of the four general principles set up in the UN CRC: the principles of the child's best interest, non-discrimination, right to be heard and right to life, survival and development.<sup>33</sup> Such a juvenile justice system also serves the 'short- and long-term interest of the society at large'.<sup>34</sup>

The UN Committee on the Rights of the Child (the 'Committee') has further developed these provisions through a number of general comments,<sup>35</sup> especially General Comment No 10 on children's rights in juvenile justice. Among UN rules and guidelines dedicated to the administration of juvenile justice,<sup>36</sup> the Committee has stated as an 'objective' for States Parties to the UN CRC to integrate in their domestic system:<sup>37</sup>

- the Beijing Rules, which have been integrated in the leading principles in the UN CRC, thus gaining legally binding force;<sup>38</sup>
- the Riyadh Guidelines, which encourage states to develop programmes for the prevention of juvenile delinquency that aim to engage children in lawful, socially useful activities and support children to develop positive attitudes towards society and life, thereby discouraging them from developing attitudes likely to cause criminal behaviour; and
- the Havana Rules, which institute the principle of deprivation of children's liberty as a last resort and for the shortest time possible.

The UN CRC, Beijing Rules, Riyadh Guidelines and Havana Rules constitute the building blocks of the international legal framework governing juvenile justice. As evidenced, international human rights standards on juvenile justice are clearly set and binding; their implementation, however, remains a challenge.<sup>39</sup>

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33 See n 9 above, para 5.

34 *Ibid*, para 3.

35 See n 9 above; 'General Comment No 12: The Right of the Child to be Heard' (2009) UN Doc CRC /C/GC/12 ; and 'General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration' (2013) UN Doc CRC /C/GC/14 .

36 See n 28 above.

37 See n 9 above, para 4.

38 Jean Zermatten, *Children's Rights at the Heart of Human Rights*, Lecture at UNIGE Geneva, June 2017.

39 See n 9 above, paras 1–3. Final Declaration, World Congress on Juvenile Justice, 30 January 2015.

## 1.2 Key human rights challenges in juvenile justice

As mentioned, the UN CRC calls for a two-pronged juvenile justice system, where the judicial system is adapted to realise children's rights but retains limited jurisdiction so as to give way to non-judicial proceedings. This contributed to the UN CRC being seen at the time it was adopted as 'considerably in advance of anything currently formulated in rights terms at the national level'.<sup>40</sup> This section develops the main challenges states continue to face when dealing with juvenile justice today.

### 1.2.1 Developing a specialised juvenile justice system

At the core of juvenile justice is that children must be treated differently from adults because of their specific vulnerability and main objective of reintegration attached to their age.<sup>41</sup>

Article 40.3 of the UN CRC states that 'States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law'. In particular, they shall establish 'a minimum age below which children shall be presumed not to have the capacity to infringe the penal law'.

As such, the existence of a specialised system applicable to children is paramount to the treatment of children according to their age and vulnerability. It is important to highlight that the definition of a minimum age of criminal responsibility is inextricably linked to the establishment of a well-functioning system adapted to children. This can be illustrated as follows: a state could retain a high minimum age of criminal responsibility (eg, 16), but organises at the same time a response to offences committed by children below this age outside a justice system without all the fair trial and procedural guarantees, and without the proper judicial supervision. This system would be more detrimental to children than a minimum age of criminal responsibility set at 12 years old that provides all the necessary guarantees and adapted responses to children from 12 to 18 years old. The minimum age should therefore always be considered with the juvenile justice system in place.

In practice, the minimum age of criminal responsibility varies greatly among states. The 2016 IBA survey responses indicate that the minimum age in the jurisdictions covered by the survey ranges from the very low level of age seven (Nigeria) or eight (Scotland) to the higher levels of age 14 (Cyprus and Estonia), 15 (Denmark and Poland) or 16 (Belgium). The median age worldwide is 12, and it is as such the age which, in 2007, was retained by the Committee as the absolute minimum.<sup>42</sup>

Following a wave of legislation raising this minimum age,<sup>43</sup> recent years have seen the worrying trend of lowering criminal ages of responsibilities or persistent opposition to raise very low age of responsibility.<sup>44</sup>

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40 Philip Alston, Stephen Parker and John Seymour, *Children, Rights and the Law* (Oxford, Clarendon Press, 1992), vi.

41 Art 40(1). The UN CRC recognises the right of every child in conflict with the law 'to be treated in a manner consistent with the promotion of the child's sense of dignity and worth so as to reinforce the child's respect for the human rights and fundamental freedoms of others, taking into account the age of the child and the desirability of promoting his or her social reintegration, and his or her assumption of a constructive role in society'.

42 See n 9 above, para 32.

43 The Committee noted in its draft general comment on the minimum age of criminal responsibility that '[i]n the past 25 years, States parties have formed an unmistakable trend to raise their MACRs, and approximately 15 more are currently deliberating official proposals to do the same. There are very few exceptions to this general trend.'

44 See Chapter 3 for Denmark, Philippines and the United Kingdom.

In addition, notwithstanding the progress made by states since the 1980s,<sup>45</sup> in 2015, the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, noted that ‘The treatment of children in judicial proceedings, both civil and criminal, is generally unsatisfactory... too often justice systems, and in particular criminal justice systems, are designed for adults and have not integrated the specific procedural safeguards due to children.’<sup>46</sup>

### 1.2.2 Developing a restorative versus punitive justice system

The concept of restorative justice appears in the UN CRC through the requirements to develop alternative measures to detention and end inhuman sentencing, on the one hand, and to develop diversion measures to the whole judicial proceedings, on the other.

#### ENDING INHUMAN SENTENCING AND RESORTING TO DETENTION AS A MEASURE OF LAST RESORT

Over the past five years, the UN High Commissioner for Human Rights has repeatedly flagged the number of children in pre-trial detention, where children could spend years or months, and other forms of violence against children, in particular capital punishment, life imprisonment without parole and corporal punishment as a sentence for a crime.<sup>47</sup>

In particular, in 2018, and despite its absolute prohibition enshrined in Article 37(a) of the UN CRC and Article 6 of the ICCPR, capital punishment for offences committed by persons under the age of 18 remained lawful in 13 countries.<sup>48</sup> The 2016 report of the UN Secretary-General (the ‘Secretary-General’) specifically mentioned executions of children taking place in Saudi Arabia, Iran and Maldives, and where a high number of persons were on death row for crimes committed while they were children.<sup>49</sup> The Secretary-General’s report also stated that ‘[w]hile the abolition of, or moratoriums on, the death penalty are welcome developments, concerns remain that they can lead to an increase in the number of juveniles sentenced to life imprisonment’.<sup>50</sup> The Secretary-General therefore recommended to states to ensure that children are not sentenced to life imprisonment as an alternative to the death penalty. Life imprisonment and lengthy sentences were qualified by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child.<sup>51</sup> In practice, based on the most recent data, 67 states retained life imprisonment as a penalty for offences committed while under the age of 18, a further 49 permitted sentences of 15 years or longer and 90 permitted sentences of ten years or longer.<sup>52</sup>

45 Masoud Rajabi-Ardeshiri, ‘Childhood and Modernity: A Social Constructionist Reflection onto the Dilemma of “Child Execution” Within the Islamic Context’ (2014) 18 *The International Journal of Human Rights* 4–5, 434.

46 See n 1 above. See also n 24 above and CRIN, *Rights, Remedies and Representation* (CRIN 2016).

47 UNHRC, ‘Summary of the Full-day Meeting on the Rights of the Child, Report of the UN High Commissioner for Human Rights’ (2012) UN Doc A/HRC/21/31; UNHRC, ‘Report of the United Nations High Commissioner for Human Rights, Access to Justice for Children’ (2013) UN Doc A/HRC/25/35.

48 CRIN, [www.crin.org/en/home/campaigns/inhuman-sentencing/problem](http://www.crin.org/en/home/campaigns/inhuman-sentencing/problem) accessed 26 February 2018. The 13 countries listed by CRIN are: Brunei Darussalam, Islamic Republic of Iran, People’s Democratic Republic of Lao, Malaysia, Maldives, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, UAE and Yemen.

49 UNHRC, ‘Question of the Death Penalty, Report of the Secretary-General’ (2016) UN Doc A/HRC/33/20.

50 *Ibid.*, 14.

51 UNHRC, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez’ (2015) UN Doc A/HRC/28/68, para 74.

52 CRIN, *Inhuman Sentencing: Life Imprisonment of Children Around the World* (CRIN 2015) <https://deprivation-liberty.crin.org/life-imprisonment-1> accessed 26 February 2018.

As established in the UN CRC and subsequent UN rules and guidelines, juvenile justice policies shall ‘promote the child’s rehabilitation, reintegration, and assuming a constructive role in society’.<sup>53</sup> To this end, Article 40.3 of the UN CRC requires that states promote ‘whenever appropriate and desirable, measures for dealing with these children without resorting to judicial proceedings while ensuring that human rights and legal safeguards are fully respected’. For these measures, social control through close supervision will replace deprivation of liberty in institutional care facilities. Inspired by restorative justice principles, the aim of these measures is to increase the minor’s resources and reduce the risk of reoffending. Diversion can take place all along the judicial process. It can divert cases from judicial proceedings or lead to non-custodial sentences.

In recent years, Marta Santos Pais, UN Special Representative of the Secretary-General on Violence Against Children (SRSG), has been a key advocate for restorative justice, looking for good practices around the world.<sup>54</sup>

### 1.2.3 Empowering children as subject of rights

Under Article 12 of the UN CRC, children have a right to express their views in all matters affecting them, consistent with their levels of age and maturity, and shall be afforded the right to be heard in any judicial or administrative proceedings concerning them. In that respect, the UN CRC ‘has fundamentally changed the way we regard and treat children, moving away from the perception of children as *objects of welfare* to *full subjects of rights*’ [emphasis author’s own].<sup>55</sup>

This right of active engagement, which has been conceptualised as ‘participation’, was a new concept in international law when the UN CRC was adopted and still poses a challenge to most countries throughout the world, where a culture of listening to children is not widespread or even acceptable.<sup>56</sup> This right goes beyond participation in judicial contexts and involves ‘an ongoing process of children’s expression and active involvement in decision-making at different levels in matters that concern them. It requires information sharing and dialogue between children and adults based on mutual respect, and requires that due consideration of their views be given, taking into account the child’s age and maturity.’<sup>57</sup>

As recalled by SRSG Santos Pais, children are rights-holders whose rights must be respected even when they are in conflict with the law.<sup>58</sup> This empowerment is a core condition for the realisation of rights.

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53 Final Declaration, World Congress on Juvenile Justice, 30 January 2015.

54 See n 15 above.

55 Save the Children, *Universal Periodic Review: Successful Examples of Child Rights Advocacy* (Save the Children 2013), 6.

56 The Committee, ‘General Comment No 12: The Right of the Child to be Heard’ (2009) UN Doc CRC /C/GC/12, para 3.

57 *Ibid.* See n 3 above, 16.

58 World Congress of Juvenile Justice, Communication on 28 January 2015.

### 1.2.4 Addressing root causes through involving key stakeholders

The Committee has stated that in order:

‘to create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of [UN] CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law.’<sup>59</sup>

The role of some of the key stakeholders is developed further below.

#### THE ROLE OF MEDIA AND PUBLIC OPINION

Children in conflict with the law are likely to be considered by states and society in general mostly as offenders. This is induced by the worrying current perception of increased juvenile violence. Though not supported by reliable evidence,<sup>60</sup> this perception channelled through the media ‘influenced the political discourse and too often led to the adoption of legislation on the treatment of young offenders that weakened children’s rights, including the trend of criminalising young people’.<sup>61</sup> For instance, one Australian lawyer responding to the IBAHRI survey mentioned that ‘popular press drives a strong law and order agenda in politics which underlies a drive for harsher penalties in all areas of criminal behaviour’.

As presented by the Committee: ‘This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures).’<sup>62</sup>

#### THE ROLE OF TRADITIONAL ACTORS

The role of traditional courts has long been exemplified in juvenile justice.<sup>63</sup> While the number of countries with a customary juvenile justice is unclear, it is considered that about 60 countries have a mixed legal system and apply customary law in addition to civil, common or religious law.<sup>64</sup>

The importance of integrating traditional systems of justice into the juvenile justice system becomes even more evident when one looks at the objective of restorative justice embedded in the UN CRC. As evidenced in the work of the SRSG, ‘restorative justice derives from ancient forms of community

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59 See n 9 above, para 96.

60 See n 54, paras 7 and 11.

61 *Ibid*, para 7.

62 See n 9 above, para 96.

63 UN Women, UNICEF, UNDP, ‘Informal Justice Systems: Charting a Course for Human Rights-based Engagement’ (2011); Guidelines on Action for Children in the Justice System in Africa (2011). UNICEF, ‘Diversion not Detention: A Study on Diversion and Other Alternative Measures for Children in Conflict with the Law in East Asia and the Pacific’ (2017).

64 See Juri-globe research available online at [www.juriglobe.ca/fra/sys-juri/class-poli/sys-mixtes.php](http://www.juriglobe.ca/fra/sys-juri/class-poli/sys-mixtes.php) accessed 26 February 2018.

justice, practiced around the world, that focus on establishing reconciliation between offenders and those affected by the offence, in order to restore social harmony'.<sup>65</sup> The model of restorative justice fuelled by the UN CRC provides a new approach to restorative justice that is based on human rights.

The decisions made by traditional courts in juvenile justice can reportedly reach up to 80 per cent of the decisions made relating to juveniles.<sup>66</sup> However, the scale and content of traditional justice by country remains less easily accessible. This may partly explain why the Committee has, for instance, never referred to traditional actors in juvenile justice other than their role in ending corporal punishment and harmful practices.<sup>67</sup>

Some NGOs are looking at this issue.<sup>68</sup> In particular, the NGO Terre des Hommes is currently finalising an eight-year survey-based research documenting the role, process and content of traditional justice for juveniles in a number of countries. This research will consolidate the understanding of traditional justice systems, as well as 'hybrid' systems where bridges between the formal and traditional systems exist to a greater or lesser extent.<sup>69</sup> Like any legal system, traditional and hybrid systems are constantly evolving and cannot easily be classified. In some cases, international recommendations addressing only the formal systems may therefore have limited impact.

#### THE ROLE OF LEGAL PROFESSIONALS

A survey published in 2016 by Child Rights International Network (CRIN) reveals that only eight out of 197 countries provide the 'right to a lawyer with experience required for the nature of the claim or offence when receiving legal aid'.<sup>70</sup> This appears to be the weakest point in the adjustment of justice systems to guarantee children's rights.

Training judicial and legal professionals on children's rights is essential to the realisation of a child-friendly justice. The legal community can play an active role during the detention stage by ensuring that detainees get the ability to understand their rights and are treated fairly when their case is heard, and in offering advice on public-private alternative solutions to detention, suitable to promoting children's rehabilitation.

The lack of training of professionals working in juvenile justice has been highlighted as a key impediment to the application of international children's rights standards through the whole process.<sup>71</sup>

In 2015, the Special Rapporteur on the Independence of Judges and Lawyers recommended that 'institutional training on children's rights, including relevant national, regional and international human rights law and jurisprudence be established and made compulsory for judges, prosecutors and lawyers, so as to ensure a child-friendly justice system'.<sup>72</sup> The Special Rapporteur also recommended that 'children's rights expertise should be promoted, valued and integrated into all types of legal

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65 See n 15 above, 1.

66 UN Women, UNICEF, UNDP, 'Informal Justice Systems, Charting a Course for Human Rights-based Engagement' (2011).

67 See on the Universal Human Rights Index, search results with the keyword 'traditional'.

68 Guidelines on Action for Children in the Justice System in Africa (2011).

69 See, eg, Claudia Campistol, Kristen Hope, Yann Colliou and Marcelo F Aebi, 'Customary Justice for Children in Egypt: An Overview of the Situation in the Governorate of Assyut' (2017) 5 Restorative Justice 1, 29–52; Kristen Hope, 'Imagining Hybridity to Achieve Restorative Justice for Children: A Palestinian Case Study' (2017) Today's Children are Tomorrow's Parents Special Issue 62–73.

70 CRIN, *Rights, Remedies and Representation: A Global Report on Access to Justice for Children* (CRIN 2016), 33.

71 Jean Zermatten, *Contenu et méthode de formation en justice juvénile*, World Congress of Juvenile justice, Communication on 28 January 2015.

72 See n 1 above, 20.

training and capacity-building for the judiciary and members of the legal profession'.<sup>73</sup> Furthermore, setting up specialised juvenile courts improves consistency, efficiency, coordination and respect for children's rights within the administration of justice. These specialised institutions allow 'judges, prosecutors, lawyers and judicial personnel to increase their expertise in working with children'.<sup>74</sup>

### 1.3 The UPR: a key forum to enhance human rights in juvenile justice?

International standards in juvenile justice are strong and widely accepted. As indicated by the NGO Save the Children, '[t]he UN Convention on the Rights of the Child (UNCRC) is the most ratified international human rights treaty. However, translating the vision of children's rights and the principles embodied in the Convention into national policy and practice is far from straightforward'.<sup>75</sup>

Several features make the UPR a unique mechanism to support the implementation of international standards and recommendations, including those related to the rights of the child.

First, as a peer-review of states by other states, one of the UPR's key and foremost features lies in the fact that it gives political traction to international human rights norms and recommendations. The UPR places states as the primary actors in the process of human rights monitoring of their peers.

Although the UPR recommendations have no legal force, they can have a fundamental role in giving these standards both the political traction inherent to the mechanism and its time-bound nature (recommendations accepted are to be implemented before the next cycle), as well as triggering commitment from states, which have to take a stand on the recommendations received. The UPR further has the potential to give an additional dimension to standards by enhancing and reiterating them.<sup>76</sup> It further assists states in their implementation by recommending concrete actions, which are both measurable and adapted to the specific situation of the countries reviewed. The UPR gathers the most unprecedented amount of information from state and non-state actors about human rights performance in countries under review.

Furthermore, children's rights have become one of the main topics addressed during the UPR. The potential of the UPR to raise the profile of children's rights on the political agenda through international peer pressure was particularly emphasised by participants at a side event at the UN in 2014.<sup>77</sup>

Finally, the UPR should be instrumental in assessing in a holistic manner both human rights obligations and the SDGs. Matrixes developed on the ground by NGOs to monitor human rights are increasingly assessing the SDGs together with human rights standards. A number of the SDGs relate to children's rights.<sup>78</sup> SDG 16 on access to justice for all is of particular relevance. One of the global indicators for assessing progress in the achievement of this SDG sets out to measure the rate

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73 *Ibid.*

74 See n 1 above, para 58.

75 See n 55 above.

76 On the role of the UPR in the consolidation of international customary norms, see IBAHRI, *The Role of the Universal Periodic Review in Advancing Human Rights in the Administration of Justice* (2016).

77 Save the Children, *Advancing Children's Rights Through The Universal Periodic Review: Achievements, Challenges And Lessons Learned*, Report of Side Event, Palais Des Nations (Save the Children 2014).

78 See n 24 above.

of detained persons before a final decision about their case has been taken as a percentage of overall prison population. The indicator purports to measure the efficiency of the justice system in the light of respect for the standard of presumption of innocence, and as a corollary of the principle that persons awaiting trial shall not be unnecessarily detained in custody. Measuring the extent to which detention is used with regard to children will provide evidence to assist countries in identifying and implementing suitable alternatives to deprivation of liberty that promote the child's reintegration into society (Article 40.3 of the UN CRC). It will also prompt the adoption of targeted measures that match situations specific to different jurisdictions.<sup>79</sup>

This report intends to shed further light on the concrete contribution of the first two cycles of the UPR in promoting and protecting human rights in juvenile justice.

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79 *Ibid*, 10–11.

# Chapter 2: Juvenile justice at the UPR: quantitative and qualitative insights

This chapter depicts the main challenges in juvenile justice addressed in the UPR recommendations.

It analyses the recommendations related to juvenile justice made during the two first cycles of the UPR, from session one to session 26 (2008–2016). This analysis covers the number, specificity and focus of these recommendations.

## 2.1 Juvenile justice: an issue relevant to almost every state

Over two UPR cycles, 57,686 recommendations were made to states, including 10,112<sup>80</sup> recommendations on children’s rights in general. Out of these, 819 recommendations, or 1.4 per cent of the total number of UPR recommendations, were made on the topic of juvenile justice.

### 2.1.1 A global overview

The number of recommendations made on juvenile justice during Cycle 1 (382) is comparable to that of Cycle 2 (437).

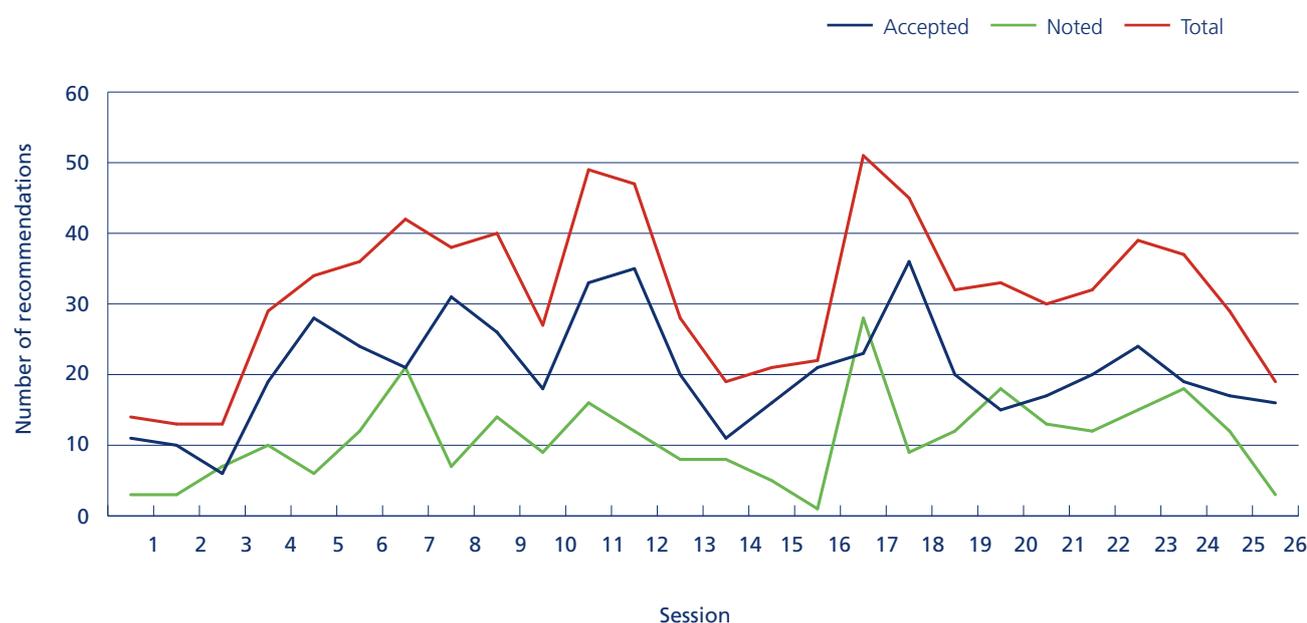


Figure 1: Evolution of the number of recommendations addressing juvenile justice at the UPR (sessions one to 26)

80 Source: UPR Info database, [www.upr-info.org/database](http://www.upr-info.org/database) accessed 27 August 2017. Data from sessions one to 26.

Overall, 174 states received at least one recommendation on juvenile justice during the first two cycles. This means that only 20 states have not received any recommendation on this issue.

While the average is 4.7 recommendations per country (see Table 1), a few countries received a very high number of recommendations. The number of recommendations by session varied from 13 recommendations at session two to 51 at session 17. The high number of recommendations at session 17 was due to the review of Israel and Saudi Arabia.

### 2.1.2 A regional perspective

From a regional perspective, the first observation is that the GRULAC, WEOG and Asia Pacific have received the highest average number of recommendations per country. It was followed by Africa and, lastly, the EEG. The focus of the recommendations depends on the stage of development of juvenile justice in the country. The majority of the recommendations focused on improving the system in place so as to better foster children’s rights in the administration of justice.

Regional group	Number of states in regional group	Number of states receiving recommendations on juvenile justice	Proportion of states in the region receiving recommendations on juvenile justice (%)	Number of recommendations received	Average number of recommendations by state under review
Africa	54	49	91	187	3.82
Asia Pacific <sup>i</sup>	54	49	91	262	5.35
EEG	23	20	87	57	2.85
GRULAC	33	30	91	168	5.60
WEOG <sup>ii</sup>	30	26	87	145	5.58
<b>All states</b>	<b>194</b>	<b>174</b>	<b>90</b>	<b>819</b>	<b>4.71</b>

Table 1: Number of recommendations on juvenile justice at the UPR by region

i Included in Asia Pacific is Kiribati, which is not officially part of the Asian group.

ii Included in the WEOG are the UN observer states: the Holy See and State of Palestine.

A second observation is that the vast majority of recommendations were made by the EEG and WEOG states, followed by the GRULAC.

Regional group	Number of states in regional group	Number of states making recommendations on juvenile justice	Proportion of states in region making recommendations on juvenile justice (%)	Number of recommendations made by the region	Average number of recommendations made by recommending states
Africa	54	24	44	81	3.38
Asia Pacific	54	27	50	87	3.22
EEG	23	17	74	194	11.41
GRULAC	33	19	58	152	8
WEOG	30	27	90	305	11.3
<b>All states</b>	<b>194</b>	<b>114</b>	<b>59</b>	<b>819</b>	<b>7.18</b>

Table 2: Number of recommendations made on juvenile justice by regional groups

### 2.1.3 Top recommending states and states under review

Czechia has been the top recommending state on juvenile justice,<sup>81</sup> with 48 recommendations made over the two cycles. It has to be noted, however, that Czechia reduced by one-third the number of recommendations from Cycle 1 (36 recommendations) to Cycle 2 (12 recommendations).

Uruguay, on the other hand, increased the number of recommendations made on juvenile justice from Cycle 1 (seven recommendations) to Cycle 2 (25 recommendations). This is significant because Uruguay is both a country receiving and making most of the recommendations on juvenile justice (See Tables 3 and 4).

Some states have more or less maintained the number of recommendations made over time, including France (15 recommendations at Cycle 1; 18 at Cycle 2), Austria (18 recommendations at Cycle 1; 14 at Cycle 2) and Slovenia (21 recommendations at Cycle 1; 14 at Cycle 2).

Looking at states under review, those that have accepted the most recommendations are Uruguay (14), Sudan (11), Thailand (11), Vanuatu (11) and the Solomon Islands (11).

81 CRIN, *The Universal Periodic Review: Status of Children's Rights* (CRIN 2010), 28.

Recommending states	Number of recommendations made (on juvenile justice over two cycles)
Czechia	48
Mexico	39
Slovenia	35
France	33
Austria	32
Uruguay	32
Slovakia	29
Germany	25
Belgium	21
Spain	21
Hungary	21

Table 3: Top ten recommending states

State under review	Number of recommendations received (on juvenile justice over two cycles)
Iran	35
Yemen	19
Israel	17
Grenada	15
Sudan	15
Australia	15
Denmark	15
Saudi Arabia	14
Uruguay	14
Antigua and Barbuda	14

Table 4: Top ten states under review

It is noteworthy that three of the top ten recommending states are also in the top five states that make the most specific recommendations. UPR Info classifies the recommendations in five categories based on the type of action required:

1. minimum action;
2. continuing action;
3. considering action;
4. general action; and
5. specific action.

Almost two-thirds of the recommendations of Czechia, Uruguay and Austria are considered category 5 by UPR Info. This shows that some states pay strong attention to and place emphasis on the issue of juvenile justice.

#### 2.1.4 An acceptance rate increasing over years

The average acceptance rate for children’s rights recommendations is 73 per cent.<sup>82</sup> By contrast, the overall acceptance rate of UPR recommendations related to juvenile justice is 66 per cent. This number has been growing over years. In 2010, ‘just over half of the recommendations on juvenile justice [were] accepted’.<sup>83</sup>

<sup>82</sup> UPR Info statistics, [www.upr-info.org/database/statistics](http://www.upr-info.org/database/statistics) accessed 27 August 2017.

<sup>83</sup> See n 81 above, 24.

Looking more closely at the acceptance rate by issue, it appears that most of the recommendations have a very high acceptance rate (see Table 7). The lower mean of the total of the recommendations is therefore due to the very low acceptance of the great number of recommendations on the abolition of the death penalty for offences committed by persons under 18 years of age.

At the end of the second cycle, 168 of 174 states under review had accepted at least one of the recommendations received on juvenile justice, while 123 had accepted more than one.

Table 5 shows the acceptance rate of recommendations depending on their level of specificity. It uses UPR Info’s classification of recommendations, described above, from general (category 1) to specific (category 5). It appears that only 47 per cent of the most actionable recommendations (category 5) are accepted. Conversely, 83 per cent of recommendations that are more general (category 4) are accepted.

Recommendation category	Number of recommendations	Number accepted	Proportion accepted (%)	Number noted	Proportion noted (%)
1	4	3	75	1	25
2	56	50	89	6	11
3	79	56	71	23	29
4	304	251	83	53	17
5	376	177	47	199	53
<b>All categories</b>	<b>819</b>	<b>537</b>	<b>66</b>	<b>282</b>	<b>34</b>

Table 5: Percentage of recommendations on juvenile justice accepted and noted at the UPR depending on their specificity

## 2.2 Key issues at a glance

The UN CRC, Beijing Rules, Havana Rules and Riyadh Guidelines set a range of rights to be respected with regard to children in the justice system. Those are at the core of the administration of juvenile justice.

This report classifies UPR recommendations related to juvenile justice in different categories of CTAs, identified using the rights enshrined in the four instruments (see Introduction).

A total of 104 types of CTA were identified based on this international framework on juvenile justice. Out of 819 recommendations, 1,073 CTAs were made by recommending states.

Annex 1 provides the list of CTAs in reference to each juvenile justice topic and issue identified.

## 2.2.1 A general overview

The quantitative analysis of the UPR recommendations related to juvenile justice shows a striking difference in the coverage of juvenile justice issues at the UPR.

Figure 2 shows three ‘blocks of topics’ that are, respectively: (1) significantly addressed; (2) poorly addressed; and (3) neglected at the UPR. The block of issues significantly addressed relates to the issue of detention and inhuman sentencing and the establishment of a specialised juvenile justice system including a minimum age for criminal responsibility. The block of issues poorly addressed encompasses the objective of rehabilitation of the child, fair trial guarantees and training of legal professionals on children’s rights. Finally, the block of neglected issues encompasses the core issues of juvenile delinquency prevention and diversion.

When comparing Cycle 1 and Cycle 2 in Figure 2, it appears that a number of topics have been addressed more during the second cycle. This is the case for the diversion from judicial proceedings, which has only been addressed during Cycle 2. In addition, the abolition of the death penalty was addressed almost twice as much during Cycle 2 as opposed to Cycle 1. Finally, the objectives of reintegration and the child’s fair trial guarantees have received greater attention, though remain poorly addressed. Only one issue has lost some attention, which is the training of the legal profession.

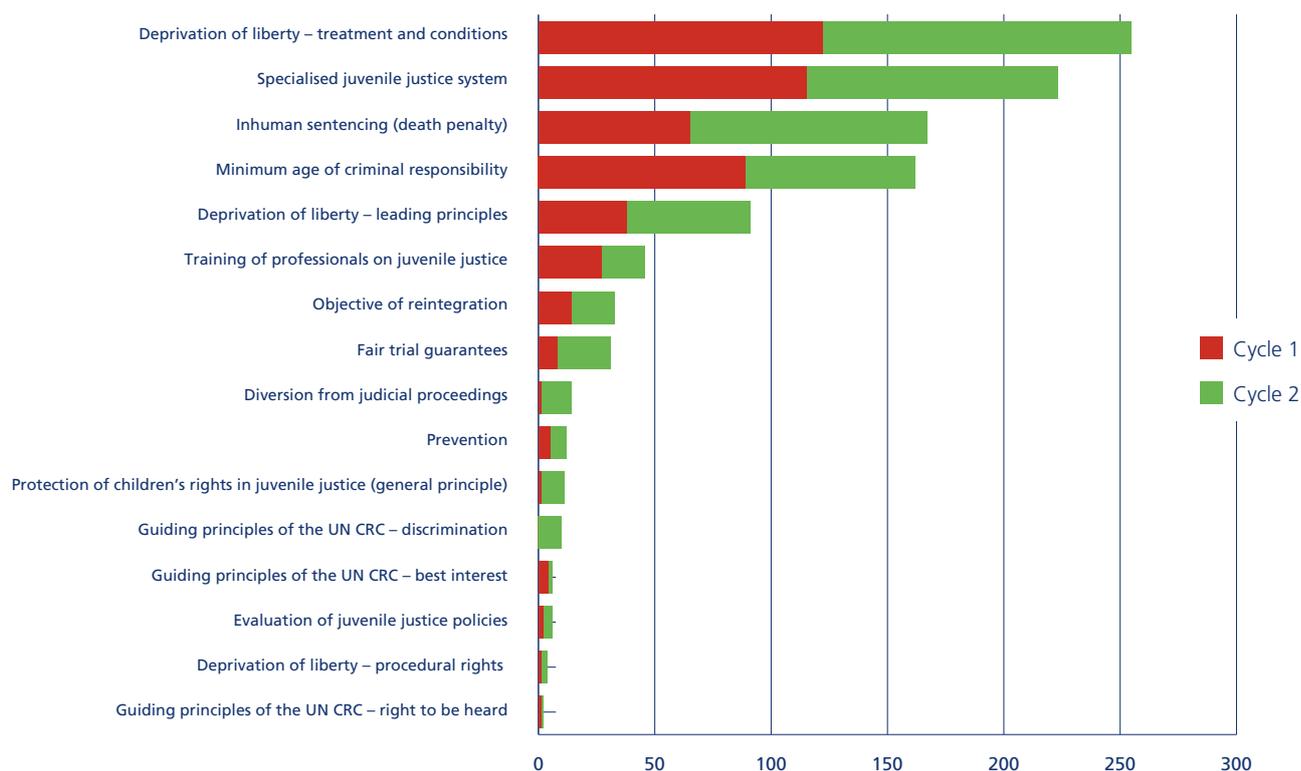


Figure 2: Number of CTAs by topic and cycle

While all issues have a high acceptance rate of about 80 per cent, three issues, namely inhuman sentencing, minimum age of criminal responsibility and fair trial guarantees, score low with about 50 per cent or less (see Table 7).

Main topics	Number of CTAs	Acceptance rate (%)
Deprivation of liberty	350	72
Specialised juvenile justice system	223	83
Sentencing including inhuman sentencing	167	26
Minimum age of criminal responsibility	162	52
Training of professionals on juvenile justice	46	87
Objective of reintegration of the juvenile justice system	34	88
Fair trial guarantees	31	48
General principles of the UN CRC: non-discrimination, best interest, right to life, survival and development, and right to be heard	18	78
Diversion from judicial proceedings	14	93
Prevention	12	92
Protection of children's rights in juvenile justice	11	91
Evaluation of juvenile justice policies	6	67
<b>All topics</b>	<b>1,073</b>	<b>66</b>

Table 7: Number of CTAs/juvenile justice topics based on the UN CRC and UN rules and guidelines

### 2.2.2 Key issues by region

According to civil society organisations (CSOs) working specifically on juvenile justice, the UPR rightly reflects the main trends and challenges faced by the regions in the administration of juvenile justice.

The classification of CTAs places deprivation of liberty as the first issue addressed in the recommendations made to the states in the WEOG, GRULAC, EEG and Africa.

The establishment or improvement of a juvenile justice system is the second issue made to the states in the EEG, Africa, GRULAC and WEOG.

The first issue received by the states in the Asia Pacific group in general is inhuman sentencing, which reflects the non-prohibition of the death penalty imposed on minors in several states of this region. The second topic most addressed was the minimum age of criminal responsibility. By contrast, this issue is directed a lot less to the states in the WEOG and GRULAC. The states in the EEG received no recommendations addressing inhuman sentencing and only two regarding the minimum age of criminal responsibility.

Issues	Regions				
	Africa (%)	Asia Pacific (%)	EEG (%)	GRULAC (%)	WEOG (%)
Deprivation of liberty	41	15	47	53	66
Establishment of a juvenile justice system	26	19	35	21	10
Minimum age of criminal responsibility	12	21	0.25	16	7
Inhuman sentencing	12	33	0	6	5
Others	9	12	17.75	4	88

Table 8: Priority issues on juvenile justice by regional group (percentage of recommendations received by priority issue compared with the total amount of recommendations received on juvenile justice)

## 2.3 Making human rights-based and SMART recommendations on juvenile justice: work in progress

As emphasised and advocated by civil society since the establishment of the UPR in 2008, UPR recommendations should be specific, measurable, achievable, realistic and time-bound (SMART) in order to be actionable and monitored.<sup>84</sup>

In addition, the IBAHRI is of the view that UPR recommendations should follow a human rights-based approach, and thus satisfies three conditions:

- First, they should build on international human rights norms and standards and recommendations of the UN human rights mechanisms.
- Second, they should address the root causes of the problem, the ‘what’ and the ‘how’, as well as the relevant duty-bearers and rights-holders.
- Third, in accordance with the experience-sharing of the objectives of the UPR, the recommendations should build on good practices.

Table 9 provides a human rights-based assessment of the UPR recommendations on juvenile justice.

<sup>84</sup> UPR Info, *A Guide for Recommending States at the UPR* (UPR Info 2015), 27.

Criteria	Description	Assessment of the UPR recommendations on juvenile justice and examples	Result
<b>Developing SMART recommendations</b>	<p>UPR Info classifies the recommendations in five categories based on the type of action required:</p> <ol style="list-style-type: none"> <li>1. minimum action;</li> <li>2. continuing action;</li> <li>3. considering action;</li> <li>4. general action;</li> <li>5. specific action.</li> </ol>	<p>According to UPR Info's classification, out of 819 recommendations related to juvenile justice, 376 recommendations qualify as a specific action (category 5), while 304 correspond to general action (category 4).</p> <p>This means that about 83 per cent of the recommendations made on juvenile justice at the UPR qualify as actionable and measurable.</p>	High
<b>Referring to international instruments and recommendations of UN human rights mechanisms</b>	<p>Referring to international norms, standards and recommendations not only gives legitimacy and legal strength to a UPR recommendation, but also provides the context and benchmark for its implementation. For example, 'Implement a system of administration of juvenile justice that fully integrates in its legislation, policies and practices, the provisions and principles of the Convention on the Rights of the Child (CRC) (in particular articles 37, 39 and 49) as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System' (Uruguay to Belize - Cycle 2).</p>	<p>One out of eight UPR recommendations on juvenile justice refers to an international instrument.</p> <p>States have referred to:</p> <ul style="list-style-type: none"> <li>• the UN CRC (103 recommendations);</li> <li>• the Beijing Rules (eight recommendations);</li> <li>• the Havana Rules (two recommendations);</li> <li>• the Riyadh Guidelines (six recommendations); and</li> <li>• recommendations made by treaty bodies, such as the Committee, both in its concluding observations and general comments (27 recommendations).</li> </ul> <p>States have also encouraged the withdrawal of reservations to the UN CRC, especially to Articles 37 and 40.</p>	Poor
<b>Addressing the root causes of the problem</b> <b>Addressing the 'what' and the 'how'</b>	<p>Developing SMART recommendations should entail addressing the root causes of the problem, the objective to reach and the specific measure through which to reach it. For example, 'Take concrete steps to combat juvenile delinquency which includes the provisions of opportunities for training, education and employment' (Costa Rica to Cape Verde - Cycle 2).</p>	<p>See Annex 1 for a complete assessment of the UPR recommendations as general or specific recommendations.</p>	Fair
<b>Addressing key stakeholders and duty-bearers</b>	<p>For example, 'Continue ensuring systematic training for all personnel working in the juvenile justice system, including police, lawyers and judges' (Malaysia to Costa Rica - Cycle 1).</p>	<p>References to stakeholders at the UPR were in a large majority made when addressing the need for specific training of these professionals on juvenile justice standards (45 recommendations).</p>	Poor
<b>Referring to good practices</b>	<p>As per UNHRC Resolution 5/1 (2007), paragraph 4(d), the aim of the UPR is to achieve a dialogue among states based on an exchange of good practices. For example, 'Strengthen implementation of its obligations under the Convention on the Rights of the Child by adopting legislation based on the Organization of Eastern Caribbean States model Children (Care and Adoption) Bill, model Status of Children Bill, and model Child Justice Bill' (Canada to St Lucia - Cycle 2).</p>	<p>Only a few good practices could be identified in relation to juvenile justice at the UPR.</p>	Poor

Table 9: Human rights-based assessment of the UPR recommendations

## 2.4 Conclusions and ways forward

As presented in the introduction, the UN CRC requires states to establish a specialised juvenile justice system departing from the punitive system, restricting the use of detention as a measure of last resort, and precluding the death penalty and other inhuman sentencing. The system shall empower children as subject of rights, and promote diversion measures and the reintegration of children in society.

It appears from the aforementioned that the UPR has been instrumental in addressing a number of the challenges faced by the majority of states in the implementation of these obligations.

The current state support/resistance to the international legal framework of juvenile justice can be assessed by looking together at: (1) the issues addressed by recommending states in their recommendations; and (2) the level of acceptance of those recommendations by states under review. This provides insights as to the geopolitics around the international legal framework on juvenile justice.

First, establishing a justice system specifically applicable to children, including the adoption of an acceptable minimum age of criminal responsibility in law, and protecting children through adapted detention conditions and the abolition of the death penalty have been key priorities for recommending states. It clearly reflects that states are still at the stage of fixing crucial aspects relating to the very existence of a juvenile justice system itself. These priorities also align with the issues mostly raised by civil society. An analysis of civil society's submissions, although limited to 12 countries, indeed showed that the issues most raised by civil society on juvenile justice are issues around the minimum age of criminal responsibility, death penalty and deprivation of liberty.

States under review have mostly accepted the recommendations related to the establishment of a juvenile justice system and detention conditions. Conversely, they have been far more reluctant to address the more specific recommendations related to the minimum age of criminal responsibility. Furthermore, the abolition of the death penalty has encountered a major opposition, with more than 75 per cent of the recommendations noted. While the number of recommendations on the death penalty was higher at Cycle 2, the acceptance rate was even lower.

The key objectives of prevention and diversion have only been addressed in a general and sporadic manner by recommending states. The issue of diversion has been addressed through alternative measures to detention during Cycle 1, and through a call for restorative justice that has appeared as a new topic during Cycle 2. Both prevention and diversion measures have been well accepted by states under review. Conversely, the issue of fair trial guarantees have both been poorly addressed by recommending states and accepted sporadically by states under review.

The reasons usually advanced to justify the focus on some key priorities and not others at the UPR are addressed and challenged below.

First, the limited amount of speaking time allocated to recommending states during the UPR process inevitably pushes them to define key priorities to raise during the country review. It is, however, important that recommending states do not undermine by so doing the main rationale behind the UN CRC and keep the objectives of the international legal framework interlinked. The need for restorative justice and diversion measures should be addressed together, and in an equal manner, with

the objectives of establishing juvenile justice systems that preclude execution and other inhumane sentencing, and restrict detention as a measure of last resort for children. Likewise, greater attention should be paid to fair trial guarantees as the only way to ensure that children have their rights respected when in contact with the juvenile justice system.

Furthermore, the low acceptance rate of topics related to the minimum age of criminal responsibility, abolition of the death penalty and children's fair trial guarantees should not be a reason for recommending states to stop addressing those issues. First, raising these issues at the UPR allows dialogue to take place on the topic. The setting-up of a minimum age of criminal responsibility remains a highly debated issue and the UPR provides a unique forum further to understand where countries stand. Second, the raising of these issues has the advantage of challenging target states every time they are reviewed at the UPR (and hopefully each time they are reviewed by other UN human rights bodies) and of obliging them to answer and justify the departure of their legislation from the internationally accepted human rights standards. The call for the prohibition of the death penalty at the UPR has opened a breach and the block of retentionist countries is no longer monolithic, as Chapter 3 will clearly demonstrate. Recommending states should continue addressing those sensitive topics, and civil society has a crucial role to play in advocating governments for them to accept the recommendations received.

Finally, states tend to be reluctant to make recommendations to other states when they have not themselves fully implemented their obligations on that same issue. This leads to a 'vicious circle' where rights that are the least guaranteed at the national level would also be the least promoted at the international level. On the other hand, states that have implemented measures at the national level are usually inclined to make recommendations at the international level on those measures. For instance, in March 2015, Santos Pais, the SRSG, indicated that Indonesia had implemented restorative justice. This fact explains why, during the second cycle of the UPR (2012–2016), Indonesia became the first and leading proponent state calling for the implementation of restorative justice. One exception to the vicious circle described above is Uruguay, which is in the top ten states under review being addressed on juvenile justice and is also in the top ten recommending states on the issue.

Overall, states' priorities should be to continue making recommendations as specific, concrete and measurable as possible in order to keep all key issues on the political agenda and ensure effective impact on the ground. In that respect, as per Resolution 5/1 (2007), one of the objectives of the UPR is 'the sharing of best practice among States and other stakeholders' (para 4(d)). While time constraints make this objective difficult to realise, referring to good practices and/or recommendations made by the special procedures of the UNHRC is key. As such, the UPR clearly appears as complementary to other human rights mechanisms.

# Chapter 3: Challenging the most alarming current violations worldwide: the UPR's contribution to enhancing human rights in juvenile justice

This chapter assesses the extent to which the UPR has contributed to enhancing human rights in juvenile justice.

As described in Chapter 2, the UPR has been instrumental in addressing the most blatant violations of international law by reassessing international obligations to establish a specialised justice system applicable to children and a minimum age of criminal responsibility. It has further contributed to fixing some of the most alarming issues relating to repressive measures, that is, inhuman sentencing and the deprivation of liberty of children.

This chapter first looks at the impact of the UPR on the international legal framework applicable to juvenile justice, namely the UN CRC, together with the Beijing Rules, Havana Rules and Riyadh Guidelines. This is done by assessing whether the UPR has either consolidated or gone beyond the international legal framework.

This chapter then provides country examples to shed light on successes and challenges in the implementation of UPR recommendations, including examples of engagement of civil society in the UPR process that led to policy change. The UPR has the potential to assist states in their implementation by providing concrete actions, which are both measurable and adapted to the specific situation of the countries reviewed.

## 3.1 Clear call for the establishment of a specialised juvenile justice system and a minimum age of criminal responsibility

### 3.1.1 UPR recommendations consolidating the international legal framework

More than one-third of the CTAs related to juvenile justice address either the establishment and improvement of a specialised justice system applicable to all children under the age of 18 (223 CTAs) or the state obligation to establish a minimum age of criminal responsibility (162 CTAs).

#### ESTABLISHMENT OF A JUVENILE JUSTICE SYSTEM

As mentioned in Chapter 1, the UN CRC calls upon states to establish a juvenile justice system, that is, laws, procedures and institutions specifically applicable to children, based on the principle of reintegration and discretion of the judge according to the age of the child and circumstances as presiding principles, and offering all fair trial guarantees. It is also clear from the UN CRC that this specialised system should apply to all children, that is, all persons under the age of 18, as per the definition of the child of the UN CRC (Article 1). The Committee further develops that a comprehensive juvenile justice system 'requires the establishment of specialized units within... the

judiciary, the court system, the prosecutor’s office’, inter alia, as well as ‘specialized defenders or other representatives who provide legal or other appropriate assistance to the child’.<sup>85</sup>

As it appears from Table 10, most of the UPR recommendations on this topic called on states to either establish or improve a juvenile justice system. To a lesser extent, states focused on the adoption of specialised laws and, to a significantly lesser extent, specialised institutions. Recommendations have also highlighted the fact that children should never be subjected to military courts (four recommendations).

Specialised juvenile justice system	Number of CTAs	Proportion of CTAs accepted (%)
Access to justice	10	100
General improvement of juvenile justice	18	94.4
Specialised juvenile justice institutions	27	85.2
Specialised juvenile justice laws	60	85.0
Specialised juvenile justice system	108	78.7
Establishment of a specialised juvenile justice system	45	88.9
Juvenile justice system applicable to all children under the age of 18 (penal majority)	24	41.7
Improvement of the existing juvenile justice system	39	89.7
<b>All CTAs on specialised juvenile justice system</b>	<b>223</b>	<b>83.4</b>

Table 10: CTAs addressing the establishment and improvement of specialised juvenile justice systems

Two observations should be made as to the content of these recommendations. First, a number of recommendations remained general, which makes their implementation difficult to monitor.

Second, none of these recommendations addressed the traditional or community actors. As mentioned, a number of countries have a hybrid system and addressing only part of the reality experienced by children on the ground may undermine any substantial impact.

#### MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Article 40.3(a) of UN CRC prescribes that states must establish a minimum age of criminal responsibility, that is, the age under which the child is presumed to lack the capacity to infringe criminal law, however serious their acts or omissions. Children below that age cannot be formally charged, prosecuted and held responsible following a criminal law procedure. Children at or above that minimum age can be subject to criminal law procedures in compliance with the rules on juvenile justice established in international and regional standards and guidelines. The Beijing Rules first indicated that this should ‘not be set at a too low age’.<sup>86</sup> In its General Comment No 10, the Committee then stated that a minimum age of criminal responsibility below the age of 12 was not internationally acceptable.<sup>87</sup> It encouraged States Parties to increase their minimum age of

85 See n 9 above, para 92.

86 Beijing Rule n 4, see n 30 above.

87 See n 9 above, para 32.

criminal responsibility to the age of 12 as the absolute minimum age and to continue to increase it to a higher age level. This absolute minimum was established after the Committee considered the practice among states:

‘Regarding current State party practices, 179 States parties have either explicit minimum age of criminal responsibility or age limits that serve in practice as a minimum age of criminal responsibility. These minimum ages range from the age of 6 years to the age of 18 years, while the overall average is 11.5 years, and the median is 12 years (i.e. an equal number of States parties have minimum ages above and below the age of 12). The Committee notes that these figures are significantly influenced by the large number of States parties (34) with a minimum age of criminal responsibility of 7 years, virtually all of which derive their provisions from historic English common law.’<sup>88</sup>

Some countries have age limits that vary according to the nature or severity of the offences. In others, the minimum age of criminal responsibility depends upon the relative maturity of the child within certain defined ages. This is referred to as the principle of *doli incapax*. When this applies, the police or prosecutors can rebut the presumption that a child is ‘incapable of committing a crime’ by providing evidence that the child did in fact understand the consequences of his or her actions.<sup>89</sup> Such assessment is left to the judge, often without the involvement of a psychological expert.<sup>90</sup> The Committee has found that this practice has led to the use of lower ages of criminal responsibility for more serious offences and leaves children vulnerable to discriminatory practices. It recommends that exceptions to the minimum age of criminal responsibility allowing the use of a lower age should not be permitted in any case, including when a serious offence has been committed or when the child is considered sufficiently mature.<sup>91</sup> This also precludes retaining the age of puberty for the minimum age of criminal responsibility, as per the Sharia law, which considers 15 years old as the age of criminal responsibility for boys and nine for girls.

Fifty-seven states received a recommendation on this issue at the UPR. A total of 162 recommendations called for states to raise (132), establish (seven)<sup>92</sup> or amend (seven) their minimum age. This in itself demonstrates the magnitude of the issue.

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88 The Committee, Preparatory Work for a General Comment on the Minimum Age of Criminal Responsibility (date not found).

89 Penal Reform International, Justice for Children Briefing n 4, *The Minimum Age of Criminal Responsibility* (PRI 2013). Don Cipriani, *Children’s Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Ashcroft 2009) mentions a 2009 survey finding 55 countries that retain a *doli incapax* procedure.

90 See n 3 above, 21.

91 See n 9 above, para 34.

92 Cambodia, Mauritius, Micronesia, Seychelles and Timor Leste.

CTAs on minimum age for criminal responsibility (MACR)	Number of CTAs	Proportion of CTAs accepted (%)
Raise the MACR	110	51.8
Raise to 18	10	10
Raise the MACR to 14	5	40
Raise the MACR to 16	3	0
Raise the MACR to 12	9	77.8
Establish a MACR	7	71.4
Review the MACR	7	85.7
Repeal the current MACR (seven/eight years old)	7	57.1
Others	4	75
<b>All CTAs on MACR</b>	<b>162</b>	<b>52.5</b>

Table 11: CTAs addressing the minimum age of criminal responsibility (MACR)

More than two-thirds of the recommendations specify that the minimum age should be raised ‘according to international standards’ or alike. This is comparable to the practice of the Committee, which in the most recent years, has recommended states to raise the minimum age of criminal responsibility ‘to an internationally acceptable level’, ‘in accordance with the General Comment No 10’ or ‘in accordance with international acceptable standards’. About 16 per cent of the recommendations called upon the state under review to adopt a specific age (12, 14, 16 or 18) as the minimum age.

While it may not have been the case so far, a strategic incremental approach could be adopted in the future to keep raising the minimum age. In absence of an internationally set minimum age of criminal responsibility, states should adapt their recommendations to the specific context of the country and adopt a strategy of a gradual increase of minimum age. Countries with a particularly low minimum age would receive recommendations to raise it to the absolute minimum of 12. Then, countries that may already have in their legislation this absolute minimum age would receive recommendations to go further (eg, raise it to 14 or 16). As recognised by civil society working on juvenile justice, it would be difficult, and probably unrealistic, to recommend to a state whose legislation sets the minimum age at seven or eight to raise it at 14 years old. However, a recommendation to raise to the absolute minimum of 12 years old could have more chance to be accepted and implemented. It is then up to recommending states (and civil society) to not only ensure that the recommendation is implemented, but also to follow up at the subsequent UPR cycle with a second step in calling for an increase of this minimum age (this time from, eg, 12 to 14).

### 3.1.2 Success and challenges: some country examples

While recommendations related to the juvenile justice system were mostly accepted, with an 83 per cent acceptance rate, recommendations on a minimum age of criminal responsibility have only received a 52 per cent acceptance rate.<sup>93</sup>

Both recommendations can be monitored, but their impact is more difficult to assess. The former are most often drafted in a general manner. As per the issue of the minimum age, its impact can only be considered in light of the full juvenile justice system in place.

Looking at the 33 countries that accepted at least one recommendation on the minimum age, it can be concluded that the UPR led to progress or dialogue on one of the most sensitive and long-standing issues in juvenile justice.

Among countries that received recommendations to specifically raise their minimum age of criminal responsibility to 12 years old,<sup>94</sup> Thailand and Bangladesh have reported addressing the issue.<sup>95</sup> Other countries, like Albania, also reported having opened the debate.

Among countries that were called to repeal their provision due to a particularly low minimum age,<sup>96</sup> Botswana announced that its legislation has been reformed to ensure that a child under the age of 14 years old is presumed to be incapable of committing a criminal act.<sup>97</sup>

The UPR further contributed to put pressure on the United Kingdom, where the issue of the very low minimum age of criminality responsibility receives regular criticisms both internationally and domestically. While the government noted the two recommendations received in 2012 by Belarus and Chile calling for the minimum age to be raised, the fact that the issue was raised at the UPR led to some progress, at least in Scotland. The Criminal Procedure (Scotland) Act 1995 used to provide that: ‘It shall be conclusively presumed that no child under the age of eight years can be guilty of an offence’. This Act was amended in 2010 to raise the age of criminal prosecution to 12 years old; this means that children under 12 years old are not prosecuted or sentenced in the criminal courts and are instead dealt with through the Children’s Hearing System. Criminal offences committed between the ages of eight and 12 may be included on a child’s criminal record, even though a prosecution may not take place. The Scottish government announced in December 2016 that it would raise the minimum age of criminal responsibility to 12 in 2018. Second, while the minimum age of criminal responsibility remains at ten years old in the rest of the UK, civil society indicates that this allowed for the start of a now ongoing and regular dialogue and discussions with the government.<sup>98</sup>

For civil society, it was in this case instrumental to use in combination the international pressure from two UN human rights mechanisms: the UPR review and review of the state by the Committee. One crucial element from the UPR, compared with the concluding observations of the Committee, was

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93 States that received a recommendation at their first review only and noted it: Ethiopia, Jamaica, New Zealand, Oman, St Vincent & the Grenadines and Sudan. States that received a recommendation only at their second UPR and noted it: Australia, Hungary, Indonesia, Kuwait, Nepal, Philippines, Tonga, UK and Zambia. States that noted the recommendations they received at both their reviews: Belize, Brunei Darussalam, Guyana, Ireland, Lebanon, Panama, Seychelles, Singapore and St Kitts & Nevis.

94 Bangladesh, Lebanon, Malawi, Qatar, Sudan, Thailand, Tonga and Zimbabwe.

95 Thailand, A/HRC/WG.6/25/THA/1 (2016), para 73. Bangladesh, A/HRC/WG.6/16/BGD/3 (2013), para 37.

96 Botswana, Brunei Darussalam, Kuwait, Mauritania, St Kitts & Nevis, Thailand and Zimbabwe.

97 Botswana, Mid-term Progress Report (2016), para 12.7.

98 See, eg, Age of Criminal Responsibility Bill [HL] (HL Bill 3 of 2017–19).

the international pressure on this issue coming from neighbouring countries whose minimum age is in majority higher than in the UK.

The UPR may have contributed, in at least two cases, to the implementation of the recommendation of the Committee ‘not to lower minimum criminal ages already set’.

In Denmark, on 14 July 2010, the then-government, a centre-right coalition, reduced the minimum criminal age from 15 to 14 years old. During its UPR in 2011, Denmark had received a recommendation from Kyrgyzstan to bring this amendment ‘into line with the recommendations of the Committee on the Rights of the Child’. In 2012, the new government, a centre-left coalition raised the minimum age of criminal responsibility back to 15 years old.

In the Philippines, several bills were introduced between 2006 and 2013 with a view to lowering the minimum age of criminal responsibility. Following strong attempts by the Congress to lower the minimum age of criminal responsibility from 15 to 12 years old, an NGO coalition supported by Save the Children actively engaged in the UPR process, both at the national level and in Geneva, to put pressure on the government against this measure. Civil society acted through four means of action, including reaching out at country level to embassies to raise the issue with potential recommending states; bilateral meetings and oral statements at the UNHRC; and raising the priority within a nationwide electoral advocacy campaign. These initiatives contributed to the Philippines receiving a recommendation during its second UPR in 2012 from Germany, specifically following submissions by civil society, calling on the country to ‘[e]nsure that the age of criminal responsibility is not lowered’. In 2013, the Republic Act No 10630 was passed maintaining the minimum age of criminal responsibility at 15 years old. The debate, however, is not closed. In 2017, the ‘war on drugs’ pushed President Duterte and his political allies to back a bill that would lower the age of criminal responsibility from 15 to nine years old.

It is often difficult to attribute progress in the country to the UPR. The UPR, however, may have contributed to a last ‘push’. This is the case in Australia, for example. Following a recommendation received during the UPR in October 2015 calling on the country to ‘[b]ring the Australian juvenile justice system in conformity with international standards, including removing minors from the adult justice system and ensuring their rehabilitation’, the government of Queensland passed the Youth Justice and Other Legislation Amendment Act 2016.

Similarly, in 2009, Austria recommended to Russia to ‘establish a juvenile justice system that not only strives to punish, but rather to help juveniles to re-integrate into society, taking into account existing international standards in this regard’. A few years after, Russia adopted a ‘National Strategy for Activities to the Benefit of Children for 2012–2017’ aimed at facilitating the creation of child-friendly services and systems; eradicating all forms of violence against children; and ensuring children’s rights in situations where they are particularly vulnerable. In that framework, a mediation network was created in 2014 for the purposes of rehabilitating children who are involved with delinquency but who have not reached the age of criminal responsibility.

## 3.2 Deprivation of liberty in focus

### 3.2.1 UPR recommendations strengthening the international legal framework

Article 37 of the UN CRC sets up the principle of deprivation of liberty as a last resort and for the shortest time possible and the principle of separation of children from adults in detention. The topic of deprivation of liberty attracted by far the highest number of UPR recommendations/CTAs related to juvenile justice, with 350 CTAs out of a total of 1,073. A total of 118 countries from all regional groups received at least one recommendation related to detention. This reflects that deprivation of liberty of children is an issue that still requires drastic improvement from states from all regions.

Deprivation of liberty	Number of CTAs	Proportion of CTAs accepted (%)
Deprivation of liberty – leading principles	91	73.6
Alternative measures to detention	29	89.7
Deprivation of liberty as last resort	31	83.9
No deprivation liberty for minors	13	23.1
Prohibition arbitrary detention	5	40
Respect of children’s rights in detention	13	76.9
<b>Deprivation of liberty – treatment and conditions</b>	<b>255</b>	<b>71.8</b>
Separation from adults in detention	112	76.8
Prohibition of cruel/corporal punishment/abuse in detention	57	47.4
General protection of children in detention	48	89.6
Monitoring detention	17	58.8
Rehabilitation in detention	13	84.6
Care	8	75
Deprivation of liberty – procedural rights	4	50
Deprivation of liberty – right to legal assistance	3	33.3
Right to privacy	1	100
<b>All CTAs on deprivation of liberty</b>	<b>350</b>	<b>72</b>

Table 12: CTAs addressing deprivation of liberty of children

Three issues found particular resonance at the UPR (listed in order of priority): (1) the separation of children from adults in detention; (2) the protection of children and prohibition of cruel or corporal punishment in detention; and (3) the use of detention as a last resort together with the use of alternative measures to detention.

The UN CRC establishes minimum standards and procedural rights concerning treatment of and living conditions for children while in detention. These require, in the first place, that children deprived of liberty shall be separated from adults.

There is broad evidence that children are often placed in adult prisons, where their basic safety, ability to remain out of criminal cycles and possibilities to reintegrate into society are at high risk of being compromised.

In response to this blatantly illegal reality, a high number of UPR recommendations addressed the most basic protection of children in detention, that is, their separation from adults in detention (112 CTAs) and their protection against abuse, violence and corporal punishment (57 CTAs).

It is noteworthy that some UPR recommendations are formulated more specifically than the language of the UN CRC. For instance, on the obligation to separate children from adults in detention, 23 CTAs specifically make recommendations, such as ‘building specific facilities for children in detention’. Some recommendations have even gone further by mentioning the specific facilities needing to be improved in order to separate children from adults in detention.

#### DEPRIVATION OF LIBERTY: FROM DETENTION AS A MEASURE OF LAST RESORT TO THE PROHIBITION OF DETENTION

The UN CRC and Beijing Rules clearly prescribe that deprivation of liberty should be a measure of last resort and for the shortest time possible, and that alternatives to detention must be available and favoured by judges.<sup>99</sup> Even after trial, as a sentencing measure, deprivation of liberty or institutional care should be limited to the most serious cases of children found guilty of an offence. As noted by the Special Rapporteur on Torture, ‘a number of studies had shown that, regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development’.<sup>100</sup> This is insofar as ‘children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment’.<sup>101</sup>

In practice, the Committee has noted with concern the use of pre-trial detention, including with regard to children, as a prevalent practice in a number of states. The Special Rapporteur on the Independence of Judges and Lawyers expressed particular concern about the situation of children deprived of their liberty as a result of a criminal trial.<sup>102</sup>

The UPR has been instrumental in addressing those issues and reiterating international standards. Thirty-one recommendations in total called to ensure that deprivation of liberty should be a last resort, while 29 focus on the provision of alternatives to detention.

Thirteen recommendations have gone beyond international standards and called on states to prevent the detention of children and even to ‘adopt legislative measures to prohibit the detention of

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99 UN CRC, Art 37. Beijing Rules, see n 30 above.

100 See n 51 above, paras 16 and 33.

101 *Ibid*, para 16.

102 See n 1 above, para 62.

minors’,<sup>103</sup> thus going further than the principle of deprivation of liberty as a last resort enshrined in the UN CRC.

#### FOCUS ON ARREST AND PRE-TRIAL DETENTION

One specific concern of the Committee in its General Comment No 10 on juvenile justice is the specific issue of pre-trial detention, as children face the risk of being detained for undefined periods of time without judicial overview of the deprivation of liberty.<sup>104</sup>

This concern is reflected at the UPR, with 43 CTAs addressing at least one aspect of pre-trial detention. In addition to this, 25 CTAs address the need to provide police and law enforcement personnel involved in the arrest of juveniles with specific training on juvenile justice standards.

CTAs addressing pre-trial detention	Number of CTAs
No pre-trial detention for children	3
Pre-trial detention for children as a last resort and/or for the shortest time possible	15
Alternative measures to pre-trial detention for children	7
Conditions of detention in pre-trial custody	5
Separation of children from adults in pre-trial detention	5
Protect children in pre-trial detention against all forms of corporal punishment/torture	8
<b>Subtotal (recommendations specifically on pre-trial detention)</b>	<b>43</b>
Set up an independent monitoring mechanism to monitor the detention conditions of children including in pre-trial detention, with focus on protection against violence and abuse	7
Provide training programmes to police and law enforcement personnel on juvenile justice standards	25
<b>Total</b>	<b>75</b>

Table 13: CTAs addressing pre-trial detention of children

### 3.2.2 Success and challenges: some country examples

Recommendations on detention are generally fairly well accepted, with a 72 per cent acceptance rate. Major exceptions to this concern the right to legal assistance (33 per cent), the prohibition of arbitrary detention (40 per cent) and the prohibition of cruel punishment in detention (47 per cent).

In Ireland, the legal profession indicated that the international pressure and criticism from the international community through the UPR in 2016 was critical to give the ‘last push’ to the effective closure of the Saint Patrick Institution hosting both persons under and above 18 years old, first announced in 2013 and enacted in 2015. The effective closure took place in spring 2017, following a specific and concrete recommendation received by Ireland from Israel in 2016.

103 Costa Rica to Greece.

104 See n 9 above, para 80.

While there are a number of recommendations on the alternatives to detention (29 CTAs), the specificity of the recommendations is nuanced: there is no mention in any recommendation of the specific measures that can be taken as an alternative to detention, listed in Article 40 (4) of the UN CRC, such as probation or community service. These recommendations are analysed in Chapter 4.

The UPR here again may have fostered changes at the national level. Norway received over its two first UPRs, respectively in 2009 and 2014, 15 recommendations, addressing mostly the use of detention and detention conditions. A few months after the second UPR, in July 2014, two new measures – juvenile sentence and juvenile sanction – entered into force. The juvenile sentence is intended to be an alternative to an immediate custodial sentence and in certain cases to community punishment. The measure is imposed by the court and requires the consent and participation of the minor. The juvenile sanction is intended to be used in less serious criminal cases.

### **3.3 Keeping up the fight against the death penalty and other inhuman treatment imposed on children**

#### *3.3.1 UPR recommendations strengthening the international legal framework*

**A STRONG SIGNAL FOR THE ABOLITION OF THE DEATH PENALTY FOR OFFENCES COMMITTED BY PERSONS UNDER THE AGE OF 18**

Despite its absolute prohibition enshrined in Article 37(a) of the UN CRC and Article 6 of the ICCPR, capital punishment for offences committed by persons under the age of 18 remained lawful in 13 countries at the beginning of UPR Cycle 3.<sup>105</sup>

The prohibition of the death penalty for crimes committed by a person under 18 years old is the issue that triggered one of the highest numbers of CTAs since the start of the UPR, with 114 of a total 1,073 CTAs related to juvenile justice. The number of recommendations increased considerably between Cycle 1 and Cycle 2 (see Figure 2), and overall a total of 20 states were put in the spotlight.

In Cycle 1, eight states<sup>106</sup> received at least one recommendation about the death penalty against juveniles. All but one<sup>107</sup> accepted at least one recommendation.

In Cycle 2, 16 states received a recommendation related to the death penalty. Four had already received the recommendation at their first review,<sup>108</sup> and 12 received it for the first time.<sup>109</sup> Seven states accepted at least one of these recommendations.<sup>110</sup>

A series of observations can be made. First, Iran received almost half of the recommendations on abolishing the death penalty for minors (45 CTAs). It was followed by Yemen (16 CTAs), Saudi Arabia (13 CTAs), Sudan (13 CTAs), Maldives (six CTAs rejected), Nigeria (four CTAs), the United States (two CTAs) and Tonga (two CTAs). The other states received one recommendation.<sup>111</sup> The high number of recommendations received by Iran is justified by the fact that it is the state that most

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105 See n 48 above.

106 DPRK, Iran, Kenya, Niger, Qatar, Saudi Arabia, Sudan, the US and Yemen.

107 DPRK noted the recommendation received.

108 Iran, Saudi Arabia, Sudan and Yemen.

109 Bangladesh, Brunei, Burkina Faso, Central African Republic, Egypt, Malaysia, Maldives, Nigeria, Somalia, St Lucia, Tonga and the UAE.

110 Bangladesh, Brunei, Malaysia, Maldives, Somalia, St Lucia, Tonga and the UAE.

111 Bangladesh, Brunei, Burkina Faso, CAR, Egypt, Kenya, Malaysia, Niger, North Korea, Qatar, Somalia, Saint Lucia and the UAE.

actively sentences to death and executes persons for crimes committed under the age of 18 years old.<sup>112</sup>

Furthermore, the UPR has been an effective alert mechanism to point at regressive legislative reforms. Brunei<sup>113</sup> and the Maldives<sup>114</sup> changed their legislation after their first review and received accordingly a number of recommendations during their second cycle. Maldives attracted six recommendations. Kuwait also changed its legislation and established the death penalty for offences committed while aged over 16, after its second UPR, in December 2016, but repealed these reforms in March 2017.

Additionally, as shown below (see paragraph 3.3.2), a call for the abolition of the death penalty for offences committed under 18 years old has more chance to be accepted than a call for a general abolition of the death penalty (ie, regardless of the age and crime). This has been true in the case of Egypt, which accepted a similar recommendation concerning children during its second UPR. Egypt's child law prohibits the sentencing to death of children; however, concerns had been raised by the Committee about military trials.

For a number of states, the issue of the juvenile death penalty comes together with the establishment of a minimum age of criminal responsibility and/or the issue of discrimination based on gender or religion. As mentioned, the minimum age is associated with physical maturity and puberty under Sharia law. As a result, from 15 years old, and nine years old, respectively, boys and girls can be sentenced to death under Sharia law.

Other issues are legal pluralism, in countries such as Somalia, and the absence of a juvenile justice system, such as in Tonga.

Finally, some states differentiate between the age of responsibility and the age of sentencing. As per the books, children are protected and the sentence is executed only when they reach 18 years old. It is therefore particularly important that recommending states specifically mention the prohibition of the death penalty 'for offences committed by a person under 18 years old'. A common pitfall is to use formulations calling for the prohibition of the death penalty against 'minors' or 'children'. International human rights standards, and especially the UN CRC, set the prohibition of the death penalty for 'crimes committed by persons under the age of 18 at the time of the offence' as opposed to prohibiting executing children. Out of 89 CTAs addressing either the abolition of the death penalty imposed on minors or calling for a moratorium, 39 specifically referred to persons under 18 years old at the time of the offence, such as '[o]utlaw the death penalty for persons convicted of crimes committed before the age of 18, without exceptions, and implement a moratorium on all executions' (Ireland to Iran - Cycle 2).

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112 See Ensemble Contre la Peine de Mort and Iran Human Rights, 'Annual Report on the Death Penalty in Iran' (2017), 27.

113 CRIN, *Inhuman Sentencing of Children in Brunei Darussalam* (CRIN 2014), 1. Brunei enacted the Syariah penal code order in October 2013 that expands the forms of inhuman sentencing to which people may be sentenced for offences committed while under the age of 18. The Penal Code was to be fully enforced, including offences punishable by death, at the end of 2016.

114 CRIN, *Inhuman Sentencing of Children in the Maldives* (CRIN 2015), 1: 'the current penal code was ratified by the president in April 2014 and came into force on 16 July 2015, instituting wide reaching reforms of Maldivian criminal law. Corporal punishment and the death penalty are lawful penalties for offences committed while under the age of 18.'

While recommendations addressing the issue of the death penalty imposed on minors correspond to the majority of CTAs made on inhuman sentencing imposed on children in general, other forms of harsh sentencing of children covered by UPR recommendations include life imprisonment, corporal punishment and mandatory sentencing. Seven recommendations on the withdrawal of reservations on this particular issue were also made.

Inhuman sentencing	Number of CTAs	Proportion of CTAs accepted (%)
Death penalty	114	28.1
Prohibition of life imprisonment	23	26.1
<i>Prohibition of life imprisonment</i>	18	33
<i>Prohibition of life imprisonment without parole</i>	5	0
Prohibition of sentence to torture/corporal punishment	19	15.8
Mandatory sentences and proportionality	4	50
Reservations	7	14.3
<b>All CTAs on inhuman sentencing</b>	<b>167</b>	<b>26.3</b>

Table 14: CTAs addressing inhuman sentencing against children

Article 37 of the UN CRC prohibits the imposition of life imprisonment without possibility of release if the offence has been committed by persons under the age of 18 years. The Committee contends that, despite the possibility of release, life imprisonment makes it very difficult to achieve the aims of juvenile justice and therefore strongly recommends the abolishment of all forms of life imprisonment in cases of offences committed by persons under 18.<sup>115</sup> Life imprisonment and lengthy sentences were qualified by the Special Rapporteur on Torture as grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child.<sup>116</sup> Life imprisonment imposed on children that does not exclude parole is still a form of inhuman sentencing ‘through which a person is liable to be detained for the rest of his or her natural life’,<sup>117</sup> and for which the judge has all the discretion power to decide on the possibility and moment of release. The Secretary-General therefore recommended to states to ensure that children are not sentenced to life imprisonment as an alternative to the death penalty.<sup>118</sup>

The problem is widespread. The most recent data shows that 67 states retained life imprisonment as a penalty for offences committed under the age of 18 years old, a further 49 permitted sentences of 15 years or longer and 90 permitted sentences of ten years or longer.<sup>119</sup> Life imprisonment and lengthy prison sentences are not the preserve of the diminishing few; they can be found in the laws of the majority of states.<sup>120</sup>

115 See n 9 above, para 77.

116 See n 51 above.

117 *Ibid.*, 2.

118 OHCHR, ‘Question of the Death Penalty, Report of the Secretary-General’ (2016) UN Doc A/HRC/33/20, 14.

119 See n 52 above .

120 *Ibid.*

By focusing on a larger scale on life imprisonment in general, with 18 recommendations calling on 12 countries<sup>121</sup> to ban life imprisonment for crimes committed by children, the UPR goes beyond the language of the UN CRC, which only refers to the prohibition of life imprisonment without parole. It contributes to raising and advancing international standards on juvenile justice and drawing additional attention to a form of inhuman sentencing on which international condemnation is often limited.<sup>122</sup>

As such, the UPR corroborates General Comment No 10 of the Committee and follows here the General Assembly and the UNHRC, which have called on states to ‘consider repealing all other forms of life imprisonment (rather than life imprisonment without parole), for offences committed by persons under 18 years of age’.<sup>123</sup>

### 3.3.2 Success and challenges: some country examples

#### ABOLITION OF THE DEATH PENALTY FOR OFFENCES COMMITTED BY PERSONS UNDER 18 YEARS OLD

States retaining the death penalty for offences committed when the person was still a child are the hardest to push to a change. As commented by Riordan, ‘as the number of retentionist states decreases, only the most committed death penalty advocates remain’.<sup>124</sup>

The issue of the death penalty therefore is by far the least accepted issue within the recommendations related to juvenile justice, with an overall acceptance rate of 28 per cent, compared with the mean 66 per cent acceptance rate of juvenile justice-related recommendations. This acceptance rate is slightly higher than the acceptance rate for recommendations on the death penalty for adults, which stands at 22 per cent.<sup>125</sup>

Against this background, a relatively higher rate of acceptance of a UPR recommendation on the death penalty for children is already a success in itself.

Table 15 presents the different formulations and strategies used by recommending states when addressing the issue of the death penalty, with correlated various acceptance rates from 14 per cent to 34 per cent depending on the formulation. Eighty-eight CTAs generally include the idea of prohibiting the death penalty for children. Out of 88, 51 use the direct formulation to ‘abolish the death penalty...’, 17 use the exact language of the UN CRC, which states ‘do not impose death penalty for crimes committed’, and 14 use a gradual approach recommending the implementation of a moratorium with a view to abolishing the death penalty for children.

As expected, recommendations that call for the abolition of the death penalty regardless of the age of the person (‘general abolition’) have a lower acceptance rate than those calling only for the prohibition of the death penalty for offences committed under the age of 18 years old. Surprisingly,

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121 Antigua and Barbuda, Argentina, Australia, Bangladesh, Brunei Darussalam, Dominica, the Netherlands, Niger, Nigeria, Saudi Arabia, Somalia, St Lucia and Trinidad and Tobago. The US was recommended to abolish life imprisonment ‘without parole’ insofar as it is the system in place in the country.

122 See n 52 above, 2.

123 UNGA Resolution, ‘Human Rights in the Administration of Justice’ (2012) UN Doc A/RES/67/166.

124 John Morrison Liam Riordan, ‘The Implacable Ritual, A Study Examining the Inertia of Death Penalty Abolition Within the Universal Periodic Review, Despite Tacit Support and Global Trend’ (2015) Master thesis, University of Leiden, 7.

125 *Ibid*, 7.

recommendations calling for the direct abolition of the death penalty have a greater acceptance rate than those calling for a moratorium.

CTAs addressing the death penalty	Accepted	Noted	Total	Proportion of recommendations accepted (%)
Abolish the death penalty for minors/do not impose the death penalty for crimes committed by persons below the age of 18	23	45	68	34
Declare a moratorium with the aim of abolishing	2	12	14	14
Declare a moratorium	3	10	13	23
Abolish the death penalty in particular for minors	1	5	6	17
Limit the crimes punishable by the death penalty for minors		2	2	0
Commute sentences	3	6	9	33
Prohibit public executions		2	2	0
			<b>Mean</b>	28

Table 15: CTAs addressing the death penalty for persons under 18 years at the time of the offence/ children

Looking at the impact on the ground, some states have taken action after accepting at least one of the recommendations related to the death penalty.

In Cycle 1, out of the seven states that accepted recommendations to abolish the death penalty for offences committed under 18 years old, Kenya<sup>126</sup> and Niger<sup>127</sup> effectively engaged in awareness campaigns and measures towards a general abolition. Niger has long been a de facto abolitionist country; however, its death sentences are commuted to life sentences, which remains contrary to international recommendations.

The US accepted the recommendation but reported in Cycle 2 that under constitutional constraints in addition to federal and state laws and practices, the use of the death penalty for any individual under 18 years old at the time of the crime was barred.<sup>128</sup> It further stated that three states had abolished the death penalty, and the number of persons executed each year and the size of the population on death row had continued to decline since the country's last report.<sup>129</sup>

126 Kenya, 'National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21' (2014) UN Doc A/HRC/WG.6/21/KEN/1, para 56: 'Soon after the country's first review in 2010, the Government in collaboration with the Kenya National Commission on Human Rights and other stakeholders began discussions on how to raise public awareness regarding the abolition of the death penalty, among Kenyans.'

127 Niger, 'National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21' (2015) UN Doc A/HRC/WG.6/24/NER/1, para 30. The report mentions the accession by the country to the Second Optional Protocol on capital punishment and, in 2014, the vote in favour of the UN General Assembly calling for a global moratorium on the death penalty.

128 US, 'National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution' (2015) UN doc 16/21A/HRC/WG.6/22/USA/1, para 49.

129 *Ibid*, para 51.

Among the seven states that accepted at least one recommendation on the death penalty in the second cycle, Burkina Faso, following the recommendation from Belgium, adapted its legislation to ‘prohibit the application of the death penalty to minors’.<sup>130</sup>

In Nigeria, despite the acceptance of three recommendations to abolish it, the death penalty remains lawful in a number of states.<sup>131</sup> At the same time, the legal profession in Nigeria indicates that courts are reluctant to pronounce such sentences. However, they have also indicated that children are being sentenced to life imprisonment without parole, despite the acceptance by Nigeria of two recommendations calling for life sentences not to be imposed for crimes committed by minors.<sup>132</sup>

The Central African Republic has reported that the death penalty has been kept in its revised Criminal Code.<sup>133</sup>

Saudi Arabia and Yemen have both accepted some of the recommendations about abolition made during their first and second cycles, but have not taken any action. Yemen reported that Yemeni national legislation does not allow the death penalty against children.<sup>134</sup> Saudi Arabia and the UAE have also mentioned that the death penalty does not apply to minors. These statements are seemingly in contradiction with the current practice and/or legal system in these countries.<sup>135</sup>

Out of the 35 recommendations received, Iran accepted only the recommendation made by Kazakhstan during the first cycle to ‘consider the abolition of juvenile execution’. Iran responded that the death penalty is carried out subject to its reservation to the UN CRC.<sup>136</sup> According to this reservation, ‘The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.’<sup>137</sup>

The other states noted all the recommendations on the death penalty against children.<sup>138</sup> Among them, Bangladesh had already adopted the 2013 Children’s Act explicitly prohibiting the death penalty and life imprisonment for children.<sup>139</sup> Bangladesh therefore noted the recommendation at its second UPR in 2013. It was observed, however, that the laws are unclear in the country.<sup>140</sup>

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130 Burkina Faso, ‘Rapport a mi-parcours de la mise en œuvre des recommandations de l’examen periodique universel (epu) et des organes de traites’ (December 2015), para 6: Law No 015-2014/AN of 13 May 2014 relating to the protection of children in conflict with the law or in danger (*portant protection de l’enfant en conflit avec la loi ou en danger*) prohibits the death penalty for children.

131 The Committee, ‘Concluding Observations on the State Party’s Third/Fourth Report’ (2010) UN Doc CRC/C/NGA/CO/3-4, para 32.

132 Slovakia and Poland to Nigeria.

133 Central African Republic, ‘National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (2013) UN Doc A/HRC/WG.6/17/CAF/1, para 48.

134 Yemen, ‘National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (2013) UN Doc A/HRC/WG.6/18/YEM/1, para 100: ‘With regard to protection of children from the risk of the death penalty, there is no article in Yemeni law that authorizes the imposition of a death sentence on juveniles. This is in accordance with article 36 of the Juvenile Welfare Act.’

135 See n 123 above, 27–28. See also information available on CRIN website: [www.crin.org/en/home/campaigns/inhuman-sentencing/problem/death-penalty](http://www.crin.org/en/home/campaigns/inhuman-sentencing/problem/death-penalty) accessed 20 April 2018.

136 A/HRC/14/12/add.1, para 7.

137 See [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec) accessed 20 April 2018.

138 Bangladesh, Brunei, DPRK, Malaysia, Maldives Somalia, St Lucia, Tonga and the UAE.

139 CRIN, *Inhuman Sentencing of Children in Bangladesh* (CRIN 2015).

140 *Ibid.*

Overall, the UPR has allowed the international community to keep the momentum and pressure on states retaining the death penalty by repeating a continued and constant call for the abolishment of the imposition of the death penalty for crimes committed by persons under the age of 18 years old. This also results in consolidating the broad consensus in the international community around this absolute standard of international law.

#### LIFE IMPRISONMENT AND OTHER INHUMAN SENTENCING

As to other forms of inhuman sentencing, only three states (Argentina, Niger and Nigeria) have accepted recommendations to prohibit life imprisonment for children, with no implementation so far.

Three states out of 12 accepted recommendations to prohibit corporal punishment (Mauritania, Philippines and Tonga).

With respect to life imprisonment, abolitionist states commuting death sentences into life imprisonment remain a key issue, as is the case in Niger, for example.

### 3.4 Conclusions and ways forward

Despite a quasi-universal ratification of the UN CRC, a majority of states still need to implement the main and leading principles underlying the administration of juvenile justice. This chapter illustrates the potential of the UPR in upholding children's rights within juvenile justice through the reaffirmation of the main human rights standards applicable, as well as the successful impact of the UPR on effective legislative changes.

First, the UPR has given way to a ripple effect through which key issues gained political traction and eventually legal force by their repetition by a number of states.

The UPR recommendation to establish or improve a juvenile justice system has been addressed to 115 states. The human rights principles governing detention have been addressed to 118 states. Furthermore, the UPR has been the place to send a strong signal for the abolition of the death penalty for crimes committed by persons under 18 years old. Retentionist states have been systematically addressed and Iran received up to 35 recommendations. As previously stated by the IBAHRI, 'while some of the commitments are stronger than others and the full impact of these commitments to review has yet to be seen, the UPR has definitely engaged in the universal debate of complete abolition of death penalty'.<sup>141</sup> Following their first review, some states have adopted a legislation prohibiting the death penalty for crimes committed under 18 years old (Burkina Faso) and some have taken measures towards general abolition (Niger and Kenya). The group of retentionist states is no longer monolithic and the UPR has further opened up challenges to this position that will increase as the momentum continues to be echoed at the UPR.

Second, the UPR has become the forum for strengthening and going beyond the requirements of international human rights standards. States called to raise the minimum age of criminal responsibility above 12 years old, sometimes referring to 14, 16 or 18 years old. The UPR has also gone beyond the international legal framework in relation to detention of minors by calling for the

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141 IBAHRI, *Sexual Orientation, Gender Identity and Expression and Sex Characteristics at the Universal Periodic Review* (IBA 2016).

total prohibition of detention for children and the prohibition of life imprisonment with or without parole. These recommendations are commendable and should be improved in the future.

Recommendations addressing the establishment of juvenile justice systems, however, have remained general. More inclusive and specific recommendations are needed to cope with the reality on the ground.

Furthermore, in a large majority, when states address the issue of minimum age of criminal responsibility they do so in an isolated manner, that is, their recommendation only addresses this issue. However, as setting up a minimum age is part of the establishment of a juvenile justice system as a whole, when making this recommendation, recommending states should systematically link it to one on the advancement of a specialised justice system adapted to the needs and rights of children. Some states have already taken this path and 22 recommendations link the raising of the minimum age of responsibility with the establishment or improvement of an adequate juvenile justice system.<sup>142</sup> States should also make sure that when addressing countries with a very low age of criminal responsibility they explicitly specify in their recommendations that the age of 12 years is an absolute minimum.

Regarding sentencing, states should make sure that while addressing the abolition of the death penalty they specify that it cannot be replaced by life sentences with or without parole, which, according to the Special Rapporteur on Torture ‘are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child’.

Recommending states should further address lengthy detention (15 years or more), which is currently not the subject of international attention. According to civil society, this focus of international human rights standards on the worst forms of the sentence, however, has disguised the practice of less severe or overt forms of life imprisonment, which are still widely practised around the world, as opposed to life imprisonment without parole, still only practised in the US.

Finally, recommending states should address in a more comprehensive manner the components of the juvenile justice system. It is indeed striking to observe that, beyond these main principles that should apply on the deprivation of liberty, other aspects of deprivation of liberty have not received any proper attention at the UPR. This is the case for the procedural rights of children deprived of liberty, with only three recommendations on the right to legal assistance in prison and only one on the right to privacy. This goes together with the lack of attention on the monitoring of detention conditions, that is, any mechanism to safeguard the rights of children in detention (17 CTAs). Furthermore, these issues have been mostly rejected. Other aspects of conditions of detention outside the separation and protection from abuse are also particularly absent, in particular care measures in detention (eg, access to medical care and appropriate food) and measures for future rehabilitation (including education and communication with the family and the wider community). As Chapter 4 will demonstrate, additional rights that should be respected for children deprived of liberty have not been addressed at all.

While addressing these issues, states should also act in parallel on aspects of juvenile justice that would prevent the majority of children from coming into contact with the law in the first place

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<sup>142</sup> Eg, ‘Raise the minimum age of criminal responsibility to 16 and establish a system of juvenile justice’ (Belgium to Indonesia - Cycle 2).

(prevention) or to facing trial, sentencing and deprivation of liberty (by diverting them from judicial proceedings when an offence is committed).

The role that restorative justice could play in untangling the situation in countries with a particularly tough juvenile justice system would be an interesting path to advance alternative advocacy strategies at the UN. In its 2015 national report, Kuwait, reported that ‘Under the Juveniles Act No. 3 of 1983, juveniles who are delinquent or exposed to delinquency are deemed to be victims of the socioenvironmental circumstances in which they live and therefore, instead of punishment, deserve protection, reform and rehabilitation through specific measures.’<sup>143</sup>

More emphasis on restorative justice could possibly contribute in the long term to decreasing the number of children facing trial or in detention and those at risk of being detained with adults and facing abuse in detention. It would further prevent the need to deal with the negative impact of deprivation of liberty on children.

These shortcomings of the UPR recommendations which have been made so far in the first two cycles are addressed in the next chapter.

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143 Kuwait, ‘National Report Submitted In Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (2015), UN Doc A/HRC/WG.6/21/KWT/1, para 40: such measures encompass the ‘delivery into the custody of a trustworthy guardian; placement in one of the reform institutions run by the Ministry of Social Affairs and Labour; or judicial probation, which is a remedial measure applied to rectify the delinquent’s behaviour within his natural environment in cases in which a social worker’s report has found his environment to be an appropriate setting for the proper care of the delinquent under the guidance and supervision of a probation officer providing advice and counselling. Probation orders are issued by the Juvenile Court, which designates a probation officer to monitor the behaviour of the juvenile residing in an institution or in his family home, and the juvenile reform institutions are supervised by the Juvenile Welfare Department which is staffed by a number of psychosociologists’; para 41: The Department, acting in collaboration with other agencies, such as the Ministry of Education, the Ministry of Social Affairs and Labour and the Ministry of Information and civil society institutions, implements awareness-raising and counselling programmes designed to promote human values, ensure respect for public order and the law.

## Chapter 4: Towards a participatory and rehabilitating juvenile justice: addressing the shortcomings of the UPR recommendations

From the initial text of the UN CRC to its most recent developments by the Committee and a number of guidelines, the international legal framework places the concepts of juvenile delinquency prevention, and rehabilitation and restorative justice at the core of a juvenile justice system. This chapter addresses these standards, which, despite their normative developments, have only received marginal attention at the UPR until now.

This chapter first looks at the issue of empowerment of children as subjects of rights, then continues to look at the prevention aspect and the diversion process in a restorative justice model. Finally, the role of judges, prosecutors and lawyers in upholding children's human rights and applying international human rights norms, standards and principles at the domestic level is examined. This chapter provides a basis for further discussion and research into how the legal community, working with civil society and governments, can be involved in maintaining or improving human rights for children in conflict with the law.

### 4.1 Child protection and children as subject of rights

#### 4.1.1 *Fair trial guarantees and children's procedural rights*

Under Article 12(2) of the UN CRC, children have a right to express their views on all matters affecting them, consistent with their levels of age and maturity, and shall be afforded the right to be heard in any judicial or administrative proceedings concerning them. As noted, the UN CRC recognises children as active agents in the exercise of their rights, that is, being able to be involved in decisions affecting them, compatibly with their competence. This is crucial to their empowerment and a core condition for the realisation of their rights.

As indicated in Chapter 2, the number of recommendations addressing the guarantees of fair trial, described in detail in Article 40(2) of the UN CRC, is very low (31 CTAs). This is also the case for the procedural rights of children deprived of liberty (fewer than five CTAs), which is in striking opposition to the level of protection recognised to the treatment and conditions of children deprived of liberty (250 CTAs).

Some of the guarantees of fair trial rights were addressed in a general manner (eight CTAs). Some UPR recommendations address specifically the right to appeal (five CTAs), the right to an interpreter (one CTA), the right to legal assistance (13 CTAs), protection from compulsory self-incrimination (one CTA) and the right to an atmosphere of understanding (three CTAs). Other guarantees have not been addressed at all. This is the case for the right of the child to be notified promptly and directly of the charges, the right to remain silent, the right to the presence of a parent or guardian at

all stages of the process, the presumption of innocence, the right to examine adverse witnesses and the right to challenge the legality of the decision.<sup>144</sup>

In addition, many of the detailed provisions enshrined in the Havana Rules have not been reflected at all in their specificity in the UPR recommendations. This includes some related to conditions and treatment of deprivation of liberty, such as:

- admission proceedings: registration, movement and transfers from detention facilities (rules 21–26);
- the possibility to set up open detention facilities (rule 30);
- the possibility to pursue work in detention (rules 45–46);
- the right to practise a religion when being deprived of liberty (rule 48);
- the confidentiality of information about the child deprived of liberty (rule 19);
- the notification of illnesses, injuries and death of the child in detention (rules 56 and 58); and
- specific rules on the recruitment and quality of prison staff (rules 82–83).

#### ***4.1.2 Children's participation at the UPR***

While all UPR recommendations address children as objects of the legislation or measures to be taken by the state, no recommendation has addressed the need to involve children in the process of elaborating, developing or implementing these measures, although these affect them directly. Policy-makers need to hear from children themselves about the existing obstacles to fulfilling their rights in order to identify barriers and solutions.<sup>145</sup>

The same rationale supports children's engagement at the UPR. Some NGOs have actively been working on making human rights mechanisms accessible to children.<sup>146</sup> Consultation with children's groups, such as parliaments of children in the country, fosters their involvement in the implementation of recommendations relating to the juvenile justice system. In a number of countries, children are more and more engaged within the UPR.<sup>147</sup>

## **4.2 Prevention and diversion**

As Chapter 2 shows, juvenile delinquency prevention and diversion have received low attention from states at the UPR, with 12 CTAs and 14 CTAs, respectively. The recommendations calling for alternative measures to detention (29 CTAs) addressed only one form of diversion. However, as a core objective of the juvenile justice system called for in the UN CRC, the issue deserves more attention.

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144 Art 40(2)(b) of the UN CRC; Beijing Rule 7; and Havana Rule 17.

145 See n 3 above, 17.

146 See, eg, NGO Group for the Convention on the Rights of the Child (now Child Rights Connect), *My Pocket Guide to CRC Reporting* (2011).

147 See, eg, the report on Albania (2013) submitted by the Child Led Groups in preparation for the UPR. The Child Led Groups, established in 2000 with the support of Save the Children, comprise 50-60 children aged between 12 and 18 and advocates for their rights.

### 4.3.1 Prevention of juvenile delinquency

The UN CRC does not directly address the aspect of preventing children from committing offences and coming into contact with the justice system. This is, however, the exact subject of the Riyadh Guidelines, to which the Committee refers to in its General Comment No 10.

Despite this, the issue of juvenile delinquency prevention has hardly been reflected at the UPR. This observation should be nuanced, as a number of measures included in the Riyadh Guidelines, for example, provisions about education, the family environment and the child's standard of living, are addressed in a large extent in UPR recommendations. They are, however, not addressed under the perspective of prevention of juvenile delinquency.

It is advocated here that it would be important for states knowingly to take measures for the purpose of preventing delinquency. The UPR is a perfect forum to highlight the link between a range of measures and the prevention of delinquency so that these measures are also tailored and developed with the purpose of prevention.

A few recommendations at the UPR have made this link and can be pointed at as good practice (see Annex 1). This is the case of the recommendation from Costa Rica to Cape Verde during Cycle 2 to 'take concrete steps to combat juvenile delinquency which include the provision of opportunities for training, education and employment'.

### 4.3.2 Diversion

Article 40(3) of the UN CRC establishes that States Parties shall seek to promote measures for children allegedly responsible for criminal offences to avoid judicial proceedings whenever appropriate and desirable. Juvenile diversion strategies hold children accountable for their actions and provide connections with supportive services, while reducing recidivism. Diversion also presents cost advantages. By reducing the burden on the court system, the caseload of juvenile probation officers and avoiding confinement, (limited) resources are released that can be employed in services for high-risk juveniles in conflict with the law.<sup>148</sup>

Diversion strategies vary substantially and can range from warn-and-release programmes to treatment that is more serious, or therapeutic programming. Examples include restorative justice programmes (including victim-offender mediation or family group conferencing), community service orders, treatment or skills-building programmes (including cognitive behavioural therapy or employment training), family treatment, drug courts and youth courts.

Diversion measures imply the interplay between legal, social, and educational measures and actors. Their implementation is, therefore, complex. As highlighted by a lawyer in Georgia about the recent legal changes promoting diversion in the country,

'[t]he biggest challenge for the reform is that there is a very small number of community-based services for children that would prevent their contact with law and would ensure their integration in the community afterwards. We see that the social services are not following up the juveniles as

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148 See n 3 above, 30.

much as needed. In fact, the Justice sector is pioneering in the field, while it is not supported by relevant educational, social and rehabilitation services.’<sup>149</sup>

The Committee has increasingly referred to ‘diversion’ within the past five years. In 2016, the Committee recommended 16 countries to ‘promote alternative measures to detention, such as diversion, probation, mediation, counselling, or community service’ or the like. As such, the Committee used to retain a restrictive definition of diversion as limited to substitutes to detention. By contrast, the UN CRC calls for diversion measures as substitutes for the whole judicial process. The Committee has recently adopted a broader approach.<sup>150</sup> The same shift is needed at the UPR.

During the first cycle, the UPR addressed diversion only from the perspective of alternative measures to detention (13 CTAs). It is only during the second cycle that, besides alternative measures to detention (16 CTAs), then reaching in total 19 countries,<sup>151</sup> diversion from the judicial proceedings was addressed through a call for restorative justice (14 CTAs). Out of 14 recommendations addressed to 13 states,<sup>152</sup> 11 were made by Indonesia. Indonesia hosted in 2013 a workshop on restorative justice with the Office of the SRSG and has since then taken the lead on this issue at the UPR. The other recommending states were Norway, South Africa and Uruguay.

Only a few states have already reported on the measures adopted to respond to this call for restorative justice. Among them, in response to the recommendations made by Indonesia,<sup>153</sup> Albania barely developed the measures undertaken. The report mentions that a specific juvenile justice code and a children’s justice strategy are being drafted; in 2015, 130 fewer children were sent to pre-trial detention than in 2014 and the average detention time was reduced; and the number of alternative measures had increased through the years (16 per cent in 2014).<sup>154</sup>

Overall, the UPR has not been the place to share experience on diversion. This is regrettable, as a number of countries have undertaken programmes. Respondents to the 2016 IBA survey<sup>155</sup> reported that diversionary programmes are occasionally incorporated into the law and process in their jurisdiction. For instance, in Northern Ireland, ‘youth engagement clinics’ were part of procedural reform in 2012. These are aimed at reducing the number of youth cases that progress to court by introducing a meeting between youth specialists and the minor to explain if a diversionary disposal is available and the options available to the young person at that stage.

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149 *Ibid*, 39: ‘The Georgian Ministry of Justice, in close cooperation with UNICEF and the EU, has recently completed the first ever stand-alone Juvenile Justice Code, which is based on the UNODC Model Law on Juvenile Justice and Related Commentary, the Convention on the Rights of the Child and other relevant international documents. Among the novelties introduced, the Code (in force since 1 January 2016) sets out that in all juvenile cases, priority should be given to the alternative measures while imprisonment should be applied as a measure of last resort, and that juvenile justice procedures shall be administered only by professionals specialised in juvenile justice. Accordingly, an ad hoc Working Group on Specialisation in Juvenile Justice has been established with the task of coordinating and administering the process of specialisation of the professionals involved in juvenile justice reform.’

150 The Committee, ‘Concluding Observations of the Combined Fifth and Sixth Report of Guatemala’ (2018) UN Doc CRC/C/GTM/CO/5-6, para 46(d). Promote non-judicial measures in cases of children accused of criminal offences, such as mediation, diversion or non-custodial sanctions, including probation, counselling or community service, and intensify its efforts to implement alternative measures at sentencing.

151 In Cycle 1, Argentina, Bolivia, Honduras, Italy, Mali, Nicaragua, Thailand and Uruguay received a recommendation regarding alternative measures to detention. In Cycle 2, Argentina and Uruguay received a similar recommendation again, while a number of new countries were addressed, namely Costa Rica, Denmark, Jordan, Liberia, the Netherlands, Panama, Paraguay, Timor Leste, Ukraine, the UK and Vietnam.

152 Afghanistan, Albania, Bulgaria, El Salvador, Iraq, Malta, Mexico, New Zealand, Nicaragua, Norway, Spain, Turkey and Zimbabwe.

153 ‘Continue efforts to ensure the implementation of the principle of the best interest of the child in the juvenile justice system, including by considering incorporating the restorative justice principle.’

154 Albania, ‘Mid-term Report of Albania on the Implementation of the Recommendations Received During the Second Cycle of Universal Periodic Review (UPR)’ (2017).

155 See n 3 above.

A ripple effect between mechanisms by which the UPR and the Committee reinforce the recommendations made by the each other would be necessary to raise the issue of diversion up on the national agenda.<sup>156</sup>

### 4.3 Role of lawyers in enhancing human rights in juvenile justice

The right to legal assistance, including to prepare the defence (Article 40 (2) (b) of the UN CRC) and to challenge the deprivation of liberty (Article 37(d) of the UN CRC) is clearly enshrined in international human rights law for children. The Special Rapporteur on the Independence of Judges and Lawyers has recommended to states that ‘legal aid should be provided free of charge to all children in both criminal and civil proceedings’<sup>157</sup> and that ‘[s]uch legal aid should be tailored to the specific needs of children and respect, in particular, children’s right to express their views and to be heard’.<sup>158</sup>

Children are specifically dependent on legal assistance to understand the juvenile justice process and be represented so that their rights are respected. Without such representation, it would be challenging for them to claim their rights within the juvenile justice system.

The presence of a lawyer is crucial in ensuring the respect of all children’s rights within the justice system, including ensuring that young detainees understand their rights and are treated fairly when their case is heard; ensuring the defence of children during trial; requesting the presence of an interpreter when needed; ensuring the respect of the right of the child to remain silent; explaining the judicial process to the child involved in the proceeding; ensuring that the objective of reintegration of the child prevails in the sentencing decision of the judge; presenting all the facts and circumstances of the case to be taken into account by the judge; reminding the court of the principle of deprivation of liberty as a last resort; offering advice on alternatives to detention that promote and enhance rehabilitation; and asking for the application of specific alternatives to detention.

The fundamental role of lawyers in representing and defending children in judicial processes depends on the training received on children’s rights and juvenile justice standards. Highlighted by Beijing Rule 22, the training of professionals working on juvenile justice, and especially of lawyers, is essential to the adequate representation of children in the justice process.

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156 Eg, in 2014, at its UPR, New Zealand received the recommendation to ‘implement the restorative justice principles to all children’ from Indonesia, however, in 2016, the Committee did not raise the issue of diversion, when reviewing the country, other than calling the country to ‘limit the use of detention to a measure of last resort and for the shortest period of time’. See CRC/C/NZL/CO/5 (CRC, 2016), para 45(d).

157 See n 1 above, para 99.

158 *Ibid.*

Many lawyers that answered the IBA survey<sup>159</sup> recognised their essential role in representing children in the justice system, but pointed out the lack of specific training on children's rights for lawyers and the lack of resources or pro bono programmes to ensure free legal representation for all children. For instance, in Australia, members of the legal profession have indicated that access to representation for children was subjected to resource constraints and was not always readily accessible. They have pointed out the fundamental role that bar associations could play in conducting training for lawyers on juvenile justice standards, organising pro bono aid and advocating for changes to governments, to raise the public's awareness about the need for law reform. Awareness raising is specifically needed to explain and promote the importance of a rehabilitative approach that should apply to juvenile justice as opposed to the widespread punitive approaches in many countries.

Children's right to legal assistance has been addressed in 13 recommendations at the UPR. It is mentioned to a greater extent with regard to children victims than for children alleged as, accused of or recognised as having infringed the penal law.

Thirty-one UPR recommendations called for the training of the legal profession. None mentioned the role that bar associations could have with respect to children's rights in the justice system. Specific recommendations could be made calling states to equip bar associations with capacities and resources to conduct such trainings.

## 4.4 Conclusions and ways forward

This chapter addresses the shortcomings of the UPR recommendations made during the first two cycles and demonstrates the interconnection between features widely addressed and those poorly addressed in order to lead to successful steps on the ground towards the juvenile justice system envisioned in the UN CRC.

In this way, sentencing and deprivation of liberty cannot be improved effectively without the implementation of the fair trial guarantees during the trial or other judicial processes. It is by empowering and hearing children, providing them with appropriate and legal assistance to prepare their defence, that appropriate measures will be adopted, including ensuring a better implementation of the principle of detention as a last resort and for the shortest time possible. Similarly, the detention conditions of children cannot be improved if children are denied the right to challenge the mere principle of this deprivation or the appropriate assistance to do so.

In comparison, fair trial guarantees and due process as leading principles, regardless of the age, are relatively well covered at the UPR. It could be argued that the same principles apply to both adults and children. Some recommending states may prefer referring to the general principles, thus addressing all groups and individuals. While fair trial guarantees do and indeed should apply to all, their respect is additionally crucial for children, whose specific age and vulnerability make access to the process more difficult. For example, legal assistance is crucial to allow children to understand the judicial process, prepare their defence and argue for appropriate sentences.

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159 See n 3 above.

To reflect this, UPR recommendations on fair trial guarantees must specifically address their application to children alleged as, accused of, and recognised as having infringed the penal law. Recommendations should do so by reflecting detailed provisions of the main UN rules and guidelines in specific and concrete recommendations to states under review.

The issue of diversion has first and foremost been addressed through alternative measures to detention, and more recently through restorative justice. Diversion measures can take place at any time from the arrest by the police to the sentencing by the court. The core rationale of diversion measures is to keep children away from repression by the judicial system. It contributes to the core objectives of the UN CRC to set up a system with rehabilitation of the child at the core. This dimension is still emerging at the UPR and the majority of states' concerns relate to the most alarming violations occurring within the criminal justice system.

In addition, the focus and priorities of states at the UPR reflect a common trend in the way children's human rights are addressed, including in human rights fora. Prevalence is given to child protection, rather than children's rights, and especially children's right to access to justice. While children are often seen as objects of protection, including because of the vulnerability attached to their age, the recognition of children as subject of their own rights, who should be listened to, including in the justice process, is often overlooked. The UPR does not seem to avoid this global trend.

Going forward, the legal profession could have a unique role in contributing to address some of these challenges and filling some of the gaps that have been observed.

As was observed in a previous report by the IBAHRI,<sup>160</sup> the legal profession has hardly been addressed in UPR recommendations as part of main legal reforms. This is particularly regrettable as lawyers specifically trained on children's rights, together with the support of bar associations, have the specific legal expertise and practical experience to be able to contribute to the development of legal reforms adapted to national contexts and specific challenges encountered. According to some members of the legal profession in Australia and Nigeria, lawyers should be engaged through consultation of bar associations by the government. Lawyers are also adequately placed to advocate governments to ensure that the UPR recommendations requiring legislative changes are effectively implemented.

Lawyers should engage in order to ensure that all areas of juvenile justice are in line with the UN CRC, whether it is about a law raising the minimum age of criminal responsibility, prohibiting the death penalty for crimes committed under the age of 18 or in advocating and raising awareness on the importance of a rehabilitative approach of the juvenile justice system as a whole.

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160 IBAHRI, *The Role of the Universal Periodic Review in Advancing Human Rights in the Administration of Justice* (2016).

## Chapter 5: Conclusions and recommendations

International standards on children's rights within juvenile justice are not only well developed, they are enshrined in the most ratified UN human rights treaty, the UN CRC. Article 37 contains in particular the absolute prohibition of inhuman sentencing for children, with the prohibition of the death penalty imposed for offences committed by persons under the age of 18 at the forefront. As recognised during the 2015 World Congress on Juvenile Justice, the main challenge in advancing on the respect of children's rights in this area remains the effective implementation of these standards.

In this context, the present report analysed the main contributions of the UPR in protecting the rights of children alleged as, accused of and recognised as having infringed the penal law. These findings shed light on positive elements of the two first cycles and led to the identification of suggestions and opportunities to advance further the impact of the UPR on the implementation of juvenile justice standards. The final recommendations of the report are meant to support key stakeholders of the process in this direction.

With a particularly high number of recommendations made on four issues – namely the establishment and improvement of a juvenile justice system adapted to children, together with the establishment of a minimum age of criminal responsibility, the deprivation of liberty of children and the prohibition of inhuman sentencing imposed on children – states have mobilised around key issues of juvenile justice where children's rights are subjected to particular violations. On these issues, the UPR has allowed for a clear call to states to improve the respect of these rights and standards for all children in the context of juvenile justice.

This is particularly the case for the prohibition of the death penalty imposed on children, on which states sent a strong signal to retentionist states on its abolition and used the UPR to maintain regular political pressure on these states. The UPR also notably contributed to the reinforcement of the standard of the prohibition of life imprisonment of children, thus going beyond the UN CRC's restricted position on prohibition of life imprisonment without parole.

Through the level of attention given to the deprivation of liberty of children, states have also made improvement on this issue as a priority. This confirmed the crucial need for the current UN Global Study on Children Deprived of Liberty, so as to enable states to 'comprehensively collect data and statistics from across regions on the number and situation of children in detention; share good practices; and formulate recommendations for effective measures to prevent human rights violations against children in detention and reduce the number of children deprived of liberty'.<sup>161</sup>

On these issues, effective and tangible progress at the national level was affected by the implementation of concrete and country-specific recommendations made through the UPR, in particular through the joining of civil society and key stakeholders of the political pressure triggered by the UPR with ongoing national advocacy efforts. This is particularly promising for furthering the potential of the UPR to advance the recognition and implementation of international juvenile justice standards during its subsequent cycles.

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161 NGO panel for the Global Study on Children Deprived of Liberty, Call for a Global Study on Children Deprived of Liberty (2014).

However, the analysis also showed that some of the key rights of children applicable when children are in contact with the juvenile justice system have been overlooked and hardly entered the UPR dialogue. This is the case for issues of prevention, diversion and respect of fair trial guarantees for children and their right to be heard. This leads to the risk of these issues escaping international scrutiny.

Going forward, with the start of the third cycle of the UPR, states should use the potential of this mechanism to ensure that all relevant issues enter the dialogue through country-specific and actionable recommendations.

## **Recommendations to recommending states**

1. When making recommendations, refer to the UN CRC, Beijing Rules, Havana Rules and Riyadh Guidelines, as well as the prior recommendations by the Committee, other treaty bodies and special procedures.
2. Use the language of ‘children alleged as’, ‘accused of’ or ‘recognised as having infringed the penal law’, in accordance with the UN CRC, to refer to children in the juvenile justice system. Refrain from using potentially harmful terms such as ‘child offender’.
3. Make SMART recommendations with detailed actions and, where possible, good practices, and avoid general recommendations to improve juvenile justice systems.
4. Encourage states to take into account the role of the traditional justice system(s) while developing or improving their juvenile justice system, and ensure they are in line with the UN CRC and international standards.
5. Call upon states to ensure that any deprivation of liberty of a child respects the UN CRC, Beijing Rules and Havana Rules. Recommending states should also ensure that deprivation of liberty is used as a measure of last resort, for the shortest period of time and that measures are taken to prevent the negative impact of deprivation of liberty on children.
6. Call upon states to abolish the death penalty by using the precise language in the text of the UN CRC for ‘crimes committed by persons under the age of 18 at the time of the offence’ and not replace it with a life sentence with or without parole, which, according to the Special Rapporteur on Torture ‘are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child’.
7. Call on states to abolish sentences of life imprisonment with or without parole for ‘crimes committed by persons under the age of 18 at the time of the offence’.
8. Call on states to abolish all sentences, including lengthy imprisonment, amounting to cruel punishment and take into account the specific vulnerability of children.

9. Call on states under review to raise their minimum age of criminal responsibility to no less than 12 years old as the absolute minimum age. When making this recommendation, recommending states should systematically link it to one on the advancement of a specialised justice system adapted to the needs and rights of children.
10. Call on states under review to put a strong focus on the prevention of juvenile delinquency, including opportunities for training, education and employment, based on the Riyadh Guidelines.
11. Call on states under review to favour diversion of cases involving children, that is, disposing of those cases without resorting to formal trial by the competent authority, as outlined in Article 40(3)(b) of the UN CRC, and especially call for the implementation of restorative justice principles in national legislation.
12. Call on states under review to revise their existing legislation in consultation with children and the legal community in order to ensure the respect of fair trial guarantees to all children alleged as, accused of or recognised as having infringed the penal law. This review should include procedural rights to which they are entitled when deprived of liberty, as outlined in Articles 37(b) and 40(2) of the UN CRC.
13. In particular, call on states under review to ensure that a sufficient number of legal professionals and law enforcement officers are trained on children's rights and provide adequate, accessible legal aid services in order to ensure the right to legal assistance to all children alleged as, accused of or recognised as having infringed the penal law.
14. Support specific training on children's rights within the administration of justice, following the recommendations of the Special Rapporteur on the Independence of Judges and Lawyers in 2015.<sup>162</sup>
15. Provide assistance to the states under review to follow up on recommendations made at the UPR, including through bilateral actions with in-country embassies.
16. Over the whole UPR process, ensure a continued and ongoing dialogue with CSOs.
17. Work with other recommending states to ensure that all issues regarding juvenile justice are covered at the UPR.

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<sup>162</sup> See n 1 above, para 112: 'Institutional training on children's rights—including relevant national, regional and international human rights law and jurisprudence—should be established and made compulsory for judges, prosecutors and lawyers, so as to ensure a child-friendly justice system.'

## Recommendations to states under review

1. Accept UPR recommendations aimed at improving children's rights within the administration of juvenile justice.
2. Use the UN CRC, Beijing Rules, Havana Rules and Riyadh Guidelines as legal benchmarks for the implementation and monitoring (state report to the UPR) of UPR recommendations relating to juvenile justice and SDG 16.
3. Involve the judiciary and professional organisations of lawyers in the implementation and monitoring of the recommendations of the UN human rights mechanisms including UPR recommendations, particularly those relating to juvenile justice.
4. Carry out consultations with relevant stakeholders, including children, legal experts and CSOs working on children's rights in order to involve children in relevant stages of the UPR process, including the drafting stage of the national report and before accepting or noting the proposed recommendations.
5. Involve children in the implementation of UPR recommendations relating to juvenile justice so that their views and opinions on the respect of their rights are taken into account in implementation plans.

## Recommendations to legal professionals and associations of legal professions

Lawyers should have a specific role in feeding into the UPR process. They have the requisite specific knowledge of legislation and legal issues at the national level to provide UPR recommending states with legally precise and evidence-based recommendations. This could be crucial to ensure that recommending states make SMART recommendations adapted to the specific context of the state under review. The legal profession is also well placed to attempt to remedy the lack of UPR recommendations addressing the specific right of children to representation and legal assistance when they are alleged, accused of or recognised as having infringed the penal law, including when they are deprived of liberty. Lawyers can also assist recommending states in formulating recommendations on juvenile justice.

What is more, lawyers have a unique role in following up and contributing to the implementation of the UPR recommendations received by the state, and in particular of the recommendations requiring legal reforms by the state.

Bearing this in mind, the IBAHRI calls on the legal profession to:

1. Make submissions as representatives of the legal profession to the UPR, both on key legal reforms needed in the field of juvenile justice and the importance of the right to legal assistance and representation of the child alleged as, accused of or recognised as having infringed the penal law.
2. Engage and coordinate with CSOs, including CSOs working on juvenile justice, to increase synergies and ensure comprehensive and specific submissions in the UPR process.

3. Use the UN CRC, Beijing Rules, Havana Rules, Riyadh Guidelines and other relevant instruments to monitor and engage in the implementation of UPR recommendations relating to juvenile justice in the country and make concrete proposals for legal reforms based on international human rights law.
4. Use the UN CRC, Beijing Rules, Havana Rules, Riyadh Guidelines and other relevant instruments to monitor the respect of children's rights within juvenile justice in the state under review.
5. Attend, organise or support training of the legal profession on the rights of children in the juvenile justice system in order to ensure legal representation to children alleged as, accused of or recognised as having infringed the penal law.
6. Strengthen awareness raising of the population, including conducting workshops and conferences and disseminating accessible information on the respect of children's rights within juvenile justice.
7. Develop legal aid systems for children who are in contact with the criminal law within bar associations as complementary to the government system.
8. Engage in a dialogue with the state, especially through bar associations, regarding main law reforms based on UPR recommendations received, and especially on the withdrawal of reservations to Articles 37 and 40 of the UN CRC.

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### 1. International instruments

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## Annex 1: List of calls to action (CTAs) made at the UPR on juvenile justice

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
<b>General principles of the UN CRC</b>	Right to non-discrimination	Article 2 UN CRC  Beijing Rules 3.1 and Riyadh Guidelines 56 (status offences – reflecting discrimination between adults and children in qualification of crimes)	<ul style="list-style-type: none"> <li>• <b>Recommending states made recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure that children alleged as, accused of or recognised as having infringed the penal law are treated without discrimination based on gender (4 CTAs).</b> Eg, 'Ensure that any reform of the juvenile justice system explicitly takes into account the differentiated needs of girls and boys' (Austria to Albania);</li> <li>– <b>ensure that children alleged as, accused of or recognised as having infringed the penal law are treated without discrimination based on ethnicity (5 CTAs).</b> Eg, 'Reduce the rate of family separation of indigenous peoples caused, among others, by the removal of babies and children from their families and the imprisonment of juveniles and adults' (Paraguay to Australia); and</li> <li>– <b>decriminalise status offences (1 CTA).</b> Eg, '... decriminalise child begging' (Costa Rica to Greece).</li> </ul> </li> </ul>	10
	Principle of the best interest of the child	Article 3 UN CRC  Rule 1(1) of the Beijing Rules (well-being of juveniles)  Rule 5(1) of the Beijing Rules (juvenile justice system conducive of the well-being of the juvenile)  Rule 14(2) of the Beijing Rules (proceedings conducive to the best interest of the child)	<ul style="list-style-type: none"> <li>• <b>Recommending states made recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure that the best interest of the child is a primary consideration in the administration of juvenile justice.</b> Eg, 'establish appropriate measures to deal with the situation of children in the juvenile justice system, taking fully into account the best interest of the children concerned...' (Norway to Mauritius).</li> <li>– <b>Recommendations on the best interest sometimes indicate how to respect the principle.</b> Eg, 'Continue its efforts to ensure the implementation of the principle of the best interest of the child in the juvenile justice system, including by considering incorporating the restorative justice principle' (Indonesia to Albania).</li> </ul> </li> </ul>	6
	Right to be heard	Article 12.2 UN CRC	<ul style="list-style-type: none"> <li>• <b>Recommending states called to ensure that children are heard in any judicial and administrative proceedings affecting them.</b> Eg, 'Ensure that children are heard in the judicial and administrative procedures concerning them, in accordance with procedures adapted to their maturity...' (Belgium to Finland).</li> </ul>	2
<b>Protection of children's rights in juvenile justice (general principle)</b>		Beijing Rule 2.3(a)  Havana Rule 1	<ul style="list-style-type: none"> <li>• <b>Protect the rights of children alleged as, accused of or recognised as having infringed the penal law in the juvenile justice system.</b> Eg, 'Strengthen the legal framework for the protection of children, as well as guaranteeing the rights of delinquent minors' (France to Mauritania).</li> </ul>	11

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
Specialised juvenile justice system	General improvement of juvenile justice	Article 40(3) UN CRC Beijing Rule 2.3	<ul style="list-style-type: none"> <li>• <b>States made general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>improve or reform the administration of justice to children (6 CTAs).</b> Eg, 'Take further practical steps to enhance the administration of juvenile justice' (Belarus to Brunei Darussalam).</li> </ul> </li> <li>• <b>States also called states under review to:</b> <ul style="list-style-type: none"> <li>– <b>seek technical assistance to improve the administration of juvenile justice (12 CTAs).</b> Eg, 'Assess the recommendation made by the Committee on the Rights of the Child with regard to seeking technical assistance from the United Nations, in order to implement the recommendations of the study on violence against children and the establishment of a juvenile justice system' (Chile to Bulgaria).</li> </ul> </li> </ul>	223
	Right to access to justice		<ul style="list-style-type: none"> <li>• <b>States have called to:</b> <ul style="list-style-type: none"> <li>– <b>ensure access to justice for children (10 CTAs).</b> Eg, 'Adopt adequate legislation to ensure that children in conflict with the law have access to justice and social reintegration, using the deprivation of liberty as a last resort' (Chile to Jamaica).</li> </ul> </li> </ul>	
	Establishment of specialised juvenile justice laws		<ul style="list-style-type: none"> <li>• <b>States have called to:</b> <ul style="list-style-type: none"> <li>– <b>establish or adapt laws and procedures specifically applicable to children alleged as, accused of or recognised as having infringed the penal law (19 CTAs).</b> Eg, 'Adopt a national action plan for child rights in the juvenile justice system' (Sudan to Oman).</li> </ul> </li> <li>• <b>States also made specific recommendations calling for the adoption of a specific piece of legislation on juvenile justice (16 CTAs).</b> Eg, 'Take immediate measures to effectively implement the Juvenile Justice and Welfare Act of 2006' (Norway to Philippines).</li> <li>• <b>States made additional recommendations calling states to:</b> <ul style="list-style-type: none"> <li>– <b>align juvenile justice legislation with the UN CRC, international standards/the UN CRC, Beijing Rules and Riyadh Guidelines (21 CTAs).</b> Eg, 'Adopt a penal system that is in conformity with the Committee on the Rights of the Child recommendations, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)...' (Slovenia to Argentina); and</li> <li>– <b>adopt child-friendly justice standards (4 CTAs).</b> Eg, 'Consider and address the issue of reportedly high number of children and adolescents in juvenile detention centres by applying child-friendly justice standards and encouraging the use of alternative sanctions and reintegration programmes' (Serbia to Costa Rica).</li> </ul> </li> </ul>	

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	Specialised justice system for juveniles		<ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>create a specialised juvenile justice system for children alleged as, accused of or recognised as having infringed the penal law (34 CTAs).</b> Eg, 'Take steps to implement a juvenile justice system...' (Canada to Grenada); and</li> <li>– <b>strengthen/improve the juvenile justice system and ensure the functioning of the system (22 CTAs).</b> Eg, 'Improve the judicial system that is specialized for minors' (France to Uruguay).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>establish a specialised juvenile justice system for children alleged as, accused of or recognised as having infringed the penal law in line with the UN CRC, Beijing Rules and/or Riyadh Guidelines (11 CTAs).</b> Eg, 'Implement a system of administration of juvenile justice that fully integrates in its legislation, policies and practices the provisions and principles of the Convention on the Rights of the Child (CRC) (in particular articles 37, 39 and 49) as well as the Beijing Rules, the Riyadh Guidelines, United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System' (Uruguay to Belize);</li> <li>– <b>bring the specialised juvenile justice system in line with the UN CRC, Beijing Rules and/or Riyadh Rules (17 CTAs).</b> Eg, 'Bring juvenile justice into conformity with the Convention on the Rights of the Child' (Mali to Guinea Bissau);</li> <li>– <b>ensure that minors/children under the age of 18 are not tried in the adult criminal justice system (20 CTAs).</b> Eg, 'Ensure that only the juvenile justice system deals with cases of children under 18 years' (Uruguay to St Vincent &amp; the Grenadines); and</li> <li>– <b>ensure that minors/children under the age of 18 are not tried in military courts (4 CTAs).</b> Eg, 'Do not undertake criminal proceedings against Palestinian juveniles in military courts' (Iraq to Israel).</li> </ul> </li> </ul>	
	Specialised juvenile justice institutions		<ul style="list-style-type: none"> <li>• <b>Recommending states made recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>establish specialised juvenile courts/courts and judges/make courts more child friendly (specific recommendations) (21 CTAs).</b> Eg, 'Take further steps to ensure that juvenile courts are set up and that children are separated from adults in detention facilities' (Hungary to Gabon);</li> <li>– <b>establish juvenile justice facilities/institutions (6 CTAs).</b> Eg, 'Guarantee the protection of child rights and provide adequate juvenile justice facilities' (UAE to Jordan); and</li> <li>– <b>2 CTAs mention the role of a children's ombudsman.</b> Eg, 'Create a system of juvenile justice that includes the establishment of a children's ombudsman' (Spain to Chile).</li> </ul> </li> </ul>	

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
<b>Reintegration</b> Objective of reintegration of children		Article 40(1) UN CRC Havana Rule 8	<ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations (24 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure the reintegration in society of juveniles alleged as, accused of or recognised as having infringed the penal law/of juvenile offenders.</b> Eg, 'Strengthen its national strategy to reform the prison system, in particular to promote the prompt reintegration of juvenile detainees into society' (Morocco to Georgia).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations (9 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>create programmes of reintegration for juvenile offenders.</b> Eg, 'Improve existing and develop new rehabilitation and reintegration programmes for children in conflict with the law...' (Kyrgyzstan to Montenegro).</li> </ul> </li> </ul>	33
<b>Prevention of juvenile delinquency</b>		Riyadh Guidelines (all provisions)	<ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations (4 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>take measures to prevent juvenile delinquency.</b> Eg, 'Improve the human rights system protecting young people and children and take measures to prevent juvenile delinquency' (Belarus to Venezuela).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations (8 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>implement specific programmes of prevention of juvenile delinquency (3 CTAs).</b> Eg, 'Look to replicate successful programmes that aim to keep adolescents out of the prison system wherever possible' (Australia to Papua New Guinea); and</li> <li>– <b>including through: education, training and employment (2 CTAs), measures to address poverty (2 CTAs) and the separation of children from adults in detention to avoid reoffending (1 CTA).</b> Eg, 'Take concrete steps to combat juvenile delinquency which include the provision of opportunities for training, education and employment' (Costa Rica to Cape Verde).</li> </ul> </li> </ul>	12
<b>Diversion from judicial proceedings</b> Principle of dealing with children without resorting to judicial proceedings		Article 40(3)(b) UN CRC Beijing Rules 6 and 11	<ul style="list-style-type: none"> <li>• <b>Recommending states made recommendations (3 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>exclude criminal proceedings for children alleged as, accused of or recognised as having infringed the penal law.</b> Eg, 'Expand the successful pre-trial diversion programme for juvenile offenders from the existing five provinces to 10' (South Africa to Zimbabwe).</li> </ul> </li> <li>• <b>Recommending states also made recommendations (11 CTAs) calling:</b> <ul style="list-style-type: none"> <li>– <b>to implement restorative justice principle (ie, one manner to divert cases from judicial proceedings).</b> Eg, 'Continue efforts to strengthen its juvenile justice system through, inter alia, considering the incorporation of the restorative justice principle' (Indonesia to Nicaragua).</li> </ul> </li> </ul>	14

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
<p><b>Minimum age of criminal responsibility</b></p> <p>Obligation to establish a minimum age of criminal responsibility</p>		<p>Article 40(3)(a) UN CRC</p> <p>Beijing Rule 4</p>	<ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>raise the minimum age of criminal responsibility (42 CTAs).</b> Eg, 'Raise the minimum age of criminal responsibility' (Brazil to Brunei Darussalam); and</li> <li>– <b>review the minimum age of criminal responsibility (7 CTAs).</b> Eg, 'Revise the legislation on the age of criminal responsibility' (France to Vanuatu).</li> </ul> </li> <li>• <b>Recommending states made more specific recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>establish a minimum age of criminal responsibility (7 CTAs).</b> Eg, 'Set a minimum age for criminal responsibility, as well as special procedures for minor offenders' (Ecuador to Micronesia); and</li> <li>– <b>raise the minimum age of criminal responsibility in line with international standards/with the UN CRC (69 CTAs).</b> Eg, 'Raise the minimum age of criminal responsibility to an internationally accepted level, and in line with the Convention on the Rights of the Child, the Beijing rules and Riyadh guidelines' (Uruguay to Botswana); and 'Raise the minimum age of criminal responsibility according to the general comment No. 10 of the Committee on the Rights of the Child' (Uruguay to Seychelles).</li> </ul> </li> <li>• <b>Indicating more specifically the age to raise the minimum age of criminal responsibility, states made recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>raise the minimum age of criminal responsibility to the age of 18 (10 CTAs).</b> Eg, 'Raise the minimum age of criminal responsibility from 7 to 18 years' (Sierra Leone to Kuwait);</li> <li>– <b>raise the minimum age of criminal responsibility to the age of 14 (5 CTAs).</b> Eg, 'Consider raising the age of criminal responsibility from 12 to 14 years, even for the most serious crimes' (Republic of Korea to Hungary);</li> <li>– <b>raise the minimum age of criminal responsibility to the age of 16 (3 CTAs).</b> Eg, 'Raise the minimum age of criminal responsibility to 16 and establish a system of juvenile justice' (Belgium to Indonesia);</li> <li>– <b>raise the minimum age of criminal responsibility to the age of 12 (9 CTAs).</b> Eg, 'Increase the age of minimum criminal responsibility to at least 12 years, as recommended by the CRC' (Austria to Malawi);</li> <li>– <b>raise the minimum age of criminal responsibility from the age of 12 years old (1 CTA).</b> Eg, 'Raise the minimum age of criminal responsibility currently fixed at 12 years, in compliance with its international obligations' (France to Sudan);</li> <li>– <b>repeal very low minimum age of criminal responsibility (7 CTAs).</b> Eg, 'remove the provision in the penal code establishing the age of criminal responsibility as 7 years old' (France to Mauritania); and</li> <li>– <b>prevent children from being accountable in court (2 CTAs).</b> Eg, 'Conform the juvenile justice system to be in accordance with international standards so as to prevent children from being legally accountable in courts' (Serbia to Kenya).</li> </ul> </li> </ul>	162

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
<b>Fair trial guarantees</b>	Respect of fair trial	Article 40(2)(b) UN CRC  Beijing Rules 7 and 14.1	<ul style="list-style-type: none"> <li>• <b>Recommending states called to ensure that all fair trial guarantees are respected for children alleged as, accused of or recognised as having infringed the penal law (8 CTAs).</b> Eg, 'Reinforce existing legislation to ensure a fair judicial treatment, especially for the most vulnerable categories, such as women and children' (Italy to Bolivia).</li> </ul>	31
	Right to appeal	Article 40(2)(b)(v) UN CRC  Beijing Rule 7	<ul style="list-style-type: none"> <li>• <b>Develop/promote an appeal mechanism/system to review sentences (5 CTAs).</b> Eg, 'Continue advancing on the specialization of the juvenile justice system, including the development of an appeals mechanism' (Chile to Uruguay).</li> </ul> <p>Note that three of these CTAs call for the withdrawal of reservation to Article 40(2)(b)(v) on the right of children to appeal.</p>	
	Right to an interpreter	Article 40(2)(b)(vi) UN CRC	<ul style="list-style-type: none"> <li>• <b>Ensure that children are not compelled to give confessions in a language that they do not understand (1 CTA).</b> Eg, 'End urgently night arrests of Palestinian children, the admissibility in evidence in military courts of written confessions in Hebrew signed by them, their solitary confinement and the denial of access to family members or to legal representation' (Ireland to Israel).</li> </ul>	
	Right to legal assistance	Article 40 (2)(b)(ii) UN CRC  Beijing Rules 7 and 15	<ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations (6 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure that children alleged as, accused of or recognised as having infringed the penal law have access to legal assistance.</b> Eg, 'Continue to guarantee young people the access to legal assistance in conformity with the law' (Djibouti to China).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations (7 CTAs).</b> Eg, 'Ensure the proper functioning of the juvenile justice system in compliance with international standards and to guarantee that minors are always heard in the presence of a legal representative' (Iran to Austria).</li> </ul>	
	Protection from compulsory self-incrimination	Article 40(2)(b)(iv) UN CRC  Beijing Rule 7	<ul style="list-style-type: none"> <li>• <b>Ensure that children are not compelled to give confession of guilt (1 CTA).</b> Eg, 'End urgently night arrests of Palestinian children, the admissibility in evidence in military courts of written confessions in Hebrew signed by them, their solitary confinement and the denial of access to family members or to legal representation' (Ireland to Israel).</li> </ul>	
	Right to an atmosphere of understanding	Beijing Rule 14.2	<ul style="list-style-type: none"> <li>• <b>Adopt child-friendly measures for children involved in criminal proceedings (3 CTAs).</b> Eg, 'Recommended that child-sensitive procedures be adopted during criminal proceedings involving children' (Canada to Republic of Korea).</li> </ul>	
<b>Sentencing including inhuman sentencing</b>	<b>Proportionality of sentences –</b> (including minimum sentences)	Article 40(4) UN CRC  Beijing Rules 5, 16, 17.1(a)	<ul style="list-style-type: none"> <li>• <b>Ensure that sentences applied to children take into account their age and circumstances (2 CTAs).</b> Eg, 'Consider how to deal with minor delinquency in order to provide sentences suited to the age of offenders, to educate them and lead to their social reintegration' (France to Cape Verde).</li> <li>• This should lead to the <b>abolishment of mandatory minimum sentencing to children, which was recommended twice (2 CTAs).</b> Eg, 'Abolish the mandatory minimum sentencing of juvenile offenders' (Czechia to Australia).</li> </ul>	4

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<b>Prohibition of the death penalty</b>	Article 37(a) UN CRC Beijing Rule 17.2	<ul style="list-style-type: none"> <li>• <b>Recommending states made recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>abolish the death penalty in particular for minors (6 CTAs).</b> Eg, 'Abolish the death penalty, at least for juvenile perpetrators' (Czechia to Iran);</li> <li>– <b>abolish the death penalty for minors (51 CTAs).</b> Eg, 'Cease immediately the use of the death penalty, especially for minors and those who committed offences while they were juveniles' (New Zealand to Iran);</li> <li>– <b>do not impose the death penalty on minors (17 CTAs).</b> Eg, 'Strictly ensure that the death penalty is not imposed for children, and declare an official moratorium on executions with a view to abolishing the death penalty' (Australia to Kenya);</li> <li>– <b>declare a moratorium with the aim of abolishing the death penalty for minors (14 CTAs).</b> Eg, 'Establish a moratorium on executions with a view to abolishing death penalty entirely, especially with regard to juvenile offenders' (Slovakia to the UAE);</li> <li>– <b>declare a moratorium on the death penalty for minors/halt executions of minors (13 CTAs).</b> Eg, 'Immediately declare an official moratorium on executions, particularly for minors at the time of the crime' (Belgium to Iran);</li> <li>– <b>limit the crimes punishable by the death penalty for minors (2 CTAs).</b> Eg, 'Strengthen the moratorium on the death penalty against young people, established in October 2008 limit the crimes punishable by the death penalty to commute death sentences to imprisonment...' (Spain to Iran);</li> <li>– <b>commute sentences of the death penalty of minors (9 CTAs).</b> Eg, 'Ban executions of juvenile offenders, while at the same time providing for alternative punishments in line with the new Iranian Penal Code' (Italy to Iran); and</li> <li>– <b>prohibit public executions of minors (2 CTAs).</b> Eg, 'Take immediate measures to abolish the death penalty for crimes committed by persons when they were under the age of 18, and place a moratorium on public executions' (Norway to Iran).</li> </ul> </li> </ul>	114
	<b>Prohibition of life imprisonment</b>	Article 37(a) UN CRC	<ul style="list-style-type: none"> <li>• <b>Prohibit life imprisonment sentences for persons under the end of 18/ensure that the sentence of life imprisonment is not imposed for offences committed under 18 years old (16 CTAs).</b> Eg, 'Abolish the sentencing of children to life in prison' (Lithuania to Australia).</li> <li>• <b>1 CTA specifies the age under which life imprisonment should not be imposed.</b> Eg, 'Prohibit sentences of corporal punishment for children and life imprisonment of children under the age of 14, under all systems of justice and without exception, to ensure full compliance with international standards' (Germany to Dominica).</li> <li>• <b>Renounce to life imprisonment without parole for/ introduce a possibility of remission (6 CTAs).</b> Eg, 'Renounce to life in prison without parole sentences for minors at the moment of the actions for which they were charged and introduce for those who have already been sentenced in these circumstances the possibility of a remission' (Belgium to the US).</li> </ul>	23

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<b>Prohibition against sentencing to torture and other cruel and degrading treatment or punishment</b>	Article 37(a) UN CRC Beijing Rule 17.3	<ul style="list-style-type: none"> <li>• <b>Prohibit the use of corporal punishment in the context of juvenile justice (overall) (2 CTAs).</b> Eg, 'Outlaw corporal punishment in the context of juvenile justice...' (Germany to Saint Kitts and Nevis).</li> <li>• <b>Prohibit sentences to torture/corporal punishment for children under the age of 18 (17 CTAs).</b> Eg, 'Ban corporal punishment sentences and life sentences, in particular for children' (Costa Rica to Brunei Darussalam).</li> </ul>	
<b>Deprivation of liberty – leading principles</b>	<b>Alternative measures to detention</b>	Article 40(4) UN CRC Beijing Rule 18; Pre-trial detention: Beijing Rule 13. 2; Havana Rule 17	<p><b>29 CTAs</b></p> <ul style="list-style-type: none"> <li>• <b>States insist on alternatives to pre-trial detention (7 CTAs) by calling to:</b> <ul style="list-style-type: none"> <li>– <b>promote the use of alternatives to pre-trial detention.</b> Eg, 'Introduce alternative measures to pre-trial detention for minors wherever possible' (UK to Sweden).</li> </ul> </li> <li>• <b>They encourage the use of alternatives to detention through general recommendation:</b> <ul style="list-style-type: none"> <li>– <b>develop/promote/prioritise alternative measures to detention (19 CTAs).</b> Eg, 'Extend the juvenile justice system to the whole country and create alternative forms of deprivation of liberty for children in conflict with the law' (Mexico to Mali); and</li> <li>– <b>through specific recommendations (3 CTAs).</b> Eg, 'Consider the request put forward by the Federal Council for Children, Adolescent and the Family to adjust the provincial procedural legislation for the establishment of non-custodial measures' (Chile to Argentina).</li> </ul> </li> </ul>	91
	<b>Deprivation of liberty as last resort and for the shortest time possible</b>	Article 37(b) UN CRC Beijing Rules 17(b) and (c) and 19; Havana Rules 1 and 2  Pre-trial detention: Beijing Rule 13.1; Havana Rule 17	<p><b>44 CTAs</b></p> <ul style="list-style-type: none"> <li>• <b>Take all necessary measures so that deprivation of liberty is used only as a measure of last resort (13 CTAs).</b> Eg, '...ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders...' (Austria to Croatia).</li> <li>• <b>Ensure that deprivation of liberty is for the shortest time possible (3 CTAs).</b> Eg, 'Put in practice a broad system of alternative measures to deprivation of liberty of minors so that it is used only as a last resort, for the shortest time possible and in the appropriate conditions' (Uruguay to Jordan).</li> <li>• <b>Ensure that pre-trial detention is a measure of last resort and for the shortest time possible (15 CTAs).</b> Eg, 'Revise its system of detention to reduce the use of police custody for children, and ensure that police custody of children is a measure of last resort and for the shortest period of time possible' (Canada to Norway).</li> <li>• <b>More specifically.</b> Eg, 'Introduce a limit for the time a child can be held in detention, pre-trial' (Israel to Sweden).</li> <li>• <b>Other recommendations go further in calling states not to deprive children of their liberty (13 CTAs, including 3 CTAs regarding pre-trial detention).</b> Eg, 'Ensure that no children are held in detention' (Brazil to Austria).</li> </ul>	
	<b>Prohibition of arbitrary detention</b>	Article 37(b) UN CRC	<ul style="list-style-type: none"> <li>• <b>Ensure that children are not arbitrarily detained (5 CTAs).</b> Eg, 'Continue carrying out the principles contained in CAT, with a specific focus on the elimination of arbitrary detention, especially of minors, and of violence occurring at the hands of law enforcement personnel' (Holy See to Laos).</li> </ul>	

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<b>Respect of children's rights in detention (general principle)</b>	Havana Rules 12 and 13	<b>13 CTAs</b> <ul style="list-style-type: none"> <li>• <b>Respect the rights of children in detention (10 CTAs).</b> Eg, 'Ensure the protection of the rights of children, including juveniles who are incarcerated in overcrowded prisons' (Botswana to Austria).</li> <li>• <b>Align the standards of detention of juveniles with international standards (3 CTAs).</b> Eg, 'Ensuring that its system of juvenile detention is in line with its human rights obligations' (Germany to Uruguay).</li> </ul>	
<b>Deprivation of liberty – procedural rights</b>	<b>Deprivation of liberty – right to legal assistance</b>	Article 37(d) UN CRC Havana Rules 18(a) and 78	<ul style="list-style-type: none"> <li>• <b>Ensure that child detainees have access to legal assistance/legal aid (3 CTAs).</b> Eg, 'Guarantee the rights of prisoners, provide access to legal aid from the moment of arrest and create programmes of rehabilitation, including for juvenile offenders' (Mexico to Burkina Faso).</li> </ul>	4
	<b>Right to privacy in detention</b>	Beijing Rule 8 Havana Rules 18, 32 and 87(e)	<ul style="list-style-type: none"> <li>• <b>Ensure that the child's right to privacy is respected in detention (1 CTA).</b> Eg, 'Address the high incarceration rate of children, ensure that the privacy of children is protected' (UK to Algeria).</li> </ul>	
<b>Deprivation of liberty – treatment and conditions</b>	<b>General protection of children in detention</b>	Article 37(c) UN CRC Havana Rule 28 Beijing Rule 26.4 (on protection of young female offenders) and 13.3 (regarding pre-trial detention conditions)	<b>48 CTAs</b> <ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure the protection of children in detention (5 CTAs).</b> Eg, 'Consider, in the area of administration of justice, the protection of children and adolescents in juvenile detention centres' (Zambia to Costa Rica);</li> <li>– <b>improve the detention conditions of minors (33 CTAs).</b> Eg, 'Improve detention conditions in general, particularly for women and children' (Italy to Bolivia); and</li> <li>– <b>ensure the conditions of pre-trial detention of minors (6 CTAs).</b> Eg, 'Continue to further improve conditions for juveniles in pre-trial detention facilities' (Georgia to Croatia).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>establish open detention facilities (2 CTAs).</b> Eg, 'Improve existing and develop new rehabilitation and reintegration programmes for children in conflict with the law who are residing in semi-open and residential institutions' (Kyrgyzstan to Montenegro);</li> <li>– <b>improve the detention conditions in a specific detention facility (1 CTA).</b> Eg, 'Continue its efforts to improve conditions for detention of minors, in particular, set up, as quickly as possible, the security unit of the socio-educational centre of Dreibern' (France to Luxembourg); and</li> <li>– <b>ensure that detention facilities are adapted to girls (1 CTA).</b> Eg, 'Alter detention and prison facilities as well as standards of treatment for juveniles so that they are gender sensitive and ensure effective protection of detainees' and prisoners' personal safety' (Czechia to Canada).</li> </ul> </li> </ul>	255

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<p><b>Right to be separated from adults in detention</b></p>	<p>Article 37(c) UN CRC</p> <p>Beijing Rule 26.3</p> <p>Havana Rule 29 (Rule 30 on basic detention facilities)</p> <p>Pre-trial detention: Beijing Rule 13.4; Havana Rule 17</p>	<p><b>113 CTAs</b></p> <ul style="list-style-type: none"> <li>• <b>Recommending states made general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>ensure the separation of adults and children in detention (58 CTAs).</b> Eg, 'Ensure separation of juvenile prisoners from adult inmates' (Slovakia to Guyana).</li> </ul> </li> <li>• <b>Recommending states also made specific recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>prohibit the detention of minors with adults (9 CTAs).</b> Eg, 'Immediate elimination of the practice of incarcerating juvenile offenders alongside adults' (UK to Jamaica);</li> <li>– <b>create/provide specific detention facilities for minors (23 CTAs).</b> Eg, 'Build enough housing facilities so offenders under the age of 18 are housed separately from the general prison population' (US to Antigua and Barbuda);</li> <li>– <b>1 specific CTA:</b> 'Guarantee the closure of the Saint Patrick's Institution and the effective implementation of the Children (Amendment) Act of 2015 and the Prisons Act of 2015' (Israel to Ireland);</li> <li>– <b>ensure that all children up to the age of 18 are separated from adults in detention (2 CTAs).</b> Eg, 'Increase the age of criminal responsibility from 12 to 16 years and arrange that convicted minors aged between 16 and 18 years complete their sentences segregated from the adult prison population' (Chile to Grenada);</li> <li>– <b>establish a norm providing for the separation of minors with adults (2 CTAs).</b> Eg, 'Establish a norm leading to the separation of women and men in penitentiary centres and between adults and minors and set up measures to ensure compliance with this norm, having heard information on the measures that will be adopted in penitentiary centres' (Spain to Iceland);</li> <li>– <b>withdraw reservations to Article 37(c) on the separation of children from adults in detention (14 CTAs).</b> Eg, 'Withdraw its reservation to article 37(c) of the Convention on the Rights of the Child (CRC) regarding the separation of children deprived of liberty from adults' (Austria to Japan); and</li> <li>– <b>ensure the separation of children from adults in pre-trial detention (5 CTAs).</b> Eg, 'With regard to the pre-trial detention regime, put in place appropriate measures that would allow for separation of detainees on the basis of gender and age' (Malaysia to Belarus).</li> </ul> </li> </ul>	

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<b>Prohibition of cruel/corporal punishment/ abuse in detention</b>	Articles 37(a) and (c) UN CRC  Havana Rules 67, 63 and 64 (specifically on use of restraints) and 85(a) specifically on ill-treatment by prison staff	<b>57 CTAs</b>  <b>States have detailed different practices amounting to torture, corporal punishment and abuse in detention.</b>  <ul style="list-style-type: none"> <li>• <b>They have issued general recommendations calling to:</b> <ul style="list-style-type: none"> <li>– <b>prevent the use of corporal punishment and violence against children in detention (7 CTAs).</b> Eg, ‘Take steps to prevent violence against children, in particular in school, family and penitentiary environments’ (France to Costa Rica).</li> </ul> </li> <li>• <b>They have issued specific recommendations (24 CTAs) calling to:</b> <ul style="list-style-type: none"> <li>– <b>adopt legislation prohibiting corporal punishment in detention.</b> Eg, ‘Prohibit specifically and by law all corporal punishment of children at home, care institutions, penitentiary centres and any other settings, in conformity with article 19 of CRC’ (Uruguay to Algeria).</li> <li>• <b>States have also referred to specific forms of ill-treatment of children, including by calling for:</b> <ul style="list-style-type: none"> <li>– <b>putting an end to sexual abuse in detention (1 CTA).</b> Eg, ‘...pay special attention to women and children to avoid that they are subjected to sexual abuse in detention’ (Ecuador to DPRK);</li> <li>– <b>prohibiting solitary confinement of children in detention (13 CTAs).</b> Eg, ‘Prohibit the use of solitary confinement for children within the criminal justice system’ (Slovenia to Denmark); and</li> <li>– <b>prohibiting the use of physical restraint of children in detention (1 CTA).</b> Eg, ‘...enact regulations to ensure greater protection of children’s rights particularly such as the use of restraints and strip searches’ (Slovenia to Israel).</li> </ul> </li> </ul> </li> <li>• <b>States have also addressed pre-trial detention by calling to (8 CTAs):</b> <ul style="list-style-type: none"> <li>– <b>prevent violence/torture in pre-trial detention.</b> Eg, ‘Take the necessary measures so that persons below 18, being under arrest, would not be subject to corporal punishment or other forms of ill-treatment’ (Hungary to Azerbaijan).</li> </ul> </li> </ul>	
	<b>Care of children in detention</b>	Article 37(c) UN CRC  Beijing Rules 26 and 13.5 for care in pre-trial detention  Havana Rules 34 (adequate sanitation), 37 (provision of adequate food), 49–55 (medical care)	<b>8 CTAs</b>  <ul style="list-style-type: none"> <li>• <b>States have mentioned different measures aimed at providing care to children in detention including by calling to:</b> <ul style="list-style-type: none"> <li>– <b>provide adequate nutrition and sanitation services to children in detention (3 CTAs).</b> Eg, ‘Ensure that all children living in detention are accorded special protection, including the nutrition, health and educational services necessary for their proper development’ (Austria to Bolivia); and</li> <li>– <b>ensure access to medical care for children in detention (including social counselling services) (5 CTAs).</b> Eg, ‘Provide separate prison and detention facilities for minors, male and female inmates and improve access of inmates to adequate food and medical care’ (Czechia to Côte d’Ivoire).</li> </ul> </li> </ul>	

Main theme	Topics/ principles	International provision	Call to action	Number of CTAs
	<b>Rehabilitation in detention</b>	Article 37(c) UN CRC  Beijing Rules 24; Havana Rules 38–42 (education)  Beijing Rules 25 and 26; Havana Rules 59–62 (links with community)  Pre-trial detention: Beijing Rule 13.4; Havana Rule 18(b)	<b>13 CTAs</b>  • <b>States have mentioned different measures aimed at the rehabilitation of children after detention including:</b> – <b>provide adequate education and training to children in detention (11 CTAs).</b> Eg, ‘Undertake effective measures to guarantee access to education for juveniles in the penitentiary system’ (Croatia to Georgia); and – <b>guarantee the contact of children deprived of liberty with their family and the wider community (2 CTAs).</b> Eg, ‘Intensify strategies aimed at social and family integration of minors detained in the disciplinary section for minors of the Penitentiary Centre’ (Holy See to Luxembourg).	
	<b>Obligation of monitoring detention facilities</b>	Havana Rules 14, 72–78	<b>17 CTAs</b>  • <b>Ensure the independent monitoring of conditions of detention of children (2 CTAs).</b> Eg, ‘establish an independent mechanism to overview conditions in detention facilities, with particular focus on conditions of children and their protection against violence and abuse’ (Czechia to Azerbaijan). • <b>Investigate cases of death/violence against children in detention (13 CTAs).</b> Eg, ‘Take the necessary steps to ensure that allegations of ill-treatment by security forces in detention centers are promptly investigated, through a transparent and independent procedure, especially when they relate to particularly vulnerable groups such as minors’ (Spain to France). • <b>Allow access to independent organisations/NGOs to detention facilities (2 CTAs).</b> Eg, ‘Review conditions in prison and detention facilities, in particular where juveniles are concerned and allow access to detention facilities to civil society organizations’ (Czechia to Vanuatu).	
<b>Training of professionals on juvenile justice</b>		Beijing Rule 22 (general)  Beijing Rule 6.3 (judges)  Beijing Rule 12 (police)  Havana Rules 81, 85, 86 on detention staff	• <b>Recommending states called for awareness raising of the public on juvenile justice (2 CTAs).</b> Eg, ‘Further raise public awareness about ... children’s participation in civil and criminal proceedings’ (Lithuania to Estonia). • <b>Recommending states also called to provide training to all stakeholders working in the juvenile justice system (12 CTAs).</b> Eg, ‘Guarantee an effective and sufficient specialization of the stakeholders in the juvenile justice system’ (Egypt to Chile). • <b>Recommendations specifically mentioning the professionals involved in juvenile justice, ie, the police, the judiciary, lawyers (32 CTAs).</b> Eg, ‘Continue ensuring systematic training for all personnel working in the juvenile justice system, including police, lawyers and judges’ (Malaysia to Costa Rica).	46
<b>Evaluation of juvenile justice policies</b>		Beijing Rule 30	• <b>Recommending states made recommendations calling to:</b> – <b>evaluate the outcome of the juvenile justice policies (4 CTAs).</b> Eg, ‘While continuing its positive initiatives, invest more rigour in evaluating the outcomes of planned activities in many of these areas: prisons conditions, criminal justice system, juvenile justice system...’ (UK to Brazil); and – <b>gather data on the rights of children in the juvenile system (2 CTAs).</b> Eg, ‘Provide an update at its mid-term review on the number of detention centres in the country containing separate facilities for juvenile offenders’ (Hungary to Zambia).	6









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**International Bar Association**

4th Floor, 10 St Bride Street  
London EC4A 4AD, United Kingdom  
Tel: +44 (0)20 7842 0090  
Fax: +44 (0)20 7842 0091  
Website: [www.ibanet.org](http://www.ibanet.org)

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