

# **POLICE ABUSE AND KILLINGS OF STREET CHILDREN IN INDIA**

**Human Rights Watch Children's Rights Project**

**Human Rights Watch/Asia**

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*Human Rights Watch Children's Rights Project*

The Human Rights Watch Children's Rights Project was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director; Yodon Thonden is counsel; and Rosa Ehrenreich, Arvind Ganesan, and Lee Tucker are consultants. Jane Green Schaller is chair of the advisory committee.

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## CONTENTS

GLOSSARY .....	vii
I. SUMMARY .....	1
Recommendations .....	4
II. OVERVIEW .....	7
III. ILLEGAL DETENTION.....	15
The Juvenile Justice Act.....	20
Observation, Remand, Special, and Juvenile Homes .....	23
IV. TORTURE .....	30
Abuses Associated with the Investigation of Crime .....	34
Other Situations in Which Torture Is Used .....	42
V. EXTORTION .....	50
Abuses and Extortion Associated with Investigation of Crime .....	52
Abuses Associated with the Payment of Protection Money .....	55
VI. NGO INITIATIVES TO ADDRESS POLICE ABUSE OF STREET CHILDREN.....	60
VII. CUSTODIAL DEATHS, IMPUNITY, AND THE NEED FOR REFORMS	67
VIII. THE APPLICABLE LAWS .....	90
International Laws.....	90
The Laws of India .....	92
IX. CONCLUSION .....	94
APPENDICES.....	96
A: Statement of Krishna Kumar Tripathi .....	96
B: The Juvenile Justice Act, 1986.....	103
C: U.N. Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).....	130
D: U.N. Rules for the Protection of Juveniles Deprived of Their Liberty.....	140
E: U.N. Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment .....	156
F: U.N. Convention on the Rights of the Child .....	169



## GLOSSARY

Human Rights Watch uses the definition of “child” in Article One of the United Nations Convention on the Rights of the Child which states: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

Section 2(h) of India’s Juvenile Justice Act (1986) states that a “juvenile” is “a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.”

This report will use the UNICEF definition of street children as cited by Nandana Reddy in *Street Children of Bangalore: A Situational Analysis* (NOIDA: Government of India, 1992), p. 2:

Street children are those for whom the street (in the widest sense of the word, i.e. unoccupied dwellings, wasteland, etc.) more than their family has become their real home, a situation in which there is no protection, supervision, or direction from responsible adults.

and the three operational categories:

### 1. Children on the Street

Forming the largest category, these are children who have homes; most return to their families at the end of the day.

### 2. Children of the Street

These children are a group who have chosen the street as their home and it is there that they seek shelter, livelihood, and companionship. They have occasional contacts with their families.

### 3. Abandoned Children

These children have severed all ties with their families. They are entirely on their own, not only for material survival but also psychologically.

## Frequently Used Terms and Acronyms

**A.I.R.:** *All India Reporter* (which publishes the decisions of the Supreme Court)

**APCLC:** Andhra Pradesh Civil Liberties Committee

**CACL:** Campaign Against Child Labour

**Chouki:** A police booth or area within bus terminals or railway stations. It is operated by the police station that has jurisdiction over the particular railway or bus station.

**CID:** Crime Investigation Department  
**Coolie:** A luggage porter at railway or bus stations.  
**CrPC:** The Code of Criminal Procedure  
**DIG:** Deputy Inspector-General of Police  
**FIR:** The First Information Report, the first report, recorded by police, of a crime.  
**Goonda:** A habitual criminal, usually associated with a criminal gang  
**Hafta:** Protection money  
**ICCPR:** The International Covenant on Civil and Political Rights  
**IEA:** Indian Evidence Act  
**IPC:** Indian Penal Code  
**JJA:** The Juvenile Justice Act, 1986  
**Ladam position:** A position in which a child is made to sit with legs outstretched and hands tied behind the back.  
**Lathi or Danda:** A police baton, frequently carried by Indian police. It is approximately one meter in length, two to five centimeters in diameter, and usually made of wood.  
**Murga or Cock position:** A position in which a child is made to sit or squat with the arms under the legs and the hands holding the ears.  
**NCRB:** The National Crime Records Bureau of India  
**NGO:** nongovernmental organization  
**NHRC:** The National Human Rights Commission of India  
**NPC:** The National Police Commission  
**PUCL:** The People's Union for Civil Liberties  
**RPF:** The Railway Protection Force, a central government body authorized to protect railway property. It uses local city police as the enforcement body.  
**SI:** Sub-Inspector of Police  
**SP:** Superintendent of Police  
**UNCRC:** United Nations Convention on the Rights of the Child  
**UNDP:** United Nations Development Programme  
**UNICEF:** United Nations Children's Fund



## I. SUMMARY

*[T]he diabolical recurrence of police torture, result[s] in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturesome poignancy when the violent violation is perpetrated by the police arm of the state whose function is to protect the citizens and not to commit gruesome offences against them.<sup>1</sup>*

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<sup>1</sup> Supreme Court of India, *Raghumbir Singh v. State of Harayana*, *All India Reporter* 1980, Supreme Court, paragraph 1088.

India has the largest population of street children in the world.<sup>2</sup> At least eighteen million children live or work on the streets of urban India, laboring as porters at bus or railway terminals; as mechanics in informal auto-repair shops; as vendors of food, tea, or handmade articles; as street tailors; or as ragpickers, picking through garbage and selling usable materials to local buyers.<sup>3</sup>

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<sup>2</sup> United Nations Development Programme (UNDP), *Human Development Report, 1993* (New York: Oxford University Press, 1993), p. 24.

<sup>3</sup> There are no current statistics that give the number of street children in India. In 1983, the Operations Research Group-Baroda stated that there were forty-four million working children in India of which eleven million were street children. This number must be considered significantly low, given the fact that the study is now thirteen years old. While there are no statistics for the total number of street children in India under the UNICEF definition, the government of India's 1991 Census estimated that eighteen million children lived and worked in India's urban slums (huts, tenements, pavement dwellings), which under the government's definition, qualified them as street children, by virtue of their residence, the fact that they were considered working, and the fact that their families were also living on the street as pavement dwellers or in huts which are street-level shelters. Children who work in informal auto mechanic shops and as tailors are considered street children under the first UNICEF definition because their work-sites are informal booths or alcoves on the street and

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many work on the streets and sleep on the streets with their families. But considering that the population of India increases by eighteen to twenty million people per year, the number of street children in India in 1996 could be significantly higher than eighteen million. There are more than 234 million Indians living in urban areas, of whom more than eighty-nine million people are at or below the poverty line. (See United Nations Development Programme, *Human Development Report, 1996*, p. 171.)

Indian street children are routinely detained illegally, beaten and tortured and sometimes killed by police. Several factors contribute to this phenomenon: police perceptions of street children, widespread corruption and a culture of police violence, the inadequacy and non-implementation of legal safeguards, and the level of impunity that law enforcement officials enjoy. The police generally view street children as vagrants and criminals. While it is true that street children are sometimes involved in petty theft, drug-trafficking, prostitution and other criminal activities, the police tend to assume that whenever a crime is committed on the street, street children are either involved themselves or know the culprit. Their proximity to a crime is considered reason enough to detain them. This abuse violates both Indian domestic law and international human rights standards.

Street children are also easy targets. They are young, small, poor, ignorant of their rights and often have no family members who will come to their defense. It does not require much time or effort to detain and beat a child to extract a confession, and the children are unlikely to register formal complaints.

Police have financial incentives to resort to violence against children. Many children report that they were beaten on the street because the police wanted their money. The prospect of being sent to a remand home, the police station or jail, coupled with the threat of brutal treatment, creates a level of fear and intimidation that forces children or in some cases, their families, to pay the police or suffer the consequences.

Indian law contributes to the problem. Under the Indian Penal Code, anyone over the age of twelve is considered an adult, and ambiguities in the code concerning the ability of the child to be cognizant of a crime have made it possible for children as young as seven to be treated as adults under the law. There are no provisions in the code that prohibit the detention of juveniles in police stations or jails. The Juvenile Justice Act, which applies to all the states and Union Territories in India except Jammu and Kashmir, does prohibit the detention of “neglected” or “delinquent” juveniles in police lock-ups or jails, but these provisions are routinely ignored by police. Moreover, at the remand stage, the law makes no distinction between neglected and delinquent children, so that a six-year-old orphan on the street and a fifteen-year-old child who has committed murder are likely to be treated the same way under the law, an issue analyzed further below.

Finally, there is the *de facto* immunity of police from prosecution. The government of India has known about the extent of custodial abuse, including abuse of children, at least since 1979 when the National Police Commission issued a devastating indictment of police behavior. More than a decade and a half later, none of its recommendations have been adopted, and police can detain, torture and extort money from children without much fear of punishment.

This report documents police abuse of Indian street children and deaths of children in police custody. It is based on investigations conducted in India during February and March 1995 and December and January 1995-96. Human Rights Watch spoke with more than one hundred street children, as well as representatives of nongovernmental organizations, social workers, human rights activists, human rights lawyers, and other individuals who work with street children in Bangalore, Bombay, Delhi, and Madras. Of the one hundred children interviewed, sixty complained of police abuse in the form of detentions, beatings, extortion, or verbal abuse. All the children interviewed reported a fear of the police. Of the sixty street children who reported police abuse, Human Rights Watch recorded twenty-two detailed testimonies. These cases were selected because the children had better recollection of the incidents and could provide a comprehensive description of their treatment by police. The testimony of two social workers who had been abused by police for attempting to stop the police from beating children was also recorded; one of these cases involved detention and severe beating. In total, forty-one cases are presented in this report. In addition to this first-hand information, written statements taken by lawyers from children who had been victims of police abuse, documents written by police officials concerning police abuse, case files prepared by India's National Human Rights Commission, press reports, reports by local human rights organization, reports by the United Nations, studies on street children funded by the government of India and the United Nations Children's Fund (UNICEF), and reports by local nongovernmental organizations (NGOs) provided corroborating evidence in the preparation of this report. This report also details the deaths in custody of fifteen children from 1990 to 1994 and the death of one child in a remand home in 1996.

Human Rights Watch was able to interview only boys for this report. Access to girls was limited because most groups working with street children do not work with girls, and because cultural norms make it improper for girls to speak to strangers, especially males.<sup>4</sup>

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<sup>4</sup> Many NGOs do not actively work with girls because girls usually work in their own homes and as domestic servants in other residences and are not as accessible to NGOs as boys.

## RECOMMENDATIONS

### **To the government of India:**

- Implement the recommendations made by the National Police Commission in 1980, specifically those that call for a mandatory judicial inquiry in cases of alleged rape, death, or grievous injury of people in police custody and the establishment of investigative bodies whose members would include civilians as well as police and judicial authorities.
- Implement the Juvenile Justice Act in all states and Union Territories and amend the Juvenile Justice Act to provide for a complaints and prosecution mechanisms for cases of custodial abuse of children. These mechanisms should be constituted along the lines described in the National Police Commission's recommendations for the creation of civilian, judicial, and police complaints bodies for cases of police abuse.
- Implement the recommended amendments to the Code of Criminal Procedure made by the Parliamentary Committee on Home on March 4, 1996. These recommendations include a mandatory judicial inquiry in cases of custodial death or rape and compensation to families of people who have died in custody.
- Amend Sections 53 and 54 of the Code of Criminal Procedure so that medical examination (including age verification) is mandatory at the time of detention, in order to provide a medical record of the condition of the detainee. Subsequent examinations should be carried out at regularly scheduled intervals. This procedure would circumvent attempts by police officers to intimidate detainees not to complain of torture, and would also protect police from frivolous claims of torture because a complete medical record would exist for the duration of the detention. The order for a medical examination would be independent of the detainee and the police. The initial and final examinations should be done by different people to further ensure their validity.
- Amend Section 197, specifically Sections 3, 3A, and 3B of the Code of Criminal Procedure to delete the provision that requires government

approval for prosecution of law enforcement officials when complaints of custodial abuse or illegal detention are alleged.

- Amend Section 43 of the Police Act, so that police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.
- Amend the Trade Union Act to allow children to form and participate in trade unions. The Convention on the Rights of the Child, which India has ratified, guarantees children the right of freedom of association.
- Review all laws relating to child labor and the Juvenile Justice Act to ensure that the implementation of these laws does not result in criminalizing children who are forced to work.
- Establish a civilian review board comprised of NGO representatives, judges, and lawyers to monitor police stations. Members of the review boards should be adequately trained and provided access to lock-ups and detention registers.
- Establish a high-level commission to investigate allegations of custodial abuse and killings of children.
- Complaints against law enforcement personnel should be promptly and thoroughly investigated by an independent agency with subpoena power and an adequately trained investigatory staff. This agency should be directly accessible to street children.
- Investigate all complaints of illegal detention, physical abuse, and killings of children by law enforcement officers, and prosecute to the full extent of the law those found responsible.
- Investigate all complaints of extortion and bribes from children, their families, or NGO representatives working with street children and prosecute to the full extent of the law those found responsible.
- Require the registration of each child taken to a police station, including the time, date, and reason for detention. The registers should be subject to frequent mandatory review by a judicial magistrate.

- Enforce payment of compensation for people who have been victims of custodial abuse, as per the Supreme Court decision in *Nilabati Behara v. State of Orissa (1993)* which ordered compensation in case of custodial death under Article 32 of the Constitution of India.
- Conduct a census of street children through city-wide surveys with the assistance of nongovernmental organizations (NGOs). Without an accurate estimate of the population of street children, it is difficult to plan and implement programs for their benefit.
- Promptly submit the report on India's compliance with the United Nations Convention on the Rights of the Child to the Committee on the Rights of the Child.
- Ratify the United Nations 1984 Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment.
- Invite the United Nations Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention to India to investigate allegations of illegal detention, abuse and deaths of children in police custody.

**To the United Nations:**

- The United Nations Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention should visit India and investigate police abuse of street children.
- The United Nations Committee on the Rights of the Child should investigate the abuse and killings of street children by police in India.
- The United Nations Committee on the Rights of the Child should devote one of its theme days to police violence against street children.

**To Nongovernmental Organizations Working With Street Children:**

- Maintain detailed records of incidents of violence between police and children in order to monitor and document abuses by police. Submit these records to the National Human Rights Commission on a regular basis.



## II. OVERVIEW

*Child is a man in miniature. The same human tendency exists in every one and an individual with a criminal propensity becomes an anti-social element and a menace to the law-abiding society.*<sup>5</sup>

Police abuse of street children is symptomatic of three problems: the increasing population of street children, the perception of street children as criminals, and the lawlessness of police. In the four cities Human Rights Watch visited, UNICEF estimated that the population of street children totaled 295,000.<sup>6</sup> All observers we spoke to agreed that this population was increasing. The rising

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<sup>5</sup> I. Ravi Arumugam, Inspector-General of Police, Planning and Coordination, Madras, *Custodial Violence and Deaths: Problems and Prevention*, paper presented to the one day symposium titled: Custodial Violence and Deaths, Problems and Prevention, Organized by the Indian Society of Victimology, Department of Criminology, University of Madras, January 29, 1994, p. 3.

<sup>6</sup> UNICEF estimated that Bombay has a population of 100,000 street children, New Delhi has 110,000 street children, Madras has 40,000 street children, and Bangalore has 45,000 street children. These estimates are based on the 1981 Census of India and must be considered significantly low in 1996. Representatives of the Center for Concern for Child Labour, a nongovernmental organization, have reported that Calcutta alone may now have as many as 500,000 street children.

number of street children is linked to India's burgeoning population growth: eighteen million children are added to the population every year, a rate that will result in India's mid-1993 population of approximately 902 million people doubling to 1.8 billion by about 2043. Rapid urbanization has also contributed to the problem.<sup>7</sup> The Indian government's five-year plan for 1992-1997 reported:

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<sup>7</sup> United Nations Development Programme, *Human Development Report, 1996* (New York: Oxford University Press, 1996), p. 179.

There has been a marked acceleration in urbanisation over the past two decades. If the present trends continue, urban population may account for about one-third of the total population by the turn of the century.<sup>8</sup>

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<sup>8</sup> Government of India, *8th Five Year Plan (1992-1997)* (New Delhi: Cosmos Bookhive (P) Ltd., 1992), p. 12.

Urban population statistics for India reflect this observation. According to the United Nations Development Programme (UNDP), in 1960, 18 percent of India's population lived in cities. In 1992, this number had risen to 26 percent of the population. The UNDP estimates that by 2000, 29 percent of India's population will be urban—more than 261 million people.<sup>9</sup> A major factor that contributes to rapid urbanization is the increased migration from rural areas to India's urban areas. Many of these migrants are landless agricultural laborers whose traditional occupations no longer exist or do not provide sufficient income, and who have come to the cities in search of employment. In Bangalore, many are migrant construction workers who were promised work by agents and subcontractors for construction companies, but who were abandoned by the construction companies and their agents once the work was completed. In general, rural-to-urban migration can be explained by India's policy of development, which has favored urban, industrial development over rural development.<sup>10</sup> While this policy did create greater industrialization and less reliance on agriculture as the engine of economic development, it did not alleviate rural poverty.<sup>11</sup> According to the UNDP, 49 percent of India's rural population live at or below the poverty line.<sup>12</sup> Some of these unemployed or underemployed people are forced to go to cities in search of economic opportunities. Cities provide a slightly better opportunity for these people. However, since the UNDP estimates that 38 percent of India's urban population is at or below the poverty line, this accounts for more than eighty-nine million people.<sup>13</sup> A 1992 UNICEF study of street children in Bombay observed that the

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<sup>9</sup> The urban population growth rate is 1.1 percent a year, meaning that every year, the population of India's cities increase by about 2.6 million people. In the case of Bombay, India's largest and wealthiest city, the population growth rate is 4.2 percent, almost four times the national average of 1.1 percent. United Nations Development Programme, *Human Development Report, 1996*, p. 177.

<sup>10</sup> Government of India, *8th Five Year Plan (1992-1997)*, p. 10.

<sup>11</sup> *Ibid.*, pp. 8, 65.

<sup>12</sup> United Nations Development Programme, *Human Development Report, 1996*, p. 171.

<sup>13</sup> *Ibid.*

large-scale migration of families from rural to urban areas... has resulted in severe overcrowding, degrading work conditions, homelessness, deprivation of basic services and appalling living conditions in the city. Yet, to return to the village means starvation: to remain in the city means possible survival at least physically.<sup>14</sup>

Within this population are children, who may become street children when they arrive in the cities. This process was described in a 1992 UNICEF study of street children in Calcutta:

To a great extent the issue of street children is closely associated with the process of fast urbanization that has been taking place in the major cities of India since the sixties... They [the children] come to the city with high expectations and full of hopes that they would easily get jobs there and be able to live comfortably with their families. But except for the fortunate ones the dream is shattered in the case of many. Finding it very hard to make both ends meet they are driven to a life of precarious survival. No place to live, no job to support their family with, they are forced to take to streets as their homes and live on the meagre earnings that they somehow manage by doing various odd jobs. The railway stations and their surroundings, under flyovers [highway overpasses] and overbridges, and in unoccupied spaces they live in large clusters constructing tiny little shanties with bamboo poles and plastic sheets or torn cloths.<sup>15</sup>

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<sup>14</sup> Hazel D'Lima and Rima Gosalia, *Street Children of Bombay: A Situational Analysis* (NOIDA: National Labour Institute, 1992), p. 2.

<sup>15</sup> Ibid.

Some of these children have been displaced as a result of development projects, like the Subarnarekha Irrigation Project which began in 1982 with a World Bank loan of \$127 million.<sup>16</sup> The goal of the project was to create irrigation for agriculture, industry, and cities, and hydroelectric power for the states of West Bengal, Orissa, and Bihar through the construction of two dams, two barrages, and seven canals.<sup>17</sup> The World Bank estimated that 60,000 people would be displaced by the project, while NGOs estimated that the number of people displaced would be closer to 120,000.<sup>18</sup> An example of this project's effect on children in the district of Palamu in Bihar was described by Jose Verghese, an advocate for the Supreme Court of India in 1991:

[T]he project has involved displacement of large numbers of the population away from their means of livelihood. This development project, built with the aim of aiding the development of the area has had the opposite effect, it has

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<sup>16</sup> Public Interest Research Group, *The World Bank and India* (New Delhi: Public Interest Research Group, 1994), pp. 38-39. All amounts in this report are in U.S. dollars. A barrage is an artificial water barrier to promote irrigation.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

impoverished large sectors of the local population and in particular children... Some of these children who have been displaced and whose families were impoverished have found their way on to the streets of New Delhi and other cities, others... have become... bonded labour[ers].<sup>19</sup>

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<sup>19</sup> Jose Verghese, "Serious Violations of Children's Rights," paper presented at the International Symposium on Democracy, Development and Human Rights, sponsored by SOS/Torture, Manila 1991, p. 33. For more information on bonded child labor in India, see: Human Rights Watch Children's Rights Project and Human Rights Watch/Asia, *The Small Hands of Slavery: Bonded Child Labor in India* (New York: Human Rights Watch, 1996) and Human Rights Watch Women's Rights Project and Human Rights Watch/Asia, *Rape for Profit: Trafficking of Nepali Girls and Women into Indian Brothels* (New York: Human Rights Watch, 1995).

Co-mingled with the migrant population and contributing to the phenomenon of street children is the local population of urban poor who were born in the cities, the temporary migrant families, children who travel to cities daily for work, and abandoned or orphaned children. All are subjected to the same economic and social problems that the poor throughout India face, including coping with significant increases in the cost of living. According to the World Bank, consumer prices increased 9 percent in 1990, 11.8 percent in 1992, 6.4 percent in 1993, and 10.5 percent in 1994, resulting in a 37.7 percent increase in consumer prices from 1990-1994.<sup>20</sup> There has not been a corresponding increase in per capita income; in fact, per capita income has declined, from \$340 in 1991 to \$300 in 1996, according to UNDP figures.<sup>21</sup>

As an increasing number of children face severe economic hardship, more and more children become child laborers in whatever occupations are available, including a practice that the Indian government described as, "decadent social practices like scavenging..."<sup>22</sup> in the form of ragpicking, and increasingly, criminal activity.

According to NGOs, lawyers, and human rights activists working with street children, juvenile crime has been increasing, largely due to an increasing population of children and worsening economic conditions. The Swedish childrens' aid agency, Rädde Barnen, a member of a coalition of agencies affiliated with Save the Children, wrote in October 1995 that:

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<sup>20</sup> The World Bank, *Trends in Developing Economies, 1995* (Washington D.C.: The World Bank, 1995), p. 246.

<sup>21</sup> United Nations Development Programme, *Human Development Report, 1996*, p. 171.

<sup>22</sup> Government of India, *8th Five Year Plan (1992-1997)*, p. 3.



Limited data reveals that, in 1991, 29,591 juveniles were apprehended for various crimes. Most of them were charged with theft, burglary and riot. Of those, 20% were children aged between 7 and 12 and 64% were between 12 to 16. Over 60% were from families earning less than Rs.500 [\$14.29] a month. Girls formed 27% of juvenile offenders (an uncommonly high percentage). Very little information is available on what happens to these children. Legal representation is rare and there are few facilities existing for the detention of children separately from adults. Little is known about the effectiveness of any rehabilitation centres that may exist. Again, in India, juvenile crime rates are exploding.<sup>23</sup>

Very little information is available because very little information formally recorded and what information is available is not reliable. For example, the National Crime Records Bureau (NCRB) reported that in 1992 there were 1,102 juvenile arrests in India's five largest cities (Bangalore, Bombay, Calcutta, Delhi, Madras). The same year, the United Nations estimated that the population of children in these five cities was 8,919,474, which would mean there was one arrest for every 10,746 children.<sup>24</sup> The figures show that juvenile crime was extremely low in these cities, but the figures are questionable. As author Srikanta Ghosh wrote in 1993:

In this country where normal crime statistics contain a large element of concealment and non-registration, it is not possible to present a correct picture of the situation.<sup>25</sup>

This fact is best illustrated by statistics on juvenile delinquency in Calcutta. The National Crime Records Bureau reported thirteen arrests of juveniles in 1992. In a city that has over ten million inhabitants and over 1.2 million children,

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<sup>23</sup> Tim O'Flynn, *Summary of Findings Re: Juvenile Justice in Sri Lanka, India and Nepal*, (Radda Barnen: October 1995), p. 5.

<sup>24</sup> United Nations, *Compendium of Human Settlement Statistics, 1995* (New York: United Nations, 1995), pp. 276-277.

<sup>25</sup> Srikanta Ghosh, *Torture and Rape in Police Custody: An Analysis* (New Delhi: Ashish Publishing House, 1993), p. 57.

including an estimated 100,000 street children, thirteen arrests is a remarkably low number. It is about one arrest for every 94,000 children and even if all of the arrested were street children, it would be one out of every 7,692 street children.

What this indicates is that crime records do not accurately reflect the state of crime in India, and consequently, do not give proper indication of how many people are detained by the police or why people are detained by the police. It also contributes to an environment of impunity, which is discussed in Chapter VII.

While the extent of juvenile crime is unknown, the police perception of street children as criminals is common and is a factor that contributes to police abuses against street children. A 1992 study on street children in Delhi reported:

Five police officials, one at Connaught Place and four at New Delhi railway station, were interviewed to find out their perception of these children and their experiences in dealing with them. The police invariably were quite critical about these children—excepting one officer who was quite sympathetic. According to the three police at the railway station and one at Connaught Place, these children are anti-social elements. They perceive them as thieves, rogues and drug addicts<sup>26</sup> who have to be remanded in institutions and disciplined. They feel there might be only 2 to 3% who are “honest” and are at the station and street to earn a living.<sup>27</sup>

In the case of self-employed children working at railway stations, this perception is reinforced by provisions in the Child Labour (Prohibition and Regulation) Act, 1986 and the Juvenile Justice Act, 1986, which make it a criminal offense for children to be working. This issue is discussed further in Chapter V.

Once a child or anyone else is viewed as a criminal by the police, regardless of the validity of the perception, they are treated as such. This attitude was also reported by NGOs working with street children. An NGO representative in Bangalore told Human Rights Watch:

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<sup>26</sup> Ironically, the NCRB reported that in 1992, the same year of this study, that there were 219 juvenile arrests in Delhi, none of which were drug-related offenses. Even if all 219 arrests had been of street children, it would be one arrest for every 502 children.

<sup>27</sup> Rita Panicker and Parveen Nangia, *Working and Street Children of Delhi* (NOIDA: National Labour Institute, 1992), p. 43.

They [police] use street children as a scapegoat for all sorts of things. They are corrupt and cannot arrest the real criminals. Street children are always there, and they are viewed by the police and public as criminals or criminals-in-waiting.<sup>28</sup>

The view of children as criminals, a culture of policing that includes brutal treatment and other abuses, and an increasing population of street children have led to consistent abuses against children by the police, leading most observers to believe that the police pose the greatest threat to the welfare of street children. An NGO representative in Madras commented:

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<sup>28</sup> Human Rights Watch interview, Bangalore, December 10, 1995.

The most common and pervasive form of abuse street children experience is by the police. They force them to clean the stations, they beat them, they take money from them, and they torture them into confessing to crimes or to name who committed them.<sup>29</sup>

Another NGO representative with more than twenty-five years of experience with street children in Bombay told Human Rights Watch that the police were “the number one problem” street children face.<sup>30</sup>

The combination of an increasing population of urban children driven to the streets in order to survive with a brutal police force that views street children as criminals has led to a situation in which detention, torture, and extortion have become the norm, practiced in an environment of almost complete impunity.

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<sup>29</sup> Human Rights Watch interview, Madras, February 2, 1995.

<sup>30</sup> Human Rights Watch interview, Bombay, January 17, 1996.

### III. ILLEGAL DETENTION

*A new procedure is being increasingly adopted by the police where a suspect is being picked up and detained for many days. No permission is sought from the court and no information is given to the relatives regarding the whereabouts of the detainee. Even if the detainee dies, the police do not own responsibility as there is no evidence to show that he died in police custody.<sup>31</sup>*

Although prohibited under Indian and international law, the illegal detention of street children is common in every part of India.<sup>32</sup> Arbitrary detention is illegal under Articles 21 and 22 of India's constitution. Sections 50, 56, and 57 of the Code of Criminal Procedure mandate that no person can be detained in custody without knowing the grounds for arrest, and that a detainee must be presented before a magistrate within twenty-four hours of arrest. Section 160 of the code prohibits the detention of males under the age of fifteen or females of any age for the purposes of investigation or questioning by the police. Article 9 of the International Covenant on Civil and Political Rights, and Article 37 of the U.N. Convention on the Rights of the Child prohibit arbitrary detention. India has ratified both. The United Nations Minimum Rules for the Administration of Juvenile Justice, called the "Beijing Rules" because they were drafted in Beijing, state that all juveniles arrested have the right to counsel, notification of charges and the right to have a parent or guardian present at the time of arrest. Both the "Beijing Rules" and the U.N. Rules for Juveniles Deprived of their Liberty state that the human rights of juveniles should be protected and respected while in custody. Moreover, India's

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<sup>31</sup> Shankar Sen, *Policing a Changing Society* (Hyderabad: Boys Town Offset Press, 1994), p. 63. (Note: The author was formerly the head of the National Police Academy in Hyderabad and is currently the Director General of Investigation for the National Human Rights Commission.)

<sup>32</sup> Illegal detention is not unique to children and is common for adults as well.

Juvenile Justice Act prohibits the detention of juveniles in either police stations or jails.

Many observers have documented the tendency of police to arrest and detain children without good reason. A 1992 study sponsored by the Indian Ministry of Labour and UNICEF on the plight of street children in Bombay noted:

The most common complaint of street children without families was that they are rounded up and locked up by the police for two or three days merely on suspicion. This, they explained, was done to fill the “quota” which police are expected to do. Younger children are generally not caught; it is the older children the police have their eye on.<sup>33</sup>

An NGO representative and human rights activist in New Delhi had a similar comment:

For their reports and to make money, the police lock up a few children and majors [adults] everyday, only to release them later after having taken their money and/or beaten them up. A few are also presented to the magistrate to show proof that the police are performing their “duties.”<sup>34</sup>

The case of **Anand**, a thirteen-year-old ragpicker whom we interviewed on March 14, 1995, was typical.<sup>35</sup> He was a pavement dweller who told us he lived

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<sup>33</sup> D’Lima and Gosalia, *Street Children of Bombay: A Situational Analysis*, p. 50.

<sup>34</sup> Testimony of Krishna Kumar Tripathi, New Delhi, received January 1, 1996.

<sup>35</sup> All names of children in this report have been changed to protect their identities, except for the deceased children whose cases are presented in Chapter VII. Many children, due to custom, do not have a last name, and in most cases only one name was given.

with his mother, two brothers, and a sister “near a tree” in Triplicane, Madras. Because of their poverty, Anand had to work and spent much of his time on the street. He usually slept with other street children on the rail platform of Triplicane, a stop for the Madras local train. He earned about twenty rupees a day [\$0.57].<sup>36</sup> He said he was ragpicking in January 1995 around 2:00 p.m. when two police officers came up to him. They told him they wanted him to pick up some garbage, so he went with them to the Zambazaar Police Station. Anand told Human Rights Watch:

When we were inside the station, the police started to beat me with their lathis (thick bamboo canes) and fists, calling me a thief and asking me to tell them where some stolen articles were. I said I had no idea what they were talking about. The beating continued for some twenty or thirty minutes. Then I was put in the cell in the station reserved for criminals and left there for about two hours. At around 4:00 p.m., the police let me go, one of the constables having first grabbed me by the shirt, slapped me, and told me to get out. No charges were filed, and no case was registered. It was the second time I’ve been detained without justification or explanation by the police.

In some ways, Anand was lucky, because the detention was relatively brief, and he sustained no lasting injuries. **Palini** was not so fortunate. A thirteen-year-old child from Bangalore, Palini lives and works on the street selling tickets to popular films that he buys up and then sells at inflated prices, a practice known as selling “black” tickets. Sellers of black tickets give the police a cut, according to Palini, but at the end of the month, they do not have any money and so they cannot pay. He said that on September 30, 1995, when he was working near the Movieland Theater, the police came and took him to the Upparpet Police Station in Bangalore. There he was made to take off all his clothes except his underwear. An inspector and two uniformed police officers held his legs while the inspector hit Palini’s legs and feet with a lathi. Palini told us:

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<sup>36</sup> The conversion rate used in this report is thirty-five rupees to one U.S. dollar.

He kept on asking me if I was selling tickets. There were about eleven other police in uniform and in plainclothes watching while they did this. They were yelling [in the local language, Kannada], "So you think you are a rowdy [a term for a hoodlum], your mother is a prostitute, you are the child of a prostitute!" They beat me for about half an hour. After this, they put me in the lock-up. There were around ten boys and three adults in there with me. They kept me in the cell until Monday. I think they kept me an extra day because my legs were so swollen. Before they presented me to the magistrate, they beat me again, the same way as before. Then they made me walk around and stretch my legs so that they would not look swollen. Then they presented me to the magistrate who fined me 300 rupees [\$8.57]. I also had to pay two police officers forty rupees each because they allowed me to go to a shop owner to borrow money to pay the fine.

Palini said new policemen beat ticket sellers and take all of their money. Police who have been around longer take their money and only beat the children if they do not pay up. The going rate is five rupees for every twenty-five rupee ticket. If the tickets cost more or if the film is popular, the police take more. Palini said he pays anywhere from fifty to 400 rupees a day in bribes to the police.

Even though these acts are illegal, in reality, most children do not know that their rights have been violated and are intimidated by police, so they do not complain. NGO representatives and lawyers whom Human Rights Watch spoke to in Bangalore, Bombay, Delhi, and Madras said that even if children wanted to complain, magistrates, specifically in the remand and bail phases of dealing with an accused, do not spend enough time on any one case to provide the accused with a forum for complaint. The magistrate also relies on the First Information Report (FIR) to decide the status of the accused. The FIR is the first description of the alleged crime. Because it is written at the discretion of police and has no input from the accused, the police can easily use it to frame false charges. This is illustrated in a 1993 study of Bombay's criminal justice courts:

The usual processing of the remand or first appearance of the accused was that an interpreter rapidly yelled the names of the accused and the police constable on duty seldom allowed the accused to remain before the magistrate for more than a few seconds. Often, they were pulled back even before they heard



the next date of appearance. Consequently, they were forced to depend upon the policemen for this vital information. The magistrates, on their part, either briefly looked at the accused or continued with the court files. Most of the accused reported that “they did not get attention from the magistrate. Without making any enquiry or looking at them, remands were extended; the understanding of the accused was that the clerk calls names and accordingly they have to respond. The submission of the police officer was relied upon and as a matter of routine remands were granted mechanically.” However, if the accused were produced in the court accompanied by an advocate, remand would not be extended in such a manner.<sup>37</sup>

This process holds true for both adults and children and was described to Human Rights Watch in interviews with social workers, human rights activists, and lawyers throughout India.

Magistrates also fail to inform children of their rights or to check on the legality of police action. Moreover, magistrates routinely neglect to inform the accused of the charges against them. The Bombay study noted:

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<sup>37</sup> Manohar S. Pawar, *Justice Processing Sans Justice: Delays and Plight of Defendants* (Bombay: Tata Institute of Social Sciences, 1993), p. 112.

After the accused are produced before the magistrate, the magistrate by statute, must inform the accused that they have a right to remain silent, that their testimony can be held against them, and they can have a reasonable amount of time to engage an advocate. Finally, if an accused person cannot afford private counsel, (s)he has a right to court appointed counsel... In the magisterial courts of Bombay, it was observed that in all cases, the magistrates did not apprise the accused of his/her rights. In a majority of cases (95 percent) the accused were not even informed of the charges under which the police had produced them before the court. What is more, in nearly three-fourths (72 percent) of the cases no time was given to hear accused person's point of view.<sup>38</sup>

The lack of adequate judicial oversight and the magistrate's reliance on the FIR and police accounts have contributed to an environment that allows police to illegally detain, beat, and extort money from street children without fear of scrutiny by the judiciary. **Mohan's** experience is illustrative in this respect; it was provided, in writing, to Human Rights Watch on December 12, 1995, by a lawyer in Bombay who represented him.

Mohan, who is mentally retarded, was working as a mason in Bombay at the age of fifteen when he was arrested on January 2, 1991 at approximately 10:00 p.m. According to his statement he was walking home after buying cigarettes when a constable named Kadam offered him a ride in an autorickshaw. When Mohan refused, Kadam hit him with his belt and took him to the Trombay Police Station. At the station Mohan was again beaten by Kadam and several other policemen and then accused of allegedly stabbing another person.

The next morning, after being fingerprinted, Mohan was taken to the metropolitan magistrate at Kurla. Although he told the magistrate about his treatment by the police, the magistrate refused to release him and remanded him to judicial custody at the Bombay Central Prison. According to Mohan, the warden beat him every night simply because he was mentally retarded.

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<sup>38</sup> Ibid., pp. 110-111.

Mohan's family was never notified of his incarceration. After one and a half months of searching, they found him at the Bombay Central Prison. After obtaining bail of 550 rupees (\$15.71), Mohan was released.

Mohan was arrested again several months later, during the Ganapati festival, because he was part of a crowd in which some boys were fighting. He was detained at the Deonar Police Station for ten days as a result of this incident. He later left to work in Delhi but was arrested on November 3, 1993, because he did not appear in court in relation to the Ganapati arrest. He was eventually acquitted of all charges but only after being imprisoned from November 3, 1993, to March 12, 1994.

### THE JUVENILE JUSTICE ACT

The Juvenile Justice Act, 1986, was enacted in an attempt to address the plight of children within the justice system. It was based on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).<sup>39</sup> Generally, this law, like constitutional rights and other legislation intended to protect children's rights, is ignored.

The Juvenile Justice Act prohibits the detention of juveniles in police station or jails for periods longer than twenty-four hours. It also requires the registration of "neglected" and "delinquent juveniles" and requires that juveniles be sent back to their parents or guardians or to a remand home immediately following either their identification as a "neglected juvenile" or their arrest as a "delinquent juvenile." But, the act also makes the police responsible for identifying neglected juveniles and arresting delinquent juveniles. The police actively abuse this authority, resulting in a pattern of arbitrary arrest, detention, extortion, and beatings of street children, and a practice known as the "round-up," in which children are detained in large groups and either sent to remand homes or disciplined in the police station. There are several reasons for the round-up. The act views children working in railway stations as "delinquent juveniles;" such children are frequently victims of the round-up. In other cases, juvenile boards, the authority designated by the act to handle cases of neglected children and send them to the remand homes, pressure the police to fill vacant remand homes. NGO representatives and lawyers

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<sup>39</sup> Juvenile Justice Act, 1986, Statement of Objects and Reasons Section 2(vii).

that Human Rights Watch spoke to said that because the shelters were ostensibly designed to care for both neglected and delinquent juveniles, officials fear that an empty home might invite criticism that the juvenile boards, the courts, and the police were not doing their duty. The round-up is also used as an expedient method of detaining possible suspects. Because police generally view street children as criminals, a round-up is an easy way to catch and interrogate them. The 1992 UNICEF study of street children in Bombay described the practice:

When some property (e.g. a bag) belonging to the public is lost/stolen at the station, these children are rounded up and some even framed. To prove that they are not guilty, the children have to do their best to find the culprit and save their skin.<sup>40</sup>

Social workers, NGOs, human rights activists, and lawyers throughout India have documented such arbitrary arrests of street children. The following series of incidents that occurred at the Bangalore Railway Station during 1995-96 is illustrative of the pattern:<sup>41</sup>

On June 29, 1995, forty boys aged between eight and fifteen were taken to the police lock-up by the RPF because government officials had complained about the security risks passengers at the train station faced from street children asking to carry their luggage. They also complained about the station being dirty. Consequently, the boys were beaten with lathis, verbally abused, and then warned not to be seen around the railway station's premises ever again. The police also demanded a payment of twenty-five rupees (\$0.71) each as a bribe.

On October 8, 1995, thirty-two boys aged eight to fifteen were apprehended by the RPF for being a nuisance around the station and begging passengers to carry their luggage. The RPF forced them to clean the ten railway

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<sup>40</sup> D'Lima and Gosalia, *Street Children of Bombay: A Situational Analysis*, p. 50.

<sup>41</sup> These accounts are paraphrased from the NGO's original written record of detentions. The NGO representative was interviewed by Human Rights Watch in Bangalore on January 12, 1996.

platforms, the toilets, and the playground. Then the boys were stripped of all their clothes except underwear and put in the lock-up for three days. After three days, they were sent to remand homes because the juvenile board notified police that the homes were vacant and needed to be occupied.

On February 1, 1996, two foreign tourists were robbed of a camera and \$ 2,000 in the bus stand and railway station area. Thirty to forty boys, aged twelve to seventeen, were apprehended, beaten, and kept in the lock-up for four days. They were released after being photographed holding a slate on which their names, crime numbers,<sup>42</sup> and the alleged offenses were recorded. The NGO working with street children filed a complaint with the police because the children were unlawfully arrested and offenses were recorded against them without any proof.<sup>43</sup>

The way the act has been implemented led a Bangalore-based NGO to make this comment:

The Juvenile Justice Act, 1986, introduces itself as one meant "to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles." This well-meaning statement, in reality, reads, "Letting a child know in no uncertain terms that he is a criminal, therefore cannot live with his parents but with other little criminals, must work while other children play, is 'asking for it' if sexually-molested or raped, is liable to be rounded up fiercely by the police on the slightest murmur of a crime taking place in any locality where he may be, is watched over by people who hate their jobs and couldn't be bothered about probing the child's mind to ensure that he never has to come back there again."<sup>44</sup>

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<sup>42</sup> The case number related to an offense.

<sup>43</sup> According to NGO representatives and lawyers Human Rights Watch spoke to throughout India, police routinely fabricate records for street children as offenders or potential offenders in order to show that a juvenile has a history of criminal behavior. When a crime is committed, the police detain street children who are on these lists because this record identifies the children as criminals. In this way, police criminalize street children who were never arrested or charged with any offense.

<sup>44</sup> BOSCO, *Celebrating 12 Years on the Streets* (Bangalore: National Printing Press, 1993), p. 41.

### **OBSERVATION, REMAND, SPECIAL, AND JUVENILE HOMES**

From police custody, the children may be sent before a juvenile board, or a juvenile court, headed by a magistrate with jurisdiction over juveniles who have been arrested on a criminal charge. Both the court and the juvenile board have the authority to send children to institutions known variously as observation, remand, special, or juvenile homes.<sup>45</sup> Thus, regardless of their status as juvenile offenders, abandoned or orphaned children, or children awaiting trial, all children are remanded to the same institutions. This situation was described by the additional commissioner of the Delhi police (ACP), Amod Kanth, who also runs a shelter for street children in Delhi:

Rather than providing custodial care like parents provide, juvenile homes have degenerated into jail-like custodial centres. The JJ Board [Juvenile Justice Board], despite its authority, has remained a mute spectator to the pitiable conditions of the homes. The Juvenile Justice Act strongly advocates that children should not be kept in lock-ups as juvenile justice is distinguished from criminal justice. Most children arrested are non-offenders but the two categories—neglected children and juvenile delinquents are wrongly clubbed together.<sup>46</sup>

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<sup>45</sup> The observation, remand, and juvenile homes all refer to the same homes; the names are interchangeable.

<sup>46</sup> Reeta Dutta Gupta, "Juvenile homes are like jails," *Times of India* (Delhi edition), January 11, 1996.

The arbitrary nature of detention in observation homes has been documented in studies on street children. The joint reports on street children by the government of India's Ministry of Labour and UNICEF list some of the reasons children had been sent to remand homes:

In Bangalore, the bulk (81.5 percent) of children were sent to remand homes on charges of theft, the second largest group were sent on "doubt" (11.3 percent). This means that 11.3 percent of children were sent to remand homes without having been informed of the reasons.<sup>47</sup>

The Bombay study reported that the majority of children (74.6 percent) were sent to remand homes on charges of vagrancy or suspicion. In other words, they were arrested because the police considered them vagrants or suspected they might commit crimes or may have committed a crime. But these children were never formally charged with any offense.<sup>48</sup>

The Madras study found that 87.2 percent of children were sent to remand homes on "petty cases" or other charges not including drug peddling, loitering, theft, or robbery. The study commented:

This analysis would not be complete without a reference to delinquency. The cross tabulation reveals that 109 boys and only one girl of the total sample of 2,000 had been remanded to a juvenile house of correction, a very small percentage indeed. But out of this small number, the cross tabulation reveals that seven of these children are between the ages of six and ten years. A shocking revelation about our penal system that such small children should be remanded at all!<sup>49</sup>

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<sup>47</sup> Nandana Reddy, *Street Children of Bangalore: A Situational Analysis* (NOIDA: National Labour Institute, 1992), p. 43.

<sup>48</sup> D'Lima and Gosalia, *Street Children of Bombay: A Situational Analysis*, p. 51.

<sup>49</sup> Joe Arimpoor, *Street Children of Madras: A Situational Analysis* (NOIDA: National Labour Institute, 1992), pp. 16, 40.

The homes function as virtual prisons. Nationally, the capacity of the homes is estimated at 350,000.<sup>50</sup> According to lawyers and NGO representatives working with children, the homes are poorly maintained, inadequately staffed, and are not rehabilitative. In addition to the appalling conditions, NGO representatives, lawyers, and children themselves consistently alleged physical abuse and sexual abuse. A lawyer working with children in the remand homes told Human Rights Watch:

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<sup>50</sup> Gupta, "Juvenile homes are like jails."



The situation in remand homes is just as bad as what happens in the police station. The masters and older boys beat and molest the younger boys, there is rampant bribe taking. The conditions are bad.<sup>51</sup>

The case of **Habib**, a twelve-year-old unlicensed porter at the Bangalore Central Railway Station exemplifies the treatment children are subject to in the remand homes. He told Human Rights Watch about an incident that occurred in August 1995. He was walking to a shelter for street children to watch a movie on the shelter's VCR when a group of "crime police" affiliated with the Railway Protection Force (RPF) of the Bangalore Central Railway Station picked him up in a jeep. He was detained as part of a round-up. Habib told us:

They took me to the RPF lock-up where there were around forty other children like me. The police checked all of us for money and took it all. Then they started to beat us with lathis. Two police hit me on my feet, knees, and hands. They called me foul words and insulted me. I was beaten for ten minutes, then they beat others. They were just beating us. After they beat us, they sent all the boys under sixteen to the observation home.<sup>52</sup> The older boys were taken to clean the station.

At the observation home, I was stripped and a guard with a crippled hand was there. He told us to call him "Daddy." He made us face a pool of water, then he told us to look at all the pictures of Gandhi, Nehru, etc. on the wall. While we were doing that, he would walk behind us and kick us into the pool of

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<sup>51</sup> Human Rights Watch interview, Bombay, December 14, 1995.

<sup>52</sup> A social worker in Bangalore told Human Rights Watch on January 12, 1996, that every Thursday, juvenile magistrates check the observation homes. If they are empty, the RPF rounds up children from the railway stations and sends them to the homes.

cold water to make us clean. Later he would just make us stand while he kicked us and we could not move. When “Daddy” was tired of beating us he gave the younger boys to the older boys—they get the boys of their choice. The older boys are called monitors and they beat and molest the younger boys. I was in the remand home for about three months and then let go.

The treatment in the observation home Habib described is similar to the treatment **Ram** reported he experienced in an observation home in Bombay. The account that follows is drawn from his statement, provided by a lawyer representing him whom Human Rights Watch spoke on December 12, 1995, is summarized below:

Ram is from Uttar Pradesh and left home when he was around seven years old. In 1991, he was working as a ragpicker near Kalyan Bus Depot, collecting scrap iron and steel and selling it. He and his associates, Bansilal and Rajesh, both aged twelve years, were caught one morning at around 10:00 a.m. and taken to Kalyan Bus Depot by the police constables. The constables beat them and asked them where they had sold the scrap. After the boys told them, they were taken to the police station where they remained for three hours. They were made to stand with their bodies bent forward while they were repeatedly asked their age. When it was confirmed that they were “juveniles,” they were taken to the remand home in Bhiwandi.

At the remand home, Ram was subjected to constant beating for one month. This was done by the older inmates at the instigation of the house master. The house master, in order to elicit total obedience from the new boys, hit them on the slightest provocation. He hit boys with a belt, hockey stick, cricket bat, or any other instrument; if the boy was injured, the master would claim that he had fallen down.

After a month, Ram was elevated to the status of an “older boy” and told to hit the new entrants. Refusal to beat the boys led to torture: the house master would place a weight on the recalcitrant boy’s head, make another boy sit on each thigh, and beat the boy with a cane. Seeing other boys go through it, Ram quietly complied with the house master’s orders. Boys who had visitors were targets and their gifts were taken away. One night at 2:00 a.m., Ram along with a dozen other boys was called by the house master who hit them, opened the door and told them they could escape. But he warned them that if they were caught, then he would break their bones. None of the boys left.

Ram’s case was brought before the juvenile magistrate. After nine months, he was charged with theft, admitted his guilt, and was released with help from an NGO working with street children.

Children in remand homes have died as a result of severe beatings and other forms of torture. On March 6, 1996, fourteen officials, including six caretakers, two welfare officers, three cooks, and a chowkidar (security guard), of the Kasturba Niketan remand home in the Lajpat Nagar area of New Delhi were suspended in connection with the death of an eleven-year old boy, **Rohit**, who was allegedly beaten to death by an eighteen-year old boy, Dabloo. Rohit had been sent to the remand home after having been arrested for loitering. Apparently he had tried to escape from the home on March 2, 1996 and as punishment, a caretaker had ordered Dabloo to beat him. The *Times of India* reported that the caretaker, Subash, had been arrested on March 4, 1996 because he had told Dabloo to “teach Rohit a lesson.”<sup>53</sup>

*The Statesman*, a Calcutta-based national daily, reported that Dabloo had forcibly taken Rohit, rubbed oil on his body, forced him to bathe, and then hung him upside down from a wooden beam on the ceiling. Then Dabloo beat Rohit on his heels, back, and stomach. Later that evening, Dabloo beat Rohit again. On the morning of March 4, Rohit did not respond to calls of other children in the home and when the caretakers found him, he was dead. Children in the home said that despite Rohit’s repeated cries for help none of the three caretakers on duty tried to investigate the source of the screams. This allegation was corroborated by the officer-in-charge of the Lajpat Nagar police station, Vijay Singh Chauhan, who said, “Despite being on duty, not one of them [the fourteen remand home personnel] informed a senior official about the thrashing.”<sup>54</sup>

According to the post-mortem report, the body revealed several injury marks which could only have been inflicted over a prolonged period of time. The report also revealed cigarette burns on Rohit’s genitals and observed signs of sexual abuse “which casts a shadow on the condition of other children in the Home.”<sup>55</sup>

*The Statesman* also reported that:

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<sup>53</sup> *Times of India* (Delhi edition), “14 Officials of Remand Home Suspended,” March 7, 1996.

<sup>54</sup> Nandini Bose, “11-yr-old Inmate ‘Beaten to Death’ in Delhi”, *The Statesman* (Calcutta edition), March 5, 1996.

<sup>55</sup> *The Statesman* (Calcutta edition), “Delhi Inmate Died of Torture: Report”, March 10, 1996.

Residents of the area had also alleged that they would hear frequent screaming from the children's home and were convinced that the children were subjected to torture on more than one occasion.<sup>56</sup>

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<sup>56</sup> Ibid.

On July 30, 1996, fourteen-year-old **Hira** reported to the *Times of India* that after he had been found on the streets by police, he had been detained in the Lajpat Nagar Remand Home for five years. Originally from Madhya Pradesh, the boy left home at the age of nine on an “impulse” which led him to Delhi. The police rounded him up on the street and he was sent to the Lajpat Nagar Remand Home. His parents were never notified of his detention and said, “We searched for our first-born for many months after he was missing. We thought he was dead.”<sup>57</sup>

Hira alleged that while in the home, he had been subjected to constant torture by Dabloo, who was arrested for killing Rohit. Hira recounted one incident of being beaten because he forgot to clean a teacher’s room:

I was asked to strip down to the waist, made to lie on the floor and my body was oiled. Then I was beaten with a stick until I fell unconscious.<sup>58</sup>

On May 8, 1996, one hundred juveniles detained in the Rajkiya Kishore Graha juvenile home escaped, claiming that “...food shortage and atrocities had forced them to flee.”<sup>59</sup> The district magistrate, Ashok Kumar, concurred with these claims:

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<sup>57</sup> “Remand Home Inmate Tortured,” *Times of India* (Delhi edition), July 31, 1996.

<sup>58</sup> Ibid.

<sup>59</sup> D.S. Kunwar, “It Is Better to Live on the Streets than in this Hell,” *Times of India* (Delhi edition), May 17, 1996.

[T]he inmates were indeed living in sub-human conditions at the juvenile home. Severe beatings and denial of food by the home officials had driven the boys to desperation and forced them to flee.<sup>60</sup>

The conditions in the home led one boy to say that, "It is better to live a life on the streets than lead a hellish life here."<sup>61</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

There is some statistical evidence of conditions in the remand homes nationally. A number of the joint UNICEF and Ministry of Labour studies which interviewed street children who had been in the homes found that the majority of children reported that their treatment by staff at the homes and the provision of basic necessities in the homes was "bad," as Table 3.1 illustrates:<sup>62</sup>

**Table 3.1**

Conditions In Remand Homes			
City	Total Number of Children Who Had Been Institutionalized	Percent of Children Who Reported Treatment by Staff as "Bad"	Percent of Children Who Reported That the Provision of Basic Necessities was "Bad"
Bangalore	48	75.0 (36)	91.7 (44)
Bombay	126	75.4 (95)	53.2 (67)
Madras	110	83.6 (92)	71.2 (79)
<b>TOTAL</b>	<b>284</b>	<b>Average: 78.5 (223)</b>	<b>Average: 66.9 (190)</b>

On July 28, 1996, the National Human Rights Commission announced that it would begin to investigate the conditions in juvenile homes in several Indian states.<sup>63</sup> Unfortunately, this investigation is likely to be subject to the same

<sup>62</sup> Sources of data for Table 3.1 are: Reddy, *Street Children of Bangalore: A Situational Analysis*, pp. 42-43; D'Lima and Gosalia, *Street Children of Bombay: A Situational Analysis*, p. 51; and Arimpoor, *Street Children of Madras: A Situational Analysis*, pp. 40-41.

<sup>63</sup> "NHRC Will Inquire Into Juvenile Homes," *Times of India* (Delhi edition), July 29,

limitations to which all of the commission's investigations are subject, a problem discussed in detail in Chapter VII.



#### IV. TORTURE

*The criminal justice system in our country should be reviewed for making it more purposeful and effective. The criminal is happy with the court proceedings, with the law of the land, with the punishments imposed by the courts and with the easy life and comforts in the jails and is unhappy only with the police investigation and their preventative measures involving torture and harassment.*<sup>64</sup>

*It is therefore reasonable to believe that a certain complacency arising from authority derived from law motivates some policemen to resort to violence against those held in their custody, lawful or otherwise.*<sup>65</sup>

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<sup>64</sup> I. Ravi Arumugam, Inspector-General of Police (Planning and Coordination)-Madras, "Custodial Violence and Deaths: Problems and Prevention," paper presented at a one day symposium titled "Custodial Violence and Deaths: Problems and Prevention," sponsored by the Indian Society of Victimology, Department of Criminology, University of Madras, January 29, 1994, p. 16.

<sup>65</sup> R.K. Raghavan, Additional Director General of Police-Madras, "Custodial Violence and Deaths-Problems and Prevention," paper presented at a one-day symposium sponsored by the Indian Institute of Victimology, Department of Criminology, University of Madras, January 29, 1994, p. 3.

Torture, usually in the form of severe beatings with fists, lathis, or other instruments, and kicking is a common feature of police treatment of street children.<sup>66</sup> Beatings themselves are used extensively as a means of investigation, punishment, and retribution. As an NGO representative in Madras told us:

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<sup>66</sup> Torture of adults is common as well. Every NGO representative Human Rights Watch spoke to during our investigations described these methods of torture used by police against street children.

Regardless of the situation the police beat the children. I have seen broken bones, broken teeth, bruises, etc... The older a child is, the more horrible the treatment. They will tie boys down in a spread-eagled position and beat them, use knives or needles, they will hang them up by the arms and beat them brutally.<sup>67</sup>

The brutality of police in the course of investigating crime, especially in investigations of crimes against property, and as a form of retribution or punishment are acknowledged characteristics of police behavior. A senior state police officer, Inspector-General I. Ravi Arumugam, himself described this behavior in a paper he presented in 1994. An excerpt of his extraordinary statement, including the two charts which he used to describe illegal detention, torture and punishment, follows:

The police short-cut is brutality and it has become a way of life. In a house breaking case, the process of making enquiries from various people, from the Modus Operandi Bureau and from the various fences of stolen property takes time: for the normal police officer it is faster to catch the servant in the house, hammer him and if it works and, at his instance, some stolen property is recovered well and good, otherwise tough luck for the complainant; the case goes undetected. Of course, in India, the most superior short-cut is not to register the burglary at all; harass any one who comes to the police station so that an ordinary citizen would think several times before coming to report an offense. Brutality works even better in handling a law and order situation. And, sadly enough, under pressure it seems to be the natural response of police, regardless of country. Yet the desired change in police behaviour is not an impossible undertaking. The general awakening of society against police brutality is a good sign.<sup>68</sup>

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<sup>67</sup> Human Rights Watch interview, Madras, March 13, 1995.

<sup>68</sup> Arumugam, "Custodial Violence and Deaths...", pp. 11-13.

Inspector Arumugam then provided these charts to illustrate his point:

**Table 4.1: This table was presented by Inspector-General Arumugam to illustrate the normal procedure for investigation compared to the “short-cut” investigations which he said occurred in India.**

SHORT CUT INVESTIGATION	NORMAL INVESTIGATION
Offence Reported	Offence Reported
1. Visit to spot	1. Visit to spot
2. People including complainant questioned	2. People including complainant questioned
3. If available, scientific evidence collected	3. If available, scientific evidence collected
4. Await result	4. Await result
5. Suspect(s) identified	5. Suspect(s) identified
6. <b>Suspect put through Third Degree 'Confesses'</b>	6. Suspects questioned
7. Recovery of property or weapon of offence made at instance of suspect	7. Alibi statement of suspect is verified by movements
8. Case put up in Court	8. Traveling to places for verification
	9. Questioning people regarding suspect's whereabouts
	10. Case built up
	11. Suspect(s) confronted with evidence collected against him
	12. Pressure of evidence against suspect mounted
	13. If stolen property or weapon of offence made at the instance of suspect
	14. Fences questioned
	15. Suspect confronted
	16. Recovery of property or weapon of offence made at the instance of suspect

SHORT CUT INVESTIGATION	NORMAL INVESTIGATION
	17. Case put up in court
Brutality: 8 Steps	Legality: 17 Steps

**Table 4.2: This table was presented by Inspector-General Arumugam as an example of how the police actually deal with a “Goonda” (A term for a habitual criminal).**

SHORT-CUT: ACTION AGAINST A GOONDA		
SHORT-CUT	SHORT-CUT #2	NORMAL LAW
<b>1. The Goonda is caught and hammered</b>	1. Reports of cognizable offences registered against the Goonda, usually last three years collected	1. Complaints recorded
	2. Non-cognizable reports also compiled	2. Goonda watched: his activities and his associates
	3. Goonda's activities kept under observation	3. Report filed in Magistrate's court for action under Section 110 Code of Criminal Procedure
	4. Details of preventive action taken already compiled	4. Interim order
	5. Goonda file examined in S.P. [Superintendent of Police] office	5. Witness examined
	6. District Magistrate moved, warrant issued by District Magistrate	6. Adjournments
	7. Goonda arrested	7. Defense evidence concluded
	8. District Magistrate reports to Government within 10 days	8. Goonda bound over for good behaviour for 6 months
<b>If he misbehaves, he is beaten up again</b>	9. State Government confirms District Magistrate's detention order	9. Again misbehaves

SHORT-CUT: ACTION AGAINST A GOONDA		
	10. High Court confirms detention order	10. Report filed in court
	11. Goonda in detention	11. Court may call witnesses
	For externment, District Magistrate examines witnesses of prosecution and defense	12. Court orders forfeiture of bonds
		13. Notice to sureties issued
		14. Await reply
		15. Order issued to attach property
		16. Auction and realization of amount
		17. Goonda free
<b>Brutality: 1 or 2 steps</b>	Preventative Detention Act or National Security Act. Externment: 11 steps This is also a short cut	Normal Law: 17 steps Goonda free

## ABUSES ASSOCIATED WITH THE INVESTIGATION OF CRIME

During the course of crime investigations, expedience is not the only reason police resort to brutality. Section 25 of the Indian Evidence Act states that confessions made to a police officer while in custody are inadmissible. The provision is intended to prevent police from torturing suspects to gain confessions. But Section 27 of the Indian Evidence Act allows evidence obtained through confessions into court through a back door.<sup>69</sup> For example, if a suspected thief is

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<sup>69</sup> Section 27 of the Indian Evidence Act states: "Provided that any fact is deposed to as discovered in consequence of information received from a person accused in any offense, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." This provision runs contrary to the doctrine in other common-law jurisdictions such as the United States and the United Kingdom which hold that evidence derived from illegal interrogation

tortured into telling the police the whereabouts of stolen property or other facts not amounting to a confession, the police can then seize the stolen property or investigate the other facts and use this evidence against the accused. The justification of torture to obtain admissible evidence under Section 27 of the Indian Evidence Act is well known and acknowledged by senior police officers, as Inspector General I. Ravi Arumugam observed in his 1994 paper:

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or other illegal means is inadmissible because of the tainted means used. This is known as the “fruit of the poisonous tree doctrine.”



In [the] Indian Evidence Act, section 25 says that, “No confession made to a police officer shall be proved as against a person accused of any offence.” This clearly shows... how a policeman is regarded in our country. Until this suspicious concept is removed from the law book, the police may harp on getting some evidence for the “hard-nut to crack criminals” under section 27 IEA, they are forced to use violence to extract information in a case.<sup>70</sup>

However, instead of arguing that torture should be eliminated from investigations or that Section 27 should be amended or removed from the Indian Evidence Act because it leads to torture, Inspector-General Arumugam argues that Section 25 should be eliminated, thereby removing a suspect’s only legal protection from torture when evidence is being gathered by police.

The police routinely torture children in order to obtain both evidence and confessions, as the case of Shantanu illustrates.

**Shantanu**, along with a friend, committed a robbery at a wedding in Bombay on December 31, 1992. Eight days later, on January 8, 1993, two plainclothes police officers, Sheikh Sahab and Arun Hawaldar, came to Shantanu’s house at about 10:00 a.m. and took him to the D.N. Nagar Police Station in Bombay.<sup>71</sup> The following is the account Shantanu gave of his case:

At the station Shantanu was taken to a “separate enquiry room” where he was asked to put his hands on a table, palms up, and was then beaten with a police baton on the hands. After about an hour, the person who filed the complaint came to the station and identified Shantanu as the robber. Once identified, Shantanu was taken back to the enquiry room where the police hung him from the ceiling and proceeded to beat him for about forty-five minutes with police batons on the shoulders, back, and thighs. Following this, he was forced to lie on a block of ice

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<sup>70</sup> Arumugam, “Custodial Violence and Deaths...,” p. 2.

<sup>71</sup> His written statement was given to Human Rights Watch by a lawyer working on his case on December 12, 1995.

while his legs were held in place by police. The police hit him whenever he tried to move. Then he was taken outside and made to lie in the sun for two hours while police asked him where the stolen property was kept. When he said that he did not know where the property was, the police beat him.

Two days later, while Shantanu was still in custody, the police brought his parents to the station and threatened to beat his parents if he did not confess to the robbery. He confessed, the stolen property was recovered, and the police released his parents. The police then beat him and told him to confess to any crimes he had committed in the past. He was kept in the police station for ten more days. During that time, Sheikh Sahab would take Shantanu to the beach and ask him to escape so that he could shoot him. Shantanu claimed that Sahab tortured him because Shantanu had once fought with Sahab's brother.

On January 18, 1993, Shantanu was produced before the 10th Metropolitan Magistrates Court at Andheri in Bombay. The police falsely recorded his age as nineteen, even though he was fifteen. The police brought him before the court with his face covered and he could not hear the court proceedings. Shantanu reported that he had been tortured so badly that he could not stand, and two policemen had to hold him up during the proceedings. Despite this, he was remanded to police custody for eight days, during which the police beat him for five days. Then he was sent to the Bombay Central Prison.

The inspector-general of the prison was not convinced that Shantanu was an adult and asked the magistrate to provide age verification. Upon seeing his birth certificate, the inspector-general sent him to an observation home where he was subjected to frequent beatings by the house master. One day before his release, Shantanu struck the house master, which led to his remand being extended by one month.

Upon his release, when Shantanu was presented before the juvenile court, the magistrate asked if he had been mistreated by police. Shantanu stated that he had and as a result Sheikh Sahab was suspended and Shantanu's case was dismissed. Shantanu spent the next twenty days in the hospital as a result of the torture he received in police custody and in the observation home.

Police also torture possible witnesses, accomplices, or people who were near a crime scene into revealing the identity and location of the perpetrator. Although it is illegal under Section 160 of the Code of Criminal Procedure to detain males under the age of fifteen and females of any age who are not suspects, this tactic is extremely common. On January 11, 1995, between 2:00 and 3:00 a.m., six boys, aged twelve to fourteen, who had been sleeping at the Triplicane Railway

Platform in Madras were detained by two plainclothes police officers.<sup>72</sup> These police officers are known as “crime police”; they are plainclothes officers in charge of investigating theft and robbery.

The boys told Human Rights Watch that the police officers woke the boys up and took them in a jeep to the D-1 Police Station in Triplicane, Madras. When they arrived at the police station, the boys were placed in the station’s holding cell or “crime cell.” There were three older boys (possibly seventeen or older) in the cell with them. A total of nine people were in the twelve-by-fifteen-foot cell, which had no toilet. **Rajiv** told us that the police threatened to put him in the “minor jail” (an observation home) if he did not confess. **Vikram** told us that when he woke up and saw the police with lathis, he feared he was going to be beaten.

After about three hours, at approximately 6:00-6:30 a.m., three plainclothes officers entered the cell and brought a table with them. They forced all nine detainees to place their hands, palms down, on the table and proceeded to beat the boys’ hands with lathis. Then they made the boys turn their hands over and proceeded to beat their palms.

The boys told Human Rights Watch that the beatings continued for approximately thirty to forty-five minutes. The police then stopped and told the boys that some auto parts, a gas cooking stove, and 10,000 rupees had been reported stolen from a lawyer’s house which was near the Triplicane railway platform. They told the boys to confess or to tell them who committed the theft. According to Vikram, the police said, “Only if we beat you will you tell us the truth. If you do not tell the truth, we will beat you more.”

Then the police made four of the boys sit down “ladam” style, a position in which a boy sits on the ground with his hands behind his back and his legs straight out in front. The police then beat the four boys with lathis on their legs, feet, and soles of their feet. The other five boys, who were made to sit in a corner of the cell and watch, were periodically beaten with fists and lathis.

Vikram told Human Rights Watch:

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<sup>72</sup> Human Rights Watch interviewed three of the boys Rajiv, Vikram, and Suresh on March 13 and 15, 1995.

They made me and some others sit down ladam. Then they said: "You better tell the truth in five minutes or we will beat you more." Then they just started to beat my feet and legs with lathis. I kept telling them that I was in a Red Cross program learning horticulture training.<sup>73</sup> I kept telling them that I didn't know anything, but they kept on yelling at us and beating us.

Suresh told us:

I told them that I was a ragpicker and didn't do such things. I told them to call the NGO and they [the police] would see that I was telling the truth. But they just kept beating us. Even when we said we didn't know anything, they just beat us.

The beatings continued until approximately 8:30 a.m., when mothers of the boys began to arrive at the police station. Neighbors had apparently told the boys' mothers that they were at the police station. The mothers came individually and were allowed to feed the boys. Vikram asked his mother to contact the NGO he was affiliated with in order to help secure his release.

At about 10:30 a.m., the police told the mothers to leave. The boys told Human Rights Watch that police then proceeded to beat the children with their fists and lathis. They continued to tell them to confess and threatened them with more torture. Rajiv told Human Rights Watch:

When my mom left, they came back in [the cell] and told us to "Tell the truth." They yelled at us and called us filthy things and beat us. One policeman with a bald head and a short lathi screamed and beat us very hard.

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<sup>73</sup> See "Street children turn gardeners," *Indian Express* (Madras edition), March 26, 1995.

Vikram added:

They kept beating us and told us to confess. They called us “fucker” and other filthy things. Another policeman told them, “What is this, you shouldn’t hit such small boys.” This made them stop, but when he left, they beat us even harder.

According to the boys, this treatment continued until approximately 12:30 p.m. The police then stopped and left the boys in the cell. No case had been registered. At approximately 3:30 p.m., an NGO representative arrived and demanded that the boys be released. He had been informed of the boys’ whereabouts by some of the boys’ mothers. The boys were released at approximately 6:00 p.m. All the boys were fingerprinted, their names and addresses were recorded, and the reason they were taken into custody was recorded. No charges were filed. Vikram told us that it was very difficult to walk because of the pain in his legs, so he and the other boys had to hold each other and walk slowly, but he was “glad to leave the station.”

The NGO representative who saw these boys at the police station told Human Rights Watch:

Whatever the police want from the children, you can always guarantee they will beat them. For our boys, they weren’t beaten that badly.<sup>74</sup>

The children said that they were kept in police custody for approximately fifteen to sixteen hours in total, of which they reported that they spent approximately four-and-a-half hours being beaten.

Human Rights Watch was told by several NGO representatives and lawyers that sometimes the police are aware that their methods are illegal and as a result torture children in ways that are less conspicuous. An NGO representative in Bangalore explained:

The types of injuries seen are those associated with severe beatings. The police are careful not to go too far and attract public attention. They won’t beat the head or face because then

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<sup>74</sup> Human Rights Watch interview with the NGO representative, Madras, March 15, 1995.

the magistrate might be suspicious, or the public. Some children are chained for days at a time.<sup>75</sup>

**Sanjiv's** experience is indicative of this. He was seventeen at the time of this incident. We interviewed a lawyer working on his case on December 12, 1995, who provided us with Sanjiv's statement:

Sanjiv dropped out of school after the fourth grade and was living in Matunga, Bombay with his parents. One of his friends, Yusuf, was involved in thefts and would frequently give stolen items to Sanjiv for safe-keeping until Yusuf claimed them. Sanjiv's parents were not happy with his activities, so Sanjiv slept on the streets, outside his house.

On March 21, 1991, four police officers from the Matunga Police Station had come to his neighborhood inquiring about a theft. Several boys in the area told the police that Sanjiv might be involved in the crime and told them where Sanjiv lived. At approximately 2:30 a.m. on March 22, 1991, Sanjiv and two of his acquaintances, Kanhaiye and Vijay, nineteen and seventeen respectively, were taken to the Matunga Police Station. The police made Sanjiv lie on his stomach on a bench and tied him down. Then they beat him on his feet and back while the police told him to give them the whereabouts of Yusuf, who was wanted in connection with a theft. Sanjiv refused to reveal Yusuf's whereabouts, but Kanhaiye and Vijay revealed the whereabouts of a hut that contained the stolen property, and the police took Sanjiv there. The police, along with Sanjiv, then went to Yusuf's house in Chembur, Bombay. Yusuf was not there, but his brother was, so the police beat Yusuf's brother and told him to bring Yusuf. His brother promised to send Yusuf to the police the next day.

The next morning, Sanjiv was produced before the metropolitan magistrate at Bhoiwada in the Dadar area of Bombay. The magistrate remanded him to fourteen days of police custody. The first two days, Sanjiv reported that he was not tortured, but following this, the torture began. He was made to stand with his hands tied to two stationary poles while police hit him with a wooden pole all over his body, including his face. Then his legs were tied and placed in a tire and he was beaten on the legs. After the beating, the police made him "exercise his legs" so that there would be no signs of torture.

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<sup>75</sup> Human Rights Watch interview, Bangalore, December 10, 1995.

Sanjiv was implicated in thirteen cases and remanded for two-and-a-half months to police custody, during which he was again badly beaten. He was then sent to Bombay Central Prison where he reported mistreatment at the hands of prison guards and inmates. While in prison, he came in contact with an NGO and now works for the same NGO.

The torture of children as a part of investigating crime is extremely common, as the following cases from Bangalore, Madras and New Delhi illustrate.

**Kalasipalyam Police Station - Bangalore, July 7, 1995:** Satish, sixteen, and Ayappa, twenty, were taken into custody by the Kalasipalyam Police Station for selling peanuts and cigarettes near a shop. This shop was robbed the next day, and the two boys were taken in for questioning. The boys pleaded that they knew nothing, but reported that the police beat them. After five days, an NGO secured their release. No charges were filed.<sup>76</sup>

**K-3 Police Station, Madras - September 1995:** Shiva was sixteen and he had been on the street since 1992. He comes from the outskirts of Madras. He came to the street because he had no father, his mother was a drug-addict, and his twelve-year-old sister became pregnant. He decided to work as a ragpicker to help his sister and earns twenty to thirty rupees a day (\$0.57 to \$0.86).

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<sup>76</sup> The information is from interviews by Human Rights Watch and the written record of an NGO representative who works with Satish interviewed by Human Rights Watch in Bangalore, January 12, 1996.

He told Human Rights Watch that he was picked up by the police in September 1995 because they wanted information on a friend. He was taken to the K-3 police station and questioned about the whereabouts of his friend. The younger police officer started to beat him with a lathi, yelled at him, and asked him where his friend was. When he said he did not know and that he was an "NGO kid,"<sup>77</sup> an older officer said, "Do not beat NGO kids," and the younger officer stopped.

After this they searched his rag-bag. They found plastic scraps, which they said may have been from stolen goods and kept him at the station overnight. They did not beat him any more.

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Some are very good and they say don't sleep in the road, be careful. Some are very bad and they beat us brutally and take the money from our pockets.<sup>78</sup>

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**Vyalikaval Police Station - Bangalore, September 9, 1995:** Murugan, aged thirteen, was apprehended by police from the Vyalikaval Police Station on September 9, 1995, at 6:00 a.m. on suspicion of stealing 4,000 rupees from the house where he worked as a car cleaner. The money had been lost one week earlier and the owner's wife had accused him of taking the money. Murugan had been waiting to collect his salary for the past seven months so that he could return home. A constable at the police station informed the NGO representative, who managed to get Murugan released, obtained his back pay for one-and-a-half years and sent him home to his family. Before being released, Murugan was again beaten by the police and given no food for the entire day.<sup>79</sup>

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<sup>77</sup> The local NGO working with street children is known to the K-3 Police Station and children in the program are told to tell the police that they are part of the NGO so police will notify NGO representatives that "their" children are in custody. Consequently, these children are referred to by police as "NGO kids."

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<sup>78</sup> Human Rights Watch interview, Madras, January 5, 1996.

<sup>79</sup> This incident was documented through interviews and the written account of the NGO representative responsible for working to get these children released from police custody. The NGO representative discussed the case with Human Rights Watch and provided this written account. Interviewed by Human Rights Watch in Bangalore, January 12, 1996.

**Railway Protection Force Police Station - New Delhi Central Railway Station, New Delhi, December 1995:** Girish was fourteen. He worked as an unlicensed porter at the New Delhi Railway Station. He was taken by the Railway Protection Force (RPF) to the RPF police station in late November-early December 1995. Girish told Human Rights Watch:

I was sleeping in the parking lot when the police came. They asked me who stole 10,000 rupees from a passenger. They said the passenger had left his suitcase at the station. I said I didn't do it. Then they asked me to name who did, but I didn't know anything. They took me to the station and two police started to beat me all over with lathis. They kept on saying, "Name the person," and beating me. I kept on telling them I didn't know anything, but they just beat me. They did this for about an hour and then they let me go. They didn't file any charges.<sup>80</sup>

#### OTHER SITUATIONS IN WHICH TORTURE IS USED

The torture of children in the course of investigations was only one situation where children are tortured. In some instances, the police detained and beat children because they claimed it was a method of crime prevention.

**Mohammed's** experience was indicative of this. We interviewed him in Bangalore on January 12, 1996. He told us that when he was a luggage porter at the bus stand, he was picked up by the police in January 1995 and taken to the Upparpet Police Station in Bangalore. Mohammed told Human Rights Watch that he was sitting on a railing at the bus stand with about nine to fourteen other children when eight or nine police officers came and rounded them up; when they asked where the police were taking them, the police beat them with lathis.

They were all taken to Upparpet Police Station where they were forced to move confiscated items, such as weapons and drugs, to a storage room. They were not beaten, and were released when the work was done.

Two days later Mohammed was sleeping at the bus stand. Around midnight he and two others were picked up by about eight uniformed police officers

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<sup>80</sup> Human Rights Watch interview, New Delhi, January 1, 1996.

and taken to the police kiosk at the bus station. No reason was given. Mohammed told Human Rights Watch that he was then made to sit, holding his ears with his hands through his legs—the “murga” or cock—position, and that policemen beat him for an hour with lathis on the soles of his feet and knees, saying: “If we don’t beat you, you will commit crimes.” Afterwards, they released him without charges.

Approximately eight months later, **Raju** was subjected to similar treatment at the Upparpet Police Station. He was apprehended by the police on August 18, 1995. The NGO representative who helped secure his release wrote this about the incident:

Raju from the Bus Stand was apprehended by Upparpet Police Station for loitering in the area. [He was] kept in [the] lock-up, beaten, and abused in bad language, so as to prevent him from committing any crime. This is the reason given by the police regarding Raju who is a high school student, earning his livelihood by cleaning private buses, vans, and cars.<sup>81</sup>

“Preventative torture” is one symptom of the overall lawlessness of the police; another is the use of torture and beatings as a form of pre-judicial or extrajudicial punishment. The Andhra Pradesh Civil Liberties Committee, a human rights organization, described this aspect of policing in a 1995 report on custodial deaths in Andhra Pradesh:

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<sup>81</sup> Written account of social worker who was in charge of going to the police station. Interviewed by Human Rights Watch in Bangalore, January 12, 1996.

The habit of “teaching lessons” on somebody else’s behalf by the unlawful use of force is an aspect of a more general habit that the police have cultivated. This is the habit of acting as judge and executioner rather than as merely the police. This attitude has been allowed to develop, and has been implicitly sanctioned and encouraged by the political establishment. Whatever the niceties of the penal jurisprudence developed by civilised thought, in India it is in the police lock-up that the investigation, trial and punishment of crimes takes place. Often, the three take place simultaneously or even in reversed order. The punishment starts before the investigation begins, and it is in the course of dealing out the punishment that the investigation is completed and the judgement delivered, including a possible verdict of not guilty. And the norm of punishment is preventive and retributive, not reformative.<sup>82</sup>

This behavior was also acknowledged by a senior police officer who said that, “A strong sense of professional duty and little faith in the judicial system has sometimes led the police to take justice in their own hands and to do away with as many common criminals as possible.”<sup>83</sup> Police punish children as a means of discipline and as a form of retribution. In general, the tendency of the police is to resort to beatings and torture, and the reasons for the violence are often arbitrary or incidental.

The case of **Bhaskar** is an example of how little provocation is necessary for the police to retaliate against street children. Bhaskar was selling illegal movie tickets in Bangalore on July 2, 1995. He was beaten by the crime police affiliated with the Upparpet Police Station, apparently to punish him for having previously mocked the police and having run away from them. The NGO representative who helped to secure his release from custody wrote:

Bhaskar, aged fifteen, was badly beaten by the crime police at Upparpet Police Station for making faces at the police on a

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<sup>82</sup> Andhra Pradesh Civil Liberties Committee, *Complaint to National Human Rights Commission on Deaths in Police Custody, Andhra Pradesh, January 1984 - July 1995* (Hyderabad: Andhra Pradesh Civil Liberties Committee, 1995), p. 21.

<sup>83</sup> Arumugam, “Custodial Violence and Deaths...,” p. 10.

previous occasion while running away after selling cinema tickets in black [scalping tickets]. He was released the next day with a warning.<sup>84</sup>

**Sharad**, a fifteen-year-old ragpicker was caught in the act of stealing milk cartons in January 1995. The police of the V-1<sup>85</sup>, Villevakkam Police Station in Madras, apprehended, beat, and released him. Sharad told us:

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<sup>84</sup> Written account of social worker who was in charge of going to the police station. Interviewed by Human Rights Watch, Bangalore, January 12, 1996.

<sup>85</sup> Police stations in Madras are often identified by a letter followed by a number, as well as their colloquial name.

I took some milk cartons from a house and the police caught me and took me to the police station. When I got there the police officer started beating me with a lathi all over my body. He kept on saying: "Don't do this again." He never used abusive words. He beat me for ten minutes, then made me sit in the station. I was caught in the morning and they let me go in the evening. When I was there, I saw about five other boys sitting in the cell. The police made them remove all of their clothes, except their underwear, and started to beat them with lathis. I don't know why.<sup>86</sup>

In the bus terminals and train stations of India's cities, police routinely beat street children as a result of a reported theft or other crimes. A study on street children in Delhi observed:

The other major problem faced by street children is that they are often nabbed by police for crimes they have not committed. For example, a lady passenger's necklace was stolen for which all the boys at the station were rounded up and put in the lock-up for two weeks. They are mercilessly thrashed and sometimes put in lock-ups under charges of vagrancy, gambling or street brawls or sent to remand homes...<sup>87</sup>

The previous description, published in 1992, accurately describes what happened to fourteen-year-old **Ramesh** in the Police Chouki at Delhi's Interstate Bus Terminus (ISBT), in June 1995. He has been on the street since 1991 when his father was seriously injured in a bus accident. He left home to work and help support his father and at the time Human Rights Watch interviewed him, earned about ten to twenty rupees a day (\$0.26 to \$0.57) as an unlicensed porter at the bus station. The Police Chouki is a small station within the station's premises and is

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<sup>86</sup> Human Rights Watch interview, Madras, January 5, 1996.

<sup>87</sup> Panicker and Nangia, *Working and Street Children of Delhi*, p. 22.

under the control of the Kashmiri Gate Police Station. Ramesh told Human Rights Watch:

A stranger came to the ISBT and had his luggage stolen. Around 10:00 in the morning, the police picked me up because I am an unlicensed porter and took me to the chouki [police station at the station]. They told me to bend over and grab my hands behind my calves and hold my ears, in the “murga” (cock) position. The police told me to stay in that position until the officer in charge came. I waited, then the officer came and started beating me with a lathi. He made me stay in that position while he beat me. He called me the son of a prostitute, thief, and other things. I had to stay like this for two or three hours while he beat me. After that they told me I could move, but I couldn’t stand because of the position I was in.

The police then told him to stay in a corner of the police station. While in the corner, four or five policemen beat and verbally abused him. Ramesh told us that, “Some police are humane and will give you food and let you go to the toilet, but not that day.” The police then recorded Ramesh’s name and address, then made him sign a blank piece of paper, but Ramesh was not sure what it was. He was released sometime between 6:00 and 7:00 p.m. Ramesh said that he had been detained by the police on at least five occasions and whenever a theft occurs, the police will apprehend children and beat them. Ramesh said:

If they arrest us, we should not be beaten like this. They should be human. We aren’t thieves, we are just working to live.<sup>88</sup>

As the previous cases illustrate, children are routinely beaten by the police for a variety of reasons. Ramesh was one of several children who told Human Rights Watch that they had been subjected to beatings by the police on multiple occasions and for different reasons. The experiences of Manik and Surinder are similar.

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<sup>88</sup> Human Rights Watch interview, Delhi, January 1, 1996.

Beginning in 1992 at the age of fifteen, **Manik** was harassed and beaten by police several times. His story was provided by a lawyer working on his case.

Manik has studied up to the eighth standard (eighth grade) and lived with his father, stepmother and younger stepbrother. Manik had friends involved in petty thefts and when he was fifteen years old, he committed a petty theft along with his friends. He was arrested by the watchman of the building, who was a witness, and taken to Kherwadi Police Station. There Manik was stripped of his clothes, a rod was passed through his armpits and he was beaten by a wooden bat on his hand and on his head. The beatings continued from 7:00 a.m. until 6:00 p.m. He was not given anything to eat. After he confessed to the offense, he was then taken to the observation home at Umerkhadi where he underwent a medical check up and was treated for the bruises on his back. He was then taken to Nagpada Police Hospital for age verification. After he was produced before the juvenile court magistrate, his father furnished bail and Manik was released.

Although Manik severed his relations with his friends, the police often arrested him because they suspected him of criminal activity. The police on three occasions registered false cases of theft against him and later released him. On some occasions, they would arrest Manik while he was asleep at night and beat him up.

In December 1992, Manik and a friend, Bhanwar Singh, were stopped in their car by police from the Azad Maidan Police Station at about 1:00 a.m. When Bhanwar Singh was unable to produce a license and car papers, they were taken to the Azad Maidan Police Station. The police forced Manik to lie on a bench and beat him until they broke his leg. He was repeatedly questioned on his involvement in the theft of the car. His legs were swollen and he could not stand. He was produced before the Metropolitan Magistrates Court at Esplanade next day. The police threatened to break his other leg if he told the magistrate how his leg had been broken. When Magistrate J. Basu asked him why he could not stand, Manik first lied, saying he had fallen. But when the magistrate repeated the question, Manik told the truth and asked to be given judicial custody. The magistrate asked him if he wanted to prosecute the police. Manik declined. He was then remanded to judicial custody for one day and directed to be sent to the hospital for medical treatment.

He was taken to Bombay Central Prison, which was overcrowded with prisoners arrested during an outbreak of communal violence that had occurred at that time. Two days later he was taken to the hospital and given an injection, but the pain did not ease. On the orders of the magistrate, he was given a medical examination, but although he told the doctor what had happened to him, and despite the fact that he could not even walk, the doctor reported him to be fit.



Manik was named as the main accused in the case. He was initially remanded to fourteen days custody, then further remanded to an additional fourteen days, and was then granted bail. Although he claimed he had been falsely implicated, on the advice of the magistrate he pleaded guilty and was released on probation in January 1993. A social worker who had been sent by the magistrate visited Manik at home and got him a job as a lawyer's clerk.

Two months after Manik's release, policemen from Azad Maidan Police Station came to his house at 2:30 p.m. and took him to Azad Maidan Police Station in their jeep, allegedly for work. In the jeep, they threatened Manik that they would get even with him. He was taken to the lock-up and his hands and feet were tied. The inspector who examined Manik's record saw a letter to the police station written by the social worker asking for Manik not to be arrested. The inspector questioned Manik about the social worker's organization. Manik showed him the identity card he had received from the NGO. After the questioning, Manik was untied and in the morning he was released. He immediately contacted the social worker who went to the police station and was informed that Manik had been called in for a routine inquiry. At the time Human Rights Watch reviewed his case, Manik was training with the NGO.<sup>89</sup>

**Surinder** was fifteen when we met him. He dropped out of school after the fifth standard (fifth grade) and came to Delhi from Bihar in 1994 to find work. He worked as an unlicensed porter at the Interstate Bus Terminus and earns between thirty and fifty rupees (\$0.86-\$1.43) per day. We interviewed him at the bus station on January 1, 1996, when he recounted three incidents involving the police from the Police Chowki there.

In August 1995, he was carrying the luggage of a passenger. When he asked for ten rupees (\$0.29) as payment, the passenger refused and would only give him five rupees. They began to argue and push each other, so the passenger called the police. Two police officers started to beat Surinder and took him to the police station. There, they beat him with lathis on his hands and arms while they accused him of being a thief. He reported that other police watched this, but nobody intervened on his behalf. After the beating ended, the police told him to leave the bus station and released him.

On December 29, 1995, as he was watching a card game at the bus station, two police officers started to beat the card players and spectators with lathis and accused them of gambling. The police took Surinder to the police lock-up, which held two other detainees. Surinder told Human Rights Watch:

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<sup>89</sup> Statement received from lawyer, Bombay, December 12, 1995.

There were three police in the station and they told us, "If you do not pay money, we will chargesheet you and send you to jail." We only had one hundred rupees [\$2.86] between us, but we gave it to them. They didn't think this was enough so they started to beat us with lathis. Then I guess they realized this was all we had so they took the money and let us go without filing charges. Some police will take money and release you, some police will take money and keep you in the lock-up or send you to jail. The police are very, very bad.

Two days later, on December 31, 1995, as Surinder was again watching a card game, a policeman came and beat him on the arms and hands and with a lathi and told him to go away and to stop watching people gamble.

## V. EXTORTION

*In reality cynicism protects a policeman from any feeling of revulsion against either corruption or brutality. He starts ensuring that he would not be cheated out of the prize.<sup>90</sup>*

Corruption, in the form of extortion, reinforces the use of custodial violence. With street children, extortion by police is an integral part of the processes that perpetuate illegal detention and custodial violence. The police prey on street children for money.

When children are arrested, they or their guardians are asked to pay money in order to get them released. This is true whether the charges are fabricated or real. The police threaten the families and children by telling them that their children will be beaten, kept in custody, or sent to jail if they do not pay. In one case reported to Human Rights Watch, the police told children and their families that failure to pay would lead to the deaths of their children.

In detention, it is standard operating procedure for the police to take whatever money is in the child's possession.

Children working on the street as ragpickers, porters, shop vendors, or shoe shiners have all reported the payment of *hafta* (protection or kickback money) to the police. Failure or inability to pay usually results in a child's being beaten, detained, or arrested by police. In some cases, payment is no guarantee against further extortion.

The link between torture and corruption has been described by former deputy inspector, and former director of the National Police Commission, Shailendra Mishra:

With a policeman, the reputation for expert brutality fetches more money than actual brutality, but, of course, the reputation has to have a solid foundation. Once a policeman acquires a reputation for expert third degree he makes enormous quantities

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<sup>90</sup> Arumugam, "Custodial Violence and Deaths...", p. 8.

of money in daily crime work by simply withholding customary brutality.<sup>91</sup>

As with the case of torture in general, extortion and brutality are not limited to the investigation of crimes, but certain types of investigation, specifically crimes against property, are notorious for their promotion of corruption, as the Andhra Pradesh Civil Liberties Committee noted:

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<sup>91</sup> Shailendra Mishra, *Police Brutality: An Analysis of Police Behaviour* (New Delhi: Vikas Publishing House, 1986), pp. 62-63.

Investigating theft cases is a lucrative business for the police. The one who has lost property will pay, the one into whose hands the stolen property has passed will pay, and even the one who is falsely accused of stealing or receiving stolen property will pay, provided that all the violence that the police are capable of is brought to bear on the matter. And that is why theft charges turn up so frequently in the list of custodial killings. We emphasize this point because in all the discussion that usually takes place on the causes and reasons for custodial violence, the factor of corruption is downplayed, though it is a very important factor. The police routinely extort money from people they lock up, not only on theft charges but any charge or even no charge at all.<sup>92</sup>

The amount of money paid to police largely depends on the child's (or his family's) ability to pay and the discretion of police. In Madras, Delhi, and Bangalore, social workers and children told Human Rights Watch that unlicensed porters have to pay approximately 50 percent of their earnings to the police as a form of protection money. A social worker in Bangalore stated that policemen extort amounts ranging from fifty to eight thousand rupees (\$1.43 to \$229) from a detainee or their family. According to the People's Union for Civil Liberties (PUCL) report on the death of Satish Kumar, the thirteen-year-old boy who died after being held in police custody, the police asked parents of one detainee to pay a bribe of 20,000 rupees (\$571). The range Human Rights Watch encountered was from ten to 2,500 rupees (\$0.29 to \$71). A 1993 study on the justice system in Bombay found that the average non-legal expenditure incurred at a police station was 557 rupees (\$15.90), with a minimum payment of ten rupees (\$0.29) and a maximum payment of five thousand rupees (\$143).<sup>93</sup>

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<sup>92</sup> Andhra Pradesh Civil Liberties Committee, *Complaint to National Human Rights Commission on Deaths in Police Custody...*, p. 18.

<sup>93</sup> Pawar, *Justice Processing Sans Justice...*, pp. 108-109.

The fact that police extort money from street children is well known. In the *Third Report of the National Police Commission*, published in 1980, the commission reported several situations where extortion by police is common, including:

- Extorting money by threatening persons, particularly the ill-informed and weaker sections of society, with conduct of searches, arrests and prosecution in court on some charge or the other.
- Fabricating false evidence during investigation of cases and implicating innocent persons or leaving out the guilty persons on *mala fide* considerations.
- Extortion of periodic payments as *hafta* from shopkeepers, platform vendors, brothel keepers, promoters of gambling dens, and others.<sup>94</sup>

#### **ABUSES AND EXTORTION ASSOCIATED WITH INVESTIGATION OF CRIME**

Every child Human Rights Watch interviewed who alleged extortion while in custody in conjunction with a crime investigation had been detained on charges of theft or suspicion of theft, as the following cases illustrate.

**Firos** is a seventeen-year-old ragpicker who lives near the Valluvar Kottam in Nungambakkam, Madras.<sup>95</sup> In an interview with Human Rights Watch

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<sup>94</sup> National Police Commission, *Third Report of the National Police Commission* (New Delhi: Government of India, 1980), p. 26.

<sup>95</sup> The Valluvar Kottam is a monument to the famous Tamil poet Thiruvalluvar. It is about one block long and a prominent feature of Madras city.

he said that he earned about thirty rupees a day (\$0.86). He had a brother and an uncle, but because they live in a hut in a slum, he spent most of his time on the street. At the time of our interview, he was taking part in a non-formal education program run by an NGO two hours a day.<sup>96</sup>

Firos told Human Rights Watch that on Sunday, February 5, 1995, he was near the Valluvar Kottam when a woman and three men accused him of stealing some auto parts and a sari. He told Human Rights Watch:

I said I didn't do these things. They told me to come to their house and talk, but I was afraid that they would beat me if I went to their house. I told them to come to the NGO and we could talk there, but they wouldn't come. They started to beat me on the street. Even the woman beat me. They took me to the [Nungambakkam] police station and the woman told the police that I had stolen these things and that I should be put in jail.

The police took Firos and his four accusers left. Two uniformed police officers took him to a fifteen by fifteen foot storage room within the police station, adjacent to the jail cell. Firos described it as having a desk, bench, a single bulb, no windows, and some iron rods. Firos said that after bringing him to this room, the two police officers began to beat him with lathis and told him to confess to stealing. He said that when he fell as a result of the blows, the officers kicked him.

They took me in the room and started hitting me with lathis. They hit me on the arms, shoulders, hip, legs, knees. I fell down because they were hitting me so hard. When I fell they started kicking me with their boots. They kept saying: "You better tell us you stole these things or we will beat you more." They were yelling and kicking and beating me and calling me "fucker" and "thief."

Firos told us that this continued for approximately thirty minutes. Then the officers manacled one of his legs to the bench in the storage room. He was forced to crouch next to the bench as a result of being manacled. This put him between the

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<sup>96</sup> Human Rights Watch interview with Firos, Madras, March 17, 1995.

bench and a wall. With the exception of being taken to the toilet once a day, he was forced to remain in this position until he was released, three days later.

Later Sunday evening, another uniformed police officer came into the room. A second police officer came in later and told him to confess to stealing and then hit him with his fists while continuously telling him to "tell the truth." Firos said that there was no room because he was still manacled to the bench, and every time the policeman hit him, his head would hit the wall. Firos said that his head "was paining and everything hurt a lot."

Firos was left alone all night. He said he slept a bit, but was not given any food. The following morning, two uniformed police officers that Firos did not recognize came in the room.

Firos described what happened:

Two new police came in and they told me: "You better admit to stealing or tell us who did." They were hitting and kicking me and my head was hitting the wall. I told them I took a clutch wire from some vehicle on the street and that maybe M., V., and S. took those other things. I told them because I wanted them to stop beating me. They stopped beating me and asked for my address. I gave them my uncle's and then they left.

Firos remained manacled to the bench. Later that afternoon, Firos said his brother and uncle were brought by the police to the station. Firos said that his brother fed him, and that the police told his brother that he had admitted to stealing a "clutch wire" and that his brother should come back to the station the next evening. According to Firos, this was the first time in two days that he had eaten any food or seen anybody other than the police. He said he was left alone except when being beaten and questioned by the police.

The next evening, the NGO representative and Firos' brother came to the station to get Firos released. The police told them that since Firos had confessed, they would have to pay the police for his release. The NGO representative told Human Rights Watch:

The police told us: "He has said he stole auto parts and he has named other boys. You better pay us, otherwise we will keep him and file charges!" I refused to pay, but Firos' brother was scared and went to his uncle's to get money. The next day his



brother paid the police about 2,500 rupees [\$71.40] and they let Firos go without filing charges.<sup>97</sup>

**Narayana** is fourteen. He came from Nepal about two years ago because his friends told him that Delhi is a very good place where one could earn money and he had a “dream to make money in Delhi.” He is a fifth standard (fifth grade) drop out. When we spoke to him on January 1, 1996, he told us that he was working as a valet at the Interstate Bus Terminus in Delhi on November 27, 1995 when a customer refused to pay a three rupee (\$0.09) storage fee and tried to leave on his scooter without paying. The argument escalated into a fight. The customer beat Narayana and then called the police. A policeman was watching and took Narayana to the terminal’s police chowki. Narayana told us:

At the station I was made to stay in the murga position and three officers beat me with their lathis. They beat me like this for two hours. The police demanded money. They told me: “You’re in no position to bargain, you beat that customer.” They finally let me go when my boss paid them 300 rupees. I don’t work there anymore.

#### **ABUSES ASSOCIATED WITH THE PAYMENT OF PROTECTION MONEY**

The other way extortion is committed is through the payment of hafta—protection money. Children are either beaten on the street or brought to the police station and beaten; they are told that they must pay the police otherwise they will face beatings. Hafta is also required when children are involved in illegal activities. Children who sell “black” movie tickets told Human Rights Watch that they had to pay about 25 to 50 percent of their earnings to the police, otherwise they would be beaten, arrested, or both. At railway stations, children pay hafta in order to get around the minimum age requirements for obtaining a porter’s license and to avoid being arrested under laws which make it a criminal offense for a child to work in railway stations.

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<sup>97</sup> Human Rights Watch interview, Madras, March 17, 1995.

Many children who work in railway stations are migrants from other parts of the country and railway stations are their first entrance into a city. Faced with a new and unknown environment, no shelter, and no means of income, children stay in and around the railway station because it is covered shelter, it is perceived as "safe," there are other children there, and they can immediately begin earning money as self-employed, unskilled laborers, like railway porters. In this respect, the railway station, especially for unaccompanied migrant or abandoned children, represents an area where they can immediately begin to meet their survival needs.

The problem for children is that any work involving the "transport of passengers, goods, or mails," working as a food vendor, clearing ash-pits or cinder picking, and any work which "is done in close proximity [to] or between the railway lines" represent some of the occupations explicitly prohibited under the Child Labour (Prohibition and Regulation) Act, 1986.<sup>98</sup> Because most of these children are self-employed, this prohibition allows police to arrest children in accordance with the "delinquent juvenile" provisions of the Juvenile Justice Act, 1986, which defines offense as "any offence punishable under any law for the time being in force."

For older children, the situation is not much better. According to every NGO representative and lawyer who works with street children at railway stations that Human Rights Watch spoke to throughout India, the minimum age to obtain a railway porter's license is eighteen, thereby prohibiting any child from legally working as a porter. Those children who are too old to fall under the Juvenile Justice Act, can still be viewed as criminals because they are unlicensed.

By using threats of prosecution and beatings in exchange for hafta, the police have created a profit-making enterprise out of the increasing population of street children who come to railway stations in need of shelter and work to survive. In this way, the police exercise almost complete control over children who work at railway stations. But even when hafta is paid by children, it does not ensure protection from the police, as a 1992 study on street children in Delhi observed:

Street children who are self-employed such as porters, vendors and shoe blacks spoke of harassment from police and municipal authorities because they do not have licences to work. By paying

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<sup>98</sup> Section 3, The Schedule, Part A(1,2,3,4) of the Child Labour (Prohibition and Regulation) Act, 1986, explicitly prohibits these occupations. These provisions comprise four of the twenty-five occupations in which children are explicitly prohibited from working.

the officials the children get some respite from their harassment. While talking to Habib, a 15-year-old coolie, about police harassment, he mentioned small children usually pay the bribe out of fear. He does not any more give *hafta* (a bribe given every week) to the police as it did not guarantee trouble free work at the station.<sup>99</sup>

NGO representatives and lawyers working with street children interviewed by Human Rights Watch corroborated this account. The following cases describe a series of incidents involving unlicensed porters and the abuses they experienced associated with hafta payments to the police affiliated with the Railway Protection Force (RPF) police station at the New Delhi Central Railway Station.

Human Rights Watch interviewed fifteen-year-old **Rakesh** on January 1, 1996. Originally from Calcutta, where he had lived on the street, Rakesh had gone first to Bombay and then to Delhi where he has been working as a porter at the New Delhi Railway Station since 1993. He had never been to school. In June 1995, at about 2:30 a.m., he was sleeping on one of the New Delhi Central Railway Station platforms when eight policemen from the Railway Protection Force (RPF) woke him, along with three other boys and began to beat them with lathis. Then they took them to the RPF police station.

At the station, Rakesh was made to lie on his back with his arms outstretched. A policeman stood on each of his hands, then his legs were tied and placed in the air. He said that this happened to all four boys. Another policeman started to beat their legs and feet with lathis while the police called them thieves and sons of prostitutes. He said that he was beaten for a long time and so badly that his legs and feet bled.

The next morning the police sent the other children to observation homes, but they did not send Rakesh because they had injured him so badly they did not want a magistrate to see him. Instead they called two strangers who carried him back to the street. He was not charged with any offense.

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<sup>99</sup> Panicker and Nangia, *Working and Street Children of Delhi*, p. 22.

After he was left outside the railway station a friend took him to a nearby health van<sup>100</sup> where he had his injuries treated. He said that he had to walk with a cane for eight weeks because of the injuries he sustained. Rakesh told us:

If you work as a porter, the police beat you. On the same day I was beaten, someone stole 24,000 rupees from a suitcase. The police caught the thief and took 23,000 rupees for themselves and gave 1,000 rupees to the thief and then let him go. Then they beat us. If this happens regularly, then maybe we should stop working and start stealing so we can pay the police more and lead a better life. What can we do? In this condition people can do anything to fill the policeman's stomach and lead a good life.<sup>101</sup>

**Sabir** is fourteen. At the time Human Rights Watch interviewed him, he worked as an unlicensed porter at the New Delhi Central Railway Station. Sabir told Human Rights Watch that on November 16, 1995, he was detained by the RPF.

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<sup>100</sup> Health vans are run by NGOs and other organizations in an effort to provide basic health services in areas ignored by government.

<sup>101</sup> Human Rights Watch interview, Delhi, January 1, 1996.

Some friends and I were sitting on the platform. Somebody set fire to some rags on the platform. The police came and started to beat us with lathis, then they took us to the lock-up and made us sit murga position and beat us with lathis. They took all of our money; I had fifty rupees [\$1.43]. The police told us, "If you pay regular, we will not beat you, otherwise we will always beat you."

We were kept in the lock-up around fifteen hours. They didn't give us any food. To get food, you have to pay them. We were let go without being charged. The police are useless.<sup>102</sup>

**Susai**, a fourteen-year-old unlicensed railway porter at the New Delhi Railway Station, earned about fifteen to twenty-five rupees (\$0.43 to \$0.71) a day. Susai told Human Rights Watch about an incident at the RPF police station on December 1, 1995:

At around 9:00 p.m., I was waiting with some others for a train. Five policemen came and began to beat us with lathis. The police arrested me and three of my friends. They took us to the police station and beat us. They said, "If you clean the station, we will release you." So we cleaned the station. When we were done, they put us in the jail. This was late in the night. In the lock-up, the police beat us with their fists and lathis. They would say, "Don't sleep, this isn't your father's house," and beat us. They said: "If you pay us fifty rupees each [\$1.43], we will leave you alone." We did not have the money, so they kept us in the jail and beat us.<sup>103</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

The next morning, Susai told us that they were taken to the RPF Magistrate. He asked them what they did wrong and when they told him that they didn't do anything, he released them.<sup>104</sup>

Abuses involving extortion are, in large part, a result of an environment which has tolerated abuses in the normal functioning of police. In the absence of accountability for custodial violence, the police have evolved and refined the tactics of illegal detention and custodial violence to propagate a profit-making enterprise. Thus, remedies that seek to improve the investigative skills of the police as a way to reduce torture overlook one of the principal reasons for torture: In many cases, detention, ill-treatment, and torture have nothing to do with the investigation of a crime, they simply represent a way for the police to make money.

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<sup>104</sup> Ibid.

## VI. NGO INITIATIVES TO ADDRESS POLICE ABUSE OF STREET CHILDREN

*They [children] are kept in detention at the station for a few hours [or] up to six months (one case). Generally it lasts for a few days. No advocate or social worker is present. I only go if another boy or a family member informs me, otherwise I have no way of knowing. The police do not inform anyone.<sup>105</sup>*

Police abuse of street children is so common that it has forced NGOs to monitor the police to ensure that they do not break the law. NGOs working with street children have addressed the problem in several ways. The most common strategy, adopted throughout India, is for NGOs to directly intervene at police stations when children are reported to be in custody.

The following accounts describe a series of interventions by an NGO in Bangalore. They are from written accounts by the NGO representative who is responsible for going to the police stations when children are detained.

### **Goripalya Police Station - June 11, 1995**

Raju and Anand, aged twelve, and Yusuf, aged thirteen were taken to Goripalya Police Station for interrogation about a theft of 550 kilograms of iron from a nearby construction site. A security guard at the site had allowed the boys to sleep in the basement in return for some odd jobs the boys had performed. The police lured the boys to the station to speak to their sub-inspector; there they were stripped of their clothes, beaten on the knees and soles of their feet and knuckles. After the NGO's intervention, they were released after three and a half days.<sup>106</sup>

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<sup>105</sup> Human Rights Watch interview with an NGO representative, Madras, March 13, 1995.

<sup>106</sup> From the written account of the NGO representative who was in charge of going to the police station. Interviewed by Human Rights Watch in Bangalore, January 12, 1996. The following accounts were also obtained during this interview.

**Kengerigate Police Station - July 7, 1995**

Krishna, Anand, and Faisal aged fifteen, fifteen, and sixteen, were apprehended by police from the Kengerigate Police Station and accused of the theft of three plastic pots. They were beaten at the spot of arrest and again at the police station. They were asked to bring three brass pots and three thousand rupees (\$85.71) if they did not want to go to jail. One of them was kept in lock-up, while the other two were sent to bring the money and pots. The two boys went to the NGO. After the NGO called the concerned officials and then met with the crime sub-inspector, the other boy was released after two days.

**Vyalikaval Police Station - July 15, 1995**

Babu and Krishna, aged twelve and fourteen, were in Vyalikaval Police Station for nine days. The NGO discovered their whereabouts, but over the phone, the police denied any knowledge of the boys. When the NGO representative went to the station, she saw the boys; the older boy had been sick with a fever for the previous two days. After she wrote a letter to the commissioner and the concerned officer, the police released both of the boys the same day; Krishna was sent to the government hospital with a police escort.

**Railway Protection Force Police Station - July 26, 1995**

Anil, aged eleven, was apprehended by the railway police for being in possession of a bag with about fifty gold bars. He told the police that he had been carrying the luggage for a passenger who had disembarked from the train (Rajabhadri Express) and that the man had taken his other bag and suitcase to an auto-rickshaw and had never returned. Anil was beaten and suffered a one-inch cut on his forehead before the NGO was able to get him released from police custody.

**Railway Protection Force Police Station - October 26, 1995**

Four boys were very badly beaten by the Railway Protection Force (RPF), two had their arms fractured, one had his lips torn and lost two teeth. The NGO representative wrote to the railway commandant who ordered an inquiry and then the NGO pressured the officials to suspend the policemen who were responsible. The medical expenses were partly covered by the RPF.

**Kalasipalyam Police Station - December 12, 1995**

John, aged fourteen, was apprehended and taken to Kalasipalyam Police Station for interrogation about the murder of a woman in the market where he had been selling vegetables the previous day. The crime police beat him with the lathi



on his inner calves. The NGO representative, after three days of repeatedly going to the police station and calling senior police officers, was able to obtain his release.

Another common strategy to address the problem of street children and police is issuing identification cards to children in contact with the NGOs so that if a child is detained by the police, the child can show the I.D. card to the police who can then notify the NGO that the child is in custody. The cards are also a way of alerting the police that the children are affiliated with NGOs, so the police then understand that if the child is illegally detained or mistreated an organization will know about it. NGOs have tried to get police to officially recognize the system of I.D. cards, but as of September 1996, no police force has officially agreed to do so, limiting the effectiveness of the strategy. Also, children frequently lose the cards.

An NGO representative in Madras reported:

We have introduced the I.D. card system, but the I.D. card system doesn't work because every individual police officer may not know about it and may not respect it. Children may not use it.<sup>107</sup>

Some NGO representatives carry I.D. cards that have been signed by a high-ranking police officer. The card is used to gain access to police stations when NGOs learn that children are being detained, and is supposed to allow the NGO representative easier access to police stations and children. In some cases the I.D. card identifies the NGO representatives as the guardians of the street children. While some senior police officers have agreed to sign the I.D. cards, police stations frequently do not recognize them, often claiming that they do not believe the signature of the police officer is real.

Even when NGO representatives gain access to the police station, such interventions may not work. NGO representatives told Human Rights Watch that the police have denied that children are in their custody. Moreover, NGO representatives said that they have been denied access to children, verbally abused, asked to pay bribes for the children's release; and in one case, the NGO representative was detained and beaten along with the children. The following three incidents illustrate police responses to NGO representatives.

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<sup>107</sup> Human Rights Watch interview, Madras, January 3, 1996.

**Magadi Road Police Station - Bangalore, September 1995**

The social worker involved in this incident was given a “special police officer” designation by the Additional Commissioner of Police (ACP), granting her the powers of a circle inspector (a police officer who has jurisdiction over several police stations), who outranks any police officer at a police station.<sup>108</sup>

The social worker told Human Rights Watch:

One night a few months ago, we had heard some boys were in the station near Magadi Road. I went there with another lady in the program to the police station but the officer would not let us in. When I showed the officer my Special Police card, he said: “You think because you are some VIP that you can come in here, but I don’t care.” I told him that I was no VIP, that the ACP had given me this designation because I worked with street children, and that he should let me see the kids. He took our I.D. cards, looked at them and threw them on the street.

The NGO representatives told the police officer that it was their right to see the children, but the officer refused and verbally abused them, calling them names like “prostitute.” The NGO representative told us that after this:

I said, “If you do not let us see the children I will scream ‘rape’ and yell as loud as I can. Then there will really be problems.” Then he let us see the children. Afterwards, I calmly went to the street, picked up the I.D. cards, and left. I was shaking because I was so scared. The woman with me was terrified. I don’t think she will do that again.<sup>109</sup>

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<sup>108</sup> This designation is provided for under the Karnataka Police Act, Subsection 1, Section 19. NGO representatives told Human Rights Watch that this status is usually given to people who are wealthy or have political influence.

<sup>109</sup> Human Rights Watch interview, Bangalore, January 9, 1996.

**Kengerigate Police Station - Bangalore, November 4, 1995**

The same NGO representative in Bangalore learned that six boys aged fifteen to sixteen were apprehended and taken to Kengerigate Police Station, for no apparent reason. One of them was released in order to go to the NGO and bring 200 rupees (\$5.71) each for their release. The NGO representative called the deputy commissioner of police to complain about the matter but then took the money to the station. There were no police available, so she went back after some time and a constable took the money. She asked him to provide a receipt as a record of the payment. Instead, the officer gave back the money and filed charges against the boys. The boys were beaten and then brought to the court to pay a fine of 120 rupees (\$3.42) each.<sup>110</sup>

**New Delhi Central Railway Station - New Delhi, November 16, 1995**

Krishna Kumar Tripathi is a social worker for an NGO that works with street children. He had previously been a human rights activist for the People's Union for Civil Liberties (PUCL) in Delhi, and before that was an activist for the PUCL in Bihar.

Tripathi told Human Rights Watch that on November 16, 1995, he learned that the police at the New Delhi Central Railway Station were beating street children and went to intervene.

When he went to platform number ten at the station he saw uniformed and plainclothes police officers beating children. Tripathi went to the senior station manager, Mishree Lal, who had ordered and was supervising the beatings and asked him why they were beating the children. Lal had Tripathi's platform ticket (a ticket needed for a non-passenger to be on a train platform) torn up and ordered police to take Tripathi, along with some children to the police station. Tripathi was beaten by the police on the way to the police station, in a train conductor's office, and in the police station. He was detained in the police station's lock-up overnight where Tripathi alleged that police beat children throughout the evening. Tripathi was forced into a cell that was fouled with excrement.

Before he was presented to a magistrate, the police told him to plead guilty to the charges that the police were framing against him, namely being on a railway platform without a ticket and interfering with police function (not allowing police to beat children), otherwise he would be subjected to more beatings. Tripathi told the magistrate about his treatment and the magistrate fined him 753 rupees (\$21.50) and

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<sup>110</sup> Human Rights Watch interview, Bangalore, January 9, 1996.

released him. Even though Tripathi alleged misconduct by the police and the incident was publicized in the *Times of India*, a Bombay-based national daily, no investigation was launched into the conduct of police. A complaint was also made to the National Human Rights Commission. A full account of this incident is provided in Appendix V.

A longer-term approach to curb police abuses against street children began in 1994 when UNICEF, the Indian government's Ministry of Home and Welfare, and a Bangalore-based NGO working with street children initiated a "Police Training Curriculum." The curriculum is designed to sensitize police to the special problems that street children face and educate police about the provisions and implementation of the Juvenile Justice Act. UNICEF eventually expects this curriculum to be implemented at the national level, but as of September 1996, the preliminary training curriculum had just been submitted to UNICEF, and a program for implementation had not yet been finalized.

A pilot project was carried out by the NGO in Bangalore from 1994 through 1995. NGO representatives reported that during the training of the Bangalore police there were improvements in the way police treat street children, but noted that police abuses were still common. For example, from June 1994 to May 1995, the same period in which the NGO was implementing the police training curriculum, the NGO recorded 154 interventions at police stations, involving 198 children kept in police lock-ups. According to the NGO representative in charge of interventions, this was a rate of about one intervention every two days. The most common reasons for detention reported by the NGO were theft, "false cases filed by police and public," and harassment by the RPF.<sup>111</sup>

The main difficulties the NGO has reported is that they do not have the resources to train every police officer in the city and that while greater sensitization to the rights of children and the Juvenile Justice Act may reduce abuses resulting from a police officer's ignorance of the law or human rights standards, they have no effect on police who do not care or who commit abuses to further other illegal activities such as extortion or bringing false charges. Nevertheless, NGO representatives did feel the curriculum was a positive step and should be pursued nationally.<sup>112</sup>

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<sup>111</sup> Human Rights Watch interview with the NGO representative, Bangalore, January 12, 1996. BOSCO, Annual Report 1994-95, (Bangalore: BOSCO, 1995), pp. 19, 22.

<sup>112</sup> Human Rights Watch interviews with NGO representatives, Bangalore, December 10, 1995 and January 12, 1996.

Because some laws which prohibit child labor effectively criminalize specific groups of self-employed children, thus making them more vulnerable to the lawlessness of the police, many NGOs have sought to organize street children into trade unions. A number of NGOs have called for the amendment of the Trade Union Act to allow children to form trade unions as a means to provide them with a legal basis to protect their physical integrity and means of survival. NGOs in Bangalore and Delhi have attempted to form informal unions of street children. As a result of this experience, many NGOs working with street children are opposed to blanket prohibitions on child labor, arguing that such approaches do not take into consideration the repercussions of such laws on child laborers and the circumstances that force children to work.

NGO interventions and I.D. cards, while having a positive effect on reducing abuses against street children, suffer from several drawbacks, namely that they are not guarantees that police will stop mistreating children and that there are not enough NGO personnel to monitor every child to ensure that they do not face abuses by police. Most importantly, these initiatives, along with the police training curriculum, only allow for voluntary participation by police and do not mandate their cooperation, nor do they make police institutionally accountable for abuses. For these reasons, none of these efforts can be considered strong enough to actually eliminate or prevent police abuses against street children, and are no substitute for institutional and statutory measures aimed at stopping abuses and eliminating impunity.

## VII. CUSTODIAL DEATHS, IMPUNITY, AND THE NEED FOR REFORMS

*I remember a case when I was DIG [Deputy Inspector General Police] CID [Crime Investigation Department] in Orissa of an Inspector of Orissa Police posted in Karaput district who brutally kicked to death in the police station a bright school boy when the latter at the time of interrogation had the temerity to ask him that under which section of the law he had the authority to misbehave or use third-degree methods during the investigation of a case. The Inspector's blood was up. He gave two hard kicks with his boots on the chest of the boy and two in the genitals. The poor boy gave a loud shriek and breathed his last. The Inspector now tried with the help of the police station staff to show it was a case of suicide by hanging the body from a nearby electric pole. The investigation done by the CID team sent from State Police Headquarters unraveled the truth. The Inspector was prosecuted u/s [under section] 302 IPC [Indian Penal Code] for murder. But the Sessions Judge in a mood of clemency exonerated the officer of the charge of murder and convicted him under section 323 IPC for causing hurt. But nemesis overtook him. He lost his life in a road accident.<sup>113</sup>*

Custodial violence occurs because successive state and national governments have failed to implement any institutional reforms, such as the recommendations of the National Police Commission, to prohibit or prevent these abuses. Custodial abuse of street children is only part of the larger problem of custodial violence; the impunity enjoyed by police who torture and kill street children is shared by their counterparts in the security forces throughout India. This impunity occurs on three levels: the first is the impunity derived from the failure to register and acknowledge detentions, the second is a failure by authorities to

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<sup>113</sup> Sen, *Policing a Changing Society*, p. 53.

investigate custodial crimes, and the third is a failure by authorities to prosecute custodial crimes.

Custodial deaths are consequences of the most extreme form of custodial violence. In its 1994-95 *Annual Report*, the National Human Rights Commission observed that torture was the predominant reason for custodial deaths when it recommended that India ratify the 1984 United Nations Convention on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment:

The Commission believes that a further, major step is required to proclaim the impermissibility, in our country, of custodial deaths, rape, torture, and other forms of cruel, inhuman and degrading treatment or punishment. Accordingly... the Chairperson recommended that in this 125th year of the birth of Mahatma Gandhi, the Republic could best pay tribute to the values he embodied by acceding to the 1984 Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment... Referring to the prevalence of third-degree methods as a reason for custodial death, he asserted it was wrong to believe that investigations could not be successfully handled without recourse to such methods. Noting that a permissive approach towards the use of third-degree methods led to the violation of the fundamental rights of citizens, the Chairperson urged again that the use of third-degree methods and torture in investigation should be banned and eliminated.<sup>114</sup>

An NGO representative in Madras was more blunt about the reasons for impunity:

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<sup>114</sup> National Human Rights Commission, *Annual Report 1994-95* (New Delhi: Government of India, 1995), p. 17.

The lack of serious concern and political will to prevent custodial violence on the part of the state is one of the primary reasons for the increasing incidence of such crimes. As a general rule, even when a commission for Inquiry into such illegalities is ordered [this occurs] only when compelled by strong public and political reaction. The state ordering an independent inquiry *suo moto*, is rare... The indifferent attitude of higher echelons of Government to serious lapses on the part of police personnel at lower levels amounts to abetting illegality and emboldening the latter to continue indulging such atrocities. In such a "permissive" atmosphere, it is hardly surprising that the police feel no sense of accountability to the public for its misdeeds.<sup>115</sup>

In the case of custodial abuses, state governments, if the officers involved were state police, are responsible for initiating an investigation into the incident as if it were a criminal offence. Generally, the state orders an investigation only after media coverage or public protests. But even when an investigation is ordered, it is done by the police themselves, in some cases, by members of the same department or station in which the alleged abuse occurred, which is a major obstacle to adequate investigations and subsequent prosecutions or convictions, an issue discussed further below. Another obstacle is that medical examiners in India are employees of the police and are known as "police surgeons" who are subject to the same institutional pressures and biases as investigating officers. Consequently, investigations may not be reliable, and if the case proceeds to a judicial magistrate, the evidence may not be thorough or accurate enough to warrant a conviction; or as one former police surgeon told us, "Some police surgeons are 'real' police surgeons, they do whatever the police tell them."<sup>116</sup>

In a case in point, police initially said that thirteen-year-old **Satish Kumar**, who died in police custody on June 11, 1994, was never in custody. A report in the New Delhi-based *Indian Express*<sup>117</sup> and the protests of the local community

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<sup>115</sup> Mythily Sivaraman, "Custodial Violence with Reference to Women," paper presented at a one-day symposium titled "Custodial Violence and Deaths: Problems and Prevention," sponsored by the Indian Institute of Victimology, Department of Criminology, University of Madras, January 29, 1994, p. 9.

<sup>116</sup> Human Rights Watch interview, Madras, April 25, 1995.

<sup>117</sup> See *Indian Express* (Madras edition), June 12, 1994.



prompted the People's Union for Civil Liberties in Tamil Nadu (PUCL-TN), a prominent Indian human rights organization, and the Campaign against Child Labour (CACL), an organization working to eliminate child labor, to conduct a fact-finding investigation into his death.

According to their report, Satish Kumar was employed by a tailor, Vijay Kumar, in his shop in the Mylapore area of Madras. On June 8, 1994, Satish skipped work to go to a movie. On his way home, the staff of an electronics shop called Trillions and Trillions caught Satish and accused him of stealing. Babu, a friend of Satish's brother Senthil, told the fact-finding team:

A small boy came and told me that Senthil's brother had been caught by the shop staff of Trillions and Trillions. I immediately went there. Satish Kumar was tied up and kept in a corner of the shop near the cash counter. I asked the shop person what had happened and why they had kept the boy inside. They said he had stolen some watches from the shop and he had already stolen some video games from this shop before. My brother-in-law called the boy and asked him what he had done. He said he had picked up some fancy watches from the shop which had scattered down [fallen down]. My brother-in-law gave him one slap and chastised him for shaming his parents' name. I asked the shop persons to release this boy since he belonged to our area. Instead they rang up the police, saying they were doing it to scare the boy. The shop staff told us not to bother since they would release him soon. I came back thinking they would release Satish Kumar. I did not meet Senthil that day, so I told him the next morning.

No one had contact or knew the whereabouts of Satish until the next day, June 9, 1994, when a boy, Raju, told Satish's father, Kapali, that his son was in the police station. Raju had gone to the station to give food to another person detained in the station. At approximately 9:15 a.m., Kapali went to the police station to see his son and talk to the police. Kapali told the fact-finding team:

At that time my son came and cried to me. Then I asked the constable what had happened and why had they caught him. The policeman said that my son had stolen 5,000 rupees [\$142.86] worth of articles from a fancy shop named Trillions and Trillions, together with a few other boys. They could not catch all the boys

and only Satish Kumar got caught. The policeman said the boys had stolen some watches, video games, electronic goods, etc... He asked me to pay 2,000 rupees [\$57.14] for the release of my son. When I asked my son what he did, he told me that some other boys might have taken something from the shop and instead he got caught. He told me he did not steal anything. I saw my son in lungi [a garment, similar to a sarong] and shirt and he was crying in pain. He said he was caught by the shop manager, Muthukrishnan, and handed over to the police. I told the policeman that if the boy had really done something wrong, they should leave him in the juvenile home because I did not have such a big amount to pay. But the policeman said, "If you have money come, otherwise we will look after him." So I came back home.

Later that day, two policemen came to Kapali's house with Satish Kumar to search for the stolen goods. Kapali told the fact-finding team that the police asked him whether any stolen items were in the house and that Satish was only wearing a lungi and his hands were tied with a rope. The police found a small penknife and a keychain on Satish's person, which they confiscated. According to Kapali, the police kept on pushing and threatening Satish which caused him to cry. Kapali said:

My son started weeping and said he did not have anything else. I asked the policemen why they were taking him back when no stolen goods were found. They told me to shut up and that they knew how to take care of my son.

That same afternoon, Kapali went to Satish Kumar's employer, Vijay Kumar, and told him that Satish Kumar was in the police station and that the police had demanded 2,000 rupees for his release. As a result of this, Vijay Kumar went to the police station at approximately 8:00 p.m. to see Satish Kumar and speak to the police. Vijay Kumar told the fact-finding team:

Thursday evening at eight, I went with another person to the Mylapore police station and met Sub-Inspector [SI] Gopinath. I saw Satish crying and asking me to release him. I requested the SI to reduce the amount [of the bribe] since they [Satish Kumar's family] were very poor people. The SI asked me to pay 500 rupees [\$14.28]. Satish Kumar then requested me to pay 500

rupees and take him out and to deduct the amount from his salary. I noticed that Satish had been beaten up and he was crying in pain. Then I brought some tiffin [food] and gave it to him. I informed his father of the matter. But he said he did not have the money and if the boy had really done something wrong, he could be sent to the juvenile home for some time.

During Satish Kumar's detention, he was severely beaten and kicked by police officers. This was alleged by Ravi, a seventeen-year-old boy, who was detained in the police station at the same time in relation to another case of theft. Ravi told the fact-finding team that he and four other boys (Venkatesan, Kannan, Ranjit, and Madhukar) were apprehended by the police and detained for fifteen days. He described what he saw in the police station:

On the evening of June 8, 1994, I saw this boy, Satish Kumar, being brought by the policemen to the station. The police usually beat us every day [He showed some open injuries on his hands]. Like that they beat Satish Kumar. Again on June 10, they took Satish Kumar into the SI's room and beat him severely. We could hear only the voice of the boy who was screaming loudly and crying. After sometime they brought Satish out and gave us all some iddlies [steamed rice cakes] to eat. We all sat together (including Satish) and had the food. After some time, we saw the boy [Satish] vomiting the food with blood. We called the policemen and told them. In front of us, a policeman immediately kicked the boy in the stomach with his boots. I saw the boy's eyes becoming yellow. Immediately the police shoved us into the lock-up. Afterwards, I do not know what happened to the boy.

According to the fact-finding report, the statements of the other three boys, Venkatesan, Kannan, Madhukar, and Ranjit were published in the June 22, 1994 issue of the Madras-based magazine *Junior Vikatan*. All of these boys were in custody from May 31, 1994 to June 11, 1994, the same day that Satish Kumar died.

According to Ranjit's statement:

Inspector Krishnamurthy and Sub-Inspector Gopinath beat Satish Kumar repeatedly with a big causerina [a type of wood] stick,

"This is hockey style. How is it?" asked SI Gopinath, laughing. At twelve o'clock, they brought Satish Kumar to the lock-up, and Satish asked for water. The Inspector warned us not to give him water. After some time, Satish Kumar started vomiting blood. They immediately took him out. When some policemen asked for Satish Kumar, SI Gopinath said he had gone home. They also threatened me, "Pay ten thousand rupees [\$285.71] or you will also vomit blood like Satish Kumar."

Venkatesan confirmed this, and said:

In front of me, SI Gopinath asked my mother to pay 20,000 rupees [\$571.42] for my release. The whole night my mother stayed in the police station. Under the influence of liquor, SI Gopinath shouted at my mother, "If you don't have the money, then send me your daughters." My mother kept quiet, weeping to herself. The next day the police grabbed all the household articles and materials from my father's vulcanizing shop. In front of me, they hit my father and mother for money. They also grabbed my mother's one-fourth sovereign [gold] ring.

Kannan told the fact-finding team:

They [police] beat my brother and father for money, so that my father gave 1,000 rupees [\$28.57]. They told my father, "That is not enough, sell the cattle and bring money, otherwise we will not leave your son alive." Poor Satish Kumar was crying all the time saying, "I did not steal, I did not steal."

The fact-finding team reported Madhukar's statement to the magazine:

Among the boys, they hit me severely and asked me to name the pawnbroker's shop where I had sold jewels. I refused to tell any shop's name. Afterwards they took my mother to my native village of Nugambal. On the way, they had some liquor and hit my mother. Due to the death of Satish, they remanded us to jail in a hurry. We were caught by the police ten days ago, but we were asked to tell the magistrate we were only caught the day before, otherwise we would have to meet the same fate as Satish.

Satish Kumar allegedly died in the early morning of June 11, 1994. According to the fact-finding report, earlier that evening an auto-rickshaw driver, C. Srinivasan, was asked by Sub-Inspector Gopinath to drive him around. Srinivasan initially refused, but he was threatened by Gopinath, two other policemen, and a man named Antony. He took these four people in his auto and told the fact-finding team what happened:

First we went to a slum in front of Stella Maris College. Antony showed the police the houses of some of his relatives sought by the police. Then they brought into the auto another man, about twenty-five years of age. I was asked to proceed to Mylapore and drop him at the police station. Then we again went to Visalatchi Thottam [the name of the slum]. From there the constables brought another man, aged around thirty-five, and pushed him into the auto. Again we dropped him at Mylapore PS [police station]. Then SI Gopinath and a constable asked me to drive to Hotel Samco at Alwarpet. The hotel was closed. SI Gopinath asked me to proceed to Hotel Select. SI Gopinath and the other constable had drinks at the hotel. The constable remained there. SI Gopinath asked me to take him to his house at Kottur. At this point the meter showed 67.40 rupees [\$1.93]. Gopinath said the fare would be paid at the police station the next day. Then I came back to Luz Corner.

After fifteen minutes, about 1:30 a.m., early on Saturday, June 11, 1994, the two constables attached to Mylapore PS asked me to come along with them. I went with them to C.I.T. Colony [a housing project]. There were two constables there on patrol duty. They asked the patrol constables to come along, but they refused. Then we went to Srinivasapuram police quarters to call somebody, but no one came. They asked me to come to Triplicane, but since there wasn't sufficient petrol in my auto, I refused to go. They even called me to come to Bazaar Road. Again I refused. Then I dropped them at Mylapore PS.

While I was waiting for the fare, I had gone to the rear side of the police station. I heard somebody crying in pain. When I enquired about this with the constable, he said a boy was

suffering from stomach pain, diarrhoea, and vomiting. I requested them to admit the boy to a hospital. The constable said permission from higher officials was required for that. They asked me to take him to a hospital, but I refused to take this risk. Then they asked me to take him to his house. At first I did not agree, but when they said they would also accompany me, I agreed to take the boy.

The boy, I noticed, could not walk. The constables had to lift him and drag him into the auto [rickshaw]. Two constables accompanied the boy in the auto. When we reached Kapali Thottam [Satish Kumar's neighborhood], they stopped in front of the boy's house. The three of us carried the boy out and laid him on a cycle-rickshaw we found nearby. Then I dropped them at the station again. They too told me to come the next morning for the fare. The next day they only gave me thirty rupees and threateningly asked me to leave.

A woman who lived in Kapali Thottam, Rajam, saw the driver and the two constables transporting Satish Kumar to the empty rickshaw. She told the fact-finding team:

I went to take some water from the outside [hand] pump. It would have been around 2:30 [a.m.]. It was dark. I saw an auto coming. Three persons from it carried a small boy and laid him on a rickshaw nearby and went off. Then the rickshaw man came and asked the boy to get up. The boy woke up and crawled to an auto just opposite the rickshaw and lay down inside it. I thought someone was not feeling well. I could not recognize the face of the boy because it was dark. Afterwards, I went inside and left for work early morning. That is all I know. When I came from work, I saw the boy's mother crying and came to know about this incident and told them what I had witnessed.

The owner of the cycle-rickshaw confirmed to the fact-finding team that he found Satish in his rickshaw at around 2:30 a.m. and asked Satish to move so that he could sleep. According to the fact-finding report, Satish woke up and crawled to a nearby rickshaw. At approximately 5:45 a.m., an unidentified woman told Satish

Kumar's parents that their son was unconscious and lying outside. Kapali, Satish's father told the fact-finding team:

I immediately rushed down and saw Satish. His face was changed, his eyes were yellowish and he had some swelling underneath the stomach. I rushed him to Royapettah Government Hospital. The doctors took some time to respond to us. When the doctor examined Satish, he said that the boy had been dead for at least three hours. Then the body was taken for post-mortem.

The state government initially suspended four police officers, including Inspector Krishnamurthy, and then prosecuted them, but on February 15, 1996, all four officers were acquitted of any wrongdoing. *The Hindu* (Madras edition), a Madras-based national daily, described the verdict:

The Magistrate in his order said that it was clear from the report of the Forensic Department that the boy, Satish Kumar, had died of acute dehydration and there were no marks on his body to indicate that he was subjected to violence. There was lack of evidence to prove the guilt of the accused beyond a reasonable doubt, he pointed out and acquitted all the four accused, Krishnamurthy, Inspector, Gopinath, Sub-Inspector, and Karuppaswamy Pandian and Jayabalan, Grade I constables.<sup>118</sup>

In response to widespread reports of human rights abuses throughout India, in 1993, the Congress (I) government created the National Human Rights Commission under the Protection of Human Rights Act of 1993. On December 14, 1993, the commission ordered all the State Governments and Union Territories to direct all district magistrates or superintendents of police to submit a report in any case of custodial death or custodial rape to the commission within twenty-four hours of the incident. The commission said that a failure to do so would "lead to a presumption by the Commission that an effort was being made to suppress knowledge of the incident."<sup>119</sup> The effort has not been entirely effective, as the commission reported:

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<sup>118</sup> *The Hindu* (Madras edition), "Policemen Acquitted", February 16, 1996.

<sup>119</sup> *Ibid*, pp. 16-17.

In response to these instructions and from the reports received, it appears that a keener sense of responsibility is being created, but much remains to be done to consolidate it.

The commission does not have an independent investigative apparatus, but must rely on other government bodies and personnel to investigate cases of abuse. It does have the power to compel testimony as in a civil court, but statements made to the commission are not admissible in a trial. Moreover, the commission's decisions are non-binding and its findings are only recommendations. State governments and union territories have discretion to send reports to it but are not obligated to do so. For these reasons the commission relies on press reports and submissions by victims, lawyers, nongovernmental organizations, and state legal aid boards to provide information on cases of alleged abuse. Many cases of abuse go unreported because the victim is intimidated by police, unaware of how to complain, or unwilling to lodge a complaint. There are frequently no press reports of such incidents and organizations do not know about the allegations and cannot file complaints on the victims' behalf. As a result, the number of complaints is far less than the actual number of incidents of custodial abuse. Finally, the commission's investigations, by mandate, have a statute of limitation of one year from the time the alleged abuse occurred; therefore, the commission is unable to initiate any investigation into incidents that are more than one year old although once initiated, investigations are not curtailed by any time limit.<sup>120</sup> The most recent statistics and statements available from the commission, illustrate the problem of not having a truly independent investigative body. In its 1994-95 *Annual Report*, the commission reported that there were 1,660 "particularly grave cases" which the commission investigated. The commission noted:

It will be seen that 111 of these cases relate to death in police custody, fifty-one to death in judicial custody and nine to death while in the custody of other State agencies (the Armed Forces or the Forest Department). It will also be seen that 497 cases relate to allegations of various forms of police excesses, including the use of torture or third-degree methods in interrogation, while 114 cases allege illegal detention... While the cases relating to custodial death and rape invariably originated in reports from

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<sup>120</sup> The Protection of Human Rights Act, 1993; Section 36(2).



State agencies themselves... The other cases were generally based on complaints by those who were themselves victims of ill-treatment, or those representing them.<sup>121</sup>

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<sup>121</sup> National Human Rights Commission, *Annual Report 1994-1995*, p. 31.

On September 16, 1996, the commission reported that there were 444 reported deaths in custody throughout India from April 1995 to March 1996, almost triple the number of custodial deaths reported over the same period in 1994 to 1995. But the commission attributed this increase to “a greater honesty in reporting incidents” as opposed to an actual increase in custodial deaths.<sup>122</sup> The commission said in its 1994-95 *Annual Report* that “the Commission is of the view that instances of custodial death and rape are now generally being reported to it, and not being covered-up...” which does not adequately explain how there could have been a three-fold increase in the number of custodial deaths in 1995-96, if the commission believed that custodial deaths were properly reported in 1994-95, and there was no real increase in custodial deaths in 1995-96.<sup>123</sup>

The commission has frequently recommended payment of compensation to victims or victims' families in cases of state abuse. According to the Supreme Court of India, compensation is provided under Article 32 of the Indian Constitution and was made precedent in the case *Nilabati Behara v. State of Orissa, 1993*. But these recommendations are non-binding and cannot be enforced by the commission. Compensation can only be recommended after alleged abuses have been investigated and payment only occurs after the recommendation is agreed to by the state government. Compensation is not a measure designed to prevent abuses but a measure to alleviate the suffering of victims and their families.

The commission has also recommended prosecutions of abusers, but these recommendations are also non-binding. The case of **Raja Murugan**, a fifteen-year-

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<sup>122</sup> “Custody deaths in India almost treble in 12 months,” Agence France Presse, September 17, 1996.

<sup>123</sup> National Human Rights Commission, *Annual Report 1994-1995*, p. 32.

old boy who died in police custody in the state of Tamil Nadu on January 30, 1994,<sup>124</sup> provides an example of a successful intervention by the commission.

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<sup>124</sup> All information and documents cited concerning this incident were obtained from the case file of the Tamil Nadu State Legal Aid and Advice Board and represents their correspondence with the National Human Rights Commission, the local police, and local legal aid boards concerning this incident, which was given to Human Rights Watch in March 1995.

On February 2, 1994, the Tamil Nadu Legal Aid Board sent a letter to the commission notifying it that a newspaper report in *The Hindu* stated that Raja had disappeared after being taken into police custody.<sup>125</sup> Upon receiving the letter, the commission issued a notice to the Hosur Police Station requiring it to provide the details of the incident. K. Radhakrishnan, Superintendent of Police (SP), responded to the commission's request by letter.

According to police, Raja was arrested by the Hosur police on October 10, 1993 and sent to the observation home at Dharmapuri for his involvement in the theft of unspecified items worth 765 rupees (\$21.86). Raja escaped from the observation home on November 22, 1993 at approximately 3:00 a.m. Consequently, a magistrate in Hosur issued a warrant for the arrest and production (to the court) of Raja on January 18, 1994.<sup>126</sup>

On January 28, 1994 at approximately 7:30 p.m., Raja was brought to the Hosur Police Station voluntarily by his brother and presented to Sub-inspector Muthamiah Muthalvan. Raja was not immediately sent to an observation home, but kept in police custody. On January 30 at approximately 3:30 p.m., Venkatammal, a suspect who was being interrogated by police in connection with a case of female infanticide, went to the toilet where he discovered Raja's body hanging from the ceiling. Sub-inspector Muthalvan then transported the body to a car and drove it to

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<sup>125</sup> Letter dated February 1, 1994 from the Tamil Nadu State Legal Aid and Advice Board addressed to the commission. The article reference was "Hosur tense after boy disappears," *The Hindu* (Madras edition), February 1, 1994.

<sup>126</sup> Letter dated February 2, 1994 from K. Radhakrishnan, Superintendent of Police to the Secretary General of the National Human Rights Commission.

an unknown location. Muthalvan returned to police station at approximately 11:00 a.m. on January 31, 1994.<sup>127</sup>

On the same day, Raja's father, Muniappan, submitted a written complaint to the Hosur Sub-collector alleging that his son was missing from the police station and asking that his son be found and returned to him. The sub-collector forwarded the request to Hosur's assistant superintendent of police who conducted an informal inquiry into the whereabouts of Raja. The inquiry revealed that Raja had committed suicide on January 30, 1994 by hanging himself and that Sub-inspector Muthalvan had disposed of the body. Based on the findings, Muthalvan and constables Duriasamy and Sharief were suspended, a missing persons case was registered, and a formal investigation was initiated.<sup>128</sup>

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

Initially Muthalvan claimed that Raja had tried to hang himself and when police were transporting him to the hospital he jumped out of the car and escaped, but the formal investigation revealed that Raja had died of hanging in the police station and that Muthalvan along with constables Joseph and Ganesan took the body to a nearby wooded area, built a pyre, doused the body with gasoline and cremated it. This resulted in the arrest of Muthalvan and the case was transferred to the State Crime Branch CID (Crime Investigation Department) on February 5, 1994.<sup>129</sup> The investigations led to the prosecutions of Muthalvan, Duriasamy and Sharief for illegally disposing of Murugan's body, and trying to conceal his death and cremation from the authorities. The National Human Rights Commission in a written decision dated May 5, 1994 stated:

In view of the fact that the prosecution had been ordered, the Commission expects that the matter may be pursued at their end in accordance with law. No further action by the Commission in that regard is necessary except keeping track of further development of the matter in Court.

This seems to be a case where compensation should be paid to the next of kin of the deceased. The Commission is of the view that in the facts and circumstances appearing in the papers, compensation of Rs.50000/- [\$1428.57] without prejudice to any other claim, may be paid within one month from now. The Commission would expect a report of compliance within that period. Send a copy of this order to the Secretary, Tamil Nadu State Legal Aid & Advice Board. The Commission would like to express commendation over the interest taken by the Tamil Nadu

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<sup>129</sup> Ibid.

State Legal Aid & Advice Board in protecting the human rights in the area.<sup>130</sup>

In a letter dated, August 23, 1994, the Krishnagiri District Legal Aid and Advice Committee notified the Tamil Nadu State Legal Aid and Advice Board that the state government had paid the parents of Raju the 50,000 rupees in compensation. The police officers involved confessed to the charges and were prosecuted.<sup>131</sup>

The commission has strongly urged that the recommendations of the National Police Commission be implemented, as it stated in its 1994-1995 *Annual Report*:

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<sup>130</sup> Letter dated May 5, 1994 from the National Human Rights Commission sent to the Tamil Nadu State Legal Aid and Advice Board.

<sup>131</sup> Letter dated August 29, 1994 from the Krishnagiri (Tamil Nadu) District Legal Aid and Advice Committee to the Tamil Nadu State Legal Aid and Advice Board.

The commission has recommended on more than one occasion that it is essential to revitalize the role of the civilian administration if the rule of law is to be effectively revived... [I]n almost all parts of the country there is a clear and increasing need to reform the police itself, to retrain and reorganize it and to restore to it the skills and the integrity that country so desperately needs if the function of preserving law and order is to be improved. It is for this reason that the Commission recommends that serious action be taken on the Report of the Police Reforms Commission [The National Police Commission] which in 1979, made a series of proposals that remain highly pertinent today... Without determined action being taken on that report, the Commission fears that the daily decisions of the Courts, no less than its own recommendations in respect of police high-handedness, will remain palliatives, the illness itself remaining unchecked.<sup>132</sup>

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<sup>132</sup> National Human Rights Commission, *Annual Report 1994-95*, p. 12.



Constituted in 1979, the National Police Commission was originally charged with investigating abuses committed by the police during the Emergency of 1975, when then Prime Minister Indira Gandhi suspended the Constitution and declared a state of emergency. The suspension was followed by widespread arrests of opposition party members and massive human rights abuses by law enforcement agencies. The commission was formed to study the problem of police excesses and functioning and make recommendations to the central government. It investigated 76,444 complaints to police from the states of Harayana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and Delhi.<sup>133</sup> Based on their findings, the commission reported that deficiencies in the investigation of police abuse had led to an environment of impunity. In particular, the commission noted that inquiry officers would not properly investigate allegations of police abuse because they felt any negative findings would stigmatize the police, that frequent exposure of abuse would make the investigating officer unpopular with his peers, that investigation of otherwise professionally competent officers would unnecessarily harm those officers, that an already corrupt or abusive investigator does not wish to expose other officers' actions, that investigators do not take the time to conduct a thorough investigation, and that political pressure would undermine serious investigations.<sup>134</sup>

The commission made specific recommendations to address these problems, including the formation of "complaint cells" to deal with police abuses. The first level of inquiry was to be a special complaint cell to be headed by a deputy superintendent of police with two or three inspectors and support staff to investigate complaints of police misconduct on a district level. A second cell was to be created to monitor the first at a multi-district level under a Range Inspector, a police officer with jurisdiction over several districts. A third cell, called the "police complaints board," was recommended to monitor and investigate police abuses at the state level.

The commission recommended a fourth body to be empowered to oversee the functioning of the other complaint boards. This body was to be constituted of police and qualified civilians, in order to provide civilian monitoring. This board would also be in charge of appointing members to the police complaints board.

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<sup>133</sup> National Police Commission, *First Report of the National Police Commission* (New Delhi: Government of India, 1979), p. 57.

<sup>134</sup> *Ibid*, pp. 60-61.

In addition to the police monitoring and investigation of alleged abuses, the commission recommended that a mandatory judicial inquiry should take place in several instances, including alleged rape in custody and a death or "grievous hurt" in police custody. Grievous hurt was defined as castration, permanent blindness or deafness, fractures, dislocations, or permanent injury to any limb.<sup>135</sup>

Senior police officers concerned about custodial abuse have endorsed the reforms. In 1994, Additional Director General of the Madras Police, R.K. Raghavan described the National Police Commission's recommendations as "[p]erhaps the most significant and practical guidelines in the area [of custodial abuse]..."<sup>136</sup>

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<sup>135</sup> Ibid, pp. 61-62.

<sup>136</sup> Raghavan, "Custodial Violence and Deaths...", p. 13.

However, these recommendations have never been implemented, largely due to the lack of will on the part of India's national and state governments to do so. As recently as February 15, 1996, the chief minister of West Bengal, Jyoti Basu, stated that a mandatory judicial inquiry in the case of a custodial death would not be implemented on the grounds that there was no need for an inquiry because "beating or torture were not responsible for all such incidents."<sup>137</sup> Ironically, the chief minister's decision was released on the same day that four policemen were acquitted in Madras for the death of Satish Kumar.

Another factor that was not addressed by the National Police Commission, but that contributes to environment of impunity is the fact that even if a complaint of abuse is registered, it rarely leads to prosecution or conviction of police officers. As a result, many observers, including the Law Commission of India, have advocated reforms to Indian penal law in order to facilitate prosecution of police officers. In a 1995 study on custodial deaths in Andhra Pradesh, the Andhra Pradesh Civil Liberties Committee (APCLC) commented:

The Supreme Court and the Law Commission have, in the past, acknowledged the special nature of custodial violence. The Supreme Court said in Ramsagar Yadav's case (1985) that since there can be no independent witnesses in a case of custodial violence, the onus of proof must be shifted to the policemen. The same opinion was reiterated by the Supreme Court in the case of Bhagwan Singh (1992). The Law Commission expressed the same opinion in its 113th report. Though a decade has passed since then, no action has been initiated by the Government to legislate this recommendation.<sup>138</sup>

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<sup>137</sup> *The Statesman* (Calcutta Edition), "Custody death probes ruled out", February 16, 1996.

<sup>138</sup> Andhra Pradesh Civil Liberties Committee, *Complaint to the National Human Rights Commission on Deaths in Police Custody...*, p. 10.

The recommendation the Law Commission made to facilitate prosecution of police officers was to amend the Indian Evidence Act by inserting Section 114B, which states:

(1) In a prosecution (of a police officer) for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during the period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The Court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances, including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim's statement or attempted to record it.

In the absence of reforms to Indian law, prosecutions are rare, as the Andhra Pradesh Civil Liberties Committee reported:

Prosecutions are not being undertaken even under ordinary penal law, as they can very well be without any amendment of the law.

Of the present 211 cases [of custodial deaths documented in the report], criminal prosecution has been launched in not more than 10 cases. To our knowledge, only three of them... have resulted in conviction at a trial court.<sup>139</sup>

It is significant that of the three cases that resulted in conviction, the most recent case occurred in 1986. This means that 162 incidents of custodial death have

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<sup>139</sup> Andhra Pradesh Civil Liberties Committee, *Complaint to the National Human Rights Commission on Deaths in Police Custody...*, p. 10.

occurred between 1986 and 1995 in Andhra Pradesh alone which have not resulted in prosecution of police officers.<sup>140</sup> Fourteen of these 162 custodial deaths involved children. The following cases represent a sample of those incidents, as reported by the committee that took place between 1990 and 1994:

**Solanki Maruti - Central Crime Station, Hyderabad, October 26, 1994**

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<sup>140</sup> Ibid.

Solanki Maruti, a young man who belonged to an itinerant community of ironsmiths, was taken into custody in the village of Bothi of Bhokar Taluk, Nanded district, Maharashtra, where he had gone to work on the laying of a road, in April 1994. He was arrested on the suspicion that he was making sharp nails for the use of highway robbers. For three months he and another eleven youths were detained illegally and beaten at Mamda police station, and later for another three months at the Central Crime Station in Hyderabad. When Maruti's condition deteriorated, the twelve youths were taken to the court at Nirmal, where the magistrate remanded them to jail without even looking at the prisoners. They were all then taken in a police van to the Nizamabad district jail, but Maruti died on the way. Police said he died of cardiac arrest.<sup>141</sup>

**Koora Narayana - Kosgi Police Station, Mahbubnagar District, Andhra Pradesh, September 6, 1994**

Koora Narayana, a "head-load" worker with a criminal record,<sup>142</sup> Narayana and five other youths were taken into custody on September 1 for a suspected theft in a grocery store. The parents of four of the children paid 1,000 rupees each to the police and got their sons released. Narayana and Yella Reddy, who remained, were beaten with sticks and given electric shocks for five days. Narayana died in the police station on September 6. Police said he died of an epileptic fit.<sup>143</sup>

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<sup>141</sup> Ibid, p. 85.

<sup>142</sup> A "head-load" worker is a manual laborer who carries materials in a basket on his or her head.

<sup>143</sup> Andhra Pradesh Civil Liberties Committee, *Complaint to the National Human Rights Commission on Deaths in Police Custody...*, p. 83.

**Kachanapalli Outpost - Khammam District, Andhra Pradesh, August 16, 1994**

Orusu Narasamma of Kachanapalli was taken into custody on the evening of August 16 as she got off a bus at her village. Police suspected her of selling illicit liquor. She had her one-month-old child in her arms. The mother was continuously beaten by the police until she reached the outpost, and was beaten further at the outpost. As she cringed and begged the police not to beat her, some of the blows hit the child and the child died in the mother's arms. Police disclaimed responsibility for the child's death.<sup>144</sup>

**Kakkarla Sudhakar Goud - Central Crime Station, Warangal, Warangal District, Andhra Pradesh, June 22, 1994.**

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<sup>144</sup> Ibid, p. 83.

Kakkarla Sudhakar Goud, an unemployed rural youth, was suspected of a theft in his own brother's house by the police. Goud knew that the police suspected him, so on June 15, he went with his brother to the police station and presented himself to the authorities. The police detained him and beat him regularly till he died on June 22. The police then called his brother, gave him the dead body and told him to tell everyone that his brother had come home and committed suicide. The police claimed that he committed suicide in his home after being released from custody.<sup>145</sup>

**Sudhakar - Yemmiganur Police Station, Kurnool District, Andhra Pradesh, November 19, 1993**

Sudhakar, a fifteen-year-old rickshaw puller, was taken into custody on the night of November 10, after a customer who was traveling in Sudhakar's rickshaw saw some policemen coming and jumped out and ran away. The policemen caught hold of Sudhakar and took him into custody to question him about the customer. After four days of illegal custody and torture, the unconscious Sudhakar was sent home in another rickshaw on November 14. He never regained consciousness and died on November 19. Police said they let him off and he died later of natural causes.<sup>146</sup>

**Pochamma - Pochampally Police Station, Nalgonda District, Andhra Pradesh, September 16, 1993**

Pochamma, a fifteen-year-old girl, was taken into custody along with her mother, Lachamma on September 14 because the police suspected they had links with "radicals." Both were beaten very badly, and when Pochamma complained of pain, she was taken to a local doctor by the police, who advised that she should be taken to Hyderabad. She died in a hospital at Hyderabad on September 16. The

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<sup>145</sup> Ibid, p. 80.

<sup>146</sup> Ibid, p. 76.



post-mortem report said she died of internal bleeding. Police said she died of natural causes.<sup>147</sup>

**Habibnagar Police Station - Habibnagar, Hyderabad, September 7, 1993**

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<sup>147</sup> Ibid, p. 75.

Sophia, a member of an itinerant community, who was at that time staying in Hyderabad, was arrested along with her mother, Radhabai, on suspicion of having committed a theft while they were staying at Warangal. When the Warangal police came to Hyderabad to arrest her, the whole community rebelled and beat up the police. The local police then entered the scene. When they took Sophia along with her five-month-old child to a police station on September 6, the inspector beat and kicked Sophia very badly. The blows struck the child who was in the mother's arms. As a result of the beating, the child fell and died. The police denied responsibility for the child's death.<sup>148</sup>

**K. Bhaskar - Railway Police Station, Kazipet, Warangal District, Andhra Pradesh, June 8, 1993**

On the morning of June 7, K. Bhaskar, a thirteen-year-old student and talented athlete, went to the Kazipet Railway Stadium to practice, but he found the stadium locked and the RPF guarding it. When he tried to defy them and enter, they beat him. Bhaskar playfully picked up the bag of one of the constables and ran away. Later, he sent word that he would return the bag, but police said it was Bhaskar they wanted and not the bag. On the evening of June 8, the railway policemen found Bhaskar and took him into custody. That very night his dead body was found on the railway tracks in the goods yard. In a second post-mortem examination conducted on public demand, it was found that the body had injuries apparently caused by beating and kicking. The police claimed his death was an accident or suicide.<sup>149</sup>

**Kanne Sammaiah - Mahadevpur Police Station, Karimnagar District, Andhra Pradesh, June 5, 1993**

Kanne Sammaiah, an unemployed youth, was involved in a public quarrel with another youth, Penta Bapu, on June 3. Both were taken into custody by the

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<sup>148</sup> Ibid, p. 74.

<sup>149</sup> Ibid, p. 71.

police. Bapu was released but Sammaiah was not. His dead body was found, floating in the Godavari river. Police claimed that he was never in custody.<sup>150</sup>

**Babu Rao - Matwada Police Station, Warangal, Warangal District, Andhra Pradesh, January 17, 1993**

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<sup>150</sup> Ibid.

On January 10, 1993, Babu Rao, an unemployed youth, had an altercation in the street, on behalf of a friend, with a man whom he did not know to be a plainclothes policeman. Babu Rao beat the man. When he learned that the man was a policeman, he hid. On January 13, his relatives took him to the police station and handed him over to the police. The police beat him severely, for four days. They took him in an unconscious state to a hospital on January 17 and he died in the hospital that same day. Police claimed that he died a natural death.<sup>151</sup>

**Ramavath Badya Naik - Gurajala Police Station, Guntur District, Andhra Pradesh, September 26, 1992.**

Ramavath Badya Naik, a tribal youth, was arrested on September 20 on suspicion of murdering his wife. He was tortured regularly for six days, and many contusions and cigarette burns were found on his body. He died on the morning of September 26. Police said he hanged himself in the lock-up.<sup>152</sup>

**Simhachalam - VIII Town Police Station, Vijayawada, Krishna District, Andhra Pradesh, July 26, 1991**

Simhachalam, a thirteen-year-old picker of waste paper and old iron, was suspected by the police of being involved with a theft and taken into custody on July 20, along with another ragpicker, Sambaiah. Simhachalam was tortured very badly, with pins being stuck under his fingernails. He was repeatedly kicked in the stomach. The two were released on July 24, and Simhachalam, who was running a high fever by that time, died in the streets on July 26. Police said he died of natural causes after they released him.<sup>153</sup>

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<sup>151</sup> Ibid, p. 67.

<sup>152</sup> Ibid, p. 65.

<sup>153</sup> Ibid, p. 56.

**Nelluri Babu Rao - Nagaram Police Station, Guntur District, Andhra Pradesh, February 19, 1990**

Nelluri Babu Rao, a sixteen-year-old boy who made a living by pressing clothes, was taken into custody on February 10 on suspicion of theft. He was illegally detained and made to confess to several crimes while being tortured. He died in custody on the afternoon of February 19. Police said that he died of cardiac arrest.<sup>154</sup>

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<sup>154</sup> Ibid, p. 47.

No one has been prosecuted for any of these deaths. From January 4, 1994 to March 31, 1995, the most recent statistics which are available, the National Human Rights Commission reviewed 152 cases of alleged custodial death. The commission determined that there was no wrongdoing by police in thirty-nine cases; decisions were pending in 107 cases; in three cases the commission recommended prosecution of police; and in two cases it recommended compensation.<sup>155</sup>

The former Congress (I) government did not ratify the U.N. Convention against Torture. However, on June 6, 1996, India's fledgling United Front government announced in its platform that the Indian Penal Code, the Criminal Procedure Code and all other national laws "will be reviewed and amended to make their provisions consistent with the sanctity of human rights. The United Nations Convention on Torture will be adopted..."<sup>156</sup> As of October 1996, these measures had not been implemented.

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<sup>155</sup> National Human Rights Commission, *Annual Report 1994-95*, pp. 30-35.

<sup>156</sup> United Front Coalition's Economic Program, presented June 6, 1996, pp. 3-4. From *MakroIndia Business Page* sponsored by Amrok Securities Private Limited at <http://www.macroindia.com/hlight1.htm>, pp. 3-4.

## VIII. THE APPLICABLE LAWS

The arbitrary detention and physical abuse of children by police are prohibited under both international and national law. However, the Indian government has not abided by these standards.

### INTERNATIONAL LAWS

Arbitrary and illegal arrests and detention are forbidden by two basic international agreements to which India is a party, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child.<sup>157</sup> Illegal arrests and detentions are by definition “arbitrary”; such acts can also be arbitrary if not in conformity with international standards of human rights and procedural fairness, regardless of specific provisions of domestic law. Basic procedural rights of persons who are arrested include the right to know the reasons for arrest, the right to be brought promptly before a judge or other judicial officer following arrest, and the right to receive either a trial in a reasonable time of release.<sup>158</sup> Victims of unlawful arrest also have an enforceable right to compensation.<sup>159</sup>

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<sup>157</sup> ICCPR, Article 9 and Article 37 of the CRC prohibit arbitrary arrest or detention. Article 10 of the ICCPR and Article 37 of the UNCRC prohibit the detention of children with adults. Article 9(5) of the ICCPR mandates that “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation;

<sup>158</sup> ICCPR Article 9(2), 9(3), and 9(4); CRC Article 37(b) and 37(d).

<sup>159</sup> ICCPR Article 9(5).

The detention of children with adults is also specifically prohibited by these international agreements, in recognition of the special protection to which children are entitled.<sup>160</sup>

According to the United Nations Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, torture is defined as:

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<sup>160</sup> ICCPR Article 10; CRC Article 37.



...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering only from, inherent in or incidental to lawful sanctions.<sup>161</sup>

Severe beatings of children by police are a form of torture and are prohibited by international standards. Torture is expressly prohibited in numerous international treaties and standards. The prohibition of torture can be considered customary international law, binding on all nations regardless of whether they are parties to the Convention against Torture.<sup>162</sup> Even where physical and mental abuse

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<sup>161</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Article I(1).

<sup>162</sup> ICCPR Article 7; UNCRC Article 37; United Nations Standard Minimum Rules for the Treatment of Prisoners Section 31; United Nations Basic Principles for the Treatment of Prisoners Section 5, Principles 1, 3, 6, and 7; United Nations Convention against Torture

does not cause severe pain or suffering, it may be prohibited as “cruel, inhuman or degrading treatment or punishment” under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.<sup>163</sup>

### THE LAWS OF INDIA

Articles 21 and 22 of the Indian Constitution mandate that no one may be arbitrarily detained or arrested. Article 22 of the Indian Constitution and Sections 50, 56, 57, and 70 of the Code of Criminal Procedure specify that an arrested person must be told of the reason for his or her arrest, and must be presented before a magistrate within twenty-four hours, otherwise the detention is illegal. To detain a person for a period greater than twenty-four hours, the police must obtain permission from a magistrate. In addition to these laws, Section 160 of the Code of Criminal Procedure states that neither males under the age of fifteen nor any women may be brought to a police station for questioning when a crime is investigated.

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and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations Standard Minimum Rules for the Administration of Juvenile Justice; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty; and the United Nations Code of Conduct for Law Enforcement Officials Article 5 which states “No law enforcement official may inflict, instigate, or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment...”

<sup>163</sup> ICCPR Article 7; CRC Article 37; Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment Article 16; and the Code of Conduct for Law Enforcement Officials Article 5.

The Juvenile Justice Act was enacted in 1986 to address the treatment of juveniles by law enforcement officials. Sections 13 and 18 of the Juvenile Justice Act mandate that juveniles cannot be kept in a police station for more than twenty-four hours, and upon identification as a “neglected juvenile”<sup>164</sup> or upon arrest (where the child is not released on bail) as a “delinquent juvenile,”<sup>165</sup> may not be remanded to a jail or police station, but must immediately be sent to an observation home or remand center. Juveniles charged with criminal offenses must be tried in juvenile courts and cannot be tried with adults. The act also mandates that arrested juveniles have the right to be informed of the charges against them, the right to remain silent, and the right to an attorney.<sup>166</sup>

The Supreme Court has ruled in five decisions that Article 21 of the Indian constitution forbid torture, although the constitutional prohibition is not explicit.<sup>167</sup>

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<sup>164</sup> The definition of a “neglected juvenile” under Section 2(l) of the Juvenile Justice Act is:

“Neglected juvenile” means a juvenile who—

- (i) is found begging; or
- (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or
- (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or
- (iv) lives in a brothel or with a prostitute or frequently goes to any place used for prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; or
- (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

<sup>165</sup> The definition of a “delinquent juvenile” under Section 2(e) of the Juvenile Justice Act is:

“delinquent juvenile” means a juvenile who has been found to have committed an offence.

<sup>166</sup> The Act mandates that a juvenile is afforded the protections and rights as specified in the Code of Criminal Procedure.

<sup>167</sup> *Sunil Batra v. Delhi Administration*, A.I.R., 1978 S.C. 1675; *Sunil Batra v. Delhi Administration II*, A.I.R. 1980 S.C. 1579, paragraphs 31 and 42; *Sher Singh v. State of Punjab*, A.I.R. 1983 S.C. 465, paragraph 11; *Javed v. State of Maharashtra*, A.I.R. 1985 S.C. 231, paragraph 4. In *Sita Ram v. State of U.P.*, A.I.R. 1979 S.C. 745, the supreme court

Section 24 of the Indian Evidence Act makes confessions made through “inducement, threat, or promise” inadmissible as evidence and sections 25 and 26 of the Indian Evidence Act make any confession to a police officer inadmissible unless it takes place in the presence of a magistrate. However, under section 27 of the Indian Evidence Act, any evidence obtained by a police officer while a suspect is in custody is admissible in court. Torture by police is subject to criminal charges under the Indian Penal Code.

The Prevention of Corruption Act was enacted in 1988. Sections 7 and 11 forbid public servants to take money or property in discharge of official duties, outside of their normal remuneration. Section 13 of the Act considers any public servant habitually involved in corrupt practices to be guilty of “criminal misconduct.” Corruption is a criminal offense in the Indian Penal Code. A beating used to propagate corruption constitutes a criminal offense under Section 329 of the code and calls for a prison term of up to ten years.

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ruled that:

An undertrial or convicted prisoner cannot be subjected to a physical or mental restraint

- (a) which is not warranted by the punishment awarded by the court, or
- (b) which is in excess of the requirements of prisoners discipline, or
- (c) which constitutes human degradation.

## IX. CONCLUSION

The detention, ill-treatment, and torture of street children by police in India has reached epidemic proportions. Torture has long been a routine part of police investigations, and despite widespread recognition of the problem, little has been done to address it. The victims typically represent the most vulnerable sectors of society: they are poor, members of low-caste groups or minorities, and have no political standing that would afford them protection from the lawlessness of the police. Street children, in addition, generally have no family members to intervene on their behalf.

Changing a police culture that not only tolerates but endorses torture is not easy. As a first step toward ending the abuse, the Indian government should implement all of the reforms of the National Police Commission, a step that is now at least fifteen years overdue. The recommendations of the commission include making judicial inquiries into cases of alleged rape, death, or grievous injury in police custody mandatory, and establishing investigative bodies whose members would include civilians as well as police and judicial authorities. Provisions prohibiting the detention of juveniles in police lock-ups should be strictly enforced, and a civilian review board comprised of former police, NGO representatives, judges, and lawyers should be established to monitor police stations. Complaints against law enforcement personnel should be promptly and thoroughly investigated by an independent agency with subpoena power and an adequately trained investigatory staff. This agency should be directly accessible to street children. Where the agency finds evidence of wrongdoing, prosecutions and trials should be pursued expeditiously.

These reforms will only work, however, if the state governments, for their part, agree to work with local NGOs and citizens' groups to monitor police behavior and enforce the law, and if the central government monitors the state governments' performance. No single agency can bring an end to police abuse. Most importantly, better police training and closer monitoring of police behavior must be linked to greater accountability, for as long as police feel assured of impunity, custodial violence will not end.

India must also change the laws that contribute to the problem. The Code of Criminal Procedure should be amended to require mandatory medical examinations and age verification at the time of detention. All laws relating to child labor as well as the Juvenile Justice Act should be revised to ensure that the implementation of both laws does not result in criminalizing children who are forced to work.

At the international level, the government of India should ratify the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment, a pledge made by the current government of India in their platform. It should also invite the United Nations Special Rapporteur on Torture to India to investigate, and the U.N. Working Group on Arbitrary Detention to investigate, respectively, the torture and arbitrary detention of street children by police.

## APPENDICES

### Appendix A: Statement of Krishna Kumar Tripathi

This is the statement of Krishna Kumar Tripathi describing what happened to him on November 16, 1995. It was given to Human Rights Watch, in writing, when we interviewed him on January 1, 1996 in New Delhi. This incident was previously reported in *The Hindustan Times* on December 10, 1995, under the headline: "Kids beaten up at Rly station." The statement has also been sent to the National Human Rights Commission as a complaint.

I, Krishna Kumar Tripathi, son of Shri. D.N.A. Tripathi, am working with Butterflies, an organisation having a programme for street and working children. The following activities are a part of the programme run by the organisation: 1. Non-formal Education and Income Generation 2. Health care 3. Saving scheme 4. Credit union 5. Technical Education and Income Generation 6. Recreation and 7. Legal aid (whenever needed) etc. The programme is run with children's participation. The aim is to empower children, make them aware of their rights and ultimately make it a children's movement. We are working among rag pickers, shoe shiners, porters, Dhabi boys and other self employed children. The programme is conducted at eight places in Delhi, where the concentration of street children is high. These places are called contact points. One of these contact points is Ajmeri Gate, outside the New Delhi Railway Station. This is for children who are working as porters and those who ragpick in the trains. We meet the children from 2:00 p.m. onwards. Since we need to enter the station to meet children from time to time, we regularly buy platform tickets.

On 16th November 1995, I was sitting and talking to some children near the car parking lot at Ajmeri Gate contact point, when one kid named "Bablu" came and told me that some of the children were being beaten up on the other side of the bridge. When I reached the over bridge near platform No. 10, I saw some men in plain-clothes and some in police uniform brutally beating up children.

The Senior station Manager, Mr. Mishree Lal (who was in a blue suit), was leading this assault. I went up to them and asked why they were beating up the children so brutally. Mr. Mishree Lal asked rudely as to who was I to question them. I told him I was a social worker with Butterflies (which had a programme for street and working children) and was working with these children, and that we have a programme for them which is conducted just outside the station. At this he asked me if I knew that all these children were pickpocketers and "*Uthagire*" (some one who picks up things with the intention of stealing). I told him I know what goes on

at the station and who are involved in such rackets, but that we did not work with such children. We have a programme for children who worked to earn their living, and by involving them in various activities of our programme, we try and rehabilitate them.

During this conversation, the children who had been picked up were still being beaten. I told Mr. Mishree Lal that we also give Identity Cards to children with whom we work. He retorted, "*Saala Bada neta banta firta hai!*" (He is behaving like a politician/leader), and asked for my platform ticket. When I showed them the platform ticket I had with me, one plain-clothes inspector, Mr. Goswamy, abused me and tore the ticket into pieces. I kept on appealing to not hit the children, but they continued beating them with belts and lathis. Mr. Mishree Lal abused me and told the police to beat me saying, "He pretends to be a social worker, let's take all that social work out of him."

In the meantime, they had picked up a few more people who were gambling or roaming around and along with them, the children and I were taken away. They tied groups of two or three persons each, with a piece of rag that children keep on their heads while picking up loads. They continued to beat with belt and dandas from behind, while they took us towards the main building of the station. Till then, the policemen were hesitant to hit me. But when they got us on the platform, Mishree Lal said, "Why are you not hitting the *Netaji* (politician/leader), beat him too."

After he said that, all of them pounced on me. Mr. Goswamy was the first one to beat me and started with his danda. He had been beating up the children till then. He hit me on my hands, feet, and back, on every and any place. One man, in a white shirt and white trousers, also used his belt to beat me. I wasn't able to get his name, but I can remember his face. When I said, "Tying up hands, picking up people, taking them away, beating them up and humiliating them so, is a violation of human rights," they said, "Let's teach him human rights." When I tried to say something or argue with them, the policeman behind me would hit me with a belt or danda. When I told Mishree Lal they should untie my hands and I would come with them voluntarily, they threatened me and told me to keep my mouth shut and start walking.

They took all of us to the T.C.'s (Train Conductor) office and made everybody else sit on the floor, while I remained standing. The T.C. asked me if I was ashamed of sitting among these people. I told them that I was not ashamed of sitting as I worked with these children, and am used to sitting/talking with them. They ordered me to sit and hit me with the belt.

Around 7:00 p.m., everyone was taken to Mishree Lal's office and I was asked if I had an identity card. I showed them my I.D. (Butterflies) card and my



visiting card. After checking it, they asked, "Where did our organisation get the money?", and I told them whatever I knew. Then they asked me for "my educational qualifications." I told them I was Botany (Honors), and they replied, "So, you could not find any other work?" I said that I worked with the children since I liked doing such work, get satisfaction out of it and the children need people like us. Mishree Lal said I was trying to be a *Neta* (politician/leader) by working among such thieves. He asked me, "Where are you from? Gorakhpur?" I replied, "Yes, from that part of the country." "Aren't there any poor children there? You can not get the pleasure of doing *Netagiri* there as you do in Delhi, so why would you work there?" I said that this problem was more in metropolitan cities, as these children need caring and guidance more than the poor children staying at home. At least these children have their families supporting them. These children, who are away from their families, lead very hard lives. We don't ask them to come to us, instead we go and meet them wherever they work.

At this they said, "If we see you here again..." I said, "Sir, I told you I work with the organisation and do things which seem right to me." Mr. Lal replied, "I will thrash out the devil of social work from your head all right." The other officers standing around, kept on softly telling me to touch his feet and ask forgiveness with promise not come to the station again-and I would be forgiven "as he is from your side of the country." But I refused to listen to them. However, there was one officer from the upper caste who kept on protesting to touch the feet. Then Mr. Mishree Lal asked the children as to who all knew me. The children-Sabir (14), Arun (18), Shivchand (14), Amir (15), Satyavan (12), Gopal (16)- told them that they knew me. He asked, "What do you do for these children?" I said, "Why don't you ask them?" Arun told him that he goes for training to become a driver and the rest said the teacher taught them, gave medical help, helps to save their money through the organisation's saving scheme, have games and picnic, etc.

Mr. Mishree Lal asked me if I would be able to improve these people "*In saalon ko*" (at your house)—he enquired as to who was at my home, what do my parents do, if I was married. I told him these were personal matters and refused to answer.

At this, all the people along with Mr. Mishree Lal said, "Yes take care of your home first, you can't do that and you are trying to improve the world?" I replied it was my personal right as to where I worked and why. I had also told Mr. Mishree Lal that my hands and feet were hurting and I want some medicines. I also said I would like to ring up the office and tell them my situation. Mr. Lal said, "We will allow you to do these things in the police station. That is their duty." In a non-angry tone of voice, I said that what he was doing was a violation of Human Rights. He said, "What will you do? Put up a case in the NHRC [National Human Rights

Commission]? I have already 4-5 cases pending against me. I shall fight another one. So what?"

Mishree Lal abused me and said, "*Chalan the Netaji* and then see to the others." Then, they took me from the T.C. Room and all the T.C.'s and policemen abused me saying that if I had touched his feet, he would have let me off. As he was a high-ranking officer and even well-known people touch his feet. When I asked if I can call my office, they said I can do that when I reached the police station. I said if you want to fine me, I will just ask the office people to send money. They said that Mr. Lal had asked them to put me in jail, and I was accused of three things: being ticket-less, interference in railway function, and causing violence (fighting).

They made a charge sheet and forced me to sign it under the threat of beating me up. There was an understanding T.C. Who took me to make a telephone call; but as soon as I made the call, the inspector came and yelled at him, saying that they would all lose their jobs and so I was taken back to the T.C.'s office. The T.C./Police brought in some children (who were not from our contact) and proceeded to beat them up. I tried to intervene when they started hitting a little ten-year-old, but they pushed me aside and hurled insults at me. Some T.C. and policemen forced me to finish signing the charge sheet, tied my hands and then took me to the RPF (Railway Protection Force) Thana (NDRS).

They wanted to put me in the lock-up there, but there was no space and so they brought me back. To the T.C.'s room. Then the Railway Officer phoned and asked the RPF officers, whether the lock-up is made to keep things or to lockup the culprits. After awhile, we returned to the RPF Thana, where ASI (Assistant Sub-Inspector) Shiv Ram handcuffed me with iron chains and told to sit. When I sat on a chair, they pushed me off, beat me up and told me that I should behave like a common prisoner. They talked with each other, saying that I was trying to become a politician. Next: my watch, wallet and everything I had on me was taken away and a list was made. I asked them once again if I could make a call, but I was told to stay put and remain silent if I do not want to be beaten up again.

I remained seated on the floor till about 10:30 p.m. I asked for medicine for the pain in my arms and legs but was told again to remain seated (with the threat of being beaten up). As I sat there in the middle of New Delhi, being victimised by this terrible violation of Human Rights, I thought of worse crimes that are probably committed by police in rural areas. Just then, around 10:30 p.m., three of my colleagues arrived from the office. They had received a phone call which got disconnected. A few children had been to the office and to the Director's residence, and had told them about me.

I was very relieved to see them, and was allowed to meet one of them. They were informed by the police that I would be taken to the Special Railway Magistrate at 11:00 a.m. the next day that they should come there and do the needful. They were also told that the Government did not pay them enough to provide meals and so my colleagues brought me food. They left later and tried (without success) to talk to other police officers that night.

After they left, I was put into a lock-up that had excreta lying in it. They told me that this was dinner and that I should eat it. When I asked for water, I was told to drink some from the dirty tap next to the excreta. After a long time, they gave me a dirty blanket. I had not eaten, was thirsty, got bitten by mosquitos and could not sleep with the unbearable stench of excreta. The children remained outside and were kicked and beaten by the police throughout the night. Their earnings were taken away and they were sent away. This is because no actual charges were lodged against the children, apart from loitering. Magistrates often release them (if they are minors) and imprison them for fifteen to twenty days if they are majors. For their reports and to make money, the police lock up a few children and majors everyday, only to release them later after having taken their money and/or beaten them up. A few are also presented to the magistrate to show proof that the police are performing their "duties." That particular night, police got twenty to forty rupees from some children and released them. They brought in some more children and adults in the morning, took their money from them (without making any accounts) and took us all to the Special Railway Magistrate around 2-2:30 p.m. on November 17, 1995.

In the morning, when I asked to use the bathroom. I was told to do the needful in my lock-up because the prison toilets were all blocked and unusable. I was given neither tea nor breakfast, was threatened with a charge sheet and going back to the lock-up if I told the magistrate the truth. This was repeated to me in the Police Station, the Police van and the court lock-up.

While being produced before the Magistrate, I was accompanied by my colleagues and the Advocate of Butterflies [an NGO]. When my advocate tried to meet me earlier, he was grabbed by the neck and pushed away several times. I told the Magistrate the entire truth about the whole incident. His attitude was not very encouraging, he told me that it was wrong to interfere with the working of the state and that children at the station were the root causes of all crime. He said, "If you want to see their work, go to the station with an empty suitcase and let your attention wander from the luggage, and see who picks up the suitcase—it will be the children themselves." I said, "Sir, I know all this happens on the station and some children are included in it, but we don't work with such children. If any one of the kids starts towards such a path or we come to know that he is getting involved in

such work, we try and turn him onto the right path." When he asked about the programme, I told him about it in brief. He said most of these kids are like this, and wanted to know how we are going to teach them or get them work. "*Haram ke khane ki aadat ho gaye hai.*" (They won't work—try to get them some work—they will run away after robbing you.)

I said, "Sir, the organisation has rehabilitated quite a few children. Some are running the Butterflies restaurant at ISBT, some have gone back home, some are studying at residential schools. The Magistrate then asked me what he should do with me. I told him I had told the whole truth and it was up to him to do what he thought was correct.

He asked, "How much is your salary?" I said, "I am a volunteer and am working with an aim. A salary does not mean anything much to us." He said, "But you must be getting something?" I told him and he said, "If I fine you, where will you get the money from? There are quite a few charges against you and the maximum punishment would be 5,000 rupees and six months imprisonment. Even then, I will fine you for a total of 753 rupees; 153 rupees as railway dues and the 600 rupees as a fine. Our Advocate and colleagues got together the sum and I was released from the torture I had endured for twenty-three hours.

Thereafter, I went to the organisation's doctor for a checkup and medicines. When I talked about going to a Government Hospital, he said that I had puffiness and pain in the hand and feet. The hurt, though, is more on the inside and the report would not say much as there is no blood clotting or obvious dark marks. So I took some Brufain and used Iodex. There was ringing in the ears due to the hit on the ears, which remains till date and I still cannot touch my hands or feet.

What I felt after this incident:

These are not new things for a social worker and neither are they new to me, as I have worked as a civil liberties activist, been secretary of Bihar PUCL and am attached to the Delhi PUCL. I have seen and heard and sometimes personally experienced human rights violation by the State, Police, and Administrative Officer. Now, in two and a half years of working with Butterflies, one has encountered such incidences face to face, time and again. Every one sees helpless children being beaten either by the police, employers, a 'dada' of the area or some drunk uncle. What did I face? Some beatings with a baton, a few kicks and punches—that's all. The children take this and more in their everyday life and quietly suffer it. Some see this, some do not. Those who have seen and heard it, don't do anything about it. Also, if someone tries to do something, they don't succeed in doing anything.

A large percentage of children are forced to suffer life helplessly. We call them "delinquent" on our terms and the matter ends there for us. The reality is that-children can never be or are delinquents. If anyone is delinquent it is society and

the adults who have given them all this. The unequal development, breakdown of families, migration from rural to urban areas and socioeconomic and political conditions are all the issues to be kept in mind, and which are responsible for taking these children away from their families and throwing them on the pavements.

If, during their struggle for survival, they come in contact with negative elements, they are held fully responsible. We believe that by labeling them as delinquents, we have fulfilled our duties. As a result of such an approach, these children get cut off from mainstream society and are deprived of development. This is in no way an example of our capability and importance, but shows our mental weaknesses and capacity for double standards.

There are many people like Sri Mishree Lal, Senior Station Manager, and the Police Officers involved in this case, who have important positions in Government which has signed and promised to abide by the UN Convention on the Rights of the Child. Which article of the CRC are they following by placing such a large section of children at risk? Today, we need to change this frame of mind and these people, so that a large part of childhood is not lost, while India enters the 21st century.

Incidents like this where social workers like us are beaten up or harassed by the Police, only serve to increase our commitment, feelings and determination to work for these children. I have realized the real need and relevance of this work. As adults, we tend to find help and survive difficult situations. But how about children? Where do they go? Whom do they look to? One has to get closer to them and do much more for them. That is the lesson of this incident.

## **Appendix B: The Juvenile Justice Act, 1986**

### **Introduction**

The problem of juvenile justice is, no doubt, one of tragic human interest so much so in fact that it is not only confined to this country alone but cuts across national boundaries. Juvenile delinquency laws are characterised by the feature that they prescribe many acts which are regarded as non-criminal if indulged by elder persons like drinking, smoking, viewing adult films or reading adult literature, *etc.* The extension of the concept of juvenile delinquency to wider limits has drawn adverse criticism on the ground that it is neither necessary nor desirable to use police and courts in private matters which can well be tackled by the family themselves.

The first legislation concerning children which came in 1850 was the Apprentice Act which provided that children in the age groups of ten to eighteen convicted by courts were intended to be provided with some vocational training which might help their rehabilitation. It was followed by the Reformatory Schools Act, 1897. The Indian Jail Committee (1919-1920) brought to the fore the vital need for fair trial and treatment for young offenders. Its recommendations prompted the enactment of the Children Act in Madras in 1920. This was followed by the Bengal and Bombay Acts in 1922 and 1924 respectively. The three pioneer statutes (i.e. Acts concerning Madras, Bengal and Bombay) were extensively amended between 1948 and 1959.

In 1960 at the second United Nations Congress on the Prevention of Crime and Treatment of Offenders at London, this issue was discussed and some therapeutic recommendations were adopted.

The Central enactment, the Children Act, 1960 was passed to cater to the heads of the Union Territories. To remove the same inherent lacunae of the above mentioned Act, the Children (Amendment) Act was passed in 1978. But the need of a uniform legislation regarding juvenile justice for the whole of the country had been expressed in various fora, including Parliament, but it could not be enacted on the ground that the subject matter of such legislation fell in the State List of the Constitution. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice, Parliament seems to have exercised its power under Article 253 of the Constitution read with Entry 14 of the Union List to make law for the whole of India to fulfill international obligations. On 22nd August, 1986, the Juvenile Justice Bill, 1986 was introduced in the Lok Sabha.

### **Statement of Objects and Reasons**

A review of the working of the existing Children Acts would indicate that much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also a need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

In this context, the proposed legislation aims at achieving the following objectives:—

- (i) to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in a jail or a police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts;
- (ii) to provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child as found in any situation of social maladjustment;
- (iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;
- (iv) to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation;
- (v) to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or societally maladjusted children and to specifically define the areas of their responsibilities and roles;
- (vi) to constitute special offences in relation to juveniles and provide for punishments therefore;

(vii) to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

As its various provisions come into force in different parts of the country they would replace the corresponding laws on the subject, such as the Children Act, 1960 and other State enactments on the subject.

The Bill seeks to achieve the above objects.

#### ACT 53 OF 1986

The Juvenile Justice Bill, 1986 was passed by both the Houses of Parliament. After receiving the assent of the President it came on the Statute Book as the Juvenile Justice Act, 1986 (53 of 1986).

### THE JUVENILE JUSTICE ACT, 1986

(53 of 1986)

[1st December, 1986]

*An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of, delinquent juveniles.*

## CHAPTER I

### Preliminary

**1. Short title, extent and commencement.**—(1) This Act may be called the Juvenile Justice Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date<sup>168</sup> as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “begging” means—

<sup>168</sup> It came into force on 2nd October, 1987.



- (i) soliciting or receiving alms in a public place or entering into any private premises for the purposes of soliciting or receiving alms, whether under the pretense of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
- (ii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
- (iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;
- (b) "Board" means a Juvenile Welfare Board constituted under section 4;
- (c) "brothel", "prostitute", "prostitution" and "public place" shall have the meanings respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956);
- (d) "competent authority" means, in relation to neglected Juveniles, a Board and, in relation to delinquent Juveniles, a Juvenile Court and where no such Board or Juvenile Court has been constituted, includes any court empowered under sub-section (2) of section 7 to exercise the powers conferred on a Board or Juvenile Court;
- (e) "delinquent juvenile" means a juvenile who has been found to have committed an offence;
- (f) "fit person" or "fit institution" means any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its care and protection on the terms and conditions specified by the competent authority;
- (g) "guardian" in relation to a juvenile, includes, any person who, in the opinion of the competent authority, having cognizance of any proceeding in relation to a juvenile, has, for the time being, the actual charge of, or control over, that juvenile;
- (h) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;
- (i) "Juvenile Court" means a court constituted under section 5;
- (j) "Juvenile home" means an institution established or certified by the State Government under section 9 as a juvenile home;

- (k) “narcotic drug” and “psychotropic substance” shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (l) “neglected juvenile” means a juvenile who—
- (i) is found begging; or
  - (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or
  - (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or
  - (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; or
  - (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain;
- (m) “observation home” means any institution or place established or recognised by the State Government under section 11 as an observation home;
- (n) “offence” means an offence punishable under any law for the time being in force;
- (o) “place of safety” means any place or institution (not being a police station or jail), the person in charge of which is willing temporarily to receive and take care of a juvenile and which, in the opinion of the competent authority may be a place of safety for the juvenile;
- (p) “prescribed” means prescribed by rules made under this Act;
- (q) “probation officer” means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958 (20 of 1958);
- (r) “special home” means an institution established or certified by the State Government under section 10;
- (s) “supervision”, in relation to a juvenile placed under the care of any parent, guardian, or other fit person or fit institution under this Act, means the supervision of that juvenile by a probation officer for the purpose of ensuring that the juvenile is properly looked after and that the conditions imposed by the competent authority are complied with;

(t) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

**3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.**—Where an inquiry has been initiated against a juvenile and during the course of such inquiry the juvenile ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person if such person had continued to be a juvenile.

## CHAPTER II

### Competent Authorities and Institutions for Juveniles

**4. Juvenile Welfare Boards.**—(1) The State Government may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more Juvenile Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected juveniles under this Act.

(2) A Board shall consist of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a woman; and every such member shall be vested with the powers of a Magistrate under the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

**5. Juvenile Courts.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more Juvenile Courts for exercising the powers and discharging the duties conferred or imposed on such court in relation to delinquent juveniles under this Act.

(2) A Juvenile Court shall consist of such number of Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be, forming a Bench as the State Government thinks fit to appoint, of whom one shall be designated as the Principal Magistrate; and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

(3) Every Juvenile Court shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the State Government.

**6. Procedure, etc. in relation to Boards and Juvenile Courts.**—(1) In the event of any difference of opinion among the members of a Board or among the Magistrates of a Juvenile Court, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Chairman or of the Principal Magistrate, as the case may be, shall prevail.

(2) A Board or Juvenile Court may act notwithstanding the absence of any member of the Board or, as the case may be, any Magistrate of the Juvenile Court, and no order made by the Board or Juvenile Court shall be invalid by reason only of the absence of any member or Magistrate, as the case may be, during any stage of the proceeding.

(3) No person shall be appointed as a member of the Board or as a Magistrate in the Juvenile Court unless he has, in the opinion of the State Government, special knowledge of child psychology and child welfare.

**7. Powers of the Board and Juvenile Court.**—(1) Where a Board or a Juvenile Court has been constituted for any area, such Board or Court, shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act have power to deal exclusively with all proceedings under this Act relating to neglected juveniles or delinquent juveniles, as the case may be:

*Provided that a Board or a Juvenile Court may, if it is of opinion that it is necessary so to do having regard to the circumstances of the case, transfer any proceedings to any Juvenile Court or Board, as the case may be:*

*Provided further that where there is any difference of opinion between a Board and a Juvenile Court regarding the transfer of any proceedings under the first proviso, it shall be referred to the Chief Metropolitan Magistrate or, as the case may be, the Chief Judicial Magistrate for decision, and in a case where the District Magistrate is functioning as a Board or a Juvenile Court, such difference of opinion shall be referred to the Court of Session, and the decision of the Chief Metropolitan Magistrate or Chief Judicial Magistrate or, as the case may be, the Court of Session on such reference shall be final.*

(2) Where no Board or Juvenile Court has been constituted for any area, the powers conferred on the Board or the Juvenile Court by or under this Act shall be exercised in that area, only by the following, namely:—

- (a) the District Magistrate; or
- (b) the Sub-Divisional Magistrate; or

(c) any Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be.

(3) The powers conferred on the Board or Juvenile Court by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

**8. Procedure to be followed by a Magistrate not empowered under the Act.—**(1) When any Magistrate not empowered to exercise the powers of a Board or a Juvenile Court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile had originally been brought before it.

**9. Juvenile homes.—**(1) The State Government may establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles under this Act.

(2) Where the State Government is of opinion that any institution other than a home maintained under sub-section (1) is fit for the reception of the neglected juvenile to be sent there under this Act, it may certify such institution as a juvenile home for the purpose of this Act.

(3) Every juvenile home to which a neglected juvenile is sent under this Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.

(4) The State Government may, by rules made under this Act, provide for the management of juvenile homes, including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, the certification of a juvenile home is granted or withdrawn.

**10. Special homes.—**(1) The State Government may establish and maintain as many special homes as may be necessary for the reception of delinquent juveniles under this Act.

(2) Where the State Government is of the opinion that any institution other than a home established or maintained under sub-section (1) is fit for the reception

of the delinquent juveniles to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.

(3) Every special home to which a delinquent juvenile is sent under this Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.

(4) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and the nature of services to be maintained by them, and the circumstances under which, and the manner in which, the certification of a special home may be granted or withdrawn.

(5) The rules made under sub-section (4) may also provide for the classification and separation of delinquent juveniles on the basis of age and nature of offences committed by them.

**11. Observation homes.**—(1) The State Government may establish and maintain as many observation homes as may be necessary for the temporary reception of juveniles during the pendency of any inquiry regarding them under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1) is fit for the temporary reception of juveniles during the pendency of any inquiry regarding them under this Act, it may recognise such institution as an observation home for the purposes of this Act.

(3) Every observation home to which a juvenile is sent under this Act shall not only provide the juvenile with accommodation, maintenance and facilities for medical examination and treatment but also provide him with facilities for useful occupation.

(4) The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and the nature of services to be maintained by them, and the circumstances under which, and the manner in which, an institution may be recognised as an observation home or the recognition may be withdrawn.

**12. After-care organisations.**—The State Government may, by rules made under this Act, provide—

- (a) for the establishment or recognition of after-care organisations and the powers that may be exercised by them for effectively carrying out their functions under this Act;

(b) for a scheme of after-care programme to be followed by such after-care organisations for the purpose of taking care of juveniles after they leave juvenile homes or special homes and for the purpose of enabling them to lead an honest, industrious and useful life;

(c) for the preparation or submission of a report by the probation officer in respect of each juvenile prior to his discharge from a juvenile home or special home, as the case may be, regarding the necessity and nature of after-care of such juvenile, the period of such after-care, supervision thereof and for the submission of a report by the probation officer on the progress of each such juvenile;

(d) for the standards and the nature of services to be maintained by such after-care organisations;

(e) for such other matters as may be necessary for the purpose of effectively carrying out the scheme of after-care programme of juveniles.

### **CHAPTER III** **Neglected Juveniles**

**13. Production of neglected juveniles before Boards.**—(1) If any police officer or any other person or organisation authorised by the State Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected juvenile, such police officer or other person or organisation may take charge of that person for bringing him before a Board.

(2) When information is given to an officer-in-charge of a police station about any neglected juvenile found within the limits of such station, he shall enter in a book to be kept for the purpose the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the juvenile, he shall forward a copy of the entry made to the Board.

(3) Every juvenile taken charge of under sub-section (1) shall be brought before the Board without any loss of time but within a period of twenty-four hours of such charge taken excluding the time necessary for the journey from the place where the juvenile had been taken charge of to the Board.

(4) Every juvenile taken charge of under sub-section (1) shall, unless he is kept with his parent or guardian, be sent to an observation home (but not to a police station or jail) until he can be brought before a Board.

**14. Special procedure to be followed when neglected juvenile has parents.**—(1) If a person, who in the opinion of the police officer or the authorised person or organisation is a neglected juvenile, has a parent or guardian who has the actual charge of, or control over, the juvenile, the police officer or the authorised person or the organisation may, instead of taking charge of the juvenile, make a report to the Board for initiating an inquiry regarding that juvenile.

(2) On receipt of a report under sub-section (1), the Board may call upon the parent or guardian to produce the juvenile before it and to show cause why the juvenile should not be dealt with as a neglected juvenile under the provisions of this Act and if it appears to the Board that the juvenile is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the juvenile) to an observation home or a place of safety.

**15. Inquiry by Board regarding neglected juveniles.**—(1) When a person alleged to be a neglected juvenile is produced before a Board, it shall examine the police officer or the authorised person or the organisation who brought the juvenile or made the report and record the substance of such examination and hold the inquiry in the prescribed manner and may make such orders in relation to the juvenile as it may deem fit.

(2) Where a Board is satisfied on inquiry that a juvenile is a neglected juvenile and that it is expedient so to deal with him, the Board may make an order directing the juvenile to be sent to a juvenile home for the period until he ceases to be a juvenile:

*Provided that the Board may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.*

*Provided further that the Board may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.*

(3) During the pendency of any inquiry regarding a juvenile, the juvenile shall, unless he is kept with his parent or guardian, be sent to an observation home or a place of safety for such period as may be specified in the order of the Board:

*Provided that no juvenile shall be kept with his parent or guardian if, in the opinion of the Board, such parent or guardian is unfit or unable to exercise or does not exercise proper care and control over the juvenile.*

**16. Power to commit neglected juvenile to suitable custody.**—(1) If the Board so thinks fit, it may, instead of making an order under sub-section (2) of section 15, for sending the juvenile to a juvenile home, make an order placing the juvenile under the care of a parent, guardian or other fit person, on such parent,



guardian or fit person executing a bond with or without surety to be responsible for the good behaviour and well-being of the juvenile and for the observance of such conditions as the Board may think fit to impose.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the Board may, in addition, make an order that the juvenile be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time it appears to the Board, on receiving a report from the probation officer or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the juvenile, it may, after making such inquiry as it deems fit, order the juvenile to be sent to a juvenile home.

**17. Uncontrollable juveniles.**—Where a parent or guardian of a juvenile complains to the Board that he is not able to exercise proper care and control over the juvenile and the Board is satisfied on inquiry that proceedings under this Act should be initiated regarding the juvenile, it may send the juvenile to an observation home or a place of safety and make such further inquiry as is may deem fit and the provisions of section 15 and section 16 shall, as far as may be, apply to such proceedings.

#### **CHAPTER IV Delinquent Juveniles**

**18. Bail and custody of juveniles.**—(1) When any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home or place of safety in the prescribed manner (but not in a police station or jail) until he can be brought before a Juvenile Court.

(3) When such person is not released on bail under sub-section (1) by the Juvenile Court it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

**19. Information to parent or guardian or probation officer.**—Where a juvenile is arrested, the officer-in-charge of the police station to which the juvenile is brought shall, as soon as may be after the arrest, inform—

- (a) the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Juvenile Court before which the juvenile will appear; and
- (b) the probation officer of such arrest in order to enable him to obtain information regarding the antecedents and family history of the juvenile and other material circumstances likely to be of assistance of the Juvenile Court for making the inquiry.

**20. Inquiry by Juvenile Court regarding delinquent juveniles.**—Where a juvenile having been charged with an offence appears or is produced before a Juvenile Court, the Juvenile Court shall hold the inquiry in accordance with the provisions of section 39 and may, subject to the provisions of this Act, make such order in relation to the juvenile as it deems fit.

**21. Orders that may be passed regarding delinquent juveniles.**—(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit,—

- (a) allow the juvenile to go home after advice or admonition;
- (b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (d) make an order directing the juvenile to be sent to a special home,—
  - (i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;
  - (ii) in the case of an other juvenile, for the period until he ceases to be a juvenile:

*Provided that the Juvenile Court may, if it satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit:*

*Provided further that the Juvenile Court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the juvenile attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl;*

(e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b), clause (c) or clause (e) of sub-section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

*Provided that if at any time afterwards it appears to the Juvenile Court on receiving a report from the probation officer or otherwise, that the delinquent juvenile has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well being of the juvenile it may after making such inquiry as it deems fit, order the delinquent juvenile to be sent to a special home.*

(3) The Juvenile Court making a supervision order under sub-section (2), shall explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties if any, and the probation officer.

(4) In determining the special home, or any person or institution to whose custody a juvenile is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the juvenile to ensure that religious instruction contrary to the religious persuasion of the juvenile is not imparted to him.

**22. Orders that may not be passed against the delinquent juvenile.—**(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent juvenile shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine in default of furnishing security:

*Provided that where a juvenile who has attained the age of fourteen years has committed an offence and the Juvenile Court is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour have been*

*such that it would not be in his interest or in the interest of other juveniles in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Juvenile Court, may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.*

(2) On receipt of a report from a Juvenile Court under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such delinquent juvenile to be detained at such place and on such conditions as it thinks fit:

*Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.*

**23. Proceeding under Chapter VIII of the Code of Criminal Procedure not competent against juvenile.**—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), no proceeding shall be instituted and no order shall be passed against a juvenile under Chapter VIII of the said Code.

**24. No joint trial of juvenile and person not a juvenile.**—(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, no juvenile shall be charged with or tried for, any offence together with a person who is not a juvenile.

(2) If a juvenile is accused of an offence for which under section 223 of Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

**25. Removal of disqualification attaching to conviction.**—Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

**26. Special provision in respect of pending cases.**—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the

Juvenile Court which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the juvenile has committed the offence.

## **CHAPTER V**

### **Procedure of Competent Authorities Generally and Appeals and Revision from Orders of Such Authorities**

**27. Sittings, etc. of Boards and Juvenile Courts.**—(1) A Board or a Juvenile Court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.

(2) A Board or, as the case may be, a Juvenile Court under sub-section (2) of section 7 shall, while holding any inquiry regarding a juvenile under this Act, as far as practicable, sit in a building or room different from that in which the ordinary sittings of Civil and Criminal Courts are held, or on different days or at times different from those at which the ordinary sittings of such courts are held.

(3) An inquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless, for special reasons to be recorded in writing, the competent authority otherwise directs.

**28. Persons who may be present before competent authority.**—(1) Save as provided in this Act, no person shall be present at any sitting of a competent authority, except—

- (a) any officer of the competent authority, or
- (b) the parties to the inquiry before the competent authority, the parent or guardian of the juvenile and other persons directly concerned in the inquiry including police officers and legal practitioners, or
- (c) such other persons as the competent authority may permit to be present.

(2) Notwithstanding anything contained in sub-section (1), if at any stage during an inquiry a competent authority considers it to be expedient in the interest of the juvenile or on grounds of decency or morality that any person including the police officers, legal practitioners, the parent, guardian or the juvenile himself should withdraw, the competent authority may give such direction, and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as may be necessary.

(3) No legal practitioner shall be entitled to appear before a Board in any case or proceeding before it, except with the special permission of that Board.

**29. Attendance of parent or guardian of juvenile.**—Any competent authority before which a juvenile is brought under any of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the juvenile to be present at any proceeding in respect of the juvenile.

**30. Dispensing with attendance of juvenile.**—If, at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the juvenile is not essential for the purpose of the inquiry, the competent authority may dispense with his attendance and proceed with the inquiry in the absence of the juvenile.

**31. Committal to approved place of juvenile suffering from dangerous disease and his future disposal.**—(1) When a juvenile who has been brought before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a juvenile is found to be suffering from leprosy or is of unsound mind, he shall be dealt with under the provisions of the Lepers Act, 1898 (3 of 1898), or the Indian Lunacy Act, 1912 (4 of 1912), as the case may be.

**32. Presumption and determination of age.**—(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

**33. Circumstances to be taken into consideration in making orders under the Act.**—In making any order in respect of a juvenile under this Act, a competent authority shall take into consideration the following circumstances, namely:—

- (a) the age of the juvenile;
- (b) the state of physical and mental health of the juvenile;
- (c) the circumstances in which the juvenile was and is living;
- (d) the reports made by the probation officer;

- (e) the religious persuasion of the juvenile;
- (f) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interest of the welfare of the juvenile:

*Provided that in the case of a delinquent juvenile, the above circumstances shall be taken into consideration after the Juvenile Court has recorded a finding against the juvenile that he has committed the offence:*

*Provided further that if no report of the probation officer is received within ten weeks of his being informed under section 19, it shall be open to the Juvenile Court to proceed without it.*

**34. Sending a juvenile outside jurisdiction.**—In the case of a neglected or delinquent juvenile whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority; and the competent authority exercising jurisdiction over the place to which the juvenile is sent shall in respect of any matter arising subsequently have the same powers in relation to the juvenile as if the original order had been passed by itself.

**35. Reports to be treated as confidential.**—The report of the probation officer or any circumstance considered by the competent authority under section 33 shall be treated as confidential:

*Provided that the competent authority may, if it so thinks fit, communicate the substance thereof to the juvenile or his parent or guardian and may give such juvenile, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.*

**36. Prohibition of publication of names, etc. of juveniles involved in any proceeding under the Act.**—(1) No report in any newspaper, magazine or news-sheet of any inquiry regarding a juvenile under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published:

*Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile.*

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

**37. Appeals.**—(1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session:

*Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*

(2) No appeal shall lie from—

- (a) any order of acquittal made by the Juvenile Court in respect of a juvenile alleged to have committed an offence; or
- (b) any order made by a Board in respect of a finding that a person is not a neglected juvenile.

(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section.

**38. Revision.**—The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

*Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.*

**39. Procedure in inquiries, appeals and revision proceeding.**—(1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974), for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

**40. Power to amend orders.**—(1) Without prejudice to the provisions for appeal and revision under this Act, any competent authority may, either on its own motion or on an application received in this behalf, amend any order as to the institution to which a juvenile is to be sent or as to the person under whose care or supervision a juvenile is to be placed under this Act.

(2) Clerical mistakes in orders passed by a competent authority or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on application received in this behalf.

## CHAPTER VI



### Special Offences in Respect of Juveniles

**41. Punishment for cruelty to juvenile.**—(1) Whoever, having the actual charge of, or control over, a juvenile, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

**42. Employment of juveniles for begging.**—(1) Whoever employs or uses any juvenile for the purposes of begging or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

(3) The offence punishable under the section shall be cognizable.

**43. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a juvenile.**—Whoever gives, or causes to be given, to any juvenile any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of a duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

**44. Explanation of juvenile employees.**—Whoever ostensibly procures a juvenile for the purpose of any employment and withholds the earnings of the juvenile or uses such earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

**45. Alternative punishments.**—Where an act or omission constitutes an offence punishable under this Act and also any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

### CHAPTER VII Miscellaneous

**46. Power of State Government to discharge and transfer juveniles.**—(1) The State Government may, notwithstanding anything contained in this Act, at any time, order a neglected or delinquent juvenile to be discharged from the juvenile home or special home, either absolutely or on such conditions as it may think fit to impose.

(2) The State Government may, notwithstanding anything contained in this Act, order—

(a) a neglected juvenile to be transferred from one juvenile home to another;

(b) a delinquent juvenile to be transferred from one special home to another or from a special home to a borstal school where such school exists or from a special home to a juvenile home;

(c) a neglected juvenile or a delinquent juvenile to be transferred from a juvenile home or a special home to a fit person or a fit institution;

(d) a juvenile who has been released on licence which has been revoked or forfeited, to be sent to the special home or juvenile home from which he was released or to any other juvenile home or special home or borstal school:

*Provided that the total period of the stay of the juvenile in a juvenile home or a special home or fit institution or under a fit person shall not be increased by such transfer.*

(3) The State Government may, notwithstanding anything contained in this Act, at any time, discharge a juvenile from the care of any person under whom he was placed under this Act either absolutely or on such conditions as may think fit to impose.

**47. Transfers between juvenile homes, etc. under the Act, and juvenile homes, etc. of like nature in different part of India.**—(1) The Government of a State may direct any neglected juvenile or delinquent juvenile to be transferred from any juvenile home or special home within the State to any other juvenile home, special home, or institution of a like nature in any other State with the consent of the Government of that State.

(2) The Government of a State may, by general or special order, provide for the reception in a juvenile home or special home with the State of a neglected juvenile or delinquent juvenile detained in a juvenile home or special home or institution of a like nature in any other State where the Government of that State makes an order for such transfer, and upon such transfer the provisions of this Act shall apply to such juvenile as if he had been originally ordered to be sent to such juvenile home or special home under this Act.

**48. Transfer of juveniles of unsound mind or suffering from leprosy or addicted to drugs.**—(1) Where it appears to the State Government that any

juvenile kept in a special home or juvenile home or institution in pursuance of this Act is suffering from leprosy or is of unsound mind, or is addicted to any narcotic drug or psychotropic substance, the State Government may order his removal to a leper asylum or mental hospital or treatment centre for drug addicts or other place of safe custody for being kept there for such period not exceeding the period for which he is required to be kept in custody under the orders of the competent authority or for such further period as may be certified by the medical officer to be necessary for the proper treatment of the juvenile.

(2) Where it appears to the State Government that the juvenile is cured of leprosy or of unsoundness of mind or drug addiction it may, if the juvenile is still liable to be kept in custody, order the person having charge of the juvenile to send him to the special home or juvenile home or institution from which he was removed or, if the juvenile is no longer liable to be kept in custody order him to be discharged.

**49. Placing out on licence.**—(1) When a juvenile is kept in a juvenile home or special home, the State Government may, if it so thinks fit, release the juvenile from the juvenile home or special home and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of, any responsible person named in the licence willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.

(2) Any licence so granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The State Government may, at any time, by order in writing, revoke any such licence and order the juvenile to return to the juvenile home or special home from which he was released or to any other juvenile home or special home, and shall do so at the desire of the person with whom or under whose supervision the juvenile has been permitted to live in accordance with a licence granted under sub-section (1).

(4) When a licence has been revoked or forfeited and the juvenile refuses or fails to return to the special home or juvenile home to which he was directed so to return, the State Government may, if necessary, cause him to be taken charge of and to be taken back to the special home or juvenile home.

(5) The time during which a juvenile is absent from a special home or juvenile home in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the special home or juvenile home:

*Provided that when a juvenile has failed to return to the special home or juvenile home on the licence being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he is liable to be kept in custody.*

**50. Provision in respect of escaped juveniles.**—Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile who has escaped from a special home or a juvenile home or from the care of a person under whom he was placed under this Act and shall send the juvenile back to the special home or the juvenile home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape but the special home, juvenile home or the person may, after giving the information to the competent authority which passed the order in respect of the juvenile, take such steps against the juvenile as may be deemed necessary.

**51. Contribution by parents.**—(1) The competent authority which makes an order for sending a neglected juvenile or a delinquent juvenile to a juvenile home or a special home or placing the juvenile under the care of a fit person or fit institution may make an order requiring the parent or other person liable to maintain the juvenile to contribute to his maintenance, if able to do so, in the prescribed manner.

(2) The competent authority before making any order under sub-section (1) shall inquire into the circumstances of the parent or other person liable to maintain the juvenile and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.

(3) The person liable to maintain a juvenile shall, for the purposes of sub-section (1), include in the case of illegitimacy, his putative father:

*Provided that where the juvenile is illegitimate and an order for his maintenance has been made under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), the competent authority shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent authority and such sum shall be paid by him towards the maintenance of the juvenile.*

(4) Any order made under this section may be enforced in the same manner as an order under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

**52. Fund.**—(1) The State Government may create a Fund under such name as it thinks fit for the welfare and rehabilitation of the juveniles dealt with under this Act.

(2) There shall be credited to the Fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.

(3) The fund created under sub-section (1) shall be administered by such officers or authority in such manner and for such purposes as may be prescribed.

**53. Advisory Board.**—(1) The State Government may constitute an Advisory Board to advise it on matters relating to the establishment and maintenance of homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of neglected and delinquent juveniles and co-ordination among the various official and non-official agencies concerned.

(2) The Advisory Board shall consist of such number of officers and other persons as the State Government thinks fit and may also include experts and the representatives of voluntary organisations engaged in the relevant areas.

**54. Visitors.**—(1) The State Government may nominate not more than three non-officials to be Visitors for each of the homes established under this Act.

(2) A Visitor nominated for a home under sub-section (1) shall periodically visit such home and make a report to the State Government.

**55. Control of custodian over juvenile.**—Any person in whose custody a juvenile is placed in pursuance of this Act shall, while the order is in force, have the like control over the juvenile as he would have if he were his parent, and shall be responsible for his maintenance, and the juvenile shall continue in his custody for the period stated by the competent authority, notwithstanding that he is claimed by his parent or any other person:

*Provided that no juvenile while in such custody shall be carried except with the permission of the competent authority.*

**56. Delinquent juvenile undergoing sentence at commencement of the Act.**—In any area in which this Act is brought into force, the State Government may direct that a delinquent juvenile who is undergoing any sentence of imprisonment at the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special home or be kept in safe custody in such place and manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by a Juvenile Court to be sent to such special home or, as the case may be, ordered to be detained under sub-section (2) of section 22.

**57. Appointment of officers.**—(1) The State Government may appoint as many probation officers, officers for the inspection of special homes, juvenile homes, observation homes or after care organisations and such other officers as it may deem necessary for carrying out the purposes of this Act.

(2) It shall be the duty of the probation officer—

- (a) to inquire, in accordance with the direction of a competent authority, into the antecedents and family history of any juvenile accused of an offence, with a view to assist the authority in making the inquiry;
- (b) to visit neglected and delinquent juveniles at such intervals as the probation officer may think fit;
- (c) to report to the competent authority as to the behaviour of any neglected or delinquent juvenile;
- (d) to advise and assist neglected and delinquent juveniles and, if necessary, endeavour to find them suitable employment;
- (e) where a neglected or delinquent juvenile is placed under the care of any person or institution on certain conditions to see whether such conditions are being complied with; and
- (f) to perform such other duties as may be prescribed.

(3) Any officer empowered in this behalf by the State Government may enter any special home, juvenile home, observation home or after-care organisation and make a complete inspection thereof in all its departments and of all papers, registers and accounts relating thereto and shall submit the report of such inspection to the State Government.

**58. Officers appointed under the Act to be public servants.**—Probation officers and other officers appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

**59. Procedure in respect of bonds.**—The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (2 of 1974), shall, as far as may be, apply to bonds taken under this Act.

**60. Delegation of powers.**—The State Government may, by general or special order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to that Government.

**61. Protection of action taken in good faith.**—No suit or other legal proceeding shall lie against the State Government or any probation officer or other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

**62. Power to make rules.**—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the places at which, the days on which, the time at which, and the manner in which, a competent authority may hold its sittings;
- (b) the procedure to be followed by a competent authority in holding inquiries under this Act, and the mode of dealing with juveniles suffering from dangerous diseases or mental complaints;
- (c) the circumstances in which, and the conditions subject to which, an institution may be certified as a special home or a juvenile's home or recognised as an observation home, and the certification or recognition withdrawn;
- (d) the internal management of special homes, juvenile homes and observation homes and the standards and the nature of services to be maintained by them;
- (e) the functions and responsibilities of special homes, juvenile homes and observation homes;
- (f) the inspection of special homes, juvenile homes, observation homes and after-care organisations;
- (g) the establishment, management and functions of after-care organisations; the circumstances in which, and the conditions subject to which an institution may be recognised as an after-care organisation and such other matters as are referred to in section 12;
- (h) the qualifications and duties of probation officers;
- (i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their services;
- (j) the conditions subject to which a girl who is neglected or delinquent juvenile may be escorted from one place to another, and the manner in which a juvenile may be sent outside the jurisdiction of a competent authority;
- (k) the manner in which a contribution for the maintenance of a juvenile may be ordered to be paid by a parent or guardian;
- (l) the officers or authorities by whom, the manner in which and the purpose for which the Fund created under section 52 shall be administered;
- (m) the conditions under which a juvenile may be placed out on licence and the form and conditions of such licence;
- (n) the conditions subject to which juveniles may be placed under the care of any parent, guardian or other fit person or fit institution under this Act and the obligations of such persons or institutions towards the juveniles so placed;
- (o) any other matter which has to be, or may be, prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the legislature of that State.

**63. Repeal and savings.**—If, immediately before the date on which this Act comes into force in any State, there is in force in that State, any law corresponding to this Act, that law shall stand repealed on the said date:

*Provided that the repeal shall not affect—*

*(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or*

*(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or*

*(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or*

*(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,*

*and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.*



## **Appendix C: The United Nations Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)**

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

### **PART ONE**

#### **GENERAL PRINCIPLES**

##### **1. Fundamental perspectives**

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

##### **2. Scope of the Rules and definitions used**

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, color, sex,

language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

- (a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult;
- (b) An offense is any behavior (act or omission) that is punishable by law under the respective legal system;
- (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offense.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.

### 3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behavior that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

### 4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

### 5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense.

#### 6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

#### 7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

#### 8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

#### 9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

## PART TWO

## INVESTIGATION AND PROSECUTION

### 10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

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

### 11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

### 12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of

juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

### 13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 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.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles 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.

13.5 While in custody, juveniles 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.

## PART THREE

### ADJUDICATION AND DISPOSITION

#### 14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

#### 15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

#### 16. Social inquiry reports

16.1 In all cases except those involving minor offenses, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offense has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

#### 17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offense but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offenses and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

#### 18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counseling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

#### 19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

#### 20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

#### 21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

#### 22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

#### **PART FOUR**

##### **NON-INSTITUTIONAL TREATMENT**

###### **23. Effective implementation of disposition**

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

###### **24. Provision of needed assistance**

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

###### **25. Mobilization of volunteers and other community services**

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

#### **PART FIVE**

##### **INSTITUTIONAL TREATMENT**

###### **26. Objectives of institutional treatment**



26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions 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.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.

## 27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

## 28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

#### 29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

### **PART SIX**

#### RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

#### 30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

## **Appendix D: United Nations Rules for the Protection of Juveniles Deprived of Their Liberty**

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

### **I. FUNDAMENTAL PERSPECTIVES**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. 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.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including

compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by

regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

### III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

#### IV. THE MANAGEMENT OF JUVENILE FACILITIES

##### A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The 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.

##### B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

#### C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

#### D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should



be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

#### E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labor and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labor, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offense or to send it to his or her family or other persons outside the detention facility.

#### F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

#### G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counseling or indoctrination.

#### H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

#### I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the

opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

#### J. Contacts with the wider community

59. 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 society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

#### K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director

should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

#### L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including 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. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labor should 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 and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offense;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defense, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

#### M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should

they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure', to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.



84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favorable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

### **Appendix E: The United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment**

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

#### **PART I**

##### **Article I**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a

confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

#### Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

#### Article 4

1. Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.

#### Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses referred to in article 4 in the following cases:

(a) When the offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

- (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offenses in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
  3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offense referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offense referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offense of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for

prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offenses referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### Article 8

1. The offenses referred to in article 4 shall be deemed to be included as extraditable offenses in any extradition treaty existing between States Parties. States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offenses as extraditable offenses between themselves subject to the conditions provided by the law of the requested State.

4. Such offenses shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offenses referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the

instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## PART II

### Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties,

### Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
  - (a) Six members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

### Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their

undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

#### Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary



account of the results of the proceedings in its annual report made in accordance with article 24.

#### Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

#### Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

## Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## PART III

## Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

## Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

## Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

## Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

## Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months

from the date of such communication at least one third of the States Parties favors such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

#### Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

#### Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

#### Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

#### Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

## **Appendix F: The United Nations Convention on the Rights of the Child**

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

### **PREAMBLE**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the

United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**



For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

#### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction 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.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

#### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

#### Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by

local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

#### Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

#### Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

## Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

## Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

## Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

## Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

## Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

## Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

## Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

## Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

## Article 21

- States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
  - (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
  - (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services,

rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 25



States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every

child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

#### Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

#### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

#### Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

#### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

#### Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;
- (b) 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 time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

#### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
  - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
  - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
  - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
  - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.

#### Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

## PART II

### Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after

the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.



5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### PART III

#### Article 46

The present Convention shall be open for signature by all States.

## Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

## Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

## Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favor a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

## Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

#### Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.