Training Course on Juvenile Justice for Officials from China

Sion Seminar 2007

Jean Zermatten (Ed.)

Working Report 1 - 2008
Training Course on Juvenile Justice for officials from China

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This working report presents the various conferences of the Sion Seminar, held in Switzerland from August 26th to September 1st 2007

Working Report
1 - 2008

Organised by
Institut International des Droits de l’Enfant (IDE)

In collaboration with
UNICEF CHINA
TABLE OF CONTENT

Introduction
Jean Zermatten, Director of IDE 2

The Swiss legal juvenile justice system
Jean Zermatten, Director of IDE 5

Children in special need and the notion of vulnerability
Daniel Stoecklin, Senior Officer, IDE 18

The Involvement of the Community in Juvenile Justice
Christian Nanchen, Head of the Children’s Protection Office, Sion 35

Presentation of the Chinese Juvenile Justice system
Xiangwei Ge, Prof of Research Center for Criminal Prevention, Ministry of Justice, Beijing 45

How to run an Institution
Jean-Pierre Heiniger, Former Director of la Fontanelle, Switzerland 52

The restorative Justice, the guiding principles
Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone 92

International developments in Juvenile Justice, the new General Comment Nr 10
Jean Zermatten, Director of IDE 95

The question of ages in Juvenile Justice
Karl Hanson, Senior Lecturer and Researcher, Children’s Rights Unit, IUKB, Sion 108

The strategy for street children
Daniel Stoecklin, Senior Officer, IDE 117

The criminal investigation police of the canton Valais
Robert Steiner, Chief of Investigation Police of the canton Valais, Switzerland 129

The Work of a juvenile judge
Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone 149

Final recommendations
adopted by the delegation on 1st September 2007 153

Final Report
IDE 155

Appendix : List of participants 159
INTRODUCTION
Jean Zermatten, Director of IDE

Good Morning!

Honorable Chief of Delegation, Mr Liu Jian,
Members of the Delegation, representants of
- the Ministries of Justice, Public Security, Commerce
- the China Law Society,
- the center for Criminal Prevention

Dear Madam Cheng Xuefeng, Representative of Unicef - China

Dear Madame Renate Winter, Director of the Seminar,
Dear Speakers, animators and Members of the IDE staff,

Distinguished participants,

On behalf of the International Institute of the Rights of the Child, and on behalf of the Swiss Agency for Cooperation and Development of Canton du Valais, I have the honour to welcome you in Switzerland, and more precisely in the beautiful Canton of Valais. Our Institute and the numerous authorities that will be present this week and different institutions we will visit are very proud to receive this high level delegation coming in our country to visit institutions, to see best practices and to have a practical view of the swiss system dealing with juvenile offenders.

The International Institute for the rights of the child (IDE), located here in this pretty city of Sion, is used to receive training course in the field of Juvenile Justice. This time, I would like to take this opportunity to thank UNICEF- China, and UNICEF ion general to have create this event (or joint-venture) inviting a delegation of responsibles of Chinan the field of Juvenile Justice to come here for “Best Practices and Visits” on the topic of Juvenile Justice. As many of you already know, IDE has been involved in juvenile justice in many countries for the past six years and has received many delegations from many countries. Today, we are provided with an another country and opportunity to work with you and embark in the process of shaping a solid juvenile justice system that brings internationally recognized standards in the field to the reality of China.

Juvenile Justice is very well doted with international standards, since we have a lot of instruments dealing with the problems of the young coming in conflict with the law. Naturally, the principal instrument is the Convention on the Rights of the Child, to which China is a signatory, and has recently presented its report to the Committee for the Rights of the child in Geneva.

§But at the international (or universal) level, we ave also others instruments like the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles
Deprived of Their Liberty and the new Guidelines on Justice for child victims and witnesses of crime. And, most recently, the new General Comment no 10 for Juvenile Justice that will be presented on Thursday.

All this rules provide a comprehensive framework of juvenile justice. And from these rules, it’s possible to find out some core principles that can be summarised as:

- The necessity to protect the dignity and the well-being of the child and ensures that any reaction to juvenile offenders shall always be proportionnate both to the circumstances and the offence;
- The promotion of the child’s re-integration and the child’s assuming a constructive role in society;
- The establishment of a minimum age below which children are presumed not to have the capacity to infringe the penal law;
- The development of alternatives to deprivation of liberty or institutional treatment or care (in particular in pre-trial detention) to prevent the negative effects of emprisonnemnt and isolation;
- The necessity to deal with children, keeping them in their own community as far as possible. If detained in jail, they shall be contact with their family;
- The control of strict conditions of emprisonnement as separation from adults, education and possibilities to work or to be occupied, measures when they are released for appropriate help and support;
- The obligation to select and train qualified personnel available in all elements of the system (not only in the courts);
- The idea to tackle the problems before the young come in conflict with the law: it means to emphasis the prevention, that requires efforts of the part of the entire society and not only of so called “specialists”. The role of the family and of the school system is of paramount importance.

The main problem that faces the States when changing a law is to find its way, respecting its culture, its history and the political will of the citizens. But one problem is common to all States: how to avoid the destructive consequences of the uncritical use of deprivation of liberty? Many countries have the same problem.

The answer is surely in looking at alternative measures to develop both public safety and responses to juvenile justice offenders that respect their rights and their best interests.

In concluding my intervention I would like to express the best wishes from our Authorities, in particular from the Swiss Agency for Devleoppement and Coöperaiton, and from the cantonal and municipal authorities; and to ensure you of the full committement of the International Institute for the rights of the child to give you the best hospitality in our canton du Valais. As you know, the official part (lectures, visits, and workshops...) are important; the people coming to give you lectures or the institutions you will visit are very good ones and the IDE has tried to shape a well-balanced programme.

So ENJOY your stay in Sion, Valais, Switzerland!
Thank you for your attention and have a fruitful seminar.
THE SWISS LEGAL JUVENILE JUSTICE SYSTEM
Jean Zermatten, Director of IDE

The presentation plan

ATTENTION : **New law**
Law of inspiration "welfare"

1) The objectives of the law
2) Distinction between juvenile delinquents and juvenile endangered
3) The ages of intervention and the conditions of place
4) Statistics
5) Catalog and characteristics of the measures and the punishments

The models

In the world, there are three models that inspire the juvenile court's systems:

- the Welfare Model,
- the Justice Model, or Control model
- the Restorative Model.
The Welfare Model

The Welfare Model puts the emphasis on the **person of the young offender**. The latter is seen more as **victim** than as an offender: victim of his family, of his history, of his environment, of his immaturity, of the hazard of care...

- So, the justice does not have to punish him, but to look for **the causes** of his behaviour and to act on them.
- The principal answer to the offence is not a sanction, but a **measure**. The question of the responsibility isn't important.
- The model of the Model was the French legislation of 1945, still in function, but adapted several times since its entry into force.

The Justice Model

The Justice Model, on the contrary, is based on the idea of a young offender **responsible** of his acts and who has chosen to "malpractice". So he has to pay in the form of a **retributive punishment**.

- In the model the **procedural rights** of the young are very developed, but not the possibilities of taking care.
- The question of guilty or not guilty is the central point of the trial. If this model goes until his last logic, it means the end of the specific courts for juveniles.
- This system is used principally in countries with a long tradition of common law.
The Restorative Model

The Restorative Justice Model goes from the idea to re-integrate the victim in the process and from the other idea of reparation. The young offender has to face his victim(s) and do something in order to repair his fault. These two ideas are important and it's a fact that during a long time, the victims have been forgotten.

- With this model, the Mediation and the Service Community Orders appear and become more and more applied.
- There is no "only" Restorative Justice Model but we can mention that the Austrian law for juvenile (1988) is based on Mediation.

The objectives/goals of the Swiss criminal law of the minors

The five objectives are:

- Educational
- Curative/Care
- Preventive
- Social integration / reintegration
- Protection (public security)
General ideas of the Swiss system

- Distinction
  Minors/juveniles endangered / Minors delinquents

- Minors endangered

Civil authorities=guardian (ship) system

Several models
- Minors delinquents

Penal authorities =

**Juvenile Court**

*specialised* courts with

*specialised* judges

---

**Swiss System**

**conditions of age**

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Legal Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10 years old</td>
<td>absolute irresponsibility</td>
</tr>
<tr>
<td>10-18 years old</td>
<td>relative responsibility</td>
</tr>
<tr>
<td>15, 16 years old</td>
<td>age limit for deprivation of liberty</td>
</tr>
<tr>
<td>18 years old</td>
<td>majority (civil, civic and penal)</td>
</tr>
</tbody>
</table>
| 18-25 years old   | “young adults”
                    | total responsibility but a watered-down intervention |
Conditions of place

- Inquiries:
  place where the act is committed

- Judgment:
  place where the young lives

- Foreigner:
  rules can change

Statistics

GENERAL COMMENT

Generally speaking, the situation in Switzerland is characterized by:

- A sharp rise in the number of minors charged and convicted in juvenile court,
- A shift from “adult” delinquency towards juvenile delinquency,
- A change in the type of offenses committed by minors,
- The question of violence
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Minors Condemned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>6'803</td>
</tr>
<tr>
<td>1991</td>
<td>7'278</td>
</tr>
<tr>
<td>1992</td>
<td>7'357</td>
</tr>
<tr>
<td>1993</td>
<td>7'930</td>
</tr>
<tr>
<td>1994</td>
<td>8'243</td>
</tr>
<tr>
<td>1995</td>
<td>7'983</td>
</tr>
<tr>
<td>1996</td>
<td>8'900</td>
</tr>
<tr>
<td>1997</td>
<td>9'364</td>
</tr>
<tr>
<td>1998</td>
<td>10'131</td>
</tr>
<tr>
<td>1999</td>
<td>12'238</td>
</tr>
<tr>
<td>2000</td>
<td>11'314</td>
</tr>
<tr>
<td>2001</td>
<td>12'319</td>
</tr>
<tr>
<td>2002</td>
<td>12'854</td>
</tr>
<tr>
<td>2003</td>
<td>13'483</td>
</tr>
<tr>
<td>2004</td>
<td>14'363</td>
</tr>
<tr>
<td>2005</td>
<td>14.106</td>
</tr>
</tbody>
</table>
### Statistics

**Number of minors denounced in Valais**

<table>
<thead>
<tr>
<th>Year</th>
<th>Denounced</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>829</td>
</tr>
<tr>
<td>1991</td>
<td>884</td>
</tr>
<tr>
<td>1992</td>
<td>904</td>
</tr>
<tr>
<td>1993</td>
<td>874</td>
</tr>
<tr>
<td>1994</td>
<td>928</td>
</tr>
<tr>
<td>1995</td>
<td>1,016</td>
</tr>
<tr>
<td>1996</td>
<td>1,026</td>
</tr>
<tr>
<td>1997</td>
<td>1,072</td>
</tr>
<tr>
<td>1998</td>
<td>1,097</td>
</tr>
<tr>
<td>1999</td>
<td>1,273</td>
</tr>
<tr>
<td>2000</td>
<td>1,387</td>
</tr>
<tr>
<td>2001</td>
<td>1,360</td>
</tr>
<tr>
<td>2002</td>
<td>1,399</td>
</tr>
<tr>
<td>2003</td>
<td>1,354</td>
</tr>
<tr>
<td>2004</td>
<td>1,374</td>
</tr>
<tr>
<td>2005</td>
<td>1,371</td>
</tr>
</tbody>
</table>

**Number of minors denounced in Valais**

![Graph showing the number of minors denounced in Valais from 1990 to 2005.](image)

The number of minors denounced in Valais has generally increased from 1990 to 2005, with a peak in 2001 and a slight decline in 2005.
From “Adult” Delinquency towards Juvenile Delinquency

- For quite a long time most offenses were committed by adults, with an over-representation of young adults (18-25 years old).
- Now however, although the majority of those brought before the law enforcement authorities are adults, the numbers of juveniles subjected to criminal proceedings is becoming proportionately higher.
- Thus, from approximately **15%** of all recorded offenses being committed by minors the figures have risen almost to **one quart / one third**

### Changes in the Type of Offenses Committed

<table>
<thead>
<tr>
<th>Year</th>
<th>Offenses against the penal code (general) property</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>7'396 convicted juveniles</td>
</tr>
<tr>
<td>2003</td>
<td>8'217 convicted juveniles</td>
</tr>
<tr>
<td>2004</td>
<td>8'866 convicted juveniles</td>
</tr>
<tr>
<td>2005</td>
<td>9'175 convicted juveniles</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Offenses against the physical integrity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>1'600 convicted juveniles</td>
</tr>
<tr>
<td>2003</td>
<td>1'755 convicted juveniles</td>
</tr>
<tr>
<td>2004</td>
<td>2'068 convicted juveniles</td>
</tr>
<tr>
<td>2005</td>
<td>2'268 convicted juveniles = 16 %</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Drugs-related offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>4'957 convicted juveniles</td>
</tr>
<tr>
<td>2003</td>
<td>4'953 convicted juveniles</td>
</tr>
<tr>
<td>2004</td>
<td>5'199 convicted juveniles</td>
</tr>
<tr>
<td>2005</td>
<td>4535 convicted juveniles</td>
</tr>
</tbody>
</table>
Increasingly Young Offenders

One characteristic of the new data is that offenders are committing their offenses at an increasingly young age. This holds true throughout the Western world.

- In Switzerland juvenile courts have found themselves in the throes of this trend.
- This situation poses additional difficulties since the age of these young offenders often corresponds to a delicate period compounded by the educational status of the young who at times are no longer accepted at normal educational institutions, and have been expelled from them (compulsory education...!).
- The lack of appropriate structures to deal with this type of situation create difficulties.

POSSIBILITIES OF INTERVENTION

The Judge has many possibilities

- To divert (non-suit, refusal to take action, dismissal, acquittal, withdrawal of complaint, conciliation)
- To renounce to punish = remission
- To mediate = mediation
- To pronounce a measure
- To punish
The restorative aspects

- Mediation: at three stages of the intervention: inquiry, judgement and application of a measure
- The objective is to confront author and victim with two aspects: reparation (damage) and restoration (social relationships)
- If the young offender and the victim find an agreement, the case is dismissed
- If no agreement, the case goes to trial
- Community service orders play an important role in Switzerland

Characteristics of the measures

- Idea of protection (offender is a victim); system said dualist: measure or / and punishment
- Priority of the measure
- The measure have to be accepted
- The term of the measure is not fixed
- The measure can be changed
Measures

- Protectional measures
  - Probation (educational assistance)
  - Foster care
  - Institutional care
  - Welfare institutions (with school)
  - Welfare institutions (with work or activities)
  - Welfare institutions with psychological help
  - Closed institutions
  - Medical treatment
    - Outpatient treatment
    - Still treatment

Characteristics of the punishments/penalties

- Subsidiary with regard to the measures
- Idea of retribution (the child is guilty), but educational contents
- The term is fixed
- The question of the deprivation of liberty from 15: until 1 year
- From 16 until 4 years for aggravated offences
- Swiss speciality: obligation to renounce (art 21)
Punishment/penalties

- Reprimand
- Community Service Orders
- Fine
- Deprivation of liberty
  - Suspended
  - Without respite
- Probation
- Control time
- Supervision orders

Art 21

The necessity of collaboration

The Juvenile justice is **a system**
Not only the judge / prosecutor but
- the parents
- the police
- the social services
- the psycho-social services
- the lawyer
- the community
CHILDREN IN SPECIAL NEED AND THE NOTION OF VULNERABILITY
Daniel Stoecklin, Senior Officer, IDE

Children

Children “in conflict with the law”

may be

Children “in special need”

Children in special need

The concept « children with special needs » is not a term of art in international law...

... but they exist!...

Children in special needs is the term used by NGOs and IGOs to indicate that some groups of children are particularly vulnerable both because of their status as children and because of other factors...

(V. Burren)
Who are they?

- Children with disabilities
- Children traumatized by war or natural disasters
- Child refugees (and unaccompanied child refugees)
- Children permanently or temporarily deprived of their parents
- Children living and/or working in the street ("street children")
- Other children « in especially difficult circumstances » ...

Children in a special situation

- Do not constitute exclusive groups (categories may overlap) with different needs...
- They are children whose special situation has to be specifically addressed so that they are able to benefit from the full exercise of their rights
Specific situations and problems

- Children with disability: accessibility to education, training, health care services, rehabilitation services, etc.

- Children in war and/or natural disaster: trauma (PTSD)

- Child refugees: statelessness

- Unaccompanied child refugees: family reunification (art. 22 (2) CRC)

What is the situation/problem of a « street child »?

- Permanently or temporarily deprived of his family environment ?...

- Dangers of the street: abuse, exploitation, beatings, etc. ?

- Social evils: drugs, alcohol ?

- Conflict with the law ?...
Macrosocial causes

- Massive urbanisation: overwhelming problems regarding social life, education, sanitation and housing, and slums are expanding without any basic facilities.

- Growing numbers of families at the boarders of the informal sector.

- Economic structures have become transnational (globalisation). The role of the State is challenged.

Social breakdown

- Under- or unemployment, poor work conditions, mostly aggravated by alcohol and drugs.

- Breakdown of the family leading to rejection children.

- Legal and illegal “surviving strategies”.
Citizenship

- Accessibility of basic facilities (Covenant on Economic, Social, Cultural rights)
- Accessiblity of political representation (Covenant on Civil and Political rights).

Process of labelling

- Having no voice, slum children are mostly considered only once they have become street children, a public and visible issue, depicted as a public nuisance (they mostly commit petty crimes).
- Children “in special need” may progressively (or all of a sudden) be labelled children “in conflict with the law”.
What people see

- Children working on the streets
- Children begging
- Children stealing
- Children involved in drug trafficking
- Children sniffing glue
- Children roaming around
- Children making noise
- Etc.

How people react

- People usually evaluate the situation using their own values, positions and interests:
  - Bandits (in conflict with the law) / Victims (of poverty, violence).
  - Overestimations / Underestimations.
Labelling versus Prevention

- When declared «in conflict with the law», the child is hardly ever seen in as belonging to children «in special need»...

- So, if one doesn’t take care of vulnerable children, one may eventually have to deal with children «in conflict with the law».

How many are they?

- It is very difficult to give an exact figure because people talk of the same children using different categories:
  - “children of the street”,
  - “on the street”,
  - “homeless”,
  - “abandoned”,
  - “in conflict with the law”,
  - “in especially difficult circumstances”, etc.
« Children in street situations »

- The real problem is not the difficulty to count “street children”, it is the label “street child” itself...

- We prefer to use the expression "Children in Street Situations" (CSS), because the problem is not just with the children, it is with the situations they have to face.

Diversity of situations

- Post-war situation
- Bonded labor
- Public violence
- Prostitution and trafficking
- Forced begging
- Unregistered births
- Etc...
Differenciating dimensions

- Time (spent on the street; age)
- Space (City Center / periphery)
- Norms & Values (socialization)
- Relations
- Activities
- Image of Self
- Motivation (goals)
- Gender

A system of links between the child and the street environment. To understand the typical ways (profiles) in which children experience street life.

Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)
Interactions

Street life is a question of the quality of the existing interactions between these children and the people surrounding them.

- It requires that we also cast light on those who are in contact with these children, because they are part of the problem, and hopefully also of the solution.

Articles of CRC addressing CEDC

- **General Principles:**
  - Art. 2: Non-discrimination
  - Art. 3: Best interest of the child
  - Art. 6: Life, survival and development
  - Art. 12: Opinion
Art. 2: Non-discrimination

- 1. State 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 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. State 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.

Implications of Art. 2

- Abandon the label “Street children” (negative images and discrimination because of the prejudice against their parents)

- Use the expression “children in street situations” (acknowledge the situations with the participation of children).

- Equal treatment → more efforts on prevention for vulnerable children.
Art. 3: Best interests of the child

- 1. In all actions concerning children (...) 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 (...).
- 3. States Parties shall ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards (...) of safety, health, (...) staff (...) supervision.

Implications of Art. 3

- Because of evident diversity of situations, identifying the best interests of children in street situations cannot be done without listening to them (art. 12).

- Actions aimed at protection and care shall also help preventing the social dynamics affecting children in street situations.

- Because these children more or less actively participate in these dynamics (they are social actors), intervention should also empower children in street situations to modify their own situations in their best interests.
Art. 6: Life, survival, development

1. *State Parties recognize that every child has the inherent right to life.*

2. *State Parties shall ensure to the maximum extent possible the survival and development of the child.*

Implications of Art. 6

- Children in street situations shall be protected against the current violence they are facing.

- Their development is jeopardized by their life conditions. However, these conditions have also been conducive to early maturity and to « survival strategies » (legal and illegal).

- Positive skills developed in and outside the street shall be taken due account (recognition of competences is necessary for child development).
Art. 12: Opinion

1. States Parties shall assure to the child who is capable of form 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.

Implications of Art. 12

- It is essential to have appropriate tools and techniques to guarantee that the child will actually be heard.

- To hear children in street situations helps identifying the children’s different situations and appropriate measures to be taken.
Vulnerability

- A child is vulnerable when he/she cannot actively defend him/herself against discrimination and violence.

- Vulnerability is the result of situations in which the social actor is victim of harm with no remaining possibilities to protect or to develop oneself...

Vulnerability versus Capability

The actor can be vulnerable/capable:

- Because of weak/strong institutional structures (family, education, associations, etc.)

- Because of weak/strong personal skills (social and symbolic competences)

- These two levels (individual and social) are interdependent.
Capability approach regarding the other CRC rights concerned

- Art. 19: Protection from abuse and neglect
- Art. 20: Protection of children without families
- Art. 22: Refugee children
- Art. 23: Handicapped children
- Art. 30: Children of minorities or indigenous groups
- Art. 32: Child labour
- Art. 33: Drug abuse
- Art. 34: Sexual exploitation
- Art. 35: Sale, trafficking and abduction
- Art. 36: All other forms of exploitation
- Art. 38: Armed conflicts
- Art. 39: Rehabilitative care

The CRC helps social integration

- Acknowledgement of children’s rights and competences of children
- The CRC helps regulating social structures and empowering children
Recommendations

- Consider the child as a “social actor”, having skills and an opinion on his/her situation.

- Strengthen social integrative structures (family, school, work, leisure activities, sports, etc)

- Use the CRC as a framework allowing to work on both (individual and social) levels
THE INVOLVEMENT OF THE COMMUNITY IN JUVENILE JUSTICE
Christian Nanchen, Head of the Children’s Protection Office, Sion

Introduction

Collaboration between the Juvenile Court and the Cantonal Children’s Protection Office

By adopting on May 11th 2000 the Law in favour of Youth (hereafter Lje), the Valais cantonal Parliament wished to modify the philosophy of child care in situations necessitating State intervention.

Until this law was adopted, the traditional conception of children's rights in the Valais had indeed revolved around the concepts of protection and care to provide to the child. Thanks to the entry into force of the Convention on the Rights of the Child, a third, more positive principle appeared: participation. This principle is explicitly stated in the new Valais Law provisions.

Thus, the new Law has meant to favour better social inclusion of youth. In its conception, it progresses from the general – promoting youth – to the particular – minor protection, special provisions, etc…

This Law emphasizes the general principles that must guide any State action in the field, notably:

1) That responsibility of providing care, maintain and education to the child is foremost the parents' responsibility.

2) That any decision in compliance with the law must be taken in respect to the best interests of the child, as well as to the subsidiarity principle.

3) That the child has the right to freely express his/her opinions on any issue regarding him/her, according to age and maturity.

Any intervention must respect the subsidiarity and proportionality principles. Therefore, any decision taken in virtue of the present Law must intend to maintain the child in his/her family environment; every measure must be adapted to the pursued goal.

Parents are invited to participate as actively as possible to the implementation of the provisions aiming at putting an end to situations compromising the security or development of a child, and preventing them to recur.

The Juvenile Court and the Cantonal Children’s Protection Office, created at the adoption of the Lje, are very often required to collaborate with each other.
As a matter of fact, about 100 cases are tackled yearly by the Children’s Protection Office by mandate of the Juvenile Court. During such mandates, the Office's collaborators carry out various functions like:

- Drafting social evaluations to inform the judiciary authorities on the child's living conditions, notably about the socio-emotional support he/she receives.

- Educational assistance follow-up: counselling the youth and supporting his/her family system, when the Juvenile Judge has ordered such a measure for the youth, and give regular feed-back on the evolution to the judiciary authorities.

- Follow-up of institutionalization, one of the measures available to the Judge when situations crave that the youth be extracted temporarily form his family environment. The Office can be appointed to find an institution able to care for the youth. In such cases it will be in charge of informing the Judge on the evolution of the measures and on future prospects.

- This joint two-partner work has a key-word: collaboration. It is indeed not to be considered that the measures ordered by the Court have any results if those two bodies do not work in a respectful and interactive mindset. The purpose is to avoid that the youth, by his/her behaviour, find himself/herself again in conflict with the provisions of the Swiss Criminal Code. However, the Juvenile Judge is sole master of the procedure, and last resort decisions rated necessary for the youth are his/her competence.

- The Office can also be required to carry out expert reports by mandate of the Juvenile Judge. Reports are drafted by the specialized units: educational counselling, school psychology and psychiatry, in order to determine whether the youth directed to the Juvenile Court suffers psychological troubles, and to assess whether therapeutic measures should be ordered among the pronounced measures. About 40 mandates are appointed yearly to these specialises units. An important evolution in future years in this respect will be the increased recourse to psychologists and paedo-psychiatrists due to the implementation of the new Young Offender Law.

- We wish to emphasize the importance for Courts to be granted access to offices and specialized staff in child and youth protection. In our view, it is essential that these various specialists be gathered in a common service in order to avoid the dissipation of forces and competences.

Presentation of a psychological evaluation and of a therapy following the judgement of a minor, in the context of a European Master’s in Child Rights

**Psychological evaluation**

We present our psychological evaluation under this heading, indicating to the Judge:

- Our response to his request for a psychological evaluation of younx X
- Made to us on date Y.

And in order to carry out this evaluation, we need to:
- have x interviews with the parents and the juvenile
- have x interviews with the parents alone
- have x interviews with the juvenile alone
- and sometimes, x interviews with others (teachers, an apprentice-master, the family doctor).

**Reason for the request**

We remind the Judge of:
- the offences committed by the child or adolescent
- his/her present situation (in which school-year, or which degree of formal education)
- weather he/she has been placed in an institution
- …

**Intellectual assessment**

Intellectual Quotient test:

The results obtained provide a quotient:
- Verbal
- Performance
- Total.

**Emotional evaluation**

To arrive at this we use:
- various psychological tests: Rorschach, Thematic Aperception, Test …
- free-structured conversations, directed towards problems that are specific and significant to the child or adolescent
- questionnaires that give us a personality profile: anxious, depressive, aggressive type…

**Perspective**

At this stage of the evaluation, we are able to perceive:
- how the child or adolescent has experienced events since the court appearance
- his/her feelings of guilt concerning the acts committed
- his/her present emotional state regarding all this
- and the probability, or not, of recidivism.

**Conclusions and Suggestions**

Under this heading, we summarise the essential aspects of the evaluation, attempting a synthesis of the whole, and at the same time drawing attention to pertinent elements that have emerged during the process of evaluation. Based on this conclusion, we generally offer suggestions to the Judge. The latter may be very varied in nature.
Here are some examples:

- need for therapy for the child or adolescent
- importance of follow-up, not only for the child, but for the whole family
- placing the child in an institution
- education assistance for the parents
- …

**After the Judgement: “special measures”**

We usually work on:
- a building or consolidation of self-esteem for the child/adolescent,
- a word space
- an apprenticeship in emotional management
- individuation in all relationships
- an opportunity for the juvenile to take some distance from the family problem.

**Family history of the child or adolescent**

- Number of children in the family, rank, how do the siblings get on among themselves?
- History of the family, of the parents, their relationship as a couple (Close? Divorced? In conflict?…).
- General emotional climate of the household (tensions, type of communication …).
- Problems specific to the family (illness of a parent, depression in the family …).

**Evaluation of the child’s or adolescents interpersonal relationships**

- Relationship with the father
- Relationship with the mother
- Relationship with each sibling individually
- Relationships with friends
- Relationships with peers
- Relationship with teacher, educator, employer…

**Social evaluation report of the children’s protection office**

1. Mandate
2. Identity of the members of the family
3. Contacts-procedures
4. Other speakers
5. Personal situation of the parents
   5.1 History of the couple
   5.2 Mister
   5.3 Madam
6. Personal situation of the children
   6.1 Child 1
7. Hearing of the Child(ren)
8. Relations parents – children
   8.1 Personal realations of the child with his parents
8.2 Collaboration between the parents
9. Synthesis
10. Proposals
SOCIAL EVALUATION REPORT

1. Mandat : mandate
2. Dentite des members de la famille : identity of the members of the family
3. Contacts – demarches : contacts - procedures
4. Autres intervenants : other speakers
5. Situation personnelle des parents : personal situation of the parents
6. Situation personnelle des enfants : personal situation of the children
7. Historique du couple : History of the couple
8. Relations parents – enfants : relations parents - children
9. Synthèse : synthesis
10. Propositions : proposals

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Reason for the request

We remind the Judge of:

- The offences committed by the child or adolescent
- His/her present situation (in which school-year, or which degree of Formal education
- Whether he/she has been placed in any institution
- …

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- Number of children in the family, rank, how do the siblings get on among themselves?
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42
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Problem
I am greatly honored to have such an opportunity to attend this kind of conference in beautiful Switzerland, and give presentation to all the experts and law practitioners about Chinese juvenile justice system. China has made great progress both in Economy and in its regulation and justice systems in recent years. I will give a brief introduction to the law and regulation and its practice of Chinese juvenile justice system. What I want to emphasize is: juvenile justice system covers contents of different aspects, I will mainly focus on the crime and illegal action of minors.

Concept: what is juvenile justice system
Most countries attach great importance on juvenile justice system. The 6th meeting of crime prevention of the U.N awarded the juvenile justice system as the crown of modern law system. The so-called juvenile justice system is the general name for the provisions about the juvenile ill behavior and its protection and punishment, and the criminal procedure and the method of education and rehabilitation for the juvenile crimes and violations. As to the definition of juvenile, every country has its own prescription, and in China it refers to those under the age of 18. This is consistent with the United Nation’s Convention on the Rights of the Child.

International pacts
The Juvenile Justice System in China is made up of International Pacts and national laws. International Covenant on Civil and Political Rights and Convention on the Rights of the Child provide principles on the juvenile justice system. The meeting of crime prevention and criminal treatment of U.N has constituted three documents especially for the juvenile justice system:
United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Tokyo Rules)
China has subscribed the above mentioned pacts and should abide by the provisions of the juvenile justice system in the pacts.

National laws
Besides the pacts, the provisions of Chinese juvenile justice system are mainly in national laws. Constitution is general program. It provides that the state shall protect the physical and mental health of minors, safeguard their lawful rights and interests, promote their all-round development in morality, intelligence and body. These provisions set up firm constitutional basic for the juvenile justice system. The law on the protection of minors and the law on the prevention of juvenile delinquency supply more particulars about the system. These two laws
are the principle part of the system. Other laws and statutes including criminal law and criminal procedure law and judicial documents are as a supplement of the system.

**The main contents of the current law**

In this part, I will introduce the Chinese regulations and practice about the current Juvenile Justice system. There are some good progresses made in China both in the regulations and in the practice. I will put the main part of my presentation on this topic.

**The legislative policy and principle**

According to the juvenile protection law, the policy of education, persuasion and redemption shall be implemented and the principle of taking education as the main method and punishment as the subsidiary shall be upheld. Of course, it doesn’t preclude the legitimate punishment for the juvenile delinquents. But the judicial work emphasizes on education and retrieving them through education, persuasion and necessary legitimate punishment, turn them into law-abiding citizens. The aim of punishment lies in education and redemption.

**Protection from substantive laws**

The substantive prescriptions award the juvenile with absolute rights:

The juvenile reached the age of 14 but not the age of 16 shall bear criminal responsibility only when they commit the very 8 kinds of crimes: intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug-trafficking, arson, explosion or poisoning.

If a person who has reached the age of 14 but not the age of 18 commits a crime, he shall be given a lighter or mitigated punishment.

Capital punishment shall not be imposed on juvenile criminal.

**Protection from procedural law**

There are different measures in every stage of criminal procedure to safeguard the legal rights of the juvenile criminal. Let’s introduce it stage by stage.

**Pre-trial stage:**

At the end of last year in 2006, the Supreme People's Procuratorate added and improved the series of systems of handling juvenile criminal cases. Other laws also provide a series of procedural measures to guarantee the legal rights of juvenile criminals. At the same time, referring to the international experience, china has also tried some new practices. I will specially introduce the following two points.

**The pre-trial prosecution division system**

It is a practice introduced from Britain and just exercise in some area of China. In 2002, the government of Panlong area of Kunming city of Yunnan province in southwest of China, cooperated with the Britain association of children rescue and introduced this practice. It involves advanced notion of juvenile judicial protection and special methods of education and management. It insists the conditional and maximum division of the juvenile from judicial procedure, and took judicial protection for them. In detail, in the stages of detection, prosecution and trial in the juvenile criminal cases, the police, prosecutor, and the judge all have discretion in choosing the non-prisonment punishment measures. They can use the measures of mediation, bail, suspended prosecution, no prosecution, suspended judgment, and probation, so as to divert the juvenile delinquents from judicial procedure to the most. The judicial diversion shall be implemented with multi-department cooperation. The aim of this
measure lies in the better rehabilitation of the juvenile and to make them back to the right path. According to the statistic, since the exercise of the item, there has been juveniles almost one thousand diverted.

**Appropriate adult system**

The Beijing rules provide that once the juvenile has been arrested, the authority should inform parents or guardian as soon as possible. The appropriate adult system demands that, as to the juvenile suspicion, in the course of interrogation, the legal representative or other appropriate adult should be present, including the parents of the juvenile suspicion, or the foster parents, the guardian, or the member of the social organization engaging the juvenile protection. China has established the right of the appropriate adult to be present. But the law set such right as one with choice, but not an absolute right. The juvenile perhaps would be denied such right in practice. So efficient participation in inquest of appropriate adult is a problem must be solved in China.

**Stage of trial**

In this stage I will mainly introduce the following aspects

**Juvenile court and juvenile courthouse**

The first juvenile court was founded in Shanghai in 1984, since then there are about 4000 juvenile courts set up in the whole country. At present the jurisdiction of the court has been enlarged, the scope of accepting cases expanded, beyond the limits of juvenile criminal and including the juvenile tort cases.

China is preparing to establish juvenile courthouse as experiment units in 8 provinces, namely, Shanghai, Jiangsu, Heilongjiang, Guangdong, Fujian, Sichuan, Henna and Hebei. There are family courts in foreign countries, which include the right protection related with the family problem. China has an inclination to include this part of right protection into juvenile courthouse. The trend in this aspect is to be consistent with the international situation. It shows that China has take active measures to implement the provisions of Beijing rules.

The setting of juvenile court differs from that of other normal court. In the trial of the juvenile criminal cases, the court of the Qinhua area, Nanjing city, takes the lead in applying the so-called round-table trial. In the course of the trial in court, the two parties take their seats around a round table, the chief justice in the middle, with the prosecutor and the counsel in his two sides, the opposite is the defendant, and in his two sides are the counsel and his close relatives. In the trial, the prosecutors interrogate the defendant with care and seriousness, and eliminate the sense of terror of the defendant. Such a method contribute to the prevention of further crime, at the same time, it embodies the education, redemption and expectation of the court to the juvenile defendants.

**Appointed counsel system**

Chinese criminal procedure law provides that in the course of interrogation and trial juvenile under 18 without counsel, the court should appoint counsel for him. The main problem arising is how to offer efficient defense. In practice there are such situations that because of the deficient service of the counsel, the juvenile get a lawyer in form, but the substantive content is absent, which makes the defense only possess its form, but fail in its aims and effect. The legal rights of obtaining counsel by the juvenile should not be limited to the form of getting an appointed counsel, but more in the content.

**Social investigation system**
The relative judicial explanation of the Supreme People’s Court provides that, before the trial in court, the prosecutor and the counsel can make investigation about the following circumstances of the juvenile defendant, such as the character, the family situation, the social intercourse, the development course and the behavior before and after the commission of crime, and make written paper to the court. When necessary, the court can entrust related social associations to make investigations about the described circumstances, or make investigation itself.

On the setting of the social investigator, there are two modes adopted in practice by the courts, one is to set social investigator inside the juvenile court, another is to set outside the juvenile court, normally provided by the local juvenile protection office. The social investigator make social investigation before the trial, make report of social investigation, participate in the court trial, his status and role lies between the witness and the judge in court. At the end of the trial the investigator shall read the report of the individual situation of the juvenile defendant, and consult the advice of the prosecutor and the counsel. Besides, the social investigator also assume the task of education after the trial, and the track and help and reviewing. At present, this system has exerted good effect in China. Although this system has been established in most countries, it is a new-born thing in our country. At present juvenile courts in different areas are trying to do further research and attempt to gain valuable experience.

♠ No public trial system
♠ Mediation system
♠ After-trial education system

**Suspended judgment**

This is a bran-new judicial system developed from practice, under the spirit of the Beijing rules. The system of suspended judgment is that after the trial in court, for some juvenile defendants who committed crime and met certain conditions, decide that their behavior has constituted crime, but don’t make sentence for a while, set a review term from 3 months to 1 year, let them continue learning and life in society, and do some service work in the social commonweal or welfare institutions such as rest home or orphanage, review them in the aspect of repentance, and then based on the situation of their repentance, make decisions of sentence or probation or exemption of criminal punishment. Although the implementation of this system has been doubted, it still has certain reasonableness, and has extensive room for development and spread.

**The stage of execution**

Use the imprisonment as least as possible, separated management and imprisonment, carry out and fulfill the measure of revisit and assistance.

♠ Separated imprisonment system

**Community correction**

China has started the program of community correction in 2003, the object including the juvenile with non-prisonment sentence, probation, parole and execution outside the prison. In virtue of the participation of volunteers with professional knowledge, integrate the community resource, absorb the soul of china’s traditional method of help and assistance, make the juvenile committing slight violations get help in community, and serve their sentence in the
lenient environment of the community, so as to conduce to their being accepted by the society, and in such course make them realize their mistake, repent honestly, and get a professional skill with the help of the volunteer.

Sustentation fund for juvenile reform objects
At the end of last year, the project of Sustentation fund for juvenile reform objects formally started, which project is founded by the juvenile protection professional committee of the China Bar Association, the court of the Chaoyang area, Beijing city, and the Chaoyang judicial bureau. This fund make use of funds contributed by the social philanthropists, to provide the juvenile reform objects with the chance of education or relative skill for family difficulties, create conditions for their back to society, the first 5 juvenile reform objects has gained the first 5,000 yuan training fund of re-learning. This is the first time in China to emerge such fund with alike character.

Society service code
Society service code is part of the community correction. The new manner of punishment, offering community service, has been experimented in certain places in our country, and has accumulated some experience. It’s a substitute for imprisonment of juvenile. In 2001, for the first time, the People's Procuratorate in Chang'an area in Shijiazhuang city passed a document, named temporary regulations on implementing the order of social service. In 2002, the court in Changning area in Shanghai city has experimented the manner, as the first one the system of courts, which enacted the temporary regulations on implementing the order of social service. 99 percents of the juvenile can accomplish the work according to the demands, and get exemption of sentence or commute largely at last, so the manner receive the welcome of the juvenile and their parents. In practice, the successful experiment of this manner provides favorable basis for the implementation of the compromise system of juvenile criminal and their victim.

♣ The stage after release

Canceling criminal record
This system has wide practice in different countries in the world. For example, the juvenile crime prosecution law in Australia provides that, the criminal record of juvenile by the police cannot be remained after their adulthood, it must be destroyed after they are 18 years old. The American juvenile criminal rehabilitation law provides that, when the juvenile criminal is released unconditionally before the fulfillment of former decided maximal limits, the former conviction will be cancelled automatically. Besides, the juvenile courthouse law in Germany and the Switzerland criminal law all provide similar contents. In our country, although this system has been experimented in Shijiazhuang, Hebei province as early as the beginning of 2004, but as a whole, as a new method and attempt, the court in different areas still hold an attitude of suspicion and looking on.

Aftercare and help system
This system continues to offer help to the juvenile after release. In nature, this is the problem of general prevention after the release. Incorporate the comprehensive strength of the family protection, the school protection, and the society protection, realize the education and rehabilitation of the juvenile criminal, make them suit the society as early as possible.

Direction of improvement in China juvenile justice system
The above is the main regulations and typical practice of juvenile justice system in China. The regulations and the research of practice are primary. It’s necessary to be improved. I think the direction of the improvement shall focus on the following aspects:

**Set up the independent juvenile law system**

On the whole in many aspects the protection of juvenile is limited to structure of the adult law. The current two juvenile laws are insufficient, and the operation prospect is rather weak. So, China should consider the problem of procedure, substantive law and rehabilitation comprehensively. It’s necessary to establish an independent juvenile law which separates the juvenile crime and criminal procedure from the criminal law and criminal procedure law and incorporate the substantive and procedural law about juvenile, put together the juvenile crime and violations.

**Expand the treatment scope on the juvenile cases**

The family court in Japan deals cases of wide scope, including criminal cases, and civil cases and violations, even administration tort cases. Similarly, the American juvenile court, the Britain juvenile court, both possess jurisdiction of juvenile cases far beyond criminal cases. In China a large number of juvenile courts are still in primary stage, the cases they deal with are limited to juvenile criminal cases, so it is necessary to refer to the experience of other countries in dealing with juvenile cases, expand the jurisdiction of the China juvenile court, fully exert the protection and education function of the juvenile court, to guarantee the healthy development of juvenile.

**Provide detailed special protection of the juvenile criminal in each section of custody and trial**

When detained, the juvenile criminal should be separated as possible. China seldom set special place for the custody of juvenile, a substantial number of custody places put the juvenile criminals and the adult ones together. Such is common occurrence that the adult bait the juvenile, or teacher the juvenile how to commit crimes, which does great harm to the juvenile. So, it is necessary to separate the juvenile criminals from the adults in the stage of deterrence.

Try to realize the non-prisonment of the juvenile criminal in the stage of trial. The non-prisonment includes two parts, namely, try the best to avoid the pre-decision deterrence and after-sentence deterrence. Though China’s juvenile protection law and the juvenile crime prevention law both provide contents about non-prisonment, but there is no such special laws regulating the avoidance of pre-trial deterrence, and non criminal punishment. In practice the problem is more prominent. In the detective stage, in respect of applying the criminal detention and arrestment to the juvenile, some few places completely handle according to the provisions of the criminal procedure law, equal with the applying condition of the adult. So there arises the phenomenon of high ration of pre-trial detention of the juvenile. When sentenced the juvenile, some courts also according to the provisions on adult. To realize the non-prisonment of the juvenile criminal is consistent with the international trend.

**Establish the systematic juvenile welfare protection mechanism**

The juvenile welfare protection is most important, which means a lot to the protection of juvenile and the prevention of juvenile delinquency, is the premise of juvenile judicial protection. In view of the prototype of the juvenile justice system, no matter the welfare mode of the common law, of the criminal mode of the continental law system, both have close relation with the juvenile welfare system. The reasons for juvenile delinquency almost all lie
in the absence and faultiness of the welfare protection, which results in their short of material comforts, and tramping on the street, being abused and ignorance, and they begin committing crimes for the absence of socialization and the subsistence pressure, so it is necessary to urge the welfare organization to participate in the juvenile judicial protection. The juvenile welfare in China is a civil administration measure, with the nature of remedy, it is very imperfect, which cannot provide all-round protection.

**Sum-up**

On the whole, though the china juvenile justice system started rather late, it develops rapidly. The china government has attached importance to the judicial protection of juvenile rights, and established relatively perfect law system for this aim, and has made useful researches in juvenile justice in practice. On the other hand, there are many aspects need improvement in the juvenile justice problem in china. It is a fundamental direction to learn from the advanced countries such as Switzerland, and to be consistent with the world trend.
HOW TO RUN AN INSTITUTION
Jean-Pierre Heiniger, Former Director of la Fontanelle, Switzerland

Objective of the session

How to run an Institution?

What I think we should take into consideration based on my learning's as a Former Director of La Fontanelle. (1991-2002)

This is only my point of view!

The mountain metaphor
3 basic questions if you want to climb one of these mountains

- **Vision & choice**: which one are you going to climb?
- **Motivation & values**: why are you doing this summit?
- **Action plan & strategy**: who are you going to do it?

It’s all about Leadership

- **Vision - Head**: Thinking: able to give a direction
- **Motivation - Heart**: Feeling: able to feel passionate
- **Action - Hand**: Competence: able to act precisely
- **Inspiration & Orientation**: Energy & values
- **Organization & Action Plan**:
1. Vision - Perception

« Itinerary » of the session

1. Vision – or the way we interpret the reality! *Perception*

2. Motivation – or the way we meet our fundamental needs! *Relationship*

3. Action – or the way we build an Institution! *Concept*
We are build through our beliefs!

Observer

Action

Results
The process of our beliefs

- I take **Actions** build on these beliefs
- I adopt **Beliefs** on the world
- I make **Conclusions**
- I create **Hypothesis** related to my meaning
- I give **Meaning** to the data
- I select **Data** depending on what I observe
- **Observable** data and experiences

Our beliefs are guiding our choices for new data observation

This explains how belief and explanation systems are self-realizing and self-verifying, and therefore self-perpetuating.
Story of the monkey and the fish!
Monkey saw Fish swimming. He did not know that Fish liked water. He sympathized with Fish and took it out of water thinking it would drown. In the process Fish died. Monkey cried and said he was only helping.

“We don’t see things as they are. We see things as we are.”
Anais Nin
“We are what we think. All that we are arises with our thoughts. With our thoughts, we make our world.”

Buddha

We see what we have been trained to see from birth to now through 3 filters!
The three filters of perception

1. Physiological
2. Socio-cultural
3. Life experience

My PERCEPTION of the reality is biased by my thoughts?
Can I CHANGE my Perception of the reality?

We mostly change through EXPERENTIAL LEARNING!

What is learning about?
Learning is not made with what happens to you, but with what you do when this happens to you!

Learning is reflecting on experience (education)

First condition: You need to be involved personally in a concrete situation (“Head, Hart, Body”).

Second condition: Learning is a continuing process. We learn from what we already know, from what we all have accumulated. There is a strong interaction between the learner and the object of learning.
Learning is an interaction! (Dewey)

INDIVIDUAL
Needs, expectations, Competences, values

ENVIRONMENT
Social, Physical

Experiential situation

Previous experiences

Present experience

Continuing Principle

Enrichment

Four steps to get in a learning! (Kolb)

Apply
Active Experimentation

Practice
Concrete Experience

Synthesize
Abstract Conceptualization

Analyze
Reflective Observation
“Tell me and I will forget;
show me and I will maybe remember;
involve me and I will understand”

Chinese proverb

To summarize:
what is important for us at this point?
There are three «traps» to be avoided when I run an Institution!

1. To look and act = activism without thinking...

2. To look and analyse = theories only, no action, no change

3. To analyse and act = applying models that are not adapted to the situation
Tip of 5 W:

Who?
What?
When?
Where?
How?

Why? (last one! Because it leads to quickly to interpretation and not to the observable facts)

Failure strategies (dead end options)
- What I see is true for everybody
- What I know is true for everybody
- What I feel is true for everybody
- What I think the truth
- Things are exactly as I see them
- If you don’t see things the same way as I, it means you are looking in the wrong way.
As soon as you have made a thought, laugh at it.

Lao Tzu

2. Motivation - Values
Basically our **Motivation** is directly related to the way we can feed our fundamentals needs.

What are they?

What do we need to grow, to develop, and to live a healthy and satisfying life with others?
We all need:

- Shelter
- Love
- Friends
- Spirituality
- Religion
- Medical care
- Cleanliness
- Unity/peace
- Security
- Protection
- Values / Beliefs
- Hope for the future
- Sense of belonging
- Family
- Responsibilities
- Respect
- Clothing
- Food
- Communication
- Activities
- Formal & informal education
- Traditional culture

To make it simple we can make 3 categories of needs:

**Material needs (existence):** helps to survive!

**Social needs (relatedness):** helps to belong and feel secure!

**Personal needs (Growth):** helps to build our personal identity!
Levels of needs

- **Growth** (Personal development)
- **Relatedness** (Attachment)
- **Existence** (basic needs - survival)

Four strategies available!

- **Fight**: take what I need by force (survive strategy)
- **Flight**: run away from my responsibility and let others take care of me (survive strategy)
- **Powerlessness**: loss of hope and will by refusing to look at the reality (survive strategy)
- **Master**: capacity to cope with the reality and with others through cooperation and negotiation even in difficult situation: resilience
Our Motivation is build Secure Bases that we have created through our relationship with others (persons, animals, things,...)
What to we need to feel secure?

1 - Competence: *able to do*, capacity to act!
   Existence level
   I CAN through activities

2 - Identity: *able to be*, capacity to love and to be loved, to belong!
   Relatedness level
   I HAVE security through relationship

3 - Meaning: *able to trust*, capacity to give a purpose to life!
   Growth level
   I AM through my beliefs and values

My Person, My World

I CAN

I HAVE

I AM

Resilience
When the world of a person is disrupted!

I AM:
Hopelessness
Confusion

I HAVE:
Mistrust
Loss

I CAN:
Insecurity
Fear

Effects on a person

People are looking for secure bases!

Get out of the comfort zone to learn to change the reality

Take some risk!

Learn from mistakes!

Necessary skills:
Resilience, Endurance, Coping, Adaptation, Openness

Secure Base
Attachment

Exploration & discovery
Separation
Attachment and separation: The Cycle of Life

Crisis

- Grief
  - (identity)
- Separation
  - (preparation)

Stability

- Attachment
  - (comfort)
- Bonding
  - (interest)

Attachment and separation: The Cycle of Life

The Strength of a Secure Base

Attachment

Bonding

Persons

- To love
- To be loved
- To belong
- To be worthwhile
- To deserve to exist

Secure Base

Goals

Exploration

Competence

Playful

Success

Self-esteem

To Act

To be Capable of acting

(G. Kohlrieser)
How can we grow?

Personal Growth Dynamic

(P.Tap)

Affirmation of identity

Recognition

Anchor

Engagement

Legitimization

Change with continuity

Give Meaning to life

Orientation

Openness

Anticipation

Adaptation

Coping with stress

Past

Future

Present
3. Action - Concept

RELATIONSHIP vs TASK

A difficult balance!
Two energies in tension

- **Production** energy: activities with objectives will give to the members of the group the possibility to participate

- **Maintenance** energy: keeps the group in cohesion with two important functions – facilitation and regulation

**Sustainable results**
Rational vs Irrational

A cover tension!
Two different goals in tension

- The task level of the group: the production energy
  **Rational** – how to get into an action?

- The relation level of the group: the maintenance energy
  **Irrational** – how can we survive together?

Individual vs Group

* A fragile dynamic!
Culture tendency

**Individualism:**
- Independent
- Goals
- Compete
- Unique
- Private self-know
- Direct communication

**Collectivism:**
- Related
- Belong
- Duty
- Advice
- Context
- Hierarchy
- Group solidarity

Different levels of interaction in a system

1. **Individual** (self)
2. **Inter-individual** (between two persons)
3. **Intra-group** (small group, a team in an institution)
4. **System – Organization - Institution**
The different elements of an Institution

Environment

Organization

Culture/Values

Mission and Strategy

System
Mission and Strategy

Refers to the final outcome of the Organization and to the resources and tactics needed to realized the strategy.

System

Refers to the global resources available to get organized. For example: the structure of the organization, the techniques to manage the information, the human resources, the finance and the materiel.
Culture

Refers to the **global beliefs and norms** that will influence individuals and groups in this environment.

The logical frame to Reach the mission

- **Donors/Government**: Gives the resources to the right organization
- **Director**: Transform the resources into action plan
- **Beneficiaries in need**
- **Services**: Execute the action to reach the needs
  - **Social worker/educator**
  - **Youth in difficulties**

**Resources**

**Services**
Responsibility of the Institution

1. Consider the needs
2. Realize the rehabilitation
3. Control the result

Documentation Of The Institution

- External Documents
  - Laws & Conventions
- Quality Manual
- General Concept
- Institutional Rules
- Internal Formulary and Procedures
  - Tool box To help the Educator to Work With quality
- General organization
a) The Institution: a place to leave not to survive!

1. Quality of the organization
2. Quality of the communication network
3. Maintenance of the values and the quality of life
4. Solidarity in action
5. Engagement of the educators at 100%
6. Integration of the global need of a person
7. A dynamic environment of life
The Concept: a road map to create a learning environment

1. Philosophy of the institution: concept
2. Presentation of the Institution: context
3. General Organization: structure
4. Psycho-Social options
5. Experiential activities:
   • The shelter (home): boys and girls
   • The Professional and School sector
   • The Sport sector
   • The Reinsertion sector

Stages of the boys programme

Admission → Stabilisation
Integration 3 mois +/- → Construction of the project → Realization 3 mois +/-

Exploration 3 mois +/- → Verification 3 mois +/-
Stages of the girls programme

- Admission
- Stabilisation
  - Module « Socialization »
    - 6 months
    - Evaluating 4 spheres of competences
- Construction of the project
  - Module Project building
    - 3 months +/-
  - Module Outside Support
    - 3 months +/-
- Module « Socialization »
  - 6 months
- Evaluating 4 spheres of competences
- End

Respect of instructions
Self-respect
Relating to others
Commitment in activities

Module Project building
3 months +/-
Module Outside Support
3 months +/-
Experiential activities

1. School
2. Sports and outdoors
3. Rituals & Initiation
4. Exploration of rules and norms
5. Group relations meeting
6. Individual follow up with the educator
7. Family therapy
8. Meeting with Judge and Social worker
9. Personal project
10. Professional training
11. External individual activities
12. Meetings with partners

b) The educator: a guide, a secure base to hold on!

1. Personality: self awareness, self management, social awareness, social management
2. Competences: knowledge, know how, self knowledge
Three essential roles!

1. **A organizer**: logistics, coordination, communication, group work and collaboration, leading activities

2. **A educator**: creating bound, mentor, authority figure, mediator, conflict management, pedagogue, trainer

3. **A therapist**: able to listen, to coach, to heal, to encourage, to guide and confront

c) The Beneficiaries: youth in difficult situation

1. Behavior disorder
2. Family breakdown
3. Emotional instability
4. Violence
5. Delinquent
6. Dependency to drugs
7. Excluded from official school
8. No professional activities
9. Poor social integration
d) Partnership with others key players

1. Youth judges of the Swiss French part
2. Parents, family members
3. Social workers and Tutor
4. Psychotherapist
5. Medical Physician
6. Bosses of different Company
7. Teacher of regular school
8. Neighbors of the Institution
9. Local authorities
Collaboration principles

1. The partners should have a clear picture of our work and our goal: transparency, humility, communication, talk about successes and failures, guaranty service with quality

2. Respect the formal authority of our partners: work with their resources, take into consideration their point of view, listen to their remarks and their feedbacks

3. Keep the dialogue: through regular communication, meetings, festival and celebration, Institution Dairy

Collaboration with the Family

1. Our role is the monitoring of the process, not the replacement of the parents. No substitution!

2. Keep the parents informed about the daily life in the institution with clear boundaries

3. Help the parents to recover their role of authority and build the relationship with their competences

4. Rebuilt trust and the bounding with their child
Collaboration with the judges

1. Before a placement, analyze the needs of the youth together with the social worker
2. Maintain a regular contact
3. If necessary use the authority of the judge for sanction
4. Give clear information on the progression of the youth
5. Presentation of the personal project to the judge by the youth
6. Do not use the judge for what is our responsibility!

Collaboration with the Social Worker

1. Keep them regularly informed about the process
2. Organized meeting with them and the parents to discuss the future
3. Every three month, give them a report to help them to stay aware of the progress or the difficulties
THE RESTORATIVE JUSTICE, THE GUIDING PRINCIPLES
Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

Convention on the Rights of the Child
Art. 40

Promotion of diversion

States Parties seek to promote whenever appropriate and desirable measures for dealing with children without resorting to judicial proceedings providing that human rights and legal safeguards are fully respected

Alternative measures

• Resolve Conflicts
• Establish Peace
• Question the exclusive rights of the state for punishment
• Are embedded in the traditions of the state

Before trial:
• Instead of procedure → Diversion

During trial:
• Instead of condemnation

After trial:
• Instead of sanction
Develop a variety of dispositions such as:

- Care
- Guidance
- Supervision orders
- Counseling
- Probation
- Foster Care
- Education
- Vocational training programmes
- Alternatives to institutional care
### How to realise this goal

**Special legislation providing for...**

<table>
<thead>
<tr>
<th>Alternatives</th>
<th>Network of institutions</th>
<th>Training</th>
</tr>
</thead>
<tbody>
<tr>
<td>To procedure</td>
<td>Non-institutional</td>
<td>Police</td>
</tr>
<tr>
<td>To sentencing</td>
<td>Institutional</td>
<td>Judiciary</td>
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<td>To punishment</td>
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<td>Lawyers</td>
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<tr>
<td>To enforcement</td>
<td></td>
<td>Social workers</td>
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</tbody>
</table>

**Alternatives**

- To procedure
- To sentencing
- To punishment
- To enforcement

**Non-institutional**

- NGOs
- Social services

**Institutional**

- open facilities
- halfway houses
- Correctional centres
- detention centres
- special clinics (drugs)

**Training**

- Police
- Judiciary
- Lawyers
- Social workers
- prison staff
- media
- Civil society

**Network of institutions**

- NGOs
- Social services

**Institutional**

- open facilities
- halfway houses
- Correctional centres
- detention centres
- special clinics (drugs)

**Training**

- Police
- Judiciary
- Lawyers
- Social workers
- prison staff
- media
- Civil society

**Separated**

**Together**

**Regular meetings**

### Justice

**Retributive**

- Violation of law
- Culpability
- Punishment
- Orientation: past
- Punishment to add wrong to wrong
- Perpetrator is denounced
- Justice divides
- Needs of victim neglected
- Trial separates parties
- Wrong caused by perpetrator balanced by wrong for him
- State has monopoly to deal with wrongdoing

**Restorative**

- Of persons / relations
- Responsibility
- Reparation
- Future
- For restitution for wrong
- Wrong is denounced
- Perpetrator is denounced
- Justice unites
- Needs are central
- Reconciles parties
- Balanced by positive act (ion)
- Role perpetrator, victim, community recognised
INTERNATIONAL DEVELOPMENTS IN JUVENILE JUSTICE, THE NEW GENERAL COMMENT NR 10
Jean Zermatten, Director of IDE

PLAN

• Three main United Nations texts
• … and the CRC ;
• ECOSOC works
• Guidelines Child victims and witnesses
• A new General Comment no 10

The three main United Nations Texts

Riyadh Guidelines (1990)

- Prevention of Juvenile Delinquency in a positive way, i.e. upgrading the overall well-being, and socialization.
- Tackling the problem in a comprehensive way, and not merely through expounding negative or partial situations.
- Prevention cannot be limited to the justice area and must include all fields relative to childhood and adolescence.
- Force of the phrase: prevention is everybody’s business and not only a few specialists.
- Input of community services, school role, implication of local associations, collaboration with sport, leisure and media bodies.
- Helping youth to make relevant choices.

UN Standard Minimum Rules for the Administration of Juvenile Justice BR (1)

- Provide States with guidelines for elaborating specialized systems of justice for minors.
- The Rules predate the CRC, but are incorporated in it (art. 37 and 40) = binding power through the CRC.
- 10 fundamental principles,
UN Standard Minimum Rules for the Administration of Juvenile Justice (2)

1. Fair and humane treatment
2. Use of diversion;
3. Taking the minor’s opinion into consideration;
4. Detention = last resort, for the minimum necessary period;
5. Deprivation of liberty only for extremely serious cases;
6. Capital and corporal punishment abolished;
7. Institutionalisation: last resort
8. Specialized training for all law enforcement officials;
9. Objective: rehabilitation;
10. Consider the issue of release as soon as possible

United Nations Rules for the Protection of Juveniles deprived of their Liberty (1)

- **Definition**: any person under the age of 18, under deprivation of liberty, i.e. any form of detention or imprisonment or the placement in a public or private custodial setting as a result of the penal law
- The Rules are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for children’s rights.
- Special emphasis is given to pretrial detention and to the respect of certain rules in arrest and police headquarters situations. This is of paramount importance, since this stage of the procedure accounts for the most serious violations of children’s rights reported in various countries.
United Nations Rules for the Protection of Juveniles deprived of their Liberty (2)

**Principles**
1. Deprivation of liberty should be a disposition of last resort and for the minimum period;
2. Minors cannot be deprived of their liberty without objective judicial grounds
3. The establishment of small open facilities must be encouraged;
4. Juveniles deprived of their liberty should be prepared for release (educational programmes);
5. Contacts with families must be maintained;
6. The facilities management personnel must be trained.


- A holistic text, with basic principles related to Juvenile Justice:
- Non-discrimination (art. 2)
- Best interests of the child (art.3)
- The child’s view (art.12)
- Indivisible and interdependent rights
- 3 articles: 37, 40 and 39
THE CONVENTION ON THE RIGHTS OF THE CHILD (2)

Article 37

a) Prohibition of torture and cruel, inhuman or degrading treatment. No capital punishment nor life sentence without possibility of release for minors.
b) No arbitrary or unlawful deprivation of liberty. The arrest, detention or imprisonment of a child shall be in conformity with the law and 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. Separation from adults and right to maintain contact with his or her family;
d) Children deprived of liberty: right to prompt access to legal assistance and 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.

THE CONVENTION ON THE RIGHTS OF THE CHILD (3)

Article 40

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.
THE CONVENTION ON THE RIGHTS OF THE CHILD (4)

**Art 40 : guarantees**

- i) Presumption of innocence;
- ii) Information on the charges and legal assistance;
- iii) Matter determined without delay by a competent, independent and impartial judicial body;
- iv) No compelling to give testimony or to confess guilt; examining or having examined adverse witnesses as well as witnesses on his or her behalf;
- v) Possibility of appeal;
- vi) Free assistance of an interpreter;
- vii) Privacy fully respected at all stages of the procedure.

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THE CONVENTION ON THE RIGHTS OF THE CHILD (5)

**Article 40 : dispositions**

- Necessity of laws, procedures, judicial bodies and institutions intended especially for minors including:
  a) minimum age under which children will be presumed not liable to infringing criminal law;
  b) taking measures to treat those children without resorting to judicial proceedings every possible time;
- Priority given to care, probation, to family placement, to education and professional training programmes, and to non-institutional solutions.
- Proportionate both to the circumstances and the offence.
Guidelines for Action on Children in the Criminal Justice System, ECOSOC, Vienna 1997

- Resume all precedent texts (CRC, Beijing, Riyadh et The Havana)
- Emphasize the importance of specialized bodies, specific procedures and a broad range of adapted responses
- Emphasize mediation and restorative justice
- Reduce recourse to institutionalization
- Special attention to vulnerable groups
- Including victim and witness children
- Institution monitoring
- Necessity of international collaboration
- Training support by UN agencies


**Basic principles**

- Dignity: every child is a unique human being and should be protected,
- Non-discrimination (see art. 2 CRC)
- Best interests of the child (see art.3 CRC)
- Protection (life, survival and development see art. 6 = protection against abuse, neglect and hardship)
- Harmonious development: if traumatized, take every step to treat him/her
- Right to be heard (see art.12 CRC)
Guidelines on Justice for Child Victims and Witnesses of Crime (2)

Rights recognized by the Guidelines (partie B. art. 1 à 10)
- The right to be treated with dignity and compassion;
- The right to be protected against discrimination;
- The right to be informed;
- The right to express views and concerns and to be heard;
- The right to effective assistance;
- The right to privacy;
- The right to be protected from justice process hardship;
- The right to safety;
- The right to reparation;
- The right to special preventive measures.

GENERAL COMMENT No. 10
Excellent pedagogical tool

Children’s rights in juvenile justice 02.02.07
Brand new instrument with objectives:
- To provide States parties with guidance and recommendations for
  a comprehensive juvenile justice policy, (special attention to prevention),
- introduction of alternative measures without resorting to judicial procedures,
- interpretation and implementation of all provisions contained in articles 37 and 40 of CRC;
To integrate, in a national and comprehensive juvenile justice policy, all international standards.
GENERAL COMMENT No. 10

THE LEADING PRINCIPLES

- Non-discrimination (art. 2), girls, truancy, recidivism, vagrancy, runaways
- Best interests (art. 3)
- Life, survival and development (art. 6)
- Views of the child (art. 12).
- Dignity (art 40)

Dignity (art. 40 (1)):

- Treatment that is consistent with the child’s sense of dignity and worth
- Treatment that reinforces the child’s respect for the HR and freedoms of others
- Treatment that takes into account the child’s age and promotes reintegration
- Requires that all forms of violence in the treatment must be prohibited and prevented
GENERAL COMMENT No. 10

CORE ELEMENTS OF A COMPREHENSIVE POLICY

• Prevention of juvenile delinquency
• Interventions/diversion
• Age and children in conflict with the law
• The guarantees for a fair trial
• Measures
• Deprivation of liberty, including pretrial detention and post-trial incarceration

GENERAL COMMENT No. 10

The minimum age of criminal responsibility

• a minimum age of criminal responsibility below the age of 12 years is considered not to be internationally acceptable.
• States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

The upper age-limit for juvenile justice

• for all children who, at the time of their alleged commission of an offence, have not yet reached the age of 18 years.
GENERAL COMMENT No. 10

Guarantees for a fair trial (art 40 (2) CRC and 14 ICCPR)

• No retroactive juvenile justice (terrorism!)
• The presumption of innocence: burden of proof of the charge on the prosecution
• The Right to be heard directly: information on the charges and on the JJ process
• Prompt and direct information on the charges: official document and oral explanation
• The right to privacy: behind closed doors

GENERAL COMMENT No. 10

Guarantees for a fair trial (follow)

• Legal or other appropriate assistance (and free of charge)
• Decisions without delay; pedagogical impact of the intervention
• Involvement of the parents: assistance and cooperation in the decision-making process
• Presence and examination of witnesses
• The right to appeal
• Free assistance of an interpreter
GENERAL COMMENT No. 10

Measures

A - Pre-trial alternatives
• Explore the possibility of diversion and respect the conditions of diversion and respect of all legal safeguards
• Pre-trial detention / why, where, how, how long….

Measures

B – Disposition by the judge/court
• No death penalty
• No life imprisonment without parole
• Deprivation of liberty last resort and shortest time possible
• Proportionality with crime and personnality
• Large range of measures / see Restorative Justice instruments
GENERAL COMMENT No. 10

The organization of Juvenile Justice (40 (3))

- A comprehensive system with: laws, procedures, authorities
- Specialised units in police, the judiciary, the prosecutor’s office, the defenders
- Specialized services such as probation, counselling, supervision, therapy…
- Specialized facilities for treatment and residential care
THE QUESTION OF AGES IN JUVENILE JUSTICE
Karl Hanson, Senior Lecturer and Researcher, Children’s Rights Unit, IUKB, Sion

There is no clear consensus on from what age onwards children are considered competent to buy a specific product or to participate in a particular activity. A debate with Charlton Heston, who was then president of the National Rifle Association of America (NRA), transmitted on American television in May 1999, perfectly illustrates the current confusion. In the month before the television debate, two teenage students had killed twelve fellow students and a teacher, and wounded twenty-four others, before committing suicide. This shooting, that became known as the Columbine High School massacre, provoked intense debate regarding gun control laws and the availability of firearms in the United States. During the television debate, there was discussion on young people’s competence and ages for procuring a shotgun (a ‘six-shooter’). The moderator referred to the argument to raise the current age limit in certain States from 16 to 18 by referring to legislation that prohibits the selling of beer (a ‘six-pack’) to young people under 21. Old enough to kill, but too young for a beer? Charlton Heston subtly replied that young people under 18 are considered competent to serve the American army in conflict zones. Old enough to die for the country, but too young for a gun?

This American debate on the setting of age limitations for carrying guns and drinking beer refers to inconsistencies we encounter on the setting of ages also with regard to criminal justice. In addition, the example shows how discussions on age limitations and competence not only deal with children’s evolving capacities and competence or with children’s rights and interests, but also and even predominantly deal with social and ideological preferences. Or, as Martha Minow has put it: “…the inconsistent legal treatment of children stems in some measure from societal neglect of children. The needs and interests of children, difficult enough to address when highlighted, are too often submerged below other societal interests. The dominance of these other interests helps to explain the inconsistent treatment of children.”

Inconsistencies in age limitations for children indeed seem endless. For example:

- Participation in elections – in most countries the voting age is 18, with exceptions such as in Brazil, Nicaragua, Cuba and Bosnia Herzegovina that have set 16 as voting age;
- Child labour laws use various age limitations depending on the type of work; international labour law legislation for instance sets minimum ages for work at 12/13 for light work, at 14/15 for child labour and at 18 for hazardous work;
- In civil law, disparities within and among countries exist, for instance setting the age to consent for adoption at 15, the age of civil majority at 18; minimum ages to get married can vary between 12, 15 or 18 and the right to be heard in custody cases can start at age 7 or even younger.

This paper offers some general reflections and ideas on age limitations (sections 1 and 2) and applies them in particular to the juvenile justice context (sections 3 and 4).

1. Children’s rights and the difference dilemma

Traditionally, children’s rights literature distinguishes between two approaches, that of ‘child liberation’ and that of ‘child welfare’. Child liberationists take as a starting point the claims to autonomy of children and emphasise the importance of their rights to self-determination. From the point of view of the welfare of children, child welfarists point to the importance of taking care of children and predominantly emphasise the child’s right to protection. However, this dichotomy often leads to an ideological debate of truths, or develops into a war of position with two camps, the ‘advocates’ and the ‘critics' of rights to self-determination and of rights to protection. In order to transcend this diametrical opposition between defenders of the rights to freedom and the rights to protection, different authors seek to find a balance between both approaches. They do not consider the protection of children as the antithesis of advocating their right to self-determination or vice versa. “Protecting children and protecting their rights are therefore not necessarily oppositional but can be complementary objectives”.

The right to freedom and self-determination as well as the right to protection and care should both therefore be recognised. With respect to young children, who first need protection and care, rights to protection should be emphasised. As children grow older, their rights to self-determination become more important, and their rights to protection may less immediately lead to a restriction of their rights to freedom. A gradual acquisition of rights is defended to give shape to the complementarity between freedom and protection. The division of children’s rights into two categories, i.e. rights to self-determination and rights to protection can, in abstracto, generate an overview of children’s rights. However, this division is inadequate as it is oversimplified. The positions on children’s rights referred to in often complex concrete situations, can seldom be reduced to rights 'to protect children', 'to respect their autonomy' or 'to gradually find a balance between both'. Discussions on children’s rights occur in different social sectors and within different social contexts, and can seldom be described by merely using these simple categories.

An alternative conceptualisation of rights that seems to leave more room to cover the complexity of the discussion on children’s rights, is the distinction between the 'equal rights' and 'special rights' of children. Rodham, for example, distinguishes two general approaches of claims for children’s rights: the extension of adult rights to children and the search for legally enforceable recognition of children's special needs and interests. She illustrates the demand for the extension of adult rights to children by referring to the proposals to extend all the rights of adult criminal defendants to accused juvenile delinquents. However, it is not her intention to simply equalise adults and children. In some cases, the rights of adults can be applied to children in the same way as for adults, whereas in other cases, they must be adjusted to the needs and situations of children. The second approach of children’s rights, which seeks to legally enforce children's special needs and interests, “begins with the belief that even if all adult rights were granted to children and were strictly enforced, this would not guarantee that certain critical needs unique to children would be met”.

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5 Ibidem, pp. 495-496.
children have additional, special rights on the basis of their individuality. In this respect it is significant that the notion of children’s rights comprises a double claim, i.e. the claim for the recognition of general (adult) rights for children, as well as the claim for the recognition of the special rights of children. According to this approach, children have a right to 'equal rights' as well as to 'special rights'. The two claims, however, do not always coexist smoothly. The discussions on children’s rights may, in accordance with the discussion in the feminist theory of law, also be explained by using the difference dilemma:

- Should children (or those who defend them), on the one hand, choose a treatment similar to the treatment of adults, with the risk that this equal treatment is not adjusted to children, but follows the same pattern as the treatment of adults?
- Or should they, on the other hand, defend special treatment, on the basis of their particularity while running the risk that this special (and different) treatment may lead to new forms of discrimination?

As for all dilemmas, no definite solution exists. In one case, children should be granted special rights, whereas in another case it may be important to defend children's equal rights. In other words, rather than making general abstractions to resolve the difference dilemma, an assessment of concrete contexts dealing with children's equal rights or special rights is always required.

Several authors, including de Langen and Verhellen, explicitly situate the debate on the recognition of children’s rights, and the discussion between the general human rights of children as well as their special or preferential human rights, within the framework of human rights. They refer for example to the comprehensiveness of the Convention on the Rights of the Child (CRC), which indeed recognises general human rights as well as a number of special rights of children. This enables negotiations about the different (sometimes opposite) claims within the same common framework. This common framework, i.e. human rights, offers inter alia the possibility to accurately indicate the differences or similarities between the points of view. The discussion then no longer deals with the choice between some rights of children and others, but with the mutual contribution and the interrelation of children's general and special rights. When and how far should children's special rather than general rights be recognised? Which rights should be given priority, and to what extent, if there is a conflict between both? In what cases, to what extent and on the basis of which criteria can children's preferential rights extend or otherwise restrict their general human rights? Special rights should in this respect enable the recognition of the individuality of children and the defence of children’s interests, whereas equal rights – to a greater or a lesser extent adjusted to the situation of children – emphasise the equality of children and adults.

In a time of proliferation of human rights claims, human rights offer a strategic point of departure for a number of interest groups, including those fighting for the emancipation of children, to formulate their claims in the form of human rights claims. Likewise authors and organisations that were at first rather sceptical about the idea of a separate human rights treaty for children now seem to be convinced of the strategic possibilities offered by the CRC to

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promote the emancipation of children. They formulate their claims within the existing framework of human rights, using the CRC as well as the provisions in general human rights treaties. The growing consensus on the strategic importance of the recognition of children’s rights as human rights does not however solve the possible contrasts between the different approaches towards children’s rights. Nevertheless, the different dimensions of human rights (including the positive legal aspects as well as the way in which social movements are using human rights) offer a broad and diversified framework enabling a balanced approach of the scientific question of the emancipatory significance of children’s rights.

2. The age criterion and the differentiation between adults and children

Two often overlapping criteria play an important role for deciding which differences and resemblances are important to differentiate between adults and children, namely age and competence. The question of ages can be addressed as follows.

2.1. Discussions on age

Children are different from adults, but also different from one-another. A clear-cut criterion to base this distinction on, is fixing a legal age. However, the ways ages have been fixed in law has encountered some strong criticisms, including arbitrariness, unreliability, preference for another criterion (e.g. competence) and inconsistency. We will briefly address these critiques.

- **Arbitrariness**: whatever age limit is considered unjust, because ages are arbitrary dividing points and age limitations nothing but a ‘birthday lottery’. Archard considers the price of arbitrariness acceptable if there is a connection between the dividing point and the reason why the distinction is made. Only if reaching a certain age in no way relates to competence then this division is unjust.10

- **Unreliability**: the critique that any age is arbitrary must be separated from the critique that a particular age is unreliable. This critique generally holds that age cannot be related to competence. For example, some kids are at 14 more competent to work than others who even at 17 are totally unfit to take up responsibility in the labour market. Consequently, setting the minimum age for employment at 15 is not reliable. Most discussions on age deal with the question what minimum age should correspond with what kind of activity. It is not about setting age limits for carrying guns as such, but about whether 16 (or 18) is the right age for allowing a person to carry guns. The comment that ages are unreliable then deals with finding the right competence and the right age corresponding to that level of competence.

- **Preference for another criterion**: age limitations are also criticised because there would be other criteria, most notably competence, that assign certain rights to certain categories of persons. Not reaching a particular age, but the degree of maturity or competence should be used to differentiate children and adults. However, testing the competence level of a person is not easy to bring about, as it is generally expensive and time consuming and can even lead to

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10 Ibidem, pp. 61.
abuse of power of the interviewer over the person that is tested. Furthermore, competence
tests lack the predictability of the age criterion: if age is the dividing point, then people can
know on beforehand what will be the possible consequences of their acts.

- **Inconsistency**: as already shown in the introduction, many inconsistencies exist on the age
at which a person gains various rights. For example, many argue that minimum ages in the
criminal justice sphere must be consistent with ages in the civil rights sphere.

2.2. **Modulating ages**

A possible answer to critiques of arbitrariness and unreliability of current legal age limitations
is to modulate ages according to context. Depending on the rights that are at stake, it could for
instance be possible to reach agreement over a different age. In this respect, Rodham proposes
a modulated approach: “Age may be a valid criterion for determining the distribution of legal
benefits and burdens, but before it is used its application should be subjected to a test of
rationality. Assessing the rationality of age classifications could be expedited by legislative
abolition of the general status of minority and adoption of an area-by-area approach”.  
In practice, an area-by-area approach seems widely accepted, for example with regard to
minimum ages for employment. In international law ages are differentiated related to the kind
of work that is carried out, and different minimum ages are set for light work, for child labour
and for hazardous work.

Modulating ages offers the advantage of taking into account different areas for which ages
differentiations apply. In this sense, an area-by-area approach nuances the critique that age
limitations are inconsistent. Reality is varied, and it can be appropriate to apply different ages
for different social spheres or to draw lines differently for different legal procedures. The
suggestion to sufficiently take into account the context for which an age limitation applies can
even be invoked as an argument to be not too consistent… Hence, the difficulty will lie in
finding a right balance between the need for a certain degree of consistency with the need for
a sufficiently contextualised area-by-area-approach.

3. **Ages in juvenile justice**

3.1. **A separate juvenile justice system**

Historically, there has not always been a separate system for dealing with juvenile offenders.
There are also variations depending on the country for setting the age of penal majority.
Therefore, an important question is: Should child offenders be treated in a different way and
within a different justice system compared to adult offenders? Whilst we admit that there are
great differences between men and women, and that these differences also amount to male
and female delinquency, we did not establish different criminal justice systems for men and
women (even if there are separate prisons for men and women). Another example concerns

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differences between white-collar crime and street delinquency. We never thought of instituting separate justice systems for dealing with rich thieves and poor thieves…

From the normative side, the CRC clearly urges States to set the age of penal majority at 18, and to design a separate juvenile justice system for all children:

CRC, Article 40, 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”

3.2. Dimensions in juvenile justice

We can analytically make a distinction between several dimensions in any given justice system. Within each dimension, questions rise of how to differentiate between adults and children concerning the definition of offences, criminal responsibility, criminal procedure, the imposition of sanctions (sentencing) and the execution of sanctions.

- Definition of offences: Is there a same set of definitions of what constitutes an offence? Can children and adults be prosecuted for the same offences such as theft, robbery, murder or fraud? In principle, the same criminal code applies for children and adults. One notable exception are status-offences, that is conduct not considered an offence or not penalized if committed by an adult, but considered an offence and penalized if committed by a young person (for example: truancy and vagrancy). Here definitions of offences are different for adults and children: only children can be prosecuted, but not adults. Status offences are contrary to international legal standards, that refute differentiation on the basis of age for the definition of offences.\(^\text{12}\)

But what about acts that constitute an offence only if committed by adults, and not if committed by children (acts we suggest to phrase as ‘reversed status-offences’)? Are there acts that are not considered an offence if committed by children, but that are if committed by adults? Although few examples exist, one might think of lese majesty or forgery. Another example is the introduction of age differences regarding sexual majority and consent for sexual intercourse.

- Criminal responsibility: In criminal law, for an act to constitute an offence, two conditions must be fulfilled, a material and a moral. The first condition refers to the material facts of the offence: did the person committed the act for which he is prosecuted? Has he actually stolen the jewels, did he actually fire the gun? The second condition refers to the offender’s state of mind (mens rea). Was he acting out of his own free will and not forced to commit the act? And did the person know that he ought not to do what he has done? Or was his brain temporarily damaged or was he all too young to understand that what he did was wrong?

At what age young people should be considered criminal responsible? Is it at 18, the age of civil majority that is also recognised in the CRC as the age where childhood ends and adulthood starts? Or is the minimum age for criminal responsibility to be set lower, at 16, 14,

\(^\text{12}\) See, a./o.: United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990, No 56: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”
12 or even as young as seven? Remark that the debate on children’s criminal responsibility is unclear and often mistakenly amalgamates between ages for penal majority and criminal responsibility.

- **Criminal procedure**: Are the same criminal judges competent to judge both young and adult offenders or is there a specialist court system such as a specialist (unique) juvenile judge? Also, do the same procedures apply in adult and child criminal procedures, including all due process principles?

- **Imposition of sanctions (sentencing)**: What are sanctions for juveniles compared to sanctions imposed on adults? Does their young age gives juveniles a right to a special reduction, for example only paying “half the price”, as was the case in the nineteenth century French or Belgian Criminal Code? Are some sanctions more adapted for children than for adults?

- **Execution of sanctions**: Are children in case of deprivation of liberty always to be separated from adults, as prescribed by international law? Or are exceptions possible? For instance, CRC, Article 37 c) on deprivation of liberty that states that:
  
  “(...) 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.”

  In what circumstances the exception not to separate children from adults might be considered more respectful for the child’s best interests than to separate children from adults?

The distinction between these dimensions makes it possible, for example, to differentiate between children and adults for one dimension (e.g. sanctions) but not for another (e.g. definition of offences). In the same vein, recognising children’s criminal responsibility, as part of the recognition of children as fully-fledged persons, does not per se implies that children should be imposed the same penal sanctions as adults. In other words, considering criminal responsibility as only one out of several dimensions of a criminal justice system makes possible to consider children’s criminal responsibility independently from juvenile criminal procedures or sanctions.

### 4. Seven questions on ages in juvenile justice

By way of conclusion, I propose a series of specific questions on ages in juvenile justice which should be taken into account when designing, setting up or changing juvenile justice systems:

1. Is age an appropriate criterion to distinguish juvenile and adult offenders? Or do we also need competence?
2. And what are ‘proper’ ages to differentiate in criminal law?
3. How to balance the need to be consistent with the demand for an area-by-area approach?
   
   In other words, how consistent a juvenile justice system is to be:
   
   - Consistency within the national juvenile justice system: do we need the same ages for the five different dimensions? Or should we adopt an area-by-area-approach, and differentiate ages according to the different dimensions?
• Consistency with other social aspects of children’s lives: do ages in the criminal sphere have to be consistent with ages in other contexts, or is an area-by-area approach to be preferred? Should minimum ages in the criminal justice sphere for instance be consistent with minimum ages in the civil rights sphere?
• Consistency in comparison with other national systems and with international law on juvenile justice: in how far international law can accept age variations in juvenile justice depending on, e.g., national legal systems or socio-economic conditions?

4. Who is to set the ages?
5. What disciplinary knowledge do we need?
   • Developmental psychology
   • Statistics
   • Sociology
   • ...
6. Do we see the age limitations as all-or-nothing cut-off points, or is there room for flexibility within the age systems?
7. How much room is there for children and young people to also give their opinions on ages in juvenile justice? How can children be involved in discussions on ages in juvenile justice?

Bibliography


THE STRATEGY FOR STREET CHILDREN
Daniel Stoecklin, Senior Officer, IDE

Art. 12 CRC

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.

This article stresses the right of the child to be heard, and participate to the process of decision-making regarding all matters affecting the child.

Indivisibility of rights

Links among articles: Art. 12 (the right to expression) is strongly linked to Art. 3 (Best interests of the child), because it is necessary to include the child’s opinion into the process of decision-making.
Crucial questions

- How are the best interests of “street children” decided upon?... What are the preconditions to help “street children” become part of the decisions affecting them?

- It takes time to be able to define the best interests of a child living in a “street situation” (trust building).

- Strong participation of the child can only be achieved if he/she is consulted from the very beginning of intervention.

Obligation to hear the child

- The obligation to hear the child should cover all settings: home, community level, school, judicial and administrative proceedings.

- Obligation to hear the children = design policies and programmes that actually enable children to have their views taken into account.

- Day of General Discussion to the theme “Speak, Participate and Decide – The Child’s Right to be Heard” (15.09.06)
Acknowledging skills

- Children’s capacities may be quite diverse. Children in street situations have developed, mostly out of necessity, some social, symbolic and instrumental competences that are quite important and often more developed than with other children of their age.

- Transposition of skills from deviant areas to socially and legally conform behaviour is in fact the main objective of a project addressing the needs and capacities of children in street situations.

Levels of participation

- level 8: Child-initiated shared decisions with adults
- level 7: Child initiated and directed
- level 6: Adult-initiated shared decisions with children
- level 5: Consulted but informed participation
- level 4: Assigned but informed participation
- level 3: Tokenism
- level 2: Decoration
- level 1: Manipulation

(Roger Hart, Innocenti Studies)
Child-friendly tools

- They must be understood by the children.
- They must be tested and developed to guarantee that the child will actually be heard.
- They must allow integration of children’s voices in the definition of situations and not define the situations beforehand.

Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)

A system of links between the child and the street environment.
To understand the typical ways (profiles) in which children experience street life.
Child-Street System (Prof. Riccardo Lucchini, Fribourg University)

The child’s habitual life space(s) (streets, family, institutions, ...). The child’s appraisal of the characteristics of the(se) space(s). The child’s movements between these spaces (frequency, reasons).

Child-Street System (Prof. Riccardo Lucchini, Fribourg University)

The child’s period(s) of street life. The child’s appraisal of the(se) period(s).
What the child says about ...

The child’s role models (in family, school, work, street, other...).

The child’s appraisal about the consistency or conflict among these models.

The child’s relationships with adults (people in the community, police, street-sellers, etc...).

The child’s relationships with other children in the street (peer-group):

The child’s appraisal on the organization of the peer-group (goals, strategies, integration and role distribution of members, ...).

The child’s appraisal on the skills necessary to be the group’s leader (physical strength, intelligence, ...).
Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)

The child’s current activities (work, play, use drugs, steal, roam around, ...). The child’s participation in group activities (what and how it is organized). The child’s evaluation of these activities (good/bad/pleasant/abusive,…).

Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)

The child’s perception of others (mother, father, brothers, sisters, friends,…). The child’s identification to a social group (child, "street child", other…).
Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)

The child’s evaluation of life (street, family, other place...).
The child’s expectations, dreams, hopes.
The child’s evaluation of the ways to realize his/her wishes.

The child’s view on boys.
The child’s view on girls.
The child’s view on men.
The child’s view on women.
Analysis of data is made along a systemic approach, considering that a phenomenon is made of elements that linked together and influencing each other in a specific way that has to be discovered. All these aspects form a system because the elements affect each other.

The CSS-Tool helps understand the dynamics behind the child’s biography.

Profiles and career

- Children in street situations may have quite different “profiles”, according to the differential importance these dimensions of street experience may have for them.

- By linking these different dimensions together, one comes to a more accurate image of the way the children actually experience street life.

- It helps identify the child’s life course (street “career”). The child’s life conditions on the streets are the outcome of:
  - The constraints that may affect the child
  - The child’s own survival strategies according to competences he/she has acquired outside and in the street.
### Profiles Shanghai 1995-96

**The “beggar” child (taofan er tong):**
- Hierarchy and exploitation
- Rejection and stigmatisation
- Strict supervision
- Simple begging techniques
- Poor and routine sociability
- Weak competences and reduced autonomy
- Occasional recreations

**The “vagrant” child (liulang er tong):**
- Repression and lack of territory
- Ambivalence toward the street (boredom)
- Peer-group “cooperation” (leaders and victims)
- Deviant identity (or identification)
- Emancipation strategies (combination of work and playful activities)

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### 3-steps process

- The CSS-tool is complementary to already existent tools or individual files regarding children’s background and follow-up.

- The CSS-tool functions as a cyclical three-steps process: (1) data collection, (2) data analysis, (3) guidance.

- It is used for profile identification (needs and competences) and follow-up of the children, which are prerequisites to chose appropriate habilitation activities, as well as child’s participation in promotion and prevention activities.
Bottom-up model of action

**Structures:** Use and networking of spaces appropriate for the required activities (or creation of such spaces if lacking)

**Options:** Profile-wise choice and combination of empowerment and promotion & prevention options, in order to satisfy children’s needs and develop their skills

**People:** Assessment of needs and abilities and identification of typical profiles thanks to the “Child-Street System”

Conclusion

- Processes for child participation should include the children’s own competences.
- It is the best way to include them as social actors and partners in the projects for personal and social development.
- Principles of action inspired with the norms contained in the CRC can be best translated into practice when they are coupled with child participation.
Art. 12 CRC requires specialized tools and techniques

Listening to children (acknowledge rights and competences)
in order to favor social integration
THE CRIMINAL INVESTIGATION POLICE OF THE CANTON VALAIS

Robert Steiner, Chief of Investigation Police of the canton Valais, Switzerland

Chronology and the different steps of the investigation

• Starting of the case (report, legal proceedings, denunciation, enquiries etc.)

• Preliminary police investigation - enquiries

• Contacts with the juvenile judge or the examining magistrate

• Contact with the victim (medical examination, safeguarding of the prints and traces) – preparation of his hearing (relating person, psychologist, specialist LAVI, etc.)

• Hearing of the victim in accordance with the LAVI (law on the victim assistance) regulation (video or audio recording etc) - immediate taking in charge or the follow-up of the victim
Chronology and the differents steps of the investigation

- **Analysis** and **retranscription** of the hearing
- **Hearing** of people being able to provide informations

- **Inquiry** into the environment of the offender and the victim
- **To apprehend / arrest** the offender in private, educational or professional circle
- **Interrogation**
- **Searching / House search** – analysis of sequestered and seized objects
Chronology and the different steps of the investigation

- **Information and presentation** to the juvenile judge (measures) – **Information** of the parents
- **Release or incarceration.**
- **Checks** – **proofs** – **locking of the confession**
- **Development** and transmission of the report of denunciation

Missions of the investigation groups - Subdivisions

Investigation / statements / legal proceedings
- Theft
- Armed robbery
- Fraude
- Offences against the sexual integrity
- Ill-treatment
- Offences against the life (homicide, threat, body lesions etc.)
Missions of the investigation groups - Subdivisions

Investigation / statements / legal proceedings
- Cybercrime (paedophile)
- Removal of the body
- Prostitution
- Etc.

Narcotic cases
- Traffic = specialized subdivision
- Other = gendarmerie

The Juveniles

Mission that falls into the competences of the court police, according to the Swiss penal code and the task distribution between gendarmerie and investigation police.
Typology of the juvenile

• From 0 to 7 years : Early childhood
• From 7 to 12 years : Children
• From 13 to 15 years : Pre-juveniles
• From 15 to 18 years : Juveniles

Children and juveniles in front of the law

• From 0 to 10 years : no punishable (Art. 4 DPMin)
• From 10 to 18 years : child, punishable (Art. 3 DPMin)
Principles

- Knowledge of the rules governing the intervention by the minors children and juveniles
- Pressional attitude of the police officer
- To take account of the environment
- General informations
- Research of the truth

Interpellation of a juvenile

- Proportional measurements
- Security (personal search)
- Handcuffs if necessary
- Inventory
- Information of the holder of the parental authority
Convening

- Written convening (eventually oral agreement with the parents)
- Addressed to the parents of the minor
- Exceptionally by phone:
  - in a case of emergency
  - through the parents

Intervention and interpellation in an educational circle

- In civil only
- In accordance with the direction
- No intervention at school without information of the direction and always in accordance with the juvenile judge
Attitude of the police officer in front of the juvenile

• Exemplary behaviour
• Appropriated and adapted language
• No critics against the parents
• Resistance to the provocations
• No conditioning

Attitude of the police officer in front of the parents

• To put oneself at their place
• Objectivity
• To make less dramatic or sometimes to dramatize
• Not to judge educational deficiencies
• Not to be opposed in case of differences
• To contribute to a solving of the problem (advice)
House search

- Agreement of the parents
- Refusal of the parents:
  - search warrant
- Only in front of:
  - a parent or relative
  - a legal representative
  - a person in charge of the institution

House search

- Inventory signed by the juvenile and one of the parents (representative)
- To mention on the hearing record the origin of the objects
Hearing

- In accordance with the code of criminal procedure and the juvenile judge
- According to the case, in presence of the parents or the legal representative
- The juvenile’s signature
- No countersignature of one of the parents

Among other informations, the hearing record has to contain:

- The name of the legal representative
- The name of the social reference point / educational trainer
- The present situation
- The circumstances and facts seen by the heard person, if possible formulated with his own words
Hearing

Below mentioned informations about the juvenile’s family are obligatory:

- Father
- Mother
- Marriage
- Separation
- Divorce
- Brothers and sisters
- Attended schools
- Present situation
- Remarks

Hearing of a child of less than 10 years old

- LAVI regulation (law on the victim assistance)
- If one of the parents is present, to mention it in the record
**Environment**

The *why* is as important as the *how*

- Situation of the family
- The reasons of the offence
- Relationship
- Hobbies
- Etc.

**Turning over to the parents**

- The juvenile is obligatory to be turned over to his parents or the person in charge (school)
- The juvenile (more than 15 years) is allowed to return home by himself (with the parents's agreement)
Information of the parents

- Explanation given by the juvenile himself
- Reading of the hearing record
- Details given by the police officer

Apprentices - Students

- The apprentice-trainer has not to be informed about the intervention and the reason of it.
- Theoretically no interpellation of an apprentice on his work place.
Principles, methods and aspects of the investigation

- Concept of the investigation
- Situation of the proofs
- Situation of the facts
- Situation of the investigation
- General valuation
- Situation of the suspicion
- Situation of the danger
- Hypothesis relating to the reasons
- Hypothesis relating to the event
- Version relating to the event
- Offender
- Cui bono?
Seminar on Juvenile Justice

Principles, methods and aspects of the investigation

- Legal situation
- Public
- Medias
- Equipment resources
- Situation of the intervention
- Staff
- General evaluation

Principles, methods and aspects of the investigation

- Place
- Victim
- Spoli
- Procedure
- Hour
- Means
- Situation of the facts
Principles, methods and aspects of the investigation

- People
- But
- Situation of search
- Hour
- Place / site
- Objects
- Value of the goods
- But
- Value of the proof
- Confession
- Damaged witnesses
- Expected traces
- Fictitious and misleading traces
- Traces at disposal
- Situation of the proofs

Situation of search

Place / site

Objects

Value of the goods

But

People

Situation of search

Hour

Principles, methods and aspects of the investigation
Seminar on Juvenile Justice

Principles, methods and aspects of the investigation

- Immediate measures
- Complementary investigation
- Purpose of the investigation
- Measures parallel to the investigation
- Measures of the investigation
- Immediate measures
- Concept of the investigation
- Immediate measures

Aspects of the various methods of the criminal tactic

- Analyse / Synthesis
- Observation
- Inspection
- Questioning
- Comparison
- Hypothesis
- Forecast
- Experimentation
- Reconstruction
- Mathematical methods
- Logical methods
Juvenile specialists on the Swiss area

Connection between the cantons and vocational training
Vocational training

The course is especially scheduled for police members in charge of juvenile delinquency.

Purpose of the course is to acquire:
- General knowledge of juvenile delinquency and its processing in criminal law.
- Understanding the reasons of the juvenile delinquency and its effect.
- To acknowledge the importance of the collaboration and connection between the different juvenile professionals and cantons.
Vocational training

Matter of the course:
- Swiss penal code.
- Understanding the reasons of the juvenile delinquency and its effect.
- Victims and offenders.
- Foreign customs
- Prevention (generally and at school)
- Connection and cooperation
- Particular methods
- Drug addiction / new electronic means

Prevention

Since 1999 different prevention campaigns were started-up:

1999 – 2001  Together against violence
2002 – 2004  Domestic violence
2005 – 2007  Internet and peadocrime
2008 – 2009  Youth and violence
THE WORK OF A JUVENILE JUDGE
Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

The individualization

- The offence is the reason for the judicial intervention (principle of legality)
- The personality of the author is very important (personnal circumstances 40 CRC)
- The purpose: for each offender a “tailored” reaction/solution
- Article 3 of the CRC (best interests)

Inquiry on the facts / Inquiry ad personam

- On the facts: establish if an offence was committed by Police/Criminal Police (special juvenile division); rapid intervention
- On the person: bio-psycho-social inquiry: personality of the young offender
  The juvenile judge works with specialists
  - doctors
  - psychiatrists
  - social workers
  - experts...
  Long-term intervention
Execution

The judgement/order (social answer) depends on both the offence and the personal circumstances.

The judge follows the development of the child.

In case of measures, it's necessary to have a flexible, adapted and modifiable answer.

The judge needs the possibility to adapt it to the needs of the minor.

Interdisciplinary work

The judge is helped by various specialists:

• in the phase of inquiry
• in the phase of execution

The judge has to decide; therefore knowing the child personally is very important

• Not only through written reports
• But through meetings
The central role of the Juvenile Judge

The judge intervenes at every moment of the operations.
Necessity to establish contact with the child
Judge is the cornerstone of all judicial interventions
Personalisation of judge “He/she is my judge”

A negotiated Justice

• Before the judgement, all situations are discussed.
• Then one, two or many solutions are proposed.
• Even a solution may be tested before judgement.
• No smaller common denominator, no compulsory consensus.
**A justice of reality**

Juvenile justice aims at modifying the situation of the minor.

If a sentence is pronounced, it goes to the causes of the offence and tries to act on these.

Importance of the measures as means of changing the comportment of the child.

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**Timing of the intervention**

- Link between the act and the social reaction must be immediate
- Time is not neutral for young people
- The young offender must not have the impression of impunity
FINAL RECOMMENDATIONS
adopted by the delegation on 1st September 2007

A. Recommendations in PREVENTION

1. Primary prevention: to strengthen the awareness for legislation and morality of youth, through the education system and communication system of the government.

2. Primary Prevention: To build up an institutionalised “Child Welfare System” to provide a comprehensive protection to children, including education, healthcare, minimum living conditions etc…


4. Secondary Prevention: to protect the vulnerable children, like migrants children, left behind children, of poor families, street children, etc… through the collaboration of the concerned Ministries.

5. Tertiary prevention: for young offenders, use the principle of education and persuasion, to avoid recidivism. And use penal sanction as a measure of last resort.

6. The Community, Neighbourhood, Youth Leagues, Workers Units and Women Federation, NGOs, etc…should work for after care for the young offender, in order that he/she will be reintegrated in the society.

7. To build up a Child protection network in the Community, including professional institutions and a professional team.

8. To try the best to divert the young offenders from the official judicial proceedings and advocate the full participation of the different parties and to respect to the rights and dignity of children and to ensure the personal development of the children.

B. Recommendations for STAKEHOLDERS

1. To raise the capacity of the public security and Justice Staff concerning Children physical and psychological development, through specialised training.

2. The Public Security Sector shall lead the dealing with petty offences without resorting to the court system; for the severe crimes, the judiciary system (Prosecutor or/and Court) should lead the criminal official intervention.

3. The prison and the juvenile facilities should strengthen the education and vocational training of the minors in conflict with the law, in order to ensure the reintegration into society.

4. To avoid pre-trial detention or to reduce the pre-trial detention period.
5. To establish independent material law on Juvenile Justice, including procedural law and execution dispositions, or to adapt relevant dispositions in the existing laws.

6. Good practices such as diversion and intervention of a social worker in the Juvenile Justice System, should first go through a pilot project, and after its success could be incorporated in the law and can be used nationwide.

7. To maximise the realisation of diversion, through mediation and others instruments of Restorative Justice.

8. In official proceedings, the Judge should take the lead and use Community Correction Measures and avoid the use of deprivation of liberty, and ensure the participation of the child at every stage of the trial.
FINAL REPORT
IDE

1. Context
The International Institute for the Rights of the Child has developed since 2006 an awareness-raising programme on children’s rights in China, in collaboration with UNICEF-China. The programme includes several sections, notably:

- the issue of children in street situations, in particular in the Zhengzhou region, were a pilot project has been established and assessed by the IDE, Moreover, a training seminar has been organised by IDE and UNICEF in July 2007,
- the issue of Juvenile Justice, in the context of redrafting of Chinese provisions in the matter of Juvenile Justice, with the August 2007 Seminar we are presently reporting on,
- the issue of children’s rights in sport, on which a seminar is planned in Beijing in spring 2008,
- the issue of migrant children, that will be dealt with during a 2008 awareness-raising seminar.

As far as Juvenile Justice is concerned, discussions led in 2006 with UNICEF and various Chinese partners involved, including the China Law Society, have resulted in a proposal by UNICEF-China to send a group of official delegates to the IDE, in order to follow an introduction course on justice for minors. The course took place in Sion from August 26th to September 1st 2007. It was credited with high level government authorisations and several Ministries were represented.

2. Purposes
Purposes of this course were :
- Permit the meeting, outside context, of Chinese juvenile justice actors
- Participants’ consciousness-raising about the importance of having specific justice
- Make participants aware on the existence of minimal standards in the matter, on the international level
- Invite them to think upon possible reforms on the Chinese system
- Show realistic instruments for China (institutions and Restorative Justice instruments)
- Explain that there are other possible answers than deprivation of liberty notably alternatives like mediation
- Draft useful recommendations for China
- Ensure a Seminar follow-up, under a form to be determined later

3. Development
The Seminar took place during five days (August 27th to 31st), with a specific subject for each day. The working method was practical/theory confrontation by plenary presentations, workshops and visits (2 institutions, a mediation pilot project and a minor specialised police brigade). Participants came mainly from concerned Ministries and the China Law Society. This organisation is carrying out research on the situation of Juvenile Justice in China, preliminary to the revision of legislative provisions.

Discussions outside training sessions, and several convivial meals were organised. These are important moments for participants’ cohesion.

To avoid transfers, midday meals were taken at the Institute.

The working language was English, but several participants could talk only Chinese. The translation was made by the Ministry of Commerce delegate and the UNICEF representative.

4. Participants.
See appendix I for the list of participants.
Le Chief of delegation was Mr Liu Jian, General Director of China Law Society.
Participants came from the Ministry of Justice, the Ministry of Public Security and Ministry of Commerce.
Beside the Law Society, the China National Committee for the Care of Children was represented as well.
Ms Cheng Xuefeng represented UNICEF-China.
Several members of IDE staff also participated in the course, completely or partly.

5. Speakers
The Direction of the course was assumed by Ms Renate Winter, Judge at the UN Special Court for de Sierra Leone.

Speakers:
- Dr Karl Hanson, Senior Lecturer and Researcher, Children’s Rights Unit, IUKB, Sion, Switzerland
- Mr Jean-Pierre Heiniger, Former Director of La Fontanelle, International Consultant
- Mr Michel Lachat, Youth Court President, Member of the Board of IDE, Member of the Board of IAYFJM, Teacher at Fribourg University, Fribourg, Switzerland
- Mr Xavier Lavanchy, Juvenile Judge, Sion, Switzerland
- Mr Christian Nanchen, Chief of Children’s Protection Office, Lawyer, Sion, Switzerland
- Ms Paola Riva Gapany, LLM in Human Rights, IDE, Sion, Switzerland
- Mr Robert Steiner, Chief of the Judiciary Police, Sion, Switzerland
- Dr Daniel Stoecklin, Senior Researcher, IDE, Sion
- Mr Jean Zermatten, Director of IDE, former Juvenile Judge and Member of the UN Committee on the Rights of the Child, Sion, Switzerland
Mrs Ge Xiangwei, Professeur, Researcher at the Center for Criminal Prevention, presented very explicitly the situation of minor delinquents and related intervention in China;

6. Programme
The programme has been very intensive, the question is to consider whether the number of plenary sessions was not excessive. Being a first consciousness-raising step, however, this Seminar must provide a substantial theoretical background.

The lectures were supported by various technical devices (overhead projector, PPS, videotapes, slide-shows), making the plenary sessions particularly interesting. IUKB facilities were unanimously appreciated.

Interdisciplinary work was favoured by a variety of professional backgrounds among the speakers as among the participants. Moreover, the theme dealt with is basically interdisciplinary.

Informal encounters have also been very important, be it between Chinese officials and speakers, or among Chinese officials. This is not the least benefit of this kind of meeting. What must be stressed in this respect is that many among the participants had never met before, and not either worked together. They could accordingly not only get acquainted, but find out about the others’ work. We hope that these links established in Sion will be kept on in the home country.

There were no official events apart from the first evening’s official dinner. The Chinese delegation could nevertheless meet officials from the Swiss Agency for Development and Cooperation (ADC) Ms Elena Manfrina et Mr Olivier Chave, and share lunch with them in Fribourg on August 29th 2007.

Visits of institutions counted : St Raphaël, Pramont, the pilot project of penal mediation for minors (Fribourg), and the Fribourg minor specialised police brigade.

Transportation was provided by a specialised company (Dubuis) : this made things easier.

Meals were catered by Mr Salamin. The food was varied and pleased our Chinese guests.

7. Recommandations
Chinese participants presented recommendations under the leadership of Ms Judge Winter, Course Director, and Mr Zermatten, IDE Director. To favour this delicate step, a specially dedicated workshop was held.

A list of 16 recommendations could be discussed, corrected and finally approved during the August 31st plenary session.
These recommendations are joined in the Final Recommendations (cf. pages 153-154)

8. Follow-up
It is up to every participant to implement the Seminar’s teaching at work in the concerned Ministry, Faculty or organisation. To provide it to any interested collaborator, or even teach it further.

IDE foresees a two-fold follow-up:
- first of all the publishing of a working report on the works of the Sion week; a special section will deal with Swiss legislative basis in the field (positive and future law). Participants showed deep interest for the Swiss model, even if federalism has proved awkward to understand (and apply) sometimes.
- the possible setting up of a training Seminar dedicated more precisely to practice in China. UNICEF seems ready to be a facilitator of such a meeting, especially in order to train members of the judiciary body (judges and procurators). This session’s main speakers are available to run a second training, focused more precisely on good practices.
APPENDIX : LIST OF PARTICIPANT
List of names of participants in the study tour to Switzerland

Delegation

♦ Mr Sun Yaohua - Officer of Ministry of Commerce
♦ Mr Li Qimin - Deputy Secretary General of China National Committee for the Care of Children
♦ Mr Liu Jian - Director General of China Law Society
♦ Mr Sun Yong - Chief of Justice Division, Ministry of Justice
♦ Mr Wang Guowu - Deputy Director of Legal Bureau, Ministry of Public Security
♦ Ms Ge Xiangwei - Professor of Research Center for Criminal Prevention, Ministry of Justice
♦ Mr Chen Shiqu - Director of Anti-trafficking Division of Ministry of Public Security

UNICEF Delegation Leader

♦ Ms Cheng Xuefeng - Senior Project Officer of UNICEF Beijing