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Preliminary monitoring report

Trials before the Juveniles Courts in the West Bank and Gaza Strip

May 2020

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The Civil Coalition for Judiciary Reform and Protection (ISTIQLAL)

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Introduction and executive summary

The present preliminary report is the result of a pilot trial monitoring project carried out by the Civil Coalition for Judiciary Reform and Protection (ISTIQLAL) in Palestinian Juvenile Courts in the West Bank and in the Gaza Strip.

The report is part of a broader effort by ISTIQLAL to enhance Palestinian civil society's role in strengthening the Palestinian judiciary through transparent and objective scrutiny of their work. This commitment, made possible by the Sawasya II programme, managed by the United Nations Development Programme, already led to the publication of the Monitoring report "*Criminal Trials before the Serious Crimes Court and First Instance Courts in the West Bank and Gaza Strip*".

The preliminary findings contained in the present report are based on qualitative and quantitative analyses of data collected through monitoring of cases before Palestinian Juvenile Courts by a specialized team made of lawyers, during a limited timeframe (October-December 2019).

Due to the time constraints and limited data so far available, ISTIQLAL does not aim at drawing definite conclusions, but rather pre-identify some crucial issues that should be fathomed in the course of a more comprehensive monitoring project.

After laying out the methodology employed for collecting and analyzing the data (chapter 1), the report focuses on a quantitative approach to preliminarily assess the effectiveness of Palestinian Juvenile courts in trying and adjudicating cases before them (chapter 2). ISTIQLAL observed a number of instances where Juvenile Courts failed to try juvenile defendants in an expedite fashion and with the urgency dictated by this kind of cases. Courts often failed to start hearings on time, for diverse reasons, and to comply with daily working hours, devoting a small percentage of their time to court hearings. While this trend is in line with ISTIQLAL's findings on First Instance Courts, it is all the more concerning considering the detrimental impact criminal proceedings have on children defendants.

The report then highlights some critical areas that monitors encountered in the field of fair trial rights compliance (Chapter 3). ISTIQLAL observed *inter alia* cases where juvenile defendants did not have access to a defence lawyer, where child protection officers' reports were not taken into due account and, astonishingly, cases where Courts tried children under 12 years of age. A more comprehensive monitoring exercise would be needed to assess whether these are isolated incidents or indicators of more systemic shortcomings.

Based on the preliminary findings, the report finally contains some draft recommendations to the relevant institutions.

ISTIQLAL hopes that this report will become a continuous tradition to strengthen community oversight over the courts, enhance the courts' work and role in adhering to fair trial guarantees.

Chapter one - Research team and report methodology

1. Project and Steering committee

The present preliminary report is part of a project aimed at supporting the Palestinian judiciary's preparedness and accountability, through increasing civil society's capacities to monitor and evaluate the work of Palestinian courts.

The project is supported and funded by UNDP/UNWomen/UNICEF joint program: Promoting the Rule of law in the State of Palestine "Sawasya II" programme. It is managed by the United Nations Development Programme (UNDP).

In the framework of the project, a Steering Committee was created to supervise the trial monitoring program. The steering committee included the Civil Commission for the Independence of the Judiciary and the Rule of Law (ISTIQLAL), the Independent Commission for Human Rights, the Coalition for Integrity and Accountability (AMAN), the Jerusalem Center for Legal Aid, the Palestinian Center for Development and Media Freedoms (MaDA) and the Addameer Institute for Human Rights-Gaza. The Committee held a series of meetings to follow up on the progress of the monitoring project, approval of the required action plans needed for the implementation of the project.

ISTIQLAL was overseeing the process working with the Steering Committee to supervise the monitoring project.

2. Project implementation steps

The trial monitoring program was officially launched on April 15, 2019, at ISTIQLAL's headquarters in Ramallah and Gaza, in the presence of representatives of the institutions involved within the framework of the National Coalition for Judicial Reform and Protection, the Judges Club Association, the Attorney General's Office, and the Sawasya II programme team. That same day, a preliminary meeting was held with court monitors in order to agree on a common view of the project goals and fine-tune the methodology by going through the monitoring forms.

An evaluation meeting was held for the work stage after two weeks of fieldwork in which the performance was discussed and evaluated. Forms were developed based on the results of the practical field work experience and the way to deal with the response options.

Monitors had further regular meetings throughout the project implementation period to discuss and agree on work ethics and receive specialized training on court monitoring techniques. A group was also created on social media among project staff, making it possible for them to exchange information in real time and consult others on issues and difficulties encountered in their work.

The team was trained in the West Bank and Gaza Strip via videoconferencing technology. A social media group was created for the researchers and team members in the West Bank and Gaza Strip to give them an opportunity to exchange daily information on challenges faced in field work.

Trial monitoring forms were drafted, and meetings were held with official authorities in the West Bank to introduce them to the project, including the Chairman of the High Judicial Council and heads of courts. During the preparatory period and with the help of a statistical expert, an electronic data entry software was created to facilitate the work of field researchers in the West Bank and the Gaza Strip.

3. Monitoring methodology

Prior to starting the monitoring activities, the project team devised a number of indicators relevant to the monitoring goals. The indicators were then shared and discussed with relevant counterparts, including judiciary representatives, human rights organizations and all ISTIQLAL members. Both quantitative and qualitative approaches were used to collect and analyze data.

a) Monitored courts

For the purpose of this preliminary analysis, ISTIQLAL conducted pilot monitoring exercise in juvenile courts in Ramallah and Al-Bireh, Bethlehm, Nablus and Gaza)

b) Timeframe and number of hearings monitored

This study is based on data collected by the monitoring team in the Juvenile Courts, on the 38 monitoring days in the governorates (Ramallah and Al-Bireh, Bethlehem, Nablus, and Gaza) with a total of 510 sessions attended in the timeframe between October and December 2019.

The total number of monitoring days was 38, 27 of which were in the West Bank and 11 days were in the Gaza Strip as follows (7 days in the Ramallah, 2 days in Bethlehem, 18 days in Nablus and 11 days in Gaza). The number of files examined by the juvenile courts during this period was a total of 510, 425 of which in the West Bank and 85 in the Gaza Strip.

c) Data entry phase

With the help of a statistician, an electronic software was created enabling court monitors to enter data collected each day directly into a database. Dedicated software was developed using electronic forms on a tablet, ensuring that the forms are entered correctly. A comprehensive automated cleaning data rules were developed between questions at the level of the form to ensure consistency of questions and answers.

Comprehensive automated data cleaning rules were developed to ensure consistency of questions with and that no data is out of context or illogical.

Chapter Two - Juvenile Courts' Efficacy

According to Art. 12 of the Palestinian Constitution, everyone has a right to be tried “without delay”. In particular for children, the right to have an expeditious trial is a fair trial right of paramount importance and should be adhered to throughout all stages of the criminal justice process (see UN Committee on the Rights of the Child, Children’s Rights in Juvenile Justice. General Comment No. 10, 2007).

A delay in proceedings pending trial has a significant impact on defendants, particularly juveniles. The Committee on the Rights of the Child reiterated that, for children in conflict with the law, the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.

The majority of prominent human rights instruments seek to address the right to be tried within a reasonable time. As the CRC Committee noted, the term “without delay” (art. 40 (2) (b) (iii) of CRC) is stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR.

However, during the monitoring timeframe, ISTIQLAL observed a number of Juvenile trials that were characterized by considerable, unnecessary delays.

1. Courts' case processing capacity

First, the team considered each court’s overall case-processing capacity, in terms of working hours, number of hearings held, and average time devoted to each hearing.

	Number of court days monitored	Number of hearings held	Average number of hearings per day	Total number of hours worked in the monitoring period (hrs:min)	Average daily time dedicated to hearings	Average duration of a hearing (minutes)
Ramallah - Al Bireh	7	173	25	11:52	1:41	15
Bethlehem	2	40	20	4:00	2:00	10
Nablus	18	219	12	52:53	2:56	11
Gaza	11	312	28	20:15	1:50	15
Total	38	744	20	89:00	2:20	9

During the monitored period (38 court days), juvenile courts in the West Bank and Gaza Strip held 744 hearings, i.e. an average of 20 per day, slightly less than the daily average ISTIQLAL earlier observed in First Instance Courts (26 per day).

Hearings lasted on average 50% longer in Juvenile Courts than in regular courts (9 vs. 6 minutes). The average is actually a result of the much longer average time spent on a single file in Juvenile Courts in the Gaza Strip (15 minutes) than in the West Bank (6 minutes).

In the 38 monitored days, Juvenile Courts worked a mere 89 working hours: this means an average working time dedicated to hearings of 2 hours and 20 minutes per day. While this is in line with the average noticed in First Instance Courts (2 hours and 35 minutes), it is far from being a satisfactory performance in order to ensure juveniles' right to a trial within a reasonable time.

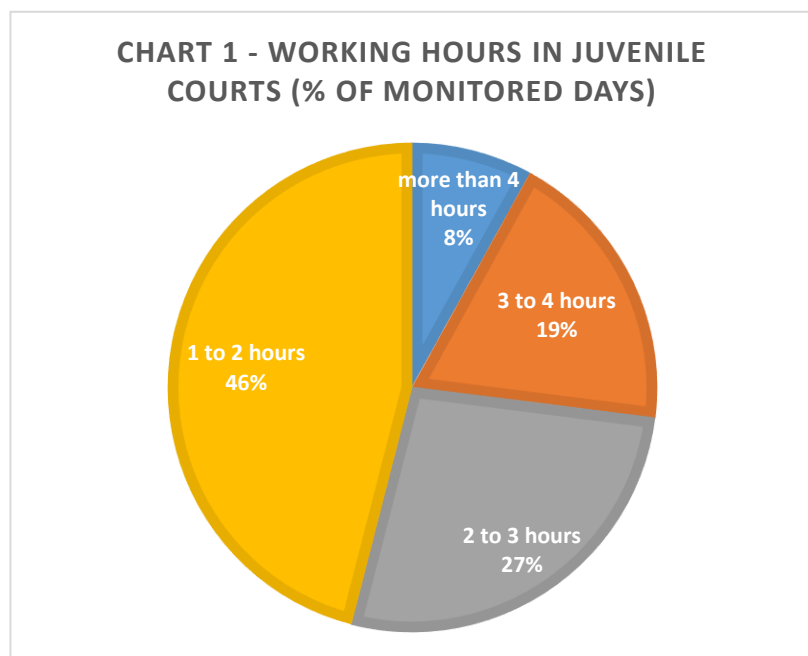
ISTIQLAL also noted that the number of juvenile judges assigned to juvenile courts appeared to be insufficient, in order to ensure that Courts can efficiently deal with their workload. Moreover, Gaza juvenile courts do not seem to have dedicated judges: in fact, the same judge who also works in first instance and reconciliation courts discharges duties as juvenile judge once a week.

Collection of more data over a longer timespan would be needed in order to confirm these preliminary monitoring results.

2. Courts' working hours

The official opening hours of the courts in the West Bank and Gaza Strip is 8 a.m., and hearings are all scheduled to start at 9 a.m. The working day finishes exactly 3 p.m.

However, as **Chart 1** shows, ISTIQLAL monitors observed that in almost half of the monitored days, Juvenile Courts operated for just 1 to 2 hours.

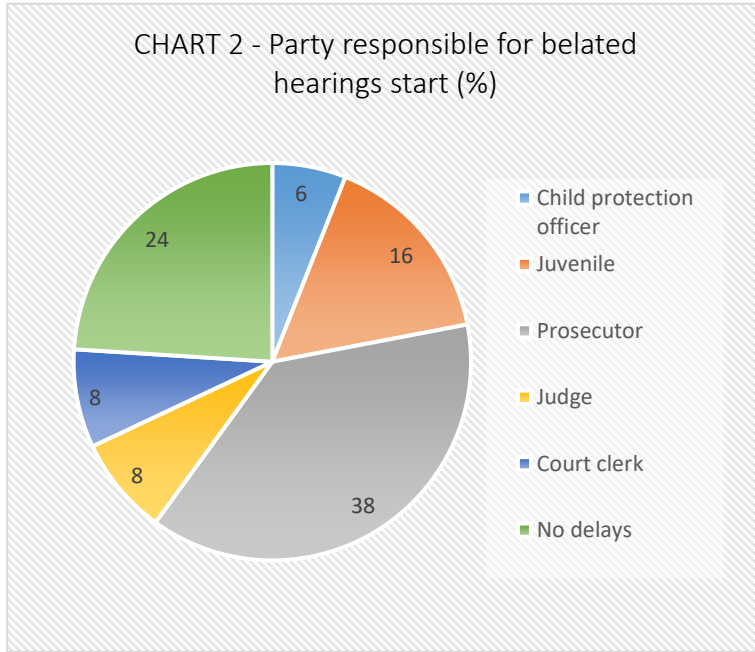


Remarkably, over 90% of Court days lasted 4 hours or less, instead of the 7 prescribed by law.

A difference in performance was also noted among courts: while the average daily working hours in the West Bank was 2 hours and 32 minutes per day, the average in the Gaza Strip was 1 hour and 50 minutes. The longest working day during monitoring period was in the Nablus Juvenile Court which was 5:00 hours.

3. Delays in starting hearings

Another concern relates to the timeliness in starting court hearings. Although, as mentioned, all hearings are due to start at 9 a.m., ISTIQLAL noticed that Courts rarely started hearing cases before 10 a.m.. The alleged reasons for belated hearing start are displayed in **Chart 2** below.



As the data shows, 76% of all hearings before Juvenile Courts started later than the 9 am expected starting time. In over one third of cases, this was due to the late arrival of the Juvenile Prosecutor. Juvenile defendants themselves were responsible for the belated start of 16% of hearings. In the remaining cases, the late start was due to the judge, the court clerk or the child protection officer.

ISTIQLAL believes that if the judges were to start a practice of commencing hearings on time (e.g. at nine a.m. sharp) all these parties will be accustomed to being present on time as well.

In any case, ISTIQLAL recalls that the judge is the authority responsible for managing the trial and ensuring that hearings start in a timely fashion. Judges should lead by example and, where appropriate, resort to available legal provisions to ensure that other parties adhere to the court timetables as well.

4. Case postponements and reasons thereof

ISTIQLAL also observed that a considerable number of monitored hearings did not result in any actual progress in the case. In such hearings, Courts simply postponed the session without taking any procedural action such as, for instance, reading the indictment, discussing the admissibility of evidence, or hearing witnesses or expert witnesses.

Reasons for postponement	West Bank	Gaza Strip	Total
Absence of Prosecution witnesses	20.1	7.1	17.5
Absence of injured party	15.6	4.7	13.4
Absence of juvenile defendant	12.4	3.5	10.6
Absence of defendant's parents	7.1	5.9	6.8
Absence of defense witnesses	2.7	7.1	3.5

Absence of a defense lawyer	4.7	4.7	4.7
Child Protection Officer requested to draft report	10.0	4.7	9.0
Irregularities in servicing documents	3.2	5.9	3.8
Deliberation and preparation for verdict announcement	2.7	18.8	5.9
Resummonsing of witnesses	9.4	9.4	9.4
Defence granted time to prepare/present evidence	3.5	5.9	4.0
Accused granted time to appoint a lawyer	2.9	4.7	3.3
Prosecution granted time to prepare/present evidence	2.1	4.7	2.6
Delay in bringing the juvenile defendant to court	0.3	5.9	1.4
Other	3.2	7.1	4.0
Total	100.0	100.0	100.0

Although in all courts the most frequent reasons for postponing a hearing was the absence of at least one party, the reasons for postponements were different in West Bank courts and Gaza Strip courts.

In West Bank Juvenile courts, the most frequent reason was absence of the prosecution witness (20,1% of all postponements), closely followed by absence of the injured party who had to be resummoned (15,6%) and the juvenile defendant's failure to attend the hearing (12,4%).

In the Gaza Strip, the most recurring reason for postponement (18,8% of all sessions monitored) was deliberation by the Court and announcement of the judgment. This rate was closely followed by absence of the defense witnesses, which amounted to 7,1% of the reasons for postponement.

In Gaza, ISTIQLAL also observed cases where juveniles were mistakenly tried by First Instance Courts, before having their cases transferred to the competent Juvenile Court.

These preliminary results, if confirmed through a more comprehensive observation of trials over a longer timeframe, may indicate that the Juvenile justice system in Palestine needs to improve its performance in order to guarantee that all children are tried in an expeditious and efficient manner, so as to avoid unnecessary additional harm to their well-being.

Chapter three - Children's rights in criminal proceedings

The present chapter contains some preliminary remarks on the Palestinian Juvenile Courts' compliance with fundamental rights of children subjected to criminal proceedings.

Child defendants are especially likely to be overwhelmed and damaged by the experience of criminal proceedings. Failure to take into consideration their different needs and abilities can have devastating implications for their fair trial rights and their welfare.

Children who are accused of criminal offences are entitled to all the fair trial rights that pertain to adults, as well as to additional protection mechanisms in acknowledgement of their age (Art. 40 (2)(b), Convention on the Rights of the Child). Art. 40 (2) of CRC contains an important list of rights and guarantees to ensure that every child in conflict with the law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR). However, the implementation of these guarantees for children requires specific aspects.

All the guarantees recognized in article 40 (2) of CRC are minimum standards, meaning that States parties can and should try to establish and observe higher standards.

	West Bank (%)	Gaza Strip (%)	Total (%)
Court adopted measures to separate defendants from public	97,9	95,6	96,2
Enabling the defendant to appoint a lawyer or provide him with legal aid	95,9	100,0	97,4
Defense lawyer is present during criminal proceedings	88,8	97,0	91,0
Child Protection Officer present during criminal proceedings	100,0	100,0	100,0
Child Protection officer report is attached to the case file	54,5	66,8	64,3
Child Protection officer report was discussed before the verdict	80,6	100,0	88,1
When defendant pleaded guilty, judgment based also on other evidence	86,8	45,9	69,9

1. Legal representation

The CRC does require that the child be provided with assistance: while assistance does not necessarily need to be legal under all circumstances, it nevertheless must be appropriate. In any case, the CRC

Committee recommends that states always provide legal representation for all children who are facing charges in juvenile courts.

Preliminary observations by ISTIQLAL indicate that Palestinian Juvenile Courts do not always ensure this right: in more than 10% of monitored hearings before Juvenile Courts in the West Bank, the defendant was not assisted by a defence counsel. ISTIQLAL also observed that in approximately 4% of cases in the West Bank juvenile defendants were not entitled to appoint a lawyer of their own choosing.

2. Child protection officers assistance

A key party to juvenile criminal proceedings is the child protection officer, i.e. the person responsible for trying to ensure that the children defendants' perspective and best interest are taken into due account.

Under Palestinian law, in juvenile proceedings child protection officers are always required to submit a report. ISTIQLAL's preliminary observations, however, indicate that the child protection officer's report was not always included in the criminal case file. This shortcoming was observed in approximately 50% of cases in the West Bank and in one-third of cases in the Gaza strip.

When present, the Child Protection officer report was always discussed before the verdict in juvenile proceedings conducted in Gaza, while it was not considered in approximately 20% of cases in the West Bank.

3. Separation from adults

An important principle in juvenile justice is that of separation of children offenders from adults.

In general, Palestinian courts limited the use of pre-trial detention in juvenile proceedings: in the cases monitored by ISTIQLAL, just 16,5% of juveniles tried had been arrested, broken down to 9.7% in the West Bank and 6.8% in the Gaza Strip.

Art. 37 (c) of the CRC foresees that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so". As the CRC Committee noted, there is abundant evidence that the placement of children in adult centres or prisons compromises their basic safety and their future ability to remain free of crime and to reintegrate.

However, ISTIQLAL has observed a concerning trend in the Palestinian system to hold children deprived of liberty in the same facilities as adults.

4. Right to call and examine witnesses

The guarantee in article 40 (2) (b) (iv) of CRC underscores that the principle of equality of arms (equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The term “to examine or to have examined” refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard (art. 12 of CRC).

	West Bank	Gaza Strip	Total
Witnesses examined by the juvenile court	83,9	62,4	68,1
Witnesses cross examined by Juvenile Protection Prosecution	90,6	63,5	70,9
Witnesses cross examined by defense attorney	77,4	70,6	72,4

5. Right not to incriminate oneself

An additional area of concern that ISTIQLAL noticed is that, in some cases, Courts based their verdicts of guilty solely on the self-incriminatory statements made by the defendant, without seeking to corroborate them with additional evidence.

The practice appears to be particularly widespread in Gaza, where over half of proceedings where the defendant pleaded guilty were concluded without further corroborating evidence.

While these, if confirmed, are concerning practices regardless of the defendant’s age, they are even more troubling in juvenile proceedings. The CRC Committee found that “The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true.”

More in-depth monitoring is needed in order to validate the preliminary data collected.

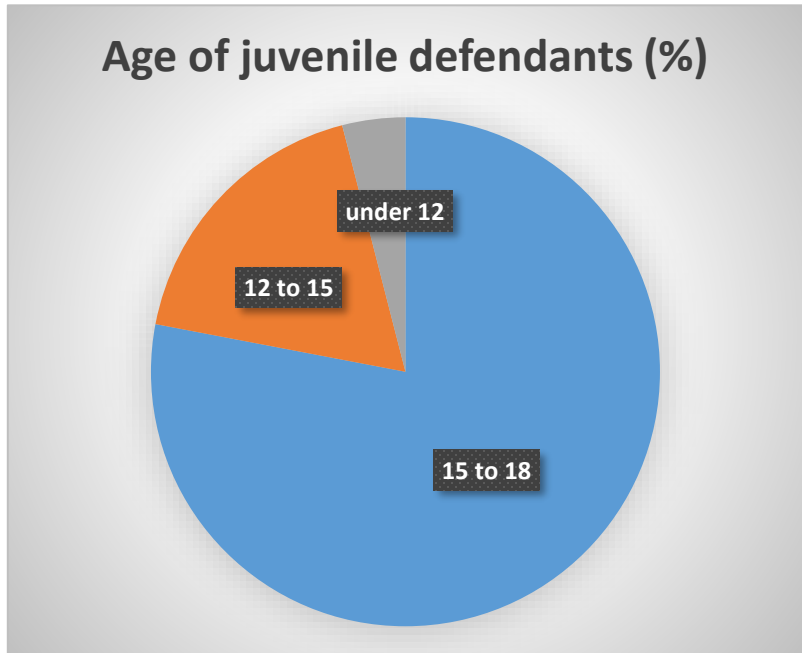
6. Trial of juveniles under twelve years of age

Lastly, ISTIQLAL monitors noted a concerning practice by Juvenile Courts to try children who were incapable of standing trial, since they had not reached the minimum legal age (12 years old) under Palestinian law.

Although the vast majority (78%) of hearings monitored involved juveniles falling in the age range 15-18 years old, 18% of defendants in monitored hearings were between 12 and 15 years of age.

Astonishingly, 4% of defendants were under the age of 12. In Gaza a trial was observed where the defendant was no older than seven or eight years of age.

More generally, ISTIQLAL noted that in some cases Courts may have not carried out a proper age assessment of the child defendant. Courts seem to have relied, at least in some cases, on the physical appearance of the person involved, rather than carrying out in-depth verifications and resorting, where identification documents are not available, to multidisciplinary methodologies to determine a person's approximate age.



While these preliminary observations would need to be corroborated by more comprehensive and detailed data collection and analysis, they point to possibly serious violations of children's fair trial rights during criminal proceedings before Palestinian courts.

Recommendations

- Ensure that Juvenile judges and prosecutors are properly trained and assigned exclusively to juvenile cases, in order to ensure they have specialized knowledge of juvenile proceedings and have sufficient time to deal with such cases expeditiously.
- Ensure that Juvenile courts are located in buildings separate from ordinary courts, in order to safeguard juvenile privacy and avoid additional traumatization.
- Avoid unnecessary delays by ensuring that an adequate number of child protection officers are available.
- Always include child protection officers reports in the case file.
- Always ensure that juvenile cases are treated with priority.
- Avoid convicting juvenile defendants based solely on their admission of guilt.
- Allow defendants proper time and resources to prepare their defence, including by calling and cross-examining witnesses.
- Avoid placing detained children in the same holding cells as adults.
- Never subject any children under the minimum legal age (12 years old) to criminal proceedings.
- Promptly transfer to Juvenile courts any juvenile case files that were erroneously assigned to ordinary courts.
- Ensure that juvenile defendants have the right to be assisted by defence counsel of their choice.
- Require the Child Protection officer to communicate with the accused and his family constantly to determine the social and economic situation.