

# Juvenile Justice System and Human Rights

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## Introduction

International human rights instruments consider children who come into conflict with the law as victims of social hardship, neglect, violence and deprivation. Thus, they require special attention, treatment and care. A number of studies reveal that the segments of children who face the process of criminal justice (arrest, detention, investigation, prosecution, adjudication and imprisonment) are more prone to develop criminal behavior and revert to criminal activities. Considering this fact, states have developed juvenile justice systems that lay emphasis on diversion schemes. A wide range of international instruments provides for juvenile justice systems.

Nepal has ratified the Convention on the Rights of Child (CRC), and the Covenant on Civil and Political Rights (ICCPR), which together constitute the basic foundation of the juvenile justice system. To give effect to the obligations under those international instruments, the Kingdom of Nepal has enacted the Children's Act (1991) and the Regulation (1993). Both these domestic instruments are envisaged to promote child rights, and provide safeguards for the best interests of children when they come into conflict with laws.

## International standards related to juvenile justice

The Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) are the main treaties related to the administration of juvenile justice. In addition, there are several rules and guidelines that are also regarded as parts of the treaty provisions, since the Committee on the Rights of the Child has made it clear that the administration of juvenile justice should be read together with those rules and guidelines. The most significant of these rules and guidelines are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, ("The Beijing Rules")<sup>1</sup>, United Nations Guidelines for the Prevention of Juvenile Delinquency, ("The Riyadh Guidelines")<sup>2</sup> United Nations Standard Minimum Rules for Non-custodial Measures ("Tokyo Rules") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.<sup>3</sup>

The Beijing Rules provide a comprehensive social policy regarding the treatment of juveniles. The Rules establish minimum standards that are formulated in such a way that they may be applicable to the different legal systems of States. They give guidance on the use of imprisonment as a last resort. They include the use of diversion for crime prevention, the establishment of juvenile courts, the basic rights of juveniles, the duties of parents and guardians, steps to ensure that the periods of detention are to be short, measures to ensure a fair trial, principles for decision-making by courts, the principle of confidentiality, respect for

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<sup>1</sup> G.A Res. 40/33, 1985

<sup>2</sup> G.A. Res. 45/112, 1990

<sup>3</sup> G.A. Res. 45/113, 1990

professionalism in the juvenile justice system, and means of providing for assistance to and rehabilitation of juveniles, and use of separate treatment for juveniles who come into conflict with the law, etc.

The Riyadh Guidelines emphasize programs to prevent children from coming into conflict with the law. They recognize the prevention of juvenile delinquency as an essential part of crime prevention in society.<sup>4</sup> They establish relevant principles and guidelines relating to the socialization and integration of children, prevention of delinquency, social policy, legislation and juvenile justice administration, research, policy development and co-ordination for non-punitive measures. The guidelines ban harsh treatment, punishment, discipline or correction in any form in the home, school or any other institution.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty prohibit the detention or imprisonment of juveniles with adults. They provide specific rules concerning juveniles in detention. They presume the principle that children awaiting trial are innocent and they should be treated as such. Only in exceptional cases should juveniles be detained. In such cases, the highest priority should be given to expedite cases of juveniles in preventive detention. The Rules provide that juveniles awaiting trial have the right to legal counsel, the right to apply for legal aid and shall be separated from convicted prisoners.

They also provide rules for the management of juvenile facilities, the standard of personnel working in juvenile justice systems, the physical environment and accommodation of juveniles, education, training, medical care, respect for the child's religion in detention, and contact with the community, etc.

The Tokyo Rules are focused on non-custodial measures and alternatives to imprisonment. They provide a set of basic principles to promote the use of non-custodial measures as alternatives to imprisonment. They emphasize the greater involvement of communities in treatment of offenders. They require states to adopt non-custodial measures in their respective legal systems. The Rules also provide that such measures should be adopted at all three stages, i.e. the pre-trial stage, trials and sentencing stage and post sentencing stage.

As a party to the CRC and ICCPR, Nepal holds several responsibilities with regard to juvenile justice. The CRC encompasses the total rights of children in a holistic approach; it contains three articles (article 37, 39, 40), relating to the administration of juvenile justice in particular.

- Article 37 relates to the treatment of children in conflict with the law. It prohibits torture of juveniles and ensures protection from arbitrary or unlawful deprivation of their liberty. It stipulates that 'every child deprived of liberty shall be treated with humanity and respect, and every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance'.
- Article 39 provides for the rehabilitation of children. It obliges State parties to take all appropriate measures to promote physical and psychological recovery and social integration of the child victim.
- Article 40 provides for respect for the dignity of children before the law. It recognizes the right of every child who has come into conflict with the law to be treated with dignity. In particular, it states that the victim is presumed innocent until proven guilty,

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<sup>4</sup> The United Nation Guidelines for the Prevention of the Juvenile Delinquency (the Riyadh Guideline, no. 1.

and must be informed promptly and directly of the charges against the child. In addition, it is stipulated that the case must be resolved promptly by a competent, independent and impartial authority or judicial body.

- Article 40 of the CRC covers the rights of all children alleged as, accused of, or recognised as having infringed penal law. Thus, it covers treatment from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, to trial and sentence. The article requires States to promote a distinctive system of juvenile justice for children with specific positive rather than punitive aims.

Similarly, Article 10 of the ICCPR provides that the juvenile should be placed separately from adult detainees.

Main obligations laid down by the international standards upon States:

- To submit regular progress reports to the Committee on the Rights of the Child.
- To adopt mechanisms to prevent children from coming into conflict with the law.
- To adopt non-punitive measures non-custodial measures, and diversion from the formal justice system.
- To adopt alternatives to imprisonment.
- To ban harsh treatment upon juveniles.
- To adopt separate mechanisms and procedures to deal with juveniles and separation of juveniles from adult detainees.
- To establish a Juvenile court and provide assistance to rehabilitation homes.
- To provide training to personnel working in juvenile justice systems.
- To improve the physical environment and accommodation of juveniles.
- To ensure education, training, medical care, respect for the child's religion in detention, and contact with the community.
- To ensure a fair and speedy trial, and provide legal aid to juveniles.

### **Present Scenario about Observation of the Treaty Provisions**

A big gap has been found between rhetoric and practice. This has been recognised by, among others, the Social Justice Committee of the National Assembly. In their second annual report presented at the meeting of the National Assembly on 9 November 2001, the committee criticised the lack of effective implementation of the act on children passed by the parliament, and recommended that legal provisions on children be strictly implemented (INSEC, 2002:86). INSEC has observed that although in every district court a child bench has been established and all district administration offices are entitled to establish child welfare committees, these provisions are “hardly functioning” (INSEC, 2002:86).

The Committee on the Rights of the Child listed this as a principal concern in 1996. Nepal submitted its initial report to the Committee on the Rights of the Child in 1995, which was due in 1992.<sup>5</sup> (Nepal's second periodical report is already due but they have yet to submit it.) In its Concluding Observations on the Report submitted by Nepal on its implementation of the Convention, the Committee expressed concern over the “gap between existing legislation and its

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<sup>5</sup> CRC/C/3/Add.34.

practical implementation”.<sup>6</sup> Nepal’s international obligations have been enshrined into domestic law through the Children’s Act and its implementing Regulation. Furthermore, section 9 (2) of the Treaty Act, 1990, provides that any law of Nepal inconsistent with a treaty or convention acceded to or ratified by His Majesty’s Government of Nepal will be void. Through these provisions, Nepal’s internationally declared commitment to children can be directly incorporated into the Nepalese legal system. This places an obligation to uphold commitments, but this is not one that has been translated into practice.

### **Common Problems Facing Juvenile Justice System in Nepal**

Age of Criminal Responsibility: Nepal is often criticized for its law prescribing criminal liability from very low age of children, compared to international practice. The UN Committee on the Rights of the Child has repeatedly expressed concern regarding the minimum age for criminal responsibility, although there is no clear international limit regarding the age at which criminal responsibility can be reasonably ascribed to juveniles. Article 40 (3)(a) of the CRC simply states that State Parties must establish a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law”.<sup>7</sup> But the Beijing Rules add to this the principle that “the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” (Rule 4.1).<sup>8</sup> However, in its Concluding Observations on State Reports, the Committee on the Rights of the Child has constantly referred to the desirability of setting the highest possible minimum age. It has particularly criticized countries where the age is set at 10 or below (Innocent Center, 1998: 4-5). In this respect, Nepal falls below the mark. As provided by the Children’s Act, only children below the age of 10 are exempt from criminal responsibility. For children aged between 10-14, if they commit an offense punishable by prison terms, the punishment will be limited to a maximum period of six months. If the child is between 14-16 years of age the punishment will be half that which is given to an adult convicted of the same crime.

The minimum age of criminal responsibility must also be considered in conjunction with the treatment of a child after the commission of an offence. In 1997, children as young as 9 were reported to have been imprisoned, even though children under 18 cannot be charged with crimes under the law.<sup>9</sup> Furthermore, it was reported that in Rukum district, a 13-year-old boy was arrested and accused of being a Maoist. He was then held for 6 months with 54 adults, in a cell designed for only 15 persons, before a trial date was scheduled.<sup>10</sup> It has been observed that “the age at which criminal responsibility is set may or may not reflect a repressive or rehabilitative perspective on the part of the authorities”.<sup>11</sup> In the light of the concerns outlined in this chapter, Nepal may be again found wanting in this regard.

In practice when children are arrested, the determination of age becomes a problem. In most cases it is difficult to find the formal registration of the birth of a child. In Nepal, only children born in a hospital receive a birth certificate and an official statement of their registration of birth. Since most children are born at home, problems occur with finding a birth certificate<sup>12</sup> As a

<sup>6</sup> CRC/C/15/Add. 57. 7 June 1996.

<sup>7</sup> Convention on the Rights of the Child, articles 40 (3) (a).

<sup>8</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 4.1.

<sup>9</sup> Op cit., US State Department, 1997, p. 12. The correct age at which children may be charged of a criminal offence is 14.

<sup>10</sup> Ibid., p. 3.

<sup>11</sup> Op cit., Innocenti Digest, p. 5.

<sup>12</sup> (CRC/ C/3/Add.34).

result, in most cases juveniles report that their date of birth was falsified by the investigating officers. In its concluding observations, the Committee on the Rights of the Child has also recommended that Nepal carry out programmes for birth registration and take further steps to ensure the birth registration of children including the establishment of mobile registration offices and registration units at schools.<sup>13</sup> The country still has yet to take such recommended measures to provide birth certificates to children.

**Arrest and Detention:** The police are authorised to arrest, investigate and proceed with charges against persons in criminal cases. Thus, the police are the ones with whom children first come into contact. It is widely reported that the police abuse this authority resulting in a pattern of arbitrary arrest and detention. Once having arrested the accused, the general trend is that police detain them. The determination of the age of children always comes later. Mostly these children are placed with adult detainees in police custody. The Constitution and legislation require police to bring those arrested before the court or DAO office within 24 hours of arrest but it is hardly applied in practice.<sup>14</sup> In many cases the police fabricate the date of arrest. They keep children as long as they want and prepare arrest papers that show that the arrest took place no more than 24 hours previously. The provision of the Beijing Rules stating that arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time<sup>15</sup>, is very rarely observed.

It has been found that the majority of child arrests were for petty crimes such as stealing small amounts of money, as well as drug and public offences.<sup>16</sup> Police randomly arrest persons, especially street kids, place them in custody for some days or weeks and just charge them with public offense. The crime of public offense is the most common reason for the arrest of many juveniles which has put many detainees at risk since there is no provision for listening to defense lawyers in these cases.

**Legal Representation:** The Children's Act provides that a child's case should not be heard unless represented by a lawyer. The right to consult with a lawyer is also enshrined in the Constitution as a non-derogable right even in a state of emergency. If a child cannot afford a lawyer, the court itself has to appoint a lawyer to plead on behalf of a child. However, this provision is not available for children arrested for public offence. There is no trend at all in the office of the DAO to hear pleading or defence made by defence lawyers. Since 'public offence' is one of the major offences for which juveniles are arrested and imprisoned, this provision should be made mandatory in the DAO's office as well.

**A Specialized System of Justice:** Nepal does not have a separate system of justice for juveniles. The concept of such a "system" has been stated to derive from article 40 (3) of the CRC provides that "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law". However, among the international provisions, it is only articulated in the United Nations Rules for the Protection of Juveniles deprived of their Liberty, which state "The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles". Nepal has not developed such a system. However, it has made

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<sup>13</sup> CRC/C/15/Add.57, para 31.

<sup>14</sup> In interviews with 400 detainees in police custody, more than 80% of those interviewed claimed that their date of arrest was falsified and were not taken to the court or CDO office within 24 hours.

<sup>15</sup> Rule 13 (b).

<sup>16</sup> Among those 75, 32 were for theft, 18 for public offence and 10 for murder.

provision for a specialized mechanism for juvenile justice delivery. The Children's Act provides for the establishment of a "juvenile benches". To date, these have not been set up. Children are tried as adults in the ordinary court. The practice has been criticized by the Social Justice Committee of the National Assembly, whose most recent report recommended that arrangements be made for the immediate establishment of children's court (INSEC, 2002:86). In 1997 (2054) a writ petition was lodged in the Supreme Court seeking the court's intervention to order government to establish a juvenile court/juvenile bench. (*Balkrishna Mailali vs. Cabinet Secretary*). The court issued an order against the government to establish the bench as soon as possible as prescribed by the Children's Act. While the case was under the court's consideration, the government published a notice in the Gazette that an order had been passed for the establishment of juvenile benches in all 75 district courts.<sup>17</sup> Accordingly, the petition was quashed. However, as yet, these are not in operation.

*Prohibition against Torture:* Article 37(1) of the CRC, article 7 of ICCPR and the CAT prohibit the practice of torture. The constitution of the kingdom of Nepal also guarantees the right to be free from torture. Section 15 of the Children's Act, 1991, states that no child shall be subjected to handcuffs and fetters or solitary confinement. There have been some positive steps towards the realisation of these rights. In *Balkrishna Mainali v. Ministry of Home Affairs*<sup>18</sup> the Supreme Court held the handcuffing of children to be "immoral", and made special reference to Nepal's obligations under the CRC. However, this progressive attitude is not the rule. INSEC has reported that 510 young people under the age of 15 suffered human rights violations in 2001 (INSEC, 2002:86). These will not all have been in the justice system, but a large majority will have been through conflict with the law, particularly in the context of the Maoist insurgency. The incident of the 13 year old detained in Rukum is a grave reminder of the prevalence of ill-treatment.<sup>19</sup> Children have been found to be severely tortured in police custody. It is also important to note that because of their critical state of physical and psychological development, children may suffer graver consequences than similarly ill-treated adults<sup>20</sup>. A particular form of treatment or punishment may not be prohibited when inflicted upon adults but may amount to cruelty or degradation when perpetrated against children. However, in Nepal, custody has now become synonymous to torture.

*Juveniles in Custody and Detention:* International law accepts that deprivation of liberty may be required for juveniles in certain cases. However, it lays out a wide range of provisions for the conditions under which juveniles may serve a sentence. One of the most fundamental is the separation of children from adults in custody. Article 10 (3) of the ICCPR, provides that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. Clause (a) of Article 37 of the CRC provides that State Parties shall ensure that no child be submitted to torture, or other cruel, inhuman or degrading treatment or punishment. Clause (c) of this article further states that State Parties must ensure that every child deprived of their liberty shall be separated from adults unless it is considered in their best interests not to do so. These international obligations have been enshrined into Nepal's domestic law in the Children's Act. Section 15 provides that any minor who is found to have committed an offence shall not be kept along with grown up prisoners.

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<sup>17</sup> Gazette 2056/12/28.

<sup>18</sup> *Balkrishna Mainali v. Ministry of Home Affairs*, decided on 2058/4/23, SC.

<sup>19</sup> Op cit., US State Department, 1997, p.3.

<sup>20</sup> E/CN.4/1996/35

Despite such provisions, the imprisonment of juveniles with adult prisoners has been widely accepted. Until recently, all detained and imprisoned juveniles were placed in the same facilities as adult prisoners. This has surely been detrimental to the development of the child. Prisons are overcrowded to more than twice their capacity. It has been argued that other prisoners have abused juveniles imprisoned in these institutions physically, emotionally and sexually.

It is very difficult to get exact numbers and information on the situation of juveniles detained and imprisoned in different facilities and prisons.

Nepal's Report to the Committee on the Rights of the Child in 1995 stated that there were no children in prison for the commission of an offence, although there were about 63 children living in prisons because their parents had committed a crime.<sup>21</sup> The US State Department reported approximately 140 to 144 children considered delinquents or accused of public offences to have been incarcerated with adults in 1997, including some children below the age of 9. In addition, it was reported there were approximately 30 non-criminal dependent children of adult inmates. These were official figures given by the Department of Prisons (US Department State, 1997:12). In 1998, the official reports of the Department of Prisons stated there were no cases of children in jail or custody for offenses committed, although there were approximately 85 non-criminal dependent children incarcerated with their parents (US Department of State, 1997:12). However, a local NGO contradicted this, reporting that approximately 100 children considered as delinquents or accused of public offences were incarcerated with adults, as the Government had not then established a Juvenile Reform Home.<sup>22</sup> In 2000, a total of 75 children came to the notice of one of child rights organisation, 3 of who were below the age of 10.<sup>23</sup> In 2001, INSEC reported that there were only 27 juveniles in different prisons of Nepal (INSEC, 2001).

These figures are superficially inconsistent, and most probably fundamentally flawed. The numbers cannot give a clear picture of the problem, since a great number of juveniles detained in custody are detained illegally and their date of birth is falsified.

As reported above, dependents of adult offenders are one of the largest categories of children deprived of their liberty in Nepal. And one of the most at risk. In 2001, the Social Justice Committee of the National Assembly criticized the lack of proper arrangements for the care and education of children remaining in jails with their guardians (INSEC, 2002:86). The 1955 Standard Minimum Rules for the Treatment of Prisoners state that "(w)here nursing infants are allowed to remain in the institution with their mothers" there should be a nursery with trained staff to care for them when they are not in the care of their mothers.<sup>24</sup> Thus, there is no international standard for the age until which a child may stay with their incarcerated mother. Under Nepal's Prison Act, 1963, when a child is born of a jailed woman or when she has a child who is below two years old, the mother may keep her child until he/she reaches two years of age. When both the parents go to prison, and there is no other family member to look after the child, the child is taken to children's welfare home. Even then the child has the right to visit his/her parents in prison. The Children's Act provides for the creation of welfare homes in which these children can be placed, however, due to a "lack of budget", these have not yet been established (National Report, 2001).

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<sup>21</sup> CRC/C/3/Add. 34, 10 May 1995, point 149.

<sup>22</sup> Ibid., p. 14.

<sup>23</sup> Balkrishna Mainali V. HMG, Ne. .Ka. Pa. Decision No. 3505, 056. Supreme Court, Judgement Date, 2058/4/23.

<sup>24</sup> 1955 Standard Minimum Rules for the Treatment of Prisoners, Rule 23.

For juvenile offenders, there is a need to make the greatest possible use of alternative sanctions to those made for adults. This has been laid down in the UN Standard Minimum Rules for Non-custodial Measures (the “Tokyo Rules”). Rule 17 of the Beijing Rules reiterates the point. It provides that the reaction of the competent authority shall always be in proportion to the circumstances and the gravity of the offence, in addition to the circumstances and needs of the juvenile, as well as society.<sup>25</sup> The well-being of the juvenile shall be the guiding factor in the consideration of the case.<sup>26</sup> Rule 18 outlines a number of disposition measures available to “competent authority” that avoid incarceration. In Nepal, probation, fine, bail, or discharge under the supervision of a person named by the court can be used as an alternative to prison. Bail, putting children in remand homes, fines, and warnings have been used to some extent, but their use needs to increase. Community service, the involvement of the community and pre and post imprisonment measures is still very new. Traditional ways of conflict resolution have also been found to be practised in remote villages. It is necessary to implement legislation that encourages and recognises these practices to the extent they are compatible with the provision of international standards and the best interests of children.

Article 14 (4) of the ICCPR urges state parties to promote the rehabilitation of juveniles. A similar provision is found in article 40 of the CRC, which provides for the re-integration of children. The term integration has a wider perspective, which rejects the assumption that the difficulties which children have faced are their problems alone; rather they arise from the social environment of the child as a whole. Since the objective of the juvenile justice system is to prevent juvenile delinquency and to assist children to develop a sense of responsibility, the term rehabilitation should be interpreted in the sense of social integration. Nepal’s Children’s Act provides that a child found guilty of an offence and punished with imprisonment shall be kept in a Juvenile Reform Home.<sup>27</sup> Section 42 (3) of the Act provides that until a Juvenile Reform Home is established, His Majesty’s Government may temporarily use Juvenile welfare homes, orphanages or centres established and operated by other persons or bodies for this purpose. This has been incorporated into the Government’s Ninth National Plan, which further provides that child rehabilitation homes will be established in all five development regions (Ninth National Plan, 1997-2002:680).

This was an issue raised before the Supreme Court in three landmark cases. In the case of *Bablu Godia v. District Court of Nepalgunj and others*, a writ petition was filed in the Supreme by a lawyer on behalf of CeLRRd, challenging the legality of the detention of the petitioner, a minor, in prison and requesting his release and placement in a Juvenile Reform Home, as required by law. The Supreme Court upheld the pleas of the petitioner and issued a writ of *habeas corpus* for his release. Furthermore, it issued an order of *mandamus* in the name of the District Court and the Government that the petitioner be placed in a Juvenile Reform Home to serve sentence.<sup>28</sup> The Supreme Court upheld its decision in the cases of *Keshav Khadka v. District Court, Dhankuta and others*<sup>29</sup> and *Pode Tamang v. H.M.G*<sup>30</sup>. In both cases, an order of Mandamus was issued in

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<sup>25</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 17. 1 (a)

<sup>26</sup> Ibid. Rule 17.1 (d).

<sup>27</sup> Section 42, Children’s Act, 1991.

<sup>28</sup> Writ No. 3390 of 2057. Issued 2<sup>nd</sup> Chaitra 2057, March 15, 2001.

<sup>29</sup> Writ No. 3685 of 2057. Issued 28<sup>th</sup> Baisakh 2058, May 11, 2001.

<sup>30</sup> Writ No.4022 of 2058. Issued 10<sup>th</sup> Shrawan, 2058, July 25, 2001. These cases filed by Ashish Adhikari, an advocate, on behalf of CeLRRd. In both of these cases, the Supreme Court upheld the petitions, and thus contributed significantly to establish juvenile justice system in Nepal.

the names of the respondents to place the petitioners in a Juvenile Reform Home and make necessary arrangement for establishment of Reform Home.

This was done in August 2001, through an agreement with the NGO, UCEP (Underprivileged Children's Education Programme), for use of one of its care facilities. There are presently about 7 juvenile offenders and 22 dependants of adult offenders in this institution. However, there have been very few resources allocated for this. Training for the caregivers and the staff still has a long way to go. Problematically, just one organisation has been identified as a Juvenile Reform Home, and it is neither specialised in the rehabilitation of juveniles nor sufficiently funded. In addition, no programmes have been set up for the early prevention of juvenile delinquency in the national plan. Even if homes are established and children in conflict with the law are placed into these homes, personnel working with them need special training and skills to deal with them, which has not been included in any further plan.

Training of the staff in institutions in which juveniles may be placed is an urgent concern. A majority of jail staff lack the formal training and education required for their challenging and sensitive assignment. There is also a need of training for police.

Conceptual Clarity on Juvenile Justice: In Nepal, there has been a widespread notion and practice of taking juvenile justice system as an integral part of the criminal justice system. This concept underpins an objective of punishment. The actors of justice system and the government of Nepal have still been not able to understand that no theory of justice has been able to rationally justify that a child can be criminally liable to an act that violates the law. The objective and notion of the criminal justice system in the context of child justice is obviously challengeable. The juvenile justice system calls for separation of it from criminal justice system on the following grounds:

- No child is considered capable of committing a crime, as the crime is an outcome of the preconceived idea or thought, and a predetermined action to transform the thought into reality. An Act of child constituting the violation of law is not an outcome of the preconceived thought, nor is it an act materialized with predetermined idea.
- No child is criminally liable to be punished for his/her act, although, his/her act harms others. But he/she is considered equally affected thereby needing help to come out of such situation.
- The child justice system should be concerned with the correction and rehabilitation of the child thus benefiting the community as well as victims. The criminal proceeding of a child is potential in destroying his/her personality psychologically and socially, the ultimate consequence being the transformation into a state of criminality.

The perception that the juvenile justice system is an integral part of the criminal justice system is, therefore, inherently defective. It is intrinsically based on a number of wrong notions.