Rapid Analysis:

Children in Namibia in conflict with the law

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By

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Commissioned by the Ministry of Gender Equality and Child Welfare (Windhoek)

December 2012

Acknowledgements

The consultant would like to thank the following individuals for their assistance, endurance and advice:

C. Feris (MGECW), E. Rakow (Ombudsman), H. Himene (MYNSSC), H. Salionga (then Acting Chief Magistrate). A special word of appreciation goes to the Commissioner General of Namibian Correctional, Services (NCS), E. Shikongo for the openness in responding to at times daunting questions. Thanks are also in particular extended to UNICEF, to mention specially the Directorate: Child Protection, for funding this study.

Note:

This report does not consider any information from stakeholders and custodians of information received later than 30 November 2012.

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Abbreviations/Acronyms

CCPB	Child Care and Protection Bill
CPA	Criminal Procedure Act (Act No 51 of 1977)
CWG	Child Welfare Grant
DCJB (2002)	Draft Child Justice Bill (2002)
ECD	Early Childhood Development
FGD/I	Focus Group Discussion/Interview
IMC	Interministerial Committee on Juvenile Justice
JJF	Juvenile Justice Forum
LSP	Life Skills Programme
MGECW	Ministry of Gender and Child Welfare
MGECW Workshop	Child Justice Training Workshop, organised by Ministry of Gender Equality and Child Welfare, 30 July 2012 – 2 August 2012
MoE	Ministry of Education
MoF	Ministry of Finance
MoHSS	Ministry of Health and Social Services
MHAI	Ministry of Home Affairs and Immigration
MoLSW	Ministry of Labour and Social Welfare
MYNSSC	Ministry of Youth National Service Sport and Culture
NNAfC	Namibia's National Agenda for Children 2012-2016
NPOVC	National Policy on Orphans and Vulnerable Children
NCS	Namibian Correctional Service
NamPol	Namibian Police
NPA	National Plan of Action
NPC	National Planning Commission
OVC	Orphans and Vulnerable Children

PG	Prosecutor General
PoN	Polytechnic of Namibia
PTCS	Pre-trial Community Service
PTF	Permanent Task Force (on OVC)
SMG	Special Maintenance Grant
Soc.Ws' Prog.	Social Workers' programme for behavioural change
UNAM	University of Namibia
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

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Introduction and Background

About thirteen years ago, in 1999, the Inter Ministerial Committee (IMC) on Juvenile Justice commissioned a Discussion Document Juvenile Justice in Namibia. This document, setting out the domestic Namibian and international legal framework for dealing with children in conflict with the law, provided albeit not comprehensive in terms of quantitative data, a fairly plausible picture of the way in which the Namibian justice system dealt with child offenders. The document clearly demonstrated that Namibia had strides to make if the country were to meet the requirements not only of its own law, but also its international obligations, notably under the United Nations Convention of the Rights of the Child (UNCRC/CRC). The Discussion Document Juvenile Justice in Namibia remained hitherto the only comprehensive document on the topic.

In the meantime however, Namibia has directed impressive resources towards the wellbeing of her children,[1] and over a period of two National Development Plans (NDP 2 and NDP 3) socio-economic conditions have changed. With the adoption of a number of Acts of Parliament addressing particular issues concerning children,[2] also the normative framework, in which children grow up today, has changed.

While all those changes have been fairly well mapped and documented,[3] they remain external to the very phenomenon of child offending as well as to the ways in which the Namibian criminal justice system behaves when it comes to dealing with children in conflict with the law. It is in this context of uncertainty and change that the MGECW commissioned this study to obtain a rapid analysis of the state of compliance with the CRC.

This introductory chapter summarises the short history of child/juvenile[4] justice in Namibia since the ratification of the United Nations Convention of the Rights of the Child in

[1] Between 2001/2 and 2009/10 financial resources devoted to child welfare grants alone have almost quadrupled from N$57million to N$202million; compare: Ministry of Gender Equality and Child Welfare, 2010, p. IX.
[2] Combating of Rape Act 8 of 2000, Combating of Immoral Practices Amendment Act 7 of 2000, Education Act 16 of 2001, Combating of Domestic Violence Act 4 of 2003, Maintenance Act 9 of 2003, Criminal Procedure Amendment Act 24 of 2003, Prevention of Organised Crime Act 29 of 2004, Children's Status Act 6 of 2006, and Labour Act 11 of 2007.
[3] See for instance: Government of Namibia. 2009.
[4] The terms "child" and "juvenile" will be used in this document interchangeably. The word "juvenile" is more common in the international context, whereas "child" has been the domestic term of choice.

September 1990. It then briefly looks into prevailing economic challenges which have an impact on the livelihood of many children in Namibia and the ways in which they are socialised. Eventually an outline of the report will be given.

A short history of Child/Juvenile Justice in Namibia[5]

The purpose of this paragraph is to give an historical aperçu on "Justice for Children" in Namibia, however from a limited criminal justice perspective,[6] in order to demonstrate that the justice for children (including child justice) debate is not a new token, but had been extensively deliberated with remarkable outputs from the mids-90s until about 2005/6 – a discourse which can be easily resumed.

Namibian law reform efforts on child/juvenile justice can be traced back to shortly after national Independence in 1990. In September 1990, the Founding President of Namibia, *Sam Nujoma* led the country's delegation to the World Summit for Children (New York).[7] The World Summit adopted the Declaration on the Survival, Protection and Development of Children and a Plan of Action for its implementation. Together with the Convention on the Rights of the Child, this Plan of Action formed the agenda to be achieved by the year 2000 by all countries. Following the World Summit, an Inter-Ministerial Policy Committee was established, tasked to draft a National Programme of Action for the Children of Namibia (NPA), and *"to consider steps to implement the Convention on the Rights of the Child"*.[8] In January 1994 Namibia submitted a first report to the UN Committee on the Rights of the Child. The Committee noted the existence of *"political commitment within the country to improve the situation of children."*[9] The Committee acknowledged the legacy of war and Apartheid in Namibia, the **constraining influence of poverty**, and the inherited mire of colonial legislation which is at odds with international standards. In considering Namibia's country report submitted in terms of Article 44 of the CRC, the UN Committee on the Rights of the Child (1994) concluded the following:

[5] This paragraph on the history of Child/Juvenile Justice in Namibia is partially based on the text Restorative Justice: The Case for a Child Justice Act (Schulz, 2009).
[6] A perspective on the whole continuum of Justice for Children would mean the Namibian development with regard to the Convention of the Rights of the Child.
[7] Namibia signed and ratified the CRC on 26 and 30 September 1990 respectively.
[8] Government of Namibia. Ministry of Women Affairs and Child Welfare, 2000, p. 26.
[9] UN Committee on the Rights of the Child, 1994.

> *[A]s regards the system of juvenile justice in place in Namibia, the Committee is concerned as to its conformity with the Convention on the Rights of the Child, namely its Articles 37 and 40, as well as with relevant international instruments such as the Bejing Rules, the Riyadh Guidelines, and the United Nations Rules for the Protection of Juveniles Deprived of their liberty*

The Committee then recommended:

> *[T]he system of the administration of juvenile justice in the State Party must be guided by the provisions of Articles 37 and 40 of the CRC as well as the relevant international standards in this field, including the Bejing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles deprived of their Liberty.*

In its 2000 National Report on Follow-up to the World Summit for Children, Namibia reported:

> *A National Inter-Ministerial Committee and a Regional Inter-Ministerial Committee on juvenile justice have been established. An increasing number of juvenile offenders are being treated according to international instruments and guidelines.*
>
> *A number of Government supported institutional facilities for committed children by Children's Court were established.*
>
> *A legal framework for the protection of children' rights is being developed. A Draft Child Care and Protection Act and Draft Children Status Bill incorporating the UN Convention on the Rights of the Child are at advanced stages of completion.*[10]

The "National Inter-Ministerial Committee" (IMC) co-ordinated substantial activities pertaining to the transformation of the criminal justice system towards compliance with the CRC. A detailed plan of action was crafted, and set in motion. The programme description towards a structured and holistic juvenile justice system contained a number of project interventions, namely:

- ✓ Law Reform
- ✓ Training
- ✓ Structures
- ✓ Service Delivery System
- ✓ Evaluation and Monitoring, and
- ✓ Advocacy and Child Crime Prevention.

The principle of restorative justice was deeply written into the programme description. Progress was made in short time regarding all project interventions. There was a common understanding that the envisaged system as a preventative and remedial tool came with its

[10] Government of Namibia. Ministry of Women Affairs and Child Welfare, 2000, p. 26.

own inherent limitations, and that its instrumental value would depend in the first place on a well developed service delivery system. This in turn required a legislative structure, which would ensure that the future system would not depend anymore on the goodwill of donor-organisations or -countries, but become sustainable on the basis of annual budget appropriations for the legislated purpose.

Thus, in 2000 the IMC commissioned the drafting of the Juvenile Justice Bill. The drafter incorporated the shared views, ideas and perceptions submitted by the various stakeholders, and the outcome was discussed at workshops and conferences for consensus building. These consultations, together with the parallel collection of statistical data, execution of pilot studies etc, led to a stable perception of feasibility and desirability of certain legal contents, structures and procedures as appropriate.[11] Such outcomes were integrated into the Layman's Draft Bill on Child Justice, authored by Adv. AW Corbett, which the IMC received in December 2002.[12] Currently, this draft is with the Government legal drafters, awaiting its finalisation.[13]

Finally, at its 61st session 17 September – 5 October 2012 the Committee on the Rights of the Child, considering the consolidated second and third periodic reports on Namibia (CRC/C/NAM/2-3) adopted its Concluding Observations: Namibia. Amongst others, the Committee noted *"with concern that despite discussions for over a decade, two notable laws on children's rights, the Child Care and Protection Bill and the Child Justice Bill, have not been adopted."*[14]

Economy and Poverty

Although more than twenty two years have passed since Independence, the Namibian economy continues to show the features of a dualistic production structure, i.e. its main streams *"comprise traditional subsistence and high-technology industry."*[15]

Although Namibia had a per capita income of about US$2 000 in 2004, which was among the highest in sub-Saharan Africa, its skewed income distribution[16] informs strongly the prevailing discrepancies in the country.[17] Roughly 28%[18] of those individuals surveyed in the

[11] This is the understanding of the consultant who then and there participated in various workshops, conferences and consultations.
[12] The end-of-2002 version of the Draft Child Justice Bill (DCJB) has been used for the purposes of this report.
[13] This information was shared by the representative of the Ministry of Justice at the MGECW Workshop.
[14] UN Committee on the Rights of the Child, 2012.
[15] Kaapama, Blaauw, Kaakunga and Zaaruka, 2007, p. 1.
[16] Namibia's Gini coefficient of 0.5971 is one of the highest in the world, see: Namibia Statistics Agency, 2012.
[17] Kaapama, Blaauw, Kaakunga and Zaaruka, 2007, p. 2.
[18] Government of Namibia, 2009, p. 94.

latest 2009/2010 household survey were living below the internationally accepted poverty datum line of one US$ a day at the dollar's 1993 purchasing power parity (PPP) equivalent. According to another measure of poverty, in terms of which a household is 'relatively poor' if it spends more than 60% of its income on food, and 'extremely poor' if it spends more than 80% of its income on food, it was found that 42% of households in rural areas were relatively poor and 13.8% of households in urban areas were extremely poor.[19] The 2009 Assessment Report on the Basic Income Grant Pilot Project gives a tangible picture of the disintegrating forces of abject poverty.[20]

Outline of the Report

The report presents an analysis of the findings of a provisional study into the situation of children in conflict with the law.

After a review of the research methodology, presented in Chapter 2, the thrust of the analysis is introduced in Chapter 3 and Chapter 4. Chapter 3 compares on the basis of available information, the degree of legislative and policy protection of four conceptual features, namely "Regular Independent Inspections", "Complaints Mechanisms", "Specialised Juvenile Justice System", and "Prevention Plan". Chapter 4 reports on the "Situation on the ground" as it can be reconstructed on the basis of a survey among criminal justice professionals, as well as focus group discussions/interviews and in-depth interviews with staff from the Office of the Ombudsman, Social Workers, Magistrates, and Prosecutors. Chapter 5 summarises and discusses key findings relating to the level of legal and policy protection of the rights of the child in conflict with the law against the backdrop of the UNCRC, and provides some reflections on the actual situation on the ground. Chapter 6 offers a brief set of recommendations.

[19] Kaapama, Blaauw, Kaakunga and Zaaruka, 2007, p. 2; on the currently used measure of poverty, see: Central Bureau of Statistics, National Planning Commission, 2012.
[20] Basic Income Grant Coalition, 2009.

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Methodology

This study *Rapid Analysis: Children in Namibia in Conflict with the Law* is undertaken under the auspices of the coordinating Ministry of Gender Equality and Child Welfare (MGECW) in terms of the Namibia National Agenda for Children 2012 – 2016. The overall objective of this study was to undertake a provisional investigation into the state of Namibia's compliance with obligations arising under the United Nations Convention in the Rights of the Child (UNCRC) as far as the situation of children in conflict with the law are concerned.

The consultant was required to:

- Solicit information on the current situation of children in conflict with the law "*as it relates to available data from police, nature of complaints, to number of cases brought before court, children in detention, pre-trial diversion programmes and diversion programmes in prisons and monitoring structures*"
- *"Identify strategic gaps and opportunities"* to enhance the current situation for children in conflict with the law.

Desk Research and Literature Survey

This was one of the key instruments that aided and guided the consultant. Various secondary resources were consulted, including written publications, laws, and policies around the key international obligations under the UNCRC. Libraries and various websites of government ministries, institutions, and non-governmental organisations (NGOs) were visited for a range of published material, official documents, including the national Namibian Constitution, other legislation and newspaper reports.

Survey/questionnaires

The study had primarily been conceived as a desk study with some investigative aspects. Requests for data and information against the backdrop of a list of juvenile justice indicators (Table 3 infra) were made via the Minister and the Ministry of Gender Equality and Child Welfare respectively to the Namibian Police, the Namibian Correctional Service, the Office of the Prosecutor General, the Ministry of Justice, the Ministry of Youth, National Service, Sport and Culture, and the Office of the Ombudsman.

Questionnaires were sent out to Magistrates, Prosecutors, Station Commanders (Police), Officers in Charge (Corrections), and Social Workers.[21]

Focus Group discussions, informant in-depth interviews

A number of focus group discussions and informant in depth interviews were held with Magistrates and Prosecutors in Windhoek, Rehoboth (16.10.2012, 17.10.2012) Swakopmund and Walvisbay (25.10.2012), Oshakati (21.11.2012) and Social Workers (17.10.2012; 6.11.2012) in Windhoek. An in depth interview with the representative of the Office of the Ombudsman was also conducted (18.09.2012).

Limitations

The study was subject to conceptual limitations as well as other impeding circumstances. The 'six-weeks' time frame for data collection was comparatively short, and the district of Windhoek as the defined geographical area for "data-mining" was comparatively small. One of the significant limitations was the absence of integrated criminal justice data bases. While the digital Namibian Court Information System (NamCIS) was conceived with the intention to provide valuable data once fully rolled out, this system is not yet in operation at Windhoek (Katutura) Magistrates' Court. Data for this report had therefore to be extracted manually. In order to be able to stay within the time frame for the completion of this report, the year 2011 was taken as the reference period for data collection from the Magistrates' Court Windhoek (Katutura). The complexity of channels of communication with high level functionaries (Minister, PS, Commissioner General [NCS], Inspector General [NamPol], etc.) had a bearing on the efficiency of communication.

Focus Group Discussions and Inerviews (FGD/FGI) with Social Workers were limited to Windhoek, and FGD/FGI with Magistrates and Prosecutors were limited to Windhoek, Rehoboth, Swakopmund, Walvisbay, and Oshakati.[22]

At the time of writing of the report, various stakeholder had not yet, or only partially responded.

[21] For reasons of protocol, the questionnaires to Station Commanders (Namibian Police) and Officers in Charge (Namibian Correctional Service) were sent by the Minister of Gender Equality and Child Welfare to the Inspector General of the Namibian Police and the Commissioner General of the Namibian Correctional Service respectively.

[22] The gathering of information through interviews beyond the magisterial district of Windhoek was not part of the formal terms of reference but became possible in connection with travel assignments under other, academic projects.

Due to the information gap the report must remain incomplete and conclusions drawn can - in a statistical sense - not be generalised. Assuming, that structural features in the environment of criminal justice professionals are – within a margin – very much similar all over Namibia, transferability seems yet plausible.

3
Namibian Laws and Policies v. International Instruments

The focus of this chapter is on the match between International Standards and national Namibian laws and policies. Children in the criminal justice system are addressed by a number of International Standards. Those standards are contained in:

- The Convention on the Rights of the Child (UNCRC)
- The United Nations Guidelines for the Prevention of Juvenile Delinquency
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- The United Nations Standard Minimum Rules for Non-custodial Measures
- The United Nations Guidelines for Action on Children in the Criminal Justice System
- The United Nations Basic Principles on the use of Restorative Justice Programmes in Criminal Matters
- The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime
- The African Charter on the Rights and Welfare of the Child.

The above standards have guided, and continue to guide, both the actions of governments and the work of organisations active in juvenile justice.

The emphasis is in the following on applicable laws, international standards and principles. Most of the time the text of those laws, principles and standards is straightforward, but some aspects will receive greater attention than others due to their legal regulation.

The United Nations Convention on the Rights of the Child

The CRC consists of 54 articles. According to Article 41 CRC the normative substance of the CRC is deemed to be residual law in the State Parties, which thus applies in all cases where the municipal law of such State Parties only provides provisions which are less conducive to the realisation of the rights of the child. Part I, Articles 1 to 41, is largely aimed at the protection of children against others, be it agents or representatives of State Parties or individuals. However, in the context of children in conflict with the law, i.e. child offenders, Articles 37 and 40 are explicit child justice provisions, because they limit and direct the range of permissible treatment of child offenders by the agents of any State Party.

Whereas Article 37 specifies some *habeas corpus* principles, it stipulates for instance that *"arrest, detention or imprisonment of a child ...shall be used only as a measure of last*

resort", Article 40 is more programmatic in directing State Parties in particular in sub-article (1) to ensure the well being of the child at any stage of formal or other proceedings in which such child is alleged as, accused of, or recognised as having infringed the penal law. Article 40 (3) states:

> State Parties shall seek to promote the establishments of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and in particular:
>
> (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
>
> (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

Article 40 (1) provides:

> State Parties recognise the right of every child children alleged as, accused of, or recognised 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 chi's assuming a constructive role in society.

The Beijing Rules,[23] which preceded the CRC, provide in Rule 4 that the lower limit of the age of criminal capacity must not be set too low, *"bearing in mind the facts of emotional, mental and intellectual maturity."* Rule 5, which reads *"the juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence."*

It is obvious that these articles aim at a paradigm-shift in treating children in conflict with the law in that they require states to:

- ✓ set a minimum age of criminal responsibility;
- ✓ maximise the application of diversion;
- ✓ establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts.

However, equally important is provision of Article 3 (1) CRC, which provides that *"the best interests of the child shall be a primary consideration"* in all actions concerning children. The notion of the best interests of the child has to guide all actions, in particular all discretionary decisions of office bearers in the criminal justice system. Whereas decisions governed by

[23] The Beijing Rules, much as the Riyadh Guidelines and the UN Rules for the Protection of Children Deprived of Their Liberty, are non-binding in nature, but have been widely accepted to provide assistance in the authentic interpretation of the CRC; see: Ruppel, 2009, p. 66.

criminal procedure law are mostly discretionary, the importance of this "primary consideration" cannot be overestimated.

The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (in the following referred to as the Charter or the African Charter) was adopted in 1990, and came into force in 1999 according to its Article 47 (3). The Charter aims to supplement the CRC. This can be gleaned from its Preamble, which reads "REAFFIRMING ADHERENCE to the principles of the rights and welfare of the child contained in ...other instruments the Organisation of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; ..." The Charter does not contain provisions that directly oppose the CRC, it often simply reaffirms the principles and standards which have been laid down in the CRC. Article 4 of the Charter reaffirms for instance the primacy of the "best interests of the child", which features already in Article 3 (1) of the CRC. Otherwise, the Charter contains specific African perspectives which were not, or not in great detail dealt with by the CRC. Article 11 of the Charter, addressing the right to education, demonstrates African progressiveness, and so giving recognition to the role of education for sustainable development.[24] Article 17 of the Charter addresses the administration of juvenile justice; it gathers the rights positions of children, which may be found in Articles 37 and 40 of the CRC. However, whereas the CRC remains silent on the purposes of the child justice system, sub-article 17 (3) of the Charter is outright explicit in that it determines that reformation of the child, reintegration into his or her family and social rehabilitation shall be the essential aim of juvenile justice. While the Charter provides implementation and enforcement mechanisms comparable to those under the CRC, only few State Parties have submitted their initial and/or follow-up reports. Due to this, a common understanding of the bearing of the Charter on the child justice systems of State Parties has not yet evolved. It is therefore that the situation of children in Namibia in conflict with the law will be assessed in the first place against the backdrop of the CRC and principles and standards of the Charter will only be invoked in particular instances.[25]

Applicability of international law according to Namibian laws

When it comes to the question about the relation between international law and municipal Namibian law, Article 144 of the Namibian Constitution suggests that an answer should be

[24] See: Ruppel, 2009, pp. 74ff.
[25] Namibia signed the Charter in 1999 and ratified it in 2004.

sought in the principles of monist law theory.[26] Article 144 Namibian Constitution, provides that *"(u)nless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."* According to the principles of the monist theory international agreements and treaties take precedence over domestic legislation. In other words the treaty law is 'directly applicable'.[27] Namibia has ratified the CRC in September 1990 and the African Charter in 2004 (supra). There is no need of a law to make these treaties operative, and they have the force and effect of a legislative enactment.[28] To be distinguished from the question of direct applicability is the question whether and to what extent domestic courts can apply treaty law in the adjudication of cases. Here we ask whether norms of a treaty or convention are self-executing.[29] The answer to this question is a matter of legal interpretation. In respect of the self-executing character of the CRC legal opinions are not uniform.[30] There are however plausible arguments in favour of the submission that at least the principle of primary consideration of *"the best interests of the child",* Article 3 (1) of the CRC, which is identical with Article 4 (1) of the African Charter, is self-executing.[31] In terms of the language of Article 37 (b) and (c) CRC, which is express, certain, unconditional and unequivocal, it stands to reason to assume that the requirements, that *"arrest, detention or imprisonment of a child...shall be used only as a measure of last resort"* and *"every child deprived of liberty shall be separated from adults"* too, are self-executing. To the extent that the CRC came into force after Namibian laws pertaining to the criminal justice system, it must in fact be taken to have superseded any and all provisions which are inconsistent with it.

Whether or not the CRC takes precedence over incompatible national law, by virtue of the ratification the Namibian Government is obliged to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.

International Standards, under the CRC and other international documents are specifically explicit on a number of items, i.e. criminal capacity, arrest, detention, diversion, trial,

[26] The monist law doctrine accepts that the internal and international legal systems form a unity. According to this doctrine, both national and international legal rules that a state has accepted, for instance by way of a treaty, or convention, determine whether actions (or omissions) are legal or illegal. However, the precise meaning of this provision, in particular the notion of the self-executing character of treaty law is not settled law in Namibia; for further details, see: Dausab, 2010, pp. 261 - 285.

[27] Alen and Pas. 1996, p.176.

[28] Hinz and Ruppel, 2008, pp. 8ff.

[29] Vazquez, 1995.

[30] Alen and Pas, 1996.

[31] Alen and Pas, 1996, pp. 182f. Compare also Verhellen, 2006, 85, who points out that the text's binding nature is indicated by verbs such as "recognise", "undertake", "ensure", and "guarantee".

sentence, institutionalisation, and (crime) prevention. The various standards referred to above have been taken as a point of departure by the United Nations Office on Drugs and Crime (UNODC), initiated by the United Nations Children's Fund (UNICEF), to formulate fifteen indicators regarding the situation of children in conflict with the law. Eleven of these indicators (indicators 1 - 11) are concerned with quantitative values (see infra Chapter 4: Situation on the ground). The information measured with indicators twelve to fifteen concerns the existence of relevant policy (Table 1), hereinafter also referred to as Juvenile Justice Policy Indicators (JJPI) and shall be discussed hereafter. On the basis of the documents (laws etc.) alone[32] a final appraisal cannot be done.[33] At this point the attribution of levels of protection regarding the policy indicators 12 "Regular Independent Inspections", 13 "Complaints mechanism", 14 "Specialised Juvenile Justice System", and 15 "Prevention Plan" are estimates. Presented hereafter is however a summary discussion of the most eminent features/findings.

Table 1 : Juvenile Justice Policy Indicators (JJPI)		
JJPI12	**Regular independent inspections**	Existence of a system guaranteeing regular independent inspection of places of detention; [Percentage of places of detention that have received an independent inspection visit in the last 12 months][34].
JJPI13	**Complaints mechanism**	Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system.
JJPI14	**Specialised juvenile justice system (CORE)**	Existence of a specialised juvenile justice system
JJPI15	**Prevention**	Existence of a national plan for the prevention of child involvement in crime

JJPI 12: Regular independent inspections

The CRC does not expressly require regular independent inspections. However, it stands to reason to believe that a State Party will easily fail in the duty to ensure special protection and assistance under Article 20 (1) CRC. A detained child is deprived of her family environment and of her usual support system, thus particularly vulnerable.

[32] This would require a discourse among the stakeholders, which still has to take place.
[33] For each Policy Indicator there is a Policy Analysis Tool (Annex II) for the collection of information on the existence of policy. The explication of the Policy Analysis Tool can be found at the beginning of Annex II.
[34] In this form the indicator also serves as a quantitative measure.

DEFINITION:

Existence of a system guaranteeing **regular independent inspection** of places of detention

JJPI 12:		Percentage	Degree of protection
	Level 1		
X	**Level 2**	**<50%**	**Feature is weakly protected by law and / or policy**
	Level 3		
	Level 4		

By monitoring of places of detention through inspections, states may ensure that such protection and assistance is in place. Although not binding per se, JDL, Articles 72 and 74 provide a plausible concretisation of Article 20 (1) CRC:

- Qualified inspectors or an equivalent duly constructed authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis...and should enjoy full guarantees of independence in the exercise of this function.
- After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them.

The normative situation is not identical with regard to the different places of detention. Places of detention, i.e. pre-trial, pre-sentence and post sentencing detention refer to confinement in police cells and correctional facilities.[35]

Police cells

Detention in police cells takes place under the Police Act 19 of 1990 and the Criminal Procedure Act 51 of 1977. Neither Act provides for the inspection of police cells. Notwithstanding the paucity of laws, police stations and police cells are regularly visited by social workers in the Ministry of Gender Equality and Child Welfare. According to information received during FGIs with Social Workers (infra pp. 73f.), these visits take place on a monthly basis.

[35] Referral to a place of safety (section 1 Children's Act 33 of 1960) other than a police cell will, for the purposes of this report, not be considered as detention in terms of the CRC, since such places do not regularly provide for the deprivation of liberty by physical barriers.

Correctional facilities

Although the Correctional Service Act 9 of 2012 has already been promulgated, it will only come into force and replace the Prisons Act 17 of 1998 when determined by the Minister by notice in the *Gazette.* The Correctional Service Act contains various provisions, in particular section 19 and sections 122f pertaining to the inspection of correctional facilities. In the following however, the focus will be on the Prisons Act.

Existence of Inspections System

Is there provision for an established system guaranteeing <u>regular</u> inspection visits to places of detention where children are held, by external, independent persons or bodies, such as inspectors or visiting committees?	
Laws: No	**Policy: No**

As will be discussed below, the Prisons Act, the Regulations, and also the recently promulgated Correctional Service Act 9 of 2012 provide for independent inspections to some extent. However, no system for **regular** inspections has been established.

Is there provision for a system guaranteeing regular visits to places of detention by magistrates, judges, prosecutors or persons acting on their behalf?	
Laws: No	**Policy: No**

The Prisons Act, the Regulations, and also the recently promulgated Correctional Service Act 9 of 2012 provide for independent inspections by 'visiting justices'. There is however, no system for **regular** inspections.

If neither visits from independent persons nor from magistrates, judges or prosecutors are guaranteed, is there provision for any other mechanisms for regular scrutiny and improvement of detention conditions?	
Laws: --	**Policy: --**

Must the purpose of regular visits include evaluating compliance of the place of detention with laws and standards?	
Laws: No	**Policy: Yes**

Correctional facilities

The management of corrections is by and large regulated by and under the Prisons Act 17 of 1998. Sections 112ff Prisons Act and s. 220 Regulations for the Administration and Control of the Namibian Prison Service[36] deal with visiting justices:

[36] Government Notice 226 of 8 November 2001.

220. (1) A judge of the Supreme Court or the High Court must at all times be afforded admission to a prison, as well as access to any section of the prison, and he or she may interview any prisoner and may report to the Commissioner in respect of any matter which he or she considers should be brought to the Commissioner's notice.

(2) A magistrate must at all times be afforded admission to a prison within the area of his or her jurisdiction, as well as access to any section of such prison, to see every prisoner and, if he or she desires, to interview any prisoner, and he or she must report his or her findings in respect of that visit to the Commissioner.

(3) A judge or a magistrate desiring to be admitted to a prison must sign the official visitor's book of the prison, and, subject to satisfactory identification, his or her signature is sufficient authority for admission to the prison in terms of subregulation (1) or (2).

For the detention of any person, including children, in correctional facilities the Act provides for inspections under the Commissioner General's direction[37] and for inspection by visiting justices.[38] Inspections in terms of section 17 are internal inspections. Such inspections are not independent from the detaining entity. The legislation of internal inspections is however commendable since the internal monitoring of system behaviour is a functional prerequisite for the vertical invocation of responsibility and accountability, an important mechanism for control, review and improvement.

Inspections by visiting justices in turn are truly independent. Section 112 Prisons Act defines various categories of visiting justices. Those persons falling in the category of judges, permanent secretaries, etc. may visit all correctional facilities in Namibia. Magistrates however, qualify only in respect of all correctional facilities within their area of magisterial jurisdiction.

Although only referring to *"rules, standing orders and administrative directives issued under section 4(3) for such correctional facility"* section 113 (2) may be read so as to accord every visiting justices the authority to evaluate compliance of the place of detention with laws and standards. It would not make sense to provide for visiting justices if they had only discretion to compare extant practices and situations in correctional facilities against the backdrop of executive law, the more such lawmaking is subject to the Act, which itself has to satisfy constitutional standards.

Conduct of Inspections

Are inspectors entitled to conduct unannounced inspections?	
Laws: Yes	**Policy: Yes**

Section 113 (1) Prisons Act; s. 220 Regulations.

[37] Section 17 Prisons Act 17 of 1998 (S. 19 Correctional Service Act 19 of 2012)
[38] Sections 112f Prisons Act 17 of 1998 (Ss. 122f Correctional Services Act 19 of 2012)

Are inspectors entitled to conduct inspections on their own initiative?	
Laws: Yes	**Policy: Yes**

Section 113 (1) Prisons Act; s. 220 Regulations.

Are inspectors entitled to access all employees working in a place of detention, including police officer confidence?	
Laws: No	**Policy: No**

Are inspectors entitled to access the records of employees working in a place of detention?	
Laws: No	**Policy: No**

Are inspectors entitled to access children held in a place of detention, in confidence?	
Laws: Yes	**Policy: Yes**

Section 113 (1) Prisons Act; s. 220 Regulations.

Are inspectors entitled to access the records of children held in a place of detention?	
Laws: Yes	**Policy: No**

Section 113 (1) (d) Prisons Act; the Regulations are quiet on this issue.

Are medical officers or public health services entitled to participate in inspections?	
Laws: No	**Policy: No**

Prisons Act and Regulations are quiet on this issue. NCS advised with reference to s. 20 Prisons Act and s. 247 Regulations that medical officers may participate in inspections. These provisions do however not mention the participation of medical officers and/or health inspectors.

Correctional facilities

Visiting justices are entitled to conduct unannounced inspections on their own initiative. They have unhindered access to the entirety of any facility (s. 113 (1)(a) *"inspect every part of the correctional facility"*) and visit any offender. Although the Act does not specify whether visits to offenders, including a child offender, may be conducted in confidence, this can be taken for granted, because the provision *"at all times escorted by an appropriate correctional officer"* has presumably been given for the safety and security of visiting justices.

The Act however does not include access to employees, neither access to the records of employees. It is not obvious that medical officers or public health services are part of the visiting justices scheme.

Results of Inspections

Are inspectors required to submit reports on the findings of inspection visits, including their evaluation and recommendations?	
Laws: Yes	**Policy: Yes**

Section 113 (2) Prisons Act; s. 220 (1) (2) Regulations.

Is investigation and prosecution required when a potential violation of laws or standards concerning children in detention has been found by inspectors?	
Laws: No	**Policy: No**

Section 38 Prisons Act; Regulations are quiet on this issue.

Correctional facilities

In terms of section 113 (2) Prisons Act it lies in the discretion of visiting justices whether or not to "*enter in the visiting justices' book, to be kept by the officer in charge for that purpose, such remarks, suggestions and recommendations about his or her findings, as he or she may consider necessary for the attention of the Commissioner-General*".

The Act does not require an investigation and/or prosecution at the instance of the report by a visiting justice, if an actual or potential violation of laws or standards concerning offenders including child offenders has been found.

The functions of the Ombudsman in relation to detention are limited in so far as they refer to the "duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms" under Article 91 (a) Namibian Constitution. Whereas it appears that the Ombudsman has in such instances powers which exceed those of a visiting justice, and importantly so with regard to police cells as much as to correctional facilities, this office does not form part of a normatively established regular inspection system.

JJPI 13: Complaints mechanism

Existence of a **complaints system** for children in detention

JJPI 13:			Degree of protection
	Level 1		
X	**Level 2**	**<50%**	**Feature is weakly protected by law and / or policy**
	Level 3		
	Level 4		

Namibian Police

Information on the complaints regime of the Namibian Police was not available.

Namibian Correctional Services

The Namibian Correctional Service[39] advised that complaints by inmates, irrespective whether the complainant is a child or an adult, are processed in accordance with the Inmate Complaint Procedure Manual of 2007. As can be gleaned from the answers provided by NCS to the questionnaire for JJPI 13 (Complaints Mechanism), the Inmate Complaint Procedure Manual of 2007 addresses a great number of issues pertaining to child inmates' complaints. It is however equally obvious that in many cases there are only policy-, but no legal provisions available for the protection of the complainant. One missing item which stands out is the absence of an authority to supervise the implementation of remedies for complainants. In many instances the void could be filled by the Office of the Ombudsman in terms of the mandate of the Ombudsman. The problem remains however, that the control and monitoring functions of that office are not integrated in a systematic complaint mechanism.

[39] See: Annex II.

JJPI 14: Specialised juvenile justice system (CORE)

Existence of a **specialised juvenile justice system**

JJPI 14:		Percentage	Degree of protection
	Level 1		
X	**Level 2**	**<50%**	**Feature is weakly protected by law and / or policy**
	Level 3		
	Level 4		

Art. 40 CRC requires State Parties to establish a separate system of juvenile justice for children. Questions to be answered are what is the meaning of "separate", and what must be the distinct features of it? In line with the openness of the formulation, it is commonly agreed that there is no one definite juvenile justice system. However, Article 40 (3) and (4) CRC set forth that State Parties must, at a minimum, set a minimum age of criminal responsibility, provide measures where appropriate, for children in conflict with the law without resorting to judicial proceedings, and eventually provide a variety of alternatives to institutional care. The applicable international standards are as follows:

- State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law..., Article 40 (3) CRC;
- Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules, and provisions especially available to offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:
    (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
    (b) To meet the needs of society;
    (c) To implement the following rules thoroughly and fairly. Beijing Rules, Article 2 (3);
- ... There should be a comprehensive child-centred juvenile justice process. Guidelines for Action;
- States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures as appropriate. Guidelines for Action.

In the following, the relevant sections of the DCJB (2002) will be briefly discussed, where they would become relevant against the backdrop of our obligations under the CRC.

Existence of a Specialised System

Are there established specific provisions for the treatment of children in conflict with the law?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

A juvenile justice system should be sensitive to the particular needs of children and operate in a child-friendly atmosphere. Currently, no legal or policy provision addresses this issue.

The CRC places also a duty on State Parties to establish a minimum age below which children must be presumed to lack criminal capacity that is the capacity to commit an offence. The Beijing Rules (rule 4) require that the age of criminal responsibility must not be fixed too low, "*bearing in mind the facts of emotional and intellectual maturity.*" Nominally, the common law rule on criminal capacity (doli capax/doli incapax) provides indeed a specific provision for the treatment of children alleged of having infringed the penal law, because the presumption of criminal capacity applies only as from the age of 14. From the age of 7 years to 13 years, there is a rebuttable presumption that the child has no criminal capacity. The question whether a young person is indeed capable of understanding the consequences of his/her action **and** act in accordance with that appreciation could be addressed on a case by case basis. But as matters stand, Namibia has one of the lowest ages of criminal capacity in the world.[40] In terms of a child's social, cognitive and emotional development, the probability of being able to establish criminal capacity at the lower end of the age bracket 7 – 13 years, is however very slim. Taking into consideration that most probably the common law assumptions are not properly applied (infra Chapter 4), it is advisable to increase the minimum age to at least to 10 years of age, in order to prevent the possibility of ascribing wrongly, and in many cases so, criminal capacity. The statistically small number of cases in which otherwise criminal capacity could have been established, should not be significant.

Section 6 (1) of the Draft Child Justice Bill (2002) provides for a minimum age of criminal capacity of 10 years, while the rebuttable presumption of *doli incapax* for children 10 years of age or older but not 14 years of age is upheld. Sub-sections (3) – (5) provide for administrative routines for that age and criminal capacity are not ignored in court. According to section 93 of the draft bill criminal capacity of a child 10 years and older but not yet 14 must be proved by the state beyond reasonable doubt.

Are there established specific provisions for the treatment of children deprived of liberty?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

[40] Compare Winterdyk, 2002, pp. XII, XIII for a listing of minimum age of criminal capacity internationally.

Specific provisions for the "treatment of children..." would address the varying needs of children in a child centred process with the aim of protection against mal-treatment, neglect, abuse or degradation. At the level of legislation, in particular the Criminal Procedure Act (CPA), children are not regularly recognised as categorically different from adults. Not any single legal provision addresses the special requirements of children in conflict with the law. This becomes obvious in comparison with s. 21 DCJB:

Section 21 of the Draft Child Justice Bill (2002) provides for treatment and rights of children in detention in police custody, which i.a. include expressly the right to be *"detained in conditions which will reduce the risk of harm to the child, including the risk of harm caused by other children."* This section provides also for adequate food and water, medical treatment, and importantly so *"access to reading and educational materials"*.

Alternative ways of dealing with children in conflict with the law without resorting to a formal hearing		
Laws: Partially	**Laws: No**	**Draft CJ-Bill: Yes**

The CPA does not provide expressly for ways of dealing with children in conflict with the law without resorting to a formal hearing before a competent authority (diversion). However, two different sections have a bearing regarding the concept of diversion, i.e. section 254 and section 6 CPA. Section 254 CPA, which substantially is a diversion clause provides for the referral of a child accused to a children's court enquiry provided:

> (1) If it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a child in need of care as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960), and that it is desirable to deal with him in terms of sections 30 and 31 of that Act, it may stop the trial and order that the accused be brought before a children's court mentioned in section 4 and 5 of that Act and that he be dealt with under the said sections 30 and 31.[41]
>
> (2) If an order under section (1) is made after conviction, the verdict shall be of no force in relation to the person in respect of whom the order is made and shall deem not to have been returned.

Before the trial stage, section 6 CPA opens the way for diversion. In terms of this section, the prosecutor has the implicit discretion to divert a case from the criminal justice system, conditionally or unconditionally. The prosecutor in Namibian law is the *dominus litis*, i.e., the driver of the criminal process. Section 6 (1) CPA provides for a charge to be withdrawn

[41] The role section 30 Children's Act can play in diverting prima facie child offenders is not clear. In terms of this section police and probation officers (i.a.) are authorised to bring a child alleged to be a child in need of care before the children's court. It is submitted that if this happens on account of a child alleged having infringed the criminal law, any ensuing enquiry in terms of section 31 Children's Act would not pre-empt a parallel criminal trial on the same facts. However, it stands to reason that in this instance the prosecution would not prosecute. In focus-group-interviews with Magistrates/Commissioners of Child Welfare (16 and 17 October 2012) participants said that they never had been approached in terms of this section.

before the accused has pleaded. In such instances the charges can always be reinstated at a later stage, and accordingly the prosecutor has the necessary discretion to divert a case from the criminal justice system. The prosecution has operated so far in the absence of a legislative framework.

Chapter 6 Diversion, sections 46 – 51 of the Draft Child Justice Bill (2002), provides extensively for diversion options.

Is a separate juvenile court or other separate competent authority entrusted with making decisions in conflict with the law?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

While all of the international standards referred to (above) posit some form of specialised court for children, the CPA does not provide for this and the protection afforded to children in adult courts follows ad-hoc arrangements and is thus minimal.

The objective of the Draft Child Justice Bill (2002) is "*[t]o establish a child justice system for children accused of committing offences"*. Sections 85ff Draft Child Justice Bill provide for the designation and jurisdiction of the child justice court.

Is provision made for semi-institutional arrangements, such as half-way houses, educational homes or day-time training centres for children in conflict with the law?		
Laws: No	**Policy: No**	**Draft CJ-Bill: No**

Currently, there are no semi-institutional arrangements for children in conflict with the law.

The Draft Child Justice Bill (2002) does not provide for semi-institutional arrangements, but encourages in its Chapter 10 Sentencing, the use of non-custodial sentences.

Is separation of children from adults in any form of detention strictly required?		
Laws: No	**Policy: Yes**	**Draft CJ-Bill: Yes**

The CPA applies also when children are detained awaiting trial or awaiting conclusion of trial, i.e., if they have not been released on account of sections 71 or 72 (1) (b) CPA. The CPA does not contain specific provisions for the treatment of children in such instances. However, the Prisons Act 17 of 1998 provides for the custody of persons under arrest, of remanded offenders, as well as of juveniles detained awaiting trial or awaiting conclusion of trial. Yet, the Act does not make specific provisions for the treatment of children in custody, other than that according to section 53 Prisons Act a *"(f)emale prisoners shall at all times during their detention or imprisonment be under the care, custody and supervision of female prison members,*

who shall be responsible for their discipline." Section 56 Prisons Act, addressing the judiciary, makes it however very clear that *"unless, in the opinion of the court, such detention is necessary and no suitable place of detention as defined in the Children's Act, 1960 (Act No. 33 of 1960) is available for his or her detention"*, a child shall not be detained in a correctional facility.

It is certainly commendable that the Prisons Act reminds the judiciary that children in general do not belong in detention. Since detention as a possibility cannot be excluded, the paucity of the Act regarding the treatment of children/juveniles in the custody of a correctional facility, must be regarded as a lacuna, which can be only partially corrected by issue of rules, standing orders or administrative directives.

To the extent that pre-trial detention of children still takes place in police cells, the Operational Manual[42] of the Namibian Police offers valuable directions. Chapter 5 deals amongst others with the safe custody and treatment of detainees. In terms of rule C.4 strictest precautionary measures have to be taken to prevent children from coming into contact with adult prisoners: Children under 16 years of age shall not be detained in police cells if it is possible to accommodate them in another approved place, and offenders under the age of 18 shall be detained separately from adult detainees.

Section 21(1) (a) of the Draft Child Justice Bill (2002) provides for the separate detention of children from adults and from persons of the opposite sex.

Treatment of Children in Conflict with the Law

Must the parents or guardian of a child be immediately notified upon his or her arrest?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

There are no provisions in the Criminal Procedure Act concerning arrest which apply specifically to children. The Act thus also fails to provide for immediate notification of parents/guardians upon the arrest of a child. However, partially addressing the issue, section 74 provides for the parents/guardians to be warned to attend court if such parent or guardian is known to be within the magisterial district in question and can be traced without delay. The problem with section 74 is that the persons who are notified must be parents or guardians, while in Namibia there may be often other family members, or actual care givers or responsible adults who are willing to take responsibility for the child.

[42] All reference to the Namibian Police Operational Manual (Standing Orders) in this text has been extracted from the Namibian Police Human Rights Manual, Legal Assistance Centre, 2000.

Section 17 of the Draft Child Justice Bill (2002) provides for the duty of the police to "promptly" notify a parent or appropriate adult.

Must the right to privacy of the child in conflict with the law be respected at all stages?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

Two sections of the CPA are relevant in this regard, i.e., section 153 (4), and section 154 (3). Section 153 (4) is an in-camera provision which stipulates that where an accused is under the age of 18 years, no person other than the accused person's legal representative and parent or guardian or person *in loco parentis* is allowed to be present in court, unless their presence is necessary to the proceedings. Section 154 (3) prohibits the publication of any information which reveals or may reveal the identity of a child accused or a witness at criminal proceedings who is under the age of 18 years. The presiding officer may yet authorise the publication of information if he/she is of the opinion that the publication thereof would be *"just and equitable and in the interest of any particular person"*.

Section 97 of the Draft Child Justice Bill (2002) provides for privacy and confidentiality throughout the entire criminal proceedings.

Must the child be allowed to express herself or himself freely?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

This feature reflects the Beijing Rules, here rules 14.1. and 14.2. The objective is to ensure that children are treated as persons and do not become objects of the proceedings. The Namibian laws do not specifically address this feature other than through the fair trial provision in Article 12 Namibian Constitution.

Section 59 Family Group Conference, but also section 69 Victim Offender Mediation support the age-appropriate participation of the child in the procedures.

Must the child be allowed to participate in proceedings in a meaningful way, such that she or he can contribute to decisions affecting his or her life according to his or her abilities, age and capacity?		
Laws: Partially	**Policy: No**	**Draft CJ-Bill: Yes**

Again, the constitutional guarantees as to fair trial, contained in Article 12 Namibian Constitution apply, with no regard to the age of the accused: All persons charged with an offence shall have an opportunity to call witnesses and cross-examine those witnesses called against them. There is also a right to be afforded enough time and facilities to prepare and present defence, both before the commencement of and during the trial, and everybody has

the right to be defended by a legal practitioner of his/her choice. No one may be forced to give evidence against him/herself. As described above, the parent or guardian of an accused child must be notified, and warned to attend the criminal proceedings; their non-attendance is yet not necessarily a bar to the continuation of the trial.

Section 70 (1) (g) (h) of the Draft Child Justice Bill (2002) provides for that the views of all persons present at the preliminary enquiry are considered, and respectively that the participation of the child is encouraged.

Do prohibitions of unlawful or arbitrary detention, arrest, or imprisonment apply to children as well as adults?	
Laws: Yes	**Policy: Yes**

Article 11 Namibian Constitution deals with arrest and detention, and applies to all persons irrespective their ages. 11 (1) reads: *"No persons shall be subject to arbitrary arrest or detention."*

Must deprivation of liberty be limited to the minimum possible time? ***Must deprivation of liberty for children only be used as a measure of last resort?***		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

Young offenders, children in particular, deserve to be treated differently from adult offenders. Children's rights with respect to sentencing should be provided in line with Articles 37 and 40 CRC, and Article 17 (3) African Charter. However, unlike South Africa,[43] Namibia has not adopted respective provisions.

Section 110 of the Draft Child Justice Bill (2002) provides that a sentence of imprisonment may not be imposed in respect of a child, *"unless the child was 14 years of age or above at the time of commission of the offence, and substantial and compelling reasons exist for imposing a sentence of imprisonment."* Section 108 of the draft opens the avenue for sentences with compulsory residential requirement, however only if the *"seriousness of the offence, the protection of the community and the severity of the impact of the offence upon any victim"* justifies this decision.

Bodies and Institutions

Police

Must police officers who frequently or exclusively deal with children be specially instructed and trained?

[43] The South African Constitution expresses the central principle in sub-section 2 *"[a] child's best interest is of paramount importance in every matter concerning the child". Further important rights are contained in section 28 (1)(g), which gives the children the right "not to be detained except as a measure of last resort..., the child may be detained only for the shortest appropriate period of time...."*.

Laws: No	Policy: No	Draft CJ-Bill: No

While no provision requires police officers to undergo special training, the Namibian Police published with the support from the Legal Assistance Centre and UNICEF a "Police Training Manual – a course guide for trainers of police officers who work with juvenile offenders"; available for downloading at http://www.lac.org.na/projects/huricon/Pdf/juvenilejusticefull.pdf.

Are personnel who deal with a child in conflict with the law empowered to exercise discretion at any stage of the proceedings?		
Laws: Partially	**Policy: No**	**Draft CJ-Bill: Yes**

Discretion plays an important role in about all criminal justice proceedings. This starts already with the question whether to arrest or use another method to secure the accused's attendance at court, e.g. written notice to appear, summons, or bail. The police may make use of a written notice to appear in terms of section 56 CPA, or the prosecutor may make use of a summons in terms of section 54 CPA. Being the *dominus litis*, the prosecution exercises discretion whether to prosecute or not in terms of section 6 (1) CPA. The trial court, throughout the trial, and even after sentencing, has the discretion to stop the criminal trial and refer the accused child to a children's court inquiry in terms of section 254 CPA, or may make use of the diverse options provided for in section 290 CPA. The shortcoming of discretion at this point is that its use is not placed under the objective of the best interest of the child as required by the CRC.

In terms of the Draft Child Justice Bill (2002) discretionary powers are given to official actors at all times.

Must a competent authority consider the issue of release without delay following arrest?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

The **Namibian Constitution** and the Criminal Procedure Act apply. Article 11 Namibian constitution prohibits arbitrary arrest and detention. It also requires that in principle all arrested and detained persons must be brought before the nearest magistrate or judicial officer within a period of 48 hours of their arrest.

The Criminal Procedure Act (51 of 1977) deals with **arrest** in sections 40 and 50. As with the constitution, there are no provisions in the Act concerning arrest which apply specifically to children. Arrest is the main method used to secure the attendance of the accused at court. Most arrests are made without warrants, since section 40 permits arrest without a warrant in a variety of circumstances. Without an express limitation it is obvious that the Act makes it easy for anybody, including a child to be arrested without a warrant.

As to **detention**, the general principle under the Criminal Procedure Act echoes the provisions of the constitution (supra). An arrested person must be brought to a police station as soon as possible after the arrest, and a person may be only detained for a maximum period of *"not exceeding 48 hours..."* (s. 50 CPA). Only a court may authorise further detention after 48 hours have expired. The judicial officer shall *"guard against the accused being detained on unsubstantial or improper grounds and to ensure that his detention is not unduly extended."*[44] Section 50 provides that in certain instances the period of detention before first appearing in court is actually longer than 48 hours, and may in the worst case extent to actually up to 95 (even 119) hours: If the 48 hour period ends on a Saturday or Sunday or on a public holiday or after 4pm on any weekday, then it is regarded as having expired at 4pm on the next court day, which would be a Monday, unless this day is again a public holiday.

Examples:

If somebody, including a child, is arrested at 5pm on a Thursday afternoon, s/he only has to be brought to court by 4 pm on Monday, notwithstanding that the 48 hours period expires actually on Saturday; if arrested at 9am on a Monday, s/he only has to be brought to court by 4pm on Wednesday; if arrested at 5pm on Monday, s/he only has to be brought to court by latest 4pm on Thursday.

The problem with the above provisions is that they only deal with the **outer limits** of time. The police has however **no duty** to bring the person before the court **as soon as reasonably possible** within the maximum period. In other words, the police may bring the person before the court just prior to the impending expiry of the maximum period, even if that had been possible much earlier without detriment to the investigation.

Section 20 of the Draft Child Justice Bill (2002) provides that preference must be given to the release of the child.

Competent Authorities

May a competent authority deal with a child in conflict with the law other than by acquittal or sentencing to deprivation of liberty?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

Section 254, section 290 CPA, and section 297 CPA allow the court to deal in a variety of alternative ways with children.

- *S. 254 CPA: Referral to a children's court*

  In terms of section 254 CPA a court may stop the trial against a child and order that

[44] Minister of Law and Order v Kader 1991 (1) SA 41 (A).

the child be brought before a children's court, if the child appears to be in need of care. There are no limitations as far as the crimes the child has been charged with are concerned, and the referral may take place at any time during the proceedings, even after conviction.

- *S. 290 CPA: Alternative orders*

  In terms of section 290 CPA any court in which a person under the age of eighteen years is convicted of any offence may, instead of imposing sentence upon him for that offence, make a variety of alternative orders, namely either place the young person

  - under the supervision of a probation officer;
  - in the custody of a suitable person; or
  - in a reform school.

  There is no limit to the offences for which any of the above measures can be employed.

- In terms of section 297 CPA sentencing courts have quite different options which may be taken:
  - the conditional suspension of the operation of an imposed sentence ("suspended sentence");
  - the postponement of the imposition of a sentence, whether conditional or unconditional ("postponed sentence");
  - the caution or reprimand and discharge of an offender.

  The conditions of suspension and postponement are general and / or specific, and contained in subsection (1) (a) (i):

  (Specific conditions)

  (a) compensation;
  (b) benefit or service in place of compensation;
  (c) community service;
  (d) correctional supervision;
  (e) submission to instruction or treatment;
  (f) submission to supervision by probation officer;
  (g) attendance of or residence at a centre of some kind;

  (General conditions)

  (h) good conduct;
  (i) any other matter.

The problem is once more that the Namibian law, and this applies to the constitution as well as to legislation, does **not emphasise** that institutionalisation must remain "***a measure of last***

resort." While this orientation does not guide the wide discretion of judicial officers, the question whether the direction given under the CRC will prevail, depends entirely on the personal values and convictions of the judicial officer adjudicating the precise case.[45]

A potential hurdle towards adjudication in the "best interests of the child" may be that the convicted child will get a criminal record and such record will not be expunged. In this regard it is only a limited relief that section 87 Children's Act provides that the conviction of a child *"shall not have the effect of disqualifying such child from being employed in the service of the State or of any local authority or from being employed in or from carrying on any profession, trade or business."*

In terms of section 96 of the Draft Child Justice Bill (2002) the court may divert the case at any time before the conclusion of the case for the prosecution. Chapter 10 Sentencing, ss. 103ff provides a wide variety of sentencing options, restorative, community based, etc.

Must the background and circumstances of the child be properly investigated and presented to the competent authority before sentencing of the child?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

There is no specific provision in the Criminal Procedure Act which requires a pre-sentence report to be furnished to the court before sentencing. The courts seem to enjoy a wide discretion in this regard. Section 274 (1) CPA determines that a court may "inform itself" of the appropriate sentence. Certain High Court judgements have commented on the desirability of obtaining a pre-sentence report regarding the person of a young offender.[46] And in some cases the discretion may shrink under the circumstances and a pre-sentence report may be required.

Section 104 (1) of the Draft Child Justice Bill (2002) requires a pre-sentence as a matter of principle, sub-section (3) requires a pre-sentence report for any sentence with a residential requirement.

[45] In S v Ndikwetepo and Others 1993 NR 319 the Supreme Court stated: *"It is a settled rule that punishment falls within the discretion of the court of trial. As long as that discretion is judicially, properly or reasonably exercised, an appellate court ought not to interfere with the sentence imposed*". On the basis of this argument, only if our law had incorporated the directive towards desistance from custodial sentences, any judgement without consideration of it would be prone to be invalidated on appeal, or as the case may be automatic review under section.

[46] State v Zilika and Others 1992 NR 25, also at 27 B-C. Also: S v Goagoses 1994 NR 77 (HC), where the accused was convicted of housebreaking with intent to steal and theft. The court on review directed in view of youth of accused (15 years) that a report from a welfare officer be obtained, and remitted the matter to trial court for sentencing; see also: S v Van der Bergh 2003 NR 69 (HC), where the court i.a. emphasised the importance of the pre-sentence report.

Must a competent authority take into account the circumstances and needs of the child as well as the circumstances and gravity of the offence?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

The question here is, whether the circumstances and needs of the child have to be used in order to balance the significance of circumstances and gravity of the offence? Sentencing, within the confines of Chapter 28 (ss. 274ff) of the Criminal Procedure Act, and taking into consideration the relevant penalty clauses, is governed by a number of general principles. These principles are purely judge-made and are not contained in any statute. In reference to the dictum by Rumpff JA in S v Zinn,[47] three basic elements find consideration as ingredients of any sentence, i.e., the crime, the criminal, and the interests of society. The first two elements, the crime and the criminal, cover the above feature. The third element, the interests of society, might or might not be compatible with it. However, the interests of society do not necessarily entail the aggravation of a sentence. To the contrary, society's interests can also mitigate the sentence, if this concept is held to be adequately addressed by a sentence which produces the bigger advantage, or the least potential harm, to society.[48] It is trite saying that in general the *"child's reintegration and the child's assuming a constructive role in society"* (Article 40 (1) CRC) will be in the interests of society. But this will not always be the only consideration, since deterrent effect ("exemplary sentences") and retribution ("gravity of the offence") may also be interests of society, yet not in the interests of the child.

No special set of principles or interpretation of principles has evolved with regard to sentencing juveniles.[49] In particular the "best interests of the child" is not paramount, and it is not obvious that the reformation, re-integration into his or her family and social rehabilitation of the child offender (Article 17 (3) African Charter) has been recognised as essential aim.

The purpose of sentencing is addressed in section 105 of the Draft Child Justice Bill (2002), which aims at the best interest of the child, by providing for the promotion *"of an individualised response which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused by the offence."*

Must personnel hearing proceedings against children in the relevant competent authority be provided with specialised training in dealing with children?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

[47] State v. Zinn 1969 (2) SA 537 (A)
[48] See in more detail regarding the interest of society: Terblanche, 2007, pp. 152ff.
[49] Although in S v Van Der Bergh 2003 NR 69 (HC) it was also stressed that rehabilitation and not punishment should be the aim in cases involving juveniles. But judgements of the High Court are few and seemingly not enough to build together a fabric of principles for guidance of the Magistracy and the Prosecution.

With the envisaged establishment of a Child Justice Court, the Draft Child Justice Bill (2002), Chapter 8, the bill provides for "specially selected and trained personnel" in section 85 (5).

Places of Detention

Must children be above a certain minimum age in order to be admitted to a place of detention?	
Laws: No	**Policy: Yes**

There is currently no legislation which explicitly stipulates a minimum age for admission to a place of detention. Such a minimum age would however apply by logical implication considering the minimum age of criminal capacity.

Section 56 Prisons Act directs that "juveniles"[50] may only be detained in a correctional facility if this is necessary and no suitable place of detention is available. But while the provision is peremptory ("must not") on the one hand, it leaves the judiciary a wide discretion for the construction of the threshold conditions ("necessary" and "suitable").[51]

The NAMPOL Operational Manual[52] deals in Chapter 5 with the safe custody and treatment of detainees. In terms of rule C.4 strictest precautionary measures have to be taken to prevent children from coming into contact with adult prisoners: Children under 16 years of age shall not be detained in police cells if it is possible to accommodate them in another approved place, and offenders under the age of 18 shall be detained separately from adult detainees.

Must girls be detained separately from boys?		
Laws: Yes	**Policy: No**	**Draft CJ-Bill: Yes**

In terms of section 15 Prisons Act 17 of 1998, and s. 198 Regulations, male and female prisoners have to be confined separately. The Act provides further for the classification and separation of prisoners upon admission in section 51, in terms of which (a) convicted offenders; (b) unconvicted offenders; (c) juvenile offenders; (d) female offenders; (e) offenders who are suffering from a mental illness; and (f) such other groups as the Commissioner-General may determine, are separated.[53] However, the proviso is that detention shall **only** be separate **so far as** the *"correctional facility accommodation renders it*

[50] The definition of "juvenile" as meaning "a person 18 years and younger" in Prison Act 17 of 1998 has been brought in line with the CRC with the promulgation of the Correctional Service Act 9 of 2012, the definition reads now "juvenile means a person below the age of 18 years".
[51] Similar wording to be found in section 69 Correctional Service Act 9 of 2012 (CSA).
[52] See FN 36 above.
[53] Section 64 CSA also provides for the classification and separation of prisoners upon admission and the same proviso as in the Prisons Act reads that detention shall **only** be separate **so far as** the *"correctional facility accommodation renders it practicable"*.

practicable". While a classification of offenders is better than none, there is no classification as laid down in the international instruments, especially the JDL Part C.

Section 21 (1) (a) of the Draft Child Justice Bill (2002) provides for detention separate from adults and separate from the opposite sex.

Must the conditional release of a child from a place of detention be used to the greatest possible extent?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

Chapter 4 Detention of Children and Release from Detention of the Draft Child Justice Bill (2002), ss. 20ff., fosters the release of children from detention to the greatest possible extent.

Must children detained pre-sentence be separated from children detained after sentencing?		
Laws: Yes	**Policy:**	**Draft CJ-Bill: --**

See above p. 32. Children will usually not be detained in police custody after sentencing but transferred to a correctional facility.

Must children in a place of detention as a result of proceedings related to care and protection be separated from children detained due to conflict with the law?		
Laws: Yes	**Policy:**	**Draft CJ-Bill: --**

Proceedings related to care and protection, do not result in the detention of children. In terms of section 31 Children's Act the options available to the Commissioner of Child Welfare are limited, e.g. committal to a place of safety, and / or a school of industries. The options do not comprise placing a child in a reform school, which is only a disposition under section 290 (1) CPA. However, the Children's Act allows for the rather theoretical case where under the different regimes of Children's Act and Criminal Procedure Act children are committed to the same place: in terms of section 38 (3) Children's Act the Minister may approve of the use of a children's home as a place of "detention of children awaiting trial or sentence". Furthermore, in terms of section 50 (3) Children's Act the Minister may under circumstances transfer a child who has been previously committed to a place of safety or a school of industries by order made under section *thirty-one* of the Act to a reform school.[54]

Must staff at places of detention be provided with specialised training in dealing with children?		
Laws: No	**Policy: No**	**Draft CJ-Bill: No**

[54] The constitutionality of this provision might however be doubtful, to the extent that this transfer would constitute preventive detention in terms of Art. 15 (5) of the Namibian Constitution.

Must children be assessed as soon as possible after admission and the specific type and level of care required determined?		
Laws: Partially	**Policy: No**	**Draft CJ-Bill: --**

Where children are admitted in police cells for the purpose of pre-trial detention, no such arrangement exists.[55]

Must children deprived of liberty receive care, protection and all necessary psychological, educational and medical assistance?		
Laws: No	**Policy: No**	**Draft CJ-Bill: Yes**

There are no specific provisions directed at the Namibian Police. Ss. 246ff Regulations apply in the case of imprisonment in correctional facilities.[56]

Section 21 (1) (c) of the Draft Child Justice Bill (2002) provides for adequate assistance.

Are staff dealing with children in detention prohibited from carrying weapons?		
Laws: No	**Policy: No**	**Draft CJ-Bill:**

Police officers and correctional officers do not as a matter of practice carry weapons when entering enclosed compounds with detainees. This practice is in line with Principle 15 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: "*Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personnel safety is threatened."*[57]

[55] Section 61 (4) CSA applies to the case of children being admitted to correctional facilities after being sentenced. In terms of this section all reasonable steps must be are taken to obtain *"(a) relevant information about the offence; (b) relevant information about the offender, including his or her social, economic, criminal and young-offender history; (c) any reasons and recommendations relating to sentencing or committal that are given by the court during conviction, sentencing or committal or during appeal; (d) any reports relevant to conviction, sentence or committal that were submitted to court; and (e) any other information relevant to administering the sentence or committal, including existing information from the police or victim, the victim impact statement and the transcript of any comments made by the court regarding parole eligibility."* This provision applies as much to adult offenders as to child offenders.

[56] In terms of section 23 CSA essential health care services must be made available to every inmate, as well as reasonable access to non-essential mental health care, which is submitted to include psychological assistance. The Act does however, not stipulate the provision of educational assistance. Part XI "Rehabilitation Programmes for Offenders" does not specifically refer to children. The Act does not give a right to work or training, although section 94 places the Correctional Service under an obligation to provide a range of rehabilitation programmes. Section 95 CSA opens a wide margin of discretion in this regard, but does eventually not give a right to education. In this regard it may however be held that depending on the age of the offender, NCS would have to make arrangements in line with the compulsory education in terms of the Education Act 16 of 2001. As a State Party to the African Charter on the Rights and Welfare of the Child, Namibia has to observe the entitlements under Art. 11 of the Charter.

[57] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.

This has to do with the obvious risks involved. However, this does not mean that they are legally prohibited from carrying weapons. And otherwise while on duty and in particular when escorting prisoners to places outside correctional facilities, officers carry weapons; presumably irrespective whether adult or children offenders are concerned. With regard to the limits of use of force or weapons, the Police Act 19 of 1990, and the future Correctional Service Act 9 of 2012 provide for the necessary.

Police members are given general powers and duties under section 14 (10) Police Act, which provides that *"[a]ny member may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of an offender or suspected offender or persons unlawfully at large."* This provision has to be read together with NAMPOL Operational Manual, Chapter 2, Standing Order C.3,[58] which reads that *"[a] member shall use only as much force as is necessary to make an arrest or prevent an escape",* as well as *C.4 "[a] member shall not discharge a firearm at a person except to protect life or to prevent grievous bodily harm"*, and C.13 *"Firearms shall be only used as a last resort to protect your life or the life of another person(s) in immediate danger."*[59]

Use of force or weapons by correctional officers is guided by section 35 (1) CSA, which reads that *"[s]ubject to the provisions of subsection (4), a correctional officer may use such force against an offender as is reasonably necessary to ensure compliance with lawful orders or to maintain discipline in the correctional facility."* Sub-section 4 adds: *"Whenever a weapon or force is used in pursuance of this section, the correctional officer must use the minimum force necessary in the circumstances to restrain the act intended, and must, as far as reasonably possible, use such weapon or force to disable and not to kill."*

While the provisions guiding the use of weapons apply to adult and child offenders in police custody and / or correctional detention, carrying firearms may only in exceptional cases be acceptable with regard to children. It must yet be doubtful whether the symbolic meaning of carrying firearms in a setting of child justice is commensurate with the spirit of child justice in terms of the CRC.

[58] See FN 42 above.

[59] It is submitted that there is a contradiction between these Standing Orders, because C.4 includes the additional ground of the protection of grievous bodily harm, which is not mentioned in C.13.

JJPI 15: Prevention Plan

Existence of a national **plan for the prevention** of child involvement in crime

JJPI 15		Percentage	Degree of protection
	Level 1		
	Level 2		
X	**Level 3**	**[50 – 75]%**	**Feature is moderately protected by law and / or policy**
	Level 4		

Crime prevention as a role of law enforcement addresses only a very small segment of factors which are known to contribute to criminality. Imprisonment, detention, non-custodial measures, restorative justice measures and even diversion cannot solve the problem of children in conflict with the law alone. The concepts of primary and secondary crime prevention (infra) indicate the need for integrated efforts on the part of the entire society to ensure the harmonious development of children, respecting and promoting their personality as from early childhood. From the international standards set out above derive the measurements. Typically,[60] a prevention plan may include programmes/policies for:

- supporting families in bringing up children
- services for low income families
- supporting flexible working patterns for parents
- community based networks for vulnerable children
- employment or vocational training opportunities for children
- abolition of corporal punishment and reduction of domestic violence
- prevention of drug, alcohol and substance abuse by children
- educational opportunities that offer an alternative or addition to regular schooling
- sport and cultural activities for children
- dissemination of information on children's rights.

To qualify for this indicator, a comprehensive integrated prevention plan must exist, either in law and / or government policy. This plan must contain mechanisms for its implementation and coordination of stakeholder activities towards its realisation. Criminology has borrowed

[60] UNODC, 2006, p. 25.

from a public health strategy, which distinguishes between primary, secondary and tertiary health prevention.[61]

Comparing the provisions of the CRC in its entirety with the sketch of various prevention levels (Table 2 infra) it becomes obvious that the CRC is in fact a preventive instrument. Beyond the criminal justice system, and here to mention for instance Articles 3, 19, 27 and 28, 31, 36, 39 CRC, the convention requires a plethora of measures from State Parties to ensure such protection and care as is necessary for the child's wellbeing, to which end appropriate legislative and administrative measures must be taken. Such measures fall squarely in the ambit of primary and secondary crime prevention. According to the Beijing Rules, Article 1 (2) State Parties must therefore: *"endeavour to develop conditions that will ensure for the juvenile a meaningful life in that community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible."*

In principle the aspirations of children in terms of the Beijing Rules are also anchored in the Namibian Constitution. The socio-legal basis for a child's entitlement to care and protection is Article 15 (1) of the Namibian Constitution. In addition Article 20 stipulates that primary education is compulsory until completion or until the age of 16 is attained, and free of charge. This means that there is some degree of compliance with the CRC and its supporting documents. At a technical legal level the Police Act 19 of 1990, and the Traditional Authorities Act 17 of 1995 address the prevention of crime, although not with a focus on child offending:

The Police Act 19 of 1990 echoes the traditional but narrow concept of crime prevention which can still be found nowadays among criminal justice practitioners. Section 13 of the Act stipulates that one of the functions of the Namibian police force is the prevention of crime. Finally, traditional authorities (Traditional Authorities Act 17 of 1995) contribute in various ways to the prevention of crime. In an auxiliary role, according to section 10 (2)(a), traditional authorities carry out the duty to assist the police and other law enforcement agencies in the prevention of crime. More important within the broader concept of crime prevention under the CRC is their function under section 10 (1) (c) to *"uphold, promote, protect, and preserve the culture, language and traditional values of that community."*

In the context of Traditional Authorities the establishment of Community Courts (Community Courts Act 10 of 2003) is worthwhile mentioning. Apart from civil jurisdiction these courts have also criminal jurisdiction provided they do not impose custodial sentences.[62]

[61] Barkan, 2009, pp.536ff
[62] S. 12 Community Courts Act 10 of 2003.

Table 2: Prevention Levels (Public Health Systems and Child Justice Systems)

Prevention Level	Public Health	Justice for Children
Primary	Primary prevention focuses on the structural elements, that is the social and physical environment that contribute to disease or injury in its quest for preventing the occurrence of disease or injury entirely.[63]	**Primary crime prevention** addresses features of society, culture, and local communities that contribute to high crime rates, e.g. government economic aid (e.g. welfare grants for OVCs) for people who cannot find work, or who find work but still cannot lift themselves out of poverty, but also address gender inequality, patriarchal structures, initiation rites etc.
Secondary	Secondary prevention seeks to reveal practices and situations that put certain individuals at risk for illness and injury. While public health advocates emphasize that poor children are at risk for serious childhood diseases, i.a. because they do not get needed vaccinations, public health facilities (clinics) spearhead high profile government vaccination etc. (polio, meningitis, ARV) and public education and awareness efforts.	**Secondary crime prevention** addresses the developmental processes, especially those in early childhood, that make crime even more likely among individuals living in criminogenic social and economic environments. Interventions at this level mean the provision of pre-school education, home visits and parenting training (social work), improvement of the nation's schools, especially in rural areas, where schools are best by lack of funds, equipment and qualified teachers.
Tertiary	Tertiary crime prevention aims at minimizing the long-term consequences of an acquired illness or a sustained injury through medication, surgical intervention etc.	**Tertiary crime prevention** focuses on preventing recidivism through the establishment of educational, vocational, and other rehabilitation (e.g. therapy) programmes for children in prisons and correctional facilities, but also and importantly so by putting the emphasis on community corrections and restorative justice programmes.

Since the vast majority of cases involving child offenders are concluded without imposing imprisonment, Community Courts may play an important role in appeasing communities through ordering compensation, restitution and authoritative ascertainment of customary law. Cases which have been settled between complainant and defendant, within the jurisdiction of

[63] Moore, 1995. p. 247.

a customary court, will probably not be reported to the Police, and therefore not enter official crime statistics. Although a court of record[64] there are currently no statistics on cases available, and the significance of the work of Customary Courts in the child justice ambit is currently not known. The production of statistics in this regard is a project of its own, which however promises to yield useful information about the filter function of these courts.

Existence and content of a prevention plan

Is there a national plan for the prevention of child involvement in crime?	
Laws: No	**Policy: No**

Namibia has **no integrated document** with the title "National Prevention Plan". However, building on the achievements and progress made under the National Plan of Action for Orphans and Vulnerable Children (2006 - 2010), the Namibian Government has adopted **"Namibia's National Agenda for Children 2012 - 2016"**, which structurally and contentually doubles up as a holistic prevention plan.

There is currently no law, which undergirds the plan, but the corresponding Child Care and Protection Bill is now expected to be adopted by Parliament in 2013. The National Agenda for Children is organised around five priority commitments, namely

- (1) All children are healthy and well nourished;
- (2) All children have equitable access to quality integrated ECD services, and pre-primary, primary, secondary and vocational education;
- (3) All children have access to age-appropriate quality HIV prevention, treatment, care and support;
- (4) All children have an adequate standard of living and a legal identity;
- (5) All children are safe from neglect, violence, abuse and exploitation.

If so, does this plan include in-depth analysis of the problem?	
Laws: Not applicable	**Policy: Yes**

Namibia's National Agenda for Children 2012 – 2016 has been devised on the basis of insights gained with the report on the study "Children and Adolescents in Namibia 2010: a situation analysis".[65]

[64] Amoo, 2008, pp. 194f.
[65] National Planning Commission, 2010.

Does the national plan for the prevention of children coming into conflict with the law include:[66]

Supporting families in bringing-up children?	
Laws: No	**Policy: YES**

National Agenda for Children 2012 - 2016, Commitment 4: Key elements under this commitment include providing integrated early childhood development (IECD) services, and adopting a revised social grants system for children. Child vulnerability shall be addressed through a comprehensive national social protection system.

The development of community-based networks for vulnerable children?	
Laws: No	**Policy: No**

As will be addressed later, the Directorate Youth in the MYNSSC provides at the level of Multi-Purpose-Youth-Resource Centres, the Youth Offices in the rural areas and the rural youth workers support for the identification and activation of community networks.

Supporting flexible working patterns for parents and services for low-income families?	
Laws: No	**Policy: No**

The Labour Act 11 of 2007 provides in ss. 26 and 27 for maternity leave and extended maternity leave, however not for paternity leave.

Employment or vocational training opportunities for children?	
Laws: YES	**Policy: No**

National Vocational Act 18 of 1994 in conjunction with the Vocational Education and Training Act 1 of 2008 provides for the establishment of vocational training opportunities. Various Vocational Training Centres located among others in Windhoek, Okakarara, Valombola, Rundu, offer automotive mechanics, bricklaying and plastering, food and beverage service and many more courses. These programmes are open to youth from all over Namibia. There is however no validated information about the "catchment area" of these centres. Knowledge about the regional origin of the clientele, would yet be beneficial for planning-purposes.

[66] To the extent that the National Agenda for Children addresses specific features, which one would expect as forming part of a formal plan for the prevention of child involvement in crime, it is submitted that these features have been.

Abolition of corporal punishment in places of education and formal care facilities?	
Laws: YES	**Policy: YES**

Corporal punishment has been declared unconstitutional in places of education in Ex parte: Attorney-General, In Re: Corporal Punishment by Organs of State (SA 14/90) [1991] NASC 2; 1991 (3) SA 76 (NmSc) (5 April 1991). This practice has been also banned on account of section 56 Education Act 16 of 2001.

Reduction of domestic violence and abuse?	
Laws: YES	**Policy: Not effective**

The Combating of Domestic Violence Act of 2003, then and there greeted with considerable expectation seems not having been very effective in supporting attitude change among the members of Namibian communities. In 2009, 6 years after the Act came into force abuse and violence are still viewed by many as a daily reality of family relationships.[67] The Combating of Rape Act 8 of 2000 is also aimed at reducing domestic violence and abuse.

Prevention programmes and assistance for children who use drugs, alcohol or other substances?	
Laws: No	**Policy: YES**

Blue Cross Namibia, as a non-governmental organisation, organizes prevention and awareness programs at schools and in the community large to encourage young people and the general public to live their lives free from drugs and alcohol.

Educational opportunities that offer an alternative or addition to regular schooling?	
Laws: YES	**Policy: YES**

NAMCOL ACT 1 of 1997.

Sports and cultural activities for children?	
Laws: No	**Policy: YES**

Ministry of Youth National Service, Sports and Culture

Dissemination of information on children's rights in child-friendly form?	
Laws: No	**Policy: No**

[67] Rachel Coomer, 2012.

Involvement of the mass media in encouraging the positive contribution of children to society?	
Laws: No	**Policy: No**

Namibian media houses are not specifically targeted by law. There is seemingly also no policy document which addresses the role of the media in fostering the awareness and realisation of children's rights. As a matter of fact however, a 2011 study published by Media Monitoring Africa (MMA) and UNICEF brought to light that Namibian newspapers bring stories about children (9%), and a significant proportion of stories (34%) are "clearly in the children's best interest."[68]

Protection of the rights and well-being of all children?	
Laws: No	**Policy: YES**

National Agenda for Children 2012 – 2016, in particular Commitments 4 and 5.

Restriction and control of the accessibility of weapons of any sort to children?	
Laws: YES	**Policy: No**

Arms and Ammunition Act 7 of 1996.

Measures to ensure that any conduct not considered an offence if committed by an adult is not considered an offence and not penalized if committed by a child?	
Laws: YES	**Policy: No**

Article 10 of the Namibian Constitution.

The protection of children from abuse, exploitation and their use for criminal activities?	
Laws: YES	**Policy: No**

The Children's Act 33 of 1960 places the duty for protection, care and control of children squarely in the hands of the parents, but extends these duties to guardians and other persons having custody of the child. In order to safeguard the children's welfare and prevent abuse and exploitation section 25 of the Act reads:

> (1) If any parent or guardian of a child or any person having the custody of a child has conduced to the commission of an offence by that child, he shall be guilty of an offence.

[68] Media Monitoring Africa and UNICEF, 2011, p. IV.

(2) If a child has committed an offence which it would probably not have committed if the parent or guardian of the child or the person having the custody of the child had taken proper care of the child, the parent or guardian or that person shall for the purposes of sub-section (1) be deemed to have conduced to the commission of that offence.

Children are used by adults for crime. Although no statistics are available, according to Magistrates and Prosecutors at Oshakati this is not an uncommon phenomenon. In such instances it appears that the adult "masterminds" of the offences also advise the children how to behave when arrested or brought before the magistrate, to the extent even to demand being released (FGD Oshakati).

While children have the constitutional right of care and protection, which is normally directed against the parents, the state has laid the enforcement of such rights in the hands of the commissioner of child welfare. The threshold for the intervention of state agencies under the Children's Act 33 of 1960 is the concept of a child in need of care, which the Act defines in section 1, inter alia, as:

- a child who has been abandoned or who is without visible means of support, or
- has no parent or guardian or has parents or a parent or guardian who does not or are or is unfit to exercise proper control over the child; or
- is in the custody of a person who has been convicted upon or in connection with that child of any offence mentioned in the First Schedule to the Children's Act.

The Act mentions further the company of any vicious or immoral person, begging, street trading, and finally "a state of physical or mental neglect".

In order to invoke the responsibility of the parents, the commissioner of child welfare may in terms of section 84 issue a written notice to the parents or guardian of the child to bring the child to appear before a children's court, provided it appears that the child is in need of care, protection or control, or has absconded from a place to which he/she was sent, or a person in whose custody he/she was placed by the Children's Act or the Criminal Procedure Act.

Notice of a child in need of care may come through a variety of agents mentioned in section 30, namely *"policeman, probation officer, authorised officer, parent, guardian or other person who has custody of the child"*, who may bring any child, alleged to be a child in need of care to the children's court. The court must then hold a children's court inquiry, and upon its satisfaction that the child is in need of care, it can make various orders in terms of section 31 Children's Act, for instance that the child be placed on probation or the supervision of a social worker.

Management of the prevention plan

Is a governmental body assigned to have the lead responsibility for the prevention of child involvement in crime at a national level?	
Laws: No	**Policy: No**

Does the plan include a mechanism for coordination of prevention efforts between all agencies, institutions and personnel involved (whether governmental or non-governmental)?	
Laws: No	**Policy: Partially**

The MGECW shall be responsible for facilitating, the coordination and implementation of the National Agenda for Children, High Level Technical Committee, Permanent Task Force (PTF).

Does the plan include well-defined responsibilities for the agencies, institutions and personnel involved in prevention efforts?	
Laws: No	**Policy: No**

Does the plan include monitoring and evaluation of programmes and strategies?	
Laws: No	**Policy: No**

Is there provision for the adjustment of programmes and strategies as a result of lessons learned from monitoring and evaluation?	
Laws: No	**Policy: No**

Does the plan provide for specialised personnel at any level?	
Laws: No	**Policy: No**

Does the plan provide for funding and other resources for children in the areas of medical and mental health care, nutrition, housing, drug and alcohol abuse prevention and treatment?	
Laws: No	**Policy: No**

4
The situation on the ground

Note:

For the compilation of this chapter the consultant relied on previous studies, reports, and discussions with various role players, as well as the responses to questionnaires. Questionnaires were sent to Social Workers, Magistrates, Prosecutors, Station Commanders (Namibian Police) and Officers in Charge (Namibian Correctional Service), see specimen in Annex I. Further requests for data and information pertaining to the Juvenile Justice Indicators 1 – 11, and breaking down the Juvenile Justice Policy Indicators 12 – 15, were sent to the Ministry of Justice, Ministry of Youth, National Service, Sport and Culture, and Ministry of Gender Equality and Child Welfare respectively, as well as the Office of the Prosecutor General. A huge information gap prevailed however – a caveat which has to be taken into consideration.[69]

The ratification of the UNCRC by our Government has placed Namibia under the international obligation to implement the standards which arise under the convention. As stated above, the UNCRC is read in conjunction with three other sets of rules, namely the United Nations Standard for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs).

The various standards have been numerated and explicated succinctly in the *Manual for the Measurement of juvenile justice indicators*,[70] a document published by the United Nations *Office on Drugs and Crime* (UNODC) (2006). Those juvenile justice indicators (JJI) provide a framework for measuring and presenting specific information, concerning both quantitative and qualitative data – about the situation of children in conflict with the law. JJIs combined form a comparative instrument for the assessment and evaluation of service and policy, and may be used for the development of suggestions for policy changes and initiatives. The total set of JJIs comprises of fifteen indicators of which five are CORE indicators of high priority, and ten normal priority indicators. The full set of indicators appears hereafter in Table 3.

[69] The Namibian Court System (NamCIS) currently does not offer disaggregated court statistics, and statistics would have to be compiled manually, according to personal communication of 20 September 2012 from the Office of the Chief of the Lower Courts; the same information was provided by the Office of the Prosecutor General. The consultant extracted therefore the 2011 data pertaining to children in conflict with the law from the Court Books of Court C, at Magistrates' Court, Windhoek-Katutura personally, data which are referred to hereafter.

[70] Indicators provide a common way of measuring and presenting information that reveals whether standards are being met.

JJI 1: Children in conflict with the law
(Number of children arrested during a 12 month period per 100,000 child population)
NO DATA

JJI 2: Children in detention (CORE)
(Number of children in detention per 100,000 child population)
NO DATA

This indicator refers to the total number of children in pre- and post trial detention. Data from NCS and NamPol are required.

JJI 3: Children in pre-sentence detention (CORE)
Number of children in pre-sentence detention per 100,000 child population
NO DATA

JJI 4: Duration of pre-sentence detention
Time spent in detention by children before sentencing
NO DATA

JJI 5: Duration of sentenced detention
Time spent in detention by children after sentencing
SEE INFORMATION in Table 3 infra

JJI 6: Child deaths in detention
Number of child deaths in detention during a 12 month period, per 1,000 children detained
SEE INFORMATION in Table 3 infra; POLICE DATA missing

During the period under review, i.e. January 2011 through June 2012, no child death occurred in Namibian Correctional facilities.

JJI 7: Separation from adults
Percentage of children in detention not wholly separated from adults
SEE INFORMATION in Table 3 infra

NCS DATA are incomplete; POLICE DATA are missing. It appears from the questionnaires returned by Heads of Prisons/Officers in Charge that children are generally kept separately from adult, but that in some instances child and adult inmates "mingle" during the day. From the interviews with Social Workers (infra) it can be concluded that the CRC obligation to keep adults and children separate is frequently violated by the Police.

JJI 8: Contact with parents and family
Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
NO DATA

JJI 9: Custodial sentencing (CORE)
Percentage of children sentenced receiving a custodial sentence
2% (two percent)

The data extracted from the Court Books of Court C, Magistrates' Court Windhoek-Katutura suggest that about 2% of child offenders in the jurisdiction of this court receive a sentence with a custodial component. There are currently no further data available.

JJI 10: Pre-sentence diversion (CORE)
Percentage of children diverted or sentenced who enter pre-sentence diversion scheme
NO DATA

JJI 11: Aftercare
Percentage of children released from detention receiving aftercare
DATA incomplete

Information regarding this indicator was requested from the Ministry of Gender Equality and Child Welfare, the Ministry of Youth, National Service, Sport and Culture, as well as from the Officers in Charge of the various correctional facilities in the country through the Office of the Commissioner General of Namibia Correctional Service. At this point in time it appears that children having served a custodial sentence benefit from the pre-release programme conducted with any prisoner before release. NCS advised that specific information on children will still be submitted.

Table 3: UNODC/UNICEF *Juvenile Justice Indicators*

Indicator		Definition
Quantitative Indicators		
1	**Children in conflict with the law**	Number of children arrested during a 12 month period per 100,000 child population NO DATA
2	**Children in detention (CORE)**	Number of children in detention per 100,000 child population NO DATA
3	**Children in pre-sentence detention (CORE)**	Number of children in pre-sentence detention per 100,000 child population NO DATA
4	**Duration of pre-sentence detention**	Time spent in detention by children before sentencing NO DATA
5	**Duration of sentenced detention**	Time spent in detention by children after sentencing[71] < 1 month 16% 1 to < 3 months 30% 3 to < 6 months 19% 6 to < 12 months 20% 12 to < 24 months 10% 24 to < 60 months 2% > 60 months 3%
6	**Child deaths in detention**	Number of child deaths in detention during a 12 month period, per 1,000 children detained **NONE**
7	**Separation from adults**	Percentage of children in detention not wholly separated from adults **DATA incomplete: see text**
8	**Contact with parents and family**	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months NO DATA
9	**Custodial sentencing (CORE)**	Percentage of children sentenced receiving a custodial sentence NO DATA
10	**Pre-sentence diversion (CORE)**	Percentage of children diverted or sentenced who enter pre-sentence diversion scheme NO DATA
11	**Aftercare**	Percentage of children released from detention receiving aftercare NO DATA

[71] Source: NCS. "No data" indicates that statistics in this respect could not be sourced and it will require research specifically aimed at this.

JJPI 12: Regular Independent Inspections

Namibian Police (Police Cells)

There is currently no normative regime, neither at legislative nor at policy level, which establishes any form of independent inspections of police cells with regard to the conditions under which detainees kept and the treatment to which they are subjected. None of the acts which govern the Namibian Police operations, i.e. the Namibian Constitution, the Police Act 19 of 1990, and the Criminal Procedure Act 51 of 1977, addresses the issue specifically.

In the past the dismal conditions in some of the country's police stations, first and foremost to mention the police stations in Windhoek, have alarmed the Ombudsman, who in terms of his constitutional mandate and statutory obligations conducted in November 2006 an extensive research on conditions prevailing at police cells throughout Namibia, which was complemented by a follow up visit to some police cells in 2008.[72] Since then[73] a number of spot visits to Police Cells, primordially in Windhoek, have been made. Due to the standing of the Office of the Ombudsman, cell visits can be carried out on short notice, and members of the office are able to do inspections with little or even no "warning" time.[74] Although the Office of the Ombudsman may carry out independent inspections, those inspections do not form part of a schedule of regular and independent inspections. The Ombudsman decides on inspections *mero motu*, or on account of complaints the office has received, complaints which are addressed as one among many unfolding priorities of the office. Considering the wide purview of the Ombudsman's duties and functions under Article 91 Namibian Constitution and section 3 of the Ombudsman Act 7 of 1990, it is obvious that the objective of an established system of 'regular independent inspections' cannot be reached. In the final analysis, there is currently no such inspection system available. According to Director E. Rakow two issues must be kept separate: First the issue of overcrowding of police cells in general, and second the issue of children/juveniles being kept separately from adults:

At national level, the overcrowding of police cells is not a general concern. In terms of the aggregate capacity, there is enough cell capacity to hold suspects/accused in pre-trial detention. The problem lies rather with the afflux of suspects in certain stations, i.e. Windhoek, Oshakati and Rundu in particular, where overcrowding is a perpetuated problem. The situation is at times such that detainees have to sleep in shifts because there is not enough floor space available for everybody to lie at the same time. It is in particular at those stations where more or less often children/juveniles are not kept separate from adults. Due to the numbers of pre-trial detainees the

[72] Ombudsman of the Republic of Namibia. 2006.
[73] Interview with Director E. Rakow, held on 18 September 2012.
[74] For inspection by third parties, see: Ruppel, Olicer C. and Angelique Groenewaldt. 2008, p. 3.

question for the station commander is not whether he/she can avoid human rights infringements in connection with pre-trial detention, but to what extent he/she can avoid, and how to minimise certain violations. The station commander has to separate according to sex/gender and age at the same time. This entails that in the worst case he/she has to cater for four different categories of detainees at the same time, e.g. adult men, adult women, male children and female children (see Table 4). The problem is exacerbated by the fact that the station commander is left alone with the question how to prioritise the objectives in practice.[75]

Table 4: Categories of pre-trial detainees

Male	Female
Adult (> 18 years)	Adult (> 18 years)
Child (< 18 years)	Child (< 18 years)

In line with earlier (2006/2008) recommendations by the Ombudsman in respect of women, the problem of non-separation of child pre-trial detainees from adult offenders could be alleviated if wherever possible children would be detained in correctional facilities.

While Magistrates should be expected to do regular scheduled inspections in order to keep themselves abreast of the situation and conditions to which they send accused adults and children, such routine could not be gleaned from the responses received to the survey among Magistrates. At the Focus Group Interviews with various Magistrates and Prosecutors it was however said that Magistrates and Prosecutors had been advised by the Magistrates Commission and the Prosecutor General respectively, not to continue with cell visits. According to the understanding of the participants this advice was given for the benefit of the office bearers, with the aim to prevent the wrong impression that they want to 'influence' the accused. It can be concluded from the survey responses that Magistrates and Prosecutors do not inspect of Police cells on a regular basis. During FGIs with Social Workers it was however said that police stations/cell are regularly visited on a monthly basis by social workers. These visits are however not recorded, and reporting of observations does not take place.

[75] At face value it appears obvious that children deserve the highest protection and therefore need to be separated by all means. The situation looks different in practice, and the fictitious, albeit likely, scenario which follows should illustrate the issue**:** Suppose a station has four cells, with a capacity of 12 each. This gives a theoretical capacity of 48 persons. On a given evening, 82 accused persons need to be accommodated, thereof one adult woman, one 17 year old male child, and one 16 year old female child. According to the CRC all categories have to be kept in separate detention. If the station commander would have as the first priority to keep children separate from adults, and his/her second priority to keep women separate from men, this would mean that 79 men would share two cells with a nominal capacity of 24 in the aggregate. The woman and the children would each have their own cell of a nominal capacity of 12 persons. It is obvious that at the expense of one male child the likewise untenable situation regarding the detention of the many adults could be eased.

Namibian Correctional Service (Correctional Facilities)

According to the various responses by the Officers in Charge of correctional facilities, the situation differs from one correctional facility to the next. While *Windhoek Central Prison*, and the facilities *Farm Scott, Luederitz, Elizabeth Nepemba, Walvisbay, Hardap, Swakopmund, Olunu, Omaruru, Grootfontein, Gobabis* were inspected between "1 – 5 times" in the period 1 January 2011 until 30 June 2012,[76] *Divundu* and *Keetmanshoop* had not received any visit in this period.

As it appears, the Ombudsman has not yet inspected the correctional facilities. This might have to do with the impression that the situation of overcrowding does not haunt the Namibian Correctional Service. If correctional facilities are not filled above capacity, this may have to do with the fact that only in special cases, pre-trial detention is carried out in correctional facilities. This practice is to change once the Correctional Service Act 9 of 2012 comes into force; this is expected to happen upon promulgation of the regulations. As has been reported earlier, in terms of the Prisons Act 17 of 1998, and the Correctional Service Act 9 of 2012, inspections by visiting justices are provided for. No information has been available about the practical aspects of the administration of such inspections.

JJPI 13: Complaints Mechanisms

No information has been available about the practical implementation of complaints mechanisms, nor the regulations affecting such mechanisms regarding the Namibian Police. Complaints from detained children in correctional facilities are, as reported uniformly by the Officers in Charge, received daily during the mornings by the member in charge of the juvenile section, in accordance with the "Inmate Complaint Procedure Manual 2007".

JJPI 14: Specialised Juvenile Justice System

At normative level, be it at the level of legislation or policy, there is no separate track for the handling of children in conflict with the law. In the absence of a normative model for the adequate treatment of child offenders, it would not be plausible to expect the court room working group to act as if such provisions were made.

[76] While not specifically asked for, no indication was given which authority visited the correctional facilities.

Where the CRC, and the same applies to the African Charter, is self-executing, the fact that Namibia is in arrear with regard to the compliance with the CRC obligations, should not be too problematic though. Domestic legislation in the same field as self-executing norms of the CRC or the African Charter would be largely declaratory.[77] The consideration of the "best interests of the child", as required under Articles 3 of the CRC and Article 4 of the African Charter must guide any decision making process of the Namibian judiciary. In particular the discretionary nature of about all decisions during the criminal process requires that office bearers account for their decisions against the backdrop of this "primary" consideration.[78] On the other hand, there are numerous other provisions in the UNCRC which in terms of structure and wording of their text suggest the existence of a subjective right, and do not pose any problem for administration or judiciary to apply the norm in relation to a child as its bearer. The formulation *"every child deprived of liberty shall be separated from adults"* in Article 37 (c) can probably not be formulated in a more concrete way. It is also submitted that sub-article (b), which requires that *"arrest, detention or imprisonment of a child...shall be only used as a measure of last resort and for the shortest appropriate period of time"*, meets the requirements. The Focus Groups Discussions with Magistrates and Prosecutors brought however to light that training in child justice is lacking. It could also be gleaned from the statements of Magistrates and Prosecutors that the CRC and/or the African Charter are not considered to be self-executing. In this respect specific training could become a remedy.[79]

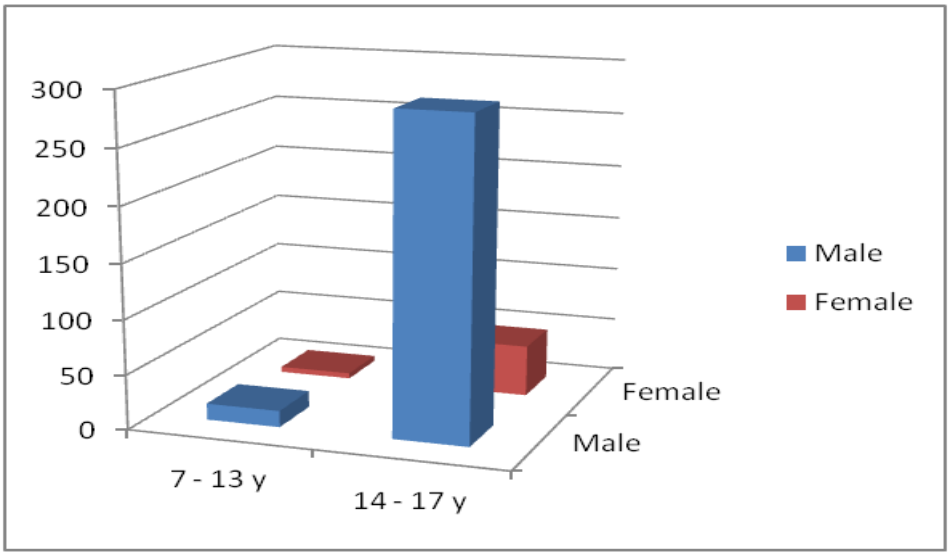
In Windhoek-Katutura (Magistrates' Court, Mungunda Street), where the number of child cases (Table 4 infra; Chart 1 infra) justifies the administrative provision of a specialised court, cases involving child offenders are dealt with by one division (e.g. Court C). However, this is the rare exception countrywide. This situation is acerbated by the fact that half of all respondent Magistrates, and two third of all respondent Prosecutors indicated[80] that they had never received any specialised training of how to deal with child offenders. Any and all respondent Magistrates and Prosecutors respectively, who had received such training, indicated that they would desire to receive further training in this regard. In general, judicial officers who responded on this item do not feel confident to competently handle child offenders in line with the standards set by the CRC and supporting international documents.

[77] Lorz and Sauer, 2011, p. 12.
[78] Lorz and Sauer, 2011, pp. 13 – 16.
[79] Dausab's appraisal of Article 144 of the Namibian Constitution (2010) places however doubts on this hope. According to her, even the higher courts do not use international law and treaty law directly, but mostly only as a part of the courts' interpretive tools.
[80] 9 of 18 Magistrates and 11 of 36 Prosecutors indicated that they had never received specialised training in dealing with child offenders.

Table 5: Child Offenders before Court C, Magistrates' Court, Windhoek-Katutura

Child offenders	7 - 13 y	14 - 17 y
Male	15	288
Female	5	47

Chart 1: Child Offenders before Court C, Magistrates' Court, Windhoek-Katutura



Arrest & Detention

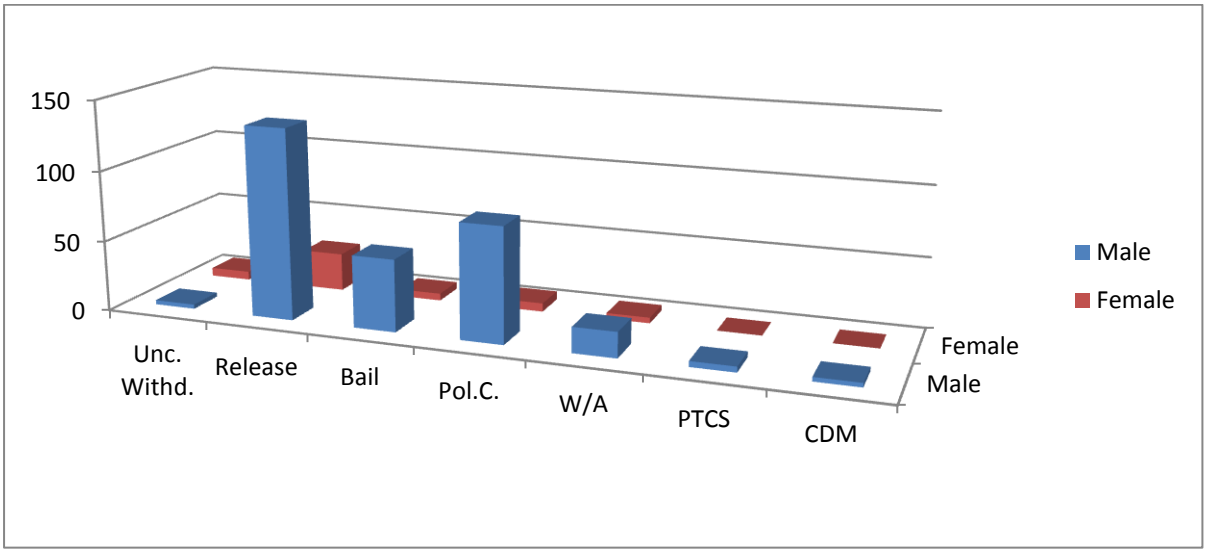
Official figures had not been available at the time of writing. Therefore, the statistical incidence of child arrest and detention cannot be gauged. A glimpse of what could be the situation countrywide may provide the 2011 child offender data which have been extracted from the court books of Court-C at the Magistrates' Court in Windhoek-Katutura.[81] The court decisions at first appearance can be gleaned from Chart 2 below. Here, roughly half of the 355 entries in 2011 show that the children were released in the care of a parent or guardian. But still about 25% of all cases ended – initially – with the offender being remanded to police custody.

Table 6: Disposal at first appearance (Court C, Magistrates' Court, Windhoek-Katutura)

Disposal at first appearance									Ancillary decisions	
Gender	**Uncond. Withd.**	**Release**	**Bail**	**Pol.C.**	**W/A**	**PTCS**	**LSP**	**Soc.Ws 'Progr.**	CDM	"Screening"
Male	3	135	51	81	18	4	4	0	29	180
Female	6	27	5	6	4	0	2	1		

[81] Data which are displayed in Tables 5, 6, 7, 9, 11 and 12, as well as Charts 1, 2, and 3, and Figures 1, 2, 3, and 4 refer to data which have been extracted for the purposes of this study from the court books of Court C at the Magistrates' Court of Windhoek Katutura.

Chart 2: Verdicts and decisions at first appearance (Court C, Magistrates' Court, Windhoek-Katutura)



The trend which can be gleaned from the Windhoek data became already apparent at the MGECW Workshop, where participant shared their impression that while children are still being arrested, all role players try to avoid the incidence of detention. The police routine was recorded at the workshop as follows:

'apprehend and arrest child suspect; inform child about the reason for arrest; inform the parents/guardian of arrest; if no parent /guardian can be traced the juvenile offender is locked up (presumably in a separate cell); if parent/guardian are present, depending on the offence committed is not too serious, the juvenile offender can be released on a warning (J127) – if age is proven (birth certificate); detention must be the last option; the juvenile offender has to be properly fed and medical attention be sought if need arises; clean clothes for the child to be arranged; juvenile offender to be brought before court within *48* hours.'

During a spot visit on 1 August 2012 to Windhoek Police Station and Wanaheda Police Station, arranged by the workshop organisers, only one male child of 17 years was kept at Wanaheda Police Station, but no child at Windhoek Police Station.

The child, who seemed timid, told the visitors that he had no mattress and had to sleep on three blankets on the floor. It was doubtful, however, whether the juvenile had been kept separate from adults until prior to the visit. This suspicion was caused by the circumstances of his incarceration, which was carried out in an inhabitable cell without roof, being soaked from tap and toilet water, which ran uninhibited from the ablution facilities through the cell. It was just not believable that any person could have slept in that cell. Also the remaining cells of the compound were overcrowded beyond capacity.

Although in the absence of official figures no valid quantitative assessment of the practice of arrest and detention of children throughout Namibia can be made, we know from the testimony of Social Workers and the Court C data that detention of children in police cells is still a regular occurrence. MGECW Workshop participants have repeatedly indicated that there is currently no "place of detention" (ss. 1 and 38 (2) of the Children's Act) in Namibia,

and that where truant child suspects, in particular those 14 years and older are concerned, places of safety, other than police stations, are seldom if ever prepared to receive a child suspect.

It is not known to what extent the Namibian police are practicing *police-diversion-on-an-informal-basis*. Leaning on the principles of community policing, the police would discuss where adequate the alleged wrongdoing with the victim and the alleged child offender and his/her parents or guardians before a charge is recorded and a docket opened. This would allow a negotiated framing of the situation with the possibility of no charge being laid in the first place. Considering the fact that sufficiently often charges are withdrawn at a later stage, either un-technically by the victim, or technically by the prosecution, this police engagement could save numerous incidents from becoming formal cases.[82]

In this context it is also important to note that the CPA does not allow the police to release a child on own cognisance.[83] This concept would admittedly benefit mostly younger children, or elder children under specific circumstances. On consideration it is held that the virtual non-existence of places of detention, and places of safety other than police custody, would set-off the beneficial effect the possibility of release on own cognisance could have on the number of children in police custody. The discretion to release a child on own cognisance would place the police in a difficult situation if the offence allegedly committed by the child were at the same time a strong indication that the child is *"abandoned"* or *"without visible means of support"*, in other words in *"need of care"* (s. 1 of the Children's Act). On weekends, or after hours a police officer could not reasonably let go of the child without arranging some kind of support. Whereas welfare services matching the need of the above mentioned child are extremely scarce in particular in rural areas, and come certainly not handy at the time of deciding whether or not to arrest and detain a child, the police officer would have to arrange for alternatives of action without child welfare support. If the police decided not to arrest/detain the child, the child would presumably have to be brought before the children's court in terms of s. 30 Children's Act. While the treatment outside the CPA would often be the preferable option otherwise, certainly in the best interests of the child, dealing with the case in terms of section 30 Children's Act would mean that the police officer must arrange for the protection of the child on his/her own accord, until such time that the child can be handed over to a social worker, or brought before a Commissioner of Child Welfare. On the other hand, while invoking the CPA, the situation receives an immediate framing, in which the police officer does not have to ascribe the consequences of police custody, which are detrimental to the child, to his own discretion, because such consequences derive from the logic and content of the CPA.

From the survey it appears that about all Magistrates having returned the questionnaire make use of all options if necessary, in order to keep children out of pre-trial detention, i.e. prior to a prosecutorial decision whether or not to divert, as well as thereafter, either by granting bail, placing the child in a place of safety (extraordinary), or releasing the child in the care of

[82] This practice might however not be without problems since it borders on a non-regulated zone, which could lend itself to be abused (see FN 104 infra).

[83] The CPA does not contain such a provision, but s. 35 of the Draft Child Justice Bill allows the Magistrate to release a child on own cognisance. It is submitted that the question whether the police should be given the authority to release, albeit under conditions, a child on own cognisance, requires a broader discourse, aiming at a broad acceptance of this instrument.

somebody in terms of section 72 (1) (b) CPA. But the fact remains that for the time being once an arrest has been made, further options are limited.

Screening and diversion

Child offenders, once they have been arrested for allegedly having infringed the penal law, are supposed to be "screened", that is assessed by competent personnel with the aim of providing substantial information to enable the prosecution to confidently decide whether or not to conditionally or otherwise withdraw charges against the child. According to the South African Law Commission, this assessment is aimed at:

> [o]btaining information about the child which will assist in the probation officer's decision or recommendation to divert the case and about whether the child can go home to parents or guardians, and where he or she cannot, what an appropriate temporary placement would be.... The child should be assessed in terms of a pre-determined and approved method. The assessment should view the child holistically, focussing on strengths. The seriousness of the offence and its impact on the victim should be factors taken into consideration when deciding whether or not to divert the child and to what type of programme, but should not be the sole or most important factor.[84]

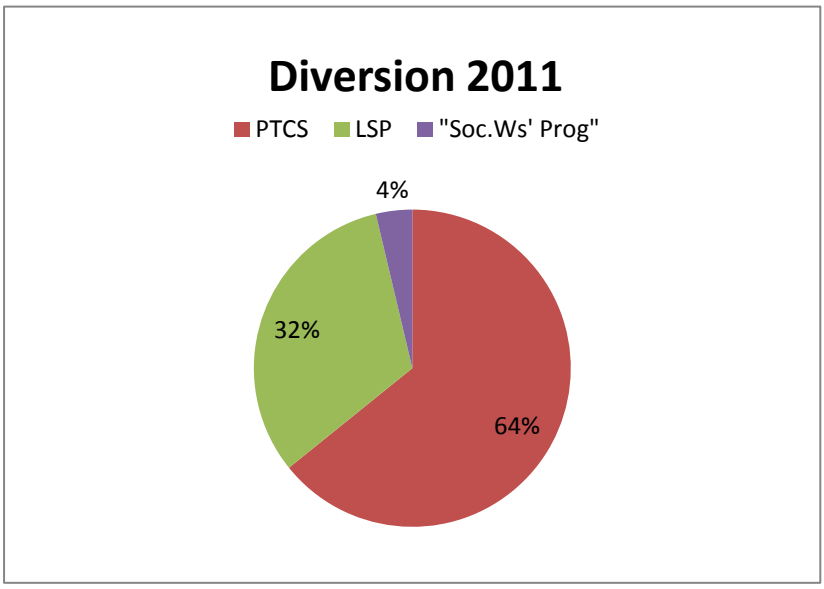


Figure 1: Diversion Decisions (Court C, Magistrates' Court, Windhoek-Katutura)

While the Ministry of Gender Equality and Child Welfare is responsible for the assessment ("screening"), the Ministry of Youth, National Service, Sports and Culture: Directorate Youth Development is currently responsible for the administration of diversion programmes.

[84] SA Law Commission, 1999, pp. 151 – 152.

Table 7: Diversion decisions

Diversion 2011	
PTCS	52
LSP	26
"Soc.Ws' Prog"	3
Total	**81**

It appeared from the contributions and discussions at the MGECW Workshop (supra) that in all regions of Namibia and at all Magistrates' Courts "screening" takes place, even though this may at times only happen once per week due to the immense distances social workers have to travel in some districts, and the many tasks they have to carry out. Statistics on screening across Namibia (Table 8) show that the bulk of screening takes place in the Khomas Region.

While at some courts "screening" takes place once in a week, no after hours screening is offered anywhere in Namibia. The consequences have been described above under "Arrest and Detention". In the Windhoek District a total of 180 children have been 'screened' in the period 1 January to 31 December 2011 (Table 6 supra).

Once the decision in favour of diversion has been reached, the range of programmes available is often not adequate and there are no guidelines in respect of referrals to diversion programmes or options. Many children are referred to Pre-trial Community Service (PTCS) or the Life Skills Programme (LSP). In Windhoek, and Oshakati PTCS more than 64% of all diversion conditions include PTCS as a condition of provisional withdrawal, whereas about 32% include LSP.

The problem with running LSP outside the bigger agglomerations, like Windhoek and/or Oshakati/Ondangwa is that the Life Skills Programme is group based and thus requires a group of children.[85] This leads to delays in the fulfilment of the condition of provisional withdrawal. Another limiting factor is that accused children are not taken into cohorts of other children, who might voluntarily participate in the Life Skills Programme. Considering that the admission of the offence for the purposes of diversion, and the "committal" to LSP is explicitly an out of system response, which does not imply "guilt" or criminal capacity of the child in terms of the criminal law,[86] it stands to reason to consider whether diverted children, provided they qualify otherwise for the participation in LSPs, should not be able to take part in regular LSP offered for ordinary children in the same district.

[85] Source: MYNSSC (interview conducted on 12.10.2012).

[86] This seems to be forgotten too often a time (infra); it may be reckoned that therefore s. 50 Draft Child Justice Bill, as well as ss. 32 (l) and 35 Draft Child Justice Bill make express reference to the presumption of innocence.

Table 8: 'Screening' (Assessment for Diversion) in Namibia[87]

	2010		2011	
	Male	**Female**	**Male**	**Female**
Caprivi	**64**		**29**	
	2	**62**	**27**	**2**
Erongo	**274**		**161**	
	266	8	156	5
Hardap	**243**		**152**	
	213	30	129	23
Karas	**64**		**63**	
	63	1	60	3
Kavango	**32**		**37**	
	31	1	37	0
KHOMAS	**660**		**638**	
	569	91	523	115
Kunene	**92**		**84**	
	89	3	82	2
Ohangwena	**20**		**31**	
	17	3	27	4
Omaheke	**66**		**60**	
	58	8	57	3
Omusati	**66**		**51**	
	54	12	49	2
Oshana	**148**		**98**	
	102	46	80	18
Oshikoto	**54**		**43**	
	53	3	43	3
Otjozondjupa	**94**		**116**	
	81	13	107	9
TOTAL	**1877**		**1563**	

Although this does not find expression in the Court C (Magistrates' Court Windhoek Katutura) data, about all Magistrates and Prosecutors stated in their responses to the survey questionnaires that other options are used to differing degrees, including an apology, compensation, counselling and pre-trial community service (PTCS), or a combination of the preceding options.

However, the real challenge is that the authorities often only take cognisance of a child in need of care when this child has come into conflict with the law, in other words if he/she committed an offence. At this point there are few if any needs and risks adequate interventions at hand. This does not necessarily affect negatively the majority of children, because, according to criminological research[88] only a small segment of less than 10% of

[87] Source: MGECW
[88] Compare Gottfredson and Hirschi, 1990, 124ff.

children are at risk to reoffend and to drift into lasting criminality.[89] But the fact remains that our knowledge of the needs and risks of at-risk-children is highly insufficient.

Trial

At the trial and in court most laypersons, but certainly children do not understand the nature of the charges brought against them. If a child is below 14 years of age, criminal capacity has to be positively established by the prosecution.[90] Interestingly, according to personal communications from a former prosecutor as well as a former defence counsel,[91] dealing with the criminal capacity of young offenders is said to depend very much on the circumstances of the individual case. One of these circumstances is probably whether the child is or is not legally represented. Also in cases before the Regional Court or the High Court, a competence test will probably be commissioned, and psychological/psychiatric experts will assess the child accused. In the Magistrate Court, cases against children below the age of 14 are most often unconditionally withdrawn. However, where this is not the case and diversion is envisaged, criminal capacity will be accepted more or less **at face value**, without the prosecution presenting a technical-legal subsumtion of facts under the constituent elements of "criminal capacity". In all those cases, it seems that the burden of proof is **lightly brushed** aside, ignoring that the admission of the offense by the child is not sufficient to establish the child's criminal capacity. Where however the criminal capacity of a child below the age of 14 is lacking, the conditional withdrawal should not be admissible. Instead, unconditional withdrawal and intervention in terms of the Children's Act would be called for. To the extent that this is not happening, this leads to net-widening.

The proof of criminal capacity would be always very cumbersome if taken seriously. This may be another reason for that the age of criminal capacity has been in many countries much higher than 7 years; with a mode of 12

[89] Delinquency in a birth cohort (1972), a study by Wolfgang, Figlio, and Sellin, brought about that whereas 18.7% of juveniles of the sample had more than one crime record, only about 5% of the cohort accounted for more than 50% of all delicts. The findings of Wolfgang, Figlio and Sellin were confirmed in a second birth cohort study by Tracy, Wolfgang and Figlio: *"In the 1958 cohort, we found that the chronic offender effect was again quite pronounced. The 1958 cohort contained 982 chronic delinquents. They represent 7.5% of the cohort members … These chronic delinquents accounted for … 61% of all the offenses…"*, Tracy, Wolfgang, and Figlio, 1990, p 280. Since the pioneering 1972 study longitudinal studies have received much attention and attracted a lot of interest. The patterns of the distribution of offences over members of a birth cohort which have been demonstrated with the initial study have never replicated many times.

[90] It appears that the establishment of a child's actual age does not pose so much of a problem any longer. The cooperation between the MGECW and MHAI seems to bear fruit, and most children, or their parents/guardians are in possession of a birth certificate. According to the survey responses from Social Workers, Magistrates, and Prosecutors, dental analyses are being requested in cases where no positive determination can be done otherwise.

[91] Personal communication received on Monday 15 October 2012.

years.[92] In Germany for instance the age of criminal capacity begins only with 14 years, and the rebuttable assumption against criminal capacity applies until the child offender reaches the age of 18 years.[93]

Figure 2: Diversity of child (male) offending

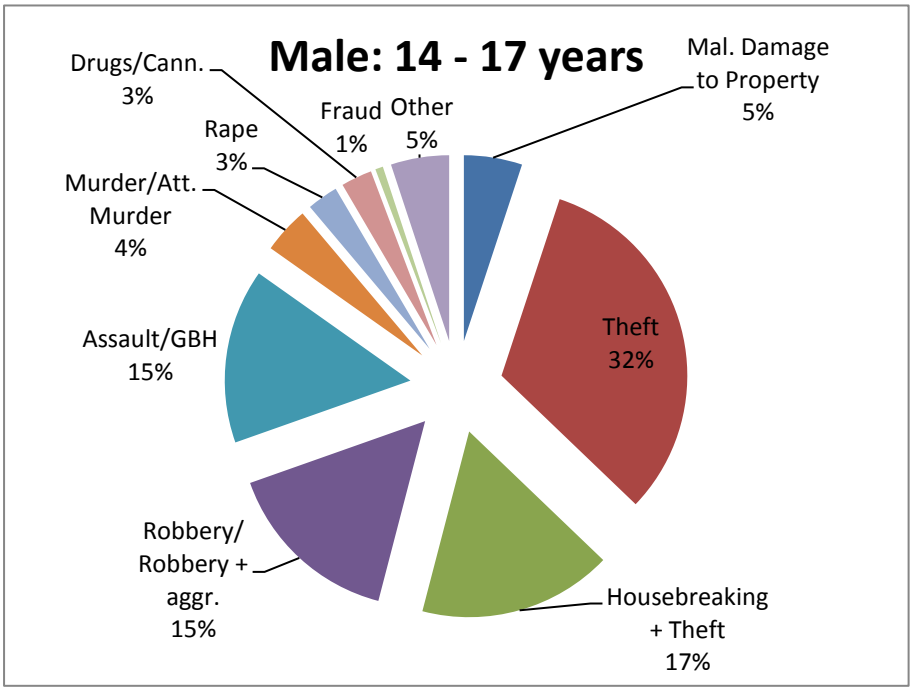


Table 9: Diversity of child (male) offending

Male	14 - 17 years
Mal. Damage to Property	15
Theft	95
Housebreaking + Theft	50
Robbery/Robbery + aggr. circumst.	46
Assault/Assault GBH	45
Murder/Att. Murder	12
Rape	8
Drugs/Cannabis	8
Fraud	2
Other	15

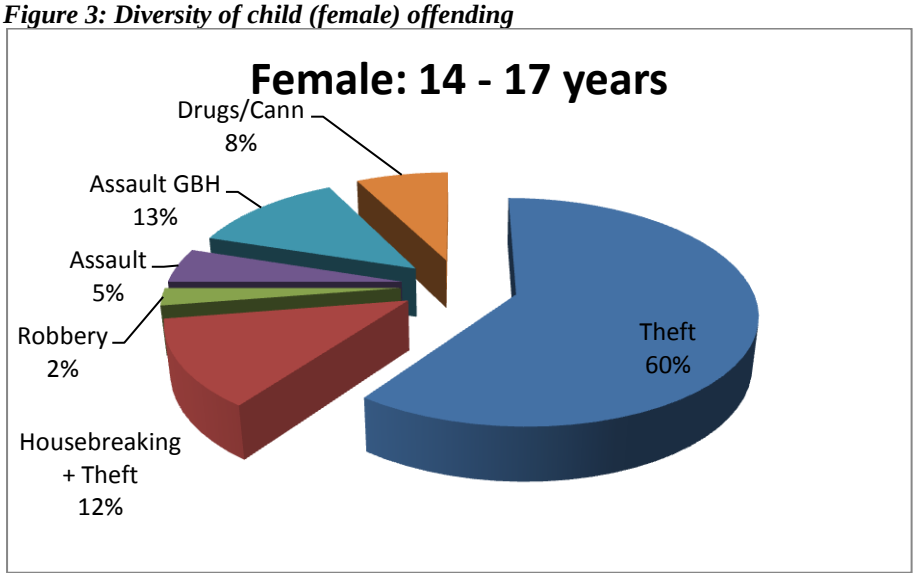
Even where criminal capacity is addressed technically correctly, with a second focus on the question whether the child has the ability to act in accordance with his/her appreciation of right and wrong/unlawfulness, peer pressure, adult influence, and other relevant factors never

[92] Winterdyk, 2002, XII, XIII.

[93] "The age of criminal capacity has always sparked intense arguments. Already at the 27th Deutscher Juristentag 1904, it had been pointed out than any legal practitioner would confirm having come across very young persons who warranted the proverbial phrase 'malitia supplet annos' (Albrecht, 2002a). Some scholars held, therefore, that due to the experienced and obvious variation in maturity of different persons a fixation of age limits for criminal capacity could not be deemed appropriate. This view did not however, change the course of the law, and whereas the age of criminal capacity was initially 12 years of age, the age barrier was elevated to 14 years in 1923", Schulz, 2009, p. 288.

enter the equation. It is here that the lack of training of members of the court room working group plays out most negatively.

Figure 3: Diversity of child (female) offending



The court and its officers carry the insignia of power, and do not suggest, neither to an adult, least to a child the inclusiveness which would be in the best interests of the child. The kind of communication routines in court and the processes are not conducive to the promotion of a child's dignity, neither to their reintegration into society.

Table 10: Diversity of child (female) offending

Female	14 - 17 years
Theft	24
Housebreaking + Theft	5
Robbery	1
Assault	2
Assault GBH	5
Drugs/Cannabis	3

Where child cases alternate in fast sequence with adult cases, something which happens even at Court C of the Magistrates' Court Windhoek-Katutura, it must be doubtful whether the mind always makes the required shift.

Sentence

Taking the survey responses as a kind of self-report from Magistrates and Prosecutors it appears that nowadays pre-sentence reports are requested as matter of routine. It also appears

that in the large majority of cases, Magistrates follow as far as justifiable the maxim that no child should ever have to go to prison. All Magistrates who have returned their questionnaires responded that they (a) never impose a sentence of imprisonment, and (b) never impose a fine in respect of a child under the age of fourteen.

Table 11: Adjudicated cases (2011)

Sentencing children (C-Court, Magistrates' Court Windhoek-Katutura, 2011)		
Age	**Charge**	**Sentence**
17	Housebreaking with intend of theft	Fine N$1000 or 1 year imprisonment
16	Housebreaking with intend of theft	1 year imprisonment
17	Discharge of firearm in municipal district	Fine N$4000 or 2 years imprisonment
15	Theft	1 year imprisonment suspended for three years
17	Driving w/o licence + reckless driving	Fine N$1000 or 3 months imprisonment
15	Driving w/o licence + reckless driving	Fine N$2000 or 6 months imprisonment

Most respondent Magistrates indicated that they make use of community-based sentences as well as restorative sentences in terms of section 297 CPA. The figures from the records of the Magistrates Court Windhoek (C-Court, Magistrate Court Windhoek-Katutura) seem not to support this. Table 11 (above) comprises about all criminal sentences which have been handed down in the magisterial district of Windhoek; not included are however cases before the Regional court and/or the High Court. The sentencing options used by the Magistrate were exclusively fine and/or imprisonment, but no use was made of further conditions in terms of s. 297 CPA. Nonetheless, the data suggest that children, irrespective their age, are seldom tried. The majority of cases are finalised by way of withdrawal, only about 5% of the cases are tried in court. Against the number of 355 total entries in 2011 cases disposed of by sentence amount only to 2%.

Figure 4: Final Disposal of Cases

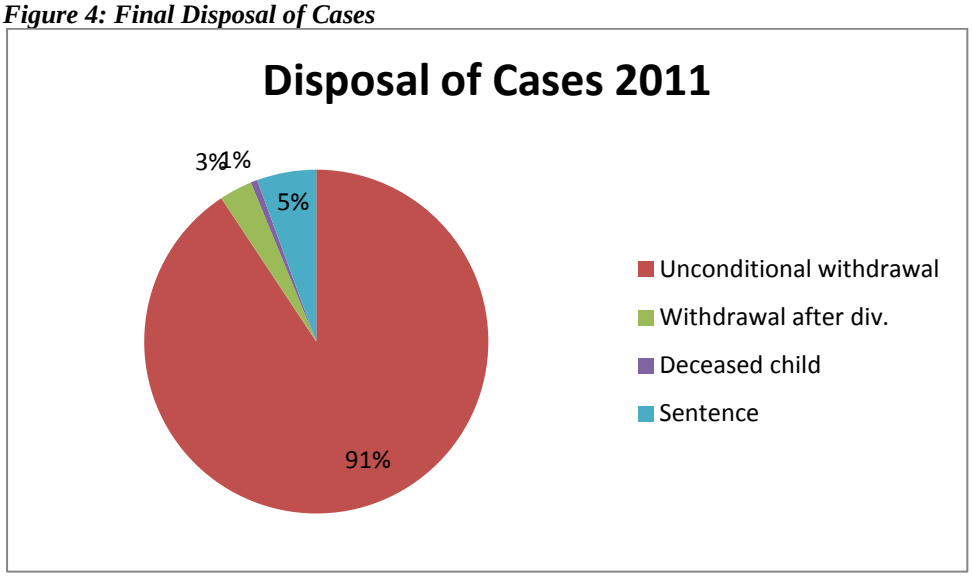
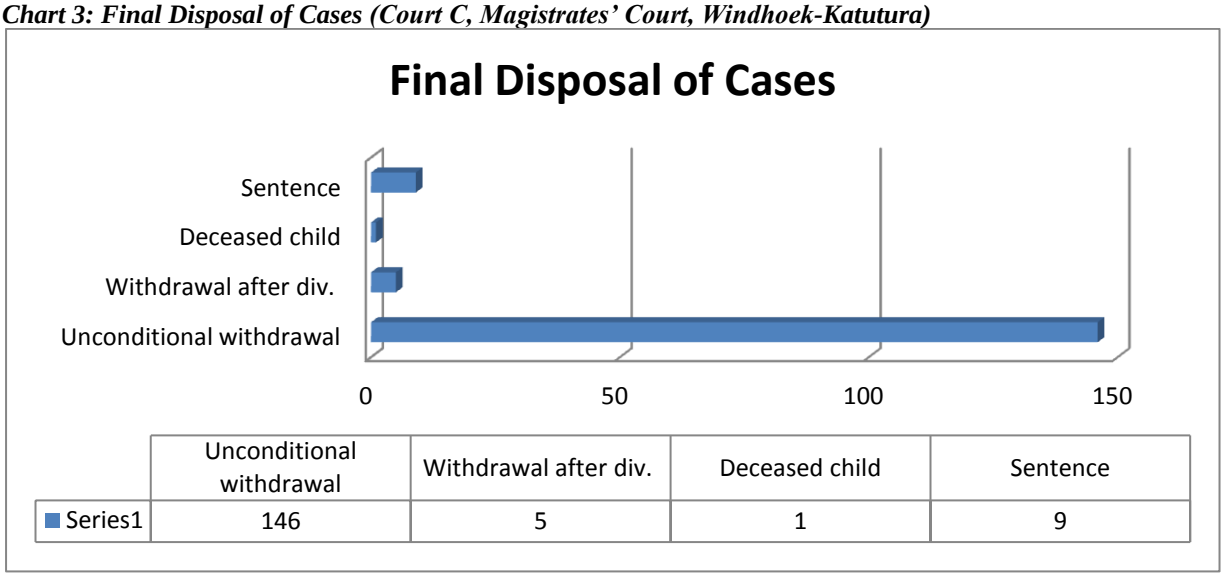


Table 12: Final Disposal of Cases

Final Disposal of Cases	
Unconditional withdrawal	146
Withdrawal after completion of diversion programme	5
Deceased child offender	1
Sentence	9
Total	**161**

In practice, there will always be cases so serious that only imprisonment can be considered an appropriate punishment, even if the offender is a child. But this is an exceptional occurrence. Children under the age of 18 in Namibian correctional facilities are very few. The child population makes currently about 1.5% of the total prison population.

Chart 3: Final Disposal of Cases (Court C, Magistrates' Court, Windhoek-Katutura)



Against the backdrop of juvenile justice statistics from other countries, which show that by and large crime is generally a youth phenomenon[94], it may be provisionally concluded that sentencing of children in Namibia tends to observe the requirement from Article 37 (b) CRC, i.e. that imprisonment should be as short as possible and if it is imposed this should happen only as measure of last resort. The data of Court C, Magistrates' Court Windhoek-Katutura, point to a degree of self-constraint of the judiciary, which is commendable.

Imprisonment

The number of children in after sentencing detention is comparatively small, hovering between 1% and 1.5% of the total prison population (Table 13). Since January 2012 the total number of children in correctional facilities has varied, captured on the 15th of each month respectively, between 71 (3 females) in January 2012, and 38 (0 females) in October 2012.

Table 13: Inmate Population January – October 2012 (Adults & Children)[95]

Lockup	Children		Adults		Total
	Male	Female	Male	Female	
Jan	71	3	4061	86	4221
Feb	65	1	4109	94	4269
March	63 (48)*	1	4155	101	4320
April	69 (51)*	1	3940	99	4109
May	62 (56)*	1	4155	103	4321
June	55	0	4128	98	4281
July	49	0	4107	95	4251
August	47	0	4107	101	4255
September	43	0	4107	98	4207
October	38	0	4066	96	4158

*Number in brackets refers to inmates below the age of 18 years.

The total inmate population was 4221 in January, and 4158 in October. The number of children in prison in accordance with the definition of a child in terms of the CRC is probably

[94] Gottfredson and Hirschi, 1990, p. 124ff. Blumstein and Cohen, 1979, 562: *"While population arrest rates have changed in absolute magnitude over time, (almost doubling between 1965 and 1976), the same pattern has persisted for the relative magnitude of the different age groups, with fifteen- to seventeen-year-olds having the highest arrest rates per population of any age group."*

[95] Source: NCS (data received on 15 Oct. 2012).

even lower, since the Prisons Act defines a child as a person of 18 years or younger. While the low absolute number is an achievement of the justice system in that it appears that even without respective legislation imprisonment as a sentencing option is utilised as a measure of last resort, the low numbers make systematic programmatic work with juveniles extremely difficult. The few child inmates are not only spread over an age bracket, from 14 – 18 years, but also across a number of prisons, with Gobabis continuously holding the bulk of child inmates (Table 14).

There is always a trade-off in that the requirement to serve one's sentence as close as possible to one's home community and family comes often at the cost of numbers in individual facilities. This makes it difficult to run rehabilitation programmes.

Table 14: Number of Children in Detention (March, April, May 2012)[96]

	March 2012	April 2012	May 2012	Total
Omaruru	5	5	6	16
Oluno	5	1	3	9
Swakopmund	1	1	2	4
Gobabis	25	28	28	81
Walvisbay	2	4	4	10
Hardap	10	12	13	35
Total	**48**	**51**	**56**	**155**

The Namibian Correctional Service is contemplating to concentrate all children in one facility. In order to allow parents and guardians to visit their children in this correctional facility, it is considered to offer simple accommodation adjacent to the correctional facility. But it has to be kept in mind that Namibian communities are often too poor to be able to afford visiting inmates in other parts of the country. Apart from the provision of simple accommodation, NCS might want to consider providing also free transport for parents/guardians, as part of an integral rehabilitation approach.

[96] Source: NCS (data received on 15 Oct. 2012).

Focus Group Interviews/Discussions: Magistrates & Prosecutors

Note

Focus Group Interviews and Discussions (FGI/FGD) have been conducted with Magistrates in Windhoek on 16 October 2012, as well as Magistrates and Prosecutors in Rehoboth on 17 October 2012, Walvisbay and Swakopmund on 25 October 2012, and in Oshakati on 21 November 2012. The voice recorded FGI and FGD were aimed at eliciting information about experience, and perceived challenges and opportunities of Magistrates and Prosecutors dealing with child offenders. Participants were informed about the objective, and invited to speak about any topical issue, but were also provided with a list of issues of interest before the FGD/I took place. The issues of interest and have been extracted from the recordings, namely:

- Practical significance and application of the CRC when dealing with child offenders;
- Specialised training in dealing with children;
- Availability of needs/risks adequate
    - diversion options
    - sentencing options (s. 297 CPA)
- Availability of needs/risks adequate child care and protection interventions (Children's Act 33 of 1960)
- Police custody and other places of safety or places of detention in lieu of police custody
- Cell visits (Police stations) and correctional facilities visits
- Criminal capacity of children below the age of 14 at the
    - Pre-trial stage
    - Trial stage
- Juvenile Justice Forum
- Presentence Report

The extracts from the recordings have been presented in the following in clusters around the issues of interest instead of reporting for each FGD/I separately.

Magistrates and Prosecutors do not apply the CRC in prosecutorial or judicial decision making. It was said, however, that although the obligations under the CRC were not applied in practice, the importance of the convention was nevertheless not ignored. One Magistrate in Walvisbay held that the CRC principles serve as a constant reminder when dealing with children. Another Magistrate in Oshakati put forth that the provisions of the CRC could not be applied because it has not been promulgated.

Without exception, Magistrates and Prosecutors deplored the absence of readily available child welfare services, which led to options running out very soon. In this respect the possibility of legislation in the near future on both child care and protection and child justice was highly welcomed. Magistrates and Prosecutors emphasised the importance of preventative social welfare programmes under the responsibility of MGECW, and acknowledged the underlying socio-economic factors contributing to involvement in child offending. However it was also said that more individualised interventions under the child justice legislation required the availability of services, which are currently absent, e.g. places of safety, industrial and reform schools specifically for repeat child offenders, and correctional facilities dedicated exclusively to child offenders.

Case numbers involving children in Swakopmund and Walvisbay appeared comparatively low. Magistrates in Windhoek and Rehoboth put forth that between ¼ and 1/3 of all new criminal cases were child cases. In the case of Rehoboth it was said that very many of the adult cases are assault cases, including 'GBH', mostly involving young men; conflict often results in violence; as to the children, in particular those above 14 it appears that there is little parental guidance and control, which was interpreted against the backdrop of parents often working in Windhoek, leaving the elder children without effective supervision until the early evening.

Magistrates and Prosecutors agreed that when children below the age of 14 are apprehended for the second or third time, this might in many cases be an indication of "need of care". Cases most of the time do not reach the

trial stage, also because of the assumption of *doli incapax*. At the same time nothing or little happens on the side of child welfare. There are just not so many options: Care of the parent/guardians, place of safety. Often however, affected children come from households which are incomplete, poverty stricken, disintegrated. They are nevertheless returned into their dysfunctional situations. Magistrates and/or Prosecutors put forth that very often these situations are still more conducive, albeit not desirable, to the development of the child than an uncertain time in police cells. Conversion in terms of s. 254 CPA is not considered very attractive.

One Magistrate said that without viable child welfare services conversion into a children's court enquiry would hold more of an empty promise: The Commissioners of Child Welfare in Walvisbay and Swakopmund held that available options are dismal. What would be needed, below the level of placing children in foster care would be programmes helping families develop and support good parenting skills, while addressing problems experienced by parents that can affect children (e.g. poor parenting practices, poverty, substance abuse, and aggression).[97]

Child welfare grants, while reaching very many of those who are by definition entitled, do not reach others who are living in abject poverty because their parents do so. Yet, there is no intervention of any kind. Thus, children are returned to their previous situations with the hope that they will avoid somehow or other further conflict with the law and keep themselves out of the criminal justice system in the future. If they do not so, then after a number of iterations the prosecution, considering the accumulated interest of society, sends the child for trial.

During the FGI at Oshakati it was mentioned that children below age are also used by adults in the commission of crimes, and advised how to behave in the case of arrest. Some child offenders in fact refer to their age and demand being released.

On criminal capacity of children it was said, that the question of criminal capacity is not thoroughly addressed, and sometimes where a trial seems the only reasonable option, the Magistrate has to indicate to the prosecutor that attention has to be given to the criminal capacity of the child. Without recalling specific cases, Magistrates addressed the possibility that in the event that postponement of passing a sentence, or suspension of a sentence (s. 297 CPA) is an option, the question of criminal capacity might not be made a *big issue*.[98] In Rehoboth it was said that for a long time (2011 - 2012) no child below the age of 14 had been tried, and that therefore the question of the minimum age of criminal capacity had not emerged ever since. Regards the occurrence of pre-trial detention of children 14 years and older, Magistrate and Prosecutor said, to always see to it that in about all cases pre-trial detention can be avoided. Even in a recent Rehoboth case where a juvenile was alleged having killed his mother, bail could eventually be approved. Eventually, there are cases where the lack of earlier intervention otherwise forces the magistracy to sentence to imprisonment. Magistrates hold that they are well functioning within their system, and with regard to their system immanent functions. But they also clearly see that the acquired routines are *"not able to produce solutions to the problems."* Every individual officer is more or less working in and from his/her own silo. In this context Magistrates also deplored the lack of coordination and information exchange, i.a. there is no internet connectivity since about two years and Magistrates and Prosecutors have to revert to their private 3-G devices.

Most of the Magistrates and Prosecutors said that they had never received any specialised training in handling child cases, and most did not know that Juvenile Justice Forums at district level existed in the past, or that an

[97] These sentiments echo almost verbatim the concept Crime Prevention through Social Development, proposed by Schneider, 2010, pp. 77 – 135.
[98] The dimension of this is not known and might warrant an inquiry of its own.

Interministerial Committee on Juvenile Justice saw to a high level coordination of actions, individual, programmatic in nature, or at policy level. Most respondents said however to be ready to participate in such structures if they were to be reactivated. Magistrate and Prosecutor in Rehoboth told that in their district the Juvenile Justice Forum has been re-established earlier in 2012, and that it is operating well, including also the Station Commander (Namibian Police) and the Social Worker (MGECW).

Magistrates and Prosecutors in Swakopmund and Walvisbay told that there was no such forum established, but held that a regular Juvenile Justice Forum might be difficult to be justified in view of the low case numbers in each of the two districts. The idea of a joint forum (Swakopmund & Walvisbay), even at a lower frequency of meetings, was positively received. Child suspects from Swakopmund and Walvisbay are said to be kept in a separate police facility at Naraville (Municipality of Walvisbay). The Magistrates of Walvisbay, although they had not conducted cell-visits, mentioned however that it seemed apparent that if elder children were known as "repeaters" the Police would keep them together with adults in either Swakopmund or Walvisbay. Those children were then treated by the Police as "adults".

Asked about the cell visit, Magistrates and Prosecutors conveyed the impression that they do not feel "entitled", and thus also not obliged to do cell visits. In fact they stated having been advised by the Magistrates Commission and the Prosecutor General respectively to desist from police cell visits, in order to avoid the wrong impression they might want to influence the accused. This coincides with the answers to the questionnaires, which revealed that only a fraction of Magistrates do police cell visits. Few had ever carried out the functions of visiting justices in terms of the Prisons Act. Asked about pre-sentence reports, the tenor of the answers was that it takes enormous amount of time to get such a report, 6 months not being a rare occurrence. Thus, pre-sentence reports will mostly be required when sentencing is intended to be with a residential/custodial component.

About all Magistrates agreed that their trust in sentencing options according to s. 297 CPA is limited. In the absence of set structures and the non-existence of service delivery systems, neither restorative justice nor community based sentencing options are seen as overly attractive. The Magistrates submitted that whenever they choose community service this means additional work for them: They must look for a placement, organise some kind of supervision, a report, which would enable them to decide based on facts whether the conditions have been fulfilled, etc. It was felt that a systematic approach, with administrative support and management of processes outside the magistracy, would do a great deal in making these sentencing options more attractive. Such approach would provide Magistrates and Prosecutors for that matter with updated lists of different categories of placement agencies, supervision staff, etc.

Prevention

At the outset it must be stated that since the beginning of the 3rd millennium Namibia has made great progress in the progressive implementation of preventative social welfare policy, Namibia's National Agenda for Children (2012 - 2016), which, as has been discussed above, meets functionally with effective primary and secondary crime prevention. As can be gleaned from the only cursory overview following hereafter, the Namibian Government has orchestrated a substantial response to a formidable challenge. But the sheer dimension of the task seems to dwarf efforts and resources mustered for the purpose so far, and it is probably not farfetched

saying that although the efforts undertaken during the last decade cannot be assessed here, a Herculean task is lying ahead, and with uncertain outcome.

Namibia has no formal "crime" prevention plan. Such a plan would require a monitoring system, and a coordination agent, Janus-faced, with a perspective on child welfare to the one side, and child justice to the other side. Notwithstanding the lack of laws and policies in this regard, the Namibian Government has staged numerous preventative interventions, which will be cursorily addressed in the following.

Demographically, Namibia is a comparatively young country. By 2011, roughly 700 000 children were younger than 14, and altogether about 921 000 younger than 18 years of age (Table 15)

Table 15: Population Projection: Age break down of child population[99]

Age Groups	Girls	Boys	Total
0 – 4 years	145 979	145 778	291 757
5 – 9 years	126 018	125 797	251 816
10 – 14 years	115 069	115 269	230 338
15 – 17 years	74 165	73 109	147 274
Total < 18 years	461 231	459 953	921 185

The Namibian society, and with it the Namibian Government, is held to provide care and protection to its children in terms of the CRC. Emanating from a broader concept of human security, this entails a concept of various dimensions which can be classified into the categories of economic, food, health, environmental, personal, community and political security.[100]

The Namibian government developed a multi-sector approach to address the various dimensions. Building on the achievements and progress made under the National Plan of Action for Orphans and Vulnerable Children (2006 - 2010), the Namibian Government has developed the National Agenda for Children 2012 - 2016, anchored in five pillars, namely health and nourishment, early childhood development and schooling, HIV prevention, treatment, care and support, adequate standard of living and legal identity, and protection

[99] Central Bureau of Statistics. 2006.

[100] These dimensions have been presented for the first time with the UNDP Human Development Report (UNDP, 1994, 22 - 25), but the consultant considers them as relevant today as they were then.

against neglect and abuse. This plan has been developed in parallel with the "evolution" of the Child Care and Protection Bill, which once in force would serve largely as the legislative mandate for the further development and implementation of the National Agenda for Children.

The MGECW through its child welfare grant system addresses the aspects of economic and food security of the bulk of Namibian children, which is in effect a cash transfer, which in the case of the Basic Income Pilot Project had strong positive effects on the life not only of those who were the direct beneficiaries, but also those who pertained to the close social knit of the beneficiaries.[101] By August 2009 it was submitted that about 28% of all children were either orphaned or vulnerable (OVCs), summing up to then about 263 000. This figure was said to be in all likelihood an underestimation of the "true situation".[102] If it can be estimated that currently about 130 000 OVCs benefit under the extant child welfare grant system,[103] it becomes quickly apparent that the gap of children falling through the mashes of the current grant system is probably between 150 000 and 170 000. Following the report of the study "The Effectiveness of Child Welfare Grants in Namibia", commissioned by MGECW in 2010, the Namibian Government is about to change the grant system so as to broaden the definition of eligibility, and so as to cover in future a maximum of actually orphaned or vulnerable children. The MGECW has been given the lead responsibility for the coordination efforts under the NNAC. While many line ministries and government departments are involved in the implementation of the plan, each of them has a defined role, and functions within the architecture of the plan.

Through the Directorate Youth in the Ministry of Youth, National Service, Sport and Culture, a range of complementary, but nevertheless important preventative activities are brought to the Namibian youth in all regions. These activities address the need for common institutional rules, significant symbols and frames of reference. The Ministry has the responsibility for co-ordinating and facilitating all the youth activities with the relevant line ministries and NGOs. The Directorate Youth runs 13 Multi-Purpose-Youth-Resource-Centres, one in each region, namely in Outapi, Usakos, Opuwo, Eenhana, Rundu, Katima Mulilo, Keetmanshoop, Windhoek, Mariental, Gobabis, Otjowarongo, Omuthiya, and Oshakati. Ideally, the centres should employ at least one social worker. This is however not the case, and currently there are

[101] Basic Income Grant Coalition, 2009.
[102] Boston University Center for Global Health and Development, 2009.
[103] The target for 2012 has been indicated with 131 000; see: Government of Namibia. Ministry of Health and Social Services, 2012, p. 47.

altogether only 3 social workers working at the various centres, assisted by several youth workers. According to a MYNSSC pamphlet, the objectives of the MPYRC are *"to recognise and develop a sense of self-esteem, potential and aspirations in all young women and men in Namibia"*, and importantly so, to *"provide opportunities for youth to develop relevant life and work skills, which will help them to become responsible and self-reliant members of the community."* In order to achieve the objectives, each centre runs a standard set of programmes, which are developed under the auspices of the Directorate Youth. The centres inter alia indentify social support networks for young people, publish and disseminate newsletters and information paper, and plan, coordinate and implement youth development programmes. Various units address diverse clusters of themes, which are in the following only cursorily listed:

- Child Justice Unit
  - Assistance of children and women in especially difficult circumstances
  - Outreach programme through the provision of Life Skills
  - Juvenile Crime Prevention Programme
- Environmental Education Unit
  - Provide youth with exposure to practical conservation work
  - Gain employment experience
  - Community based tourism
- Integrated Rural Youth Development
  - To provide rural youth with vocational skills through an informal education setting using experimental learning techniques
- Youth Health Unit
  - Focus on the health of young people
- Gender Unit
  - Primary activity is to sensitize young people about gender
  - Violence against women and children
  - Gender and economic empowerment
- Exchange, Volunteerism, Workcamps & Hostelling
  - To provide out of school and unemployed youth with the opportunity of acquiring practical conservation skills
  - To promote educational projects
- Training and Employment Unit
  - To facilitate youth training and employment and coordinate youth entrepreneurship training
  - Preparation of youth for the Labour Market
  - Identification, facilitation and coordination of training needs and employment opportunities
  - Coordination,, facilitation and assistance to youth in entrepreneurship training programmes,
  - Facilitation of the access to credit facilities by the youth.

The work of the centres is complemented by a number of rural offices, which are at least staffed with one youth officer and a clerical assistant. Rural youth officers travel rural areas and attempt to organise youth locally. In currently three youth skills training centres,

vocational training opportunities are offered to youth, i.e. in Kai//Ganaxab near Mariental, Berg Aukas, Okahao, with a fourth under construction (Frans Dimbare, Rundu).

There are doubtless many activities, in particular those offered and managed by NGOs, which have not been mentioned here. The purpose of this paragraph is however not to describe every single explicit or implicit crime prevention initiative in Namibia, but simply to point out the range and certain aspects of crime prevention within the context of international norms and guidelines.

From the above it can be concluded that while at normative level there is a virtual absence of legislation addressing comprehensively preventative social welfare policy, political will has been mounted to address the plight of the Namibian child. This political will found recent expression in a 2012 policy document which ties in about the entire Government, i.e. the National Agenda for Children 2012 – 2016. It is now expected that at legislative level the Child Care and Protection Bill will be adopted into law in 2013.

While there might be somewhat of a concern that Namibia has no express "Plan for the Prevention of Child Involvement in Crime", the situation on the ground looks much rosier in terms of the variety and reach of preventative social welfare activities. It appears that there is currently however no bird-eye's view regarding the number of users of programmes on offer. Statistics may be drawn, but they are not used to co-ordinate activities with the various role-players involved in the prevention of crime among children.

It is submitted that the identification of activities under the National Agenda for Children in terms of proper child crime prevention, as well as the co-ordination of activities and the adoption of a structured plan which incorporates prevention at all levels are of fundamental importance.

Focus group interview with Social Workers:

Note

Focus Group Interviews / Discussions (FGI/FGD) have been conducted with Social Workers Magistrates in Windhoek 2012, on 18 October 2012 (MGECW After School Centre) and 6 November 2012 (Eros). The voice recorded FGI/FGD were aimed at eliciting information about experience, and perceived challenges and opportunities of Social Workers dealing with child offenders. Participants were informed about the objective, and invited to speak about any topical issue. The issues of interest have been extracted from the recordings, namely:

- Social work in general
  - Clientele
  - Social problems and poverty
- Diversion:
  - 'Screening'
  - Needs/risks adequate Interventions
- Pre-sentence report
- Pre-trial police custody
- Specialised training
- Human resources

The extracts from the recordings have been presented in the following in clusters around the issues of interest instead of reporting for each FGD/I separately.

Social Workers said that there is currently no Juvenile Justice Forum in Windhoek. Social Workers have two points of contacts with the child offenders, at screening in preparation of a diversion decision by the prosecution and, as the case may be, in connection with the pre-sentence report. It happens seldom that if a pre-sentence report is requested, it will be the same Social Worker to do the screening for diversion and the compilation of the pre-sentence report. Only one of the three Social Workers at the After School Centre had done pre-sentence reports, which had however never taken more than one to three months to be completed. This was however at a previous duty station (Rehoboth). As to the workload in general, it was said that the quality of social work is affected by the lack of social workers, with only about half of the vacancies filled. The group members said that by now grant applications (welfare grants) had been taken from the social workers purview, so that they could now focus on case work, and less on clerical work.

A fundamental challenge is the lack of alternatives for diversion. The shared sentiment was that at the time of the child justice intervention, usually a lot has already gone wrong in the life of the child. Echoing the sentiments of some Magistrates, the Social Workers held that the juveniles *"are laughing at us, they do not take the sanctions seriously"*. The Life Skills Programme may be of help with younger children. Where elder children are given pre-trial community service, they are said to take it seriously. It was said that there are a number of children in Windhoek, who are known by all stakeholders as problem children, and who come time and again back to court. The 18 October 2012 discussion put forth the question about the merits of "boot-camp" style interventions for children 14 years and older, in particular those who have already reached the age of 15, 16 and above.[104] While participants did not suggest the introduction of "boot camps" in Namibia, the discussion clearly demonstrated a degree of frustration and dismay because of the perceived absence of any professional repertoire which could be of use to "control" the behaviour of those elder children. There were no figures available how many elder

[104] The sentiment that society might have to look for other options in the perceived absence of other effective means of control, has been reportedly aired and practiced by some police in the service of the Namibian Police. Oswald Shivute reported in The Namibian of 19 October 2012 under the heading *"When courts are a 'waste of time'"*, that *"[t]he Police at Epembe in the Ohangwena Region have allegedly adopted an instant justice and discipline approach for juvenile delinquents at the village. Those who make themselves guilty of petty crimes are simply whipped without being charged."* If such practice were confirmed, it would undoubtedly be unlawful.

children have been through the system more than once or twice. The sentiment was however that earlier intervention would have been needed in most cases, in order to prevent the child from drifting into situations in which crime is the most 'attractive' option. At that juncture again, so the feeling, pre-trial community service is often not effective. Social Workers of the After-School Centre have therefore come up with a more tailor made cognitive behavioural change programme which is offered as an alternative to LSP and PTCS. However, shared by all Social Workers was the need for the establishment of half-way houses; semi-custodial/residential facilities would be required in order to be able to cater for child offenders, who are not accepted in most of the places of safety, mostly because these children show already too strongly behavioural abnormalities. Since there is no database on places for children, finding out where a child in need of care can be placed is cumbersome. Countless phone calls have to be made before a vacancy, which is suitable has been found.

Asked about the situation of child offenders in pre-trial custody at police stations, it was said that the police stations/cells at Hosea Kutako Airport, Dordabis, Windhoek Central and Wanaheda are visited on a monthly basis. It was mentioned that this practice is a routine of social workers in all thirteen regions. During those visits, which happen also unannounced, Social Workers **find almost always** children kept **together with adults** in the same cell. While Station Commanders would take adults out of the cells during the visits from social workers, it is assumed that the separation usually ends once the social workers have left. It was also reported that at times children are found who have been in police custody for longer periods, without the police having traced their parents. No records are currently taken on these incidents, and the information about such incidents remains between the social worker and the station commander. The Social Workers suggested that a form be developed to record and report through MGECW every incident to the Inspector General of the Namibian Police, and the Prosecutor General.

Regular social work, contact and work with clients/children, is usually initiated by the children's court or at the instance of the client. There are many families and children in need of support. But due to a lack of human resources there is no chance to do much other work than which is initiated by the clients. Ideally, social work would be able to reach out and look into the hotspots of social problems. But altogether there are only about 40 MGECW social workers operating countrywide, about half the number of approved positions. It was said that social work as a profession would not attract many Namibian students. A huge portion of social work students at UNAM were said to be foreign students. The Social Workers held that the lack of attraction stemmed from a comparatively low remuneration for social work in the Namibian public service.

5

Deliberations on Key Findings

Namibia as a young country in terms of Independence has already a considerable history of child justice (supra). In 1999, the Discussion Document: Juvenile Justice in Namibia held:

> *"It is positive that in certain areas in Namibia a fledging child justice system is being established. However, without a proper national policy and guidelines there is a very real risk that children's rights are being violated by the very practices that are designed to protect them. As the matters stand, Namibia does not conform to the international standards and principles referred to in Chapter 1."*

This statement still describes aptly our situation today. Namibia fails to meet the international minimum standards and principles referred to, in Chapter 3 of this report, in particular the UNCRC. However, the assessment of the situation, back then and again now, refers to different contexts.

Following the presentation of the 1999 Discussion Document: Juvenile Justice in Namibia, the actual dealing with children in conflict with the law, underwent dramatic changes; changes for the better. The Inter-Ministerial Committee on Juvenile Justice (IMC) integrated a lot of good will, human and financial resources, provided partially by governmental departments, international donors, NGOs and various individual actors. The activities under the auspices of the IMC were guided by the international standards derived from the CRC and ancillary documents. Invaluable experience was gained and opportunities for learning by all stakeholders and actors were created. The progress in understanding/comprehension at a system and individual level was documented and found entrance into the Draft Child Justice Bill (2002), which responds to the full range of obligations of Namibia as a State Party to the CRC.

Somewhere down the line, probably in the second half of the decade (2005 - 2010) the IMC became defunct, and with it the majority of Juvenile Justice Forums at local and district level. Today young Magistrates and Prosecutors are often not aware that those forums at district level existed in many places.

The JJF as forum for exchange of data, knowledge, and interpretation of specific incidents and emerging phenomena beyond the formal communicative limits of the criminal process, allows unlocking the in-built problem solving potential of the criminal justice system beyond the limits of an individual case. Without the function of JJFs professionals operate today in the isolation of their professional "silos".

From the desk review of legislation and other available information it stands to reason that Namibia's justice system does not protect the rights of the child in conflict with the law through integrated legislation and policy. The level of protection, although difficult to gauge comprehensively against the backdrop of available data, is probably anything between "weak" and "moderate".

As to the quantitative aspects, there is a huge gap of data needed for the analysis of the performance of the criminal justice system in its treatment of children in conflict with the law. These deficiencies hinder first the evaluation, and second the more effective design of programmes to support children.

However, it seems plausible to conclude from the information received through the returned questionnaires, and during focus-group-interviews with Magistrates, Prosecutors and Social Workers, that the extent to which children in conflict with the law are detained, awaiting trial, is considerably smaller than at the beginning of the century. Overall, all stakeholders in child justice appear to be more alert with regards to the prevention of violation of children's rights than at the time of the publication of the Discussion Document Juvenile Justice in Namibia (1999). This applies to the Namibian Police, the Namibian Correctional Service, the Magistracy and the Prosecution, and surely to Social Workers.

Yet, gross rights violations still occur frequently. It is submitted that such violations are largely consequences of system deficiencies, in particular the absence of child justice legislation which would serve as a common and authoritative reference for child justice professionals with set priorities and objectives.

The provisions of the CRC and the African Charter, in particular the overarching principle derived from Article 3 (1) and Article 4 respectively, that consideration should be given to the *"best interests of the child"* as well as the principles derived from Article 37 (b) CRC that *"arrest, detention or imprisonment of a child...shall be used only as a measure of last resort and for the shortest appropriate period of time"*, could serve as a catalyst, if these norms of the CRC were considered self-executing. But neither Magistracy nor Prosecution follow consequently such interpretation and the issue of the self-executing character of the CRC at large or at least partially with regards to specific norms, has not yet been authoritatively settled in a higher court of Namibia. The lower courts seem hesitant of taking a leading role (initially) in this respect.

From within the respective silos professionals cannot be expected to act as if such common reference is already in existence. Whereas a number of short-term and mid-term interventions hold the promise to alleviate the plight of children in conflict with the law, only a strategic intervention, i.e. the adoption and promulgation of a Child Care and Protection Act and a Child Justice Act will engender a transformation of the present system which is commensurate with the expectations of the CRC.

Notwithstanding the commendable preventative social welfare interventions, the lack of focus on proper crime prevention drags the justice system into playing out the absence of a child-centred service delivery system with a wide range of services and programmes, on the back of

the children. The lack of service delivery systems for child justice is a big challenge, since competent authorities cannot chose from a variety of non-custodial, but also semi-custodial (outside corrections) in the best interest of children. The blame for this cannot be simply placed on the justice system, which follows its own intrinsic logic and objectives.[105] At system level it appears that government has not yet reaped the fruits of preventative social welfare interventions for the benefit of crime prevention. Preventative social welfare interventions therefore remains until today geared towards meeting children's rights under the CRC (ECD, CWG etc) in isolation.

This is however not a peculiarity of Namibia, because under the dominance and hegemonies of US-policies, retributive and punitive criminal justice policies have gained centre stage in large areas globally. From this perspective, social structural interventions with a view to reduce criminality are considered outdated. Not only since Independence, retribution and punitive sanctions have therefore influenced Namibian public policy.

On the one hand one recognises that in terms of the criminal justice set-up not so much seems to have changed since 1990. The criminal procedure, the general principles of the criminal law, including the minimum age of criminal capacity, remained unchanged.

On the other hand, however, it is trite saying that the material criminal law has indeed been given a substantial drift towards retribution and punitivity. While intended to maintain post-Independence nominal gains in the arena of individual human rights and freedoms, the introduction – with high publicity and awareness campaigns – of stiff penalties and mandatory sentences in connection with the promulgation of legislation against sexual violence, domestic violence, stock theft to mention some few, projected into the public mind the illusion that law enforcement could be maintained through intervention at individual level. The symbolic meaning of public censure is undoubtedly important in connection with the desired and ***necessary change*** in gender relations. Yet, if this is not undergirded by social-structural interventions of sufficient reach, it becomes easy to refer the solution of aggregate phenomena to the level of the individual. This will eventually forestall interventions at communal and societal level.

But it is not difficult to recognise also action by omission. While a set of institutional rules and significant symbols emerged alongside the already existing historical set, and so adding to

[105] See: Trenczek, 2002, pp. 23 – 34.

the value horizon of most Namibians, no support system for the integration of now often contradictory components was put into place.

At the level of the criminal justice system this became evident in two ways: First, in that with regard to adult offenders no support systems for the administration and implementation of (a) community based sentences, and (b) restorative sentences was put in place. Second, in that with regard to child offenders, i.e., the dearth of services and programmes, and the lack of alternatives to institutional care were left unattended.

Symbolically, for the criminal justice professional, be it police, prosecutor, magistrate or correctional official, this development represented and continues to represent, crime as a social responsibility issue at individual level as opposed to a social problem issue at societal level.[106] In this context, criminal justice professionals see themselves as guardians of the however justified "governmental claim of punishment",[107] a claim which can be given heed easily within the range of readily available criminal justice interventions.

While this situation is a challenge generally, the problem became exacerbated with regard to the treatment of child offenders due to a lack of theoretical and practical guidance through training for those dealing with child offenders – against the backdrop of the CRC (see also: questionnaires).

In addition, the existence of a reliable service delivery system must be regarded as a prerequisite for prosecutors and magistrates to place their trust in nominal alternatives. If it is perceived that restorative, community-based, "postponed" and/or "suspended" sentencing does not solve the case, which means that the docket appears again before the same prosecutor or magistrate, the incentive for trying alternative interventions becomes insignificant. In this situation, only a comprehensive, integrated, systematic and complementary framework of juvenile justice would authoritatively break the passive compliance with the logic of the system, and break any impasse.

The Draft Child Justice Bill (2002), would it be enacted today, would meet about all requirements under Juvenile Justice Policy Indicator 14 (Specialised Juvenile Justice System). A Child Justice Act would presumably tap on child welfare services provided under the future Child Care and Protection Act. Such services might be invoked in case of sentences with a

[106] Schmalleger, 2006, p. 20f.

[107] Possibly more than a stereotype, prosecutors prefer a high number of convictions over the conclusion of a high number of cases by other means. In a personal communication received on the 16 October 2012 a former prosecutor said that in retrospective during his time as prosecutor, whether dealing with child or adult cases, the prime objective was the conviction.

compulsory residential requirement, or referral to a residential facility (ss. 108 and 109 Draft Child Justice Bill). In terms of ss. 93 ff Child Care and Protection Bill a number of options in this regard are planned to materialise. But other measures in terms of the Draft Child Justice Bill, e.g. the family group conference plan according to s. 66 (2) (f), would rely fully or partially on the options once materialised, for instance those mentioned in section 2 (d)-(f) under the objectives of the CCPB:

> (d) to make provisions for structures, services, and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
> (e) to strengthen and develop community structures which can assist in providing care and protection for children;...
> (f) generally, to promote the protection, development and welfare of children.

The operations of the two systems should preferably be kept aligned, an objective which could be supported by a representation of the envisaged Directorate for Child Justice on the Child Welfare Advisory Council in terms of the CCPB.

As to the thrust of the work under the aegis of the Ministry of Youth, National Service, Sport and Culture, the production of statistics, which can be fed into the administration and management of the National Agenda for Children 2012 – 2016, will become very effective. "Gender" is commendably integral part of the youth curriculum throughout the country. The continuous analysis of identity forming cultural representations of masculinities, irrespective their ethnic origins, which are by themselves co-contributing factors to gender violence and violence in general, will remain important in the future.[108]

Directions from the Key Findings

This study brought to light a number of insights and confirmed a variety of views held and shared by criminal justice professionals. Due to the study we have a comparatively good understanding of what is happening qualitatively, but we are largely lacking valid quantitative data. In fact we do not know how often, when and where children's rights violations occur. In order to fill the gaps research specifically aimed at this will be required.

Law and Policy Compliance with the CRC

At a normative level Namibian laws and policies do not comply with system requirements arising from the CRC. Laws and policies have been assessed against the backdrop of four

[108] Compare: Messerschmidt, 1993.

indicators submitted by UNODC and Unicef for reporting by State Parties to the Committee on the Rights of the Child. Within the remits of a rapid analysis, the assessment here must be provisional, but it is more than probable that the findings made here will be corroborated by the State Party.

Regular independent inspections

Notwithstanding efforts made in this regard, in particular to mention the system of internal inspections, the Namibian criminal justice system has not created a system guaranteeing regular independent inspections of places of detention. Where regular independent inspections of police holding cells are taking place, i.e. carried out by social workers, this is not law or policy guided, and there is no reporting system in place, nor a mechanism to trigger remedial action in case of tangible violations of rights. This beckons the question of the purpose of such visits. It would give social workers who carry out these regular visits a sense of value if a reporting mechanism of incidences of joint detention of children and adults could be installed.

Complaints mechanism

The complaints mechanisms which have been put in place remain under the administration of the detaining authority. By virtue of this fact, the complaints mechanisms do not meet the criteria for safeguarding the rights of detainees.

Specialised juvenile justice system

Namibia has no specialised child (juvenile) justice system in place. This means that children are ushered through a system which systematically ignores the special needs of children and is not child friendly. In short, the absence of peremptory legal provisions imposing a duty on each criminal justice professional to decide at all times in the best interest of the child, disqualifies the Namibian justice system if it has to be measured against the requirements arising under the CRC. Another related issue is the prevailing age of criminal capacity, which is 7 years, and which remains one of the lowest ages of criminal capacity in the world.

Prevention plan

Preventative social welfare measures have been extended significantly in the first decade of the century. In particular the impending broadening of eligibility for child welfare grants will go a long way in reducing child offending which is triggered by socio-economic conditions. Government support (economic aid), in this case for families with children, who cannot lift themselves out of poverty is effective; in the case of Namibia this could be demonstrated with the analysis of the BIG pilot project.

The challenge to be met remains however the need to conceptualise and implement preventative social welfare measures with an eye on crime prevention: Measures need to be directed at the developmental processes that

make crime more likely among individuals living in criminogenic social and economic environments. In practice this means availing human and financial resources with the aim to change from passive reaction to pro-active interventions. Typically, and here the National Agenda for Children (2012 - 2016) shows the way forward, early-childhood development, in particular pre-school education, and improvement of performance of our schools are required. Yet, over and above these general measures, where hot-spots of social problems are recognised in particular geographical areas, specific needs and risks adequate interventions must be arranged. Interventions at this level mean for instance home visits by social workers and parenting training.

Dimensions of child offending

We do not have sufficient data on prevalence and incidence of child offending. The criminal justice system is not producing disaggregated crime data; not for adults, nor for children. Police crime statistics provide only one aspect of a complex picture. The incidence of arrest, irrespective the initial charge does not tell us much about the "evolution" of a case on its itinerary through the criminal justice system. Generally, we know that the attrition rate, which refers to the survival of criminal cases from arrest through trial, is at least 90 per cent.[109] At face value the result of the provisional analysis of the books of Court C, Windhoek Katutura Magistrates' Court is commensurate with this knowledge. What is needed however is a full set of criminal justice statistics, including variations per regions and court districts, covering a sufficient period of time, preferably a calendar-year. This set of raw data would preferably provide data on the following variables:

- **Sex/gender**
- **Age**
- **Loci of offence/s**
- **Charge against the accused at the following stages of the criminal process:**
    - Arrest
    - Trial
    - Sentencing
- **Prosecuted cases**
- **Conditionally withdrawn cases (including conditions)**
    - Final withdrawal
    - Resumption of prosecution (including reasons for resumption)
- **Court**
    - District
    - Conviction
    - Sentence/decision

[109] Schmalleger, 2008, p. 30.

- Conversion (s. 254 CPA)
- Fine
- Imprisonment
- Restorative justice sentence (s. 297 CPA)
- Community based sentence (s. 297 CPA).

It is only under the impression of the above knowledge that decisions on resource appropriation, regional distribution and allocation can be reasonably made.

Children in the Criminal Justice System

Children in the criminal justice system suffer from multiple violations of their rights guaranteed under the CRC. Those violations are mostly resulting from the system environment. It is the structure of the system which makes it prone to violations of those rights on the one hand. It is the chronic lack of resources which makes violations probable on the other hand. Criminal justice professionals do not generally intend to ignore accused children's entitlements under the CRC. Most often, like in the case of the police, they find themselves between a hard stone and a rock. Or, in the case of social workers, prosecutors and magistrates, they are dismayed by the lack of appropriate measures and interventions. After all, however, children's rights are ignored at all stages of the criminal justice process.

Arrest/police detention

Where children are arrested and cannot be brought before a court immediately, there is almost always a neglect of their special needs involved. While social workers systematically and regularly visit children in police custody, they usually find children not separated from adults. One case of a notable difference was reported for Swakopmund and Walvisbay. Here children are reportedly not detained in regular police stations but in a special location in Naraville, a suburb of Walvisbay. It is not known at this point how the "Naraville-model" was realised. It would be useful to do a case study, from which directions might be extracted for other districts.

Currently however, due to the physical infrastructure of most police stations a considerable amount of contact time for children and adults is unavoidable, irrespective whether the children are separated in their own cells from adults overnight. This alone is not conducive to the healthy development of a child. Children are always in need of age-graded adult attention and guidance, which is never available in police custody. Apart from mental stimulation, reassurance, and safety, which is by necessity absent in police custody, children have also specific nutritious requirements. The fact that the police are not resourced to adequately

detain trial awaiting accused persons is a general problem, which is exacerbated in the case of child detainees. The question is how to address these problems.

At system level it would be required to eliminate police custody of children in the first place. But this is not always an option. Children, who absolutely cannot be released for reasons of their own or society's protection, could be detained for the time being in correctional facilities. Yet, this comes with its own problems. Children would have to be transported to court from - usually more distanced - correctional facilities. And again, they would have to be separated during transport, and also while trial-awaiting at the courts. This would require at least the allocation of additional resources.

Beyond the quest for an immediate solution, the creation of places of safety other than police cells would be required for accused children. A problem is that the number of accused children requiring care and protection triggered by a criminal justice intervention in a place of safety is not known. After all we can conclude on the basis of the information extracted from the court books of Court C, Magistrates' Court Windhoek Katutura, that the number of places required at any given time will be rather low. For proper planning however, better knowledge is needed about the incidence and prevalence of pre-trial custody of children across all regions and districts of Namibia. The screening statistics (supra) give a first indication which regions have more child crime than others. A further disaggregation as per districts is however necessary.

Screening/Diversion

Interestingly, although not guided by law or policy, it appears that about all accused children who have not for any reason been excluded upfront from diversion, have been and will be assessed ("screened") for diversion. The challenge is the non-availability of specific diversion interventions. In Windhoek the imparting of Life Skills and the ordering of Pre-Trial Community Service are the options most often selected (>90%). Generally speaking, prosecutors often agree on a conditional withdrawal of cases only in order to prevent detention and trial, but they wish for more personalised, case adequate diversion conditions. Apart from LSP and PTCS social workers in Windhoek offer a more specific group based cognitive behavioural work with clients. But in general there is uncertainty why and when LSP and PTCS will produce a positive effect on the conduct of accused children.

Since the "best interest of the child" is a legal concept which must be able to be explicated against the backdrop of professional concepts of developmental psychology for children and related professional concepts of social work, the prosecutor should only conditionally withdraw if he/she is able to understand why the fulfilment of the condition is in the "best interests of the child". This requirement is seldom, if ever, met and conditional withdrawal is

often effected as a matter of routine, following blindly the recommendation by the social worker.

But while we assume that for the majority of children in conflict with the law diversion with just about any condition will be the most appropriate decision, because the alternative of pre-trial custody is beset with generally undesirable problems for the child, there are cases where members of all professional groups feel that below the level of corrections a stronger, and different intervention than LSP or PTCS is required. Those are the cases where the child has repeatedly appeared in court, and importantly so in shorter intervals and under circumstances which seem to indicate an increasing risk to the child him/herself and/or the society. This could be for instance cases where repeated physical violence plays a role. The challenge here is to get an idea of the quantitative dimension of the problem as well as its geographic distribution, but also to reassure the prosecution and the magistracy of the existence of effective measures and interventions below the threshold level of detention for correction.

From the screening/assessment statistics (supra), we do have an idea of the approximate distribution of cases across the various Magistrate Courts. But the value of those statistics can be considerably boosted with an independent data set from the Magistracy. As to the latter, a risks and needs analysis of accused children from a representative sample should provide the data needed to make adequate interventions available where they are mostly needed.

Sentencing

The problem of determining a child adequate, or better offender adequate, reaction to the offense emerges again when it comes, seldom though, to sentencing a child. Where otherwise a "suspended" or "postponed" sentence in accordance with s. 297 CPA would be recommended, this option is not necessarily available to our courts because of the same limitations as put forth here above (screening/diversion).

Theoretically, s. 297 CPA opens the way for just about any sentence which the circumstances require, from community based correction, like community service, to victim offender mediation (VOM), compensation, and any other intervention which might be in the best interests of the child. However, as in the case of diversion, magistrates are not satisfied with the range of options offered by the system.

Sentencing a young offender to a fine might be thought of if one is to assume that the fine will have a deterrent effect (individual deterrence) on the young offender. Imprisonment can only be conceived as being in the "best interests of the child" if the imprisonment can be used in constructive ways in the further formation of the young self; or if incapacitation is necessary

to protect the offender from himself, or to protect society from unacceptable risks by a person prone to relapse into violent or otherwise unbecoming behaviour with grave, unacceptable consequences for the offender and/or society.

Whereas deterrence research could show that individual deterrence only works for certain types of offenders and types of offences,[110] incapacitation will be required in the least of all cases, and only as a measure of "last resort". Considering the sentences handed down by Court C, Magistrates' Court Windhoek Katutura in 2011 it is doubtful whether – in an objective sense – these sentences are sentences in "the best interests of the child". These sentences are only understandable against the backdrop of retribution, and general and individual deterrence, and should probably not have been meted out if sentencing had to be in the best interests of the child. Considering the sentences from this perspective it stands to reason to assume that the presiding officers chose the sentences either ignoring the "best interests of the child" requirement, or cognisant of the absence of viable alternatives. In the first case the oft-deplored lack of guidance through training on the implications of the CRC for the use of discretion at all criminal justice stages might have become relevant.

General deterrence is not an eligible purpose of punishment when sentencing a child offender. Community service would often be an adequate substitute. Yet, since community service in Namibia, unlike in other jurisdiction (Finland, Germany), is not implemented with the support of a service delivery system, magistrates are reluctant to make use of this sentencing option.

To counter or mitigate the sentencing challenges, a multi-pronged approach would be necessary. Training of judicial officers will address the lack of understanding of the bearing of the CRC and the African Charter, in particular Article 17 (3), on the application of common and statutory law. The conception and implementation of a judiciary independent service delivery system for community service orders and victim offender mediation will remove the psychological barriers against these measures at the level of magistrates.

Corrections

The limited number of child inmates will become a steady occurrence once the criminal justice system fosters the child centred function of its professionals. The challenges which come along with this phenomenon can only be mitigated, but not fully balanced out. One option is the concentration of child offenders in one correctional facility in order to be able to run group based corrective/rehabilitative interventions. While this leads necessarily to farther

[110] Brown, Ebsensen and Geis, 2007, p. 171ff.

geographical distances between the correctional facility and parents and guardian, the criminal justice system can assist with free transport, and offer simple accommodation for parents and guardians for scheduled visits in the vicinity of the correctional facility.

Communication, Interaction and Co-operation

The quality of communication, interaction and cooperation between members of the various professional groups varies from district to district. The Walvisbay and Swakopmund focus groups of magistrates and prosecutors reported a constructive working relationship with the police and social workers although there is currently no Juvenile Justice Forum (JJF). The sentiments of the magistrates and prosecutors in Oshakati, also without a JJF, were much less positive, which was partially attributed to the perceived lack of time of the local social worker. Prosecution and Magistracy in Rehoboth were again very positive regards the quality of their professional relation with the social workers, and the local police. In Rehoboth a JJF has however been re-established at the beginning of 2012, this JJF holds regular meetings including the police, the social worker, the magistrate and the prosecutor.

While personality features and group dynamics characterise the quality of human interaction, it is submitted that regular meetings ensure a base line understanding among individuals independent of those factors, and so positively influences the quality of communication. It is believed that the re-establishment of JJF in districts where they have become defunct, will positively contribute to the decision making process affecting children.

Training of Criminal Justice Professionals dealing with Child Offenders

The majority of criminal justice professionals, irrespective whether they are dealing with child offenders or not, lack specific training in child justice. The professional group which got mostly training in this field are Social Workers. Magistrates and Prosecutors have seldom benefitted from such training. Where training takes place, it addresses the issues from the professional perspective of a specific group. This means that (a) the various professional groups do not have a comparable knowledge base of child justice, and (b) none of the groups has an integrated perspective from which to understand the actions and limitations of the other groups. An improvement of this situation requires continuous training of all groups. In order to achieve a common understanding of the system, training should integrate the perspective of all professional groups involved in child justice. With the aim to improve communication and

understanding between members of the various professional groups, joint training is recommended.

At the level of formation of criminal justice professionals, reviewing the curricula of criminal justice training institutions (Polytechnic of Namibia; NamPol and NCS training colleges), aiming at a decision as to the desirability of the introduction of a module on "Child Justice" would be beneficial.

But Magistrates and Prosecutors, who are as a rule legally trained, also hold very crucial discretionary powers in the criminal justice process. As mentioned before, "the best interests of the child", a primary consideration in terms of Article 3 and Article 4 of the CRC and the African Charter respectively, should be given its direct normative effect on discretionary decision making in the child justice process. But this is not happening. It is therefore submitted that the review should include the law curriculum of the University of Namibia, with the aim to decide on the merits of a child justice module, which beyond a legalistic perspective of authority, power, rights and duties, integrates the professional perspectives of the various groups participating in the child justice process, and gives an outlook on how internationally systems live up to the CRC.

Human Resources

A huge problem for the professional dealing with children in conflict with the law is the lack of human resources. While this is not an official figure, it has been said that the about forty or so Social Workers currently on the payroll of MGECW fill just half of the social worker positions. Ten out of thirteen MPYC in the various regions under the purview of the MYNSSC do not have any social worker. The fact that only a fraction of approved and budgeted social worker positions is filled is particularly problematic. Social Workers hold that the number of graduates from UNAM is not enough to serve the demand for social workers. This has been attributed to low salaries for social workers in the public service. This issue should be analysed and addressed as the case may be.

6
Recommendations

Desirable Actions and Objectives

The findings suggest few, almost obvious actions at strategic level, which are easy to formulate into distinct statements, but whose objectives are difficult to achieve against the impression of past experience. Their realisation requires political will. Political will as an outcome depends on factors which are difficult to grasp lest to influence. These actions are however important, and to the extent that they are mentioned hereafter they serve as a reminder as to what needs to be done in the bigger picture of things for Namibia to become compliant with its obligations under the CRC:

- *"Urgently update and adopt the pending Child Care and Protection Bill and Child Justice Bill."*[111]
- Create a child justice data base, gathering data and information pertaining to the Juvenile Justice Indicators (nos. 1 - 15).

Recommendations

Actionable recommendations should be understood as a function of the knowledge gathered and the insights gained on the basis of this study. They address gaps, and direct action at the level of extant motivation for change and improvement. The Ministry of Gender Equality and Child Welfare, as commissioning entity, under the aegis of the Minister, is the key driver. Recommendations hereafter address four categories, namely (A) specialised training of criminal justice professionals; (B) diversion; (C) police custody of child offenders; and (D) human resources:

A. Specialised training of criminal justice professionals:
    1. Compilation of a participatory child justice training manual for Juvenile Justice Forums (JJF) at district level, containing a standard agenda for JJF meetings, and addressing individual but also interdependent roles and functions of Police Officers, Social Workers, Prosecutors, and Magistrates;
    2. Child Justice Training for JJFs at district level.

[111] UN Committee on the Rights of the Child. 2012, p. 20.

3. Assessment of the law curriculum of UNAM, the criminal justice curriculum of PoN, as well as the curricula of criminal justice training institutions (NamPol and NCS training colleges), aiming at a decision as to the desirability/need of the introduction of a module on "Child Justice".

B. Diversion:

1. Risks and needs profile of accused children through analysis of a representative sample of matched court and social worker files with the aim to eventually determine an adequate set of risks and needs oriented intervention strategies for diversion beyond LSP and PTCS;
2. Extraction of data pertaining to the criminal cases of children from a defined sample of Magistrates Courts as well as the compilation and analysis of disaggregated statistics on all aspects of the criminal justice process with the aim to map incidence and prevalence of (a) child offending, and (b) geographical pattern of criminal justice decisions;

C. Police custody (child offenders):

1. Assessment of social workers' findings (2012) from all regions regarding their regular inquiries into the conditions of detention of children in police cells;
2. Implementing a monthly reporting mechanism for social workers regarding observed incidents of non-separation of child and adult detainees in police custody;
3. Submission of monthly reports on observed incidents of non-separation of child and adult detainees in police custody via the Minister of Gender Equality and Child Welfare to the Inspector General of the Namibian Police, the Permanent Secretary of the Ministry of Justice, as well as the Ombudsman;
4. Consultative meeting/s between the Minister of Gender Equality and Child Welfare and the Inspector General of the Namibian Police to deliberate on ways how dedicated facilities for the exclusive detention of accused children, as well as the ancillary human resources, may be made available in short time ("Naraville model");

D. Human resources:

1. Further and intensified efforts to fill vacant social worker positions;
2. Incentives and encouragement for social work study programmes at UNAM.

Conclusion

The recommendations provided here above have been formulated without ignoring the prevailing data and information gap.

Yet, it is time to act now, and the recommendations are surely commensurate with the 2012 recommendations of the committee on the Rights of the Child, which have been provided here partially in Annex III. This law reform is necessary not at last because of the prevailing interpretation of CRC and African Charter by magistracy and prosecution, i.e. that the CRC is not self-executing. In order to ensure that the CRC and the African Charter become

normatively available, Namibia needs a Child Care and Protection Act, as well as a Child Justice Act. When it comes to law reform, however, it should be kept in mind that the most ideal laws cannot solve the problem of child crime, since it is the socio-economic and political conditions/environment which always play a significant role in the commission of crimes. Those factors can only be changed through medium to long term interventions at societal level.

It is nevertheless submitted that apart from short- and mid-term interventions as recommended, legislating for child care and protection (CCPA), and the envisaged coverage of all substantially vulnerable children under the umbrella of the child welfare grant system, in conjunction with legislating for diversion and the broad application of restorative justice principles (DCJB), will have a marked impact on the degree of compliance of the Namibian child justice system with the minimum international standards and principles.

The recommendations made here above should be able to alleviate the plight of children caught in the mashes of the criminal justice system in the meantime.

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The United Nations **Guidelines for Action** on Children in the Criminal Justice System

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Interviews/ Focus Group Discussions (Social Workers)

Windhoek, Khomasdal, 17 October 2012

Windhoek, Eros, 6 November 2012

Annex I

Questionnaires:

- Magistrates
- Prosecutors
- Social Workers
- Station Commanders (Namibian Police)
- Officers in Charge (Namibian Correctional Service)

Questionnaire: Magistrates

Name of Court: .....

Your Post: .....

Note: Please feel free to use extra sheets of paper if you require more space to answer the questions

PART A

Instructions:

The following questions pertain to ***demographic/background***.

1. **Current age**: _____
2. **Gender**: ❍ female ❍ male
3. **Major area of study**:
   Please specify (e.g., law, criminal justice, social work,…) _____
4. **How many years of post-secondary school (college, university, etc.) have you completed?**

⊗✍

① ② ③ ④ ⑤+

PART B

Instructions: The following questions pertain to some underlying criminological aspects.

1. Generally speaking, do you think that when a crime occurs:

	1) No	2) Mostly no	3) Mostly yes	4) Yes
a) The victim is at fault	❍	❍	❍	❍
b) The victim is at least partially at fault	❍	❍	❍	❍
c) Situational factors lead to the criminal act	❍	❍	❍	❍

2. How do you feel about the statement that: "every person is responsible for his or her own happiness"?

- ❍ very true
- ❍ true
- ❍ kind of true
- ❍ not quite true
- ❍ not true
- ❍ not true at all

3. Do you believe (do you think or would you say) that generally speaking the number of crimes committed per year has been rising in Namibia?

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- ❍ No (**Go immediately to question 5**)
- ❍ Don't know (**Go immediately to PART C**)
- ❍ Yes

4. If you answered "yes" to question 3, do you think this increase in crime can be observed (mark only one circle)

- ❍ Ever since Namibian Independence in 1990
- ❍ Only since 2000
- ❍ Definitively since 2005
- ❍ Following the last Presidential elections
- ❍ Only in the last year

5. Regards question 3, identify two **sources of your knowledge or whatever contributed to your opinion.**

- ❍ Media (general)
- ❍ Newspaper
- ❍ Radio / TV
- ❍ Official Crime Statistics
- ❍ Professional experience (e.g. workload as prosecutor, magistrate, social worker, police)
- ❍ Other (name): _____

PART C

Instructions: The following series of questions pertain to your opinion regards the causes of crime, and the purposes of punishment.

1. Commonly the purposes of punishment are given as deterrence, rehabilitation, and retribution. In the following tell us how important the various purposes are for you:

Please choose one answer for each line: ⊗✍

	1)Extremely important	2)Somewhat Important	3)Somewhat **un**important	4)Not important at all
a) Deterrence (punishment of offender used to impress potential offenders, to refrain from crimes, also called prevention)	❍	❍	❍	❍
b) Rehabilitation (improvement of and persuading the offender to become a law-abiding citizen)	❍	❍	❍	❍
c) Retribution (repayment, vengeance)	❍	❍	❍	❍

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2. **Which of the purposes of punishment (**deterrence, rehabilitation, retribution**), is to you**
   a) the **most** important purpose: _____
   b) the **least** important purpose:_____

3. **Suppose the ***one*** could only be achieved at the expense of the ***other*** or ***vice versa*****, what would be more important to you?**
   - ❍ Crime reduction, or
   - ❍ Punishment & retribution

4. **Crime is a great social problem, and about everybody has some ideas regarding the factors contributing to crime. To what degree do you 'agree' or 'not agree' with the following statements.** ⏩ *Please choose one answer for each line:* ⊗✍

	1)Do not agree	2)Somewhat disagrees	3)Somewhat agree	4)Agree
a) Unemployment/lack of opportunities and high crime rates go together	❍	❍	❍	❍
b) Inequalities in our society cause disadvantaged people to commit crime	❍	❍	❍	❍
c) Society has nothing to do with the criminal act, it is all about individual choices, individuals are free to decide pro or contra the crime	❍	❍	❍	❍
d) The inefficiency of the Criminal Justice System (Police, Judiciary, Corrections) contributes to high crime rates	❍	❍	❍	❍
e) Too lenient punishment invites offenders and potential offenders to commit more crimes	❍	❍	❍	❍
f) A general loss of values, believes, and in particular respect for the other person, leads to much of the crime committed in Namibia	❍	❍	❍	❍
g) Lack of control by others causes persons in positions of power and/or authority (politicians, businessmen) to commit crime	❍	❍	❍	❍
h) There is not one single factor which might count for all crime, various factors may come together with any crime	❍	❍	❍	❍

5. If you were asked to explain crime in Namibia, which of the factors (a - h) given in Question 4 above would you mention ⏩ *Please choose one letter for each line. Example:* c) ✍
   a) in the **first** place: _____
   b) the **last** place:_____

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PART D

Instructions: Since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994), in Namibia evolved a marked tendency of diverting as many children/juveniles as possible away from the formal criminal justice system. The following questions pertain to your experience and knowledge of the reality on the ground in this regard.

1. Do you feel fully conversant with the obligations of Namibia under the Convention of the Right of the Child and other international instruments to which Namibia has become signatory after Independence in 1990?
   [ ] YES [ ] NO [ ] TO SOME EXTENT

2. Have you ever received any special training in how to professionally handle cases with child offenders (juveniles)?
   [ ] YES [ ] NO

3. If you have answered question 2 above with "YES", would you require further regular training and workshops in this regard?
   [ ] YES [ ] NO

4. Are you aware of the history and development of Juvenile Justice in Namibia since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994)?
   [ ] YES [ ] NO

5. Have you ever had the opportunity to study the **'Draft Child/Juvenile Justice Bill'** (2002/3)?
   [ ] YES [ ] NO

6. Are you a member in a local Child Justice Forum, consisting of various Criminal Justice professionals and/or stakeholders (Magistrates, Prosecutors, Social Workers, Police and/or, Correctional Service members, representatives of diversion agencies)?
   [ ] YES [ ] NO

7. If your answer to question 6 has been "NO", would you join such local forum if you were invited to do so?
   [ ] YES [ ] NO
   Please, provide a brief reason for your answer:
   _____

8. Do you request as a matter of routine a pre-sentence report regarding offender personality, personal circumstances and background of the offence by a social worker?
   [ ] YES [ ] NO [ ] SOMETIMES

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9. If your answer to Question 8 has been "SOMETIMES", what are the reasons for not requesting such pre-sentence report?

   [ ] non-availability of competent personnel
   [ ] Other (please, specify):
   _____

10. Other than the Draft Juvenile Justice Bill (supra question 5), the CPA (Act 51 of 1977) does not hold a magistrate to ascertain from the prosecutor whether the matter can be diverted. While no such legislated option exists currently, do you ever consider at or after first appearance of the child, suggesting to the prosecution conditional withdrawal of charges against (that is divert) a child offender? Please, explain briefly, why or why not:

    _____

    _____

    _____

11. If the prosecution does not divert the child/juvenile, do you usually consider:
    a. Bail?
       [ ] YES [ ] NO

    b. Placing the child/juvenile in a place of safety, other than police custody, in lieu of release on bail or detention in custody in terms of section 71 CPA,
       [ ] YES [ ] NO

    c. Alternatively, release the child or juvenile on warning in the care of the person in whose custody he is in terms of section 72 (1) (b) CPA?
       [ ] YES [ ] NO

12. If your answer to question **11 b.** is "YES", go to question 13 immediately, if it is **"NO"**, to what degree do you 'agree' or 'not agree' with the following reasons:

	Do not agree	Somewhat disagree	Somewhat agree	Agree
a) There is no place of safety available in the vicinity of my court	❍	❍	❍	❍
b) The places of safety have mostly no vacancies when the need for placement of a child/youth under the CPA arises	❍	❍	❍	❍
c) The places of safety which are available are mostly not suitable for the child/youth in question.	❍	❍	❍	❍
d) Other reasons (specify): _____	❍	❍	❍	❍

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13. If your answer to question **11 c.** is "YES", go to question 14 immediately, if it is **"NO"**, to what degree do you 'agree' or 'not agree' with the following reasons:

	Do not agree	Somewhat disagree	Somewhat agree	Agree
a) In such cases the child/youth is usually not currently in the custody of parents, guardians, or appropriate adults, or they cannot be found	❍	❍	❍	❍
b) In such cases there exists usually the risk that the child/youth may be a danger to another person or himself	❍	❍	❍	❍
c) In such cases there exists usually the likelihood that if the child/youth is convicted of the offence, a substantial sentence of imprisonment will be imposed	❍	❍	❍	❍
d) Other reasons (specify): _____	❍	❍	❍	❍

14. When sentencing a child/youth, do you
    a. Ever impose a sentence of imprisonment in respect of a youth under the age of fourteen? [ ] YES [ ] NO
    b. Ever impose a fine? [ ] YES [ ] NO
    c. Make widely use of the various options for community-based provided for in section 297 CPA? [ ] YES [ ] NO
    d. Make widely use of the various options for restorative justice sentences provided for in section 297 CPA? [ ] YES [ ] NO

15. If your answer to question **14 a.** is "YES", for which offences, which would you consider as compelling reasons for imposing such sentence of imprisonment?

    Please, explain: _____

    _____

16. If your answer to question **14 b.** is "YES", tell us some of the underlying reasons for your decision.

    Please, explain: _____

    _____

17. If your answer to question **14 c. and/or 14 d.** is "YES", for which offences will you generally **not** consider community-based and / or restorative justice sentences?

    _____

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18. If your answer to question **14 c. and/or 14 d.** is "NO", tell us some of the underlying reasons for your decision.

_____

_____

19. If your answer to question **14 c. and/or 14 d.** is "YES", do you consider community-based and / or restorative justice sentences for
    a. Theft? [ ] YES [ ] NO Cut-off amount: N$_____
    b. Theft of a motor vehicle? [ ] YES [ ] NO
    c. Housebreaking? [ ] YES [ ] NO Cut-off amount: N$_____
    d. Malicious damage to property? [ ] YES [ ] NO Cut-off amount: N$_____
    e. Possession of Marihuana? [ ] YES [ ] NO

20. If your answer to question **14 c. and/or 14 d.** is "YES", are there circumstances under which you request guidance from senior colleagues with regard to the appropriateness of community-based and / or restorative justice sentences?
    [ ] YES [ ] NO

21. Irrespective your answer to the previous questions, how important do you deem the following considerations for a judicial decision whether or not to impose community-based and / or restorative justice sentences instead of a custodial sentence or a fine:

Please choose one answer for each line: ⊗✍

	Unimportant	somewhat unimportant	somewhat important	important
a) The personal circumstances of the child	❍	❍	❍	❍
b) The risk of re-offending	❍	❍	❍	❍
c) The risk of harm in case of re-offending	❍	❍	❍	❍
d) The nature of the offence which the child is alleged to have committed	❍	❍	❍	❍
e) The publicity the case has received in the public	❍	❍	❍	❍
f) Other reasons (specify): _____	❍	❍	❍	❍

22. Do you think that it is in the best interest of young offenders to desist as much as possible from custodial sentences?
    [ ] YES [ ] NO

23. Do you experience that pre-sentence reports by competent professionals are helpful regards your decision whether or not to impose community-based and / or restorative justice sentences?
    [ ] YES [ ] NO

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Please give reasons for your answer [Q23 cont.]:

_____

_____

_____

24. Would you agree saying that offending of a child/juvenile may be an indicator of the child being in need of care in terms of the Children's Act?
[ ] YES [ ] NO

25. Do you often refer a child to a children's court inquiry?
[ ] YES [ ] NO

26. Are you acquainted with the latest version of the Child Care and Protection Bill (CCPB)?
[ ] YES [ ] NO

27. Are the following sentencing options under section 297 CPA are available in your geographical area:

a.	Life-skills programmes	[ ] YES [ ] NO
b.	Community service	[ ] YES [ ] NO
c.	Family group conference	[ ] YES [ ] NO
d.	Victim-offender mediation	[ ] YES [ ] NO

28. What options do you use as conditions for postponement or suspending sentencing in terms of section 297 CPA (life-skill programme; community service, apology, restitution, compensation to the victim, or something else)?

_____

29. Do you experience at times problems determining the age of an alleged juvenile offender?
[ ] YES [ ] NO

30. If your answer to question 29 is "YES", please explain what you do to solve this problem?

_____

_____

31. Do you generally try to speed-up cases involving children?
[ ] YES [ ] NO

For questions and queries, contact: Dr. Stefan Schulz, 061 207-2318; 0812 560 820 (cell); schulz@polytechnic.edu.na

32. Do you try in particular to speed-up cases involving children when they are in detention?
[ ] YES [ ] NO

33. How often have you visited police cells to see how many children are in detention, as well as to assess the situation of their detention in such police cells during the last 12 months?
[ ] NEVER [ ] ONCE [ ] TWICE [ ] MORE THAN TWICE [ ] MONTHLY

34. If on visit of police cells you realise that children are kept in custody together with adults, how do you deal with that situation?

_____

_____

35. If your answer to question 33 is "NEVER", what might be of assistance to you in future in this regard?

_____

_____

36. Do you know or inquire how long each child appearing in your court has spent in pre-trial detention?
[ ] YES [ ] NO

37. If your answer to question 36 has been "YES", do you take the period of time a child has spent in pre-trial detention into account when making a decision concerning the child?
[ ] YES [ ] NO

38. Do you think that the current circumstances under which your court has to operate with regard to children/juveniles in conflict with the law meets the requirements under the Convention of the Right of the Child (CRC)?
[ ] YES [ ] NO

39. If your answer to question 38 has been "NO", which structural or other changes in your working environment would you recommend with the aim to become able to meet the requirements of the CRC?

_____

For questions and queries, contact: Dr. Stefan Schulz, 061 207-2318; 0812 560 820 (cell); schulz@polytechnic.edu.na

40. Do you think that the adoption of the Child/Juvenile Justice Bill as an Act of Parliament (see question 5 above), with the obligation of the establishment of a service delivery system, could be helpful in meeting the required standards under the CRC?
    [ ] YES [ ] NO

41. Would you like to receive regular communication via e-mail regards the outcome of the survey, texts and documents on child justice nationally, regionally, and globally?
    [ ] YES [ ] NO
42. If your answer to question **41** has been "YES", please send your request, either with a note, or just by quoting **"REQUEST: Child Justice Information"** via e-mail to

    Dr. Stefan Schulz
    Department of Criminal Justice and Legal Studies
    schulz@polytechnic.edu.na

THANK YOU VERY MUCH FOR YOUR SUPPORT!

For questions and queries, contact: Dr. Stefan Schulz, 061 207-2318; 0812 560 820 (cell); schulz@polytechnic.edu.na

Questionnaire: Prosecutors

Name of Court: .....

Your Post: .....

Note: Please feel free to use extra sheets of paper if you require more space to answer the questions

PART A

Instructions:

The following questions pertain to ***demographic/background.*** Please choose the answer that best characterizes you. Only choose one response per question.

1. **Current age**: _____
2. **Gender**: ❍ female ❍ male
3. **Major area of study**:
   Please specify (e.g., law, criminal justice, social work,…) _____
4. **How many years of post-secondary school (college, university, etc.) have you completed?**
   ⊗✍
   ① ② ③ ④ ⑤+

PART B

Instructions: The following questions pertain to some underlying criminological aspects. We urge you to also answer these questions because responses have to be correlated to later survey questions.

1. Generally speaking, do you think that when a crime occurs:

	1) No	2) Mostly no	3) Mostly yes	4) Yes
a) The victim is at fault	❍	❍	❍	❍
b) The victim is at least partially at fault	❍	❍	❍	❍
c) Situational factors lead to the criminal act	❍	❍	❍	❍

2. How do you feel about the statement that: "every person is responsible for his or her own happiness"?

- ❍ very true
- ❍ true
- ❍ kind of true
- ❍ not quite true
- ❍ not true
- ❍ not true at all

3. Do you believe (do you think or would you say) that generally speaking the number of crimes committed per year has been rising in Namibia?

- ❍ No (**Go immediately to question 5**)
- ❍ Don't know (**Go immediately to PART C**)
- ❍ Yes

4. If you answered "yes" to question 3, do you think this increase in crime can be observed (mark only one circle)

- ❍ Ever since Namibian Independence in 1990
- ❍ Only since 2000
- ❍ Definitively since 2005
- ❍ Following the last Presidential elections
- ❍ Only in the last year

5. If you answered "yes" to question 3, identify two **sources of your knowledge or whatever contributed to your opinion.**

- ❍ Media (general)
- ❍ Newspaper
- ❍ Radio / TV
- ❍ Official Crime Statistics
- ❍ Professional experience (e.g. case register, workload as prosecutor, magistrate, social worker, police)
- ❍ Other (name): _____

PART C

Instructions: The following series of questions pertain to your opinion regards the causes of crime, and the purposes of punishment.

1. Commonly the purposes of punishment are given as **deterrence, rehabilitation**, and **retribution**. In the following tell us how important the various purposes are for you:

Please choose one answer for each line: ⊗✍

	1)Extremely important	2)Somewhat Important	3)Somewhat **un**important	4)Not important at all
a) Deterrence (punishment of offender used to impress potential offenders, to refrain from crimes, also called prevention)	❍	❍	❍	❍
b) Rehabilitation (improvement of and persuading the offender to become a law-abiding citizen)	❍	❍	❍	❍
c) Retribution (repayment, vengeance)	❍	❍	❍	❍

2. **Which of the purposes of punishment (**deterrence, rehabilitation, retribution**), is to you**
   a) the **MOST** important purpose: _____
   b) the **LEAST** important purpose:_____

3. **Suppose the <u>one could only be achieved at the expense of the other and vice versa</u>, what would be more important to you?**
   - ❍ Crime reduction, or
   - ❍ Punishment & retribution

4. **Crime is a great social problem, and about everybody has some ideas regarding the factors contributing to crime. To what degree do you 'agree' or 'not agree' with the following statements.** *Please choose one answer for each line:* ⊗✍

	1)Do not agree	2)Somewhat disagrees	3)Somewhat agree	4)Agree
a) Unemployment/lack of opportunities and high crime rates go together	❍	❍	❍	❍
b) Inequalities in our society cause disadvantaged people to commit crime	❍	❍	❍	❍
c) Society has nothing to do with the criminal act, it is all about individual choices, individuals are free to decide pro or contra the crime	❍	❍	❍	❍
d) The inefficiency of the Criminal Justice System (Police, Judiciary, Corrections) contributes to high crime rates	❍	❍	❍	❍
e) Too lenient punishment invites offenders and potential offenders to commit more crimes	❍	❍	❍	❍
f) A general loss of values, believes, and in particular respect for the other person, leads to much of the crime committed in Namibia	❍	❍	❍	❍
g) Lack of control by others causes persons in positions of power and/or authority (politicians, businessmen) to commit crime	❍	❍	❍	❍
h) There is not one single factor which might count for all crime, various factors may come together with any crime	❍	❍	❍	❍

5. If you were asked to explain crime in Namibia, which of the factors (a - h) given in Question 4 above would you mention *Please choose one letter for each line. Example:* c) ✍

a) in the **FIRST** place: _____

b) the **LAST** place:_____

PART D

Instructions: Since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994), in Namibia evolved a marked tendency of diverting as many children/juveniles as possible away from the formal criminal justice system. The following questions pertain to your experience and knowledge of the reality on the ground in this regard.

1. Do you feel fully conversant with the obligations of Namibia under the Convention of the Right of the Child and other international instruments to which Namibia has become signatory after Independence in 1990?
   [ ] YES [ ] NO [ ] TO SOME EXTENT

2. Have you ever received any special training in how to professionally handle cases with child offenders (juveniles)?
   [ ] YES [ ] NO

3. If you have answered question 2 above with "YES", would you require further regular training and workshops in this regard?
   [ ] YES [ ] NO

4. Are you aware of the history and development of Juvenile Justice in Namibia since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994)?
   [ ] YES [ ] NO

5. Have you ever had the opportunity to study the 'Draft Juvenile Justice Bill' (2002/3)?
   [ ] YES [ ] NO

6. Are you a member of a local Child Justice Forum, consisting of various Criminal Justice stakeholders (Magistrates, Prosecutors, Social Workers, Police and/or, Correctional Service members, representatives of diversion agencies)?
   [ ] YES [ ] NO

7. If your answer to question 4 has been "NO", would you join such local forum if you were invited to do so?
   [ ] YES [ ] NO
   Please, provide a brief reason for your answer:
   _____

8. Are children "screened" regarding the potential diversion before their first court appearance?
   [ ] YES [ ] NO [ ] SOMETIMES

9. Is the screening done by competent personnel, like social workers?
   [ ] YES [ ] NO

10. If your answer to Question 8 has been "sometimes", what are the circumstances under which such screening does not take place?
    [ ] non-availability of competent personnel; [ ] screening would unnecessarily delay the process
    [ ] Other (please, specify):
    _____

11. Under which circumstances will you conditionally withdraw a charge against (that is: divert) a child offender?

    _____

    _____

    _____

12. How important are the following consideration for your decision whether or not to divert:

Please choose one answer for each line: ⊗✍

	unimportant	somewhat unimportant	somewhat important	important
a) The personal circumstances of the child	❍	❍	❍	❍
b) The risk of **re-offending**	❍	❍	❍	❍
c) The risk of **harm** in case of re-offending	❍	❍	❍	❍
d) The nature of the offence which the child is alleged to have committed	❍	❍	❍	❍
e) The publicity the case has received in the public	❍	❍	❍	❍
f) Other reasons (specify): _____	❍	❍	❍	❍

13. If you take the personal circumstances of the child into consideration when deciding whether or not to divert, name some few circumstances which according to you are:
    a. **Favourable** regards diversion?
       Specify:_____
       _____

    b. **Non-favourable** regards diversion?

Specify:_____
_____

14. If your answer to question 12 is (or includes) "**The nature of the offence ...**", for which offences will you generally **not** consider diversion?

_____

15. Do you consider diversion for
    a. Theft? [ ] YES [ ] NO Cut-off amount: N$_____
    b. Theft of a motor vehicle? [ ] YES [ ] NO Cut-off amount: N$_____
    c. Housebreaking? [ ] YES [ ] NO Cut-off amount: N$_____
    d. Malicious damage to property? [ ] YES [ ] NO Cut-off amount: N$_____
    e. Possession of Marihuana? [ ] YES [ ] NO

16. Do you make the decision whether or not to divert yourself, or do you receive instructions?
    [ ] YES [ ] NO, I receive or ask for instructions

17. If your answer to question 16 is "NO", who assists, or instructs you?

_____

18. If your answer to question 16 is "YES", are there circumstances under which you request guidance from senior colleagues?
    [ ] YES [ ] NO

19. Do you think that diversion of young offenders away from the formal Criminal Justice System is generally speaking useful?
    [ ] YES [ ] NO

20. Do you experience that screening by competent professionals is helpful regards your decision whether or not to divert?
    [ ] YES [ ] NO
    Please give reasons for your answer:

_____

_____

_____

21. Would you agree saying that offending of a child/juvenile may be an indicator of the child's need of care and protection?
    [ ] YES [ ] NO

22. Have you ever referred a child to a children's court inquiry?
    [ ] YES [ ] NO

23. Do you know how to refer a child to a children's court inquiry?
    [ ] YES [ ] NO

24. Are you acquainted with the latest version of the Child Care and Protection Bill (CCPB)?
    [ ] YES [ ] NO

25. Which of the following diversion options are available in your geographical area:
    a. Life-skills programmes [ ] YES [ ] NO
    b. Community service [ ] YES [ ] NO
    c. Family group conference [ ] YES [ ] NO
    d. Victim-offender mediation [ ] YES [ ] NO

26. What diversion options do you divert children to (life-skill programme; community service, apology, restitution, compensation to the victim, or something else)?

    _____

27. If you do not divert, do you
    a. Use/suggest bail in respect of children? [ ] YES [ ] NO
    b. Ever take into considerations the child's ability to pay the bail? [ ] YES [ ] NO
    c. Do you usually recommend releasing the child into the custody of his/her parents/guardians or another adult? [ ] YES [ ] NO

28. If your answer to question **27 a**. has been "YES", how do you determine the amount of bail which you propose to the court?

    _____

    _____

29. If your answer to question **27 c.** has been "YES", please explain under which circumstances you will choose this option?

    _____
    _____

30. Do you experience at times problems determining the age of an alleged juvenile offender?
    [ ] YES [ ] NO

31. If your answer to question **30** is "YES", please explain what you do to solve this problem?

_____

_____

32. Do you generally try to speed-up cases involving children?
    [ ] YES [ ] NO

33. Do you try in particular to speed-up cases involving children when they are in detention?
    [ ] YES [ ] NO

34. How often have you visited police cells to see how many children are in detention, as well as to assess the situation of their detention in such police cells during the last 12 months?
    [ ] NEVER [ ] ONCE [ ] TWICE [ ] MORE THAN TWICE

35. If your answer to question **34** is "NEVER", what might be of assistance to you in future in this regard?

    _____

    _____

36. Do you know or inquire how long each child appearing in your court has spent in pre-trial detention?
    [ ] YES [ ] NO

37. If your answer to question **36** has been "YES", do you take the period of time a child has spent in pre-trial detention into account when making a decision concerning the child?
    [ ] YES [ ] NO

38. Do you think that the current circumstances, under which prosecution and court have to operate with regard to children/juveniles in conflict with the law, meet the requirements under the Convention of the Right of the Child (CRC)?
    [ ] YES [ ] NO

39. If your answer to question **38** has been "NO", which structural (or other) changes in your working environment would you recommend with the aim to become able to meet the requirements of the CRC?

    _____

    _____

40. Do you think that the adoption of the Juvenile Justice Bill as an Act of Parliament (see question 5 above), with the obligation of the establishment of a service delivery system, would be helpful in this regard?
[ ] YES [ ] NO

41. Would you like to receive regular communication via e-mail regards the outcome of the survey, texts and documents on child justice nationally, regionally, and globally?
[ ] YES [ ] NO
42. If your answer to question **41** has been "YES", please send your request, either with a note, or just by quoting **"REQUEST: Child Justice Information"** via e-mail to

Dr. Stefan Schulz
Department of Criminal Justice and Legal Studies
schulz@polytechnic.edu.na

THANK YOU VERY MUCH FOR YOUR SUPPORT!

Questionnaire: Social Workers

Name/s of Court/s served by you: .....

Your Post: .....

Note: Please feel free to use extra sheets of paper if you require more space to answer the questions

PART A

Instructions:

The following questions pertain to ***demographic/background.*** Please choose the answer that best characterizes you. Only choose one response per question.

1. **Current age**: _____
2. **Gender**: ❍ female ❍ male
3. **Major area of study**:
   Please specify (e.g., law, criminal justice, social work,…) _____
4. **How many years of post-secondary school (college, university, etc.) have you completed?**
   ⊗✍
   ① ② ③ ④ ⑤+

PART B

Instructions: The following questions pertain to some underlying criminological aspects.

1. Generally speaking, do you think that when a crime occurs:

	1) No	2) Mostly no	3) Mostly yes	4) Yes
a) The victim is at fault	❍	❍	❍	❍
b) The victim is at least partially at fault	❍	❍	❍	❍
c) Situational factors lead to the criminal act	❍	❍	❍	❍

2. How do you feel about the statement that: "every person is responsible for his or her own happiness"?

- ❍ very true
- ❍ true
- ❍ kind of true
- ❍ not quite true
- ❍ not true
- ❍ not true at all

3. Do you believe (do you think or would you say) that generally speaking the number of crimes committed per year has been rising in Namibia?

- ❍ No (**Go immediately to question 5**)
- ❍ Don't know (**Go immediately to PART C**)
- ❍ Yes

4. If you answered "yes" to question 3, do you think this increase in crime can be observed (mark only one circle)

- ❍ Ever since Namibian Independence in 1990
- ❍ Only since 2000
- ❍ Definitively since 2005
- ❍ Following the last Presidential elections
- ❍ Only in the last year

5. Whether you answered "yes" or "no" to question 3, identify two **sources of your knowledge or whatever contributed to your opinion.**

- ❍ Media (general)
- ❍ Newspaper
- ❍ Radio / TV
- ❍ Official Crime Statistics
- ❍ Professional experience (e.g. workload as prosecutor, magistrate, social worker, police)
- ❍ Other (name): _____

PART C

Instructions: The following series of questions pertain to your opinion regards the causes of crime, and the purposes of punishment.

1. Commonly the purposes of punishment are given as deterrence, rehabilitation, and retribution. In the following tell us how important the various purposes are for you:

Please choose one answer for each line: ⊗✍

	1)Extremely important	2)Somewhat Important	3)Somewhat **un**important	4)Not important at all
a) Deterrence (punishment of offender used to impress potential offenders, to refrain from crimes, also called prevention)	❍	❍	❍	❍
b) Rehabilitation (improvement of and persuading the offender to become a law-abiding citizen)	❍	❍	❍	❍
c) Retribution (repayment, vengeance)	❍	❍	❍	❍

2. Which of the purposes of punishment (deterrence, rehabilitation, retribution**), is to you**

a) the **most** important purpose: _____

b) the **least** important purpose:_____

3. Suppose the *one* could only be achieved at the expense of the *other*, what would be more important to you?

❍ Crime reduction

❍ Punishment and retribution

4. Crime is a great social problem, and about everybody has some ideas regarding the factors contributing to crime. To what degree do you 'agree' or 'not agree' with the following statements. ⏩ *Please choose one answer for each line:* ⊗✍

	1)Do not agree	2)Somewhat disagrees	3)Somewhat agree	4)Agree
a) Unemployment/lack of opportunities and high crime rates go together	❍	❍	❍	❍
b) Inequalities in our society cause disadvantaged people to commit crime	❍	❍	❍	❍
c) Society has nothing to do with the criminal act, it is all about individual choices, individuals are free to decide pro or contra the crime	❍	❍	❍	❍
d) The inefficiency of the Criminal Justice System (Police, Judiciary, Corrections) contributes to high crime rates	❍	❍	❍	❍
e) Too lenient punishment invites offenders and potential offenders to commit more crimes	❍	❍	❍	❍
f) A general loss of values, believes, and in particular respect for the other person, leads to much of the crime committed in Namibia	❍	❍	❍	❍
g) Lack of control by others causes persons in positions of power and/or authority (politicians, businessmen) to commit crime	❍	❍	❍	❍
h) There is not one single factor which might count for all crime, various factors may come together with any crime	❍	❍	❍	❍

5. If you were asked to explain crime in Namibia, which of the factors (a - h) given in Question 4 above would you mention ⏩ *Please choose one letter for each line. Example:* c) ✍

a) in the **first** place: _____

b) the **last** place:_____

PART D

Instructions: Since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994), in Namibia evolved a marked tendency of diverting as many children/juveniles as possible away from the formal criminal justice system. The following questions pertain to your experience and knowledge of the reality on the ground in this regard.

1. Do you feel fully conversant with the obligations of Namibia under the Convention of the Right of the Child and other international instruments to which Namibia has become signatory after Independence in 1990?
   [ ] YES [ ] NO [ ] TO SOME EXTENT

2. Have you ever received any special training in how to professionally handle cases with child offenders (juveniles)?
   [ ] YES [ ] NO

3. If you have answered question 2 above with "YES", would you require further regular training and workshops in this regard?
   [ ] YES [ ] NO

4. Are you aware of the history and development of Juvenile Justice in Namibia since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994)?
   [ ] YES [ ] NO

5. Have you ever had the opportunity to study the **'Draft Juvenile Justice Bill'** (2002/3)?
   [ ] YES [ ] NO

6. Are you a member in a local Child Justice Forum, consisting of various Criminal Justice professionals and/or stakeholders (Magistrates, Prosecutors, Social Workers, Police and/or, Correctional Service members, representatives of diversion agencies)?
   [ ] YES [ ] NO

7. If your answer to question 6 has been **"NO"**, would you join such local forum if you were invited to do so?
   [ ] YES [ ] NO
   Please, provide a brief reason for your answer:
   _____

8. Do magistrates as a matter of routine request a pre-sentence report regarding personality, personal circumstances of the child offender, and background of the offence by a social worker?
   [ ] YES [ ] NO [ ] SOMETIMES

9. If your answer to Question 8 has been "No" or "SOMETIMES", can you name cases in which such pre-sentence report was not requested?

_____

_____

10. Do you usually consider in your recommendation to the prosecutor after screening a child for the purposes of a decision on diversion:
    a. Placing the child/juvenile in a place of safety other than a police cell, in lieu of release on bail or detention in custody in terms of section 71 CPA,

       [ ] YES [ ] NO

    b. Alternatively, release the child or juvenile on warning in the care of the person in whose custody he is in terms of section 72 (1) (b) CPA?

       [ ] YES [ ] NO

11. If your answer to question **10 a.** is "NO", to what degree do you 'agree' or 'not agree' with the following reasons:

	Do not agree	Somewhat disagree	Somewhat agree	Agree
a) There is no place of safety available in the vicinity of my court	❍	❍	❍	❍
b) The places of safety have mostly no vacancies when the need for placement of a child under the CPA arises	❍	❍	❍	❍
c) The places of safety which are available are mostly not suitable for the child in question.	❍	❍	❍	❍
d) Other reasons (specify): _____	❍	❍	❍	❍

12. If your answer to question **10 b**. is "NO", to what degree do you 'agree' or 'not agree' with the following reasons:

	Do not agree	Somewhat disagree	Somewhat agree	Agree
a) In such cases the child is usually not currently in the custody of parents, guardians, or appropriate adults, or they cannot be found	❍	❍	❍	❍
b) In such cases there exists usually the risk that the child may be a danger to another person or himself	❍	❍	❍	❍
c) In such cases there exists usually the likelihood that if the child is convicted of the offence, a substantial sentence of imprisonment will be imposed	❍	❍	❍	❍
d) Other reasons (specify): _____	❍	❍	❍	❍

13. How important are the following considerations for your recommendation whether or not to divert instead of pre-trial detention:

Please choose one answer for each line: ⊗✍

	Unimportant	somewhat unimportant	somewhat important	important
a) The personal circumstances of the child	❍	❍	❍	❍
b) The risk of re-offending in case of diversion	❍	❍	❍	❍
c) The risk of harm in case of re-offending	❍	❍	❍	❍
d) The nature of the offence which the child is alleged to have committed	❍	❍	❍	❍
e) The publicity the case has received in the public	❍	❍	❍	❍
f) Other reasons (specify): _____	❍	❍	❍	❍

14. Do you think that it is in the best interest of young offenders to desist as much as possible from custodial sentences?
[ ] YES [ ] NO

15. Would you agree saying that the offending of a child/juvenile may be an indicator of that child being in need of care in terms of the Children's Act?
[ ] YES [ ] NO

16. At times, although destitute (totally impoverished) children do not benefit from Child Welfare Grants because their parents or actual caregivers do not qualify, or they are actually in nobody's care. **How prevalent is this problem in your area?**
[ ] IT IS NOT A REAL PROBLEM
[ ] IT OCCURS SELDOM, BUT SOMETIMES
[ ] IT IS A REGULAR OCCURRENCE
[ ] IT IS WIDESPREAD AND I ENCOUNTER IT MANY TIME ON A DAILY BASIS

Please, explain briefly what are the means at your hand to address the needs of those children:

_____

_____

_____

_____

17. Are you acquainted with the latest version of the Child Care and Protection Bill (CCPB)?
[ ] YES [ ] NO

18. Which of the following diversion options are reasonably available in your geographical area:
    a. Life-skills programmes [ ] YES [ ] NO
    b. Pre-trial community service [ ] YES [ ] NO
    c. Family group conference [ ] YES [ ] NO
    d. Victim-offender mediation [ ] YES [ ] NO

19. What diversion options do you recommend usually (life-skill programme; pre-trial community service, apology, restitution, compensation to the victim, or something else)?

_____

20. Do you experience at times problems determining the age of an alleged juvenile offender?
[ ] YES [ ] NO

21. If your answer to question 20 is "YES", please explain what you do to solve this problem?

_____

_____

22. In the event that you have scheduled screening days (e.g. per week), is it reasonably possible for you to do the screening any time earlier in cases involving children in detention?
[ ] YES [ ] NO

23. How often have you visited police cells to see how many children are in detention, as well as to assess the situation of their detention in such police cells during the last 12 months?
[ ] NEVER [ ] ONCE [ ] TWICE [ ] MORE THAN TWICE

24. If your answer to question 23 is not "MORE THAN TWICE", what might be of assistance to you in future in this regard?

_____

_____

25. Do you think that the current circumstances under which child welfare is operating meets the requirements under the Convention of the Right of the Child (CRC) which holds signatory states to provide a national plan for the prevention of child involvement in crime?
[ ] YES [ ] NO
In your own view, what would you require for an effective national plan for the prevention of child involvement in crime? _____

_____

_____

_____

26. If your answer to question 25 has been "NO", which structural and other changes in your working environment would you recommend with the aim to become able to meet the requirements of the CRC?

_____

27. Do you think that the adoption of the Juvenile Justice Bill and the Child Care and Protection Bill as **Acts of Parliament**, with the obligation of the establishment of a service delivery system, could be helpful in this regard?
[ ] YES [ ] NO

THANK YOU!

For any query or question, please contact: Dr. Stefan Schulz, 061 207 2318 (tel); 081 2560 820 (cell);
schulz@polytechnic.edu.na

Questionnaire: Officers in Charge (NCS)

Prison/Correctional Facility: .....

Your Post: .....

Note: Please feel free to use extra sheets of paper if you require more space to answer the questions

PART A

Instructions:

The following questions pertain to ***demographic/background.*** Please choose the answer that best characterizes you. Only choose one response per question.

1. **Current age**: _____
2. **Gender**: ❍ female ❍ male

PART B

Instructions: The following questions pertain to some underlying criminological aspects.

1. Generally speaking, do you think that when a crime occurs:

	1) No	2) Mostly no	3) Mostly yes	4) Yes
a) The victim is at fault	❍	❍	❍	❍
b) The victim is at least partially at fault	❍	❍	❍	❍
c) Situational factors lead to the criminal act	❍	❍	❍	❍

2. How do you feel about the statement that: "every person is responsible for his or her own happiness"?

- ❍ very true
- ❍ true
- ❍ kind of true
- ❍ not quite true
- ❍ not true
- ❍ not true at all

3. Do you believe (do you think or would you say) that generally speaking the number of crimes committed per year has been rising in Namibia?

- ❍ No (**Go immediately to question 5**)

- ❍ Don't know (**Go immediately to PART C**)
- ❍ Yes

4. If you answered "yes" to question 3, do you think this increase in crime can be observed (mark only one circle)

- ❍ Ever since Namibian Independence in 1990
- ❍ Only since 2000
- ❍ Definitively since 2005
- ❍ Following the last Presidential elections
- ❍ Only in the last year

5. If you answered "yes" or "no" to question 3, identify two **sources of your knowledge or whatever contributed to your opinion.**

- ❍ Media (general)
- ❍ Newspaper
- ❍ Radio / TV
- ❍ Official Crime Statistics
- ❍ Professional experience (e.g. workload as prosecutor, magistrate, social worker, police)
- ❍ Other (name): _____

PART C

Instructions: The following series of questions pertain to your opinion regards the causes of crime, and the purposes of punishment.

1. Commonly the purposes of punishment are given as deterrence, rehabilitation, and retribution. In the following tell us how important the various purposes are for you:

Please choose one answer for each line: ⊗✍

	1)Extremely important	2)Somewhat Important	3)Somewhat **un**important	4)Not important at all
a) Deterrence (punishment of offender used to impress potential offenders, to refrain from crimes, also called prevention)	❍	❍	❍	❍
b) Rehabilitation (improvement of and persuading the offender to become a law-abiding citizen)	❍	❍	❍	❍
c) Retribution (repayment, vengeance)	❍	❍	❍	❍

2. **Which of the purposes of punishment (**deterrence, rehabilitation, retribution**), is to you**
   a) the **most** important purpose: _____
   b) the **least** important purpose:_____

3. **Suppose the *one* could only be achieved at the expense of the *other*, what would be more important to you?**
   - ❍ Crime reduction
   - ❍ Punishment and retribution

4. **Crime is a great social problem, and about everybody has some ideas regarding the factors contributing to crime. To what degree do you 'agree' or 'not agree' with the following statements.** *Please choose one answer for each line:* ⊗✍

	1)Do not agree	2)Somewhat disagrees	3)Somewhat agree	4)Agree
a) Unemployment/lack of opportunities and high crime rates go together	❍	❍	❍	❍
b) Inequalities in our society cause disadvantaged people to commit crime	❍	❍	❍	❍
c) Society has nothing to do with the criminal act, it is all about individual choices, individuals are free to decide pro or contra the crime	❍	❍	❍	❍
d) The inefficiency of the Criminal Justice System (Police, Judiciary, Corrections) contributes to high crime rates	❍	❍	❍	❍
e) Too lenient punishment invites offenders and potential offenders to commit more crimes	❍	❍	❍	❍
f) A general loss of values, believes, and in particular respect for the other person, leads to much of the crime committed in Namibia	❍	❍	❍	❍
g) Lack of control by others causes persons in positions of power and/or authority (politicians, businessmen) to commit crime	❍	❍	❍	❍
h) There is not one single factor which might count for all crime, various factors may come together with any crime	❍	❍	❍	❍

5. If you were asked to explain crime in Namibia, which of the factors (a - h) given in Question 4 above would you mention *Please choose one letter for each line. Example:* c) ✍

a) in the **first** place: _____

b) the **last** place:_____

PART D

Instructions: Since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994), in Namibia evolved a marked tendency of diverting as many children/juveniles as possible away from the formal criminal justice system. The following questions pertain to your experience and knowledge of the reality on the ground in this regard.

1. Do you feel fully informed about the obligations of Namibia under the Convention of the Right of the Child (1990) and the consequences of the CRC for the execution of your daily duties as Head of Prison/Correctional Facility?
   [ ] YES [ ] NO [ ] TO SOME EXTENT

2. Have you received any special training in how to professionally handle cases with child offenders (juveniles)?
   [ ] YES [ ] NO

3. If you have answered question 2 above with "YES", would you require further training and workshops in this regard?
   [ ] YES [ ] NO

4. Are you a member in a local Child Justice Forum, consisting of various Criminal Justice professionals and/or stakeholders (Magistrates, Prosecutors, Social Workers, Police and/or, Correctional Service members, representatives of diversion agencies)?
   [ ] YES [ ] NO

5. If your answer to question 4 has been "NO", would you join such local forum if you were invited to do so?
   [ ] YES [ ] NO
   Please, provide a brief reason for your answer:
   _____

6. According to the register (1. January 2011 until 30. June 2012) of the prison/correctional facility you are heading, how many child offenders have been detained (on whatever ground) during that period?

   Number of children: _____

7. According to the register (1. January 2011 until 30. June 2012) of the prison/correctional facility you are heading, have child offenders been kept together with adults while being detained?
   [ ] YES [ ] NO

8. According to the register (1. January 2011 until 30. June 2012) of the prison/correctional facility you are heading, how often have independent inspections of the prison/correctional facility taken place (e.g. by the Ombudsman, etc.)?
   [ ] never [ ] 1 – 5 times [ ] 6 – 10 times

9. Do you inform detained children about the procedure to follow if they intend to register a complaint?
   [ ] YES [ ] NO

10. Please describe briefly the way in which complaints from detained children are handled:

_____

_____

_____

11. How many children have left detention in the prison/correctional facility you are heading from 1 January 2011 to 30 June 2012?

    Number of children: _____

12. How many of those children who have left detention in the prison/correctional facility you are heading from 1 January 2011 to 30 June 2012 have been benefitting from a structured aftercare programme designed to assist them in returning to society?

    Number of children: _____

13. Do you think that diversion of young offenders away from the formal Criminal Justice System is useful?
    [ ] YES [ ] NO

14. If your answer to question 13 is “NO”, please explain briefly why?

    _____

    _____

15. Would you agree saying that offending of a child/juvenile may be an indicator of the child's need of care and protection in terms of section 1 Children's Act?
    [ ] YES [ ] NO [ ] I do no t know

16. Are you acquainted with the latest version of the Child Care and Protection Bill (CCPB)?
    [ ] YES [ ] NO

17. Do you think that the current circumstances under which the prison/correctional facility you are heading has to operate with regard to children/juveniles in conflict with the law meets the requirements under the Convention of the Right of the Child (CRC)?
    [ ] YES [ ] NO

18. If your answer to question 17 has been "NO", which structural changes in your working environment would you recommend with the aim to become able to meet the requirements of the CRC?

    _____

    _____

THANK YOU!

Questionnaire: Station Commanders (Police)

Police Station: .....

Your Post: .....

Note: Please feel free to use extra sheets of paper if you require more space to answer the questions

PART A

Instructions:

The following questions pertain to ***demographic/background.*** Please choose the answer that best characterizes you. Only choose one response per question.

1. **Current age**: _____
2. **Gender**: ❍ female ❍ male

PART B

Instructions: The following questions pertain to some underlying criminological aspects.

1. Generally speaking, do you think that when a crime occurs:

	1) No	2) Mostly no	3) Mostly yes	4) Yes
a) The victim is at fault	❍	❍	❍	❍
b) The victim is at least partially at fault	❍	❍	❍	❍
c) Situational factors lead to the criminal act	❍	❍	❍	❍

2. How do you feel about the statement that: "every person is responsible for his or her own happiness"?

- ❍ very true
- ❍ true
- ❍ kind of true
- ❍ not quite true
- ❍ not true
- ❍ not true at all

3. Do you believe (do you think or would you say) that generally speaking the number of crimes committed per year has been rising in Namibia?

- ❍ No (**Go immediately to question 5**)
- ❍ Don't know (**Go immediately to PART C**)
- ❍ Yes

4. If you answered "yes" to question 3, do you think this increase in crime can be observed (mark only one circle)

- ❍ Ever since Namibian Independence in 1990
- ❍ Only since 2000
- ❍ Definitively since 2005
- ❍ Following the last Presidential elections
- ❍ Only in the last year

5. If you answered "yes" or "no" to question 3, identify two **sources of your knowledge or whatever contributed to your opinion.**

- ❍ Media (general)
- ❍ Newspaper
- ❍ Radio / TV
- ❍ Official Crime Statistics
- ❍ Professional experience (e.g. workload as prosecutor, magistrate, social worker, police)
- ❍ Other (name): _____

PART C

Instructions: The following series of questions pertain to your opinion regards the causes of crime, and the purposes of punishment.

1. Commonly the purposes of punishment are given as deterrence, rehabilitation, and retribution. In the following tell us how important the various purposes are for you:

Please choose one answer for each line: ⊗✍

	1)Extremely important	2)Somewhat Important	3)Somewhat **un**important	4)Not important at all
a) Deterrence (punishment of offender used to impress potential offenders, to refrain from crimes, also called prevention)	❍	❍	❍	❍
b) Rehabilitation (improvement of and persuading the offender to become a law-abiding citizen)	❍	❍	❍	❍
c) Retribution (repayment, vengeance)	❍	❍	❍	❍

2. Which of the purposes of punishment (deterrence, rehabilitation, retribution**), is to you**

a) the **most** important purpose: _____

b) the **least** important purpose:_____

3. Suppose the *one* could only be achieved at the expense of the *other*, what would be more important to you?

- ❍ Crime reduction
- ❍ Punishment and retribution

4. Crime is a huge social problem, and about everybody has some ideas regarding the factors contributing to crime. To what degree do you 'agree' or 'not agree' with the following statements. *Please choose one answer for each line:* ⊗✍

	1)Do not agree	2)Somewhat disagrees	3)Somewhat agree	4)Agree
a) Unemployment/lack of opportunities and high crime rates go together	❍	❍	❍	❍
b) Inequalities in our society cause disadvantaged people to commit crime	❍	❍	❍	❍
c) Society has nothing to do with the criminal act, it is all about individual choices, individuals are free to decide pro or contra the crime	❍	❍	❍	❍
d) The inefficiency of the Criminal Justice System (Police, Judiciary, Corrections) contributes to high crime rates	❍	❍	❍	❍
e) Too lenient punishment invites offenders and potential offenders to commit more crimes	❍	❍	❍	❍
f) A general loss of values, believes, and in particular respect for the other person, leads to much of the crime committed in Namibia	❍	❍	❍	❍
g) Lack of control by others causes persons in positions of power and/or authority (politicians, businessmen) to commit crime	❍	❍	❍	❍
h) There is not one single factor which might count for all crime, various factors may come together with any crime	❍	❍	❍	❍

5. If you were asked to explain crime in Namibia, which of the factors (a - h) given in Question 4 above would you mention *Please choose one letter for each line. Example:* c) ✍

a) in the **first** place: _____

b) the **last** place:_____

PART D

Instructions: Since the conclusions of the UN-Committee on the Right of the Child on Namibia (1994), in Namibia evolved a marked tendency of diverting as many children/juveniles as possible away from the formal criminal justice system. The following questions pertain to your experience and knowledge of the reality on the ground in this regard.

1. Do you feel fully informed about the obligations of Namibia under the Convention of the Right of the Child (1990) and the consequences of the CRC for the execution of your daily duties as Station Commander?
   [ ] YES [ ] NO [ ] TO SOME EXTENT

2. Have you received any special training in how to professionally handle cases with child offenders (juveniles)?
   [ ] YES [ ] NO

3. If you have answered question 2 above with "YES", would you require further training and workshops in this regard?
   [ ] YES [ ] NO

4. Do you have a copy, or access to a copy of the Police Training Manual: Juvenile Justice in Namibia (1997)?
   [ ] YES [ ] NO

5. Are you a member in a local Child Justice Forum, consisting of various Criminal Justice professionals and/or stakeholders (Magistrates, Prosecutors, Social Workers, Police and/or, Correctional Service members, representatives of diversion agencies)?
   [ ] YES [ ] NO

6. If your answer to question 4 has been "NO", would you join such local forum if you were invited to do so?
   [ ] YES [ ] NO
   Please, provide a brief reason for your answer:
   _____

7. Do police officers under your command contact a social worker for the screening of child suspects for diversion as early as possible?
   [ ] YES [ ] NO [ ] SOMETIMES

8. If your answer to Question 7 has been "sometimes", what are the circumstances under which such screening does not take place?
   [ ] non-availability of competent personnel; [ ] screening would unnecessarily delay the process
   [ ] Other (specify):
   _____

9. Do police officers under your command make use of section 71 Criminal Procedure Act by arranging placement of the child suspect in a place of safety other than the police station itself?
   [ ] YES [ ] NO

10. Do police officers under your command make use of section 72 (1) (b) Criminal Procedure Act by releasing the child suspect in the care of the person in whose custody he or she is?
    [ ] YES [ ] NO

11. Do police officers under your command make use of section 74 Criminal Procedure Act by warning the parent, or guardian respectively to attend the relevant criminal proceedings?
    [ ] YES [ ] NO

12. Do police officers under your command make use of section 30 (1) Children's Act by bringing destitute (totally impoverished, or lacking the bare means of survival) children before the children's court?
    [ ] YES [ ] NO [ ] **I AM NOT AWARE** OF THAT OPTION/POSSIBILITY

13. According to the cell register (1. January 2011 until 30. June 2012) of your station, have child suspects ever been kept together with adults while being in pre-trial detention?
    [ ] YES [ ] NO

14. If your answer to question 13 has been "Yes", how often did it happen?
    [ ] regularly, because cell capacity is never sufficient to cater for adults and children separately
    [ ] 5 – 10 times, in exceptional circumstances
    [ ] 11 – 20 times, in exceptional circumstances

15. According to the occurrence register (1. January 2011 until 30. June 2012) of your station, how often have independent inspections of your station taken place (e.g. Ombudsman, etc.)?
    [ ] 0 – 5 times [ ] 6 – 10 times

16. Do you inform children kept in custody in your station about the procedure to follow if they intend to register a complaint?
    [ ] YES [ ] NO

17. Please describe briefly the way in which complaints from children kept in pre-trial custody at your station are handled:

_____

_____

_____

18. Do you think that diversion of young offenders away from the formal Criminal Justice System is useful?
    [ ] YES [ ] NO
19. If your answer to question 18 is "NO", please explain briefly why?

_____

_____

20. Would you agree saying that offending of a child/juvenile may be an indicator of the child's need of care and protection in terms of section 1 Children's Act?
    [ ] YES [ ] NO [ ] I do not know

21. Are you acquainted with the latest version of the Child Care and Protection Bill (CCPB)?
    [ ] YES [ ] NO

22. Do you experience at times problems determining the age of an alleged juvenile offender?
    [ ] YES [ ] NO

23. Do you think that the current circumstances under which your station has to operate with regard to children/juveniles in conflict with the law meets the requirements under the Convention of the Right of the Child (CRC)?
    [ ] YES [ ] NO

24. If your answer to question 23 has been "NO", which structural changes in your working environment would you recommend with the aim to become able to meet the requirements of the CRC?

_____

_____

THANK YOU!

Annex II

Policy Analysis Tools

Indicator 12: Regular Independent Inspections

Indicator 13: Complaints Mechanisms

Indicator 14: Specialised Juvenile Justice System

Indicator 15: Prevention

Each tool provides two columns (law and policy). On each column a specific number of maximum marks can be collected, depending on whether or not the criteria put forth have been confirmed. The number of marks in each column of the respective tool is counted and converted to a percentage. This percentage is then used to assign an overall level to the indicator, where the different levels mean:

Level 1 (0 – 25%):	no protection by law or policy;
Level 2 (>25 – 50%):	weak protection by law and policy;
Level 3 (>50 - 75%):	moderate protection by law and policy;
Level 4 (>75 – 100%):	good protection by law and policy.

As a general rule, the strongest protection is generally achieved when a feature is provided for in legislation, and a set of policies, administrative rules, guidelines, standing orders or circulars exists to provide practical detail for implementation. On the other hand, the indication of a strong protection of a feature in terms of laws and policies must be confirmed through an assessment of practice.

***Indicator 12: Regular Independent Inspections (as* per responses from Namibian Correctional Service (NCS))**
Definition:
Existence of a system guaranteeing regular independent inspections

No.	Existence of Inspections System	*LAW*		POLICY	
1	Is there provision for an established system guaranteeing regular inspection visits to places of detention where children are held, by external, independent persons or bodies, such as inspectors or visiting committees?	YES	Ss 112 (2) and 114 Prisons Act 1998		--
2	Is there provision for a system guaranteeing regular visits to places of detention by magistrates, judges, prosecutors or persons acting on their behalf?	YES	S 112 (1) Prisons Act 1998		--
3	If neither visits from independent persons nor from magistrates, judges or prosecutors are guaranteed, is there provision for any other mechanisms for regular scrutiny and improvement of detention conditions?	--	Not applicable		--
4	Must the purpose of regular visits include evaluating compliance of the place of detention with laws and standards?	YES	S 113 (1)(d)(e) Prisons Act 1998		--
	SCORE /4				
No.	**Conduct of Inspections**	***LAW***		**POLICY**	
1	Are inspectors entitled to conduct unannounced inspections?	YES	Ombudsman		--
2	Are inspectors entitled to conduct inspections on their own initiative?	YES	Ombudsman		--
3	Are inspectors entitled to access all employees working in a place of detention, including police officers and prison wardens, in confidence?	YES	Ombudsman		--
4	Are inspectors entitled to access the records of employees working in a place of detention?	YES	Ombudsman		--
5	Are inspectors entitled to access children held in a place of detention, in confidence?	YES			--
6	Are inspectors entitled to access the records of children held in a place of detention?	YES			--
7	Are medical officers or public health services entitled to participate in inspections?	YES	S 20 (1) Prisons Act 1998	YES	Regulations 247 (2)
	SCORE /7				
	Results of Inspections	***LAW***		**POLICY**	
1	Are inspectors required to submit reports on the findings of inspection visits, including their evaluation and recommendations?	YES	S 112 (1) Prisons Act 1998	YES	Regulations 247 (2)
2	Is investigation and prosecution required when a potential violation of laws or standards concerning children in detention has been found by inspectors?	YES	S 38 Prisons Act 1998		--
	SCORE /2				

***Indicator 13: Complaints Mechanisms (as* per responses from Namibian Correctional Service (NCS))**

Definition:

Existence of a complaints system for children in detention

No.	Existence of Complaints Mechanisms	*LAW*		POLICY	
1	Are all forms of violence, torture, abuse and exploitation of children in places of detention prohibited?	YES	S 38 Prisons Act 1998	YES	Inmate Complaint Manual, 2007
2	Are specific complaints mechanisms for children in detention provided for?	YES		YES	Inmate Complaint Manual, 2007
3	If not, are there any approved initiatives at national or regional level regarding complaints mechanisms for children in detention currently pending enactment?	--	Not applicable		
4	If not, is there provision for any other channels through which the claims or complaints of children in detention can be addressed (including the possibility of a *habeas corpus* claim before a court)?	--	Not applicable		
5	Is there an independent office, such as an ombudsperson, authorized to receive and investigate complaints made by children in detention?	NO			
6	If so, is the independent office authorized to investigate claims of alleged violence, torture, abuse or exploitation?	--	Not applicable		
7	Is the independent office authorized to investigate other claims, such as complaints about conditions of detention?	--	Not applicable		
8	Are children in detention, their legal representatives, or their parents on their behalf, entitled to make complaints to a competent authority such as a magistrate or other judicial body?			YES	Inmate Complaint Procedure Manual, 2007
9	Are children in detention, their legal representatives, or their parents on their behalf, entitled to make individual requests or complaints to the director of the place of detention in which they are held?	NO		YES	Inmate Complaint Procedure Manual, 2007
10	Are children in detention permitted to participate in decisions made by the authorities responsible for the place of detention in which they are held?		FUTURE: S. 76 Correctional Service Act 2012		
11	Is there provision for a system of mandatory reporting of incidents of violence, torture, abuse or exploitation to a complaints authority for staff such as medical or social work staff, working with and for children in detention?	NO			
	SCORE /11				
No.	**Availability of Complaints Mechanisms**	***LAW***		**POLICY**	
1	Are authorities required to make children aware of available complaints mechanisms?			YES	Standard Operating Manual on Reception and Assessment
2	Are children in detention entitled to the assistance of family members, counsellors or social workers when making a request or complaint?			YES	Standard Operating Practices on Unit Management and

					Operational Strategy
3	Are children in detention entitled to receive legal advice, without cost or delay, when making a request or complaint?	NO			
4	Are children in detention permitted to file anonymous requests or complaints?	NO			
5	Are children in detention permitted to file requests or complaints without censorship as to substance?		FUTURE: S. 78 Correctional Service Act 2012		
6	Where a complaint is required to be in written form, are illiterate children required to be provided with assistance?			YES	Standard Operating Practices on Unit Management and Operational Strategy
7	Must children in detention who file requests or complaints be protected from reprisals or adverse repercussions?				Inmate Complaint Procedure Manual, 2007
	SCORE /7				

No.	**Results of Complaints Mechanisms**	***LAW***		**POLICY**	
1	Are children, or their representatives on their behalf, entitled to a prompt response without undue delay?			YES	Inmate Complaint Procedure Manual, 2007
2	Are children, or their representatives on their behalf, entitled to be informed of the outcome or resolution of their request or complaint?			YES	Inmate Complaint Procedure Manual, 2007
3	Are decisions required to be reasoned and explained to the complaining child or his or her representatives?			YES	Inmate Complaint Procedure Manual, 2007
4	Are reparations required to be made to children who are victims of violence, torture, abuse or exploitation?	NO		NO	
5	Is provision made for reparations of a financial nature?	NO		NO	
6	Is provision made for non-compensatory reparatory measures, such as improvement of conditions of detention?				Inmate Complaint Procedure Manual, 2007
7	Is there an authority or body authorized to supervise the implementation of remedies for victims?	NO		NO	
	SCORE /7				

Indicator 14: Specialised Juvenile Justice System

Definition:
Existence of a specialised juvenile justice system

No.	Existence of a Specialised System	LAW		POLICY	
1	Are there established specific provisions for the treatment of children in conflict with the law?	NO		NO	
2	Are there established specific provisions for the treatment of children deprived of liberty?	NO		NO	
3	Is there provision for alternative ways of dealing with children in conflict with the law without resorting to a formal hearing before a competent authority?		Partially: S 6 CPA	NO	
4	Is a separate juvenile court or other separate competent authority entrusted with making decisions on the cases of children in conflict with the law?	NO			Administrative provisions made at some Magistrate Courts, e.g. Windhoek
5	Is provision made for semi-institutional arrangements, such as half-way houses, educational homes or day-time training centres for children in conflict with the law?	YES	Children's Act 33 of 1960; but provisions remain theoretical, while in practice no facilities exist		
6	Is separation of children from adults in any form of detention strictly required?	YES	Prisons Act 1998	YES	Operational Manual of the Namibian Police
	SCORE /6				

No.	Treatment of Children in Conflict with the Law	LAW		POLICY	
1	Must the parents or guardian of a child be immediately notified upon his or her arrest?	YES	S 74 CPA		
2	Must the right to privacy of the child in conflict with the law be respected at all stages?	YES	Ss 153 (4) and 154 (3) CPA		
3	Must the child be allowed to express herself or himself freely?	YES	Art. 12 NC		
4	Must the child be allowed to participate in proceedings in a meaningful way, such that she or he can contribute to decisions affecting his or her life according to his or her abilities, age and capacity?	YES	Art. 12 NC		
5	Do prohibitions of unlawful or arbitrary detention, arrest or imprisonment apply to children as well as adults?	YES	Art. 11 NC		
6	Must deprivation of liberty be limited to the minimum possible time?	NO			
7	Must deprivation of liberty for children only be used as a measure of last resort?	NO			
	SCORE /7				

No.	Bodies and Institutions	LAW		POLICY	
	POLICE				
1	Must police officers who frequently or exclusively deal with children be specially instructed and trained?	NO			
2	Are personnel who deal with a child in conflict with the law empowered to exercise discretion at any stage in the proceedings?		Partially: CPA		
3	Must a competent authority consider the issue of release without delay following arrest?	NO			
	COMPETENT AUTHORITIES				
4	May a competent authority deal with a child in conflict with the law other than by acquittal or sentencing to deprivation of liberty?	YES	Ss 254, 290, 297 CPA		
5	Must the background and circumstances of the child be properly investigated and presented to the competent authority before sentencing of the child?	NO	**Only protected by case law**		
6	Must a competent authority take into account the circumstances and needs of the child as well as the circumstances and gravity of the offence?	YES	**Only protected by case law**		
7	Must personnel hearing proceedings against children in the relevant competent authority be provided with specialist training in dealing with children?	NO			
	PLACES OF DETENTION				
8	Must children be above a certain minimum age in order to be admitted to a place of detention?	NO		YES	Namibian Police Operational Manual
9	Must girls be detained separately from boys?	YES	S 15 Prisons Act 1998	YES	Regulations 198
10	Must the conditional release of a child from a place of detention be used to the greatest possible extent?	NO			
11	Must children detained pre-sentence be separated from children detained after sentencing?	YES			
12	Must children in a place of detention as a result of proceedings related to care and protection be separated from children detained due to conflict with the law?		Not applicable: Proceedings under the Children's Act 33 of 1960 do not result in detention		
13	Must staff at places of detention be provided with specialised training in dealing with children?	NO			
14	Must children be assessed as soon as possible after admission and the specific type and level of care required determined?		FUTURE: S. 64 (4) CSA		
15	Must children deprived of liberty receive care, protection and all necessary psychosocial, educational and medical assistance?	NO			
16	Are staff dealing with children in detention prohibited from carrying weapons?	NO			
	SCORE /16				

Indicator 15: Prevention

Definition:
Existence of a national plan for the prevention of child involvement in crime

No.	Existence and Content of a Prevention Plan	LAW		POLICY	
1	Is there a national plan for the prevention of child involvement in crime?		FUTURE: Child Care and Protection **Bill**		PARTIALLY: Namibia's National Agenda for Children
2	If so, does this plan include in-depth analysis of the problem?				Children and Adolescents in Namibia: 2010
Does the national plan for the prevention of children coming into conflict with the law include:					
3	supporting families in bringing-up children?		Children Act		Namibia's National Agenda for Children
4	the development of community-based networks for vulnerable children?				Namibia's National Agenda for Children
5	supporting flexible working patterns for parents and services for low-income families?				
6	employment or vocational training opportunities for children?		Vocational Education and Training Act, 2008 (Act 1 of 2008)		
7	abolition of corporal punishment in places of education and formal care institutions?		Namibian Constitution; Education Act 16 of 2001		
8	reduction of domestic violence and abuse?		Domestic Violence Act, Combating of Rape Act		
9	prevention programmes and assistance for children who use drugs, alcohol or other substances?		Tobacco Products Control Act 1 of 2010		Draft National Alcohol Policy
10	educational opportunities that offer an alternative or addition to regular schooling?		Education Act, NAMCOL Act 1 of 1997		
11	sports and cultural activities for children?				
12	dissemination of information on children's rights in child-friendly form?				
13	involvement of the mass media in encouraging the positive contribution of children to society?				
14	protection of the rights and well-being of all children?		Art. 15 Namibian Constitution		
15	restriction and control of the accessibility of weapons of any sort to children?		Arms and Ammunition Act		
16	measures to ensure that any conduct not considered an offence if committed by an adult is not considered an offence and not penalized if committed by a child?		Common Law on Crime, CPA		
17	the protection of children from abuse, exploitation and their use for criminal activities?		Children's Act		
	SCORE /17				

No.	Management of the Prevention Plan	LAW		POLICY	
1	Is a governmental body assigned to have the lead responsibility for the prevention of child involvement in crime at a national level?				Namibia's National Agenda for Children: **MGECW**
2	Does the plan include a mechanism for coordination of prevention efforts between all agencies, institutions and personnel involved (whether governmental or non-governmental)?				PTF; High Level Technical Committee
3	Does the plan include well-defined responsibilities for the agencies, institutions and personnel involved in prevention efforts?				Namibia's National Agenda for Children
4	Does the plan include monitoring and evaluation of programmes and strategies?				Namibia's National Agenda for Children
5	Is there provision for the adjustment of programmes and strategies as a result of lessons learned from monitoring and evaluation?				Namibia's National Agenda for Children
6	Does the plan provide for specialised personnel at any level?				
7	Does the plan provide for funding and other resources for children in the areas of medical and mental health care, nutrition, housing, drug and alcohol abuse prevention and treatment?				Namibia's National Agenda for Children
	SCORE /7	/7		/7	

Annex III

Excerpt:

UN Committee on the Rights of the Child. (2012). Advance Unedited Version. “Concluding Observations of the Committee on the Rights of the Child: Namibia.” In Consideration of Reports Submitted by State Parties under Art. 44 of the Convention (sixty first session, 17 September 5 October 2012, CRC/C/NAM/CO/2-3).

United Nations CRC/C/NAM/CO/2-3

Convention on the Rights of the Child

Distr.: General
5 October 2012

Original: English

ADVANCE UNEDITED VERSION

Committee on the Rights of the Child
Sixty - first session
17 September – 5 October 2012

Consideration of reports submitted by States parties under article 44 of the Convention

Concluding observations: Namibia

1. The Committee considered the consolidated second and third periodic reports of Namibia (CRC/C/NAM/2-3) at its 1732th and 1733th meetings (see CRC/C/SR.1732 and 1733) held on 20 September 2012, and adopted, at its 1754th meetings, held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the consolidated second and third periodic reports of the State party (CRC/C/NAM/2-3) and the written replies to its list of issues (CRC/C/C/NAM/Q/2-3/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multi-sectoral delegation of the State party.

II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee also welcomes the adoption of the following legislative measures:

(a) Children's Status Act No. 6 of November 2008;

(b) Labour Act No. 11 of 2007;

(c) Criminal Procedure Amendment Act No. 24 of December 2003;

(d) Maintenance Act No. 9 of July 2003;

(e) Combating of Domestic Violence Act No. 4 of June 2003;

(f) Education Act No. 16 of December 2001;

(g) Combating of Rape Act No. 8 of April 2000.

4. The Committee also welcomes the ratification of :

(a) Optional Protocol on the involvement of children in armed conflict (2002);

(b) Optional Protocol on the sale of children, child prostitution and child pornography (2002);

(c) Convention on the Rights of Persons with Disabilities (2007);

(d) Optional Protocol to the Convention on the Rights of Persons with Disabilities (2007);

(e) Optional Protocol to the Convention on the Elimination of Discrimination against Women (2000);

(f) United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2002);

(g) ILO Convention No. 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour (2000).

5. The Committee also welcomes the following policy measures:

(a) The National Agenda for Children (2012-2016), June 2012;

(b) The Education for All National Plan of Action 2005-2015;

(c) Fourth National Development Plan containing important provisions for children, including an emphasis on Early Childhood Development (July, 2012);

(d) The National Action Programme on the Elimination of Child Labour (January, 2008);

(e) The Education Sector Policy for Orphans and Other Vulnerable Children in Namibia (2008);

(f) The Education and Training Sector Improvement Programme (February, 2006);

(g) National Plan of Action for Orphans and Vulnerable Children (October, 2007);

(h) The National Policy on HIV/AIDS for the Education Sector (January, 2003).

6. The Committee notes as positive the invitation extended by the State party to the United Nations special procedures mandates.

III. Factors and difficulties impeding the implementation of the Convention

7. The Committee takes note of the fact that the State party is one of the countries most affected by climate change and the increasing impact of natural hazards, such as floods, storms and drought, leading to changes in the disease patterns, reduced agricultural outputs and food insecurity.

IV. Main areas of concerns and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6 of the Convention)

The Committee's previous recommendations

8. The Committee, while welcoming the State party's objective assessment of the child rights situation and its efforts to implement the concluding observations on its previous reports (CRC/C/15/Add.14, 1994), regrets that some of the Committee's recommendations contained therein have not been implemented.

9. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report of Namibia under the Convention (CRC/C/15/Add.14, 1994) that have not been implemented or sufficiently implemented, particularly those related to legislative reform, discrimination against girls and children with disabilities, adoption, high incidence of child labour and administration of juvenile justice.

Legislation

10. While welcoming the initiatives to review laws from the pre-independence period, the Committee regrets the failure of the State party to adopt and implement key national legislation concerning children, as required by the Convention. In particular, the Committee notes with concern that despite discussions for over a decade, two notable laws on children's rights, the Child Care and Protection Bill and the Child Justice Bill, have not yet been adopted. Furthermore, noting the existence of plural legal systems, the Committee is concerned that the customary law and practices are not consistent with the principles and provisions of the Convention, in particular those relating to the minimum age of marriage, divorce, and inheritance.

11. The Committee urges the State party to expedite the revision and adoption of pending legislation on children's rights, particularly the Child Care and Protection Bill, and the Child Justice Bill. The Committee also recommends the State party to incorporate into all proposed and existing legislation the principles and provisions of the Convention, and in the meantime, take measures to ensure that in case of conflict, the constitutional provisions and statutory laws prevail over the customary law, and that children and women have full access to the formal justice system.

Comprehensive policy and strategy

12. The Committee notes with appreciation that the State party launched the National Agenda for Children, a five-year framework (2012-2016), in June 2012, guiding all sectors in the State party towards fulfilling their obligations to protect and promote children's rights.

13. The Committee recommends the State party to allocate adequate human, financial and technical resources for the implementation of the National Agenda for Children, and set up an effective monitoring and evaluation mechanism to track the progress achieved in the implementation of the plan.

Coordination

14. The Committee notes that the Ministry of Gender Equality and Child Welfare was established as the leading coordinating body for the protection and promotion of children's rights; however, it notes with concern the information provided by the State party that the

Children in street situations

69. The Committee welcomes the State party's country-wide campaign to raise awareness on children in street situations and integrate them back into schools. The Committee, however, is concerned at reports that children in street situations are regularly subject to exploitation, abuse, discrimination, stigmatization as well as arrest and detention by police. In addition, the Committee is concerned at the institutionalization of children in street situations in the State party.

70. The Committee recommends the State party to:

(a) Develop a comprehensive strategy to protect children in street situations and reduce their number, including identifying the underlying causes, such as poverty, family violence, migration, lack of access to education with the aim of preventing and reducing this phenomenon. In this regard, the Committee calls upon the State party to pay special attention to the specific vulnerability of girls in street situations to sexual abuse, exploitation and early pregnancy;

(b) Develop initiatives that offer effective alternatives to institutionalization and facilitate the reunification of children in street situations with their families, whenever feasible and appropriate, taking into account the best interests of the child. In this context, the Committee recommends the State party to develop programs that support their long-term educational and developmental needs, including through psychological support where possible;

(c) Ensure that children in street situations are not subject to discrimination, abuse and harassment by public and law enforcement officials and that they are not subject to arbitrary arrest and illegal detention; and

(d) Promptly investigate complaints concerning ill-treatment and abuse of children in street situations by police and staff in police custody or in the government detention facilities and initiate disciplinary measures.

Sale, trafficking and abduction

71. The Committee is deeply concerned that children are trafficked within the State party for employment in agriculture, road construction, vending and commercial sex work and children from other countries are trafficked to the State party for livestock and child-minding work. The Committee also notes with concern the absence of a specific legislation on human trafficking and the lack of prosecutions for trafficking in persons.

72. The Committee urges the State party to:

(a) Urgently adopt a legislation on human trafficking in line with Palermo Convention and article 35 of the Convention;

(b) Strengthen its efforts to combat international and internal child trafficking including by establishing more rigorous border control; and

(c) Ensure that adequate measures are taken to hold perpetrators of child sale, trafficking and abduction accountable for their offences.

Administration of juvenile justice

73. The Committee welcomes the Criminal Procedure Amendment Act 24 of 2003 and its provisions on child-friendly courts; however, it is concerned that despite the exceptionally long delay, the Child Justice Bill has not been adopted. The Committee is also concerned about:

(a) The minimum age of criminal responsibility, which is seven years in the State party, being unacceptably low;

(b) The children's courts not being operational in all regions;

(c) The absence of information in the State party report and public domain on the situation of children in conflict with the law;

(d) The lack of special detention facilities for children, both boys and girls, children being incarcerated with adults, and the poor conditions of detention, including in prisons; and

(e) The reports that judges do not consistently enforce the amendments to the Criminal Procedure Act 24 (2003).

74. The Committee reiterates its previous recommendation (CRC/C/15/Add.14, 1994, para 20) that the State party bring its juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (CRC/C/GC/10, 2007). In particular, the Committee urges the State party to:

(a) Urgently update and adopt the pending Child Care and Protection Bill and Child Justice Bill;

(b) Amend the age of criminal responsibility to an internationally acceptable level, ensuring that such provision does not allow, by way of exception, the use of a lower age;

(c) Ensure that all the provisions related to juvenile justice in Criminal Procedure Amendment Act are effectively enforced, including those related to children's courts;

(d) Establish Children's Courts in all the regions of the State party;

(e) Provide all professionals working in the juvenile justice system with training on the Convention, other relevant international standards and the Committee's general comment No. 10 on children's rights in juvenile justice;

(f) Protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, in particular by establishing special prisons for children with conditions suited to their age and needs, and ensuring provision of social services in all detention centers in the country, and, in the meantime, guarantee separation of children from adults in all prisons and pre-trail detention centers throughout the country; and

(g) Gather information on the number and legal situation of children in detention, their conditions of detention and cases of children who have been provided with legal assistance and make such information publicly available.

Child victims and witnesses of crimes

75. The Committee notes as positive the pilot project developed with NGOs and professionals on the protection of child victims and witnesses of crimes. However, the Committee is concerned about the lack of a mechanism to protect child victims and witnesses of sexual abuse during legal proceedings, which exposes children to further

trauma and insecurity, and that the child witness programmes are not operational in all regions.

76. The Committee recommends the State party to accelerate the development and implementation of child victims and witnesses of crimes protection programs in all the regions of the country in order to increase protection for child victims and witnesses and their right to privacy and ensure that the child witness programmes are effectively enforced in all regions.

J. Ratification of international human rights instruments

77. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the treaties to which it is not yet a party, namely the Optional Protocol to the Convention on the Rights of the Child on Communication procedures, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

78. The Committee urges the State party to fulfill its reporting obligations under the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the reports of which are both overdue as of 16 May 2004.

K. Cooperation with regional and international bodies

79. The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of Children of the African Union towards the implementation of the Convention and other human rights instruments, both in the State party and in other African Union member States.

L. Follow-up and dissemination

80. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to local authorities for appropriate consideration and further action.

81. The Committee further recommends that the second and third periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

M. Next report

82. The Committee invites the State party to submit its next consolidated third to sixth periodic reports by 29 October 2017 and to include in it information on the