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**The American University in Cairo
School of Global Affairs and Public Policy**

**TOWARDS A CHILD-CENTERED JUVENILE JUSTICE SYSTEM IN
EGYPT: A SITUATION ANALYSIS OF LAW AND APPLICATION**

A Thesis Submitted to the

Public Policy and Administration Department

**in partial fulfillment of the requirements for the degree of
Master of Public Policy**

By

Manar Mohammad AbulQasem Hafez Ahmed

Fall 2015

DEDICATION

This thesis is dedicated to my dear family and friends who supported me through this whole journey, whose love and support made all the difference and kept me going on. My life is rich because I have you all in it.

To my dear parents who encouraged me to do what I believe in. For my father who has always trusted my judgment and encouraged me to make my own decisions and touch the sky if I want. This is to my mother for teaching me to stand up for myself and for being the strong woman she is. This is for my sisters for believing in me and pushing me to fulfill my dream.

To my loving husband without whom I would have never achieved this. For all the times he made me the priority. For all the times, he sacrificed so I flourish.

To my children for filling my life with love and joy.

To my courageous son who has always succeeded on drawing a smile on my face, even at the hardest times.

To my lovely daughter whose support and rigorous attempts to encourage me to go on gave me strength at times when I doubted myself.

To all the dreamers of a better future. To all the believers in second chances.

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The American University in Cairo
School of Global Affairs and Public Policy
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ANALYSIS OF LAW AND APPLICATION

Manar Mohammad AbulQasem Hafez Ahmed

Supervised by Professor Ghada Barsoum

ABSTRACT

The past few decades have witnessed a growing global interest in formulating juvenile justice systems that can prevent juvenile delinquency as well as rehabilitate and reintegrate juvenile offenders. This research studies the Egyptian juvenile justice system, both in terms of its regulating law as well as its application, in light of global instruments and international requirements for the establishment of a comprehensive and rehabilitative juvenile justice system. The research is qualitative, uses observation and interviews with stakeholders involved in the administration of the juvenile justice system in Egypt. It offers a conceptual framework that builds on the internationally pronounced United Nations Committee on the Rights of the Child's 2007 core elements of a comprehensive policy of juvenile justice as well as a set of parameters informed by the 2006 UNICEF and UNODC measurement of the juvenile justice and the 2008 Violence Against Children in Conflict with the Law indicators. The research argues that while the Egyptian Child Law (2008) that regulates the juvenile justice system largely complies with the core elements of a sound and just juvenile justice system, its application does not necessarily reflect the same level of compliance. Indeed, while different official documents promote the establishment of a rehabilitative system, the current system is largely punitive, prioritizing public safety and youth offender accountability to human rights and youth development. The research calls for policy reform that promotes a more child centered juvenile justice system in the country.

Table of Contents

Chapter 1: Introduction and Problem Statement.....	9
Research Objectives and Questions.....	9
Relevance and Timeliness of the Study	11
Chapter 2: Background: Juvenile Justice in the Egyptian and Global Context.....	13
An Overview of the Current Egyptian Juvenile Justice System.....	14
Governing Treaties and Egypt’s International Commitment	16
Child Law (Law 12/ 1996) and its amendment (Law 126/2008)	17
Juvenile Justice: the Global Context	18
The Rights Based Framework Governing Juvenile Justice	18
The Historical Evolution of the Juvenile Justice System Worldwide.....	22
Chapter 3: Literature Review	24
Chapter 4: Conceptual Framework	27
Chapter 5: Research Methodology and Scope	37
Research Limitations.....	45
Access to Data	45
The Principle of Do-No-Harm to Participants	45
Juvenile Justice as a Matter of National Security and Access to Governmental Stakeholders	46
Chapter 6: The Policy and Legal Framework Governing the Administration of the Egyptian Juvenile Justice System.....	47
The Aim of the Juvenile Justice System	48
The CRC/C/GC/10 and the Egyptian Child Law	50
The Organization of the Juvenile Justice System	50
Prevention.....	51
Interventions/Diversion	51
Age and Children in Conflict with the Law	52
Fair Trial Guarantees.....	52
Measures.....	53
Deprivation of Liberty, including pretrial detention and post- trial incarceration	54
Shortcomings in the Egyptian Child Law (2008) within the broader framework of Juvenile Justice	54
Children at Risk: In Conflict with the Law or in Need of Care and Protection?	55
Minimum Age of Criminal Responsibility and Age 12 and Under Subjected to the Judicial Proceedings.....	56
Child Participation.....	57

A comprehensive specialized system including Lawyers and Access to Legal Aid	58
Chapter 7: Processes, Practices, Procedures and Personnel: the Realities of the Egyptian Juvenile Justice System.....	59
The Child’s Journey in the Juvenile Justice System.....	60
2- Awaiting Trial	61
3- Sentencing Stage.....	62
4- Post Trial and Incarceration Stage	63
Analyzing the Scene: the Egyptian Realities in Juvenile Justice	63
Operational Parameters.....	64
1- Registration and Data Availability.....	64
2- Use of Detention.....	67
3- Prevalence of Violence.....	74
4- The Complaints System.....	79
5- The Fair Trial Guarantees.....	80
6- Provision of Rehabilitative Services	81
Policy Parameters	86
1- Regular Independent Inspection.....	86
2- Specialized Juvenile Justice System	88
3- Prevention.....	92
4- Governance and Accountability.....	95
Chapter 8: Beyond the Scene: A Discussion of Study Findings.....	97
A Culture of Trade-offs: the Conflict between the system and the principles of human rights, rule of law and national security.....	98
The Power Dynamics among Different Stakeholders	101
A System Manipulated by Many: the Impact of Social Norms and Cultural factors on the Juvenile Justice System in Egypt	102
Chapter 9: Conclusion and Policy Recommendations	104
Policy Recommendations and Associated Procedural Measures	105
REFERENCES	109
ANNEX	114
Annex 1: The Egyptian Child Law (2008).....	114
Annex 2: Semi-Structures Interview questions.....	131
Annex 3: The CRC/C/GC/ 10 (2007)	137

List of Figures

Figure 1 The Egyptian Juvenile Justice Framework.....	16
Figure 2 The Conceptual Framework	27
Figure 3 The Research Methodology.....	43

LIST OF TABLES

Table 1 The 2006 UNICEF and UNODC Measurement of the Juvenile Justice Indicators....	29
Table 2 The 2008 Violence Against Children in Conflict with the Law	31
Table 3 The Research Parameters	34
Table 4 The Research Phases.....	41

LIST OF ACRONYMS

GoE	Government of Egypt
HRW	Human Rights Watch
INGO	International Non-governmental Organization
JJ	Juvenile Justice
MACR	Minimum Age for Criminal Responsibility
MoJ	Ministry of Justice
MoSS	Ministry of Social Solidarity
NCCM	National Council on Childhood and Motherhood
NCHR	National Council on Human Rights
NGO	Non-governmental Organization
TDH	Terre des homes
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime

Chapter 1: Introduction and Problem Statement

Global concerns regarding youth and juvenile delinquency have been growing over the past years (UNODC and World Bank, 2007). It is estimated that there is at least one million children deprived of their liberty worldwide (ibid). These concerns inspired the development of a number of international instruments that ideally promote a comprehensive juvenile justice system that “prevents and addresses juvenile delinquency” (Committee on the Convention on the Rights of the Child General Comment num 10, 2007). These instruments should serve as the base for juvenile justice systems in state parties that ratified them.

There are few published studies and research describing the Egyptian juvenile justice system in full which is among the reasons why this research is fulfilling a gap in current literature. Questions about whether the current Egyptian juvenile justice system achieves its policy intent of preventing delinquency while rehabilitating and re-socialization juvenile offenders are on the rise. These concerns have been echoed by international reports such as in the United Nation Convention on the Rights of the Child Committee’s concluding observations on Egypt’s report in 2011. Recently, a number of media reports discussed violations of child rights inside the care and correctional institutions where juveniles are institutionalized.

Research Objectives and Questions

This research aims to provide a situation analysis of the current operational juvenile justice system in Egypt by analyzing the relevant policy and legal framework as well as practices governing it and setting its boundaries. On one hand, the research will examine the level of compliance between the current legal, policy and operational framework of the juvenile justice system in Egypt and the various conventions, rules, guidelines, and core elements governing the work of juvenile justice systems worldwide. On the other hand, the

research investigates the relevance of the current practices based on the international theories on punitive versus rehabilitative approaches to juvenile justice in light of the work of Andrews et al (1990) on the importance of rehabilitation and the fundamentals of the “nothing works” approach of Martinson (1974).

The study concludes with policy recommendations on how to improve the current Juvenile Justice system to be more responsive to international requirements for comprehensive juvenile justice systems. Operational measures are also introduced to promote a child centered juvenile justice system. These recommendations and operational measures are developed in consultation with all relevant stakeholders interviewed through the research, using a co-designing approach, to ensure the inclusion of their insights and suggestions to improve the system. The policy recommendations do not only focus on the children who are the prime target of the system but also focuses on personnel involved in the administration of the system. The question is not only on how to make it more child-centered but also more human centered, thus improving the lives of all humans involved in it.

The study starts with an analysis of the Child Law (2008) that regulates the Egyptian juvenile justice system in light of the juvenile justice international agreements especially with regards to the United Nations Convention on the Rights of the Child Committee General Comment num. 10 (2007) (hereinafter CRC/C/GC/10, 2007). This research uses qualitative data. Based on a stakeholder mapping analysis, different stakeholders involved in the system are interviewed to better understand the practices, processes, procedures and personnel administrating the Egyptian juvenile justice system. These practices and procedures are analyzed against a set of parameters that are informed by the UNICEF and UNODC 2006 Measurement of the Juvenile Justice System and the 2008 Defense for Children international’s Violence Against Children in Conflict with the Law.

Relevance and Timeliness of the Study

Over the past few years and since January 2011, Egypt has gone through tremendous political as well as social and economic changes. Some of the most heated discussions both internationally and nationally were regarding the status of human rights in Egypt. Reports on violations of human rights in general and of child rights in specific have been repeated by a number of international as well as national entities. For example, the United Nations Committee on the Rights of the Child (hereinafter UNCRC Committee) raised serious concerns on the excess use of force by the security forces that resulted in the death of twelve children (UNCRC committee Concluding Observations, 2011). These violations have also included media and NGOs's reports on the manipulation of the juvenile justice system for political reasons and against political opponents under the allegation of confronting terrorism which included a case in Minya of a child sentenced to death (interviews with lawyers defending juveniles, 2015). Other newspaper reports spoke of detaining children who participated in demonstrations in prolonged temporary custody, which violates the right of children to participation and freedom of expression¹. A number of NGOs documented cases of torture and violations of child rights inside juvenile correctional institutions².

Simultaneously, the Government of Egypt (GoE) is trying to improve its image in the face of these charges. In March 2016, the GoE shall submit its periodic report on the status of child rights based on the UNCRC to the UNCRC Committee. The raised concerns on the rights of juveniles are expected to be among the main issues tackled and fully examined by the UNCRC Committee. This can constitute an opportunity to present practical and evidence based recommendations that can help the current political system in creating a more child

¹ Shorouk newspaper report dated September 20th, 2014, accessed on Oct 15th, 2015 through <http://www.shorouknews.com/news/view.aspx?cdate=20092014&id=36e02be2-df67-4c1c-bbf5-b536ed3fcc10>.

² Please view (<https://www.youtube.com/watch?v=S35ygVttECw>, <https://www.youtube.com/watch?v=X9Bg2Q9Ni2c>, accessed October 15th, 2015

rights based juvenile justice system in the face of international condemnation of the Egyptian judicial system. In that sense, this research is seen as very relevant especially in the current time-being.

The introductory chapter presented an overview of the research and the problem statement. The second chapter provides a background on the context of the juvenile justice system in Egypt as well as an introduction to the main international agreements, guidelines and rules relevant to the juvenile justice system worldwide. Chapter three speaks of the main theories governing trends towards juvenile delinquency. Chapter four details the conceptual framework. The Fourth chapter describes the research methodology and scope. Chapter five and six represent the findings from the theoretical analysis as well as the field work. Chapter seven analyzes these findings within the wider political and social environment in Egypt. Conclusions are presented in chapter eight along with policy recommendations and procedural measures as suggested during the field work by different stakeholders.

Chapter 2: Background: Juvenile Justice in the Egyptian and Global

Context

In Egypt, the number of young people who are incarcerated is not officially announced. The latest available and reliable information on the number of young people convicted in the Egyptian system goes back to 2006. The United Nations Office on Drugs and Crime (UNODC) estimated that in 2006 there were around 36,758 youth aged 17 and under, convicted. The Egyptian juvenile justice (JJ) system classifies children in conflict with the law into two main categories: children who committed crimes, and children at risk (HRW, 2003). According to international definitions, children in conflict with the law as a concept, refers to “any person under 18 years of age who comes in contact with the law due to suspecting and/or committing an offence” (UNICEF, 2006; UNICEF, 2009). Children at risk are those exposed to situations that jeopardize their “sound upbringing” such as cases of abuse, neglect, violence and exploitation or whose upbringing (Child Law, 2008). Currently, there are 37 care institutions that receive these children. However, children in conflict with the law are only institutionalized in 19 of these care institutions with only one correctional institution for male juvenile offenders aged between 15 and 18. There are three main governmental entities that operate the official juvenile justice system in Egypt. These are the Ministry of Interior that arrests and detains children at its police lockups and stations, the Ministry of Justice (MoJ) that operates courts including the Child Court and provides judges and public prosecutors who decide the fate of children arrested by the police, and the Ministry of Social Solidarity (MoSS) that operates care and correctional institutions that host these children once their fate is determined by the judges and presumably provides evaluations on the progress and the needs of children detained, arrested and institutionalized (HRW, 2003). Resources on the living conditions that detained and institutionalized juveniles

experience are very limited. The 2003 HRW Report entitled “Charged with Being Children”, which is one of the main sources on the practices engulfing the Egyptian Juvenile Justice, describes the system as abusive and calls for a “structural reform” in how the Egyptian government deals with children in need of protection or in conflict with the law (ibid).

An Overview of the Current Egyptian Juvenile Justice System

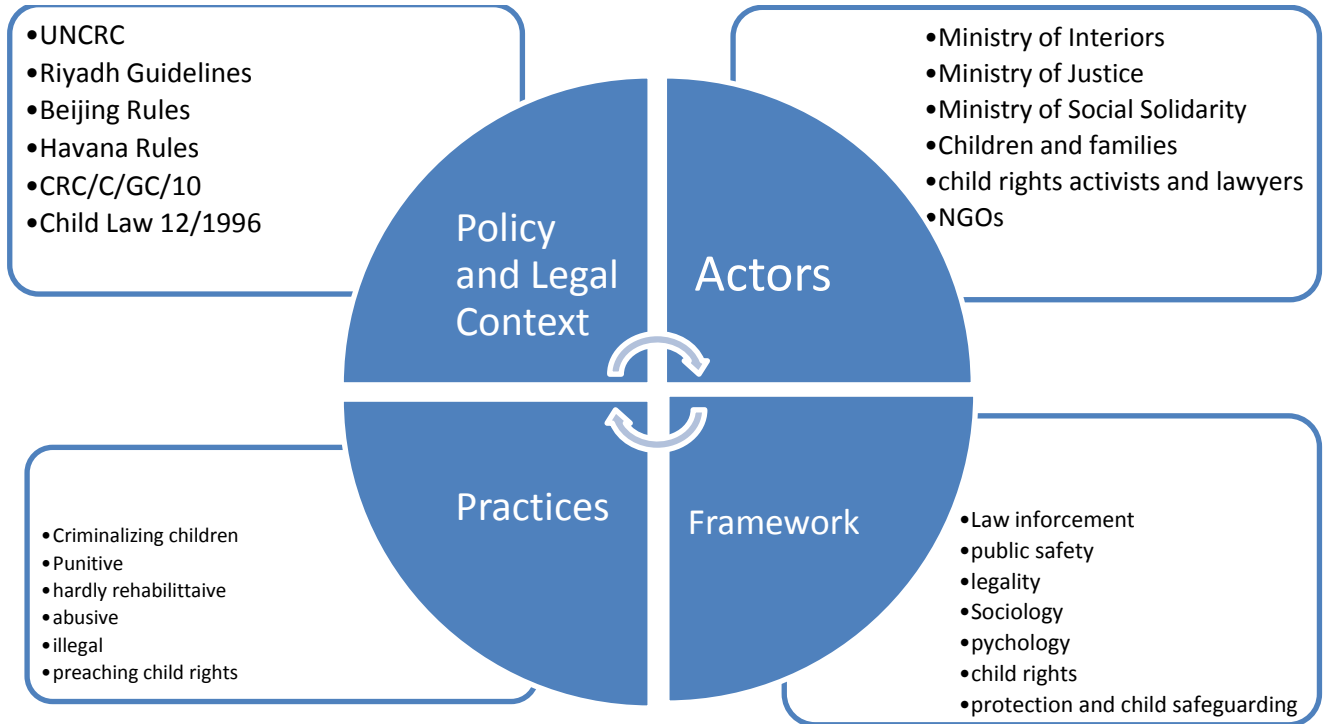
The Egyptian juvenile justice system is a highly complicated system that involves various actors. In addition to children and their families, the juvenile justice system in Egypt encompasses the three governmental actors that jointly operate the official juvenile justice system in Egypt, though with variant level of power and jurisdiction. These are Ministry of Interiors, Ministry of Justice and Ministry of Social Solidarity. The system also involves other actors such as national and international NGOs and child rights activists and lawyers, who provide legal counseling to these children and their families. The three main governmental entities play different though interacting and in many incidents counteracting roles. Their practices on the ground are not only governed by the officially announced and behold juvenile justice procedures as articulated and regulated in the Egyptian Child Law number 12/1996 and its amendment 126/2008 (hereinafter Child Law, 2008) but they are also influenced by their own personal as well as professional orientations and standpoints on the issue of children in conflict with the law and whether these children are seen as delinquent children in need of rehabilitation or as juvenile offenders accountable for their offences. The power dynamics among these various stakeholders are thus expected to play an influential role in their practices throughout the system.

Currently there are 37 care and correctional institutions under the auspices of the MoSS (interviews with representatives from the Social Defense Department in the MoSS, 2015). Based on international classifications, the MoSS has categorized these care and

correctional institutions in three types: open, semi-open and closed institutions (interviews with representatives from the Social Defense Department in the MoSS, 2015). Placement in these institutions is done by the classification center and is based on two factors: 1) based on the offence committed, whether the child has committed a crime mainly a felony, or whether the child is perceived as being at risk, and 2) based on the age of the child as only children who committed a crime and aged 15 and above are detained in correctional institutions, whereas younger children are placed in care institutions (interviews with representatives from the Social Defense Department in the MoSS, 2015).

Figure 1 shows a clustering exercise based on the results of a mind mapping of the system, developed by the author, that shows the policy and legal context of the Egyptian Juvenile Justice system, various actors, their sometimes contradicting frameworks which impact practices on the ground.

Figure 1 The Egyptian Juvenile Justice Framework



Source: Author, 2015

Governing Treaties and Egypt's International Commitment

Egypt has ratified the United Nations Convention on the Rights of the Children (UNCRC) on July 6th 1990, and was thus among the first twenty countries that ratified the UNCRC (Azer, 2009). Egypt has also signed on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002. Egypt has also ratified the Optional Protocol to the Convention on the involvement of children in armed conflict in 2007. Each of these convention and protocols aims at establishing a comprehensive child rights based protective framework through which

children, whether vulnerable or not, enjoy their full potentials. In specific, these two protocols set provisions that protect children at risk, such as in the case of street children and children in conflict with the law, from various exploitation and abuse forms.

Child Law (Law 12/ 1996) and its amendment (Law 126/2008)

The First Egyptian Child Law num. 12 was issued in 1996 (Azer, 2009). It came as a translation of the provisions included in the UNCRC (ibid). At the time of issuing the law, it was seen as a significant step towards the creation of a child centered protection system across the nation (ibid). Years after its ratification, numerous reports and studies called for an amendment of the Child Law 12/1996 to better conform to international treaties in the field of child rights and to better respond to raised concerns from the UNCRC Committee.

Amendments were introduced in 2008 creating the Child Law num 12/ Y 1996 and its amendment 126/2008 (hereinafter Child Law 2008).

The Egyptian juvenile justice system is constructed and regulated based on the Egyptian Child Law (2008), specifically on Chapter eight entitled “dealing with children having infringed the penal law”. The development and amendment introduced in the Egyptian Child Law (2008) tried to align with the Government of Egypt’s commitments to international treaties, conventions, rules and guidelines relevant to the administration of juvenile justice systems as well as its commitments to child rights and child rights based approaches to development. To start with, and based on the amendments, children were no longer defined as “liable to deviancy” but as “children at risk” (ibid). Article94 raised the minimum age of criminal responsibility (MACR) to 12 years at the time of committing the crime (ibid). Article125 confirms the right of children to legal counseling and if detained, they should be in places separate from adults. The Child Law (2008) in articles 101 and 107 confirmed the eight measures or alternatives in dealing with children at risk, listing detention

in care institutions as the last resort. In that sense, the introduced amendments have addressed some of the shortcomings in the treatment of children in conflict with the law (ibid).

Nevertheless and despite these advancements, experiences on the ground prove that there is a huge gap between rights and procedures as articulated by the law and practices exercised by various stakeholders involved in the JJ System in Egypt.

Juvenile Justice: the Global Context

The Rights Based Framework Governing Juvenile Justice

According to the UNCRC, a child is “every human being below the age of eighteen years” (Article 1). The UNCRC was first endorsed by the United Nations in 1989 and came into force in 1990 (Goldson and Muncie, 2012). In addition to its 54 articles that promote and protect the rights of the children in different fields and perspectives, the UNCRC sets four main principles that are believed to be the main pillars on which all of these articles are set and which are seen as the fundamental base to all policies and practices that directly or indirectly target or affect children (ibid). These four principles are the right to non-discrimination (Article 2), the primacy of the child’s best interests (Article 3), the right of the child to life and maximum development (Article 6) and the right of the child to participate and be heard in all matters related to him/her (Article 12) (ibid). These four principles play a fundamental role in safeguarding the rights of children in conflict with the law, and consequently in how an effective child friendly juvenile justice system should be structured and implemented (ibid). The term “children in conflict with the law” refers to any person under 18 years of age who comes in contact with the law due to suspecting and/or committing an offence (UNICEF, 2006). Some of these children are arrested and detained due to minor

offences that include begging and what is known as “status offences” or offences that are not recognized as crimes if committed by adults (UNICEF, 2006).

In addition to the four principles, the UNCRC includes a number of articles that directly define the rights of the children who come in conflict with the law. For example, Article 37 (a) of the UNCRC (1989) calls for the protection of children from torture, inhuman and degrading treatment. Article 37(b) asserts that children should not be deprived of their liberty unlawfully and if happened, they should be treated with humanity and respect as detailed in Article 37c. Children have the right to legal assistance and should be treated in a manner promoting a sense of dignity and worth (Article 37d and 40, UNCRC, 1989).

In addition to the UNCRC (1989), there are three other relevant instruments that should inform the governing rules in dealing with children within a country’s jurisdictional system. In 1985, the United Nations adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules. According to these rules, a specialized juvenile justice system should be established to protect the rights of children in conflict with the law (Goldson and Muncie, 2012).

The year 1990 witnessed the endorsement of two of the main tools protecting the rights of children in conflict with the law. The United Nations Guidelines on the Prevention of Delinquency, the Riyadh Guidelines, called for the endorsement of more diversionary and non punitive procedures in dealing with children in conflict with the law. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, also known as the JDL and the Havana Rules, stressed that detention should be seen as a last resort and the rights of juveniles deprived of their liberty should be protected (Goldson and Muncie, 2012).

In 2007, the UNCRC Committee issued its General Comment num.10 (Hereinafter CRC/C/ GC/10). The CRC/C/GC/10 details what it calls the general elements of a comprehensive policy for juvenile justice. These core elements include the following:

prevention of juvenile delinquency; intervention without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and the deprivation of liberty including pretrial detention and post-trial incarceration.

(CRC/C/GC/10, 2007)

As these elements are considered to be the core elements of a juvenile justice system, an overview of their meanings and connotation in setting a juvenile justice policy is warrant. The prevention of juvenile delinquency entails the development of national policy that supports child development and includes *“preventive policies that facilitate the socialization and integration of all children.....with a special focus on vulnerable families”* (CRC/C/GC/10,2007). These prevention policies focus on community-based services and programs and recognize the roles played by all actors involved in the development process of the child (ibid).

Interventions in the CRC/C/GC/10(2007) refer to two sets of measures: diversion which are, *“measures for children...without resorting to judicial proceedings”* in which the child must freely and voluntarily agree on, and social and education measures which can include probation, guidance and supervision orders, community services and trainings (CRC/C/GC/10, 2007). Furthermore, the core elements urge state parties to set the MACR not to have it too low, and emphasize the need to consider the level of emotional, psychological and mental maturity the child goes through (ibid).

Among the core elements is a detailed list of the fair trial guarantees as contained in AArticle40(2) of the CRC. A non-exhaustive list of these guarantees include the presumption of innocence, the right to be heard, the right to effective participation in the proceedings,

legal and other appropriate assistance, prompt and direct information of the charge(s), freedom from compulsory self incrimination. The right to privacy among other guarantees (CC/C/GC/10, 2007).

The CRC/C/GC/10 (2007) has also encouraged the use of discretion especially in the pretrial stage as it called on the public prosecutors to consider pretrial alternatives. The core elements have also included a reminder of the prohibition of the death penalty and life imprisonment. It continues to set the basic principles of the deprivation of liberty, including pretrial detention and post-trial incarceration and asserts the need to set standards for the treatment of children and conditions of incarceration especially in terms of the rehabilitative programs provided to these children (ibid).

The CRC/C/GC/10 (2007) describes the organization of juvenile justice. This organization mainly focuses on the idea of the specialization of the personnel involved in the system. It also promotes the need to raise the awareness and to train different actors involved in the administration of the juvenile justice system, and the need to provide basic and disaggregated data on the children in conflict with the law, the type of their offences and the duration of their detention throughout the juvenile justice system. It also calls for the state parties to conduct regular evaluation of their practices in the juvenile justice system (CRC/C/GC/10.2007).

Adhering to the UNCRC four guiding principles, relevant articles within the UNCRC that mainly focus on juvenile justice, and the above listed rules and guidelines, and most importantly the CRC/C/GC/10 (2007) set the boundaries of a right-based framework in analyzing a juvenile justice system.

The Historical Evolution of the Juvenile Justice System Worldwide

Historically, children started to be viewed as distinct from adult both in their needs and in their mental and psychological development in the early eighteenth century (Skelton, 2009). Before that date, children were viewed as adults and were thus subjected to the same code of penalties that include prison and death penalty. No special juvenile courts were established.

Weiss (2013) lists the four phases of the evolution of the juvenile justice system in the United States. Many countries around the world shared similar reform phases to these four phases that the US juvenile justice system went through, especially in the third and fourth waves.

According to Weiss (2013), the first wave started in 1899 with the introduction of Juvenile Court by Jane Addams. Children were recognized as being unique from adults and the focus shifted into protecting the best interests of the child. In 1967, the US Supreme court acknowledged the juvenile due process rights that included the right to confront witnesses and to counsel (Brooks and Roush, 2014).

The 1980s and early 1990 witnessed another dramatic change in the way youth offending is viewed. A growing rate of violent crimes committed by youth forced a shift towards punitive, harsh, and retributive measures and procedures, and away from rehabilitation. As a result, recidivism, which is the rate of returning to committing crimes, increased (Martinson, 1974). Public safety was prioritized to youth development and youth offender accountability was at the heart of the new system (Weiss, 2013).

Late in the 1990s, this supportive wave of aggressive procedures softened with a growing recognition of the high cost of incarceration both fiscally and socially. Supported by evidence that children are cognitively, mentally, and developmentally unique from adult, the then existent juvenile justice system was denounced and the call for the establishment of a

new system was on the rise (Weiss, 2013). This new juvenile justice system should try to create a balance among three previously conflicting concepts: public safety, personal accountability and youth development (Weiss, 2013).

Globally, the evolution of juvenile justice system around the world shared a number of common themes (Sloth-Nielsen, 2001 in Skelton, 2009). First, the need for a juvenile justice system has its root in the notion of separation. Juveniles needed special treatment which also included special legislation, principles and institutions (ibid). Second, the belief in the necessity of separation required a separation in justice courts, thus the emergence of the separate juvenile justice courts. Third, there was a growing recognition of the role of social workers in child justice (ibid).

Chapter 3: Literature Review

Juvenile offending and incidents of antisocial behaviors by young people have always formed a serious societal concern, calling for direct interventions from both policy makers as well as the communities at large (Heilbrun and Redding, 2005). This called for the establishment of responsive juvenile justice system. According to Myers (2013, P 204):

‘...the juvenile justice system, through its various policies, programs, and practices, seeks to reduce the amount of crime that would otherwise occur in the future without juvenile justice prevention and intervention efforts’

In response, two main perspectives of public safety, juvenile accountability, and correctional authorities’ accountability have mainly dominated how a juvenile justice system should be structured (Brooks and Roush, 2014). On the one hand, one perspective followed Martinson’s “nothing works” principle and advocated for what is known as the “get tough” policies, promoting public safety and youth offender accountability, thus creating a more “criminalized” juvenile justice system that focused on punishment and retribution (Myers, 2013). On the other hand, the other perspective is more inclined towards prevention and treatment of delinquency, promoting restorative justice programs and calling for juvenile justice authorities’ equal accountability towards re-directing youth offenders to the socially accepted track through rehabilitation and restoration (ibid).

In a study to assess the expected outcomes of rehabilitation programs in the US prisons in 1974, Martinson (1974) reached a striking conclusion, ‘With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism’. His main argument in reaching this statement was the lack of empirical evidence that supports the presence of positive impact of rehabilitation on one main indicator: recidivism rates. To reach this conclusion, Martinson examined hundreds of studies that

looked at various treatment tools included in different rehabilitation programs in relation to recidivism rates. Among these tools were education and vocational training, counseling, probation or parole versus prison, intensive supervision, and community treatment among others.

Martinson rests his argument of “nothing works” to rehabilitate criminals on the “crime as a social phenomenon” theory. According to this theory, the belief that we can change criminal behaviors through rehabilitative treatment is both offensive and ineffective and damages the fundamentals of a democratic society. A banker who has killed his adulterous wife should not receive less sentence than a juvenile who committed armed robbery, though the likelihood of the first committing another crime is reasonably nonexistent. The rule of crime and punishment should apply to all (Martinson, 1974).

According to Martinson:

‘It may be, — that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendencies of offenders to continue in criminal behavior”

(Martinson, 1974)

Martinson's remarks came at a time of a challenging socio-political context where the notion of "law and order" was dominant (Andrews et al, 2014). Martinson's conclusions that rehabilitation programs do not have applicable effect were well received by all political parties at his time as well as the society at large (Andrews et al, 1990).

Nevertheless, Sarre (2001) refuted Martinson's argument. According to Sarre (2001), Martinson expressed similar views of correctional treatment lacking any applicable effect in 1972. Sarre (2001) criticized Martinson's report of 1974 as it only tested correctional treatment programs against recidivism rates, ignoring other factors such as " the winding down of an offender's criminal activity" (Sarre, 2001). Martinson himself has softened his

stance in later writings and acknowledged that "some treatment programs do have an applicable effect on recidivism" (ibid). In a later study carried on by Gendreau and Ross in 1987, they confirm that there is evidence of successful rehabilitation of offenders (ibid). Sarre (2001) concluded that Martinson's concept of "nothing works" was "socially constructed reality rather than a scientific truth".

The revival of rehabilitation and correctional programs came in the early 1980s with emerging evidence that the tough on crime doctrine did not improve justice nor increase crime control (Andrews et al, 1990). Empirically, the impact of criminal sanctions on recidivism is, in its best description, limited and inconsistent (ibid). A return to correctional treatment services comes back to the scene. Andrews et al (1990, p. 374) argues that "at least 40% of better-controlled evaluations of correctional treatment services reported positive impacts".

Andrews et al (1990) confirms the co-relation between correctional treatments and decrease of recidivism rates. In order for this relation to be effective, the delivery of what Andrews et al (1990) labeled as "appropriate correctional services" is imperative. Three psychological principles ensure the delivery of the appropriate correctional services. These principles are

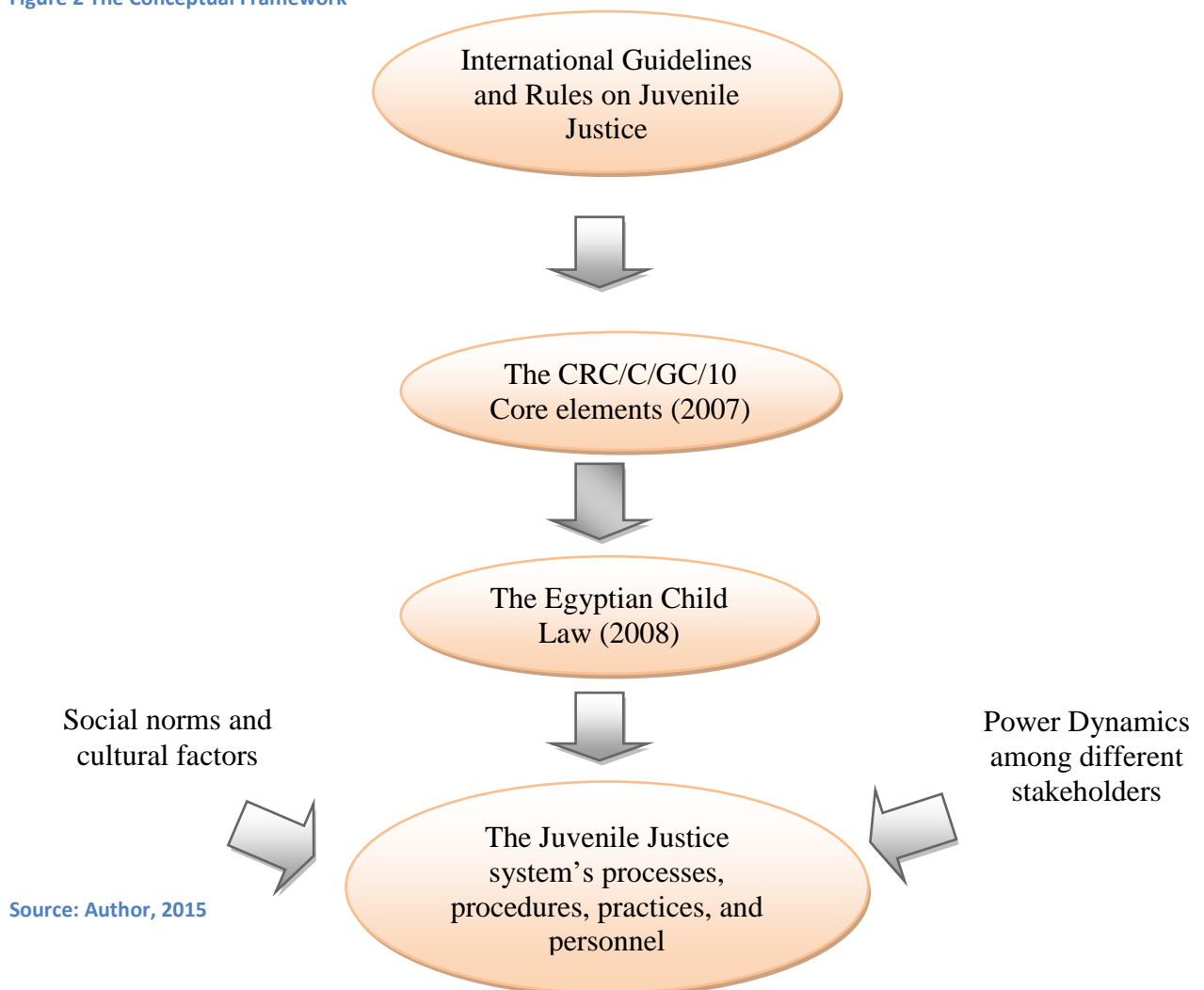
... **(1)** delivery of service to higher risk cases, **(2)** targeting of criminogenic needs, and **(3)** use of styles and modes of treatment (e.g., cognitive and behavioral) that are matched with client need and learning styles.

(Andrews et al, 1990)

Chapter 4: Conceptual Framework

Based on the previous literature review, the research employs the following conceptual framework which investigates level of conformity among international rules, regulations and core elements in the field of juvenile justice system, the Egyptian National Child Law (2008) that regulates the Egyptian juvenile justice system and sets its boundaries, and the processes, practices, procedures and personnel that are presumably regulated by the Child Law (2008). The below diagram explains this correlation of conformity whereas international rules and regulations are expected to inform later legal instruments including national laws that consequently regulate practices and procedures on the ground:

Figure 2 The Conceptual Framework



This conceptual framework builds on the fact that the CRC/C/GC/ 10 (2007) integrates the international guidelines and rules governing the juvenile justice system, namely the Beijing Rules (1985), the Riyadh Guidelines (1990) and the Havana Rules (1990) (CRC/C/GC/10, 2007). Based on this, the study examined the level of theoretical compliance and conformity between the international rules and regulations as articulated in the CRC/C/GC/C/10(2007) in the form of the juvenile justice core elements and the Egyptian National Child Law (2008). These core elements include prevention, interventions/diversion, the age and the child in conflict with the law, the fair trial guarantees, the measures, and the deprivation of liberty in addition to the organization of the juvenile justice system. Based on this, the conceptual framework then examines the actual and practical compliance between the Child Law (2008) and the practices, procedures, processes and personnel of the Egyptian juvenile justice system. The assumption here is that proving conformity between the Child Law (2008) and the actual practices and procedures of the juvenile justice system would subsequently entail compliance between these practices and procedures and international core elements of a juvenile justice system.

In this latter analytical phase, the study uses a set of parameters and associated definitions in examining this compliance. Power dynamics among different stakeholders as well as the impact of social norms and cultural factors are deconstructed and analyzed within these parameters when relevant. These parameters were built on two sets of indicators endorsed by the UN agencies and by international organizations focusing on child rights based juvenile justice. These are the 2006 UNICEF and UNODC measurement of the juvenile justice indicators (hereinafter, the 2006 measurement) and the 2008 Defense for Children International's Violence against Children in Conflict with the Law (hereinafter, the 2008 violence indicators study). Below is a summary of each of these two sets of indicators.

The 2006 measurement was created in an effort to identify global indicators that can help different actors engaged in the administration of juvenile justice systems to assess the compliance of the systems with the different international standards on juvenile justice system (UNICEF and UNODC, 2006). The measurement includes fifteen indicators that are classified into quantitative indicators and policy indicators. Below is an exhaustive list of the 2006 measurement of the juvenile justice indicators:

Table 1 The 2006 UNICEF and UNODC Measurement of the Juvenile Justice Indicators

Indicators	Definitions
Quantitative Indicators	
1- Children in conflict with the law	Number of children arrested during a 12 month period per 100,000 child population
2- Children in detention (CORE)	Number of children in detention per 100,000 child population
3- Children in pre-sentence detention (CORE)	Number of children in pre-sentence detention per 100,000 child population
4- Duration of pre-sentence detention	Time spent in detention by children before sentencing
5- Duration of sentenced detention	Time spent in detention by children after sentencing
6- Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1,000 children detained
7- Separation from adults	Percentage of children in detention not wholly separated from adults

8- Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9- Custodial sentencing (CORE)	Percentage of children sentenced receiving a custodial sentence
10- Pre-sentence diversion (CORE)	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11- Aftercare	Percentage of children released from detention receiving aftercare
Policy Indicators	
12- Regular independent inspections	<ul style="list-style-type: none"> -Existence of a system guaranteeing regular independent inspection of places of detention - Percentage of places of detention that have received an independent inspection visit in the last 12 months
13- Complaints Mechanism	<ul style="list-style-type: none"> -Existence of a complaints system for children in detention -Percentage of places of detention operating a complaints system
14- Specialized juvenile justice system (CORE)	Existence of a specialized juvenile justice system
15- Prevention	Existence of a national plan for the prevention of child involvement in crime

The 2008 violence indicators study came in response to Pinheiro’s World Report on Violence Against Children: the UN General- Secretary Study on Violence Against Children (2006). According to this study, “children deprived of their liberty and placed in detention are at extreme risk of violence” (Pinheiro, 2006). The types of violence these children are subjected to vary, take different forms, and are executed through different stages of the justice system including violence by police and law enforcement personnel in detention and custody facilities, violence by staff members in residential institutions, violence by adult detainees and other children, and violence in terms of the sentences (Pinheiro, 2006). Below is an exhaustive list of the violence indicators as suggested by the 2008 violence indicators study:

Table 2 The 2008 Violence Against Children in Conflict with the Law

Indicator	Definition
Quantitative Indicators	
1- Children in detention	Number of children in detention per 100,000 child population
2- Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1,000 children detained
3- Self-harm	Percentage of children in detention who are victims of self harm during a 12 month period
4- Sexual abuse	Percentage of children in detention who are victims of sexual abuse during a 12 month period

5- Separation from adults	Percentage of children in detention not wholly separated from adults
6- Closed or solitary confinement	Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12 month period
7- Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months
8- Exit interviews	Percentage of children released from detention receiving confidential exit interviews by an independent authority
Policy Indicators	
9- Regular independent inspections	<ul style="list-style-type: none"> - Existence of a system guaranteeing regular independent inspection of places of detention - Percentage of places of detention that have received an independent inspection visit in the last 12 months
10- Complaints mechanisms	<ul style="list-style-type: none"> - Existence of a complaints system for children in detention - Percentage of places of detention operating a complaints

	system
11- Limitations of physical restraint and use of force	<ul style="list-style-type: none"> - Existence of specialized standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty - Percentage of children in detention who have experienced the use of restraint or force by staff at least once during a 12 month period
12- Specialized disciplinary measures and procedures	<ul style="list-style-type: none"> - Existence of specialized standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty - Percentage of children in detention who have experienced a disciplinary measure at least once during a 12 month period

In applying the above indicators, I acknowledge the challenge in providing quantitative indicators, especially in light of the scarcity of data relevant to the juvenile justice system in Egypt. In principle, the few numbers and statistics provided during field work were rather generic indications and are not as detailed and specific as the ones required by the quantitative indicators defined in the 2006 UNICEF and UNODC measurement and in the 2008 Defense for Children International violence indicators. Nevertheless, the research uses these indicators in a qualitative context. Through this strategy, numerical indicators, reflecting secondary data as provided by the MoJ and/or the MoSS, were included when and if possible in addition to a qualitative analysis of the situation encompassing these indicators based on 1) the findings and outcomes of the interviews conducted with various stakeholders, 2) on observations as conducted by the author, and 3) on findings and analysis presented in

some of the reports and assessments conducted by different NGOs. To this end, some of the quantitative indicators were grouped under broader parameters. A detailed definition of these parameters is also provided.

The below table details the parameters and their associated definitions that collectively form the analytical framework of this research. The suggested parameters combine between the two sets detailed above while introducing others, such as the fair trial guarantees and the governance and accountability. The introduced parameters served to cover all of the core elements of CRC/C/GC/10 (2007), drawing a fuller image of the whole system.

Table 3 The Research Parameters

Parameter	Definition
Procedural Parameters	
Registration and Data Availability	<ul style="list-style-type: none"> - Availability of data - Centrally Collected data - Involvement of independent agencies in data collection
Use of Detention	<ul style="list-style-type: none"> - Children in conflict with the Law - Children in Detention - Children in pre-sentencing stage - Custodial sentencing - Pre sentencing diversion
Prevalence of Violence	<ul style="list-style-type: none"> - Separation from Adults - Sexual and emotional abuse - Limitation on physical restraints and the

	<p>use of force by staff</p> <ul style="list-style-type: none"> - The use of temporary custody - Complaints mechanisms
Fair Trial Guarantees	<ul style="list-style-type: none"> - The right to be heard - The right to active participation - The right to appeal - The right to legal and other assistance - The right to privacy
Provision of Rehabilitative Services	<ul style="list-style-type: none"> - Contacts with parents and families - Existence of national protection standards inside residential institutions - Disciplinary procedures - Existence of rehabilitative programs inside residential institutions - Quality of rehabilitative care in residential institutions - Assistance and legal aid - Right to medical care and psychiatric treatment, - Supervision of education - Existence of day programme - Training of staff - Aftercare
Policy Parameters	
Regular independent inspections	<ul style="list-style-type: none"> - Existence of a system guaranteeing regular independent inspection of places of

	<p>detention</p> <ul style="list-style-type: none"> - Incidents of an independent inspection visit in the last 12 months
Specialised juvenile justice system (CORE)	Existence and efficiency of a specialized juvenile justice system
Prevention	Existence and efficiency of a national plan for the prevention of child involvement in crime
Governance and Accountability	<p>Existence of a sound monitoring and evaluation system</p> <p>Accountability mechanism throughout the different stages</p> <p>Coordination among various stakeholders</p>

Source: author, 2015

Chapter 5: Research Methodology and Scope

This research is mainly qualitative. Qualitative methodology is best suited for this research for the following reasons. First, the research attempts to answer questions related to the level of compliance and conformity among the international commitments in the field of juvenile justice system, the Egyptian Child Law (2008), and consequently the practices, procedures, processes and personnel as executed on the ground. In that sense, the research required a rich and an in depth understanding of the different dynamics governing the relation among different stakeholders as they interact and counter-act across the system. This requires a substantial focus on the details of the issue examined which is a key in qualitative research (Marshall and Rossman, 1989). Second, the research tackles a field that is deemed as politically sensitive and thus required special techniques in reaching out to those who can actually collaborate in such a controversial research. It was thus expected that the number of those willing to participate in the research, in comparison to the number of stakeholders involved in the Egyptian juvenile justice system, can be rather limited.

The research geographical focus is on Cairo and Giza and has generally used a purposive sample technique in selecting the participants. As part of the research proposal, I conducted a stakeholder mapping exercise. The aim of this exercise was to identify all stakeholders that should be included in the data collection phase of the research. These included:

- Local national and international NGO working on providing legal counseling and support to children in contact and in conflict with the law
- UN agencies that focus on the administration of a child friendly juvenile justice
- Ministries involved which are the Ministry of Interiors, the Ministry of Justice and the Ministry of Social Solidarity

- Social workers inside the care institutions hosting children in contact and in conflict with the law

- Ex convicted juvenile offenders 18 years and above.

Access to lawyers, ex convicted juvenile offenders and families was obtained through local NGOs interested in supporting this research. The interested NGOs were asked to randomly identify lawyers, ex convicted juvenile offenders aged 18 and above and their families who would like to be interviewed. The selection criteria of the juvenile offenders to be interviewed included:

- ex juveniles in contact or in conflict with the law who engaged with the juvenile justice system at some stage and is currently released;

- Aged 18 and above.

To ensure no harm to the juvenile offenders participating, these juveniles are those who came in contact or conflict with the law as children and have been released at one of the juvenile justice stages, whether this stage was after detention, pre trial at the child prosecution office, post trial from the child court, or after being institutionalized. Choosing this specific population was determined based on the Institutional Review Board (IRB)'s recommendations on the vulnerability of juveniles with the aim of minimizing the possible harm that might arise from interviewing children in the care institutions with the care-givers and peers pressures and threats that these children might be exposed to for participating in this research study. As the discussion with these juveniles might provoke emotional reactions, the support of a psychologist was solicited to set measures to alleviate the pain and emotional stress that might arise. The interview questions were shared with the psychologist to ensure they are age appropriate.

The criteria of the selection of the social workers mainly depended on their willingness to participate. At the same time, I tried to reach out to social workers who work in different institutions so they represent:

- the three types of care institutions as classified by the Ministry of Social Solidarity: open, semi-open, and closed regime care institutions
- care institutions hosting boys and girls.

With regards to the selection of officials from the different ministries, the selection was based on those working directing in the juvenile justice system in Egypt, with sound experience and interest in supporting this research.

Within international NGOs and the UN agencies, the principle officer working with the juvenile justice program was contacted to be interviewed or to nominate who of his/her team to be interviewed.

As stated above, the research is mainly qualitative, but quantitative data has been included when possible. A triangulation methodology was applied. This included a triangulation in methods as well as in the participants in the research. Three methods have been used in this research. These are observations, desk review of various documents and reports, in depth interviews of different stakeholders. A stakeholder analysis technique was also used through which representation from all stakeholders as identified in the stakeholder mapping exercise has been secure.

With regarding to observation as a tool, I spent a day in the Cairo Child Court in Abu Atata. During this day, I was accompanied by lawyers who work with children in conflict with the law. These are public places that are generally open to the public and being there does not require a government's approval. The aim of being there was to observe the procedures and practices of driving, escorting and treating children in conflict with the law

and to assess the extent to which these procedures and practices abide by the Egyptian Child Law (2008).

In depth interviews were carried with different stakeholders involved in the administration of the juvenile justice system. These included lawyers defending children in conflict with the law, police officers from the Ministry of Interiors, judges from the Ministry of Justice, social workers from the care institutions hosting children in conflict with the law or juvenile offenders, experts from local national and international NGOs, representatives from the UN agencies focusing on juvenile justice, experts from the Social Defense Department in the Ministry of Social Solidarity which is responsible for the administration of the juvenile justice system in care institutions, ex-convicted, and ex institutionalized juvenile offenders who have experienced the system but are currently released from the juvenile justice system. In total, sixteen interviews were conducted. To minimize any possible harm that might arise from participation in this research, all interviews were conducted in public places outside of any government premises or buildings

During the interviews, participants, other than the juveniles, were asked to profile children who get in contact or in conflict with the law. They were also be asked to do a child journey mapping exercise through which they detail the different stages and associated procedures and practices that a child in conflict with the law go through.

The research includes three phases: the exploration phase, the analysis phase and the conceptualization phase. Table 4 details the aims of these three phases.

Table 4 The Research Phases

PHASE I	Looks into the extent to which the current policy, legal framework
The Exploration Phase	and practices reflect the Government of Egypt's commitment to different international conventions, rules and guidelines.
PHASE II	Analyzes the current practices, procedures and operations against a
The Analysis phase	set of parameters that incorporates the fundamental principles and concepts of the child rights based juvenile justice
PHASE III	Co-formulate the policy suggestions and some operational
The Conceptualization	measures in an effort to promote a child-centered Egyptian
Phase	Juvenile Justice system through suggestions, recommendations and insights from various stakeholders

Source: Author, 2015

The research started with a thorough review of all relevant juvenile justice literature worldwide and in Egypt, though there are very few published studies and assessments of the current operating Egyptian juvenile justice system. This phase is placed to answer the following questions:

- What is the governing framework for the Egyptian juvenile justice system?
- What are the international commitments that Egypt holds in the field of Juvenile Justice System?
- What is the international governing framework versus the Egyptian governing framework in relation to the operating juvenile justice system?
- How can the Egyptian Juvenile Justice be viewed within the context of these commitments and international obligations and governing procedures and practices?

The research then proceeded to the field work. The results from field work fed in both the exploration as well as the analysis phases. A child in conflict with the law goes through four stages. These are the apprehension/arrest stage, the awaiting trial stage, the sentencing stage, and the post trial and incarceration stage. In response, the exploration and analysis phases looked into these stages of the child's journey through the Egyptian juvenile justice system.

Among the key questions at these phases:

- What are the standards practices by various stakeholders in their daily encounter with the children in conflict with the law?
- What is the relation between personal and professional orientation of individual stakeholders and their observed practices on the ground?
- To what extent is the operating protocol of arrest, detention, trial and placement follow the protocol entailed by the international commitments and the official juvenile justice system as detailed in the Child Law (2008)?
- How can these practices be viewed in relation to the rehabilitative versus the punitive approaches to juvenile justice?
- What are the view points of different stakeholders on the observed outcomes of these practices?
- What are the needs and challenges of different stakeholders?
- What is the nature of the power dynamics among different stakeholders? How do they view their roles and how do they interact?
- How does the outer environment especially in terms of social norms and cultural factors impact the practices, processes, procedures and personnel of the juvenile justice system?

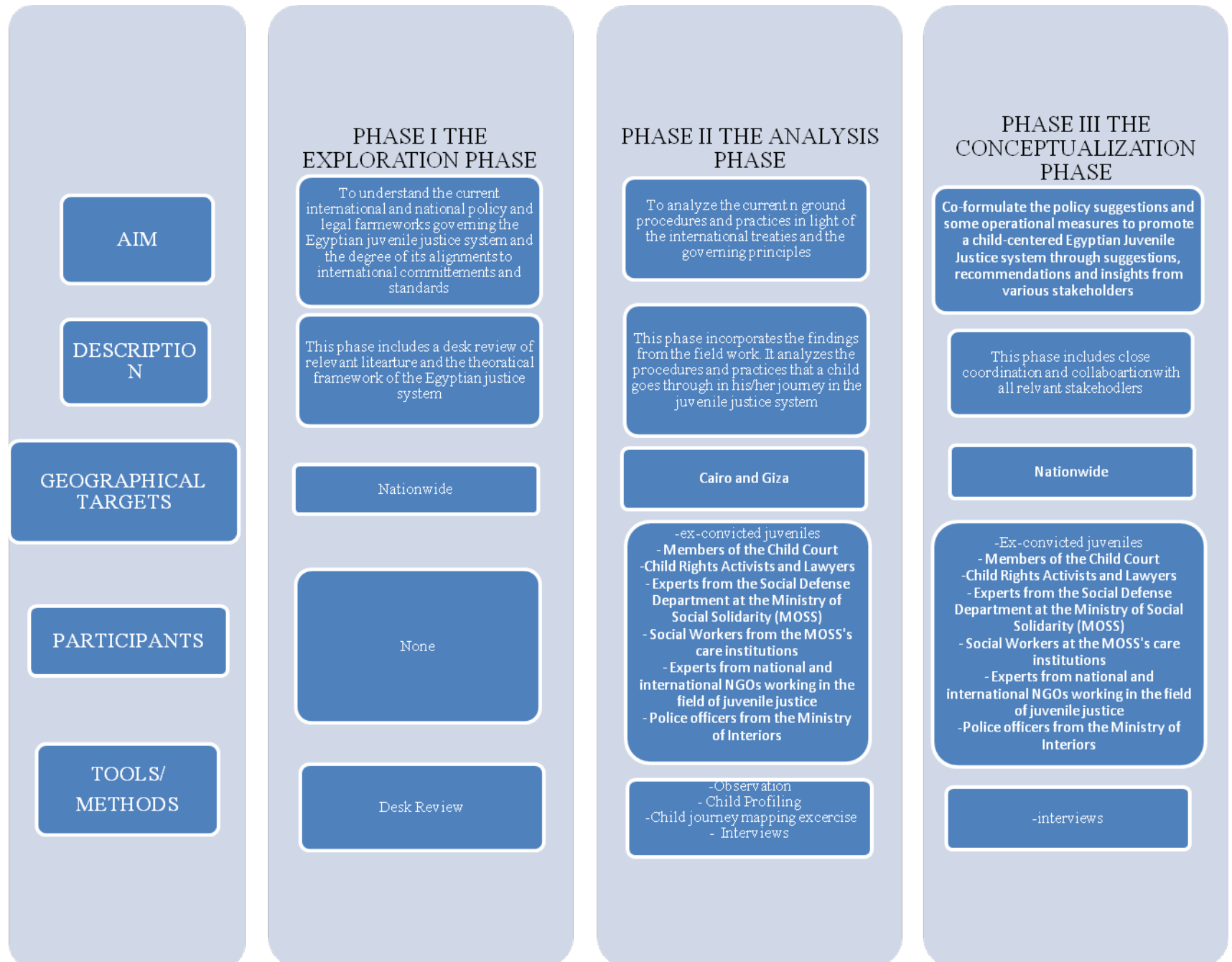
The third conceptualization phase mainly focused on means to improve the current juvenile justice system based on the insights and recommendations of various stakeholders. Information and data collected through this phase helped in conceptualizing recommendations to ensure that the Egyptian juvenile justice system is child centered and is in better conformity with the national Child Law (2008) and the international standards and core elements of the juvenile justice system.

This phase attempted to answer the following questions:

- What are some of the suggestions and recommendations from various stakeholders on means to improve the current system based on personal views and stand points?
- How can these suggestions contribute to the design of a child centered Egyptian juvenile justice system?

Figure 3 illustrates the three phases' goals, description, expected and targeted participants, and anticipated tools and methods to be used.

Figure 3 The Research Methodology



Research Limitations

Access to Data

Data on the juvenile justice system in Egypt is almost inaccessible. The challenge of data scarcity and the lack of systematic data collection mechanisms in issues related to child rights have been echoed by the UN Committee on the Rights of the Child in its concluding observations in 2011. The report has specifically confirmed, “the absence of a comprehensive data collection system contributes to the State party’s lack of data on children deprived of their liberty, children subjected to torture and ill-treatment, children with disabilities, and children in street situations” (UNCRC Committee Concluding Observations, 2011).

Surprisingly, international agencies that focus on the reform of juvenile justice worldwide did not have up to date statistics or numbers that can clarify for example the number of convicted children, detained children or rate of recidivism or incarceration. The latest number available is provided by the UNODC and goes back to 2006, which is almost ten years old.

Similarly, but more expectedly, different government entities failed or refrained from providing numbers or statistics that better depicts the dimensions of the Egyptian juvenile justice system. Different ministries refrained from officially sharing actual documented numbers and only provided ungrounded estimates of the number of children in contact or in conflict with the law.

The Principle of Do-No-Harm to Participants

With the juvenile justice system being viewed as a matter of national security, disclosure of information, perceptions or standpoints with regards to it can be problematic to participants, especially those in public positions. Pressures and negative consequences can arise. A number of

governmental stakeholders, though fully believed in the importance of such research, refrained from participation in fear of the potential harm that might arise, if by any means, their identities were revealed. This culture of fear has been on the rise over the past few years due to the politicization of the bureaucratic system in Egypt in general and in institutions presumably related to national security in particular.

Juvenile Justice as a Matter of National Security and Access to Governmental Stakeholders

This research tackled a very sensitive issue as the Egyptian Government has been criticized for how juvenile children have been treated in the Egyptian justice system. As the entirety of the juvenile justice system generally refuses to be inspected and criticized by outsiders, it is expected that officials from various ministries participating in this research might face negative consequences from their organizations if their participation was disclosed. Access to different care institutions or correctional institutions was problematic. Being an outsider was a limitation. The same can be said about access to police stations and detention locations as well as interviewing police officers.

Chapter 6: The Policy and Legal Framework Governing the Administration of the Egyptian Juvenile Justice System

This chapter examines the legislations and policies governing the administration of the Egyptian juvenile justice. It provides a comparative analysis of the policy and legal framework of the Egyptian juvenile system from a theoretical point of view in light of the international conventions, commitments, rules and guidelines. Investigating the extent to which the current Child Law (2008) operationalizes these commitments in terms of its articles and clauses is thus necessary in determining the level of compliance to these international commitments. The analysis is based on the core elements of a juvenile justice comprehensive policy as detailed in the CRC/C/GC/10 (2007). First, I generally discuss the aim of a juvenile justice system both from an international point of view as well as according to the official documents of the main actors involved in the administration of the juvenile justice system in Egypt. Secondly, I examine the extent to which the articles and clauses encompassed in the Egyptian Child Law (2008) translate the core elements of a comprehensive policy on juvenile justice.

It is important to highlight here that only the policy and legal frameworks that govern the Egyptian juvenile justice system are examined in this chapter. Processes, practices, institutions and personnel are fully investigated in the next chapter. This chapter concludes that in theory and based on the Egyptian Child Law (2008), the Egyptian juvenile justice system theoretically complies with majority of the requirements of the international legal commitments that Egypt has ratified over decades. This overarching conclusion does not deny a number of shortcomings in the Child Law (2008) that are detailed towards the end of this chapter.

The Aim of the Juvenile Justice System

In principle, Article 40(3) of the UNCRC urged all states parties 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*” (UNCRC, 1989). The call to establish an independent juvenile justice system bases its argument on the need to consider the level of maturity and age implications in determining the best means to rehabilitate the offender. This is especially true in the case of children whose actions and impulses are highly impacted by many factors including their lack of moral maturity which makes them not fully responsible for their actions (Mahoney, 1991). There are also the environmental factors such as poverty, abuse and neglect that play a substantial role in how a child behaves and reacts in the face of these challenges (ibid). This differentiation between children and adults has been echoed by the UNCRC Committee as it stated that children, ‘differ from adults in their physical and psychological development, and their emotional and educational needs.’(CRC/C/GC/10, 2007).

The notion of creating a separate justice system for juvenile offenders has its roots in the different theories including the welfarist and the rehabilitative approaches (Skelton, 2009). The two approaches supported the establishment of a juvenile justice system that promotes treatment and rehabilitation rather than punishment and penalization of children (ibid). Different studies and articles have discussed the main goals of juvenile justice systems. They have largely agreed that its main goal is rehabilitation (Niarhos and Routh, 1992; Sheffer, 1995). This vision of the main aim of the juvenile justice system is also supported by UNICEF (2009) where it states that the overall aim of a juvenile justice system is to promote prevention and treatment rather than punishment. The aim of the juvenile justice system is clearly stated in the Beijing Rule 5. It states that, “the juvenile justice system shall emphasize the well-being of the juvenile and shall

ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence” (Beijing Rules, 1985). This is also enforced by

CRC/C/GC/10 (2007):

.....the traditional objectives of criminal justice, such as repression/ retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

This can be done in concert with attention to effective public safety.’

(CRC/C/GC/10, 2007)

From a policy and legal point of view, the Egyptian Government seems to endorse a rehabilitative approach to juvenile justice. Though it was not clearly stated in the Child Law (2008) or in its by-laws, the articles detailing the treatment of child in conflict with the law confirm this assumption. Institutionally, the Social Defense Department in the Ministry of Social Solidarity, which is the prime safeguarding unit dealing with children in risk and juveniles, states its goals as, “the care, protection, re-socialization, and rehabilitation of children in risk, juvenile delinquents and children in the street situation” (The Official Website of MOSS, accessed on Oct 8th). Protection and rehabilitation are thus among the main goals of the lead government unit responsible for the wellbeing of the juvenile offenders. The official documents of the Social Defense Unit details the rehabilitative, re-integration and re-socializing programs offered to children in risk or juveniles in their care institutions in a vision that officially resonates with Andrews et al (1990)’s vision of a rehabilitative justice system. Similarly, Article 182 of the by-laws of the Egyptian Child Law (2008) states that in applying the community service alternative, the community service shall not be demeaning to the child or physically or psychologically harmful to the child and should promote a sense of belonging and responsibility, and shall support the child rehabilitation and re-integration in the society. We can thus conclude

that the overall Egyptian juvenile justice system shared a common goal with the international standard practices with regards to the main goal of a juvenile justice system.

The CRC/C/GC/10 and the Egyptian Child Law

The Child Law (2008) has dedicated chapter eight entitled “dealing with children having infringed the penal law” to detail the practices, procedures, processes, institutions and personnel that co-administrate the juvenile justice system. Many of the articles in this chapter detail the structure and expected practices of the Egyptian Juvenile Justice System and broadly conform to the organization of a juvenile justice system and the core elements of the CRC/C/GC/10 (2007). Below is a non exhaustive summary of how the different core elements are reflected in the Egyptian Child Law (2008).

The Organization of the Juvenile Justice System

The Child Law (2008) organizes a separate justice system for juveniles, though not in the full sense of the word. In terms of specialization and multi-disciplinary approach, Article 120 institutionalized the establishment of specialized Child Court at every governorate and a specialized Child Prosecution, that should deal with children. The exception to this rule is regulated by Article 122 of the Child Law. According to this article, children above 15 who commit a felony with an adult are referred to the felony court or the national security court. Articles 118 and 127 detail the role of the social workers in the policy and practice of a child justice system and link verdicts passed by the Child Court to the assessment of the child’s mental, psychological and social circumstances as prepared by the social observer. What might be seen as a shortcoming in the creation of a specialized juvenile justice system is the specialization of the lawyers defending children in conflict with the law. The idea of creating a

cadre of specialized lawyers who are trained on the Child Law (2008) and are accessible and ready to provide legal support to these children and their families is not articulated in the law.

Prevention

The Child Law (2008) details the structure of a prevention mechanism namely the child protection committees and sub committees (Articles 97, 98, 99 of the Child Law, 2008). These committees are responsible for monitoring and responding to cases of children in risk, as identified in Article 96 of the same law. Article 99 (bis), in part, details measures that the sub-committee can use in dealing with children at risk, without resorting to judicial proceedings. It empowers, again partially, the child protection sub-committees to provide regular supervision visits to the child's family or to provide social interventions methods as necessary. Nevertheless, the same article instructs the sub –committees to refer the child case to the child court when it is deemed necessary to remove the child from the dangerous environment, mainly his family in this case. In such cases, the child might be subjected to measures that expose him/her to judicial proceedings. This is one of the main confusions created in the Child Law (2008) between two rather mutually exclusive categories of children: children at risk and children in conflict with the law. Subjecting children at risk to judicial proceedings is deemed harmful to children's development as will be discussed later in this chapter.

Interventions/Diversion

The Child Law (2008) promotes interventions that move the child away from custodial detention. The law lists a number of interventions both without the judicial proceedings and with judicial proceedings. These interventions are included in Article 116 (bis)(c) and Article 101 from the Child Law (2008). Article 116 (bis) (c) admits conciliation and reconciliation at the police stations, in the general prosecution offices, or in courts. Article 101 details alternatives to

custodial detention and places institutionalization of child as a last option. These interventions target children under 15 who are in conflict with the law and children above 15 who committed a misdemeanor punishable by imprisonment. They apply to children at risk as regulated in Article 98. It details seven alternatives, excluding the alternative to institutionalize a child in a care institution. These alternatives provides social and educational measures such as reproach, delivery to parents or guardians, training and rehabilitation, community services, commitment to certain obligations, judicial probation, and placement in a health institution if the child needs to (Article 101 of Child Law, 2008).

Age and Children in Conflict with the Law

Article 94 sets the minimum age for criminal responsibility (MACR) at 12 years of age, which is considered by the CRC/C/GC/10 (2007) as “the absolute minimum age accepted”. Article 95 of Child Law (2008) confirms that the rules of the juvenile justice system apply to all children who did not reach 18 years of age at the time of committing the alleged offence. Children under 15, if institutionalized, are not be placed in closed regime institutions, in other words, are not legally considered as imprisoned. This is not directly stated by the law but it is the standard practice.

Fair Trial Guarantees

A number of articles in the Child Law (2008) support the fair trial guarantees as an integral element of the juvenile justice system. For example, Article 125 reflects the right to legal aid and assistance in cases whose penalty might place the child in custody (Child Law, 2008). Article 97 requires the establishment of the Child Helpline which should ensure children as well as their families can access the legal support system when needed. The Child Helpline also acts as a reporting mechanism on cases of abuse, neglect or exploitation (ibid). Article 116(bis) (b)

defines fines in cases of publishing or broadcasting information of children during judicial proceedings (ibid). Article 126 affirms the full respect to privacy throughout the juvenile justice system as it requires that only relatives, witnesses, lawyers and social observers be present in any trial of a child (ibid). The Same article confirms the right of the child to full participation in his/her trial and requires the judge to explain to the child any procedures or actions taken in the child's absence. Child victims and witnesses should be heard as entailed in Article 116 (bis) (d). Article 131 confirms the right of the child, his parents or guardians to be notified as well as contest all procedures and judgments passed (ibid). Article 132 asserts the right to appeal (ibid). During judicial proceedings, Article 119 denied temporary custody, limits it to one week and thus puts time limits and calls for decisions to be issued without delay through a process that still respects human rights. However, it is important to note that the same article permits the court to extend this temporary custody according to the Criminal Code which is six months for misdemeanors and eighteen for felonies.

Measures

Again, measures and alternatives are introduced by Article 101 as detailed above (Child Law, 2008). Proportional sentence that takes into consideration the child as well as the offence's circumstances is asserted in Article 127 that requires an individualized sentence that builds on the assessment conducted by the social observer of the child case and applies the principle of proportionality (ibid). Article 111 prohibits the death penalty and life imprisonment (ibid).

Deprivation of Liberty, including pretrial detention and post- trial incarceration

Legally, children under 15 years of age should not be subjected to temporary custody (Article 119 of the Child Law, 2008). Custodial detention is a last resort as per Article 107. Articles 101 and 112 of the Child Law (2008) comply with the primacy of the best interest of the child, prohibit the detention of children with adults, call for a classification of detention of children based on their sex, age, and nature of their crime, and encourage the use of alternatives to custodial detention. Article 107 calls for a close follow up from the child court on the case of the child to determine the continuation of the measure or the introduction of a more appropriate measure based on the child's response to the current measure.

In summary, the Egyptian Child Law (2008), which is the main instrument overarching and regulating the Egyptian juvenile justice system, largely comply with the core elements of a comprehensive juvenile justice system as detailed by the CRC/C/GC/10 (2007).

Shortcomings in the Egyptian Child Law (2008) within the broader framework of Juvenile Justice

Despite the above broad and theoretical conclusions in evaluating the extent to which the current Egyptian juvenile justice system is child rights based and child centered system, the Egyptian Child Law (2008) has fallen short in some of the prospects of the system. Below are some of these shortcomings:

Children at Risk: In Conflict with the Law or in Need of Care and Protection?

In its Article 96, the Child Law (2008) introduced the concept of “Children at Risk” to replace the Child Law 12/1996 concept of “Children liable to deviancy”. Article 96 detailed fourteen cases in which children shall be considered at risk, which included begging, selling trivial issues, having no permanent residence, revolting against their parents or acting badly among other requisites. Article 98 regulates using the measures of Article 101 with children at risk, which consequently leads to their detention.. While the Child Law (2008) has linguistically differentiated between children in conflict with the law and children at risk, it did not necessarily entail a differentiated treatment of both categories. Indeed, whereas one of the aims of the state-based social protection system should be minimizing the number of children processed through the juvenile justice system through prevention mechanisms, the Child Law (2008) subjects the two categories to the juvenile justice system along with its negative implications. By definition but also based on the requisites detailed in the law, a child at risk is not a child in conflict with the law. Children at risk are children who are mostly victims of abuse, neglect and exploitation (Azer, 2009). In most cases, these children lack appropriate care whether by their parents, guardians or the state. Their circumstances call for the provision of social protection mechanisms rather than subjecting them to judicial proceedings, which are widely believed to cause more harm (ibid). Grouping these children with children in conflict with the law will not only stigmatize them but will also expose them to practices that can lead to negative developmental impact and deepen their social challenges rather than eliminating them.

In its toolkit on Diversion and Alternatives to Detention, UNICEF (2009) highlighted the need to dissolve the confusion between children in conflict with the law and children in need of care and protection. These children should not be processed through the juvenile justice system

(UNICEF, 2009). Similarly, children in street situation, who are often subjected to the juvenile justice system for lack of permanent residence or for practices deemed necessary to their survival, should not be exposed to the negative implications associated with exposure to the juvenile justice system due to their need of social protection services (ibid). One of the reasons behind this overlap is the dual role played by the Child Law (2008) as both a penal law, that focuses on crimes committed by children, as well as a civil law that provides response mechanisms to the social and economic challenges that face marginalized children in need of care and protection (ibid).

Minimum Age of Criminal Responsibility and Age 12 and Under Subjected to the Judicial Proceedings

The amendment to the Child Law 12/1996 introduced Article 94 that sets the minimum age for criminal responsibility at twelve years of age (Child Law, 2008). This will entail that children under twelve years of age will not be subjected to the juvenile justice system. However, the same Article exposes these children aged 7 and above to the juvenile justice system as it says:

Yet, if the child is at or above seven (7) years and below twelve (12) calendar years, and has committed a felony or a misdemeanor, only the Child Court being the competent court, may rule in accordance with any of the measures set forth in Article 101 Items 1, 2, 7, and 8 of this Law.

Article 94, Child Law (2008)

Based on the above clause, children aged seven and above will have their cases considered by the child court, with all the negative implications stipulated by this measure.

Child Participation

As noted from the analysis of the participation articles in the Child Law (2008), the concept of child participation is not fully utilized, especially in judicial proceedings. For example, the Child Law (2008) does not necessarily enforce listening to juvenile offenders. It only entails the child's presence or his representative, and that procedures and judgment passed Article 116(bis) (d) associates this right with child victims and witnesses. Article 126, while obliges the judge to inform the child of the court decision, limits this obligation to cases where the child was not present in the court room. The CRC Committee has highlighted this finding in its concluding observations in 2011 and urged the Government of Egypt to,

Put in place specific guidelines which explain in a child-friendly manner the right of the child to be heard in administrative and judicial proceedings, in particular regarding custody and children without a family environment”

(The CRC Committee Concluding Observations, 2011)

While the Beijing Rule num 11(3) requires that children and their parents or guardians be consulted if a community service alternative is deemed appropriate, the Egyptian Child Law (2008) does not apply this rule. The child, parents or guardians are informed of the decision rather than consulted over its effectiveness and appropriateness within the family context. It is important to highlight here that such alternatives as community services are inactive. Based on the Ministry of Justice analysis of juvenile cases in Cairo in 2005, there were no records of juvenile cases where alternatives such as reproach, community services, or committing to certain obligations have been enacted (Ministry of Justice's Brochure on Juvenile Justice, 2005).

A comprehensive specialized system including Lawyers and Access to Legal Aid

As highlighted above, the Child Law (2008) calls for a number of specializations and stressed their roles and responsibilities through the juvenile justice system. However, one of the main actors missing in this call for a specialized system is specialized lawyers. Indeed, the law did not identify any requirements or specialized credentials that should be in a lawyer representing children, which is seen as a weak point in the current law. In fact, the CRC/C/GC/10 (2007) recommends that state parties provide “*provide adequate trained legal assistance, such as expert lawyers*” (CRC/C/GC/10, 2007). Related to this is the adequate and appropriate access to legal aid. Article 125 of the Child Law (2008) confines the right to access legal aid to cases whose penalty might place the child into custody. For example, cases other than felonies and misdemeanors are excluded from this obligation to provide legal aid. Legal aid is only provided at prosecution and court levels.

Chapter 7: Processes, Practices, Procedures and Personnel: the Realities of the Egyptian Juvenile Justice System

Chapter V has concluded that, albeit of shortcomings in the Child Law (2008), it largely complies with the international core elements of a juvenile justice system as endorsed by the CRC/C/GC/ 10 (2007). Based on this broad conclusion, it is thus expected that the practices, procedures, processes and personnel involved in administering the juvenile justice system and guided by this Child Law should comply with the international standards and act as reflections of these core elements.

This chapter analyzes the processes, practices, procedures and personnel involved in the administration of the Egyptian juvenile justice system and examine their compliance with the Egyptian Child Law (2008). These processes, practices, procedures and personnel are investigated in light of the outcomes of the interviews with different stakeholders involved in the administration of the Egyptian juvenile justice system. The analysis of the outcomes of the field work was founded on a number of parameters that are a direct reflection of the CRC/C/GC/10 (2007).

This chapter is divided into two sections. Section I maps the child journey through the Egyptian juvenile justice system, as entailed by the Egyptian Child Law (2008). Section II analyzes the Egyptian juvenile justice system against the set of parameters listed in the conceptual framework in order to assess the extent of compliance between the processes, practices, procedures and personnel and the Child Law 2008.

The Child's Journey in the Juvenile Justice System

This section details the stages that a child in conflict with the law should go through, according to the regulations of the Egyptian Child Law (2008). This section is informed by the outcomes of a child journey mapping exercise that was carried out with all interviewees during the field work. The child journey involves four stages. These are the apprehension/ arrest stage, the awaiting trial stage, the sentencing stage, and the post trial and incarceration stage.

1- Apprehension/Arrest Stage

Basically, there are three types of children who are expected to fall within the realm of the Egyptian juvenile justice system. These are children at risk, children in the street situation (also known as children in risk), and children accused of infringing the penal law. The Egyptian Child Law (2008) has listed fourteen cases of children perceived as children at risk in its Article 96. Children at risk include children whose safety is endangered, who are exposed to abuse and neglect, who are abandoned, who are deprived of their rights including education, who are engaged in begging or selling trivial items, who lack permanent residence, who behave badly, mingles with supposed deviants, psychically or mentally sick and who are under 7 years of age and commit a felony. If a child perceived by the law enforcement personnel as one of these three categories, s/he is liable to be arrested.

According to the ministerial decree num. 507/Y 1972, once a child is arrested, s/he must be presented to the social worker in the police station to assess his/her case and decide on appropriate procedure which can be one of two options. The first option is an encouragement of the use of discretion at the police station through the use of diversion methods away from the judicial proceedings such as conciliation or reconciliation and delivery to the child parents or

guardian (Article 116 (bis)c, Child Law 2008). The second option is processing the case through the juvenile justice system through a formal police record of the case and submitting the child to the child general prosecution. Supposedly, and in the case of a child at risk, including children in street situation, the police social worker should refer the case of the child to the child protection committees and sub-committees. However, as these committees are inactive, this procedure is non-existent.

Once a formal police record is written, the child should be transferred to the trust of the child general prosecution within 24 hours. During these 24 hours, children should not be detained with adults.

2- Awaiting Trial

At the child general prosecution, a social inquiry report of the case of the child is prepared by the court's social observer to be reviewed by the general prosecutor. Again, the general prosecutor is entitled to exert discretion and deliver the child to his/her parent or guardian with a warning. This is again a form of diversion during judicial proceeding and is dependant on the child's admission of the offense and has voluntarily given his informed consent. The general prosecutor can also institutionalize the child in a care institutions if his/her family could not be found, according to the social observer's social enquiry report, or process a charge against the child and thus refer the child's case to the Child Court .

The classification center in Cairo deals only with male children under 15 years of age who are mostly defined as children at risk or street children. Boys under 15 years of age who have committed an offence are placed in the observation center awaiting their trial. Girls are usually placed in the observation center. The classification center is responsible for admitting the

children into one of the 37 care institutions that fall under the patronage of the MoSS. The classification is done based on a number of factors including the child's sex, age, expected residence area, type of offence. Male children above 15 who are accused of alleged crimes and await trials are placed in el Marg correctional institutions in the temporary custody division.

3- Sentencing Stage

Once the child's case is referred to the Child Court, a full social enquiry report is required. The report should include a visit to the child's family, if known, and a full description of the circumstances of the child and the offence committed. The report is then discussed between the social observer and the social experts, as the later are the ones who initially approve the report to be submitted to the court and who will be present during the trial stage to discuss the report with the court according to Article 127 of the Child Law (2008). A suggestion of the disposition that the Child Court Judge can rule should be included in the social enquiry report. Article 101 lists seven alternatives to custodial detention that can be taken into consideration in cases of children under 15 years of age. These alternatives are reproach, delivery to parents or guardians, rehabilitation and training, committing to certain obligations, community services, judicial probation and placement in a specialized hospital if the case of the child deemed this necessary. Children above 15 who committed a crime sentenced by death or life imprisonment is sentenced by imprisonment. Children above 15 who commit a crime punishable by imprisonment can be put in custody or institutionalized in a care institution. Children above 15 who commit a misdemeanor punishable by custody, can be sentenced to judicial probation, community service, or institutionalization (Article 111, Child Law 2008).

4- Post Trial and Incarceration Stage

There are 256 probation offices in Egypt (interview with the MoSS official, Nov 2015). The probation officers are responsible for monitoring the progress of the case of the child once s/he receives a sentence. The social observers should submit regular reports on the progress of the child and the measure taken to the child court every two months in some measures and every three in others to enable the child court to review its sentence. The after care plans are also the responsibility of the probation officers.

There are three types of care institutions. The open and semi open regime institutions that host children who did not receive a deprivation of liberty sentence. Children who are believed by the classification center to be challenging are placed in the semi-open regime institutions. In other cases, children can move from the open regime to the semi-open regime institutions if they were deemed as ill behaving by the social workers. The closed regime institution is only one and is dedicated to boys, el Marg correctional institution. Children over 15 who received a sentence that entailed a deprivation of liberty are institutionalized in el Marg.

Analyzing the Scene: the Egyptian Realities in Juvenile Justice

This section details the findings from the field work. The findings from the field work have been analyzed based on the set of parameters and their defining indicators as listed in the conceptual framework. These parameters are divided into two categories, which are operational parameters and policy parameters. The operational parameters include registration and data availability, the use of detention, the prevalence of violence, the fair trial guarantees, the complaints system, and the provision of rehabilitative services. The policy parameters include

regular independent inspection, a specialized juvenile justice system, prevention and governance and accountability.

Operational Parameters

1- Registration and Data Availability

This parameter looks into the availability of and access to reliable data. It also assesses how this data has been collected especially in terms of the availability of centrally collected data. Finally, it investigates the involvement of independent agencies in the collection of this data.

Findings from the field work have showed that while there is data available, it is neither accessible, holistic, independently collected, nor officially validated. While this finding does not negate the availability of data but it rather questions access to data and means of data collection. To say that there is a scarcity of data with regards to the numbers of children subjected to the juvenile justice system in Egypt can be rather generic and unjustified. In fact, the field work has confirmed that there is data available and a registration system of children in conflict with the law available at different stages of the juvenile justice system. This registration system is mainly manual. For example, the Social Defense Department of the MOSS has a registration system implemented through its classification center, its probation offices and in its care institutions.

However, data from interviews show that there are two challenges with this registration system. First, it is not a holistic system which means that it does not necessarily record cases of children who get in conflict with the law at an earlier stage of the system such as in the detention and arrest and pre-trial phases and who are released on bases of unconditional release to parents or guardians or reconciliation for example. In that sense, the current registration system, if it can be labeled as such, does not capture a full picture of the whole juvenile justice system, especially

in terms of its intensity. This has also been confirmed in an interview with a UN staff member who stated:

“no, we cannot say that we know the number of children in conflict with the law”.

Secondly, access to this data remains challenging and highly contested. Categorized as “national security” data, data obtained during the field work in relation to the number of children arrested, trailed, referred to the observations centers or probation offices and/ or institutionalized was unofficially and informally offered to the researcher based on personal ties and trust relations with the interviewees. Numerical data collected could not, thus, be officially validated. While this might be expected from the government agencies and institutions, it was rather shocking from international organizations and UN agencies that did not have independently collected up to date data on number of children detained, trialed and sentenced and have refrained from sharing critical documents due to political considerations. Surprisingly, this was hardly the case with the local NGOs interviewed. Local NGOs, while did not have cumulative numbers on children nationally detained, trialed or sentenced, have shared documents available and did not put any restrictions on publically using and /or publishing these documents.

Numbers of cases of children detained, referred to the juvenile justice system and processed through the probation offices are centrally collected by the Social Justice Department. It is important to note here that formally the registration system operated by the Social Defense Department in the MOSS is mainly run by what can be vaguely labeled as an independent agency. Since the 1970s, the management of the operational roles played by the Social Defense Department has been assigned to local NGOs that have been sub-contracted by the MOSS to run

the classification center, the probation offices and the care institutions. According to one MOSS official interviewed:

“This was done in an effort to ease the bureaucratic regulations that usually hinder the work of the government and for the best interest of the children”

Nevertheless, these NGOs have been closely run, managed and staffed with public servants and as such, cannot be practically viewed as neither independent nor less bureaucratic. These NGOs solely depend on the financial aid of the MoSS. Currently, the MoSS is undergoing an assessment of these NGOs and there are serious discussions about the capacities and leadership of these NGOs.

Discussions with a number of UN agencies and international NGOs as well as government officials especially from the Ministries of Justice and Social Solidarity have shed light on a number of initiatives that have taken place, though are mostly currently on hold, to create a centralized database, where all data related to the juvenile justice system should be stored, especially with regards to number of children detained and cases trialed and sentences issued. However, these efforts have been halted by the Ministry of Interior for “*national security reasons*”, according to many of the interviewees. This finding has been echoed by the UNCRC Committee Concluding Observations to the Egyptian report in 2011 as its expressed serious concerns over, “...the lack of data on children deprived of their liberty and on the number of children prosecuted and sentenced to by courts to imprisonment”, (the UNCRC Committee Concluding Observations, 2011).

This contradiction in terms of access to data and information raises questions on transparency as well as the politicized nature that might governs the relation between the GoE

and the UN agencies and INGOs. On the one hand, these organizations' mandates focus on promoting and protection human rights. Nevertheless and on the other hand, they have to maintain a highly politically sensitive relation with the government to secure their registration and ability to intervene and enact changes at the policy level.

2- Use of Detention

The focus on the use of detention as a main parameter in assessing the compliance of a national juvenile justice system has its roots in the international consensus that detention should be seen as a last resort (UNCRC, 1989; CRC/C/GC/ 10, 2007; Child Law, 2008). In assessing the use of detention, we examine the number of children in detention, both in the pre sentencing stage, those who are temporary detained awaiting their trial in custodial detention as well as the presence of pre-sentencing diversion that protect these children from being detained and divert them from the judicial proceedings in general.

Discussions with different stakeholders have highlights what can be phrased as less tolerance from the GoE towards children in conflict with the law. This is validated through two main incidents as related by the interviewees. The first is the increased numbers of children at risk who are arrested and processed through the juvenile justice that was almost doubled in 2015. The second is the heavy reliance on detention throughout the trial stages. As an employee from the MoSS has put it:

“...the police forces have been very active this year...they almost doubled the number of children they arrest from the street and refer to us”.

According to unofficial statistics shared by interviewees during the field work, the police forces in Cairo have arrested and referred to the classification center 465 cases of children at risk in 2013. In 2014, this number was 536 cases. In 2015, the number almost doubled and reached 1380 cases according to the same source.

The increased number of children at risk arrested and channeled through the juvenile justice system is only one form confirming the over-reliance on detention. Over-reliance on detention is also apparent through different stages of the juvenile justice system and has been quoted by different interviewees. Ahmed, a 35 years old lawyer working for a local NGO, says:

“the easiest thing to do is to detain the child...reasons vary...sometimes it is because the judge does not know about the other alternatives as listed by the law, sometimes because these alternatives are not operationalized till now so the judge does not know how to implement them...”

Findings from the field work, as shown in the above quoted statements, as well as reports from international agencies and governmental entities confirm the over-reliance on and misuse of detention. In its 2005 records of juvenile cases in Cairo, the Ministry of Justice has reported that whereas 40.6 per cent of the juvenile cases in Cairo have been referred to alternatives, 67.1 per cent of these alternatives have been institutionalized in semi-open care institutions. Other alternatives such as reproach/censure, training and rehabilitation, and committing to certain obligations were never used and are thus completely inactive (MoJ, 2005). This finding is a concrete violation of Article 107 of the Child Law (2008) that explicitly states that entrusting the child into social care institutions should be seen as a means of last resort.

This same finding was previously quoted in the UNCRC 2011 Concluding Observations as the committee raised concerns over:

...(b) The high number of children aged 12 to 18 years who are deprived of their liberty during investigation, in spite of Article 119 of Child Law (2008) which provides that children below the age of 15 shall not be placed in custody;

(d) The long average periods of custody in supervisory detention establishments, ranging from three years for open or semi-open establishments to five years in closed institutions, as referred to in the State party report (CRC/C/EGY/3-4, para. 332), in contravention of international juvenile justice standards;

(UNCRC Concluding Observations, 2011)

This over reliance on detention seems to be confirmed in a recent presidential decree num 7/Y 2015 which decreases the age of children institutionalized in the closed regime establishment till the age of 21 to 18 years instead as per Article num 141 in the Child Law (2008). Based on this, once a child reaches 18, he is moved to a public prison to spend the rest of his term of imprisonment. When asked about the reason behind this decision, a lawyer responded,

“well...the capacity of el Mary Correctional Institution is around 700...currently there is a number between 1200 to 1400 institutionalized there so they had to figure out a way and that was their way”.

The same lawyer elaborated that, *“there was a suggestion to build a new correctional care institution in Menya but it was rejected for security consideration”*. The idea of responding to a rather logistical constraint by changing legislation rather than revising the policy framework

and the practices that govern the whole institutionalization process is very informative. Moving children to public prisons once they turn 18 technically destroys all rehabilitation efforts, if any; they have received during their time in el Marg.

The over-reliance on detention takes different forms and occurs at different stages of the juvenile justice system. For example, pre-trial detention can be fairly described as a widely used practice. This is not only the case with children over 15 but it is also the case with children below 15 years of age. Many lawyers interviewed have highlighted that due to the ambiguity in Article 94 of the Child Law (2008), many children between 7 and 12, who by law are not criminally liable are detained and subjected to judicial proceedings, especially in the absence of the child protection committees and sub-committees. In other cases where the child's age cannot be determined, children are referred to doctors to determine their age and consequently their criminal liability, a practice which usually prolongs the proceedings and results in longer detention of children below 15. In fact, a report by UNICEF stated that at least one out of three children below 15 are arrested and detained, in an obvious violation of Article 119 of the Child Law 2008 (UNICEF, 2015c)

For children below 15, the Child Law (2008) states in its Article 119 that pre-trial detention should not exceed one week but also allows the court to apply the criminal code that extends the temporary custody in misdemeanors to six months and eighteen months for felonies. Still, some lawyers, especially those who are involved in controversial law cases such as cases of children arrested in anti-regime protests, have reported cases of children below and above 15 who have been detained in temporary custody for almost two years. This finding is seconded by the UNICEF's 2015 report entitled the Statuary of Child Protection in Egypt.

The over-reliance on post-trial detention , that was described as abusive by some of the interviewed lawyers, sheds light on the use, or in the Egyptian case, the non use of non-custodial measures alternatives as well as diversion from the judicial proceedings. When asked about the different alternatives, other than the institutionalization alternative, listed in the Child Law (2008) and the level of their use in the Child Court, almost all of the interviewees pointed out that only very few of these alternatives are in use whereas the rest are totally inactive. Most of the interviewees have mainly listed two alternatives as the mostly used following the institutionalization alternative. These are the delivery to parents, guardians or custodians, and the judicial probation.

Interviews with different stakeholders pointed out the shortcomings in the set of alternatives introduced by the Child Law (2008). For example, interviewed lawyers mentioned that parents usually mistaken the judicial probation with a verdict of innocence or unconditional release. According to the Child Law (2008), the judicial probation should not exceed three years, and should be revisited regularly based on reports submitted by the probation officer or the social observer who should pay regular visits to the child in his/her natural environment to determine the child's compliance with the court's order and commitment to good behavior. However, majority of the lawyers and experts interviewed denied that these regular visits actually happen. This explains the confusion that parents of children released on judicial probation have with regards to the type of court ruling their children have been sentenced. On the other hand, judges, who should revisit their judicial probation decision based on these reports, do not follow up on them nor review them if they received them. When questioned about why the child court judges do not follow on these reports, Judge Mohamed, who has served as a judge in a Child Court

before and acted as a consultant to a number of national and international agencies to reform the Egyptian juvenile justice system said,

“...how will we be able to do so if everything is manual in the courts? How would I remember which case should be revisited?”

The following question was on how to overcome this obstacle, Judge Mohamed responded,

“...that you instill an automated system that generates reminders to the judge on cases to be reviewed...however, this should be the job of the child’s lawyer. They should follow up on their cases and bring them to our attention”.

The abusive use of detention does not only translate in an excess use of detention but it also results in prolonged detention in care institutions. Article 107 of the Child Law (2008) requires that the placement in a social care institutions should be revisited every two months based on a report submitted by the care institution where the child is placed. Accordingly, the judge should decide whether to stop the measure, replace it with another or keep it. In practice, lawyers, experts and judges reported that these are mostly not the case. Lawyers in specific reported that,

“... judges change all the time and it is thus hard to ask a new judge to review cases that belonged to another”.

None of the stakeholders interviewed could report on one case in which the child was released from detention due to a revisit of the measure by a judge.

Other alternatives such as training and rehabilitation and committing to certain obligations are rarely, if at all, used. Interviewed stakeholders highlighted that these alternatives are not operationalized. For example, there are no lists of places or obligations that a child can be

trained in or does. Recently, some international NGOs have started working with the MOSS on rehabilitating places to receive these children and training their staff to be able to provide such services to these children.

A number of INGOs and UN agencies have highlighted the need to promote the use of alternatives to detention as listed in the Child Law (2008) but also to other tools of diversion that divert the child from the judicial proceedings and spare the child all the negative shortcomings associated with them. This need was confirmed in an interview with a consultant working with a UN child rights based agency. The consultant said,

“I can see a huge opportunity for non-custodial and community based responses and this is where we are heading over the coming period...but currently, yes...there is a heavy reliance on detention”

In its report entitled Community-Based Response to Children in Conflict with the Law in Egypt (2015b), UNICEF has systematically examined provisions and practices that specifically support diverting the child away from the formal judicial proceedings, promote alternatives to pre-trial and post trial detention, minimize time spent in both pre trial and post trial detention and employ a restorative justice approaches that take into consideration the rights of the victims (UNICEF, 2015b). The report lists 21 community- based responses that are available in the law. However, not all these responses are in action. This assessment comes in an effort to promote such responses over the coming five years to decrease the over-reliance on detention and the spectrum of abuses children in conflict with the law are subjected to due to their engagement with the juvenile justice system. The report provides a full analysis of the eligibility, legal restrictions, strengths and challenges of each of these responses. It is expected that the promotion

of the findings and recommendation of this report will ultimately improve the situation of children in conflict with the law.

3- Prevalence of Violence

Prevalence of violence is an important indicator in examining a national juvenile justice system and has been exhaustively investigated through different sets of indicators endorsed by international agencies and bodies. In the context of this research, examining the prevalence of violence entailed looking into a number of indicators that included separation from adults, sexual and emotional abuse, limitation on physical restraints and the use of force by staff, the use of temporary custody, and the presence of complaints mechanisms that help children as well as adults report on cases of violence and abuse.

As phrased by one of the interviewees, torture, abuse and violence take different forms in the juvenile justice system. On the one hand, the violence experienced by children in conflict with the law is sometimes manifested in procedural practices that extremely violate the Child Law (2008). On the other, it is manifested in violent and abusive individual practices executed mainly by the law enforcement in the arrest and pre trial detention and by the care institutions staff in the post trial detention.

Detention with adults

“.. well...the law does not say to detain them in a separate room...but only to separate them from adults...so if they will not detain them with adult, the best case will be that they either keep them in the corridor or on the roof...a police officer once told me, “ I can only implement the law within my own resources..i cannot do more”, an NGO expert

Legally, children arrested should not be detained with adults (Article 112, Child Law 2008). Children in detention should be classified according to age, sex, and nature of crime.

Those who detained children with adults shall be fined and/or imprisoned (Article 112, Child Law 2008). However, the practices contradict these regulations. Majority of the interviewees especially lawyers and members of local and international NGOs and UN agencies have confirmed that children are usually detained with adults. Some said that children are mostly detained with women; other disagreed and confirmed that children are either kept in corridors between the lockup rooms in the police stations or on the roof of the police stations buildings. When asked about the Detention Facility Conditions and Standards and whether they include assigning a lock up room for children, none of the respondents were aware of such specifications or requirements. Judge Mohamed said,

“there are very few police stations that have a special lockup room for children...I think there is one in Nasr City and maybe one in Helwan..”.

In fact, Terre des homes (TDH) has recently partnered with the Ministry of Interiors to review the Detention Facility Conditions and Standards in an effort to improve them. Detaining children with adults has been echoed by the UNCRC in its closing observations in 2011. The UNCRC stressed concerns over, “...the continued practice of children held in custody together with adults in some police stations” (UNCRC Concluding Observations, 2011).

Detaining children with adults does not only happen in police stations. Girls detained in the post trial stage are detained in el Anater Women Jail, thus detained with adults, though in a separate building. This is simply due to the fact that there is no correctional care institution dedicated to girls. In Cairo, boys under 15 arrested, and if detained awaiting trial, should be detained in the observation center in Abu Atata. However, they are usually transferred back to the police station they originally came from. The Abu Atata Observation Center mainly hosts girls and can only host a small number of boys which results in this abusive practice. This

finding has been shared by representatives from NGO and seconded by one official from MoSS. However, other officials interviewed whether from the MoJ or MoSS have denied this or have at least said that they are not aware of such practice.

Violence during arrest, pre trial detention and post trial detention

Findings from the field work as well as observation highlighted that forms of abuse experienced by children in conflict with the law seem to continue beyond detaining them with adults. Children, lawyers and child rights activists confirmed that children are usually handcuffed. In some cases, their hands are tied up behind their backs. Children move from police stations to the prosecution premises in public transportation which is extremely humiliating to the children. In the best cases, children are transferred in the police deportation wagons with adults. Lawyers interviewed pointed out that children are better treated in the prosecution offices compared to their treatment in the police lock ups where they are commonly insulted and usually beaten.

The violent practices that children in conflict with the law might be subjected to have been the core of the HRW 2003 report that focused on different forms of violence and abuse as reported by children. In its 2003 report entitled “Charged with Being Children”, HRW recited stories of children in conflict with the law who experienced different forms of abuse during their detention in the police lock ups. The 2003 HRW report spoke about different forms of violence that were not only limited to emotional and physical violence but included sexual abuse. However, and while interviewees with lawyers, representatives from local and international NGOs and UN agencies, and ex-convicted juvenile have confirmed the prevalence of emotional and physical violence especially as practiced by the law enforcement personnel, there was no confirmed cases on sexual abuse. Lawyers, specifically, listed cases of emotional and

psychological abuse both to the juveniles as well as to their families. A lawyer reported about a case of a child caught in anti-regime protests,

“his mother was there...all she wanted was to hold the boy...but they refused to let her even get near him.....he was 15...she just stood there in silence....praying I think...”,

Only one expert from a local NGO, who has also supported the amendments introduced to the Child Law (2008), has reported cases of sexual abuse. In his words, he said,

“ yes there are two types of bribes during arrest and pre trial detention...there is monetary bribe and sexual bribes...boys would usually give like 20 pounds to ameen el shorta (the police sergeant) in their way to the police station to let him go...girls can use sexual bribes”.

Equally violent is the prolonged temporary custody that some children in conflict with the law experienced and that was discussed earlier in this chapter. According to one lawyer,

“I have cases of children who have been detained for almost two years...”

It is important to note here that according to interviewed lawyers, the prolonged temporary custody seems mainly relevant to cases where the children have been involved in anti-regime protests or practices. This reflects a prioritization of what can be labeled as national security or antiterrorism policies at the expense of the rule of law and human rights. This will be fully discussed in the following chapter.

Cases of children subjected to torture and ill-treatment by law enforcement officers has been both acknowledged by the State of Egypt in its report to the UN Committee on the Rights of the Child in 2011 as well as by the UNCRC Concluding Observations in the same year (UNCRC Concluding Observations, 2011). This comes as a clear violation of Article 3(a) of the Child Law (2008) that stresses the right of the child to be protected from all forms of violence. It

also violated the Committee's general comment n.13 (2011) regarding the right of the child to freedom from all forms of violence. As a result of this acknowledgement, the Concluding Observations report (2011), "recommends that the State party continue and strengthen human rights training for police, security forces and prison guards" (ibid).

This report urges Egypt to submit disaggregated data on numbers of children subjected to torture and ill treatment in its next periodic report which is due in March 2016. It calls on the GoE to consolidate, "...a national system of data collection, analysis and dissemination, and a research agenda on violence against children", (UNCRC Concluding Observations 2011).

Violence against children in conflict with the law is also existent in the post trial stage, and practiced by the care givers in the care institutions, based on findings from interviews with lawyers, representatives from local and international NGOs as well as ex-convicted juvenile. 18 years old Mahmoud, an ex-convicted juvenile who was institutionalized in el Marg correctional institute for two years and was released a year ago, spoke of violence inside el Marg. Mahmoud said,

"in el Marg, torture and abuse take different forms...the leader, selected by the social worker, dominate the division...we sweep the floor, clean the toilets, asked to only look in our dishes and not to talk to each other during meals...stand on one foot..only those with connections can be spared such treatment',.

Recently, and with support from Save the Children, the MoSS has endorsed in its ministerial decree num 51/Y 2015 the National Care Standards. According to this decree, the National Care Standards include developing a code of conduct and a child safety and protection policy inside the care institutions as well as detailed and realistic job description for the social workers and a case management system inside these institutions (MoSS Ministerial Decree

num.51/Y 2015). This comes in an effort to minimize violence and abuse as practiced by the social workers inside the ministry's care institutions.

To a certain extent, the unjust and violent treatment that children in conflict with the law experience can be strongly linked to a set of socially and culturally constructed perspectives of these children in the Egyptian society in general. The question about how these children are being viewed in the Egyptian society is undoubtedly relevant here. Are these children viewed by the police security forces and social workers as criminals who are fully accountable for their offences with no chances for rehabilitation according to Martinson's theory of "nothing works"? Is public safety being prioritized to youth development? Can this be the reason behind the excess and unjustifiable level of violence these children are subjected to throughout the juvenile justice system? Answering these questions has proven extremely challenging. While lawyers and representatives from local and international NGOs have seconded the previously listed views as enshrined in the social beliefs of the police security and social workers, social workers denied this assumption. In fact, social workers have attributed the challenges they face in dealing with these children to lack of resources and disproportional distribution ratio of number of children per the social worker.

4- The Complaints System

One resource to capture data on violence against children is through the establishment of a national complaints system. Again, interviewees denied the presence of such a comprehensive complaints system. Recent efforts by some international NGOs including Save the Children have focused on creating a complaints system inside the MoSS's care institutions as part of the National Care Standards. However, these efforts mainly focus on the post trial stage leaving behind other stages of the juvenile justice system that equally lacks a sound complaints system

through which children, their families and lawyers can report cases of abuse. This lack of a sound complaints system is confirmed by the absence of reports on cases of abuse. A senior expert from the MoSS has said,

“...in my so many years in the social defense department, I have only encountered one case of abuse done by a police officer...and I have personally reported it to the Cairo Security Directorate...there must be other cases but as long as I was not informed of, then I cannot comment”.

In fact, some of the lawyers interviewed have stressed that even when they try to report cases of abuse, there is no follow up procedures. The only complaints mechanism that a number of activists have highlighted is the Child Helpline 16000 operated by the NCCM. However, and according to an interviewee with an employee from the NCCM, no complaints related to the juvenile justice system have been reported to the Child Helpline. As the ex-convicted juvenile Mahmoud has stressed,

“... to whom do you want us to complain”.

5- The Fair Trial Guarantees

When asked about the right to be heard and to effective participation which are among the main fair trial guarantees required by the CRC/C/GC/10 (2007), an interviewed lawyer said,

“he (the child court judge) hardly listens to the lawyers...do you want him to LISTEN to the children !!!!”

The same lawyer detailed two cases in Alexandria where the child court judge refused to ask attendees who are not relatives of the children or involved in the cases to be discussed to leave the room in an apparent violation of the right to privacy and to Article 126 of the Child Law (2008).

Only children whose cases might render a custody penalty are assured their right to legal representation and aid through lawyers (Article 125, Child Law 2008). Some of the interviewed lawyers detailed cases of children whose trials have lasted for more than a year and half till now, such as the case with the Menya riots following June 30 2013. Children are not brought to the court due to security reasons which prolongs their trials which is a direct violation of the right to decisions without delays. Interviewed lawyers could not recall cases in which the child's family was consulted in the judgment passed in relation to their child. In many cases, lawyers admitted that children were not timely informed of their charges.

6- Provision of Rehabilitative Services

Provision of rehabilitative services is an imperative indicator in assessing whether the Egyptian juvenile justice system is fulfilling its intended goal as translated in the vision of the Social Defense Unit responsible for administrating the system that focuses on the re-socialization and rehabilitation of children (The Official Website of MoSS, accessed on Oct 8th). To be rehabilitative, there should be a number of rehabilitative services and practices in place. These services and practices include contacts with parents and families, existence of national protection standards inside residential institutions, clear disciplinary procedures, comprehensive rehabilitative programs inside residential institutions, legal aid and assistance, existence of a day program, quality of the rehabilitative services, training of staff and after care plan and services among others.

Interviews with different stakeholders seem to agree on one major observation. In theory, the juvenile justice system provides rehabilitative services, but in practice, these services and practices are non-existent, ineffective, and/or poorly administrated.

A corner stone in administrating an effective system is the human factor. The levels of knowledge, training, and incentives possessed and offered to personnel are key in ensuring quality delivery of different services. In this context, social workers and other care givers in the care institutions play an influential role. Generally, interviewees detailed a number of challenges that negatively impacts the work of the social workers and they mainly evolved around the qualifications, capacities, training and advancement opportunities, pay and morale of the social workers.

As stated before, the 37 care institutions have been sub-contracted to local NGOs to avoid the bureaucracy that generally characterizes the work of a governmental agency. This sub-contraction did not necessarily achieve its intended goal. An employee in an international NGO said,

“these care institutions became the NGO inheritance for decades”

It is important to note here that the sub-contracting that took place decades ago was not done based on a bidding process nor was it critically revisited over these past years until recently in 2014.

Indeed, the care institutions continued to be indirectly managed by the government as it hired public servants to work in these care institutions. In other words, majority of the social workers and care givers in these institutions are hired on fixed, life-time contract as public servants and as such personal performance and accomplishment do not play a substantial role. Furthermore, a major complaint among the workers in these care institutions was the policy of not hiring new staff members. Due to decline in the funds directed to these care institutions, the NGOs have refrained from hiring new staff members except in very few cases. The result was a disproportional distribution ratio of social worker-children in these institutions. Those who are in

direct contact with children are in their 40s and 50s and constantly find it difficult to exert the passion and patience needed to deal with these children. For example in the classification center, there are only nine social workers including the manager supervising at least 50 children. As the social and psychological workers are reaching retirement, they are not replaced by new staff members. This is reported as the case in all of the 37 care institutions. They are under-staffed which leaves its mark on the quality of the services provided to children in conflict with the law or with the other children institutionalized in these care institutions. As reported by an expert from an international NGO,

“till now, four probation offices have been closed due to lack of funding”.

Additionally and in cases where new staff members are hired, the discussion about the variation in the benefit packages offered to the old staff members who are public servants compared to the new ones who are hired based on annual contracts is prevalent. All social workers interviewed have referred to this issue as well as the financial status and low financial incentives offered to the social workers and care givers inside the juvenile justice system in general. For example, when one social observers was asked about the social report submitted to the Child Court based on which the judge can take a decision with regards to the child, she responded,

“ do you know how much I get as a transportation per diem for a field visit to the child’s family? 7 EGP (less than \$1)...but we still do the work because we want to help these children”.

Whether they do the work or not is of course a contested question.

Responses from different interviewees from the Social Defense Department in the MoSS, from local and international NGOs, and from social workers from the care institutions have all

confirmed the existence of day plans and rehabilitative services that include social, psychological, vocational, educational, entertainment, and artistic services in addition to trips. However, they disagreed on the level of availability and access to these services as well as quality of the services provided across all care institutions. This is mainly because the provision of rehabilitative services and even basic services such as health care for example is based on personal initiatives, individual experiences, the existence of sound management and availability of financial and human resources rather than institutionalized procedures and standards that guarantee service delivery and quality of services provided. The result is a variation in the availability, accessibility and quality in the services provided throughout the 37 care institutions. For example, they have all agreed that vocational training opportunities are non-existent mainly due to lack of financial and human resources, though all have expressed a pressing need for such opportunities. Majority of the care givers interviewed confirmed that there are very few psychological workers and as such this aspect of the rehabilitation services and plans is not activated as it should be. Access to medical care varied as some care institutions have regular medical personnel visits whereas others do not. Others highlighted that in closed regime institutions, some of these services are non-existent and/or provided based on the prosecution decision such as in the case of access to education. Mahmoud, the interviewed ex-convicted youth, was denied access to education. He appealed twice to the general prosecution while institutionalized in el Marg but his request was refused without specifying a reason. Mahmoud exclaimed,

“I have lost two years...my colleagues are in college now and I still go to school,”

Contacts with parents and guardians are allowed and in open and semi open regime institutions, children are allowed to visit their parents. After care plans are only existent on

papers. Experts from local and international NGOs highlighted that the after care plans should be launched the day the child is institutionalized and are the task of the probation officers. However, and based on findings from the interviews, these after care plans are a last minute task and are often only considered to complete the paper work. Recently and as mentioned before, the MoSS has endorsed the National Care Standards but till now, there are no clear vision of how these care standards will be activated and operationalized inside these care institutions. A number of INGOs including Save the Children are working with the MoSS on institutionalizing the National Care Standards.

The above findings are supported by a number of recently executed assessment by international NGOs as well as an assessment carried out by the MoSS. The MoSS assessment, in specific, did not render promising results. Even though the full results of the assessment have yet to be publically shared and published, those who participated in the assessment or attended the meeting to present the findings reported a number of shortcomings in the administration and management of the care institutions that both affected their effectiveness as well as the quality of the services provided through them. A 2012 Save the Children's baseline assessment of five care institutions has depicted a similar picture. The assessment has focused on five main areas: professional practices, children care, staffing, administration, and infrastructure. The assessment detailed a number of recommendations that mainly focused on the institutionalization of the services provided with quality standards and clear roles and responsibilities to enable fair assessment and evaluation (Save the Children, 2012).

One of the main questions that were asked to all of the interviewees during the field work was whether, from a professional and individual perspective, they believe the Egyptian juvenile justice system is punitive or rehabilitative. Majority of respondents including officials from the

MoSS and the MoJ has viewed the system as punitive especially in response to whether the system has achieved its intended goal. According to a consultant working for a UN agency,

“children exiting the juvenile justice system are in a worse status, both morally and behaviorally than when they entered it”.

Policy Parameters

1- Regular Independent Inspection

The existence of a system that regularly and independently inspects places of detention has been one of the main parameters listed in the 2006 measurement of the Juvenile Justice. In the Egyptian context, the detention places include three main categories. These are police stations where children are locked up, the observation centers where children are supposedly institutionalized during their trial, and the MoSS’s care institutions, including the closed regime institutions, where children are institutionalized in the post trial stage. According to the Egyptian Law, two main entities are authorized to inspect police stations. These are the general prosecution and the National Council on Human Rights (NCHR). For observation centers and care institutions, judges are entitled to inspect these places (Article 134, Child Law 2008), in addition to the NHCR. However, the inspection of police stations is not a regular procedure. There are no reports on visits by the NHCR to police stations that have raised concerns about detained children. Furthermore, judges refrain from visiting the placement institutions. When Judge Mohamed was asked about the reason behind this, he claimed that,

“as a judge, I will not stand on the door of an NGO or even of el Marg correctional institution to wait for their approval on my visit”.

The following question was who should be responsible to play this crucial role, and Judge Mohamed's answer was,

“we have suggested before to TDH that the social observers should do this”.

This suggestion is expected to carry aspects of conflict of interests taken into consideration that the probation offices where these social observers work are run by NGOs as in the case of the care institution.

The absence of a regular independent inspection of detention places shed lights on the power dynamics governing the Egyptian society in general and the juvenile justice system in specific. On the one hand, the idea of the superiority of a judge is very meaningful here as judges refuse to wait for the approval of an NGO or a police officer to inspect the detention place. This urge to protect this socially constructed superiority outweighs the obligation to protect rights and to ensure the rule of law. On the other hand, police securities in Egypt have been overly protected for decades and superficially collaborated with human rights organizations.

Discussions with the National Council on Human Rights (NCHR) did not render different conclusions. The NCHR conducted an inspection of el Marg in 2013. However, no other visits are reported and as such we cannot describe this as regular independent inspection. Recent efforts by UNICEF to engage the NCHR have been reported but no concrete results have been achieved till the moment of writing this research.

This conclusion around the lack of regular independent inspection has been quoted in the Concluding Observations of the UNCRC Committee as it criticized, “...The weak monitoring by public prosecutors, as provided by law, or by independent mechanisms on conditions of children deprived of their liberty”. It further wrote in the same report:

(it) regrets that the State party lacks an independent mechanism specifically devoted to children's rights, including the absence in the National Council for Human Rights of a unit specifically devoted to monitor and promote children's rights.

(UNCRC Committee Concluding Observations, 2011)

2- Specialized Juvenile Justice System

Creating a specialized juvenile justice system as part of the organization of juvenile justice is one of the core elements listed by the CRC/C/GC/10 (2007). Examining this parameter in the Egyptian context entails not only confirming the existence of specialized child law and a special chapter dedicated to children who infringed the penal law but it also requires a revision of different personnel engaged in the system and assessing the level of their specialization in this field.

When children are arrested, the Ministerial Decree num. 507/Y 1972 requires that a police social worker sits with the child to investigate his/her case and writes a social report. However, a recent study by TDH has reported that only 4 per cent of the Egyptian police stations have social workers and they are usually engaged in other administrative tasks (interview with the TDH representative, 2015). This simply means that this first specialization that can act as the gate keeper of the first entry point of a child into the juvenile justice system is missing. In practice, children arrested are rarely referred to the police social worker. Their cases are hardly investigated at this stage, and as such majority of these children are processed through the judicial proceedings. This shortcoming, in specific, is highly attributing to the increased number of children subjected to the juvenile proceedings. With the absence of this important gate keeper, more children are subjected to the unnecessary judicial proceedings.

Interviewed judges have asserted that the juvenile justice system starts only with the public prosecution, as the role of Ministry of Interiors is mainly administrative. In theory, throughout the juvenile justice system, social observers and social experts play an influential role in determining the fate of the child in conflict with the law as their reports are supposedly to be taken into account by the Child Court (Article 127, Child Law 2008). This conclusion is built upon the assumption that social observers and experts are specialized personnel with the level of knowledge, skills, capabilities and experiences to support the Child Judge in reaching a measure that is in the best interest of the child. However, practices contradict the theory. Social observers sitting in the 256 probation offices across the country are usually overwhelmed, under-paid, unqualified and widely unappreciated by the Child Court. Interviews with judges, social workers, lawyers, representatives of local and international NGOs as well as published assessments and studies confirm that judges undermine the reports produced by the social observers, question the level of professionalism of these reports, rarely take them into consideration while deciding a measure concerning a child in conflict with the law, and generally do not consult with the social experts as entailed by the Child Law (2008). Social workers detailed cases where they were never consulted by the judge as per the Child Law (2008) requirements. Judge Mohamed mentioned that majority of the social inquiry reports submitted by the social observers and approved by the social experts do not conclude with a specific recommendation or a measure to be considered but with a vague and loose sentence, *“and judgment is left to your honor”*. To many judges, according to Judge Mohamed,

“reading these reports is a waste of the judge’s time”.

Lawyer Ahmed mentioned a case where,

“the judge has ordered the social expert to sit some other place and not next to him”.

Judge Mohamed, as well as a representative from an international NGO, reported on how judges refused to participate in a meeting with social workers and observers and that the organizers of the meeting had to hold two simultaneous meetings to overcome this challenge. Judge Mohamed said laughingly

“I had to keep running between the two rooms to share views and discuss opportunities between the two parties”

Again, socially and culturally constructed views come to surface in analyzing this challenging dynamics between two of the main stakeholders in the juvenile justice system; judges and social workers and observers. The sense of superiority that judges hold of themselves and thus reflect on their assessment of social workers is rather disturbing. Whether the judges’ assessments of the quality of the work and reports conducted by the social workers is justified or not does not excuse the demining view judges hold of social workers. In reality, judges do not perceive social workers and observers on equal basis. An international NGO representative reported that she was informed by the MoJ that,

“being part of a training with social workers is demining to us and we will not accept it”

Within the realm of specialization in the juvenile justice system, Article 120 of the Child Law (2008) calls for the establishment of at least one Child Court in each governorate and of a specialized Child Prosecution. However, facts show that not all governorates have specialized Child Courts and Public Prosecution. This has been criticized by the UNCRC Committee in its concluding observations in 2011 as it raises concerns over, *“(a)The slow progress in establishing special child courts and specialized child prosecution offices”* (UNCRC Committee Concluding

Observations Report, 2011). Still, this is not the only challenge facing the establishment of a specialized juvenile justice system in Egypt. Judges and public prosecutors who administrate the juvenile justice system in its pre trial and trial stages are not necessarily knowledgeable of the Child Law (2008). While the MoJ's procedures require that judges transfer to the Child Court receive a specialized training, international NGOs and UN agencies reported that they are rarely informed of the transfer to arrange for the necessary training. Judges and prosecutors are transferred to different courts every two years. When asked about the need to create a specialized cadre of judges and public prosecutors who sit in the Child Court for all their term of service, Judge Mohamed ruled this suggestion as unpractical and un-warrant. His rational included a number of reasons. First, there are limited numbers of judges and thus administratively, the MoJ cannot dedicate a number of judges to only serve at the Child Court. Secondly, Judge Mohamed viewed such procedure, if implemented, as unjust to the judge as it deprived him or her of the opportunity to be exposed to different courts and various specializations within the judicial system. Third, only big cities such as Cairo and Alexandria have a notable number of juvenile cases, dedicating a judge to Child Court in smaller cities and governorates will simply mean that these judges might not have any cases to review for weeks, which is a waste of human resources, according to Judge Mohamed.

This view and associated reasoning have been contested by both lawyers and representatives of local and international NGOs. According to one lawyer,

“why do not they just hire more judges? I will tell you why...this is a limited social class and it should be kept as such...there should not be many judges so it remains that prestigious”

This last comment re-confirms the image of social classes and differentiation between professions, which is prioritized to child rights in the case of the juvenile justice system.

As highlighted before, the Child Law (2008) does not necessarily call for a specialization among lawyers who can represent children. However, there has been a proposal submitted by a child rights activist to the Egyptian Bar Association to establish a Child Defense Committee. This committee should create a network of trained and specialized lawyers to represent children in conflict with the law. This network will be represented in each governorate and district across the country to ensure a nationwide availability of and access to legal aid. Funds are still a challenge that faces the materialization of this network.

3- Prevention

One of the core elements of the juvenile justice as detailed by CRC/C/GC/10 (2007) is the prevention of juvenile delinquency. At the policy level, prevention requires the existence of an effective national plan for the prevention of child involvement in crime. Again, and as highlighted before, in theory, the Child Law (2008) details in Article 97, 98 and 99 procedures for prevention of juvenile delinquency through earlier interventions with cases of children at risk. In these articles, Child Protection Committees at the governorate level and Sub-Child Protection Committees at the district level are established to map, track, monitor and intervene in cases of children at risk providing community based interventions. However, in practice, these committees and sub-committee are ineffective, if not non-existent, to say the least.

Technically, these committees and sub-committees are supported by the National Council of Childhood and Motherhood (NCCM) whereas administratively, they follow the local administration system. They are headed by the governor at the governorate level and by the

district chairperson at the district level. Various ministries including the Ministry of Education, the Ministry of Health, the Ministry of Social Solidarity, and the Ministry of Interiors are represented in these committees and sub-committees. Local NGOs and community leaders are also represented in these committees and subcommittees. Over the past five years, numerous efforts have been exerted in vain to operationalize these committees. In interviews with various stakeholders, different challenges have been listed. Financial and human resources have been among the main challenges. These committees and sub-committees lack the financial resources to run a mapping and tracking system of potential cases of children at risk as well as technical capacities to refer the identified cases to different governmental service providers and interventions to prevent them from delinquency. These committees and sub-committees have no venues to convene. No incentives are offered to the members of these committees and sub-committees. In that sense, these committees and sub-committees that are supposed to act as the gate keeper preventing children from delinquency are dysfunctional. Even if the police social workers were existent and functional, they would have no community-based preventive mechanism to turn cases of children at risk to instead of subjecting these children to the juvenile justice system.

Not only do these committees and sub-committees lack financial resources, but they also lack adequate capacity building trainings. This has been echoed by the UNCRC 2011

Concluding Observations as it regrets:

that professional groups working with and for children, including members of the Child Protection Committees, civil servants working on children's rights at the Ministries of

Health, Justice, Social Solidarity, and Interior, police, social workers, judges and prosecutors, do not receive adequate and targeted training.

(UNCRC Committee Concluding Observations, 2011)

It is also fair to say that the deterioration in the status of the NCCM with regards to its institutional affiliation from directly reporting to the Prime Minister to acting as a subsequent of the Ministry of Health had its toll on its subsequent Child Protection Committees and Sub Committees. The NCCM lost its ability to enforce its vision and the envisioned role of the Child Protection Committees and Sub-Committees on the political agenda. Again, the UNCRC Committee has shared the same concern as it says:

the Committee is concerned that effective coordination and implementation of children's rights may be undermined in light of the change in institutional affiliation of the NCCM from the dissolved Ministry of State for Family and Population to the Minister of Health. The Committee, thus recommended that, "Put in place an effective coordination system on child policies and programmes, including by ensuring that the NCCM receive sufficient human, technical and financial resources, that it enjoys autonomy and holds a high position with leveraging power in relation to all ministries and other governmental entities at central, provincial and local levels.

(UNCRC Committee Concluding Observations, 2011)

In conclusion, and albeit recent efforts by UNICEF to operationalize the Child Protection Committees and Sub-Committees to ensure a nationwide protection of child rights and prevention of juvenile delinquency, national prevention polices might be well-articulated but they are poorly administrated, if at all.

4- Governance and Accountability

Governance and accountability refer to the existence of a sound monitoring and evaluation system, accountability mechanisms throughout the different stages of the juvenile justice system, and clear coordination among various stakeholders administrating the system. Apparently and based on findings from the interviews with different stakeholders, there is no sound monitoring and evaluation system that maps, tracks, monitors progress and measures outcomes of the juvenile justice system. Trials to create such systems have been rendered unsuccessful due to national security precautions. Data available is collected and recorded manually and is not centralized. The outcomes of the whole system and whether it achieves its intended policy outcomes of preventing delinquency, re-habilitating, re-socializing, and re-integrating children in conflict with the law are inaccessible, if they ever exist.

Furthermore, the system seems to behold juvenile accountability while denying the system accountability towards these juveniles. There are no complaints mechanisms available throughout the system to report violations of the law. Violations in detention whether with adults or prolonged temporary custody pass unpunished. Lawyers have listed cases where the Child Law (2008) has been violated. For example, public prosecutors and judges sometimes refuse to listen to them. Social observers reported cases when they were not consulted and their social inquiry reports were never examined and yet they did not report on such violations. The post trial progress reports that should be submitted by the social observers to the court to revisit its judgment concerning the child are widely missing. In the few cases these reports were submitted, they are overlooked by the judge. Poor coordination among different stakeholders was apparent. For example, judges interviewed were unaware of certain procedures or changes to the law as in

the case of girls' incarceration in the Women Jail or the change in the age of boys incarcerated in el Marg institution.

Chapter 8: Beyond the Scene: A Discussion of Study Findings

In the previous two (possibly more) chapters, findings from the collected data confirmed a major discrepancy between a well phrased, child centered, and progressive Egyptian Child Law (2008) that largely complies with international standards, guidelines, and core elements of juvenile justice, and ill practices and disturbing procedures as carried out by different stakeholders engaged in the system. The result is a system that is ultimately rendered as punitive rather than rehabilitative and protective. In that sense, the system is seen as failing in achieving its policy intent of preventing, rehabilitating and re-socializing juvenile delinquents.

This chapter attempts to deconstruct and analyze the dynamics governing the juvenile justice system within the wider political and social environment of the Egyptian society. It examines 1) the meshing of the current juvenile justice system and its conflict with principles of human rights and quests for national security and rule of law, 2) the power dynamics among different stakeholders involved in the administration of the juvenile justice system, and 3) how the current juvenile justice system is being equally manipulated by the government and the people in an apparent influence by social norms and cultural factors. Section one of this chapter discusses the culture of trade-offs between human rights principles, rule of law and national security that Egypt is caught in. The second section analyzes the power dynamics and the socially and culturally constructed hierarchy invisibly governing the relationships among different stakeholders. The last section discusses the manipulation of the system by many.

A Culture of Trade-offs: the Conflict between the system and the principles of human rights, rule of law and national security

International models in juvenile justice as well as universal guidelines promote a system that is rehabilitative, preventive and equally attentive to the requirement of public safety as well as the needs of children in conflict with the law rather than a punitive, criminalizing system that prioritizes public safety and youth offender accountability (Myers, 2013). To reach this desired juvenile justice system, compliance between the international commitments and guidelines on juvenile justice system, national laws and on ground practices should be maintained. Findings from the field work have proven that the Egyptian juvenile justice system does not necessarily reflect this level of compliance across different levels. Indeed, analyzing the Child Law (2008) in light of the CRC/C/GC/C/10 (2007) has confirmed a solid compliance, but this compliance was widely contested in comparing actual practices to the Child Law (2008).

While the Child Law (2008) has reflected a smart on crime approach, the actual practices and procedures revealed a tough on crime orientation that characterized the practices of majority, if not all, of the various stakeholders engaged in the administration of the system. A trade-off between smart on crime to tough on crime has been apparent in the increased number of arrested children in recent years, the over-reliance on detention both in the pre-trial, trial and post trial stages of the system, and a clear absence of effective and quality rehabilitative programs in post trial detention and incarceration.

However, this is not the only trade off observed through the juvenile justice system. In fact, this trade-off can be seen as a manifestation of a steady trend within the Egyptian State to draw a promising picture of compliance with universal rights while actual systems do not

necessarily reflect this picture. Violation of human rights and breaching the principle of the rule of law on bases of maintaining national security have been a long standing argument held by the GoE (Cotran and Yamani, 2000). This was reflected in , for example, the use of military courts (ibid). This trend has characterized the era prior to the outbreak of the 25 of January Uprising and have continued post it.

The word “national security” has been echoed through the juvenile justice system during the field work. It has been repeatedly used by officials in different ministries involved in the administration of the system. This was reflected in the inability to formally access reliable and governmental data on the Egyptian juvenile justice system, in cases of refusal to participate in the interviews by judges and police officers, and in concerns shared by international NGOs and UN agencies on the expected political implications if they shared their resources on the challenges enshrined in the Egyptian juvenile justice system. While the concept of national security was shared by many during the field work, there was no clear definition of what it means in the context of juvenile justice or who exactly categorized this information as national security. The only justification provided by a senior official in the MoSS was that such data, if shared, can be manipulated by international organizations to depict a negative image of the country on the international arena. It was thus clear that the GoE seems to prioritize national security over human rights and rule of law. As this culture of trade-offs prevailed, the entire juvenile justice system has hardly achieved its intended impact of preventing delinquency, rehabilitating, re-socializing and re-integrating juvenile offenders.

With the prevalence of the notion of national security over other consideration, the scene was ready for a manipulation of the juvenile justice system in favor of counterterrorism policies. Existing literature confirms that fighting terrorism has always resulted in a conflict between

security and human rights (Feinberg, 2015). Egypt is not an exception to this rule. Findings from the field work have raised concerns of cases of children caught in the middle of the political conflict between the current regime and the Muslim Brotherhoods as they participated in protests or showed signs of anti-regime behaviour. This manipulation of the system in favor of national security is not a recent practice. In fact, and in contradiction to the GoE's commitment to the guiding principle of the child's right to life, survival and development, and the right to participation, and the right to freedom of expression, the political turmoil that the country faced in the aftermath of the January 25th uprising took its toll on children. The UNCRC committee in its concluding observations issued 2011 raised concerns of the number of children killed, subjected to tear gas and traumatized by the excess use of force from the Egyptian Security Forces. The committee highlighted that:

(g) The detention of children by the military and prosecution of children before military courts since January 2011 under military law as well as reports of children sentenced by military courts and imprisoned together with adults in the period following the January 2011 Revolution.

“(it) is also very concerned at the reports of excessive use of force by security forces against peaceful demonstrators during and after the 2011 January Revolution, resulting in the death of twelve children according to the Ministry of Health and in serious injury of many persons under the age of 18. It notes with deep concern information that children were in close proximity of and affected by tear gas, rubber bullets and live bullets during the demonstrations and that injured children were refused access to health care due to the lack of identification”.

(UNCRC Committee Concluding Observations, 2011)

Manipulation of the system continued with children held in temporary custody for more than two years in a clear violation of the principle of the rule of law and the fair trial guarantees, according to interviewed lawyers. Some of them have also listed well known cases where children received the death penalty as in the Menya Case, a sentence that was successfully appealed against after confirming the age of the child at the time of the crime. In fact, the ex-convicted juvenile youth Mahmoud was arrested on what his lawyer called a politically oriented case. He, among a number of adults, has been arrested in protests post the January 25th uprising. Surprising, Mahmoud was sentenced to two years of detention in el Mary, whereas his accompanying adults in the same case, were proven innocent. The mother who was denied to hold her 14 years old boy was supposedly a member of the Muslim Brotherhood and the son was arrested in a protest against the regime.

The Power Dynamics among Different Stakeholders

Power dynamics were present among different stakeholders. This power dynamics was mainly informed by a socially and culturally constructed hierarchy that governed the relations among these stakeholders. There was a power dynamic between children and the police security forces. Another power dynamic relationship was apparent between judges and social observers and experts. In this socially constructed hierarchy, children in conflict with the law lay at the bottom. They were perceived as the weakest point of the system and as such were subjected to all forms of violence and violations of their basic rights. With the lack of a sound complaint system and effective governance and accountability mechanisms, the voices of these children were lost. Though these views were not publically expressed in the interviews but a sense of

criminalization of the juveniles and a focus on the offences rather than the offender was apparent throughout the system. The principle of the best interest of the child, though largely echoed, is not necessarily taken into consideration. This is apparent in the increased proportion of children subjected to custodial detention and institutionalization. This concern has been seconded in the UNCRC Concluding Observations in 2011. The Committee was, “concerned that the principle is rarely considered with respect to decisions concerning children in street situations, children deprived of a family environment and children in conflict with the law.” (The UNCRC Concluding Observations, 2011).

A superiority tone overwhelmed the relationship between judges and social observers and experts. Judges refused to sit with them in a meeting or to consider their judgment in passing a decision concerning children. Demining the quality of their work has been repeated, with no genuine attempts from these judges to support the social observers and experts in improving their work.

A System Manipulated by Many: the Impact of Social Norms and Cultural factors on the Juvenile Justice System in Egypt

The manipulation of the system is not only a governmental act. Social norms and cultural factors have led to a different kind of manipulation through which the system conforms to these norms and factors. The people have developed their own tactics to manipulate the system to their own advantage. For example, families encourage their under 18 years old boys to commit revenge crimes as they know that according to the Child Law (2008), they will not be sentenced to death. Revenge crime is one of the many well established social norms and traditions that continue to prevail in rural Egypt. A social worker related the story of a young man who was at

the age of 16 when he was forced by his uncles to admit killing the man who killed his father.

The young man received ten years of imprisonment as he was a child at the time of committing the crime.

The lack of awareness on good parenting and positive discipline has resulted in another manipulation of the system. The system is used as a means to discipline “daring children”, according to one social worker. Interviews with the social workers in the classification center have revealed cases where parents deliberately deliver their children to the care institutions as a means of punishment and discipline. This act has not even been refuted by the social workers. As a matter of fact, they justified the act. When they were asked about why they would not refer these cases to the family counseling units or at least offer psychological and social support to the parent, they simply said that the procedure of entrusting the child to the state in these cases only lasts for few days,

“in which the child learns to behalf and the parent comes and takes the child back..no harm done”.

Chapter 9: Conclusion and Policy Recommendations

This research has concluded that while the Egyptian Child Law (2008) can be considered as highly progressive and largely aligns with international conventions, standards and regulations in the field of juvenile justice, the application of this law does not necessarily reflect the same image. Few shortcomings have been identified in some of the articles of the Child Law (2008), however, shortcomings and ill practices in the application are more alarming. The contradiction between what is regulated in the law and what is taking place on the ground raises concerns on the effectiveness of the whole juvenile justice system and its ability to achieve its intended impact in preventing delinquency and rehabilitating juvenile delinquents. The overall conclusion is that while the system, theoretically, encompasses all success factors to be a child centered system but it practically causes more harm as it fails to rehabilitate its inhabitants while criminalizing more children.

Findings from the field work did not only raise questions about the level of compliance between the law and its application but, more importantly, they shed light on a number of political, societal and cultural factors that indirectly enforces challenging power dynamics within the system. Attempts to reform the system should not only focus on improving the day to day practices of the different institutions and stakeholders involved in it, but should also include promoting a political and social environment that is more responsive to children's needs and aspirations.

During the interviews with different stakeholders, interviewees were asked to suggest three areas for improvement in the juvenile justice system that they believe, if endorsed, can

render positive impact on the whole system. It is important to note that participants were also asked to identify means to operationalize their suggestions. Below is a summary of these recommendations.

Policy Recommendations and Associated Procedural Measures

1- Develop a Comprehensive actionable Juvenile Justice Policy and system not only in terms of the law but more importantly in terms of practical solutions to structural challenges, especially in terms of legislation, prevention, specialization and data collection and registration. To achieve this, the research suggests the following:

- Revisit the Child Law (2008) and suggest changes to some of the articles especially those contradicting with the international treaties and guidelines as highlighted in chapter five of this research.
- Remove procedures related to treatment of children at risk and children in the street situation from chapter eight of the Child Law (2008) to eliminate the contradiction caused as illustrated in this research and to ensure diverting these children away from judicial proceedings.
- provide sound preventive mechanism through active community based prevention mechanisms
- Activate role of the MoSS's family counseling offices to act as a prevention mechanism that addresses cases of family conflicts and child delinquency

- Activate the child protection committees and sub committees through advocating to include a solid financial and human resources system
- Re-active the role of the NCCM as an ombudsman through protecting its independence.
- Promote the development of a comprehensive social safety network that focuses on child and family welfare as a frontline to reduce child delinquency and responds to the increased number of children at risk. One way is the introduction of cash transfer programs.
- Employ effective measures to address the challenges of street children before they turn into children in conflict with the law or juvenile offenders.
- Approve and enable the establishment of automated specialized databases on juvenile justice system that links data collected through different stages of the system and enable effective tracking and monitoring and evaluation of different processes and procedures across the system
- Revisit the system organ-gram to identify missing needed professions and provide adequate financial and human resources to fill such gaps

2- Improve professional practices. To achieve this, the research suggests that :

- Provide specialized training packages to all personnel engaged in the system
- Develop procedural manual and friendly guidebooks for practitioners and professional working across the system
- Provide standard operating procedures (SOPs) especially in terms of non-custodial proceedings and available measures and alternatives to institutionalization

- Create a sound, user friendly, preferably anonymous, complaints system throughout different stages of the system to enable better monitoring of violations and enforce accountability of different stakeholders.
- Develop performance indicators and measurements and monitoring tools to evaluate the work of different stakeholders.
- Enforce code of conducts throughout the system to ensure respect to child's rights and protecting children from abuse, violence and exploitation.
- Encourage the replication of best practices through documentation and sharing of experiences from countries with similar socio-economic and political context such as the work in Jordan in reforming the justice system and in South Sudan in promoting restorative justice
- Conduct a detailed mapping of current initiatives that aim at improving the system outcomes and support the implementation as well as the scaling of these **initiatives**

3- Promote the rule of law, governance and accountability. To achieve this, the research suggests the following:

- Introduce formal accountability mechanisms through which the work of different stakeholders is scrutinized through a check and balance approach
- Promote the role of the civil society to promote informal accountability of the system
- Promote the engagement of independent inspection bodies through creating a special unit dedicated to monitoring child rights within the NCHR that should be responsible for regular inspection of detention places.

- Combine both incentives as well as the law and order approaches to promote good governance and accountability throughout the system.
- Introduce awareness raising programs to change the social and cultural norms and beliefs impacting the administration of the system
- Move towards results based budgeting through which a direct link between results and objectives and money spent is created to enable fair and sound evaluation and cost-benefit analysis studies of different programs to decide on effectiveness and efficiency

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ANNEX

Annex 1: The Egyptian Child Law (2008)- Chapter Eight

The Cabinet
THE NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD
LAW NO. 12 OF 1996 PROMULGATING
THE CHILD LAW AMENDED BY LAW NO. 126 OF 2008

PART EIGHT

Dealing with children having infringed the penal law

Article 94⁽²⁷⁾

²⁷ Replaced by Law no. 126 of 2008 ²⁸ Replaced by Law no. 126 of 2008 ²⁹ Replaced by Law no. 126/2008

Criminal responsibility shall not apply to the child who has not reached the age of twelve (12) years at the time of committing the crime. Yet, if the child is at or above seven (7) years and below twelve (12) calendar years, and has committed a felony or a misdemeanor, only the Child Court being the competent court, may rule in accordance with any of the measures set forth in Article 101 Items 1, 2, 7, and 8 of this Law. Appeals against rulings placing a child under institutional care are permissible in accordance with Items 7 and 8 before the Appellate Court concerned with child cases, and in accordance with Article 132 of this Law.

Article 95⁽²⁸⁾ Subject to the provisions of Article 111 of this Law, the provisions found in this chapter, shall apply to a child who has not reached the age of eighteen (18) calendar years at the time of committing the crime, or if the child is in an at risk situation.

Article 96⁽²⁹⁾

The child shall be considered at risk if he is exposed to a situation threatening the sound upbringing that should be made available to him, or in any of the following cases: 1 - If the child's safety, morals, health, or life is at risk. 2 - If the conditions surrounding the child's upbringing in the family, or at school, or in care institutions, or others, places him at risk, or if the child is exposed to neglect, abuse, violence, exploitation, or vagrancy. 3 - If the child is unduly deprived of his rights, even partially, in terms of custody or in visiting either parent or whoever is rightfully entitled to visitation rights. 4 - If those responsible for covering the child's expenses abandon him, or if the child loses his parents, or one of them, or if the child's parents or his guardian abandon all responsibility towards him. 5 - If the child is deprived of basic education or if his educational future is at risk. 6 - If the child is exposed in the family, school, care institutions, or other to violence, or to acts contrary to public morals, or pornographic material, or to commercial exploitation of children, or to harassment or sexual exploitation, or to the illegal use of alcohol or narcotic substances affecting the mental state.

33

7 - If the child is found begging. Acts of begging include offering for sale trivial goods and services, or performing acrobatic shows and other activities not considered an appropriate source of living. 8 - If the child collects cigarette butts, or any other kinds of trash or waste. 9 - If the child has no permanent residence, or generally sleeps in the streets or in other unfit places for residence or accommodation. 10 - If the child mingles with deviants or suspected deviants, or with those known for their bad reputation. 11 - If the child behaves badly or revolts against his father's authority or guardian or custodian or caregiver, or is against his mother's authority in the case of the death, absence, or legal incapacity of his guardian. In this case, no measures shall be taken concerning the child, even if it is investigation procedures, unless there is a complaint from his father, guardian, custodian, mother or caregiver according to the circumstances. 12 - If the child has no legitimate means of supporting himself or does not have trustworthy provider. 13 - If the child is physically, mentally or psychologically sick or mentally disabled, in a manner affecting his ability to perceive or chose, and where such illness or weakness would endanger his safety or that of others. 14 - If the child is under seven (7) years of age and committed a felony or a misdemeanor. With the exception of the cases mentioned in Items 3 and 4, any person putting a child at risk shall be imprisoned for a period not less than six (6) months, and a fine of not less than two thousand (2,000) Egyptian pounds, and not exceeding five thousand (5,000) Egyptian pounds, or by one of the two penalties.

Article 97⁽³⁰⁾

³⁰ Replaced by Law no. 126 of 2008

A General Committee for Childhood Protection shall be established in each Governorate, chaired by the Governor, and having as members the directors of the security, social affairs, education, and health directorates, as well as representatives from the civil society concerned with childhood affairs, as well as any other party as deemed necessary by the Governor. A decree shall be issued by the Governor in this regard. This committee shall formulate the general policy for childhood protection in the Governorate, and shall follow up the implementation of this policy.

Within the jurisdiction of each department or police district, a sub-committee for childhood protection shall be established. The sub-committee shall be established by virtue of a decree from the General Committee and shall include security, social, psychological, medical, and educational representatives. The number of members shall be at least five (5) and exceeding) 34

seven (7), including the chairman of the committee. The sub-committee may include among its members one or more representatives from the organizations of the civil society concerned with childhood affairs. The sub-committees for childhood protection shall monitor all cases of children at risk and take the necessary preventive and therapeutic interventions for all these cases and shall follow up measures taken. Taking into account Article 144 of this Law, the National Council for Childhood and Motherhood (NCCM) shall establish a General Department for Child Helpline, mandated to receive children and adults' complaints, and handle them efficiently to protect children from all forms of violence, risks, or neglect. The department shall include among its members representatives for the Ministries of Justice, Interior, Social Solidarity and Local Development selected by the concerned ministers, in addition to representatives from civil society organizations selected by NCCM Secretary General, as well as any other party as deemed necessary by the Secretary General. The General Department for Child Helpline shall be empowered to investigate any complaint received, follow up the investigation results, and forward reports concerning the findings to the relevant authorities.

Article 98⁽³¹⁾ If a child is found in a situation of being at risk, as stated in Article 96 of this Law, Items 1 and 2 and from 5 to 14, his case shall be referred to the sub-committee for childhood protection to take the necessary actions as set forth in Article 99-bis of this Law. The sub-committee shall, if it deems it necessary, request that the child prosecution, warn in writing, the child's guardian to remove the causes placing the child at risk. Objection to this warning may be made in front the Child Court, provided it is done within ten (10) days from receiving the warning notice. Examining this objection shall abide to the procedures set forth when objecting to criminal orders, and the ruling is final. If the child is found in one of the situations of being at risk referred to in the previous paragraph after the ruling becomes final, the matter shall be referred to the sub-committee for child protection. The sub-committee, in addition to its powers as stated in the previous paragraph, shall have the right to take the child to the child prosecution so as to take one of the measures as set forth in Article 101 of this Law. If the child has not reached seven (7) years of age, the measures to be applied shall be either delivery to parents, guardians, or custodians, or placement in one of the specialized hospitals.

³¹ Replaced by Law no. 126 of 2008 ³² Added by Law no. 126 of 2008

Article 98-bis⁽³²⁾ Any person who finds that a child is at risk should provide urgent help that is adequate to shield or remove this child from danger.³⁵

³³ Replaced by Law no. 126 of 2008 ³⁴ Added by Law no. 126 of 2008

The sub-committees for childhood protection shall receive complaints about cases of children at risk, and in such cases, they can - after investigating the seriousness of the complaint - summon the child, or his parents, or his guardian or the person in charge of the child to listen to what they have to say about all the facts pertaining to the complaint. The sub-committee shall examine the complaint and endeavor to remove all its causes. If it fails to do so, it shall submit a report concerning the incident and the exact measures undertaken to the General Committee for Childhood Protection to take necessary legal measures.

Article 99-bis⁽³⁴⁾ The sub-committees for childhood protection shall carry out any of the following measures and procedures as necessary: 1- Keep the child with his family and commit the parents to take the necessary measures to remove the dangerous environment within a specific deadline. The sub-committee shall carry out periodic supervision visits. 2 - Keep the child with his family and regulate the social intervention methods of the bodies responsible for providing social, educational, and health services necessary for the child and for assisting his family. 3 - Keep the child with his family while taking necessary precautions to prevent any contact between the child and the persons that could pose a threat to his health, physical, or moral well being. 4 - Recommend to the relevant court to place the child temporarily, until the danger is removed, in a family or association, or social or educational institution or, when necessary, at a health or therapeutic institution, in accordance with the legal procedures. 5 - Recommend to the relevant court to take urgent and necessary measures to place the child in a reception center or rehabilitation center or health care institution or with a reliable family or association or an appropriate social or educational institution for a period of time until the risk is removed; this is in cases where children are at risk or are neglected by the parents or guardians. 6 - The sub-committee, if necessary, could raise the matter to the Family Court to compel the person in charge of the child to pay a temporary alimony. The Court's decision in this matter shall be implemented, and cannot be stayed if objected to..

In cases of imminent danger, the General Department for the Child Helpline at NCCM or the Committee for Childhood Protection, whoever is closer, shall take all necessary measures and 36

urgent procedures to remove the child from the place where he is at risk and place him in a safe place, with the assistance of concerned officials, if necessary.

Any positive or negative action that threatens the life of a child or his physical or moral safety to the extent that it cannot be cured with time shall be considered an imminent danger.

Article 99-bis (a)⁽³⁵⁾ The committees for childhood protection shall periodically monitor the procedures and results of implementing the measures undertaken concerning the child. The Committees for Childhood Protection shall recommend to the authorities, when necessary, to review those measures and replace or suspend them so as to keep as much as possible the child in his family environment and avoid depriving him from the family environment except as a measure of last resort and for the shortest appropriate period of time; in such a case, the child shall be taken back to his family environment as soon as possible.

³⁵ Added by Law no. 126 of 2008 ³⁶ Replaced by Law no. 126 of 2008

Article 100

If the act constituting a crime occurs as a result of a mental or psychological disease or a mental weakness whereby the child loses his ability to perceive or choose, or if at the time of the crime he was suffering from a sickness causing a serious deterioration in his perception and freedom of choice, a sentence shall be pronounced placing him in one of the specialized hospitals or institutions. Such a measure shall be implemented according to the regulations set forth in the Law concerning those affected by one of these cases during investigation or after pronouncing the verdict.

Article 101⁽³⁶⁾

The verdict for a child who has not reached fifteen (15) years of age, in case he commits a crime shall include one of the following interventions,: 1 - Reproach/censure 2 - Delivery to parents, guardians, or custodians 3 - Training and rehabilitation 4 - Committing to certain obligations 5 - Judicial probation 6 - Community service activities not harmful to the child's health or mental state. The By-laws shall determine the nature of this work and restrictions thereof. 7 - Placement in one of the specialized hospitals 8 - Placement in one of the social care institutions ³⁷

With the exception of confiscation, closing stores, and returning the place to its original state, the child shall not be subjected to any other penalty or intervention stated in any other law.

Article 102

Reproach is a reprimand and censure addressed to the child by the Court for an act committed by him, and a warning against the recurrence of such behavior.

Article 103

The child shall be delivered to one of his parents, or his guardian, or his custodian. If none of them is qualified for his upbringing, the child shall then be delivered to a reliable person who shall assume the responsibility of his upbringing and proper behavior or to a trustworthy family where the family provider shall be committed to fulfill these requirements. If the child possesses his own financial means of support, or has someone who is legally obligated to financially support him, and the person to whom the child is delivered by virtue of a court judgment requests alimony for the child, the judge shall in his ruling to deliver the child, determine the amount to be obtained from the child's funds, or the amount to be paid by the person responsible to pay the alimony after notifying him of the court session determined and the dates on which the alimony shall be paid. The alimony shall be collected by the administrative sequestration. The ruling delivering the child to an individual other than the one responsible for the alimony shall be for a period not exceeding three (3) years.

Article 104⁽³⁷⁾

³⁷ Replaced by Law no. 126 of 2008

Child training and rehabilitation shall be done through the Court entrusting the child to one of the centers specialized thereof, or to one of the factories, or stores, or farms who will accept to train the child according to his circumstances. The Court shall determine in its ruling the duration for such training, providing that the period during which the child is to remain with said entities shall not exceed three (3) years as to not interfere with the child's regular attendance in basic education.

Article 105

Committing to certain obligations shall mean forbidding the child to visit certain types of places, or compelling the child to appear at specified times before certain persons or authorities, or attending punctually certain meetings for guidance, or any other such restrictions as shall be determined by a decree of the Minister responsible for social affairs. The verdict shall state that this measure shall be for a period of not less than six (6) months and not exceeding three (3) years.

Article 106

Judicial probation shall mean placing the child in his natural environment under guidance and supervision and while observing the duties determined by the Court. The period of judicial probation shall not exceed three (3) years. If the child fails in the probation, the matter shall 38

be submitted to the Court to take any other measures as it deems proper as set forth in Article 101 of this Law.

Article 107⁽³⁸⁾

³⁸ Replaced by Law no. 126 of 2008 ³⁹ The phrase “ did not attain” was replaced by “ did not reach” in Law no. 126 of 2008

Placement of a child shall mean entrusting him to one of the social care institutions for juveniles affiliated to, or recognized by, the Ministry concerned with social affairs. If the child is disabled, he shall be placed in a suitable institute for his rehabilitation. The duration of such placement shall not be determined by the Court in its ruling. The Court shall follow up the child’s case by means of a report submitted at least once every two months, by the institution where the child is placed so as to enable the Court to decide whether to immediately stop the measure, or replace it if necessary, provided that the placement in the institution is for the shortest appropriate period of time. In all cases, the Court ruling to place the child shall be a measure of last resort. In all cases, placement duration should not exceed ten (10) years for criminal act cases and five years for misdemeanor cases.

Article 108

A child sentenced to placement in one of the specialized hospitals shall be placed in one where he will receive the care necessary for his condition. The Court shall ensure that the child is kept under treatment by way of monitoring at periodic intervals not exceeding one (1) year between each, during which it shall receive the doctor’s reports. The Court shall order the release of the child if his condition permits it. If the child reaches the age of twenty-one (21) years and his condition still necessitates treatment, he shall be transferred to a specialized hospital for adult treatment.

Article 109⁽³⁹⁾

If a child who has not reached the age of fifteen (15) years commits two crimes or more, the Court shall pass a verdict to enforce a suitable measure. This measure shall be implemented even if after this ruling, it is discovered that the child committed another crime either prior to, or subsequent to that verdict.

Article 110

Such measure shall inevitably expire once the convicted child has reached the age of twenty-one (21) years. However, the Court may in criminal cases, upon the request of the Public Prosecution and after consulting with the social observer, pass a ruling placing the convicted child under judicial probation for a period not exceeding two (2) years. If the condition of the convicted child, for whom a ruling was passed placing him in a specialized hospital, necessitates continuing his treatment, he shall be transferred to one of the hospitals suitable for his case, according to the provision of Article 108 of the present Law. ³⁹

Article 111(40)

No accused person shall be sentenced to death, life imprisonment, or forced labor if, at the time of committing the crime, he did not reach the age of eighteen (18) years. Without prejudice to the provision of Article 17 of the Penal Code, if the child who has reached the age of fifteen (15) years commits a crime punishable by a death sentence, or life imprisonment, or forced labor, he shall be sentenced to imprisonment. Furthermore, if the crime committed is punishable by imprisonment, he shall be placed in custody for a period not less than three (3) months. The Court, instead of placing the child in custody, may sentence him with the measure stated in Article 101, Item 8 of this Law. However, if the child who has reached fifteen (15) years of age commits a misdemeanor punishable by placing him in custody, the Court may, instead of sentencing the child to the penalty decreed for it, sentence the child to one of the measures set forth in Article 101, Items 5, 6, and 8 of this Law.

Article 112(41)

Children may not be detained, placed in custody, or imprisoned with adults in one place . In detention, it should be observed that children are to be classified according to their age, sex, and nature of their crime. Shall be sentenced to jail for a period not less than three (3) months, and not exceeding two (2) years, and a fine not less than one thousand (1,000) Egyptian pounds, and not more than five thousand (5,000) Egyptian pounds, or by one of the two penalties, any public official or in charge of a public service who detains, places in custody, or imprisons a child with one or more adults in one place

Article 113(42)

Shall be penalized with a fine not exceeding three hundred (300) Egyptian pounds any person who - after receiving a warning notice according to the first paragraph of Article 98 of this Law - neglects to watch over the child and, as a result, the child was placed at risk according to one of the cases referred to in the aforementioned article.

Article 114(43)

Shall be penalized with a fine not less than two hundred (200) Egyptian pounds and not exceeding one thousand (1,000) Egyptian pounds any person to whom the child was delivered and, as a result of neglecting his duties, the child committed a crime or was at risk according to one of the cases set forth in this Law. 40

If this situation is the result of a gross neglect of his duties, the penalty shall be in this case imprisonment for a period not less than three (3) months and not exceeding one (1) year and a fine not less than one thousand (1,000) Egyptian pounds and not exceeding five thousand (5,000) Egyptian pounds, or by one of the two penalties.

Article 115

With the exception of the parents, the grandparents, the husband and the wife, shall be penalized with imprisonment and a fine not exceeding one thousand (1,000) Egyptian pounds, or by one of the two penalties, whoever hides a child who has been sentenced to be delivered to a person or an entity in accordance with the provisions of this Law, or induces the child to run away, or helps him to do so.

Article 116(44)

⁴⁴ Replaced by Law no. 126 of 2008 ⁴⁵ Added by Law no. 126 of 2008 ⁴⁶ Added by Law no. 126 of 2008

Without prejudice to the provisions of criminal involvement, any adult who induces a child to commit a misdemeanor, or trains him to do it, or helps him, or facilitates it in any way, but did not attain his goal, shall be sentenced to half the maximum sentence decreed for this crime. The penalty shall be imprisonment for a period of not less than six (6) months if the offender uses coercive or threatening methods with the child, or if he is related to him, or is one of those responsible for his upbringing or watching over him, or one to whom the child was delivered to by virtue of the Law, or was a servant to any of the aforementioned. In all cases, if the crime is committed on more than one child, even at different times, the penalty shall be imprisonment for a period not less than one (1) year, and not exceeding seven (7) years. Shall be penalized with the penalty set forth for cases of instigating a crime, any adult who induces a child to commit a felony, or prepares the child for this, or helps him, or facilitates it in any way, but did not attain his goal,.

Article 116-bis(45) The minimum penalty decreed for any crime shall be doubled if the crime is committed by an adult against a child, or if it is committed by one of the parents, or by one of the child's guardians, or by people in charge of supervising or upbringing the child, or by those who have authority over the child, or by a servant to any of the above mentioned.

Article 116-bis (a)(46)

"Shall be imprisoned for a period of not less than two (2) years and a fine of not less than ten thousand (10,000) Egyptian pounds, and not exceeding fifty thousand (50,000) Egyptian pounds any one importing, or exporting, or producing, or preparing, or viewing, or printing, or promoting, or possessing, or broadcasting pornographic material using children, or related to the sexual exploitation of children. Tools and other instrumentalities used to commit these 41

crimes and proceeds derived from such offences shall be seized, and the premises used to commit such offences shall be closed for a period not less than six (6) months. All the above shall be undertaken without violating the rights of those with good intentions. Without prejudice to any stronger penalty prescribed in any other law, each of the following shall be subject to the same penalty: a) anyone using a computer or internet or information networks or cartoons to prepare, or save, or process, or display, or print or publish or promote pornographic activities, or induce or exploit children to engage in prostitution or pornographic activities or defame them, or sell them. b) anyone using a computer or internet or information networks or cartoons to induce children to delinquency or use them in committing crimes or engage them in illegitimate activities or immoral acts, even if the crime did not occur.

Article 116-bis (b)⁽⁴⁷⁾ Without prejudice to any stronger penalty in any other law, shall be penalized by a fine of not less than ten thousand (10,000) Egyptian pounds, and not exceeding fifty thousand (50,000) Egyptian pounds, anyone who publishes, or broadcasts in the media any information or data, pictures, or drawings related to the identity of a child at a time when his case is being examined by the authorities concerned with children at risk or are in conflict with the law.

⁴⁷ Added by Law no. 126 of 2008 ⁴⁸ Added by Law no. 126 of 2008 ⁴⁹ Added by Law no. 126 of 2008 ⁵⁰ Replaced by Law no. 126 of 2008

Article 116-bis (c)⁽⁴⁸⁾

Provisions for the dismissal of a criminal case, in case of conciliation or reconciliation, as decreed in the Criminal Procedure Code or any other law, shall prevail for crimes committed by a child.

Article 116-bis (d)⁽⁴⁹⁾

Child victims and witnesses of crime, at all stages of arrest, investigation, trial, and implementation, shall have the right to be heard, and to be treated with dignity and sympathy with full respect for their physical, psychological, and moral safety, and shall have the right to protection, to health, social and legal assistance, to rehabilitation, and integration in the society, in accordance with the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime.

Article 117⁽⁵⁰⁾ Officers appointed by the Minister of Justice in agreement with the Minister responsible for social affairs shall, within their areas of competence, have the authority of judicial arrest in case of crimes committed by children, when they are at risk, and in all crimes stipulated by this Law. 42

Article 118

A decree by the Minister responsible for social affairs shall be issued for the selection of social observers and for determining the conditions required to be available

Article 119⁽⁵¹⁾

⁵¹ The phrase "did not attain" was replaced by the phrase "did not reach" in Law no. 126 of 2008 ⁵² The phrase "juvenile court" was replaced by the phrase "child court" in Law no. 126 of 2008 ⁵³ The phrase "juvenile court" was replaced by the phrase "child court" in Law no. 126 of 2008

A child who has not reached fifteen (15) years of age shall not be placed in temporary custody. The Public Prosecution may place him in one of the observation centers, for a period not exceeding one (1) week, and shall make him available upon each request if the circumstances of the case necessitate keeping him in custody. However, the period for keeping the child in custody shall not exceed one (1) week unless the court decides to extend the period according to the regulations for temporary custody as stipulated in the Criminal Procedure Code. As an alternative to the procedure of the previous paragraph, an order may be issued to deliver the child to one of his parents, or to his guardian, and make him available upon each request. Any person violating this duty shall be penalized with a fine not exceeding one hundred (100) Egyptian pounds.

Article 120⁽⁵²⁾

In the seat of each Governorate, one or more child court shall be established. The Minister of Justice may issue a decree to establish child courts in other places. Their areas of jurisdiction shall be determined in the decree establishing them. The tasks of public prosecution for these courts shall be assumed by Specialized Child Prosecution to be established by a decree from the Minister of Justice.

Article 121⁽⁵³⁾

The Child Court shall be composed of three (3) judges, and shall be assisted by two specialized experts one of whom at least (1) shall be a woman. The attendance of the two (2) experts during the proceedings is compulsory, and they shall submit their report to the Court after studying the circumstances of the child in all respects before the Court passes its ruling. The said two (2) experts shall be appointed by a decree of the Minister of Justice in agreement with the Minister responsible for social affairs. The conditions to be fulfilled by those who shall be appointed as experts shall be determined by a decree of the Minister responsible for social affairs. Appealing the judgment passed by the Child Court shall be done before an of Appellate Court to be established in each Court of First Instance, composed of three (3) judges where at least two (2) of them shall have the rank of Court President. The provision of the two (2) previous paragraphs shall be observed in the composition of this Court. 43

Article 122⁽⁵⁴⁾

The Child Court shall exclusively deal with issues concerning the child when accused of a crime or in case of his delinquency. The Court shall also be entitled to pass judgments regarding criminal cases set forth in Articles 113 to 116 and in Article 119 of this Law. As an exception to the provision of the previous paragraph, the Criminal Court or the Supreme State Security Court, according to each case, shall have jurisdiction over criminal cases where the accused - at the time of committing the crime - is a child above fifteen (15) years of age while the accomplice is not a child and the case necessitated bringing the criminal action against the accomplice jointly with the child. In this case, the Court – prior to passing its judgment – shall examine the circumstances of the child from all aspects and may seek the assistance of experts if it so wishes.

Article 123⁽⁵⁵⁾

The jurisdiction of the Child Court shall be determined by the place where the crime occurred, or where one of the cases of delinquency occurred, or where the child was caught, or where the child, or his guardian or his custodian resides depending on the circumstances. The Court may, when necessary, convene in one of the social care institutions in which the child is placed.

Article 124⁽⁵⁶⁾

In all circumstances, all cases before the Child Court shall follow the rules and procedures stated in the misdemeanor articles, unless otherwise prescribed by the Law.

Article 125⁽⁵⁷⁾

The child has the right to legal assistance; he shall be represented in criminal and misdemeanor cases whose penalty is placing him in custody by lawyer to defend him in both the investigation and trial phases. If no lawyer has been selected by the child, the public prosecution or the Court shall appoint one, in accordance with the rules and regulation of the Criminal Procedure Code.

Article 126

Nobody is allowed to attend the trial of the child before the Child Court except his relatives, witnesses, lawyers, social observers, and any other person having the permission of the Court to attend with a special permit.

The Court - if it deems it necessary - may order the child to leave the session after questioning him, or send away any of those mentioned in the previous paragraph. In case the child leaves the session, the Court may not order sending away the lawyer or the social observer. Furthermore, the Court may not pass a judgment convicting the child except after 44

explaining to him the procedures that have taken in his absence. The Court may exempt the child from attending the trial in person, if it is in his best interests, and shall content itself with the attendance of the child's guardian or custodian on his behalf, in which case the judgment shall be considered issued in his presence.

Article 127⁽⁵⁸⁾

⁵⁸ Replaced by Law no. 126 of 2008 ⁵⁹ The phrase "juvenile court" was replaced by the phrase "child court" in Law no. 126 of 2008 ⁶⁰ The phrase "juvenile court" was replaced by the phrase "child court" in Law no. 126 of 2008 The social observers referred to in Article 118 of this Law shall open a file for each child accused of a crime or misdemeanor prior to proceeding with the case, the file should include a comprehensive assessment of his educational, psychological, mental, physical, and social status. The case shall be dealt with in light of what is in this file. The Court, prior to issuing a judgment, shall discuss the content of the aforementioned assessment report with those that have compiled it and may order additional investigations.

Article 128

If the Court believes that the physical, mental, or psychological condition of the child necessitates examining him before passing a ruling, it shall order placing him under observation in a suitable place for the necessary duration; Court proceedings shall stop until the examination of the child is completed.

Article 129⁽⁵⁹⁾

No civil actions shall be accepted before the Child Court.

Article 130

A Court judgment on the child to enforce some measures is mandatory and shall be implemented even if the case is subject to appeal.

Article 131

All procedures required by the law that the child be notified with, and all judgments passed concerning him, shall be notified to one of his parents, or his guardian, or the one responsible for him. Every one of the aforementioned shall have the right, for the interest of the child, to contest in accordance with the procedures stipulated by the Law.

Article 132⁽⁶⁰⁾ Judgments passed by the Child Court shall be subject to appeal except judgments where the child is reprimanded and delivered to his parents or his guardian; these shall not be appealed except in case of error in implementing the Law , or invalidating the judgment or procedures. The appeal shall be filed before the Court of First Instance having this competence.) 45

Article 133⁽⁶¹⁾

If a judgment is passed sentencing the accused, who was considered to be above the age of fifteen (15) years, then it was established through official documents that he has not reached that age, the lawyer shall raise the issue to the Court where the judgment was passed to reconsider its ruling according to the Law. If the sentence is pronounced against the accused, who was considered to be above the age of eighteen (18) years, then through official documents it is established that he has not reached that age, the Attorney General shall raise the matter to the Court where the ruling was passed to reconsider its judgment, and pronounce a ruling abolishing that judgment, along with referring the papers to the Public Prosecution for action. In the previous two cases, the execution of the judgment shall be stayed, and the convict may be placed under custody according to Article 119 of this law. If a judgment is pronounced on an accused considered to be a child, then through official documents it is established that he is above eighteen (18) years, the Attorney General shall raise the matter to the Court where the ruling was issued to reconsider the judgment according to the two previous paragraphs.

Article 134⁽⁶²⁾

Only the president of the Child Court, within whose jurisdiction the judgment shall be executed, shall have the authority to rule over all disputes, and to issue decrees or orders related to the implementation of judgments passed. However, in deciding an objection concerning implementation, he shall abide by the rules as stipulated in the Criminal Procedure Law. The president of the Child Court or his assigned delegate from among the Court's judges or experts shall visit the observation centers, training and rehabilitation centers, social care institutions, specialized hospitals, punitive institutions, and other authorities cooperating with the Child Court located within the area of the court's jurisdiction - at least once every three (3) months - to ensure that the above institutions are complying with their obligations to rehabilitate the child and assist him to reintegrate into society. The Court President may send a report with his comments to the concerned General Committee for Childhood Protection to act accordingly.

Article 135⁽⁶³⁾

With the exception of the reproach measure, the social observer shall supervise the implementation of the measures stipulated in Articles 101 to 104 of this Law, observe the convicted child sentenced with these measures, and provide him as well as to those in charge 46

of his upbringing with directives. He shall submit to the Child Court periodic reports on the child for whom he is in charge of and of supervising. The person responsible for the child shall notify the social observer of the child's death or sickness, or the change of his home address, or his absence without permission, and also all other unforeseen occurrences thereto.

Article 136

If the child contravenes the judgment imposing measures by virtue of Articles 104, 105, and 106 of this Law, the Court may, after listening to his him, order extending the duration of the measure by not more than half the maximum time limit prescribed in the foregoing Articles, or replace it by another measure in accordance with his condition.

Article 137

With the exception of the measure set forth in Article 102 of this Law, the Court after reviewing the reports submitted to it, or upon the request of the Public Prosecution, or the child, or the guardian, or the custodian, or the person to whom the child was delivered, shall have the authority to end the measure, or modify its system, or replace it, subject to the provision of Article 110 of this Law. If this request is refused, it may not be renewed except after the lapse of at least three (3) months from the date of refusal. The sentence issued in this respect shall not be contested.

Article 138

Any measure which was not implemented for one (1) complete year from the date of the judgment shall only be executed by virtue of a decree issued by the Court upon the request of the Public Prosecution after consulting the social observer.

Article 139⁽⁶⁴⁾

⁶⁴ Replaced the phrase "did not attain" with the phrase "have not reached" in Law no. 126 of 2008

The implementation of a measure shall not be enforced by means of physical coercion on the convicted children that are subject to the provisions of this Law, and who have not reached the age of eighteen (18) complete years at the time of implementation.

Article 140

Children shall not to pay any fees or expenses before all courts in connection with cases related to this Part.

Article 141

Penalties restricting freedom to which the children are sentenced shall be implemented in special punitive institutions to be organized by a decree of the Minister responsible for social affairs in agreement with the Minister of Interior.

If the child reaches twenty-one (21) years of age, the penalty or the remaining period of the sentence shall be carried out in one of the public jails. However, carrying out the penalty 47

may continue in the punitive institutions if there is no danger from this, and the remaining period of the penalty does not exceed six (6) months.

Article 142

For every convicted child an implementation file shall be opened in which the case file shall be included where all papers connected with implementing the judgment are placed, as well as all decrees, orders, and judgments issued in connection with carrying out the penalty. This file shall be submitted to the president of the Court prior to taking any of the procedures prescribed in Article 134 of this law.

Annex 2: Semi-Structures Interview questions

عنوان الدراسة: نحو بناء نظام عدالة أحداث مصرى صديقا للطفل

الباحث: منار محمد أبو القاسم حافظ

أسئلة المقابلات الشخصية مع المحامين و المسئولين الحكوميين و ممثلى الجمعيات الاهلية و الدولية و منظمات الامم

المتحدة

مقدمة

انا اسمى منار محمد و انا طالبة دراسات عليا فى الجامعة الامريكية و بحضر رسالة الماجستير عن عدالة الاحداث فى مصر و الى اى مدى بتتماشى مع المعايير الدولية و ازاي ممكن نحسن نظام العدالة فى مصر اذا كان محتاج فعلا ل تحسين. زى ما وضحت ل حضرتك قبل كده المقابلة هتاخذ حوالى ساعة و نصف. فى اى اسئلة عند حضرتك قبل ما نبدأ.

- 1- مبدنيا ممكن حضرتك ترسم لى من وجهة نظرك و بناء على تجربتك الشخصية صورة ل طفل من الاطفال فى نزاع مع القانون؟ يعنى شكله ايه الولد او البنت دى؟ مين اهله؟ ظروفهم ايه؟ ايه اخبار تعليميه؟ حالهم الاقتصادية و الاجتماعية؟
- 2- انا يهمنى اوى افهم رحلة الطفل فى نزاع مع القانون داخل نظام عدالة الاحداث المصرى. خلىنا نحاول نمشيها خطوة خطوة. الاول خلىنا نتكلم عن الرحلة زى ما الكتاب بيقول يعنى زى ما قانون الطفل المصرى رقم 126 ل عام 2008 بيقول. و خلىنا لو تسمح تقسمها مراحل كده.

إسأل:

بناء على القانون ايه اول حاجة بتحصل للطفل؟ مين الطفل اللي بيتم القبض عليه؟ ليه؟ من اللي المفروض بيقبض على الطفل ده؟ فين؟ ازاي؟ الطفل ده بيقابل مين؟ لمفروض يحصل ايه بعد كده؟ المفروض يروح فين الطفل بعد كده؟ طب بتبقى فين اسرة الطفل ده او ولى امره؟ دورهم ايه بناء على القانون؟

- 3- طب خلىنا ننقل دلوقتي للشكل الممارسة على الارض... هنتكلم برضه عن رحلة الطفل فى نظام عدالة الاحداث المصرى.. فعليا ايه اللي بيحصل للطفل ده من خبرة حضرتك الشخصية... ايه هي المراحل و الاجراءات و الممارسات اللي بيعرض لها الطفل فى نزاع مع القانون على ارض الواقع؟

إسأل:

بيبقى فين الطفل؟ مين بيقابله؟ بيحصل ايه؟ مين بيكون موجود؟ بيحصل ايه بعد كده؟

- 4- فى عدة مبادئ اتبنى عليها اتفاقية حقوق الطفل الدولية و معايير دولية بتحكم نظام عدالة الاحداث. المبادئ دى زى بقاء و نماء الطفل ، عدم التمييز ، مشاركة الطفل، و المصلحة الفضلى للطفل. و معايير عدالة الاحداث بتتضمن ان الايداع هو حل اخير و الافضل اتباع البدائل المناسبة و الغاء عقوبة الاعدام و الحق فى عقوبة متفردة مبنية على تقرير اجتماعى لظروف الطفل و اسرته. حضرتك شايف المبادئ دى و المعايير ازاي فى ظل القانون المصرى للطفل 126 لعام 2008؟ طب فيما يختص بالممارسات، هل فعلا بيتم تنفيذها و اتباعها؟

إسأل:

ليه؟ ليه لاه؟ ليه بتقول كده؟ ايه هي الاسباب اللي خلت حضرتك تقول كده؟ هل فى وقائع محددة اللي خلثك تقول كده؟

- 5- بصورة عامة ، هل ممكن وصف نظام عدالة الاحداث الحالى فى مصر بانه صديق للطفل؟ ليه؟ ليه لاه؟
- 6- طب هل تعتقد ان النظام الحالى محتاج اى تعديلات او تغييرات؟ ليه؟ ليه لاه؟

- 7- طب لو قلنا ل حضرتك اننا هنغير النظام الحالى ، ايه اللي ممكن تغيره؟ حدد ثلاث نقاط تحب تغيرها و هتخلى النظام الحالى اكثر صداقة للطفل و تمشيا مع حقوق الطفل؟
- 8- هل فى اى مجهودات او برامج بتتعمل حاليا ل تحسين او تعيل النظام؟ زى ايه؟ مين اللي بيعملها؟ طب هل جابت نتيجة؟ ليه؟ ليه لا؟

شكرا جدا على وقتك. انا انهيت اسالتي لو عند حضرتك اى اسئلة ليه اتفضل.
شكرا تانى.

TITLE: Towards a Child Friendly and Human Centered Juvenile Justice System in Egypt

Principle Investigator: Manar Mohammad AbulQasem Hafez

In depth Interview Questions with Lawyers, officials from involved ministries and representatives from local and international NGOs and UN agencies:

- 1- Can you please describe a child who is likely to be a child in contact or conflict with law? What are some of the main characteristics of this child, his/her family, his/her education and socio-economic background?
- 2- So lets map the journey of a child in the Egyptian juvenile justice system? Lets first map it according to the book, officially what are the stages, the procedures the child in contact or conflict with the law should go through based on the child law126/2008?

PROBE:

Who should the child meet? Where should this happen? How? What next? Then what? Where should the child go next? What should happen at this stage? What should the child and his/her family expect at this stage?

- 3- Now, lets map the child journey as it happens in real life. What are the stages, the procedures and practices the child is exposed to if s/he got in contact or conflict with the law?

PROBE:

Who will the child meet? Where does this happen? What does this happen? How? What next? Then what? What happens at this stage? Where does the child go next?

- 4- There are a number of principles upon which the juvenile justice system in any country should be folded upon, these principles include child survival and development, child participation, non discrimination , the best interest of the child , the right to individualized sentence, the right to legal counseling, the right to privacy among other. How do you see these principles in the current operating juvenile justice system in Egypt? Are these principles followed? In the law? In practices?

PROBE

Why? Why not? Why are you saying so? Do you know of incidents that support your opinion?

- 5- Would you describe the current system as child friendly and human centered? Why? Why not?
- 6- Do you think the system need to be improved? Why? Why not?
- 7- If you are asked to change the current system, what would you change? Choose three things that I want to see changed that you believe will make the system more child friendly and human centered?
- 8- Are there any efforts done to improve the system? What are the current programs implemented by your organization/ministry/agency to introduce changes to the system? What are these changes? Are they working? Why? Why not?

عنوان الدراسة: نحو بناء نظام عدالة أحداث مصرى صديقا للطفل

الباحث: منار محمد أبو القاسم حافظ

أسئلة المقابلات الشخصية مع الاطفال و الشباب الذين سبق لهم الدخول فى نزاع مع القانون ومطلقى السبيل خلال وقت المقابلة و أسرهم

مقدمة

انا اسمى منار محمد و انا طالبة دراسات عليا فى الجامعة الامريكية و بحضر رسالة الماجستير عن الظروف الللى بيعرض لها بعض الاطفال و الشباب لما بيدخلوا فى مشكلة مع القانون لاي سبب فى مصر . و زى ما قلت لك قبل بدأ المقابلة انا باحاول اشوف ازاي الللى بيحصل ده بيعكس فعلا الالتزامات الدولية على مصر و ما بيضرش بالاطفال و الشباب دول.. زى ما وضحت لك قبل كده المقابلة هتاخذ حوالى ساعة و نصف. عندك اى اسئلة قبل ما نبدأ.

1- الاول احكى لى عن نفسك شوية؟

(للطفل/ الشاب) عايش فين؟ بتروح للمدرسة؟ عايش من اهلك؟ الللى هم مين بقى؟ طب ابوط و امك بيشتغلوا ايه؟ عندك اخوات؟ اخوات بيعملوا ايه؟ بيروحوا المدرسة؟ طب بيشتغلوا؟ طب انت بتشتغل؟ طب بتشتغل ايه؟
(لولى الامر) انتوا عايشين فين بقى؟ حضرتك بتشتغل ايه؟ فى كام فرد فى الاسرة؟ طب ممكن تقولى بيعملوا ايه بالضبط؟ يعنى بيدرسوا؟ طب بيشتغلوا؟

2- **(للطفل/ الشاب)** طيب انا للى فهمته من أستاذ (اسم المحامى الللى يعرف الطفل) انك قضيت شوية وقت فى دار الرعاية/ المؤسسة (اسم الدار)...ده صح؟ طب ممكن تقولى ليه دخلت الدار؟ ايه الللى حصل بالضبط؟ طب لما ده حصل اهلك كانوا فين؟ مين تانى كان معاك؟
(لولى الامر) انا الللى فهمته من استا (اسم المحامى الللى يعرف الطفل) ان (اسم الطفل) كان موجود فى دار الرعاية (اسم دار الرعاية)... ده صح؟ طب ممكن تقولى ليه دخل الدار؟ ايه الللى حصل بالضبط؟ طب لما ده حصل حضرتك او اى حد من الاسرة كان موجود؟

3- **(للطفل/ الشاب)** طب قبل ما تروح دار الرعاية (المؤسسة) مريت ب حاجات كثير صح؟ يعنى الاول حصل ايه؟ مثلا يوم ما البوليس قبض عليك؟ كنت فين؟ مع مين؟ كنت بتعمل ايه؟ تفكر البوليس قبض عليك ليه؟ طب و بعدين حصل ايه؟ رحنت القسم ازاي؟ طب رحنت النيابة؟ طب رحنتها ازاي؟ طب كان معاك محامى؟ فى حد قال لك انت مقبوض عليك ليه؟ مين؟ طب انت سألت حد؟ طب مين كان بيكلمك؟ ايه الللى حصل هناك؟ مين الللى كان معاك؟ طب قابلت وكيل النيابة؟ كان شكله ايه؟ طب و عمل معاك ايه؟ و بعدين؟ بيت؟ بيت؟ مع مين؟ طب رحنت المحكمة؟ شكلها ايه المحكمة د؟ كان فى مين فى المحكمة؟ ورحنت ازاي و مع مين؟ طب اهلك كانوا موجودين؟ شفتهم وقتها؟ امال شفتهم امتى؟ طب كان فى محامى؟ مين جابه؟ تعرف المحامى ده منين؟ ايه الللى حصل فى المحكمة؟ طب انت كنت فاهم و مركز فى الللى بيحصل و الا طشاش؟
(لولى الامر) حضرتك عرفت ازاي ان الولد/ البننت اتقبض عليهم؟ مين قالك؟ طب رحنت القسم و الا عملت ايه؟ طب جبنت محامى و الا عملت ايه؟ طب كلمت مين؟ يعنى فى حد شرح لك تعمل ايه و الا لا؟ طب مين؟ طب شفت ابنك/ بنتك خلال الفترة دى؟ فين؟ كان مين موجود؟ كان شكله الولد/ البننت ايه؟ طب اتكلمت مع الضابط، وكيل النيابة، القاضى؟

4- **(للطفل/ الشاب)** طب يعنى انت كنت فاهم ايه الللى بيحصل و ايه؟ و كنت فاهم ايه الللى هيحصل بعد كده؟ طب مين شرح لك؟ طب حد سالك؟ سالك قالك ايه؟
(لولى الامر) طب انت كنت فاهم ايه الللى يحصل و الواد مقبوض عليه ليه؟ مين الللى شرح لك؟ طب انت كلمت مين؟ طب القاضى قالك انه هيط ابنك فى دار الرعاية؟ طب انت قلته له ايه؟

5- **(للطفل/ الشاب)** ممكن توصف زمايلك الللى كانوا معاك؟ فى القسم؟ و هم بينقلوك للنيابة؟ طب و زمايلك الللى كانوا معاك فى المحكمة؟ طب و زمايلك الللى كانوا معاك فى دار الرعاية/ المؤسسة؟

- 6- **(للطفل/ الشاب)** طب احكى لى بقى على دار الرعاية/ المؤسسة؟ شكلها ايه بقى؟ و كنت بتعمل ايه هناك؟ طب كان فى حاجة بتحبها هناك؟ زاي ايه؟ ليه لأ؟ طب كنت بتكره ايه هناك؟ طب ليه؟ طب لما كنت بتتعب كنت بتعمل ايه؟ بتروح فين؟ طب و عملت ايه فى موضوع التعليم و انت هناك؟
- (لولى الامم)** كنت بتزرو الواد و هو فى الدار / المؤسسة؟ طب حد جيه زاركم فى البيت من المؤسسة او المحكمة او من وزارة التضامن الاجتماعى؟ يعنى فى حد قعد معاكم و سالكم عن احوالكم و احوال الولد؟ طب لما كنت بتزرو الواد / البنات، كنت بتعمل ايه بقى؟ كنت بتاخذ ده حاجة معاك؟ و بتسيبها فين؟ طب و الواد قالك ايه عن الحياة فى المؤسسة / الدار؟ و انت كان رايبك فيها ايه؟ ايه اللى عجيبك فيها؟ طب ايه اللى معجيبكش؟
- 7- **(للطفل/ الشاب)** طب كان فى جوه الدار/ المؤسسة اخصائيين اجتماعيين. يعنى ابلوات و اساتذة كده؟ مين دول بقى؟ طب كانوا بيعملوا ايه يعنى؟ ايه شغلتنهم جوه يعنى؟ طب كانت اخبارهم ايه؟ كويسين؟ ليه؟ ليه لأ؟ عملوا ايه يعنى؟
- (ل ولى الامم)** طب كنت بتقابل ابلوات و الاساتذة اللى جوه؟ كانوا بيقولوا لكم ايه عن الواد / البت؟ طب يعنى كنتوا بتسالوهم على العيال و بيردوا و الا ايه؟
- 8- **(للطفل/ الشاب)** طب لو قلت لك اوصف لى حياتك جواه الدار/ المؤسسة بكلمة واحدة تقول لى ايه؟ طب الوقت اللى قضيته فى قسم الشرطة؟ طب فى المحكمة؟ طب ايه اكثر حاجة ضيقتك من يوم ما اتقبض عليك ل يوم ما خرجت من المؤسسة / الدار؟ طب فى حاجة عجبتك؟ ايه؟ ليه؟
- 9- **(للطفل/ الشاب)** طب لو قلت لك اختار حاجة واحدة حصلت من يوم ما اتقبض عليك ل يوم ما خرجت من الدرا عاوز تنساها و تمسح كده من دماغك، ايه هى؟ ليه؟ طب مين اللى قابلته خلال الفترة دى و مش عاوز تشوفه تانى؟ ليه؟ طب مين قابلته و كنت عاوز تشوفه تانى؟ ليه؟
- 10- **(للطفل/ الشاب)** طب ايه اللى انت عاوز تغيره فى كل النظام ده اللى بيمر بيقى الاطفال و الشباب اللى بيدخلوا فى مشكلة مع القانون؟ ليه؟

Towards a Child Friendly and Human Centered Juvenile Justice System in Egypt

Principle Investigator: Manar Mohammad AbulQasem Hafez

In depth Interview Questions with ex-convicted juvenile offenders:

- 1- Can you tell me about yourself? Where do you live? Do you go to school? What do your parents/guardian do for living? Do you have siblings? How many? Do they go to school? Do you work? What?
- 2- So I knew from Mr (name of the contact who know the child) that you have been institutionalized in (name of the care institution)...is that correct? Can you tell me why? What happened? Where was your family then? Who else was with you?
- 3- OK...so before you were institutionalized in (name of the care institution), there must have been things that you went through till you were institutionalized, is that correct? So where should we start? What about the day you were detained by the police? How did you get detained? Why? what happened? Where were you? What were you doing? How did you go there? Who were with you? Did you have a lawyer? How did u know your lawyer? Why didn't you have a lawyer?

Did you see your family at this time? Who talked to you during all that time? Who accompanied you? Did they bring you food? Who did you meet at the police station, in the prosecution, at the court, in the care institutions? What did you do during the time of your trial?

- 4- Where you aware of what is happened? Did anyone talk to you about what happened? And why this is happening? The next steps?
- 5- Can you describe your inmates?
- 6- Can you describe the care institution? How was it like to be there? What did u do in your time there? What did you like about it? What did you hate about it? what would you change about them?
- 7- Can you describe the social workers in your care institutions? What were they like? Did you like them? Why? Why not? What would you change about them?
- 8- So if want you to describe all the things that you went through and you told me above in one word, what would you say? So what about the police station, the prosecution, the court, the care institution?
- 9- Is there anything that you might have liked abut this whole experience since the day you were detained by the police to the day you were released from the care institution?
- 10- What would you want to erase from this experience? Choose one incident that happened to you since the day you were detained by the police till the day you were released from the care institution that you would like to delete from your memory.
- 11- What else would you like to change about the whole journey you went through? Who was present in this experience and you do not want to meet again? Why? Whom you would have wanted to meet more often? Why?

Annex 3: The CRC/C/GC/ 10 (2007)

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Children's rights in juvenile justice

CRC/C/GC/10

page 2

CONTENTS

Paragraphs Page

I. INTRODUCTION	1 - 3 3
II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT	4 3
III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY	5 - 14 4
IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY	15 - 89 7
A. Prevention of juvenile delinquency	16 - 21 7
B. Interventions/diversion	22 - 29 8
C. Age and children in conflict with the law	30 - 39 10
D. The guarantees for a fair trial	40 - 67 12
E. Measures	68 - 77 19
F. Deprivation of liberty, including pretrial detention and post-trial incarceration	78 - 89 21
V. THE ORGANIZATION OF JUVENILE JUSTICE	90 - 95 24
VI. AWARENESS-RAISING AND TRAINING	96 - 97 25
VII. DATA COLLECTION, EVALUATION AND RESEARCH	98 - 99 25

CRC/C/GC/10

page 3

I. INTRODUCTION

1. In the reports they submit to the Committee on the Rights of the Child (hereafter: the Committee), States parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as "children in

conflict with the law". In line with the Committee's guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child (hereafter: CRC) is the main focus of the information provided by the States parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with CRC. However, it is also clear that many States parties still have a long way to go in achieving full compliance with CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law.

3. The experience in reviewing the States parties' performance in the field of juvenile justice is the reason for the present general comment, by which the Committee wants to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with CRC. This juvenile justice, which should promote, inter alia, the use of alternative measures such as diversion and restorative justice, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that CRC requires States parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 4 and 39. Therefore, the objectives of this general comment are:

– To encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with CRC, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and nongovernmental organizations (NGO's), established by ECOSOC resolution 1997/30;
CRC/C/GC/10

page 4

– To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of CRC;

– To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"),

and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”).

III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

5. Before elaborating on the requirements of CRC in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

Non-discrimination (art. 2)

6. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).

8. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish

CRC/C/GC/10

page 5

an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”

9. In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

Best interests of the child (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. 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. This can be done in concert with attention to effective public safety.

The right to life, survival and development (art. 6)

11. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of CRC (see paragraphs 75-77 below). The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (see paragraphs 78-88 below).¹

The right to be heard (art. 12)

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice (see paragraphs 43-45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

CRC/C/GC/10

page 6

justice (see paragraphs 43-45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

Dignity (art. 40 (1))

13. CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

- *Treatment that is consistent with the child's sense of dignity and worth.* This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;
- *Treatment that reinforces the child's respect for the human rights and freedoms of others.* This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (art. 29 (1) (b) of CRC and general comment No. 1 on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40 (2) (see paragraphs 40-67 below). If the key actors in juvenile justice, such as police officers,

prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;

– *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;

– *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective followup to the recommendations made in the report on the United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).
CRC/C/GC/10

page 7

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in CRC.

IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

15. A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pretrial detention and post-trial incarceration.

A. Prevention of juvenile delinquency

16. One of the most important goals of the implementation of CRC is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). The child should be prepared to live an individual and responsible life in a free society (preamble, and article 29), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. In the light of these and other provisions of CRC, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or

abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

17. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop

CRC/C/GC/10

page 8

community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of CRC confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time CRC requires States parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but also and even more on the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, early childhood education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care (CTC), a risk-focused prevention strategy.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of CRC, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40 (1) of CRC). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40 (4)).

Interventions without resorting to judicial proceedings

24. According to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law
CRC/C/GC/10

page 9

without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. In the opinion of the Committee, the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States parties indicate that a large part, and often the majority, of offences committed by children fall into these categories. It is in line with the principles set out in article 40 (1) of CRC to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40 (3) (b)).

27. It is left to the discretion of States parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial proceedings, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 of CRC and emphasizes the following:

– Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;

– The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is below the age of 16 years;

CRC/C/GC/10

page 10

– The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;

– The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;

– The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as “criminal records” and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

Interventions in the context of judicial proceedings

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor’s office), the principles of a fair and just trial must be applied (see section D below). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

C. Age and children in conflict with the law

The minimum age of criminal responsibility

30. The reports submitted by States parties show the existence of a wide range of minimum ages of criminal responsibility. They range from a very low level of age 7 or 8 to the commendable high level of age 14 or 16. Quite a few States parties use two minimum ages of criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a

psychological expert, and results in practice in the use of the lower minimum age in cases of
CRC/C/GC/10

page 11

serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices. In the light of this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40 (3) of CRC requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The committee understands this provision as an obligation for States parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following:

- Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests;

- Children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years (see also paragraphs 35-38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of CRC as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

33. At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a MACR which permit the use of a lower minimum age of criminal responsibility in cases where
CRC/C/GC/10

page 12

the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly

recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.

35. If there is no proof of age and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible (see also paragraph 39 below).

The upper age-limit for juvenile justice

36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of CRC requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

D. The guarantees for a fair trial

40. Article 40 (2) of CRC contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is CRC/C/GC/10

page 13

currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These

professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6-9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40 (1)). All the guarantees recognized in article 40 (2), which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

No retroactive juvenile justice (art. 40 (2) (a))

41. Article 40 (2) (a) of CRC affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also article 15 of ICCPR). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes to remind States parties that the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as expressed in article 15 of ICCPR, is in the light of article 41 of CRC, applicable to children in the States parties to ICCPR. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

The presumption of innocence (art. 40 (2) (b) (i))

42. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from

CRC/C/GC/10

page 14

prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

The right to be heard (art. 12)

43. Article 12 (2) of CRC requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a

representative or an appropriate body in a manner consistent with the procedural rules of national law.

44. It is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12 (1)), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47-48 below), but also of the juvenile justice process as such and of the possible measures.

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

The right to effective participation in the proceedings (art 40 (2) (b) (iv))

46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

CRC/C/GC/10

page 15

Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. But also when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40 (3) (b) of CRC that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a "translation" of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the

child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Legal or other appropriate assistance (art. 40 (2) (b) (ii))

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn.

Decisions without delay and with involvement of parents (art. 40 (2) (b) (iii))

51. Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as CRC/C/GC/10

page 16

possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. In this regard, the Committee also refers to article 37 (d) of CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The term "prompt" is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term "without delay" (art. 40 (2) (b) (iii) of CRC), which is stronger than the term "without undue delay" of article 14 (3) (c) of ICCPR.

52. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.

55. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damage caused by the child's act can, in some limited cases, be appropriate, in particular for the younger children (e.g. below 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iii))

56. In line with article 14 (3) (g) of ICCPR, CRC requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

CRC/C/GC/10

page 17

57. There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term "compelled" should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: "You can go home as soon as you have given us the true story", or lighter sanctions or release are promised.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

Presence and examination of witnesses (art. 40 (2) (b) (iv))

59. The guarantee in article 40 (2) (b) (iv) of CRC underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be

observed in the administration of juvenile justice. The term “to examine or to have examined” refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art. 12).

The right to appeal (art. 40 (2) (b) (v))

60. The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14 (5) of ICCPR. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the ICCPR
CRC/C/GC/10

page 18

that a similar provision is made in article 14 (5) of the Covenant. In the light of article 41 of CRC, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40 (2) (b) (v).

Free assistance of an interpreter (art. 40 (2) (vi))

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with “if”, “if the child cannot understand or speak the language used”, means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.

63. The Committee also wishes to draw the attention of States parties to children with speech impairment or other disabilities. In line with the spirit of article 40 (2) (vi), and in accordance with the special protection measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process (see also in this regard general comment No. 9 (The rights of children with disabilities) of the Committee on the Rights of the Child).

Full respect of privacy (arts. 16 and 40 (2) (b) (vii))

64. The right of a child to have his/her privacy fully respected during all stages of the

proceedings reflects the right to protection of privacy enshrined in article 16 of CRC. "All stages of the proceedings" includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

65. In order to protect the privacy of the child, most States parties have as a rule - sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an

CRC/C/GC/10
page 19

infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts.

Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

E. Measures (see also chapter IV, section B, above)

Pretrial alternatives

68. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. In line with the observations made above in section B, the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should continue. The nature and duration of these measures offered by the prosecution

may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.

69. In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph 27 above, which equally apply here.

CRC/C/GC/10

page 20

Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of CRC (see chapter IV, section D, above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40 (4) of CRC, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b) of CRC).

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) (The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment)). In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

72. The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).

73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.

74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of CRC, and to deprivation of liberty.

Prohibition of the death penalty

75. Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States

parties that assume that the rule only prohibits the execution of persons below the age of 18 years. However, under this rule the explicit and decisive criteria is the age at the time of the CRC/C/GC/10

page 21

commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

76. The Committee recommends the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with CRC.

No life imprisonment without parole

77. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

Basic principles

79. The leading principles for the use of deprivation of liberty are: (a) 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; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the CRC/C/GC/10

page 22

use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of

innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

Procedural rights (art. 37 (d))

82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

Treatment and conditions (art. 37 (c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, "unless it is considered in the child's best interests not to do so", should be interpreted narrowly; the child's
CRC/C/GC/10

page 23

best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;
- Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
- Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;

CRC/C/GC/10

page 24

- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;
- Every child should have the right to make requests or complaints, without censorship as

to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;

– Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

V. THE ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40 (3) of CRC, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

CRC/C/GC/10

page 25

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

95. It is clear from many States parties' reports that non-governmental organizations can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

VI. AWARENESS-RAISING AND TRAINING

96. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. 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). 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 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. It is crucial for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other
CRC/C/GC/10

page 26

than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.
