

# **Juvenile Justice in Karnataka: A Case for Systemic Change**

**June 2012**

*(This publication is a result of the in-depth assesment and collaborative analysis of the Juvenile Justice system in Karnataka by the Concerned for Working Children and the Asian Centre for Human Rights.)*

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*The most pernicious of the Government of India's flaws flourish in juvenile justice, where there is no one to complain. Physical abuse, corruption, and abuse of power dominate the system, from police to incarceration to legal proceedings.*

## **I. Background**

The Constitution of India mandates that “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.” The Indian National Government has also accepted to subscribe to the values and principles of the United Nations Convention on the Rights of the Child (CRC) and to implement the following four principles of the CRC to protect the children in India: the right to be heard, the right to non-discrimination, the primary consideration of the child's best interests and the right to life and development. As a State Party to the United Nations, India has ratified the CRC, as well as several other UN resolutions on children's rights: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (*Annexure I*).

However, India's original Juvenile Justice Act (1986), written before the CRC, did not follow the international mandate that it sets. The Juvenile Justice (Care and Protection of Children) Act, 2000, amended in 2002 and 2006, is a piece of legislation that brings together all aspects of interaction between children and the legal system.<sup>1</sup> It was originally written in response to the UN Committee on the Rights of the Child's recommendation that India incorporate the aims of the CRC into domestic legislation.<sup>2</sup> From adoption to abuse and neglect to children in conflict with law, the Act is far-reaching in its scope and intent. The provisions within the JJ Act, are intended to preserve the dignity and best interests of the child.

## **II. The Juvenile Justice Act (Care and Protection of Children), 2000**

The Juvenile Justice Act (Care and Protection of Children) Act, 2000 replaced the Juvenile Justice Act 1986, and came into force in April 2001. Prior to enactment of the Juvenile Justice Act 1986, each State had a separate juvenile legislation with distinct provisions. The Juvenile Justice Act was amended in 2006. This Act contributes to the building of a uniform juvenile justice system throughout the country and reaffirms the child's right to survival, protection, family development and participation.

The Act has laid special emphasis on rehabilitation and social integration of children and has provided for institutional and non-institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship, and after care. The Act also envisages a system of partnerships with local communities and local governments to implement the legislation.

This Act classifies children into two categories – children in conflict with law and children in need of care and protection. The Act has mandated different bodies and procedures to address the rights of both these sets of children. The State of Karnataka notified the Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2010 on 26<sup>th</sup> November 2010.

### **“Children in Conflict with the Law”: The Juvenile Justice Board**

The rights of juveniles conform to the general rights of accused under Indian criminal procedure. India, like the international community, is concerned with the standard litany of “[b]asic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel ... the right to confront and cross-examine witnesses and the right to appeal to a higher authority.”<sup>3</sup> In addition, particular attention must be paid to the special needs of children, including the right to have a parent or guardian at hearings, and a strong focus on rehabilitation, growth and development.<sup>4</sup>

<sup>1</sup> Ministry of Women and Child Development, Government of India, 2006, *Building a Protective Environment for Children*, 23, p. 22.

<sup>2</sup> [http://www.unicef.org/india/children\\_3220.htm](http://www.unicef.org/india/children_3220.htm)

<sup>3</sup> Beijing Rules, *supra* note 17, Rule 7.1. See also CRC, *supra* note 12, art. 40. Excerpt from section (iii): “To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.”

<sup>4</sup> Beijing Rules, *supra* note 17, Rule 7.1

To achieve this, the Government of India has devised a separate entity from the traditional justice system, the Juvenile Justice Board (JJB), to handle cases of children in conflict with the law. The JJB consists of a three-person panel, of one magistrate and two social workers. The goal of this composition is to have a legally recognised body that also decriminalises the administration of juvenile justice. A JJB has to be constituted for each district or group of districts.

The JJB consists of a three-person panel, of one magistrate and two social workers. The goal of this composition is to have a legally recognised body that is also sensitive to the needs of children. Those children who have committed offences are brought before the JJB. And the treatment or corrective measures undertaken by the JJB members depends upon the severity of the case. During the pendency of the case, the children are housed in 'Observation Homes'. In cases that require further rehabilitation and in-depth counseling and care, children are referred to 'Special Homes'. Under this law, every child in conflict with law has a right to bail as granting bail is mandatory, except when it can pose a threat to the life or well-being of the child. In no case can a juvenile in conflict with law be placed in a police lockup or lodged in jail (*Annexure 2*).

### **“Children in Need of Care and Protection”: Child Welfare Committee (CWC)**

In cases regarding children “in need of care and protection,” children are presented before their respective Committee on Child Welfare (CWC), and housed at Bala Mandiras, or Children’s Homes. The JJ Act mandates one CWC in each district as the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection and to provide for their basic needs and protection of human rights. Children typically come before the CWC when they are the victims of abuse and neglect, when they are orphaned or have run away from home, and when their parents claim they can no longer take care of them. The CWC passes necessary orders for their rehabilitation, restoration and social re-integration.

The process is very similar to the cases of children in conflict with the law, with a committee conducting hearings and making decisions, and institutionalising children at a Home. There are a few key differences: there is no legal structure; children are in the Homes for longer durations; and more children are kept in ‘fit institutions’ by NGOs.

The CWC consists of one chairperson and four members of whom at least one shall be woman and another, an expert on matters concerning children. It functions as a Bench of Magistrates and has the powers conferred by the Code of Criminal Procedure, 1973.

### **III. Situational Overview and Analysis**

The condition of children<sup>5</sup> entering the Juvenile Justice system throughout India is one of a marked disconnect between ideal and reality. The Government of India is committed to the values and principles of the United Nations Convention on the Rights of the Child.<sup>6</sup> However, the existing legislation is incompatible with the children’s rights framework established by the CRC. Police brutality against children, abuse in Government Homes and unjustifiable periods of detention of children typify a system unable to effectively secure children’s basic human rights. In addition, a lack of training and accountability has led to poor implementation of children’s rights at all levels. Case backlog, untrained staff, and inadequate facilities are the hallmarks of a juvenile justice system that is detaining children for extended periods of time without regard to the costs of institutionalisation and the overall preference for diversion. The lack of *mens rea* for children has also meant the lack of a determination of innocence or guilt, leaving children in extensive legal proceedings without any way to combat their incarceration. Children report abuse by police and staff at each step in the process, as well as high incidence levels of corruption and bribery (*same as Annexure 2*). A detailed compatibility analysis of the Juvenile Justice Act with the CRC is attached as *Annexure 3*.

Though Karnataka has established 28 JJBs out of 30 districts, the pendency of cases is high. Pending cases not only result in denial of justice, but places children at further risk for incarceration. The

<sup>5</sup> ‘Juveniles in conflict with law’ is a term used by international conventions and the Government of India alike, in an effort to reduce the stigma placed on children by the terms ‘juvenile delinquent’ or ‘juvenile offender.’ The word ‘juvenile’ alone has a negative connotation in society today. As such, this submission will primarily be referring to all children as children, regardless of their status within the system.

<sup>6</sup> India ratified the Convention on the Rights of the Child as of January 11, 1993. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Status of Ratifications of the Principal International Human Rights Treaties*, 6, (June 9, 2004), available at <http://www.unhchr.ch/pdf/report.pdf>.

deplorable conditions in the Children's Homes across the State have led children to even attempt suicide (*Annexure 4*).

Based on detailed investigations by The Concerned for Working Children and the Asian Centre on Human Rights, the following deplorable conditions of children entering the Juvenile Justice system in Karnataka have been raised.

### **1. Rights Violations in the Government Juvenile Justice Homes**

Karnataka has 81 registered Child Care Institutions. The Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2010 provide for detailed standards of care institutions recognised under the JJ Act including education, vocational training, recreational facilities, healthcare, nutritional diet, clothing and hygiene to be provided to the juveniles/children in the Homes.

The conditions of the juvenile justice homes are deplorable as evidenced in the following sections.

#### **Physical and sexual abuse**

The media regularly reports of physical and sexual abuse of children housed in the Juvenile Justice Homes across the State. The number of unreported cases is bound to be more. This abuse of children underpins a number of other problematic issues that mire the Juvenile Justice system. A case in point is the 2010 suspension of a CWC member (and practicing High Court Advocate) by the State Department of Women and Child Development for molesting girls in the Girls Government Home in Bangalore city. The case was brought to light by the NGOs The Concerned for Working Children and The Association for Promoting Social Action (APSA) through detailed submissions to the Karnataka Human Rights Commission, the Karnataka Commission on the Protection of the Rights of the Child (KSCPCR), and the Karnataka Department of Women and Child Development (*Annexure 5*). In its report the KSCPCR stated that the accused took the advantage of his position and used the opportunity to sexually molest the minor girls in the privacy of the cubicle and recommended his suspension and inquiry under the JJ Act and relevant sections of Indian Penal Code.

More recently, in November 2011, a 14-year-old rescued child labourer who was placed under the care of protection of the State was allegedly tortured by the warden of state-run Children's Home for Boys, Bangalore. The assault by the warden of the Children's Home resulted in the victim temporarily losing consciousness in his right hand. After the assault, the boy was not provided any medical care except a pain killer tablet (*Annexure 6*).

The situations in the homes are so atrocious that many of the children in conflict with the law and those in need of care and protection committed suicide and/or made attempts to commit suicide. Consider the case of a child housed in Bala Mandira (an orphanage), Kolar district who in October 2010 allegedly committed suicide by hanging himself from the ceiling in the bathroom. Although the circumstances leading to his death are unknown, it was stated that there was no facility for educating the children at the Bala Mandir (the children were sent to a nearby government school). There were also complaints that children were forced to work including cleaning of the overflowing toilet (*Annexure 7*). On 31 January 2012, three juveniles lodged in the Government Observation Home for Boys at Madiwala attempted suicide inside the Home by consuming pesticide. They were immediately rushed to the Victoria Hospital (*Annexure 8*).

Section 23 of the Act Juvenile Justice (Care and Protection of Children) Act is clear. It provides that *“Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both”*.

Those who illegally detain, handcuff, and chain children or those who *abandon, expose or neglect in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering* can be tried for violating the Act. Yet, the police, prison officials and those responsible for care and protection of juveniles have seldom been tried or even investigated.

#### **Lack of basic facilities**

The Karnataka State Rules on the Juvenile Justice Act 2010 outline detailed and specific mandates for the provision of basic facilities to all children in Juvenile Justice Homes that will ensure the

maintenance of a basic standard of living (Chapter 5 of Karnataka Rules, *Annexure 9*). However, several studies have shown that these basic facilities are far from being met in Homes across Karnataka (*same as Annexure 2 and Annexure 4*).

More critically, there is a complete lack of medical facilities for children in the Government-run Homes as evidenced by the 2012 report by ACHR (*same as Annexure 4*).

#### **No educational and vocational training facilities**

As per the Right to Information (RTI) replies received from the concerned authorities, educators and vocational trainers have not been appointed in at least 19 government run homes, as listed below. The replies received from the concerned authorities are provided as Annexures.

- Government Observation Home, Chitradurga (*Annexure 10*)
- Observation Home, Belgaum (*Annexure 11*)
- Observation Home in Bellary (*Annexure 12*)
- Observation Home, Dharwad (*Annexure 13*)
- Observation Home, Takke Bijapur (*Annexure 14*)
- Observation Home, Udipi (*Annexure 15*)
- Govt Observation Home, Davangere (*Annexure 16*)
- Children's Home for Boys, Mangalore (*Annexure 17*)
- Govt Children Home for Boys, Chitradurga (*Same as Annexure 10*)
- Balamandir for Boys, Belgaum (*Annexure 18*)
- Govt Balamandir for Boys, Hubli (*Annexure 19*)
- Children's Home for Boys, Koppal (*Annexure 20*)
- Children Home for Boys, Ranebennur (*Annexure 21*)
- Balakara Balamandira, Mandya (only relevant pages attached, *Annexure 22*)
- Balakiyara Balamandira, Mandya (*same as Annexure 22*)
- Children Home for Boys, Chikmagalur (*Annexure 23*)
- Shishu Mandira, Bangalore (*Annexure 24*)
- Observation Home, Mysore (*Annexure 25*)

#### **Shortage of staff, cooks, counsellors, etc.**

Juvenile Homes were found to be under-staffed which impacts care and protection of the children. Details obtained from recent replies under RTI are given below.

- At the Children's Home for Boys, Koppal, out of eight sanctioned staff only two have been appointed (*same as Annexure 20*)
- At Balakara Balamandira, Mandya all the top posts namely Probation Officer Grade 1, Superintendent and Deputy Superintendent have not been filled. The post of Probation Officer Grade 1 has been vacant since 10 February 2011, the post of Probation Officer Grade 2/Office Superintendent has been vacant since 3 February 2011 and that of Deputy Superintendent since 3 February 2011. Interestingly, the post of Guard has been also vacant since 25 June 2010, that of the Cook since 1 September 1998, the Assistant Cook since 10 February 2011, and Physiotherapist since 25 May 1984. There is no teacher posted at the Home (*same as Annexure 22*).
- At Govt Observation Home, Chitradurga, only two staff out of 11 sanctioned posts were filled as of 23 September 2011 (*same as Annexure 10*).
- At Juvenile Home for Boys, Mysore, out of 22 sanctioned staff, only 14 staff have been appointed as on 7 October 2011 (*same as Annexure 25*).
- At Govt Children Home for Girls, Bangalore, only 19 staff have been appointed against 29 sanctioned staff as on 28 September 2011 (*Annexure 26*).
- At Govt Children Home for Boys, Chitradurga only 5 staff out of seven sanctioned staff have been appointed as on 23 September 2011 (*same as Annexure 10*).
- At Govt Children's Home for Boys, Bangalore which had 119 children as in September 2011 only 49 staff out of 69 sanctioned staff have been appointed as of 18 October 2011 (*Annexure 27*).

As per the RTI replies received from the concerned authorities, no cook has been appointed in a number of juvenile justice homes. These are:

- At the Juvenile Home for Boys, Mysore two cooks have been sanctioned but both posts were vacant as on 7 October 2011 (*same as Annexure 25*).
- At Balakara Balamandira, Mandya, the post of chief cook has been vacant since 1 September 1998 and that of assistant cook since 10 February 2011 (*same as Annexure 22*).

- At Balakiyara Balamandira, Mandya, no cook has been appointed since 12 December 1996 (*same as Annexure 22*).
- At the Observation Home, Bellary no cook has been appointed as on 13 October 2011 (*same as Annexure 12*).
- At the Observation Home, Udupi, no cook has been appointed as on 29 October 2011 (*same as Annexure 15*).

### **No segregation of children**

The segregation of children residing in the Government Homes in Karnataka completely falls short of the legal mandates. In clear violations of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") and the Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2010, segregation of children on the basis of their gender, degree of offence and age (preferably up to 12 years, 12-16 years and 16 years and above) has not been completed. The lack of separation of children on the basis of their age undermines the danger to juveniles of "criminal contamination".

At Government Children's Home for Boys, Chitradurga, there were 50 children as of 22 September 2011 (*same as Annexure 10*). But there was no segregation of the children on the basis of age and nature of offence (*Annexure 28*). Similarly, no segregation of the children is maintained at the Children's Home for Girls, Hubli, District Dharwad (*Annexure 29*) and Children's Home for Boys, Mysore (*Annexure 30*).

On 7 February 2012, juveniles set fire to mattresses and destroyed properties in a bid to escape from the State-run Government Observation Home in Madiwala. The trouble began when four children, who were above 20 years of age, allegedly attempted to escape. A team from the KSCPCR, who visited the Observation Home in Madiwala found that the four children who started the violence were aged between 20 and 22 years. There were no separate residential facilities for children who are no longer juveniles in the Madiwala Observation Home but all were kept together in the same facility. The KSPCR's preliminary inquiry also stated that the root cause of the agitation by children was the lack of any correctional services or specialised care for the children (*same as Annexure 4*).

### **No inspection committees**

The JJ Act (Section 35) establishes home inspection committees and state-level advisory boards to oversee the administration of juvenile justice, but they have no mandate or meeting schedule. As of 2010, they have been set up only in 18 districts. Even in these districts inspections have not occurred for several years (*same as Annexure 4*).

Instead of increasing supervision of the homes, the State government of Karnataka while appointing the CWC members in October 2010 put the conditions that members cannot visit child care institutions, when they are not holding a sitting, without prior permission of the heads of these institutions (A printout of **The Hindu** report is annexed as *Annexure 31*).

In a number of juvenile justice homes, no inspection has taken place during 2009-2011 according to information under the Right to Information Act. During 2009-2011, no inspection took place in the Balakara Bal Mandir, Gulbarga (*Annexure 32*); Children Home for Boys, Chikmagalur (*same as Annexure 30*); Government Observation Home (Boys), Gulbarga (*Annexure 33*); Government Observation Home, Dharward (*same as Annexure 29*); the Government Juvenile Home for Boys at Bagalkot and Government Juvenile Home for Girls at Bagalkot (*Annexure 34*).

Worst, in the case of the Balamandir for Boys, Belgaum, as of 23 September 2011 no inspection was done since 2007-08. The only inspection which was conducted by the Women and Child Development Department was done in 2006-07 (*same as Annexure 18*).

In Government Children Home for Boys, Gadag, during 2009-2011 only three inspections took place respectively on 2 October 2010, 23 October 2010 and 19 August 2011 (*Annexure 35*).

## **2. Composition and Functioning of CWCs and JJBs**

### **Lack of selection criteria for CWC and JJB members**

The present recruitment procedures for JJA personnel, be they Child Welfare Committee members, Juvenile Justice Board members, counsellors, DWCD staff members and others who have access to children appear oblivious of the possibility of paedophiles and potential child abusers applying for

these posts and there are **no** procedures or mechanisms to weed such perpetrators out of the system. There is no psychological profiling of candidates nor any rigorous character and conduct background checks carried out. The selection committees appear to be satisfied with some minimum qualifications such as a degree in Social Work or experience with an NGO working with children. The recruitment procedure requires urgent review in this light and a strenuous process that includes psychological profiling and character and conduct background checks with written references must become the recruitment procedure norm (*same as Annexure 5*).

#### **Lack of codes of conduct for CWC and JJB members**

It is a well known fact that paedophiles and child molesters find way to be in close proximity with children and worm their way into organisations and institutions working with children. It is therefore imperative that all government personnel and members of committees or commissions abide by a Child Protection Code. The JJA System and mechanisms functioning under it **must** develop, implement and abide by a stringent Child Protection Code that is monitored closely and violations of which are awarded stern penalties.

In the case of molestation of girls by Balakrishna Masali, Member of Child Welfare Committee, many of the rudimentary norms of adult – child engagement were violated in this case such the guidelines for a quorum for the Child Welfare Committee sittings and the need for an escort/care giver during counselling sessions with children (*same as Annexure 5*).

***Case Study: Sharath (name changed to protect identity), from Kundapura describes what happened to him and his friend after his workplace was raided by the police and Department of Women and Child officers.***

*Case study prepared by The Concerned for Working Children*

They [the people who conducted the raid] took us one office. There adults in that office enquired with about our home and the place. From there they took us another office which was inside from the main road. There people gave us food. Then they asked us some questions like why you are not going to school and work? They slapped us and told us to go to school. We did not know who were they or why they slapped us.

Then somebody else in that office told us that they will help us to buy bus ticket to go to my village. But instead, they took us to a place. Adults in the van told us to get down from the vehicle and took us inside and left us inside. Both of us were sitting there for long time. We met a boy from Shimoga. He was the one who told us that this is the Udupi Bala Mandira. He also asked us why we came here. He also told us that adults here are not looking after children well here and he also told us that adults are beating children here. After that, some lady came there and she took our details again. I told her that I wanted to go home. She told that we will go to court next day and she said we have tell this to court. We did not know what is court.

We were very scared when adults took us in the van to several offices and when they slapped us and when brought us to Bala Mandira instead of sending us to our homes. I do not know even now why those adults did this. I feel really bad about them. No where did the adults introduce themselves to us. They did not explain to us why they are doing this us except that children should not work and they should go to school

The case study above highlights several issues that can be righted with a code of conduct in place, accompanied with regular training and monitoring.

#### **Intransparent and *ad hoc* decision making of CWCs and JJBs**

The JJB and CWC proceedings across the Karnataka are marked by lack of transparency, case backlog, *ad hoc* decision making and insensitive treatment of children. The situation is particularly pathetic in the case of the CWCs, where, since the proceedings are not official legal proceedings, and there appear to be no standards for decisions on when to admit children or when to release them. No lawyers are present, and minimal records are kept, leaving nothing up for review. Because there is no structure for when such cases are closed and children are released, children can be in the Children's Home for years, sometimes until they reach 18 (and occasionally still longer). Institutionalisation for such long periods, without any skills development or interaction with the world outside the Home, can be devastating to the lives and future prospects of these children. Foster care, adoption and alternatives to institutionalisation are not often explored as alternatives (*same as Annexure 2*).

The case study presented below highlights several of these issues.

***Case Study: Unresponsiveness and Misinformation in the Repatriation of R (name changed to protect identity)***

*Case handled by and case study prepared by The Concerned for Working Children*

“R” is a boy, aged between ten and twelve, with whom the Concerned for Working Children came in contact in September 2010 at the Boy's Home in Bangalore. Only able to speak Bengali, he had been living at the home for one month without a translator. He told us that he had been living and working on the streets for many years, primarily in Dhaka, Bangladesh, though he had spent time in various orphanages and night shelters. He had lived in Calcutta without official documents, and after arriving in Bangalore, he was picked up by police and brought to the Boy's Home without understanding the valid reasons. **The Karnataka Rules make an effort to address the language issue, stating that “[t]he child shall be informed promptly and directly of the charges against her/him in a language and manner that she/he understands so as to ensure full comprehension of the same” (Rule 13.5). This case clearly shows that this Rule is not always followed.**

R was withdrawn in early interviews and details of his life story often changed, which led us to consider him as exhibiting distrust. He expressed that he was anxious to return to Bangladesh. He was very unhappy at the Boy's Home where he was unable to interact with other boys due to the language barrier and was therefore bullied. He also struggled to deal with the type of food he was receiving, as it differed from his previous diet, his health was deteriorating, and he repeated a will to escape. **Rule 13.5 of the Beijing Rules states that “while in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality”. The staff at Children's Home was unresponsive to bullying complaints because he alleged that he had not witnessed any; nothing was done with respect to the food issue, and eye drops for an infection were the extent of his medical treatment. Regardless of the nature of R's complaints, they were falling on deaf ears.**

We began the process of repatriating R to Bangladesh. We contacted the Bangladeshi Embassy, who – while showing concern – was unable to provide much assistance without concrete details of a guardian and address in Bangladesh. After two months of extensive contacts with various NGOs, we were able to find a contact for a shelter home in Dhaka where R had stayed and who had kept his details on file. This meant that we could start the repatriation process as we had someone willing to take care of R in Bangladesh. **Unfortunately, during this period, not only did the CWC not have the capacity to support the investigations, worse still was that R was being fed inaccurate information by the superintendent, who suggested that R would “be home in a month”.**

R's frustration was evidently mounting as he attempted suicide only a few days after we had been able to arrange his repatriation. **Even in these tense conditions, the staff at Children's Home failed to provide the hospital with background information on R;** instead, it was up to the Concerned for Working Children to provide this information three days after his admission into the hospital. **R was diagnosed with bipolar disorder, a diagnosis which would surely have surfaced sooner had somebody at the Home noticed that he was introverted and bullied.** Instead, the boy languished, unable to communicate and continually misinformed about his future.

### **3. Lack of accountability of decisions made by CWCs and JJBs**

Although the Juvenile Justice system has established the CWCs and JJBs to make decisions on the lives of children in need of care and protection and children in conflict with the law, there are huge gaps in the accountability mechanisms for the decisions made by these two bodies. Children have no representation of their own, and this makes the question of accountability all the more critical and pertinent.

For instance, as evident in the case study below, there is no mechanism to hold the JJBs and CWCs accountable for their actions. In the case of children, even a month in their lives is a long time and impacts their development and future opportunities and choices.

***Case Study: Sumant, Sagar, and Charan (names changed to protect identity)***

*Case study prepared by The Concerned for Working Children*

Three children committed a theft together in 2003. Sumant was caught by police, and was beaten and interrogated until he revealed the name of an accomplice: Sagar. Charan then surrendered himself. They were all released on bail, but didn't attend hearings because they didn't know when the hearing dates were. They were picked up on June 29, 2007 for failure to attend their JJB hearings. They were picked up in a southern state, but transferred back to District 1. They told the JJB that they didn't know about their hearing dates, but it had no impact on their adjudication. At their first hearing, they were simply asked if they had lawyers (they did not), then were sent back to the Home. They eventually retained two advocates on their own, and went before the JJB four times before their release. They spent more time in the Observation Home for a failure to appear than they had for the initial offence.

#### **4. Representation for children**

The environment of the JJB proceedings is intended to be non-adversarial, implying that the Board acts as both prosecutor and arbiter. This seems to be an inherent conflict of interest, which the state dismisses because juvenile proceedings are not intended to be 'criminal' proceedings, but rather records of offences that took place. In spite of the neutral, non-adversarial intent of the JJB, the Karnataka Rules make several references to "the prosecution,"<sup>7</sup> and indeed, in some districts, a public prosecutor is employed. A defence lawyer, however, is not required, and is present only in a few cases. Under the CRC, "[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance."<sup>8</sup> For children in conflict with law who are practically very much on trial with public prosecutors employed in all cases to interview witnesses and bring forth evidence, the JJ Act allows the presence of a legal practitioner before the JJB.<sup>9</sup>

In practice, many of the cases that come before the JJB do not have any form of representation, and a very small number of cases throughout Karnataka make use of the free District Legal Services Authority. This is primarily due to lack of information, as people (particularly children in conflict with the law) are unaware that they are able to access these services, and are never informed as much by the competent authorities. When defence attorneys are present, they are generally very deferential to the magistrates, and don't seem to have much communication with their clients (*same as Annexure 2*). The need for adequate legal representation may also mean confidential meetings with the child's attorneys.<sup>10</sup> However, according to the staff at both Observation Homes visited, no visitations are private. Further, the child is generally not permitted to meet with anyone outside of immediate family, and no one may speak to the child outside the presence of Observation Home staff.

In the case of children in need of care and protection, there is an unequivocal violation of their right to be heard in the current juvenile system in India. Indeed, there are presently no child-friendly mechanism to ensure that the views of the children are taken into account during the proceedings before the CWC and to give due weight to those views. The participation of the children in their own cases is quasi absent, there is no one to represent these children before the CWC or to convey their views to the CWC members. Furthermore, there are no uniform standard for the decisions the CWC makes and minimal records are kept, leaving nothing for review. While the CRC largely emphasizes the concept of participation as a key element in juvenile justice where "including children should not only be a momentary act, but the starting point for an intense exchange between children and adults,"<sup>11</sup> the children before the CWC are left on their own often without resources or possibility to participate to the decision-making process. This clearly defies the right to participation and dynamic self-determination expressed in article 12 of the CRC.

Furthermore, these voiceless children before the CWC are placed in children's Homes for an indeterminate period whilst a decision is made about their ongoing care by the CWC. In that sense, several provisions in the JJ Act serve to negate their overall tenability. Section 33(3) of the JJ Act

<sup>7</sup> See Karnataka Rules, *supra* note 54, Rule 13.

<sup>8</sup> CRC, *supra* note 12, 37(d). This provision is also made in 40(2)b(ii), "to have legal or other appropriate assistance in the preparation and presentation of his or her defence;" and Beijing Rules, *supra* note 17, R. 15.1: "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country."

<sup>9</sup> JJ Act, *supra* note 4, art. 28 (1)(6)

<sup>10</sup> United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49/Annex (Dec. 14, 1990) [hereinafter JDL Rules], R. 18a.

<sup>11</sup> General Comment No.12, *supra* note 4.

states: “The Committee may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.” The same can be said for Section 56 of the JJ Act, which reads: “The competent/local authority may ... order a child in need of care and protection or juvenile in conflict with the law to be discharged or transferred from one children’s/special home to another ... keeping in view the best interest of the child/juvenile.” These clauses make assumption as to the best interest of the child – specifically a child in need of care and protection – in determining whether they should remain in a Government Home. This assumption, however, is grounded in – at worst – the beliefs of individual committee members or – at best – societal beliefs. Because there is no structure for when such cases are closed and children are released, they can be kept in the Children’s Homes for years, sometimes until they reach eighteen. These children typically come before the CWC when they are the victims of abuse and neglect, when they are orphaned or have run away from home. In such case, institutionalisation for such long periods without sensitive caring and safe environment where their voice can be heard can be devastating to the lives and future prospects of these children (*same as Annexure 2*).

It is well acknowledged that the current procedures before the CWC have been established in a non-judicial way to make the mechanism more child-friendly and child-appropriate. However, even in the presence of such scheme, actual substantive child participation is far more difficult in practice, as the nature of the procedures and the staffs in the room are still rigid and intimidating to children. The children before the CWC members are often in a very vulnerable and defenceless position as they typically get involved in the system when they are the victims of abuse and neglect. Therefore, there is an urgent need for a greater sensitivity towards these children and a more approachable method to give opportunity to children to be directly or indirectly heard in the procedures. Children in need of care and protection cannot be left on their own without assistance when people make decisions that can be life changing events for children. If legal representation is a constitutional and fundamental right, be it a child or adult, these children need to be heard “through a representative or appropriate body [who must have] sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.”<sup>12</sup> For the spirit and letter of the law to truly reflect India’s international obligations in relation to children’s rights, this is the best way to guarantee fundamental fairness, justice, and liberty of these children.

## **5. A “child unfriendly” and “child-rights unfriendly” juvenile justice system**

### **CWC and JJB hearings are child and child rights unfriendly**

The procedures being followed by the JJBs and CWCs are woefully short of being ‘child rights friendly’. There are no clearly articulated procedures for ensuring that the hearing is sensitive, conducted in language and pace that is understood by the child, non-threatening and safe. On the other hand as of now it is a traumatic and terrifying experience for children.

Often, Probation Officers present cases of children without even presenting the child for hearing. The procedure is rarely explained to children if they are there, and they are not presented with the options they have. In many cases, when they are allowed to be present, children are not made to feel comfortable during their hearing session. They are brought in herds and asked to sit on the ground, or stand, while the JJB or CWC members speak to other children. They are often made to stand and face the members, at times they are witness to their parents and guardians being shouted at and being treated as second class citizens. The hearings also take place in the presence of several other office staff, other children and their guardians, and at times, different members talk to different children, simultaneously. None of these practices enable a child to feel safe, respected or comfortable. These processes and procedures at the hearings that violate basic norms of child rights practice need to be investigated and changed immediately.

### **Missing children and escapes**

Frustration and isolation have led many children to escape from Homes throughout India over the years. The number of children missing from the juvenile homes in Karnataka is alarming. According to an NGO, Odanadi Seva Samste, as many as 1,089 children below 14 years have gone missing from 34 Bala Mandirs (Children’s Homes) in Karnataka during February 2005 to February 2011, and four girls committed suicide at Bala Mandirs in Bangalore during the same period. The missing children included 226 boys from the Government Bala Mandir for Boys in Bangalore, 135 from Gulbarga, 116 from Hassan, 111 from Davangere, 83 from Bellary, and 32 from Mysore. Among girls, 34 went missing from the Government Bala Mandir in Mysore, 18 from Bangalore, 11 from Bijapur, and nine each from Tumkur and Hubli. Pursuant to a petition filed by Odanadi Seva Samste on the matter of missing

<sup>12</sup> General Comment No.12, supra note 4.

children, the Karnataka State Commission for Protection of Child Rights, in an interim order passed on 17 July 2011, directed the Chief Secretary of Karnataka to order an inquiry by a three-member committee involving retired judges and submit a report in six months. The Commission also directed the custodians of Bala Mandirs to inform the State Child Welfare Committee and the Juvenile Justice Board about any future disappearance within 24 hours and register First Information Reports. The children were forced to stay in poor living conditions. Counsellors remained absent at many Bala Mandirs. In some cases, children were allegedly used by Bala Mandir officials as domestic helps (*same as Annexure 4*).

An overview of media reports also highlight that children have escaped periodically from Observation Homes in Karnataka. Two boys escaped on July 19, 2007 by walking out the front door. In January 2007, a significant number of children escaped: 46 children out of 76 total. On that occasion, there was one staff member on the premises. The superintendent had locked the phone to prevent outgoing calls, because the Department had ordered her to cut her phone costs. The one guard who was there during the escape couldn't communicate with anyone for three hours, during which time 46 children escaped through a hole in the screen. The response to this particular escape was as follows: the Superintendent of the Home was suspended; more than half of the children who escaped were caught; and the media had a field day (*same as Annexure 2*).

Previously, in the event of an escape, the Department would suspend all those on duty as well as the Superintendent. The suspension of the Superintendent at District 2 was a catalyst for change in the procedures, because of a rally among the staff to protect jobs. Staff in different Homes agitated about this because there was insufficient staff to provide substitutes for those suspended, so per the present Karnataka Rules, individual staff members can no longer be held responsible.<sup>13</sup> One Superintendent applauds this change, because "children will escape even if there is a strong-room, gun, high walls, and the staff are not always to blame." However, he is keeping the change in the Karnataka Rules secret from his own staff, because if they knew, "they will sleep" and be much more lax about their jobs. (Erika report)

#### **Case study: John**

*Case study prepared by The Concerned for Working Children*

John was in jail, despite being a minor, for one year before coming to the Observation Home. He says jail is much better. In jail, he could get up when he wanted. They do construction work and other activities – he was a 'mason,' a supervisor of construction work while in jail. He told us about punishment: once he had a matchbox, and when the guard came to inspect, he passed it off to another boy. It was found, and the guard beat the kid who had it, and then found out who it belonged to. He then gave John two beatings. Beatings are the most common punishment for 'mistakes' like getting caught smoking cigarettes or beedies. John and another boy sitting with us were among the 20 boys who were brought back after the escape. John surrendered himself because police were troubling his family, holding his elder brother in custody until he came forward. John was originally in for a 'half murder' case (presumably assault), and now has that and an escape case against him. He claims both cases are closed, and he is just waiting for his parents to come and pick him up. Children do have charges filed against them for escaping from the Home.

The Concerned for Working Children responded to news of the escape in the following manner:

*The response of the Karnataka Government to the escape of 46 children from the Juvenile Home for Boys has been nothing short of shocking. It demonstrates an extremely aggressive and callous response to a problem that is deep rooted, volatile and totally violates the rights of Children.*

*Instead of admitting their failure to perform their role as a Juvenile Home and enquiring into factors that forced 46 children to leave their premises at risk to their lives and well-being, the government has set up police teams to 'nab' children and parents have been ordered to bring them back to the Juvenile Home – where they are most likely to receive a very hostile reception and further punitive action on their return.*

*It is known beyond doubt that these homes fall shamefully short of what is expected of them. Instead of admitting their failure and genuinely attempting to set matters right, the remedial measure that the government proposes is to increase the number of guards to the ratio of 1 guard for 20 children. They also now propose to*

<sup>13</sup> Karnataka Rules, supra note 54, R. 38(2)(iv). "No escape of a juvenile or a child shall be the personal liability of any staff of the institution if such staff member has acted in good faith."

*deploy police at the Juvenile Home. The Minister of Women and Child Welfare is quoted in national newspaper as having said 'It appears from the present staff strength that the juvenile home is treating these juvenile offenders as children of a students hostel. But the procedure has to be changed, as they are offenders.'*

When boys escape, the home and the children receive negative media attention, with poor reporting and negative portrayals of the children, describing them as scary criminals. The general perception of boys in the home is so negative that social work students visiting JJB hearings carefully guard their belongings when the children pass by them.

Worse still, are proposals for more intensive policing at the Government Homes with stringent security norms and restrictions, as a preventative measure against escapes. This is antithetical to the mandate for creating a child-friendly environment in the Homes, and in fact, directly leads to further criminalisation of children in a 'jail-like' atmosphere of the Government Homes. These efforts must be resisted strongly, and replaced by a deeper analysis of 'why' children attempt to escape. This approach will result in solutions that address the root cause of children's dissatisfaction in the Homes, and can lead in more sustainable and child-friendly solutions.

### **Roles and responsibilities of police**

Children across Karnataka are detained at police stations, although this is in clear violation of Section 10 (1) and Section 7A of the JJ Act. Raids by the Karnataka State Human Rights Commission and the Karnataka State Commission on Protection of Child Rights have revealed illegal detentions and torture are rampant (*same as Annexure 4*).

Case 1: This case involves fifteen girls who were part of a 'rescue operation' in Bangalore. The factory manager, Mr. R., asked a girl, "E", who had been employed in said factory, if she could help recruit more girls. Mr. R later visited E's village and spoke to the girls and their families. Afterward, "E", a girl "D" – who was also previously employed in the factory – and thirteen other girls arrived in Bangalore on February 9th, 2010. Before being received by the warden of the hostel where they were to stay, the girls were intercepted by the Railway Police. The girls and young women were interrogated by the Railway Police and then by an NGO which had been called by the Railway Police. Their photographs were taken and they were then taken to the NGO's office where they were further interrogated. Their photographs were taken again, and then the NGO called both the TV and print press to their office and briefed them about their "rescue operation". The girls never consented to being interrogated, or to having their photographs taken; indeed, they were never asked. This violates their right to life contained in article 21 of the Constitution of India which extends to the right to privacy (*same as Annexure 1*).

Case 2: On 13 January 2012, members of the KSCPCR made a surprise visit to the Central Prison at Parappana Agrahara, Bangalore and rescued 22 minors who have been lodged in the jail for several months.

Case 3: Earlier in April 2008, a team of KSHRC rescued 20 juveniles aged below 18 years from the Bangalore Central Prison. The KSHRC found that the investigation officers had failed to document the cases involving the juveniles properly and conduct age verification tests (*same as Annexure 4*).

### **Case Study: Imran**

*Case study prepared by The Concerned for Working Children*

Imran transcribed on a chalkboard: "I want to meet my Parents. Will you help me to meet." Imran was in the police station for 10 days, beaten every day. His family has no phone so he can't contact them, and they are too poor to visit him from Tumkur. After ten days he was transferred to the Observation Home, but he could not be released because no charge sheet has been filed. Imran's brother has 'fits' (epilepsy), which costs his family Rs. 15,000. These financial troubles mean that Imran's parents can't afford to pay his bail. Imran has very little communication with his family and the outside world.

These violations by the police force described in the cases above clearly highlights the importance for vigilance to not ignore the need to conduct preliminary investigations before further action is taken. If not, this vigilance can lead to harassment of innocent citizens and children, and in the process violation of many of their rights with the 'good intentions of protecting their rights'. Codes must be developed to ensure that the Police deal with children in a manner that does not traumatise or violate the rights of

children. Special Juvenile Police Units (SJPU) as mandated under the Juvenile Justice Act must be set up and provided with training to ensure that children's interactions with the police are carried out in a child friendly and child rights friendly manner.

#### **Roles and responsibilities of media (*Annexure 36*)**

The members of the media should not violate the Section 21 of the JJA which in essence bars the publication of name, etc., of a juvenile or child in need of care and protection involved in any proceeding under the Act.

Section 21(1) states that: No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

Section 21(2) states that: Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees”.

The rights of privacy, confidentiality and dignity of children entering the Juvenile Justice system must be upheld by the media, and they must be brought to task if they do not comply with the mandated provisions.

#### **Roles and responsibilities of NGOs (*same as Annexure 36*)**

Case 1 above illustrates that even the most well-meaning of NGOs can violate the rights of children. Just like the police, NGOs involved in the Juvenile Justice system too have a responsibility to conduct thorough investigations before deciding on how to handle cases brought to them. Further, the principle of divergence is paramount to all cases relating to Juvenile Justice and must be invoked at every step.

It is common practice for the State Department to appoint NGOs to sit on Inspection Committees, House Committees etc. Although commendable, this role cannot be carried out without appropriate accountability mechanisms. The NGO sector working with children, especially those running centres providing residential care, need to develop codes of conduct and a self monitoring system that comply not just with the letter of the law, but the spirit of the CRC and the principles of equity, justice and fundamental rights. Further, the NGOs must report on their work with children coming under the Juvenile Justice system to the CWC, the JJB, the Department or to the Judiciary as appropriate.

## **IV. Recommendations**

### **In the short-term**

#### **1) Constitute an High Court Committee to conduct an in-depth investigation and make recommendations on the Juvenile Justice system in Karnataka, particularly the situation of the Government Homes and the functioning of the JJBs and CWCs**

The role of this Committee should be to assess both micro and macro issues relating to the implementation of the Juvenile Justice Act in Karnataka. Children's representatives from different groups must be made members of this High Court Committee, and support provided for facilitating their participation. The recommendations from this Committee must be presented to the Honourable High Court for appropriate action.

#### **2) Enable children to be heard in court during the proceedings of this case**

We implore this Court to directly listen to children's voices (or of their representatives chosen by them) in its hearings. Listening to children's voices in these hearings is necessary to uphold their right to participation and self-determination, which we as a country are committed to under both our Constitution and international obligations like the United Nations Convention on Rights of the Child. More importantly, children are best placed to recount and reflect on their experiences through the Juvenile Justice system. The decisions taken by this Court will be complemented with the inclusion of children's voices and opinions. During the hearings it is critical that children are facilitated by appropriate persons to present their opinions and experiences.

#### **3) It is imperative that the Children's Committees mandated under Rule 59 of the Karnataka Rules be set up with immediate effect**

The mechanisms and protocols for NGOs and other groups who facilitate the constitution of these Committees and support their functioning will need to be arrived at.

**4) Constitute a Special Committee to immediately dispose of all cases pending before the JJBs and CWCs in Karnataka in a thorough manner**

As of 10 February 2012, there were about 2,500 cases pending under the JJ Act. In Bangalore Urban district, the situation was alarming, with 1567 cases pending as of December 2011 (*Same as Annexure 4*). These high numbers are unacceptable and need to be resolved immediately. Since the provision in the JJ Act for enquiry to be completed within four months lacks proper implementation, as a sustainable solution, we propose that the Chief Judicial Magistrate/Chief Metropolitan Magistrate shall review the pendency of cases of the JJB and the CWC every six months, and shall direct them to increase the frequency of its sittings or may cause constitution of additional Boards or CWCs.

**4) Implement JJ Act mandates of placing children in foster care and fit person institutions**

The orders passed by the Children's Court, CWCs and JJBs should endeavour to place children in government hostels or fit institutions rather than for them to spend extended periods of time in the Government Homes. The importance of alternatives to institutionalisation have been accepted in national and international governments and civil society. The State Department of Women and Child Development should ensure that the fit institutions are regularly monitored and ensure that they are not violating the rights and best interests of children who are living there.

**5) Improve the conditions of the juvenile homes in terms of access basic facilities; appointment and training of legally mandated staff and teachers; and submit a report on the budgetary allocations made for each home and compliance report to the Honourable High Court**

**In the long-term**

**1) Ensure accountability of CWC and JJB**

In the current Juvenile Justice system the JJBs and CWCs are an offshoot of the State through the respective State Departments under whom the implementation of the JJ Act falls. In Karnataka, the entire JJ system is under the Department of Women and Child Development. The State sets the system in place, and it is answerable only to the State itself, which is similar to a conflict of interest. The Juvenile Justice system is clearly flawed on many counts as evidenced in the section on 'Situational Overview and Analysis'.

Therefore the JJBs and CWCs should be brought under the judiciary system, including selection, monitoring and review.

**2) Establish 'Children's Representatives' for children in the JJ system**

Under the principles of natural justice, every child is guaranteed the right to be heard and should have access to representation in the Juvenile Justice system. There are no provisions for the children's right to be heard in the CWC proceedings, and the existing provisions for the JJB proceedings are not implemented. However, children in the Juvenile Justice system can no longer be left without assistance or representation when people make decisions that can be life-changing events for them. There is an urgent need to introduce the system of a 'Children's Representative' for children in CWC hearings and to enforce the legal aid procedures for children in JJB hearings.

The Children's Representative would exclusively represent the interests of the child and not of others (parents, State, institutions, etc.) and could be a lawyer or any other person (*inter alia*, a social worker). For the JJ Act to truly reflect India's constitutional and international obligations to children's rights, this is the best way to guarantee fundamental fairness, justice and liberty of children entering the juvenile justice system.

**3) Focus on diversion of cases in the JJ system**

The nature of the existing Juvenile Justice system, with the JJBs and CWCs centralised at the District levels (and mostly in the district headquarters) implies that children in conflict with the law or in need of care and protection are often being displaced from their homes and regions to the district headquarters to be institutionalised until decisions are made about their futures. The Juvenile Justice Act provides for other alternatives such as adoption, foster care, etc., which are almost never used.

Although this principle is incorporated by specific language in the Juvenile Justice Act,<sup>14</sup> the system as it currently functions seems to operate in precisely the opposite fashion, using institutions as a quick fix without considering or developing alternatives.

In place of a system that insists on children's multiple displacements and institutionalisations, a decentralised system of administering juvenile justice is critical. This necessitates alternatives to incarceration,<sup>15</sup> both in sentencing and during proceedings, and will uphold the principles of diversion as enshrined in the Riyadh Guidelines, "Law enforcement and other relevant personnel, of both sexes, should ... use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system."<sup>16</sup>

This implies that the Grama Panchayats and Municipal Wards will need to be empowered and capacitated to undertake the administration of juvenile justice.

#### **4) Ensure that CWCs, JJBs and Management Committees follow 'child friendly' and 'child rights friendly' procedures**

Child rights friendly and child friendly procedures for the running of the Government Homes and for conducting the hearings by the JJB/CWC members should be arrived at, preferably by the High Court Committee constituted to review the Juvenile Justice system. These procedures should be immediately put in place throughout the State.

Once convened as per Rule 58 of Karnataka State Rules on Juvenile Justice 2010, the Management Committees must be monitored by the Inspection Committees as specified in the Rules, to ensure that they are executing their functions meaningfully and appropriately. Simultaneously it should be ensured that Children's Committees are also set up as the Management Committees cannot be expected to function effectively without the Children's Committees (*short-term suggestion No. 3 above*).

To ensure that Management Committees do not become seats of unmonitored control, procedures for selection and removal of members must be developed, along with benchmarks for 'appropriate directions' that can be taken by the Inspection Committees during their inspections. In order to promote transparency and accountability, the practice of maintaining a register of meeting discussions and activities should be extended to the Management Committee. Strengthening communication between Management Committees and Children's Committees would also work to ensure that the objective set out in part (vii) of subsection 5a of Rule 58 enables a meaningful form of children's participation to establish institutional programmes that reflect their actual needs and are in their best interests.

### **Organisational Briefs**

**The Concerned for Working Children** is a secular and democratic NGO registered in 1986, committed to the empowerment of children, especially working and other marginalised children and their communities through their participation in decision making and governance on all matters that concern them. The organisation has extensive field, research and advocacy experience in the area of Juvenile Justice. In recognition of their work and impact, the Concerned for Working Children has been nominated for the Nobel Peace Prize 2012.

**Asian Centre for Human Rights (ACHR)** is a public charitable trust registered in March 2003. It has Special Consultative Status with the United Nations Economic and Social Council. ACHR has been nominated by the National Human Rights Commission to serve as a member of the Core Group of NGOs to advise the Commission. ACHR has been working on the rights of the child from its inception and published "The Status of Children in India" in October 2003, which was submitted as a shadow report to the UN Committee on the Rights of the Child. For the last one year, ACHR has been conducting research on the status of juvenile justice in India and published "The State of Juvenile Justice in Karnataka" on 5 April 2012.

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<sup>14</sup> JJ Act, *supra* note 2, general principle 12.

<sup>15</sup> JDL Rules, *supra* note 92, R. 17. "Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures."

<sup>16</sup> Riyadh Guidelines, *supra* note 15, art. 58.