



**TRANSPARENCY
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**ANALYSIS ON THE EFFECTIVENESS OF LEGAL
REPRESENTATION FOR MINORS IN RWANDAN
COURTS: A CASE STUDY OF CHILDREN IN
NYAGATARE REHABILITATION CENTER**



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Acknowledgements

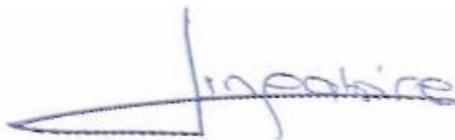
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Marie Immaculée Ingabire

Chairperson of Transparency International Rwanda

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EXECUTIVE SUMMARY

This study fundamentally conducted the assessment of the legal status of the CRC and other relevant international instruments in the national legal system. The study further investigated the respect of children's rights in the Nyagatare Rehabilitation Center with a focus on the quality of legal representation of minors and potential violation of children's rights in the Center to provide a situational analysis of children's rights realization in Rwanda and build on this by providing workable recommendations.

Although the study relied on the quantitative approach, data have been complemented by perception based findings especially with regard to the quality of representation of minors and potential violation of children's rights in the rehabilitation centre obtained by the use of qualitative method. Literature review on both Rwandan and international legal systems on justice for minors has been conducted. The desk review technique assessed reports and data from registries of the Nyagatare Rehabilitation Center. Key informants' interviews and FGDs were organized with key stakeholders including the Rwanda Correctional Service (RCS) representatives at Nyagatare Rehabilitation center as well as at National level, officials from the Commission for human rights, the Ministry of Justice and the lawyers.

Findings presented in the report show relevant various patterns in relation to the respect of children's rights in the Nyagatare Rehabilitation Center including the age of children at the period of detention, the respect of the period of detention before appearing to court provided in the law, the place and conditions of detention before being sentenced, their detention with or separation from adults in detention, their interaction with advocates, the release on parole, etc.

To address issues raised by the findings, relevant recommendations have been formulating to key stakeholders in the respect and protection of children's rights in detention including the Rwanda National Police, the police / Rehabilitation centre Officers, the Ministry of justice, the Rwanda Bar Association, the Judiciary, the National Public Prosecution Authority and the government of Rwanda in general.

1. BACKGROUND

1.1. Introduction

After the 1994 genocide perpetrated against Tutsi, Rwanda has experienced tremendous progress in all vital sectors of the country, including the overall governance and justice in particular. Governance is one of the six pillars of the Vision 2020, in which the Government lays out its commitment to ensure real and effective rule of law and strict respect for human rights with the aim to reach sustainable development. In the same vein, the Economic Development and Poverty Reduction Strategy ('EDPRS') cannot achieve effective poverty reduction, without promoting a fair and timely justice to all Rwandans.

The government of Rwanda has indeed committed to become a capable State rendering the rule of law for all people without discrimination, by emphasizing especially the quality of service in the justice sector. The Judiciary of Rwanda places importance on justice for children because Rwanda seeks to have its children enjoy fairness as provided for by the Convention on the Rights of the Child(CRC), which stipulates that all judicial and administrative decisions and actions advance the best interests of the child(Convention's Article 3).¹

In order to strengthen the realization of the child rights, in 2014, Rwanda has established a policy on justice for children to make utmost contribution to the goals of child rights, survival, development, participation, and protection as well as comply with and advance child rights principles; respect, protect, promote, and fulfill child rights associated with justice in a given circumstance; and ensure that duty bearers in the justice system have requisite capacities to deliver justice in a child-friendly manner that gives due weight to the voice of the child².

Again, in 2014, the Ministry of Justice has expended Access to Justice Bureaus in all 30 districts. Three staff members were appointed in each Access to Justice Bureau to respond to the needs of vulnerable people and bring the formal justice system closer to the people. One Access to Justice Officer in each District responds specifically to cases of gender-based violence. Another officer assists in the execution of court judgments with the support of the local government administration. The third officer represents indigent people in courts of law.

¹ UN: Convention on the rights of the child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

² Republic of Rwanda: Justice for children policy, October 2014

In addition to the above, articles 58 and 68 of the law regulating the Bar Association provide for mandatory provision of legal aid to the poor by members of the Bar Association. The increase of lawyer's membership in the Rwanda Bar Association from 37 members in 1997 to 1,200 in January 2015 has also increased access to the formal justice system for people in Rwanda. Furthermore, civil society organizations provide legal aid to vulnerable persons. This has fostered greater due process through the provision of legal assistance to vulnerable persons including women, children and indigent persons. Nationally, in 2014, the District Access to Justice Bureaus provided no cost legal aid in 20,748 cases.³

Several legal provisions aimed at protecting, assisting, follow up and rehabilitate convicted minors exist in Rwanda. However, in practice these measures are rarely ordered by the courts and this might be due to the fact that judges are unable to identify a clear mechanism of how such measures would be implemented and/or followed up.⁴

It is in this framework that Transparency International Rwanda through the EU project "promotion of equitable justice in Rwanda through improved legal aid to detainees and Rehabilitation centers committed to conduct a situational analysis in this end".

³ UN General Assembly: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*Rwanda

⁴ ILPD, Study of alternatives to imprisonment in Rwanda focusing on the mainstreaming of TIG (travaux d'intérêts général) and best practice guidelines for judges in the exercise of their discretion when imposing non custodial sentences, 2013

1.2. OBJECTIVES OF THE STUDY

The overall objective of the study consists of assessing the effectiveness of the legal representation of minors in courts in the framework of the promotion of equitable justice in Rwanda through improved legal aid to detainees and Rehabilitation centres.

Specifically the aim of the study is to:

- Analyse the legal status of the CRC and other relevant ratified international instruments in the national legal system
- Assess the quality of legal representation of minors in the selected Rehabilitation centre
- Investigate potential violation of children's rights in the rehabilitation centre including those associated with the legal status of the child in Rwandan Judicial system
- Formulate actionable recommendations to promote the quality of legal representation of minors in Rwanda.

1.3. METHODOLOGY

1.3.1. Methodological Approach

This study is mainly based on quantitative approach. The qualitative method has been used to complement perception based findings especially with regard to the quality of representation of minors and potential violation of children's rights in the rehabilitation centre. The structured questionnaire was used to collect quantitative information on the effectiveness of legal representation for minors in Rwandan courts including the age of children in the centre and the applicability of the legal age of criminal liability, the conditions of detention, the effectiveness of legal representation, the access to health services, etc.

With regard to the qualitative approach, Desk review, Interviews and FGDs were conducted. Literature on Rwandan legal framework on justice for minors in Rwanda and the international standards, norms on juvenile justice were reviewed. The desk review technique assessed reports and data from registries of the Nyagatare Rehabilitation Center in a bid to examine the quality of legal representation of minors in the center and investigate potential violation of children's rights in the Rehabilitation centre including those associated with the legal status of the child in Rwandan Judicial system. Key informants' interviews and FGDs were organized with key

stakeholders including the Rwanda Correctional Service (RCS) representatives at Nyagatare Rehabilitation center as well as at National level, officials from the Commission for human rights, the Ministry of Justice and the lawyers.

1.3.2. Study population and sample size

The target population of this study primarily covers children in the Nyagatare Rehabilitation centre. The latter are better positioned to provide their perception on the effectiveness of their legal representation in courts. Given that the population study (total number of children in the centre) was estimated at 296 children, the study used a sample size of 132 children which is statistically representative of the population study (45%). Moreover, this sample size is statistically valid as it falls between the margin errors for $\pm 5\%$ and the levels where Confidence interval is at 90% and $P=0.5$.⁵

With regard to the number of interviews and FGDs conducted, the study involved one FGDs with parents whose children are detained in the Centre and one group interview with the staff of Nyagatare Rehabilitation Centre.

1.3.3. Data analysis

Before processing to data entry and analysis, data entry clerks were recruited and trained on the data base entry process. Based on the questionnaire, a specific data entry application was designed by the researcher using Statistical Package for Social Science (SPSS). After the data entry, a tabulation plan was conceived to facilitate the elaboration of the analysis. After the tabulation plan and data cleaning, graphs and/or tables were generated on the basis of the tabulation plan.

With regard to qualitative data, the content analysis method was applied. It consisted of textual analysis by objectively and systematically identifying specified characteristics of information collected through interviews and FGDs.

⁵ Cochran, W. G. 1963. Sampling Techniques, 2nd Ed., New York: John Wiley and Sons, Inc.

1.3.4. Ethical considerations

Research on juvenile justice involves issues which sometimes may be personally and politically sensitive. Interviewees' confidentiality was therefore guaranteed by following recognized guiding principles. Verbal informed consent, whereby respondents were provided with all the necessary information regarding reasons for the research before they could give their consent was ensured for all participants in interviews and focus group discussions, unless otherwise authorised by the participant.

In addition, the research ethics requires objectivity in research design, data collection, analysis and interpretation. An attempt was made to ensure that the whole research process comply with this requirement.

2. LITERATURE REVIEW

2.1 RWANDAN LEGAL FRAMEWORK ON JUSTICE FOR MINORS IN RWANDA

The Rwandan government has put into place a number of laws aiming at improving the justice of minors. In this vein, the ministry of Justice has put into place in 2014 the justice for children policy, the law relating to the rights and the protection of the child of 2001 was repealed and being replaced by a new one in 2011. Beside this, the criminal procedure as well as the Penal Code contains some provisions relating to the justice for children in Rwanda.

2.1.1 Law relating to the rights and the protection of the child

The law which is into force in Rwanda today is the law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child which replaced the law n° 27/2001 of April 28, 2001 relating to rights and protection of the child against violence. This law in its chapter seven provides for principles relating to rights of children in conflict with law. This section analyses principles set forth by this law.

2.1.1.1 Criminal responsibility of children in Rwanda

The article 58 of the law on rights and protection of the child provides that a child under fourteen (14) years old shall not be held criminally responsible for his/her deeds. This article supplements the article 72 of the Criminal Code which provides for mitigating circumstances based on minority. According to that article 72, when an offender or an accomplice is aged at least fourteen (14) but less than eighteen (18) years at the time of commission of an offence and if the sentencing appears necessary, the following penalties shall apply:

- if he/she would be subjected to a life imprisonment or life imprisonment with special provisions, he/she shall be liable to a term of imprisonment of ten (10) years to fifteen (15) years;

- if he/she would be subjected to a fixed-term imprisonment or a fine, he/ she shall be liable to penalties not exceeding half (1/2) of the penalties he/she would receive if he/she was aged eighteen (18) years.

This provision shows clearly that a child who is below fourteen of age can never be held criminal liable in Rwanda. For the civil liability, the same article 58 of this law provides that damages resulting from an infringement committed by a child are guaranteed by his/her parents or guardian in accordance with laws. This article goes in line with the Constitution which provides that criminal liability is personal.⁶In other jurisdictions, this article is completed by the statement saying that civil liability is determined by the law.⁷ This Provision is supplemented by the civil code book three which provides that the father or the mother in the case of death or absence is liable for damage caused by children living with them.⁸ It is very clear here that whenever a child is responsible for damage he/she has caused, this burden will be supported by parents or the guardian.

2.1.1.2 Criminal Proceeding of a Child

The law on protection of children provides that except in case of recidivism, whatever charges are against him/ her, the child cannot be on remand during the judiciary inquiries. A child can be on remand only where the charges against him/her are punishable with a term of imprisonment of more than five (5) years. The period of a child's remand shall not exceed fifteen (15) days and court decision for such a remand cannot be extended. This provision provides for a special protection because the criminal procedure in its article 96 which provides that a suspect shall not be subject to provisional detention unless there are serious grounds for suspecting him/her of an offence and the offense alleged against him/her is punishable with imprisonment of at least two (2) years.

The law on rights and protection of children provides for an exception to this principle but with safeguards. It says when, based on reasons presented by the prosecutor, the judge estimates that it is necessary to continue to maintain on remand the child beyond the period stated in the

⁶Article 29 of the Constitution of 2003 as revised in 2015.

⁷ This was the case of the article 17 of the Constitution of 2003 before the revision of 2015.

⁸Article 260 Paragraph2 of the Civil Code Book 3

preceding paragraph, remand is substituted by strict monitoring measures, within his/her family, or wherever he/she lived.⁹ The same article gives power to prosecutors to compromise when the offence committed by the child is punished by an imprisonment which does not exceed five(5) years. That article says that when, based on reasons presented by the prosecutor, the judge estimates that it is necessary to continue to maintain on remand the child beyond the period stated in the preceding paragraph, remand is substituted by strict monitoring measures, within his/her family, or wherever he/she lived.¹⁰

The Rwandan Criminal Code on the other hand, provides that a suspect may be subject to provisional detention if there are serious grounds for suspecting that he/she has committed an offence even if the alleged offense is punishable with imprisonment of less than two (2) years but more than three (3) months, if :

- there is reason to believe that he/she may evade justice;
- his/her identity is unknown or doubtful;
- there are serious and exceptional circumstances that require provisional detention in the interests of public safety;
- the provisional detention is the only way to prevent the suspect from disposing of evidence or exerting pressure on witnesses and victims or prevent collusion between the suspect and their accomplices;
- such detention is the only way to protect the accused, to ensure that the accused appears before judicial organs whenever required or to prevent the offence from continuing or reoccurring;
- given the serious nature of the offence, circumstances under which it was committed and the level of harm caused, the offense led to exceptional unrest and disruption of public order which can only be ended by provisional detention.

It is good that the legislator has provided for more protective measures for children in the pretrial phase by extending the seriousness of the crime whereby a child can only be placed in remand when the offence is punishable to at least five years imprisonment. The some protection appears

⁹ Article 60 of the law on rights and protection of the child

¹⁰ Article 60 of the law on rights and protection of the child

in the validity of the provision detention where law says that it cannot exceed 15 days whereas for adults the period of validity shall go up to six (6) months for misdemeanors and one (1) year for felonies.¹¹

2.1.1.3 Conduct of proceedings, legal assistance and the sentencing of children

The law on rights and protection of child provides for a number of principles which must guide the proceedings of children. When judging a child the prosecution must take into account the privacy of the child in all proceedings. To this regard, the identity of a child under prosecution shall, in any case, be disclosed neither to the public nor to the media.¹² Even if the code of Organization, Functioning and Jurisdiction of Courts provides that court hearings shall be conducted in public unless the court orders the hearing to be in camera, when it appears that such proceedings may jeopardize public order or cause breach of public morals,¹³ the law on rights protection children provides for exception to this principle because when a person to be judged is a child, proceedings must be conducted in camera.¹⁴ The law adds that in all proceedings, the Government shall provide legal assistance to a child who has no guardian when he/she is tried before courts.

In sentencing a child, the decision of the court must put forward decisions in form of alternative sentence to imprisonment such as deferred sentence, placement in re-education center to ensure the child's social welfare.¹⁵ The decision of the court must also indicate the behavior and antecedents that marked the child's personality which justify the sentence given. Failure to mention the elements of the child's personality in the judgment constitutes a reason for the case review.

¹¹ Article 104 Criminal Procedure

¹² Article 64

¹³ Article 166 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts

¹⁴ Article 64 of the law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child

¹⁵ Article 62. of the law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child

2. 1.1.4 Placement of a sentenced child under a specialized centre and the release on parole

When the crime which has been committed by a child is punishable by an imprisonment which does not exceed two years, or if the judge to whom offense committed by a child is referred establishes that child is liable to a term of imprisonment not exceeding two (2) years, he or she may order that the child be placed under a rehabilitation centre.¹⁶

The code of criminal procedure provides that the release on parole may be granted to the applicant under the following conditions:

- ✓ if he/she was sentenced to a term of imprisonment not exceeding five (5) years and has served at least one third (1/3) of the penalty;
- ✓ if he/she was sentenced to a term of imprisonment more than five (5) years and has served at least two-thirds (2/3) of the penalty;
- ✓ if he/she was sentenced to life imprisonment or life imprisonment with special provisions, he/she may be granted release on parole only after serving at least twenty (20) years.

The application is addressed and approved by the Minister in charge of justice. The Release on parole shall be by an Order of the Minister in charge of justice after seeking advice from the Public Prosecution and Rehabilitation centre Director. The same criminal code provides that the decision granting release on parole shall not be subject to appeal. The law on protection of children on the other hand, makes this procedure compulsory when the offender to be released is a child.¹⁷ Basing on the wording of this law, we may conclude that when conditions provided by the law are met, the Minister of Justice does not have any right to refuse the release on parole of child.

The law adds that Directors of Rehabilitation centre can sometimes request the judge to release a child on parole if his/her file shows that he/she has been rehabilitated even if he/she does not meet all the requirements to be released on parole.

¹⁶ Article 63 of the law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child

¹⁷ Article 62 of the law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child

2.1.2 The Rwandan criminal procedure

The Rwandan criminal procedure provides for a number of principles which must guide the proceedings when the trial concerns a juvenile offender. In its title five, chapter one, the law recognizes that a juvenile offender must have special rules applicable to his/her detention, rehabilitation, nature of decisions which may be taken against him/her, conduct of proceedings in special chambers concerning minors, their trial and the right to a counsel.

2.1.2.1 Detention of a juvenile offender

This law has provided also that a child cannot be held in police custody when he has committed an offence which is punishable to imprisonment which is below two years. It says however that, due to exceptional reasons, a minor aged between twelve (12) and fourteen (14) years for whom there are serious grounds for believing that he/she committed an offence, may, for the purposes of investigation, be held in judicial police custody for a period not exceeding seventy two (72) hours but solely when the offense committed is punishable with imprisonment of at least five (5) years.

From the statement of this provision, we may conclude that the Rwandan criminal procedure accepts the prosecution of children who are between twelve (12) and (14) years of age. This situation contradicts the wording of the article 72 of the Criminal code which provides for mitigating excuses when the offender is between fourteen and sixteen. We think that the legislator has exceeded the age below 14 simply because at this age a person cannot be prosecuted as per the law.

2.1.2.2 Psycho-social behavior of a minor before being detained

The judicial police or the prosecutor who has been given a case of a child beside the fact of investigating on the criminal liability of that child, he/he must also investigate on his psycho-social life. The law says that a Judicial Police Officer or a Prosecutor in charge of case file shall do everything in his/her powers and conduct necessary investigation to establish the truth about

the personality of the juvenile offender and identify appropriate means for his/her rehabilitation.¹⁸

The provision adds that that judicial Police Officer or a Prosecutor, shall gather all evidence concerning all the aspects of the minor's life including his/her character and history, his/her educational background and school behaviour and conditions in which he/she has been raised. In order for them to get all necessary information concerning that minor, he may order a medical examination, he/she may even warrants or order judicial supervision in compliance with rules of general law.

After gathering all necessary information concerning the status of the child, the judicial police or the prosecutor may take one of these decisions:

- Release the minor if he/she considers that there is no sufficient incriminating evidence against him/her and return him/her to the parents, guardians or custodians;
- Take the juvenile offender to a competent court;
- Put the minor in a public rehabilitation centre pending a court decision.¹⁹

2.1.2.3 The competent court to try children and the right to a counsel

In criminal law, juvenile offenders must be tried by special chambers. A specialized chamber competent to try a minor shall be the one situated in the area where the offence was committed, where the minor resides or his/her parents or guardians domicile or reside, where the minor was found or where he/she was placed by the court.²⁰ A specialized chamber for minors shall, depending on the case filed, take measures for the protection of the minor, assistance, supervision or education it considers appropriate.²¹

The code of Organization, Functioning and jurisdiction of courts has created at the level of intermediate courts specialized chambers for minors. That law says in its article 75 that Minors

¹⁸ Article 199 of the Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure

¹⁹ Article 200 of the Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure

²⁰ Article 201 of the same code

²¹ Article 204 of the same code

accused of any offence shall be tried on the first instance only by a specialized Juvenile Chamber of Intermediate Court. The juvenile chamber shall in addition to sentencing juvenile offenders, ensure appropriate measures for their safety, support supervision and education of such children.²²

Civil actions concerning children are also tried by specialized chambers if the only accused persons are children. If one of the co-accused is an adult, the court competent to try adults shall be competent to try even children.²³ Article 75 of the Organic Law N° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts

The right to defense for minors is very crucial. For that, a juvenile offender being prosecuted must be assisted by a legal counsel starting from judicial police investigation up to court proceedings. If a juvenile offender or his/her guardians cannot choose a legal counsel for him/her, the Judicial Police or the Public Prosecution shall request the President of the Bar Association to assign a legal counsel to him/her. If the Public Prosecution fails to do so, the judge shall ask the President of the Bar Association to assign a legal counsel for the minor.

2.2. INTERNATIONAL STANDARDS AND NORMS ON JUVENILE JUSTICE

With the adoption of the United Nations Convention on the Rights of the Child and other rules, principles and guidelines developed within the United Nations, international standards have emerged in the protection of children in conflict with justice.

2.2.1 International legal framework on juvenile justice

Rwanda has ratified the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Alongside the United Nations Convention on the Rights of the Child, the United Nations has developed, via its General Assembly resolutions,

²² Article 75 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts

²³ Article 205 of the Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure

rules, principles and guidelines, to elaborate on the principles and rights enshrined in the Convention.

2.2.1.1 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) is the foundation stone of children’s rights in international law, setting out the full range of children’s rights, from the prohibition of torture to guaranteeing access to education.²⁴ The CRC was adopted and opened for signature, ratification and accession by the United Nations General Assembly resolution 44/25 of 20 November 1989. It entered after the twentieth state had ratified the convention on 2nd September 1990 in accordance of article 49 of the CRC.

Rwanda ratified the CRC on 24 January 1991 and as a ratified international treaty it should have the force of the law as national legislation in accordance of article 168 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.²⁵ It is worth mentioning that the CRC is the most ratified Human rights instrument in the world.

2.2.1.2 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

The Beijing rules were adopted by the United Nations General Assembly resolution 40/33 of 2 November 1985. They are a set of principles and guidelines for the proper administration of juvenile justice and include guidelines and commentary on justice for children issues such as juvenile courts, the age of criminal responsibility, prosecution of juveniles, sentencing and standards for juveniles if incarcerated.²⁶ The Beijing Rules are not legally binding, but many of the principles have been incorporated into the CRC, making it legally binding.²⁷ These Rules are

²⁴ Child Rights International Network (CRIN), “Rights, Remedies & Representation: global report on Access to justice for children”, January 2016, p. 7.

²⁵ Article 168 of the Constitution: “*Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of this Constitution.*”

²⁶ Penal Reform International, “Protecting children’s rights in criminal justice systems: A training manual and reference point for professionals and policymakers”, 2013, p. 11

²⁷ UNICEF Office for Barbados and Eastern Caribbean, “Working with children in conflict with the law: A summary booklet for professionals in the child justice system in the Eastern Caribbean”, 2009, p. 11.

divided into six parts: fundamental principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation.²⁸

This set of Rules addresses fundamental principles such as: the fair and humane treatment of children who come into conflict with the law; conducting proceedings in the best interest of the child and ensuring their full participation in the proceedings; the application of the principle of proportionality to the offender and the offence; the application of community programmes for diversion from court procedures; detention as a measure of last resort and for the shortest possible time; deprivation of liberty only for serious offences; the abolition of corporal and capital punishment; continuous and specialised training for law enforcement officers working with children; the application of alternatives where possible; the provision of educational and other social re-integrative services for those children who are institutionalized.

2.1.1.3 United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) were adopted by United Nations General Assembly resolution 45/110 of 14 December 1990. It is a set of rules on how to administer non-custodial sanctions and the safeguards that need to be in place for those sentenced to these measures.²⁹

According to the UN³⁰, the Tokyo Rules cover an area in which ideas are constantly developing. Non-custodial measures relate closely to life in the community. The potential for developing new ways of keeping offenders in the community is substantial. There is much scope for requiring offenders to make recompense to society in some way for their crimes. At the same time, offenders can undertake some form of rehabilitation that could well reduce the likelihood of their returning to crime. Thus, the Tokyo Rules are not intended to preclude experimentation and the development of practice; however, new developments should proceed with the full recognition of the need for the legal safeguards incorporated in the Tokyo Rules and should be in harmony with the aim of promoting the use of non-custodial measures.

²⁸*Ibidem*.

²⁹ Penal Reform International, *Op.cit.*, p. 12.

³⁰ United Nations: "Commentary on the United Nations standard minimum rules for non-custodial measures (the Tokyo rules)", New York, 1993, p. 4 available at <https://www.ncjrs.gov/pdffiles1/Digitization/147416NCJRS.pdf>

2.2.1.4 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

These Guidelines were adopted by the United Nations General Assembly resolution 45/112 of 14 December 1990, one year after the CRC was adopted, and they are considered to be supplementary to the CRC. The first phase in the child justice system is the area of prevention. Programmes must be put in place to prevent children from becoming entangled in the justice system. In addition, diversion programmes cannot be successful on their own, and must be coupled with prevention programmes in order to prevent high rates of recidivism. Apart from prevention programmes for all children, the Guidelines emphasize the holistic nature of child justice by pointing to the important role that civil society can play in preventing all children from coming into contact with the law. The Guidelines stress the need for a multi-disciplinary approach and for proper recruitment and training of personnel who work with children.³¹

They set out standards for the prevention of juvenile delinquency including the protection of children who are deemed at risk of juvenile delinquency and implementing measures that can negate these risks. They promote the role that various sectors of society such as the family, community, media, and education system have on the prevention of young people at risk of juvenile delinquency³².

2.2.1.5 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)

These Rules were adopted by United Nations General Assembly resolution 45/113 of 14 December 1990 and have come to be known as the JDL Rules or the Havana Rules since they were adopted in Havana, Cuba. It is important to note that these Rules are not only applicable to custodial settings, but to police stations where children are often held in custody. The major purpose of the Rules is to ensure that the rights of the detainee are respected at all times.

Section III applies to children under arrest or awaiting trial ‘who are presumed innocent and should be treated as such’. As a general rule, detention before trial should be avoided, and is

³¹ UNICEF Office for Barbados and Eastern Caribbean, *op. cit.*, p.11.

³² Penal Reform International, *Op.cit.*, p. 12.

limited only to exceptional circumstances. Rule 12 specifies that the “deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles”. Section IV addresses the management of juvenile facilities. Emphasis is placed on the need to encourage social reintegration of offenders by allowing children to continue their education and/or vocational training in the community as far as possible, since receiving education in a place of detention usually has a stigma attached to it. Recreational activities are also encouraged for the wellbeing of the child in custody.³³

2.2.1.6 United Nations Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines)

The United Nations Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) were recommended by Economic and Social Council resolution 1997/30 of 21 July 1997³⁴. These are Guidelines on how to implement the principles of the Convention on the Rights of the Child and other international standards relating to the administration of juvenile justice.

2.1.7 United Nations Rules for the Treatment of Women Rehabilitation centre and Non-custodial Measures for Women Offenders (Bangkok Rules)

The United Nations Rules for the Treatment of Women Rehabilitation centre and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted by United Nations General Assembly resolution 2010/16 of 22 July 2010. They complement and go beyond the Standard Minimum Rules for the Treatment of Rehabilitation centre to ensure women’s rights and needs are adequately met, including the specific needs of girls in detention.

2.1.8 African Charter on the Rights and Welfare of the Child

Like the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) was created to protect children. The Charter spells out the rights that African countries must ensure for their children, and it is the main instrument of the African human rights system for promoting and protecting child rights. The Charter, which was adopted by the Organisation of African

³³ UNICEF Office for Barbados and Eastern Caribbean, op. cit., p.12.

³⁴ In resolution 1997/30, paragraph 1, the Economic and Social Council welcomed the Guidelines for Action on Children in the Criminal Justice System annexed to the resolution and invited all parties concerned to make use of the Guidelines in the implementation of the Convention on the Rights of the Child with regard to juvenile justice.

Unity (now the African Union) in July 1990, was entered into force in November 1999. It was the first regional treaty to address child rights, and was created partly to complement the CRC, but also because African countries were under-represented in the drafting process of the CRC, and many felt another treaty was needed to address the specific realities of children in Africa.³⁵

The ACRWC and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights. Like the CRC, the ACRWC talks about the same principles of non-discrimination and participation. Some of the other issues that African States wanted the Charter to address were: children living under apartheid, harmful practices against the girl child, such as female genital mutilation (FGM), internal conflicts and displacement, the definition of a child, the rights of children of imprisoned mothers, poor and unsanitary living conditions, the African conception of communities' responsibilities and duties, weak enforcement and monitoring mechanisms, role of the family in adoption and fostering, and the duties and responsibilities of the child towards the family and community. Rwanda ratified the African Charter on the Rights and Welfare of the Child on 30 May 2001.³⁶

2.2.2 Juvenile Justice Standards in International law

International instruments have developed minimum guarantees applicable to any child in conflict with justice and recognized other specific rights depending on the step reached by the child in the phases of the criminal justice system.

2.2.2.1 Minimum Guarantees

a. Age of criminal responsibility

Article 40(3) of the CRC requires States to seek to promote “the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”, but no specific age is mentioned. Rule 4 of the Beijing Rules recommends that “the beginning of the

³⁵UNICEF Eastern and Southern Africa: “The African Charter on the Rights and Welfare of the Child” available at http://www.unicef.org/esaro/children_youth_5930.htm

³⁶ The African Charter on the rights and welfare of the child of June 11, 1990, was ratified in Rwanda by the Presidential Order N° 11/01 of May 30, 2001, O.G. N°22 of 01 June 2001.

minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.

The Committee on the Rights of the Child in its General Comment No. 10, 2007, concluded that a minimum age of criminal responsibility set below the age of 12 is not “internationally acceptable”³⁷. At the same time the committee stresses that States should not lower their age of criminal responsibility to 12 where it has already been set higher. It also strongly encourages States to introduce a higher minimum age of criminal responsibility, for instance 14 or 16 years of age.

b. Principle of non-discrimination

States will respect each child’s rights without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and will take measures to ensure that all children are protected against all forms of discrimination. A gender sensitive approach should be taken in all interventions.³⁸

The above provision provides for the principle of non-discrimination, however this principle does allow for affirmative action can be taken to ensure that all children’s rights are met equally. For example, countries may have to give differential treatment to some children, or groups of children, in order to eliminate conditions that can cause or maintain discrimination. States are required to ensure that all children are not discriminated against and active measures should be put in place to ensure that every child has equal opportunities. This is of particular relevance when dealing with girls, and other vulnerable groups, where special measures may need to be taken to ensure that their rights are equally upheld and respected. For example, special healthcare and hygiene needs for girls whilst in detention; equal access for all children to education and vocational programmes; or the use of an interpreter, and providing translated information for children with a different language, are of primary importance.³⁹

³⁷ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 32.

³⁸CRC, Article 2; Guidance Note of the Secretary-General: UN Approach to Justice for Children, September 2008(Guiding Principle 2); Beijing rule2.1; Havana rule4.

³⁹ Penal Reform International, *op. cit.*, p.14.

c. Prohibition of the retroactive prohibition of a conduct

Article 40(2) (a) of the CRC and article 15(1) of the International Covenant on Civil and Political Rights recognise to every child alleged as, accused of, or recognized as having infringed the penal law, the right not to be punished retroactively. This means that if a child is accused of, or recognised as having infringed a law that did not constitute an offence either nationally or internationally at the time the act was committed (retroactively) then, the child should not be punished. Also, if the legislation is amended and a heavier penalty is applied, the child should not be subjected to this heavier penalty. However, if a lighter penalty is introduced, then the child should benefit from this amendment to the legislation.

d. Abolition of status offences

An offence that can only be committed by a child such as: habitual running away ;truancy or absconding from school; wandering or begging; displaying immoral behaviour, etc.; should be abolished in accordance with article 56 of the Riyadh Guidelines which states: *“In order to prevent further stigmatisation, victimisation and criminalisation of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalised if committed by an adult is not considered an offence and not penalised if committed by a young person”*.

e. Competent, independent and impartial authority

Article 40(2)(b)(iii) of the CRC and 14(1) of the ICCPR recognize to every child alleged as or accused of having infringed the penal law the right to have the matter determined ... by a competent, independent and impartial authority or judicial body.

f. Presumption of innocence

The child accused of having committed an offence, must be given the benefit of doubt, and is only guilty as charged when these charges are proven “beyond reasonable doubt”. He is presumed innocent until proven guilty according to law.⁴⁰

⁴⁰ Article 40(2)(b)(i) of the CRC and article 14(2) of ICCPR.

g. Child's right to be heard in any judicial proceeding

The child alleged as, or accused of having committed an offence has the right to be heard either directly or through his or her representative. Some jurisdictions accept unsworn evidence in criminal proceedings from children who are between the ages of 12 to 14 years.⁴¹

h. Right to have the matter determined without delay

When children are in conflict with the law it is especially important to ensure that court proceedings are commenced as soon as possible. Article 37(d) of the CRC calls for “*every child deprived of his or her liberty to have the right to prompt access to legal and other appropriate assistance*”. The time between the commission of the offence and the final response to this act should be as short as possible. Furthermore the CRC states that every child alleged as or accused of having infringed the penal law has the right to have the matter determined without delay⁴².

i. The Beijing Rules state that the speedy conduct of formal procedures in children's cases is a paramount concern.

*This is particularly important as 'otherwise, whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.'*⁴³

Right to legal Representation

The right of the child to legal assistance is enshrined in the international standards including the CRC⁴⁴. Once arrested or detained, a child is to be advised immediately by the arresting officer or the officers in charge of his or her file, the right to counsel. He/she must be informed of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice

⁴¹Article 12 of the CRC; rule 14.2 of the Beijing Rules and article 4 of the African Charter on the Rights and Welfare of the Child.

⁴²Article 40(2)(b)(iii) of the CRC

⁴³Rule 20(1) of the Beijing Rules.

⁴⁴Articles 37(d) and 40(2)(b)(ii) and (iii) of the CRC; article 14(3)(b) and (d) of ICCPR

and legal aid in the country and how to obtain it and should have a reasonable opportunity to exercise that right.

The Committee on the Rights of the Child recommends in its General Comment n°.10, that this assistance be free of charge. They further recommend that in the absence of legal assistance that a social worker, who has sufficient knowledge of the legal aspects of the juvenile justice process and who is trained to work with children in conflict with the law, be present.⁴⁵

j. Presence of parents

Parents or guardians should be present at the proceedings to provide the necessary psychological and emotional support for the child. At times the judge or competent authority may think that it is not in the best interest of the child to have the parents or guardians present, and will instead opt to restrict their presence⁴⁶.

k. Right not to be compelled to give testimony or to confess or acknowledge guilt

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.⁴⁷ 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 child⁴⁸ and is wholly unacceptable. No such admission or confession can be admissible as evidence.⁴⁹

l. Right to an interpreter

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.⁵⁰ 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

⁴⁵ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 49.

⁴⁶ Article 40(2)(b)(iii) of CRC and Rule 15.2 of Beijing Rules.

⁴⁷ Article 40(2) (b) (iv)

⁴⁸ Article 37 (a) of the CRC

⁴⁹ Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁵⁰ Art. 40 (2) (vi) of the CRC and article 14(3)(f) of ICCPR

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.

m. Right to privacy

The child has a right to have his or her privacy respected at every stage of the proceedings as spelt out in article 16 of the CRC – from the initial contact with law enforcement, up until the final decision is made by the court or competent body, or to the time when he or she completes their pre-trial supervision or custodial or community-based sentence.⁵¹No 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.

2.2.2.2 Initial contact and pre-trial detention

a. Contacts promote the well-being of the juvenile and avoid harm

The police represent the first point of contact for children in conflict with the law. This initial contact is likely to strongly influence the child’s attitude towards the State and society in the future. If a police officer treats the child badly, it can destroy any possible relationship of trust. Rule 10(3) of the Beijing Rules calls for the police to behave in a manner appropriate to the legal status of the child, and in a manner that promotes the well-being of the child. It is important to note that at this stage, the presumption of innocence still applies.

b. Pre-trial detention: a measure of last resort and for the shortest possible period of time

States Parties shall ensure that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. 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 time⁵².Rule 13(1) of the Beijing Rules states that detention pending trial should be used only as a measure of last resort and for the shortest possible time.

⁵¹ See also article 40(2)(b)(vii) of the CRC.

⁵²Article 37(b) of the CRC.

The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young person does can develop non-criminogenic attitudes⁵³.”

Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.⁵⁴

c. Immediate notification to parents or guardians of the apprehension

Rule 10(1) of the Beijing Rules requires the immediate notification of the child’s parent or guardian, and if this notification is not immediately possible, then they must be so notified within the shortest possible time.

d. Child who is arrested or deprived of their liberty brought promptly before a judge or other officer authorized to exercise judicial power

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 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 on the Rights of the Child also referred to article 37 (d) of CRC⁵⁵, 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

⁵³Rule 1 of the Havana Rules. See United Nations Office on Drugs and Crime: “Manual for the measurement of juvenile justice indicators” New York, 2006, p.10.

⁵⁴Rule 2 of the Havana Rules.

⁵⁵ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 51.

stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR. Rule 10.2 of the Beijing Rules requires that a judge or other competent official or body shall, without delay, consider the issue of release.

e. Specialisation within the police

Rule 12(1) of the Beijing Rules calls for specialised training of law enforcement agents who work with children.

f. Detention pending trial replaced by alternative measures

Rule 13 of the Beijing Rules states that: whenever possible, “detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”; it should be used for the shortest possible time and as a measure of last resort; that the child should be entitled to all rights and guarantees embodied in the UN Standard Minimum Rules for the Treatment of Rehabilitation centres; and that children should be kept separate from adults or in a separate part of an adult institution. Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings⁵⁶.

g. Separation from adults

Rule 13.4 of the Beijing Rules emphasises that children under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

h. Care, protection and assistance while in custody

Rule 13(5) of the Beijing Rules states that juveniles in detention pending trial “shall receive care, protection and all necessary individual assistance social, educational, vocational, psychological, medical and physical that they may require in view of their age, sex and personality”.

⁵⁶ Rule 6.2 of the Tokyo Rules.

2.2.2.3 Diversion

a. Promote diversion or other alternative initiatives to the criminal justice system

The use of diversion seeks to resolve the case of a child in conflict with the law without recourse to a formal hearing before the relevant competent authority. International guidelines recommend that consideration should be given, wherever appropriate, to dealing with children in conflict with the law without resorting to a formal hearing before the competent authority⁵⁷.

b. Provision of community programmes

Rule 11.4 of the Beijing Rules and Rule 2.5 of the Tokyo Rules recommend the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended.

c. Requirement of consent for diversion

To benefit from diversion, the child and/or his or her parents or guardian must consent to the diversion of the child's case⁵⁸.

d. Programmes aimed at strengthening social assistance

To make diversion to criminal justice system effective, “efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes”.⁵⁹

⁵⁷ Article 40.3(b) of the CRC; Rule 6, Rule 11.1 and Rule 11.2 of the Beijing Rules; Article 15 of the Vienna Guidelines.

⁵⁸ Rule 11.3 of the Beijing Rules.

⁵⁹ Article 42 of the Vienna Guidelines

2.2.2.4 Adjudicatory Process and Sentencing

a. Competent, independent and impartial authority in a fair hearing

If the case of the child has not been diverted, then he or she will be dealt with by the competent authority (the court, tribunal, board, or council) “according to the principles of a fair and just trial”⁶⁰

b. Sentence proportionate to circumstances, gravity of the offence, age and needs of the child

Certain principles must be followed when sentencing. Rule 17(1) of the Beijing Rules states that the disposition of the competent authority should be guided by: proportionality and consideration of the specific circumstances and needs of the juvenile; restriction of the personal liberty of the juvenile to the possible minimum (alternatives to custody must always be considered in the first instance); imposition of institutionalisation only when the juvenile has committed a violent offence, or is a persistent serious offender; and, consideration of the well-being of the juvenile. Rule 12(1) of the Tokyo Rules emphasises the need for the competent authority to take account of “the needs of society and the needs and rights of the offender and the victim when sentencing”.

c. Social enquiry report

A pre-sentence or a social enquiry report for all children before the court shall be made and the competent body (the court, tribunal, board, or council) shall review it prior to issuing the sentence. These reports are usually carried out by a probation officer or social worker and they examine relevant facts about the child such as their family background and education.⁶¹

d. Non-custodial measures available

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.⁶²

⁶⁰ Article 40(2)(b)(iii) of the CRC; article 14(1) of ICCPR; Rule 14.1 of the Beijing Rules.

⁶¹ Rule 16 of the Beijing Rules and Rule 7 of the Tokyo Rules.

⁶² UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 70. ; see also Rule 18(1) of the Beijing Rules and Rules 5 ,6,2,8, 9 of the Tokyo Rules.

e. Sentence of detention as a measure of last resort

Article 37 (b) of CRC obliges the States parties to use deprivation of liberty only as a measure of last resort and it must be used for the shortest possible time.⁶³

f. Right to appeal

The child has a right to appeal to a higher and impartial tribunal against a guilty verdict.⁶⁴

g. Records of cases involving children kept confidential and closed to third parties

The right to privacy in article 16 of the CRC 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 case⁶⁵. With a view to avoiding stigmatization and/or prejudgements, rules 21.1 and 21.2 of the Beijing Rules state that records of child offenders shall be kept strictly confidential and closed to third parties and should not be used in adult proceedings in subsequent cases involving the same offender or to enhance such future sentencing.

2.2.5 Standards of Detention

a. Purpose is rehabilitation and reintegration of the child

According to article 40(1) of the CRC, children in conflict with the law have the right to treatment that promotes their dignity and worth. Children's age must be taken into account and their treatment plan must promote their reintegration into society.

b. Admission of children to detention facilities

Rule 20 of the Havana Rule states that “no juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The

⁶³See also rules 17.1 and 19 of the Beijing Rules; rules 1 and 2 of the Havana Rules.

⁶⁴ See article 40(2)(b)(v) of the CRC and article 14(5) of the ICCPR 14(5).

⁶⁵UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 66.

details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.”⁶⁶

c. Separation from adults

The CRC obliges detaining Institutions to separate children from adults. This obligation is also extended to rehabilitation centres.⁶⁷ The requirement to separate children from adults derives from the assumption that children must be protected from harmful influences and risky situations and against the risk of being abused, exploited or influenced in a harmful way by adults, as well as a juvenile’s need to be surrounded by a protective environment that provides them every opportunity to avoid further conflict and develop positive life skills.⁶⁸ The requirement to separate children from adults can be considered fundamental to international human rights law. It is found in most of the human rights standards, set at both the international and regional level. This requirement requires State Parties to separate children deprived of liberty without specifying categories of ‘accused juvenile persons’ (in Article 10(2)(b) ICCPR) and juvenile offenders (in article 10(3) ICCPR).

d. Young female offenders deserve special attention and held separately from males

The Bangkok Rules stipulate that detained girls must have equal access to the education and vocational training that is available to detained boys. In addition, they should have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence⁶⁹.

e. Contact with family

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

⁶⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) Adopted by General Assembly resolution 45/113 of 14 December 1990, available on https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

⁶⁷ Article 37(c) of the CRC; article 10(2)(b) and 10(3) of the ICCPR; rules 13.4 and 26.3 of the Beijing Rules.

⁶⁸ General Comments N.10 paragraph 28(c), Rule 28 JDLs

⁶⁹ See rules 1, 36 to 39 and 40 to 56 of the Bangkok rules

may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.⁷⁰

f. Contact with the outside world

Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society⁷¹.

g. Medical care

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 community⁷².

h. Education, vocational training and employment

According to the UN Committee on the Rights of the Child (CRC)⁷³, 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. The same right has been provided in international instruments⁷⁴.

i. Recreation

The UN Committee on the Rights of the Child (CRC) is of the view that 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,

⁷⁰ Article 37(c) of the CRC; rules 59 to 61 of the Havana Rules ; Rules 26.5 of the Beijing Rules

⁷¹ Article 17 of the CRC; rule 26.5 of Beijing Rules; Rules 41, 59 and 62 of Havana Rules

⁷² Article 24 of the CRC; rule 26.2 of the Beijing Rules; rules 49 to 55 of the Havana Rules.

⁷³ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 89.

⁷⁴ Articles 28 and 32 of CRC; rules 26.1, 26.2 and 26.6 of Beijing; rules 12, 18(b) and 38 to 46 of Havana rules

physical exercise, in arts, and leisure time activities⁷⁵. The same was provided in international instruments⁷⁶.

j. Rules on measures of discipline in institutions

Article 37 of the CRC and Rule 67 of the Havana Rules prohibit “*all disciplinary measures constituting cruel, inhuman or degrading treatment*”. These include the following measures: “*corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned*”. Rule 67 does not allow labour to be used as a disciplinary sanction --this must always be viewed “as an educational tool and a means of promoting the self- respect of the juvenile in preparing him or her for return to the community”. Rule 67 also prohibits “the reduction of diet and the restriction or denial of contact with family members”. Collective sanctions are not allowed. A child must not be punished twice for the same infraction. Rule 67 also prohibits “the reduction of diet and the restriction or denial of contact with family members.

k. Use of restraint or force never used as a means of ‘punishment’

The use of instruments of restraint and any force is generally prohibited by Rule 63 of the Havana Rules, but is allowed in exceptional cases to prevent children from “inflicting self-injury, injuries to others or serious destruction of property”. When these cases arise, the director of the facility must immediately consult medical and other relevant personnel and “report to the higher administrative authority”.

⁷⁵ UN Committee on the Rights of the Child (CRC), CRC General Comment n°10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 89.

⁷⁶Article 17 and 31 of the CRC; rules 18(c), 41, 47 and 62 of the Havana Rules

3. INTERPRETATION OF RESULTS

3.1. Age of children in the center and the applicability of the legal age of criminal liability

		Frequency	Percent
Age	Aged below 14	0	0%
	Aged between 14-16	30	22.7%
	Aged between 17-18	70	53.0%
	Aged between 19-20	26	19.6%
	Aged between 21 and above	6	0.4%
		132	100%
Sex	M	114	86.3%
	F	18	13.6%
	Total	132	100.0%
Physical disability	Yes	11	8.3%
	No	121	91.6%
	Total	132	100%

Table1. Identification of the interviewed

The age of criminal responsibility under the Rwandan Penal Code is at least fourteen (14) years¹. Therefore, a person under fourteen (14) years of age is exempt from being prosecuted. The above data show that among the respondents no child was under fourteen years at the commission of the offense. The majority of respondents, i.e. 53% are found between 17 and 18 years of age at the time of the commission of the offense. This age group was followed by children who were between 14 and 16 years old (22.7%) at the commission of the offense.

Children covered by the study are predominantly male (114 out of 132, or 86.3%; see Table above). Of the 132 children interviewed, 18 only were female. The above data show that the majority of children (91.6 %) do not have any physical disability and only 11 out 132 (8.3 %) have physical disability. In this research we have been told that the available facilities help them to enjoy their rights as any other person.

3.2. Conditions of detention

Rwandan law provides for principles aiming at protecting minors in conflict in law. Among the conditions we have retained in this title is the length of detention before being appearing before the judge, the Period of detention before being sentenced and the place of detention, the place of detention and the conditions of detention before being sentenced.

3.2.1 Period of detention before appearing before the judge

Time of detention		%
1day -10 days	56	42.4%
11 – 30 days	25	18.9%
Above 30 days	47	35.6%
Detained after being convicted	4	3.0%
Total	132	100%

Table2: Period of detention before appearing to court

The period of detention before appearing to court provided in the law was not scrupulously respected. The above data show that only **42.4%** of the respondents reported that they were held in custody for less than 10 days before appearing to court which is the maximum statutory time limit possible according to the Criminal procedure.¹ **18.9%** of children interviewed also reported that they spent between 11 and 30 days in custody before being brought to court, and **35.6%** reported that they were in police detention for more than 30 days. This is more than what the court can afford in terms of provisional detention of a child that can never exceed a period of 15 days according to article 60 para 4 of the law on criminal procedure. It is worth mentioning that the arrest of a child is prohibited unless in exceptional situations such a case of recidivism or for an offense punishable with a term of imprisonment of more than five (5) years. In some cases, children will be held in police detention for purposes other than to conduct investigation or interrogations.

3.2.2. Period of Detention before being sentenced

Period of detention	Number	%
1 day – 1 month	73	55.3%
1 month -6months	22	16.6 %
6moths -1 year	35	26.5%
1 year and above	2	1.5%

Table 3: Period of Detention before being sentenced

It was clear from the interviews carried out during this study with children that children have spent longer than the maximum of 15 days in pretrial detention. The above data show that 55.3 % of respondents reported they were detained from one day up to 30 days; 16, 6 % from one month to 6 months, 26.5 % from 6 months to one year and 1.5 % from one year and above. Cumulatively, 44.7% of respondents spent more than one month in the detention before being sentenced. The reasons cited for the delays in processing cases included adjournment of cases for various reasons including the delays of prosecutor to communicate files to courts on time, the lack of judges where in courts there will be on judge assigned to deal with children’s cases and combining them with other ordinary cases, non-appearance of advocates in hearings; problems ensuring witnesses and co-accused persons attend; and problems with coordination, such as missing files.

The international law severely limits the circumstances in which children can be placed in detention either after being charged and awaiting trial or while under investigation. Such detention is only permitted as a measure of last resort, for the shortest appropriate period of time and only in exceptional circumstances¹. The ICCPR, the CRC and the ACRWC all require that an individual charged with a criminal offence shall be brought to trial within a ‘reasonable’ period of time and that delay should be avoided.¹ The various international instruments all use slightly different terms, but the essence of the provisions is that there should be no delay. While it is clear that pretrial detention should only be used as a last resort and only for “the shortest appropriate period of time”, there is no definition of what is meant by an ‘appropriate period.’ Under article 60 of the Law n° 54/2011 of 14/12/2011 relating to the rights and the protection of the child, no child shall be remanded except in case of recidivism, whatever charges are against him/ her or where the charges against him/her are punishable with a term of imprisonment of

more than five (5) years. The period of a child's remand shall not exceed fifteen (15) days and court decision for such a remand cannot be extended. When, based on reasons presented by the prosecutor, the judge estimates that it is necessary to continue to maintain on remand the child beyond the period of 15 days, remand is substituted by strict monitoring measures, within his/her family, or wherever he/she lived.

3.2.3 Place of detention before being sentenced

Place	Number	%
Police	121	91.6%
Rehabilitation centre	2	1.5%
Other places	10	7.5%
	132	100%

Table 4: Place of detention before being sentenced

The above data show that the majority of respondents i.e. 91,6% have reported that they have been held in the police custody facilities. Few of the respondents i.e. 3.7 % have reported to have been in Rehabilitation centre and 10 respondents i.e. 7.5 % have reported to have been held in various administrative facilities such as the cell, sector or district offices. The practices of holding children in Rehabilitation centre or in other administrative facilities are in contravention of the law on criminal procedure which states that: *“A person held in detention by the Judicial Police shall in no way be held in Rehabilitation centre or in any place other than the relevant custody facility located within the jurisdiction of the Judicial Police Officer or the Military Police Officer for members of the military and their co-offenders and accomplices.”*⁷⁷

3.2.4. Conditions of detention before being sentenced which can harm lives of children

Sharing same tools (facilities) with adults	Yes	100	75.7%
	Non	32	24.2%
Being beaten by other detainees	Yes	59	44.6%
	Non	73	55.3%

⁷⁷ Article 40 para 1 of the law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure in Rwanda

Being visited by parents, guardians and teachers	Yes	88	66.6%
	Non	42	31.8%

Table 5: Sharing same facilities with adults, being beaten and the right to be visited

Out of 132 respondents, 100 (75,7 %) have reported that while awaiting for sentence they were placed in cells along with adults, they also reported that they were mixed with adults while being transported to be interrogated by the prosecutor or to appear before the court. This was found to expose child detainees to risks of violence by adult detainees; the above data show that 44.6% of respondents reported that they were beaten by other detainees especially by adults and 55,3% said they were not victims of violation by other detainees. This practice is in contravention of international law which provides that “*Every child deprived of liberty shall be separated from adults*”⁷⁸. The majority of the respondents, i.e 66,6 % reported that they have been permitted to be visited by their family members, guardians, and teachers while they were in police detention and have physical contact or communicate with the parents while 31,8 % reported that they did not receive any visit from relatives.

Data from FGD with parents suggests that there are no complaints about communication with their children who have been arrested. Parents affirm that they have interacted with their children about their situation the moment they arrived in the rehabilitation centre. This was also confirmed by the staff of the centre who reacted strongly on the matter by showing that this claim was unrelated as the center has put in place incentives to parents who are willing to organize visit to their children including transport fees.

3.3. Effective legal assistance of children before various institutions

Being represented by a lawyer	Yes	69	52.2
	No	63	47.7
Awareness on the right to be represented	Yes	19	14.3%
	No	113	85.6%

⁷⁸ See Article 37(c) of the CRC; article 10(2)(b) and 10(3) of the ICCPR; rules 13.4 and 26.3 of the Beijing Rules.

Payment of lawyers	Parents	25	18.9%
	Pro bono	44	33.3%
	Not applicable	63	47.7%
Being happy with the representation	Yes	29	21.9%
Being happy with the service of lawyers	No	39	29.5%
	Not applicable	64	48.4%

Table 6 Legal assistance before police, prosecution and courts

The above records show that of the 132 cases of children covered by study, more than half (69 cases, or 52, 2 %,) had legal counsels. Of this number, the majority (44 out of 69) were provided with pro bono lawyers (see table above) and 25 children had their own counsels. Even if the trend seems to be good, the level of satisfaction of the service of the lawyers was found to be very low. Only 25 respondents out of 69 reported they appreciated the work of the lawyer, 39 children said they were disappointed. Asked about this, they explained that their dissatisfaction was due partly to the fact that advocates do not meet them in advance to prepare together the case and do not share with them courts documents like pieces of evidence in the court file. Some even confessed that they met with their advocate for the first time in the hearing.

Another important issue raised by children in the center the fact that many of them were forced by their advocates to confess crimes they did not commit in order to lessen their work of preparing the defense. This issue has led us to think on possible failure in rehabilitating children who fall under that category. Innocent children who have been sentenced can never understand the purpose of being rehabilitated and educated.

The effectiveness of legal assistance provided by lawyers was also discussed during the FGD with parents and the staff of the Centre. It emerged from the FGD that lawyers do not take into consideration the interest of the minors in assisting them in court due to the fact that they need to make the work easier for them. Participants in the FGD highlighted that sometimes lawyers

advise minors on confessing their offenses even if they are innocent. This is a serious issue of lack of commitment and consciousness on behalf of lawyers who are more interested in statistics of cases pleaded than in the quality of their defense and the outcome of the cases. This situation is mostly caused by the fact that lawyers do not meet minors before the hearing day in order to effectively prepare the case. Surprisingly, the easy way for these lawyers is to assist children when they plead guilty.

After realizing that the role played by lawyers who assist children has been criticized by the beneficiaries, we have approached them, in order to know their position. In a meeting with some of them, they said, shortcomings related to their work are based first of all, on poor communication with the judicial police and prosecutors which leads to the postponement of cases and the delay in the disbursement of facilitation fees which makes their work very hard. They told us that sometimes, they spent more than four months without getting those fees.

The remaining 63 respondents i.e. 47.7 % did not enjoy the right to be assisted by a lawyer. They reported that they did not know they were entitled to a lawyer and no one in the process reminded them for the need of having one. This is in contravention of article 29 of the Constitution and article 39 of the law on criminal procedure which recognize the right to defense to any suspect, this includes the right to legal counsel and if he or she is unable to find one, the Judicial Police Officer or the Prosecutor shall inform the Chairperson of the Bar Association so that he/she assigns a legal counsel for the suspect. The level of the lack of awareness concerning the right to defense is particularly alarming. Out of 132 respondents, 113 (85.6%) reported that they did not know that they are entitled to right to defense.

This finding corroborate the data from the FGD with the staff of Nyagatare rehabilitation centre who argued that due to repeated absences of lawyers in court hearings which cause postponement of cases, courts are in most of the times confronted with situations where they cannot postpone cases endlessly. In such circumstances, they decide to try those cases without the assistance of lawyers.

3.4. Rights linked to the trial of juvenile offenders

3.4.1. Release on parole

Request for the release on parole	Yes	100	75.7%
	No	32	24.2%
Being accepted to be released on parole	Yes	9	6.8%
	Non	123	93.1%
Being released after paying the fine without trial	Yes	10	7.5%
	No	105	79.5%
	Not applicable	17	12.8%

Table 7: Being released on Parole

The above data show that out of 100 children who requested for being released on parole, only 9 (6.8 %) were eligible and 123 (93.1 %) were not successful. The above figures also show that out of 105 children who requested being released without trial after only paying fine, only 10 (7.5 %) were successful and 105 (79,5 %) were denied release. Reasons for not granted these measures were partly motivated by the seriousness of the offenses, some respondent explained that they were told that offenses such as rape, child defilement, murder, attempted murder, etc. were not suitable for the measures sought and other just reported that they were not given reason for the refusal to their application.

The issue of being released without trial after paying fine was also raised by parents during the FGD. The latter were not contented about the attitude of prosecutors who do not apply the law⁷⁹ which gives children the possibility to end the case amicably at the prosecution level by simply paying a fine.

These practices of sentencing children to imprisonment without possibility of release before the completion of their sentence are not in compliance with the standards in the CRC and the Rwandan domestic law. Article 37(b) of the CRC states *no child shall be deprived of his or her*

⁷⁹ Article 36 para 1 and 2 of the law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure states that : *“For any offence that falls within his/her competence, a Prosecutor may ask the accused to choose between being brought before the court or paying a fine without trial, which fine cannot exceed the maximum fine increased by any possible additional amount stipulated by law, if he/she considers that, owing to the circumstances in which the offence was committed, the court may only impose a fine and possibly order confiscation of property. If the suspect chooses to pay the fine without trial, the criminal action is discontinued”.*

liberty unlawfully or arbitrarily. 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. The CRC requires that detention must not be used as a punishment. Rather, it should be used to work intensively and therapeutically with children in order to reintegrate them into society.

Articles 61, 62, 63 of the law N° 54/2011 du 14/12/2011 relating to the rights and the protection of the child enshrine this principle into domestic law. They require from judges to put forward decisions in form of alternative sentence to imprisonment such as deferred sentence, placement in re-education center to ensure the child's social welfare in pronouncing penalty against a child. The release on parole of the child must be the rule, while the full completion of the punishment is the exception. They also empower prosecutors to suggest a compromise between a child, his/her parent or guardian and the victim of the offense when such an offense is punishable by a term of imprisonment not more than five (5) years.

3.4.2. Trials held in camera

Number of trials held in camera	115	87.12%
Number of trials held in public	17	12.8%
Total	132	100%

Table 8: Trials held in camera

In the best interest of the child, the privacy of a child under prosecution must be respected and protected at all stages of criminal proceedings, in that regards, the rule of conducting hearings in camera in cases where a child is being tried must be *proprio motu* observed by the judge and this rule does not accept any exception under the Rwandan law. The above data, however shows that not always this well-established practice is observed in practice by courts although in minority of cases because only 12,8 % of children responded that their hearings were held in public. This was supported by parents in the FGD who complained about the breach of privacy of their children since some of the trials were not conducted in camera as provided for by the law.

3.4.3. The right to bring witness in court

Allowed to bring witness	4	3.03%
Denied the right to bring witness	24	18,18%
Not applicable	104	78.78%
Total	132	100%

Table 9: The right to bring witness in court

The above data show that 24 out of 28 respondents who requested the court to summon their witnesses were denied to bring them and only four (4) out of 28 were granted this opportunity. When asked about this, some children just explained that they were told that deposition evidence in the file is sufficient and other said that they were told that it was not easy to reach their witnesses as the trial court was far from their residences. Despite the fact in the Rwandan law, the admissibility of witnesses is left to the discretion of the judge¹, some reasons which were provided to children were not so genuine to avoid their summons.

The above finding was supported by the staff of the centre who stated that the issue of the lack of witnesses in support of the children' cases in court, is a consequence of lawyers' behavior to force children to plead guilty even in cases where they can prove their innocence. This makes the recourse to witnesses unnecessary.

3.5 Conditions of life in the center

3.5.1 Access to health services

Provision of effective Health services	95	72%
Provision of Health services not effective	37	28%
Total	132	100%

Table 10: Health conditions

Of the 132 children interviewed for the research, the majority (95 children) i.e 72 % said that they were provided with an effective access to health as they were referred to health officers for medical examination whenever they needed them; 37 children i.e. 28 % said that they were not brought to a health officer when they needed they services, thus considering the provision of health service not effective. According to the staff of the center, the lack of satisfaction with regard to health facilities in the center has no relation with the quality of medical care provided to children. They have rather pointed out the fact that the children claim to be transferred to the Nyagatare Hospital as a way of meeting people outside the center’s compound than the real need to special medical treatment.

3.5.2 Right to Food and water in the center

Sufficient food available	YES	115	87.12%
	NO	50	37.87%
Cleaned drinking water available	YES	17	12.87%
	NO	82	62.12%
Total		132	100%

Table 11. Availability of sufficient food and cleaned drinking water

An increase in the food allowance and availability of cleaned drinking water for children is in order for their maximum growth and development even given the circumstances they are in.¹ Majority of the respondents (87,12 %) are provided sufficient food, 12, 87 % “no,” as they do not eat three times per day. With respect to adequate and clean water, the above data show that 62,12% of children i.e the majority of respondents, consider that this is not provided in sufficient quantity and an adequate quality. Asked on this, some children explained that sometimes they are provided with drinking water immediately fetched from Muvumba River.

Beside the status of living conditions within the rehabilitation centre, the study highlighted the concern of the future of the children outside the center after they have served their sentences. Participants in FGD noted that there are no clear strategies of reintegration of the children in the

conflict with the law in the community. As one staff put it” *Children in the conflict with the law have a very high risk of being involved in criminal activities if they do not get the chance to continue with their education and the rehabilitation process outside the centre*”.

4. CONCLUSION AND RECOMMENDATIONS

This study fundamentally conducted the assessment of the legal status of the CRC and other relevant international instruments in the national legal system. The study further investigated the respect of children's rights in the Nyagatare Rehabilitation Center with a focus on the quality of legal representation of minors and potential violation of children's rights in the Center to provide a situational analysis of children's rights realization in Rwanda and build on this by providing workable recommendations.

The study came up with key findings as follows:

1. The study shows that among the respondents no child was under fourteen years at the commission of the offense. The majority of respondents, i.e. 53% are found between 17 and 18 years of age at the time of the commission of the offense
2. The period of detention before appearing to court provided in the law was not scrupulously respected. Only 42.4% of the respondents reported that they were held in custody for less than 10 days before appearing to court which is the maximum statutory time limit possible according to the Criminal procedure
3. The study showed that cumulatively, 44.7% of respondents spent more than one month in the detention before being sentenced, which is an infringement to the law stipulating that children must be judged in a period not exceeding fifteen days.
4. Findings revealed that children were detained in the police custody as reported by 91,6% of respondents. However, 7.5 % have reported to have been held in various administrative facilities such as the cell, sector or district offices
5. 75,7 % have reported that while awaiting for sentence they were placed in cells along with adults, they also reported that they were mixed with adults while being transported to be interrogated by the prosecutor or to appear before the court.

6. The study revealed that majority of children (56.5%) in the were forced by their advocates to confess crimes they did not commit in order to lessen their work of preparing the defense.
7. The above data show that out of 100 children who requested for being released on parole, only 9 (6.8 %) were eligible and 123 (93.1 %) were not successful. The parents who participated in FGD were not contented about the attitude of prosecutors who do not apply the law which gives children the possibility to end the case amicably at the prosecution level by simply paying a fine.
8. Living conditions within the rehabilitation centre were found favorable as 72 % of children said that they were provided with an effective access to health and 87,12 % were provided sufficient food. However, children in the conflict with the law have a very high risk of being involved in criminal activities if they do not get the chance to continue with their education and the rehabilitation process outside the centre”.

Based on the above findings, the following recommendations were formulated:

1. The Rwanda National Police (RNP) should work to develop specialist units within the Police Service that deal exclusively with children in conflict with the law. The RNP should consider building the capacity of police officers to provide a child protection response to children in conflict with the law where required. This could be achieved by developing a juvenile justice training module into the standard police industry training (the National Police College), designating and training specialized police officers in each district, stationing a fulltime officer in each police station to deal exclusively with children.
2. Police / Rehabilitation centre Officers should ensure that children are not detained with adults and while being transported to and from Court.
3. The Ministry of justice, the Rwanda Bar Association and the Judiciary should work together on developing a mechanism to ensure that every child has access to free and effective legal advice or other appropriate assistance from the time of arrest, to the initial

hearing, and right through to trial and sentencing. Special trainings should be organized for Advocates involved with children in conflict with the law in order to emphasize the need not to limit their role on the appearance in hearings but to be reminded to effectively act as counselors both before hearing and during hearings, especially being involved in the preparation of the case with the child and in follow up all the steps of assistance with due diligence. Monitoring and supervising the work of advocates involved with children with children are also important tools to achieve this objective.

4. The National Public Prosecution Authority should ensure that prosecutors prosecute juvenile cases use their power in suggesting measures considering the best interest of the child such as the arrest and the remand of children, the compromise on cases against a child, etc.
5. Community rehabilitation schemes should be established for children as a diversionary measure, pretrial, or as an alternative sentence. These schemes would focus on addressing the root causes of their offending and help children stay out of trouble. The Government of Rwanda has a legal obligation to set up such diversionary and alternative sentencing measures under the commitments it made when it ratified the CRC and the ACRWC.
6. The government of Rwanda should put into place strategies accompanying children who have served their sentences such as opportunity to continue with their education.

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ANNEX

ANNEX 1

QUESTIONNAIRE TO CHILDREN

1. IDENTIFICATION

Age:.....

Sex.....

Geographical origin.....

Family status.....

Do you have any disability YesNo.....

2. QUESTIONS RELATING TO PRETRIAL DETENTION AND DETENTION

- a. Where have you been detained prior to being sentenced?
- b. Prior to being sentenced, have you been placed in separate wards (cells) from adults or did you have separate facilities?
- c. Prior to being sentenced, have you shared some common areas (like bathrooms, dining rooms) with adults?
- d. Prior to being sentenced, have you been placed in different rooms or cells with girls (if he is a boy) or boys (if she is a girl)?
- e. Prior to being sentenced, have you ever been beaten or injured by a third party?
- f. Have you been detained on charges brought by a state organ or individuals?
- g. What type of crime have you been sentenced for?
- h. Have you been visited by your parents, teachers or family members
- i. For how long have you been in detention prior to being sentenced?
- j. Have you been assisted by a lawyer (before the judicial police and the NPPA and the court) during your detention prior to being sentenced?
- k. Did you know before that it was your right to be assisted by a Lawyer?
- l. If no, how did you know it was your rights?
- m. If you were assisted by a lawyer, was he or she paid by your parents or guardians?
- n. If the lawyer was not paid by your parents or guardians, who has provided his service?
- o. Have requested the release in parole?
- p. Was it granted or not?

- q. If not, what was the reason?
- r. Where you satisfied with the service of the lawyer?
- s. (*To be responded by those have committed an offence punishable by a term of imprisonment not more than five years*) Did the prosecutor attempt to reach a compromise between you, your parents, your guardian and the victim of the offence?

3. QUESTIONS RELATING TO CONVICTION, SENTENCING AND SERVING THE SENTENCE

- a. When did you appear before the court after being arrested?
- b. Were you given sufficient time to read the charges against and prepare the defence?
- c. If the preparation of the case, were you assisted by a lawyer?
- d. During the trial, have you been given enough time to present your defence?
- e. Did you have witness (es)?
- f. If yes, have you been allowed to bring them in court?
- g. If no, why?
- h. Was your trial held in camera or in public?
- i. If not in camera, what was the reason?
- j. Did you request for any alternative sentence to imprisonment (differed sentence, placement in re-education centre)
- k. Do you benefit from educative measures in Rehabilitation centre?
- l. In serving the sentence, did you benefit from any formal education?
- m. Do you have access to health services?
- n. How efficient are they?
- o. Are the visits by parents and family members allowed?
- p. What the conditions for parents to be accepted?
- q. Does the centre provide you with sufficient food and cleaned drinking water?
- r. Do you participate to sport and cultural or artistic activities?
- s. If yes, do you have sufficient infrastructure?
- t. Have you ever been harassed by personnel of the detention centre or any third person?
- u. If yes, where did you bring the complaint and what was the reaction of the centre?

ANNEX 2

QUESTIONNAIRE TO PERSONNEL OF REEDUCATION CENTERS

1. IDENTIFICATION

- a. Position
- b. Experience.....
- c. Education background.....
- d. Working Place

2. INSTITUTIONAL RESOURCES AND EQUIPMENT AT THE REEDUCATION CENTER

- a. How many children do you have in your center?
- b. How many staff do you have in your center?
- c. Are they sufficient basing on different needs of children in the center?
- d. Do you have specialized personnel for children with special needs(psychological problems, pregnant girls, children with mental problems, etc)?
- e. How many dormitories do you have?
- f. Do you find them reasonable basing on the number of children you have?
- g. Do you have sport, cultural and artistic facilities in the center?
- h. Are they enough for the education of children in the center?

3. CHILDREN WELFARE EDUCATION

- a. How many times do children in the center eat per day?
- b. Do you find them sufficient?
- c. Do you have socio-educational programs for the children in the center?
- d. Do you have formal education program for children in the center?
- e. Do children have access to medical treatment?

- f. Is there any mechanism that guarantee the supervision of children' behavior in the center?
- g. Does the center have mechanism to prevent and punish those responsible for violation f rights of children in the center?

4. CHILDREN'S JUSTICE

- a. Do you find the system and policies enough to guarantee the justice for children?
 - b. Is there any room for improvement?
 - c. Do you find the minimum age for criminal responsibility in Rwanda reasonable?
 - d. What do you think would be modified in the law or policy to ease your task of reeducation of children in the center?
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