QUESTIONNAIRE

The Young Offender in the Criminal Justice System

During the September 2006 Congress in Siófok, the Third Study Commission studied the problems of persons suffering from mental disorders who face criminal prosecutions. In furtherance of our study of different approaches and solutions to the unique problems faced by particular identifiable groups in criminal justice systems, we turn this time to the situation of young offenders (juvenile delinquents). We hope to integrate certain themes that evolved from our earlier discussion, in particular, the difficulties associated with balancing the necessity of imposing societal norms of accountability and the objective of identifying and responding to the particular needs of accused persons whose faculties or levels of responsibility are diminished. In gathering the responses to this questionnaire, and then summarizing the main lines of discussion at our next session in Trondheim, Norway, we hope to (i) develop a deeper knowledge of the problems concerning young offenders within criminal justice systems; and (ii) study solutions that might usefully and effectively meet their particular needs.

1. **Young Offender Legislation:** Do special legislative provisions exist in your justice system for offenders who are not adults? □ no

   If yes, please indicate to which age group they apply (for example, ages 12-17):
   *Though no specific legislation exists, (other than general principles laid down in our Constitution and in respect of sentencing and right to appeal) the courts’ approach is to have special considerations to offenders under the age of 18 years.*

2. **Publication Bans:** In your justice system applicable to young offenders, do legislative provisions exist that prohibit the publication of information that may disclose the identity of adolescents charged with offences? □ yes

   If yes, does the legislation provide for exceptions? □ no  If yes, what are they?
   *Not applicable*

3. **Recourse to Alternative Measures:** In your justice system, do alternative measures programs exist for young offenders for the purpose of avoiding penal consequences? □ yes

   If yes, at what stage in the proceeding are these programs available? (i) in the discretion of the investigating officer at the initial investigation stage; (ii) in the discretion of the prosecutor after a charge is laid; (iii) in the discretion of the investigative judge during the pre-trial investigation; (iii) in the discretion of the judge at trial?
   *(ii) – it should be noted that the prosecutor’s discretion herein is limited by guidelines set by*
the prosecuting authority. Offences of a more serious nature are not diverted from the criminal justice system.

If yes, on what basis?
The offenders are evaluated by a social worker. Once it is established that the offender has a supportive parenting framework, the offender is required to attend certain life skills programs to enhance their own development and also to bring insight into the consequences of their actions. Another determining factor for such diversion is if the offender admits her/his guilt to the alleged offence. The offender is kept on the roll for a criminal court pending the successful completion of the programs and once the programs are successfully completed by the offender, then the charges are withdrawn against the offender with no further penal consequences. There is then also no criminal record against the offender.

4. Transfer of Young Offender to the Adult Criminal Justice System: (a) Is such a transfer provided for in your justice system, for example, for certain serious offences or in situations of repeat offences?  □ yes  □ no

There are no separate systems to speak of, hence there can be no transfer from the one system to the other. For serious or repeat offences, the juvenile is put through the same system as adults, but their youth remains a marked consideration in applying all criteria.

If yes, in what circumstances?
(i) All cases in which juvenile offenders appear must be finalized as a matter of priority. Juveniles may not be detained in a police cell or prison, save where prescribed circumstances exist. Normally juveniles are kept at secure places of safety if they cannot be released.
(ii) The courts laid down the rule that a juvenile offender may not be sentenced without first obtaining a probation officer’s report in which the full circumstances of the juvenile are set out and consideration is given to the effects and side effects of each sentencing option available.
(iii) In certain instances where legislation has determined prescribed minimum sentences, those prescribed sentences either does not apply at all to the juvenile (under the age of 16 years), or may be considered as a discretion of the court (where the juvenile is between 16 and 18 years old).
(iv) Where, in general, all convicted offender must apply to the court which convicte3d that person for leave to appeal, an absolute right of appeal is given to certain juvenile offenders (under the age of 16 years) who were not represented during the trial.
(v) The courts require that juveniles be assisted by a guardian during all stages of the criminal proceedings.

If yes, at what ages (for example, between ages16 and 18)?
See previous answer.
(b) If yes, are the maximum sentences the same as for those provided for an adult found guilty of the same offence? ☐ no

If no to question (a), please explain:
See answer 4(iii) above.

5. Type of Sentence Imposed on Offenders between 18 and 21 Years of Age: Does your justice system provide special sentencing/treatment options for these offenders? ☐ no

If yes, what are they?
Not applicable.

6. Purpose of Sentencing: What are the principles that govern the imposition of sentence on a young offender in your justice system? How do these principles vary from the principles that govern the imposition of sentence on an adult? Does general deterrence play a role in the imposition of sentence on a young offender? In what circumstances does a court consider imposing a sentence of incarceration on a young offender?
In general, the principles are the same as for adults. With juveniles however, the fact of their youth has been held to be a great mitigating factor. Emphasis is being placed on their particular vulnerability to influence from adults as well as their often irrational and unwise decision making and other factors associated therewith.

7. Mental illness: Are there special provisions in your justice system to address the particular problems of the young offender suffering from a mental disorder? ☐ no

If yes, please describe them:
Not applicable.

Thank you! Your responses will be gathered for the purposes of discussion at the meeting of the Third Study Commission in Trondheim scheduled for the fall of 2007.