



# Examen Periódico Universal – Colombia

## *Third Cycle*

Geneva, 10 May 2018, 9am – 12.30pm

Assessment of some previous recommendations on  
the administration of juvenile justice

By

**International Catholic Child Bureau (BICE)  
Tertiarios Capucinos in Colombia (TCC)**

April 2018

## 2006 CHILDREN AND ADOLESCENTS CODE AND THE ADMINISTRATION OF JUVENILE JUSTICE IN COLOMBIA<sup>1</sup>

Act No. 1098 on the Children and Adolescents Code has been adopted since 2006. The Act is an attempt to apply the principle of the best interests of the child as enshrined in international instruments and establishes a juvenile criminal justice system. The Code is based on the premise that the minor is responsible and that the penalties imposed on minors should aim to rehabilitate, educate and protect. Under the System of Criminal Responsibility for Adolescents established by the Code, the police force for children and adolescents apprehends young offenders and brings them before the supervisory judge, accompanied by the Family Ombudsman, within 36 hours of their apprehension. Minors can be tried only from the age of 15 years. Minors aged 14 cannot be tried, found criminally responsible or deprived of liberty, but they are brought before a judge to answer for their actions. The penalty of supervised freedom can be imposed on them, with the commitment to present themselves periodically before the Colombian Family Welfare Institute (ICBF), or semi-confinement (where they attend a rehabilitation centre only in the daytime).

The majority of detained minors are in detention for the illegal possession of weapons, theft, drug trafficking, homicide, attempted homicide and personal injury. The maximum penalty that can be imposed on them is eight years for crimes against humanity, even though the maximum penalty under the old Minors' Code was only three years. The penalty can be reduced by half if the young offender pleads guilty to the charges. There is always the possibility of appealing to a hybrid court made up of criminal and family magistrates. The most common offences involving adolescents are theft, trafficking and possession of drugs and illegal possession of weapons.

Minors aged between 14 and 16 years may be deprived of liberty only if they have committed the offences of homicide, kidnapping or extortion. Minors aged between 16 and 18 years may be detained in establishments of the Colombian Family Welfare Institute (ICBF) only if they have committed offences warranting a sentence of six years' imprisonment (sexual abuse, domestic violence or aggravated theft).

### DETENTION

#### *Positive aspects*

In response to concerns contained in the 2013 report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, which underlined that the prison crisis remains of serious concern, due to acute overcrowding of 50 percent above capacity as well as the increase in the number of persons deprived of their liberty as a result of the overuse of custodial sentencing, and the lack of health care, food, recreation and sports, education and paid work, as well as the poor health conditions and no clear rehabilitation policies<sup>2</sup>, the Government adopted:

1°. Act n°1760 of 6 July 2015 on the rationalization of detention, which has two main objectives:

- Oblige judicial officials to be much more rigorous when deciding on custodial measures;
- Establish the maximum duration thereof.

Most relevant points of the 2015 Act:

- The duration of pretrial detention may not exceed one year, which may be extended only if the case is being heard by a specialized criminal court, if there are three or more accused

<sup>1</sup> A/HRC/10/21/Add.3, §§ 87-89 (Mission of the Working Group on Arbitrary Detention to Colombia, 1-10 October 2008).

<sup>2</sup> A/HRC/22/17/Add.3, §§ 63-65 (Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia).

- persons or if the investigation or trial relates to corruption.
- Judges are obliged to demonstrate that no other precautionary measures would be able to achieve the intended objective.
- Several additional evaluation criteria are added to the requirement that the defendant must be a danger to the community.
- The Act defines the mandatory procedural deadlines between the filing of the indictment and the beginning of the oral hearing, and between the oral hearing and delivery of the verdict, as 120 and 150 days maximum, respectively.

2°/. Act n°1709 of 2014 (especially its Article 66) introduced a substantive change to the health service model for persons deprived of their liberty and established a National Health Fund for Persons Deprived of Their Liberty, which is a special account for collecting and administering the resources for the health system for persons deprived of their liberty.

3°/. Decree n°2245 of 2015 of 24 November 2015 regulates the system for the provision of health services to persons deprived of their liberty in accordance with Act No. 1709 of 2014 and the legal powers assigned to the National Prisons Institute, the Prison Services Unit, the National Health Fund for Persons Deprived of Their Liberty and other bodies involved.

4°/. Decision n°5159 of 2015 of the Ministry of health creating a Health Care Model for Persons Deprived of Their Liberty in the Custody of the National Prisons Institute. It is implemented by the Prison Services Unit in cooperation with the National Prisons Institute, in accordance with Decree n°2245.

5°/. December 2015, three technical-administrative manuals developed and presented by the Prison Services Unit and the National Prisons Institute to implement the Health Care Model.

6°/. National Development Plan 2014-2018 as a result of the reform of Colombian prison policy.

## ***Remaining Challenges***

### Basic health care services in detention for children and adolescents

The outsourcing of health services to inmates, including children and adolescents, has generated many difficulties. Thus, in January 2016, Caprecom, a health insurance provider, with whom a contract has been signed, was unable to deliver the required services.

### **Recommendation:**

- **Empower and allocate adequate resources to State-owned social enterprises and health service providers to deliver timely, regular and appropriate health care services to children and adolescents in detention.**

### Overuse of detention

In 2015, the Committee on the Rights of the Child (CRC) underlined the “disproportionate use of deprivation of liberty as a punishment for adolescents”<sup>3</sup> despite all the normative measures undertaken by the Government. Even though the 2006 Children and Adolescents Code provides for substitutions to the deprivation of liberty, the promotion and the use of alternatives measures have been insufficient, in practice, as detention measures have been overused.

---

<sup>3</sup> CRC/C/COL/CO/4-5, § 66 d).

## **Recommendation**

- **Prioritize efforts and resources to promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, whenever possible, and ensure that detention is used as a last resort and for the shortest possible time and that it is reviewed on a regular basis with a view to withdrawing it<sup>4</sup>;**

## Degrading treatment in detention

In 2015, the CRC pointed out the “insufficient measures taken to improve the conditions in juvenile detention centres and to prevent violence against children in detention”<sup>5</sup>. The lack of safe drinking water and ventilation in some cells are issues of concern. Besides corporal punishment, inmates are also subjected to psychological torture methods, including confinement as a punishment.

## **Recommendations:**

- **Limit pre-trial detention, improve detention conditions of juveniles and give priority to alternative measures to the deprivation of liberty;**
- **Ensure that all public servants, particularly police, prison officers and judges attend regular, suitable, specific and compulsory training courses on strategies dealing with violence against children and the administration of juvenile justice.**

## Overcrowding

In May 2015, the Committee against Torture<sup>6</sup> expressed concern about the increased overcrowding of detention facilities, which has led the Constitutional Court to characterize the situation as an “unconstitutional state of affairs”<sup>7</sup>. The same assessment has been made two years earlier by the OHCHR-Colombia<sup>8</sup>. In addition, most of the detained children and adolescents suffer mental health problems.

## **Recommendations:**

- **Ensure effective separation between children and adolescents and adults in detention;**
- **Take concrete steps towards drug detoxification and the implementation of mental health programmes.**

## Complaint mechanism in detention

Complaint and investigation mechanisms in detention are not effective. Such mechanisms could allow children and adolescents deprived of the liberty to report torture acts and degrading treatments endured in detention. As a matter of fact, the Committee against Torture has come to the conclusion in 2015 that there are no centralized statistics or information about the human rights violations occurring within juvenile detention centers<sup>9</sup>. Consequently, there are no investigations, trials or convictions with regard to psychological and physical ill-treatments in detention.

## **Recommendations:**

- **Set up or reinforce complaint and investigation mechanisms in detention for children and adolescents deprived of their liberty;**
- **Ensure that children and adolescents have an effective access to these mechanisms without fear for reprisals and that impartial investigations are conducted and the perpetrators found guilty duly punished.**

---

<sup>4</sup> CRC/C/COL/CO/4-5, § 67 d).

<sup>5</sup> *Ibid*, § 66 e).

<sup>6</sup> CAT/C/COL/CO/5 (2015), § 17.

<sup>7</sup> Decision No. T-388/13 of 28 June 2013.

<sup>8</sup> See footnote n°1 above.

<sup>9</sup> CAT/C/COL/CO/5, § 21.

## MUNICIPAL AUTHORITIES AND SERVICES AS KEY MILESTONES FOR THE ADMINISTRATION OF JUVENILE JUSTICE

The System of Criminal Responsibility for Adolescents (*Sistema de Responsabilidad Penal para Adolescentes, SRPA*) established a cooperation system whereby all stakeholders, including the *Instituto Colombiano de Bienestar Familiar (ICBF)*, the *Centros de servicios judiciales (CESPA)*, the health service of the Ministry of Health, *Defensoria de familia* and the *Policia nacional* joint effort to tackle the challenges. Unfortunately at the municipal level where concrete and direct steps could be efficiently undertaken by local municipal authorities and police services for the prevention and protection of children and adolescents, the shared responsibility system is not effective. Hence, municipal development strategies that deal, for example, with programs like “*Juntos con nuestros niños, niñas y adolescentes*” and “*Juventud generación de paz*” do not include Children from the SRPA.

To ensure the rehabilitation and the reintegration of children and adolescent in conflict with the law as the ultimate objective stated in the 2006 Code, local endeavors at the municipal level should be considered as key milestones. Therefore, the Government and the municipal authorities should:

- **Sensitize communities on the imperative need to breach stereotypes attached to children and adolescents in conflict with the law;**
- **Reinforce local government through development of a municipal roadmap to free children from violence and protect their rights, especially children under the SRPA;**
- **Integrate in municipal development plans support and guidance towards vocational training, including for children from the SRPA;**
- **Initiate communality-based pilot programs with schools and prisons as key actors for the prevention and sensitization of students on the consequences of gang membership and the impact of the deprivation of liberty<sup>10</sup>;**
- **Develop post-incarceration support plans with specialized operators within the municipalities and secure cooperation with the ICBF, the Defensoria de familia, civil society organizations, district police officers and local entrepreneurs for effective social and professional reintegration.**

## VOLUNTARY PLEDGE AND COMMITMENT

Continue to advance in the implementation of the national mechanism for visits to places of detention<sup>11</sup>.

Despite this encouraging voluntary pledge, Colombia has noted the following recommendations during the UPR second cycle:

118.1. Ratify international human rights instruments to which Colombia is not yet a party **(Niger)**;

118.2. Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Peru); Ratify the Optional Protocol to the Convention against Torture (Mexico, Philippines, Slovenia, Turkey); Become a party to the Optional Protocol to the Convention against Torture (Montenegro); Consider the possibility of acceding to the Optional Protocol to the Convention against Torture with a view to strengthening preventive activities **(Uruguay)**;

<sup>10</sup> Similar program is implemented in Medellin.

<sup>11</sup> A/HRC/24/6, § 126.

118.3. Ratify the Optional Protocol to the Convention against Torture and establish a national mechanism for visits to places of detention **(Costa Rica)**;

118.4. Accede to the Optional Protocol to the Convention against Torture and establish the national preventive mechanism accordingly **(Czech Republic)**;

118.5. Conclude rapidly the process of ratification of the Optional Protocol to the Convention against Torture, as well as the process of harmonization of its national legislation with the provisions of the Rome Statute **(Tunisia)**;

118.6. Ratify the Optional Protocol to the Convention against Torture and the Optional Protocol to the Convention on the Rights of Persons with Disabilities **(Guatemala)**;

118.7. Consider signing and ratifying the new Optional Protocol to the Convention on the Rights of the Child on a communications procedure **(Slovakia)**;

118.10. Consider ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, to ensure that the child's voice and needs are heard and protected **(Thailand)**;

118.11. Become a party to the third Optional Protocol to the Convention on the Rights of the Child **(Montenegro)**;

118.12. Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure **(Germany)**.

### ***Positive aspects***

Indeed, Colombia has established a Prison Conditions Oversight Commission. In addition, the Office of the Ombudsman and the Office of the Counsel-General in correctional facilities are meant to conduct inspections of detention centers.

### ***Remaining challenges***

Notwithstanding, the Committee against Torture has expressed in 2015 concerns over the fact that the "Ombudsman's recommendations are not being duly acted upon"<sup>12</sup> and that "no fully independent agency is responsible for inspecting all places of detention, including police stations, youth detention centers and psychiatric hospitals"<sup>13</sup>. Therefore, the ratification the Optional Protocol to the Convention against Torture (OPCAT) and the establishment of the National Preventive Mechanism accordingly is the solution for an independent, regular and effective inspection process of all detention places in Colombia.

#### **Recommendations:**

- **Ratify the OPCAT and establish the National Prevention Mechanism with specific and adapted protocols on the inspection of juvenile detention centers;**
- **Take necessary steps to implement the recommendations contained in previous reports issued by the Prison Conditions Oversight Commission and the Office of the Ombudsman on detention conditions in juvenile detention centers.**

---

<sup>12</sup> CAT/C/COL/CO/5 (2015), § 20

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