



Key Recommendations
&
Guidelines for Reform in the
Juvenile Justice System



National Commission for
Protection of Child
Rights (NCPCR)

April 2009

Prepared by
Mrs. Dipa Dixit, Member, NCPCR

TABLE OF CONTENTS

PARA

I.BACKGROUND.....	1-4
II.NCPCR REVIEW PROCESS OF JUVENILE JUSTICE SYSTEM.....	5-12
III. AREAS OF PRIORITY REFORM.....	13
IV. REFORM GUIDELINES – KEY ISSUES & RECOMMENDATIONS	
Expansion of Coverage of Children.....	14
a. Key Issues.....	15-34
b. Key Recommendations.....	35-45
Juvenile Justice Board-Reforms.....	46
a. Key Issues.....	47-48
b. Key Recommendations.....	49-53
Juvenile Justice System -Institutionalizing and Professionalization of Services at all Levels.....	54
a. Key Issues.....	55-59
b. Key Recommendations.....	60-63
Alternate Care and Child Placement Processes.....	64
a. Key Issues.....	65-67
b. Key Recommendations.....	68-73
Children's Homes-Transform Quality of Care.....	74
a. Key Issues.....	75
b. Key Recommendations.....	76-85
Prevention.....	86
a. Key Issues.....	87-89
b. Key Recommendations.....	90-94
V. PHASING OF REFORM RECOMMENDATIONS.....	95

I. BACKGROUND

1. The Juvenile Justice (Care and Protection of Children) Act, 2000 (amended in 2006) (hereinafter referred to as the 'JJ Act'), is a law to consolidate and amend the legal framework relating to juveniles in conflict with law and children in need of care and protection. It provides for proper care, protection and treatment by catering to a child's development needs. It attempts to adopt a child-friendly approach in the adjudication and disposition of matters in her best interest and secure her ultimate rehabilitation through various institutions established under this enactment.
2. The JJ Act draws its basis from the Constitution of India (as prescribed in article 15 (3), article 39 (e) and (f), articles 45 and 47); the UN Convention on the Rights of the Child, 1989 (ratification by Government of India on 11 December 1992); the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990; UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines); UN Standard Minimum Rules for Non-custodial Measures, 1990 (The Tokyo Rules); and many other international conventions/treaties and instruments.
3. After the passing of the JJ Act, there has been a change in perspective and appreciation of the needs of and relevant policies for children who are in need of care and protection and those in conflict of law. The focus has shifted to protection of dignity of the child and ensuring that she enjoys all her rights through state responsibility and action.
4. The Juvenile Justice System's interventions address two discrete child populations. On the one hand is the child in conflict with law (hereinafter 'CICL') and on the other, are the children in need of care and protection (hereinafter 'CICP'). In both the instances, there are provisions for rehabilitative placement and protection with due process. The CICL are presented before the Juvenile Justice Boards (hereinafter 'JJBs') that has an assigned magistrate and two social workers. There are provisions for observation homes for all such children who need correctional services. The second category of children i.e. the CICP are to be presented before the Child Welfare Committees (hereinafter 'CWCs'). The CWC is authorized to recommend appropriate measure to rehabilitate all such children. They are also provided with facilities for institutional care. The Integrated Child Protection Scheme (hereinafter 'ICDS') provides the policy framework for implementing the JJ Act.

II. NCPCR-REVIEW PROCESS OF JUVENILE JUSTICE SYSTEM

5. In order to understand the actual implementation of the JJ legislation as well as its policy outcomes, in 2008 the National Commission of Protection of Child Rights ('NCPCR or Commission') undertook a systemic review of the failures and gaps affecting children and their rights within the Juvenile Justice ('JJ') system. The NCPCR constituted two expert sub-committees:
 - (i) one on the functioning of Homes as per the JJ Act, and
 - (ii) the other on the operation of the JJBs' and the gaps in the legislation and its implementation.
6. These sub-committees held consultations with all the stakeholders, including amongst others, government officials (both at the Center and State), the judiciary, NGOs, experts, children and parents, in several states of the country.¹ The review process also included visits to children's homes and observation homes of selected States; review of the direct complaints received by NCPCR, major national assessment studies of the JJ system².
7. The detailed findings and recommendations resulting from the review process are contained in the reports which are available with the NCPCR:
 - (i) 'Review of operation of Observation Homes and Children's Homes', Sub-Committee report – (Assam, Bihar, Delhi, Maharashtra, Karnataka, Tamil Nadu, Uttar Pradesh, West Bengal)
 - (ii) JJB Report – Evaluation of the functioning of the Juvenile Justice Boards in select states
 - (iii) NCPCR Juvenile Justice State Reports – (Maharashtra, Karnataka, Kerala, Himachal Pradesh and Tamil Nadu)
8. It was found that the failures in the JJ system predominantly relate to the entrenched criminalisation and institutionalisation of children in conflict with the law and children in need of care and protection. This is reflected in the pervasive violation of children's fundamental rights in every step of a child's contact with the JJ system. There was a breach in child's rights in the procedural processes for adjudication, disposition and placement of children as well as within existing institutional care, rehabilitation and detention facilities.
9. Importantly, there was a fundamental lack of recognition within the JJ system that:

- (i) children in conflict with law are also children in need of care and protection;
 - (ii) children in need of care and protection are also at risk of becoming children in conflict with law AND
 - (iii) all 'at risk' children are also potential entitlement holders of the JJ system
10. These deficiencies undermined the ability of the system to implement strong preventive and rehabilitative measures.
11. Based on these findings, the priority and focus for recommended legislative, policy and implementation reforms have been outlined below. Whilst not exhaustive, these priority focus areas are based on urgency of reform with regard to immediate impact on child well-being and initiating transformation in those areas which stand out as the most effective 'triggers' of overall systemic reform for JJ.
12. **It may be emphasized that the responsibility and obligation to bring about reform must be equally shared by all the concerned Ministries.**

III. AREAS OF PRIORITY REFORM

13. Based on its review of the consolidated findings of two expert sub-committees, the NCPDR has identified the following six (overlapping and inter-related) areas for priority reform with regard to the treatment of children and their rights under existing JJ policy and legislation.
- (i) Significantly **expand coverage and reach** of the JJ system for categories of children who are currently unaddressed or excluded³ due to procedural or operational barriers.
 - (ii) Strengthen the Juvenile Justice system by **institutionalising the processes**, regularising its operation strengthening its capacity and ensuring **professionalisation** of actors and oversight of procedural bodies.
 - (iii) **Reform JJB procedural implementation** (intake, adjudication and disposition) to ensure procedural fairness and support of child and adolescent development considerations in line with child jurisprudential principles.
 - (iv) Comprehensively **operationalise non-institutional, alternate care provision** AND reform procedural and operational placement processes to ensure:
 - a) stable and durable placement outcomes for children without access to parental care and
 - b) appropriate re-unification processes for children returning to parental care

- v. **Transform quality of care in existing Homes** to eliminate child rights violations and ensure consistent standards of care through reform of governance, schooling re-integration and education provision within and outside the home premises, mental health provision and rehabilitation programming.
- vi. **Establish a strategy for prevention of children falling into categories requiring specific interventions** under the JJ system as a cornerstone of the juvenile justice system through systemic early intervention and targeting of ‘at risk’ children and families by community based child protective services mobilised at district and block levels.

IV. REFORM GUIDELINES –KEY ISSUES AND RECOMMENDATIONS

- 14. **Significantly expand the coverage and reach of the JJ system for categories of children who are currently unaddressed or excluded due to procedural / operational barriers.**

Key Issues

- 15. The JJ system is meant to cover each and every child who requires care and protection; it has been found that its capacity has been limited to cover a miniscule set of children due to the lack of targeted procedural mechanisms and operational capacity. Whilst the JJ Act refers to some of these categories in its definitional scope, the categories of children highlighted below are either:
 - (i) not explicitly or comprehensively addressed by existing legislative and policy provisions OR
 - (ii) have been largely excluded in the implementation of the JJ system
- 16. In particular, these categories include:
 - (i) victims of domestic (‘at home’) abuse or/and neglect
 - (ii) children orphaned and affected by HIV
 - (iii) children affected by conflict and displacement
 - (iv) children rescued from bonded or child labour
 - (v) children apprehended under security legislation⁴
 - (vi) children suffering from sexual exploitation (in particular victims of trafficking)
 - (vii) children affected by substance abuse
 - (viii) children living on or off the street
 - (ix) children married at an earlier age than that legally specified
- 17. This is not an exhaustive or mutually exclusive list but only an indicative one. There is also a need to examine the category of children living in homes that are unregistered under the JJ Act. The majority of the reform guidelines contained

herein focus on the priority measures that are needed to address these systemic operational and procedural gaps and failures.

18. The category of **domestic abuse⁵ and neglect** raises fundamental questions about the principles which should guide government intervention and procedural protection of children living at home. There are currently no mechanisms for:
 - (i) mandatory reporting of suspected child abuse;
 - (ii) systematic investigation and assessment of complaints; and
 - (iii) Remedial and / or coercive government intervention.⁶

19. With regard to **children affected and infected by HIV⁷**, there are currently no structured permanent planning and placement support (emergency, short term, longer term) processes in operation with regard to guardianship, adoption and custody of:
 - (i) orphaned children (with a single parent and/ or both parents)
 - (ii) children living with HIV positive parent(s)
 - (iii) children in informal kinship care (grandparent carers, child headed households etc)
 - (iv) children in care of orphanages and NGOs

20. Currently many children are discriminated against within the JJ system with denial of admission in many Childrens' Homes and are relegated to long term institutional care (often with unregulated providers and under-limited procedural oversight) or are not effectively supported within existing, vulnerable parental, kinship and care arrangements. A large number of children also often face disruption and discrimination with regard to schooling.

21. With regard to **children and families affected by displacement** either due to natural disasters, conflict, migration, developmental projects, there is a considerable gap in the adequate provision of appropriate community based, temporary placement and support options, significantly impacting their access to basic entitlements e.g. food, sanitation, protection, education and health services (including psychological care especially in the case of erstwhile child soldiers). This results in hunger and the further impoverishment, exploitation and abuse of vulnerable children often in terms of exposure to sexual trafficking, child labour, involvement in high risk behaviour etc.

22. With regard to **children rescued from child or bonded labour⁸**, there is a need to give them and their families protection from pressure from employers, even as the child has to be admitted to the nearest school or a hostel. For a child bonded labourer who is not with her family, the concerned departments would have to provide for the reunion of the child with her family. Pursuance of the case registered against the employer has to continue and be taken to its logical conclusion through appropriate legal aid. Such children would be covered under the Bonded Labour Act 1976, Child Labour Act 1986, and the JJ Act 2000.

23. With regard to **children apprehended under security legislation**, they are currently not tried through the JJ system and are often reportedly detained in adult correctional facilities without access to due process. The judicial view of the High Courts⁹ in a number of states has supported the overriding powers of security legislation provisions with regard to the application of the JJ Act.
24. With regard to such **children who are victims of trafficking**¹⁰, the focus has to be on prevention. From the time the child is recruited, she is at risk during her journey from her home to the workplace. Interventions at each of these vulnerable points should be made by appropriate authorities in coordination with and in accordance with the JJ Act and system. For example, the railway police and the intelligence network should be alert to these suspicious movements of placement agents with children and take immediate steps to rescue and present these children before the concerned CWCs.
25. With regard to **children affected by drug usage or substance abuse**, all studies have identified their exposure and addiction as an important public health problem widely affecting ‘at risk’ children be they in institutional / alternate care or living with parents /guardians or on the streets. These studies have also highlighted that the problem is largely ignored and ineffectively addressed with regard to prevention, education, treatment, harm reduction, rehabilitation and re-integration.
26. For the significant proportion of **runaway, street children**¹¹ in the country who self initiate their temporary or ‘effective’ permanent separation from their home, current procedural and placement processes (undertaken formally by CWCs) are typically not guided by principles which comprehensively or consistently consider the following elements:
- (i) priority for the child’s well-being , safety, shelter and education
 - (ii) the child’s right to family
 - (iii) continuing parental rights
 - (iv) protection of the child’s property rights following separation from parental care
27. Currently there are no consistent procedural guidelines that can assist CWC’s in their decision making/orders with regard to key issues such as:
- (i) *Where parents seek to have the child return to the family, what recourse does the child have who does not wish to return due to abuse and neglect at the home? How is abuse and neglect established within the home and ‘removal or separation’ mandated / supported?*
 - (ii) *Where parents seek to have the child return to the family in cases where there is no domestic abuse or neglect, what support can the family access to effect family re-unification?*

- (iii) **Children married at an earlier age** than that legally specified¹². The new cycle of early marriage and pregnancy condemns yet another generation to this vicious cycle of malnutrition. Poor health, hygiene and nutrition practices develop an infant into an underweight and stunted adolescent.

'Unregistered' segment of the JJ system

28. The scope of the JJ Act and Rules contains provisions for both registration and 'recognition'¹³ of suitable care providers. Yet, a significant factor which impacts the overall coverage, reach and efficacy of the JJ system is the large number of children who are in need of care and protection but are currently under the custody of unregistered providers (including residential care homes, shelters, orphanages, hostels etc) that operate across the country. Their interface with the procedural and oversight facets of the formal JJ system is either on an ad hoc basis or non-existent. A number of these providers may be registered or approved under other pieces of legislation¹⁴ with adherence to only the bare minimum governance standards.
29. In practice the lack of oversight on the unregistered providers has on occasions led to risk of exploitation and gross violations of their rights due to the failure of procedural safeguards. It has had an impact on their adherence to uniform standards of care.
30. On the contrary, there are also some homes which may not have been registered or fulfill the requisite physical and infrastructural compliances or comply with a uniform set of standards of care requirements or operate through the procedural assessment and referral processes of the existing JJ authority of JJBs and CWCs, but are providing exemplary care and protection for children.
31. Many such good unregistered providers are either not utilised by the CWC/ JJB referral processes (and often continue to operate outside the official procedural system) OR despite extending their care services, continue to be unable to comply with the existing registration requirements and are excluded from acting as beneficiaries of the relevant JJ financial support schemes. **The JJ system has not been able to leverage and institutionalise good practices and strengthen the capacities of good providers for the benefit of a greater number of children.**
32. **It has been found that a significant factor contributing to non-registration of 'good' care providers is the current, narrowly prescribed, non-differentiated 'fit institution' registration requirements for children's homes, observation homes, special homes and shelter homes based on singular physical formats.**
33. The focus of registration as an effective mechanism for governance and development of the JJ sector must be to establish an environment which supports a diverse range of care formats whilst ensuring adherence to care standards which

are focused on a substantive assessment and monitoring of a provider's fitness to meet the needs of the children in its care.

34. In practice, the said provisions must be interpreted in a manner in which the best interest of the child is protected. While those which have violated children's rights, even if registered, need to be taken to task, those providers, who are working in the best interests of the child against all odds, should be given full support, irrespective of the status of their registration.

Key Recommendations

35. Introduce and implement a comprehensive domestic child abuse policy and legislative framework based on considerations of:

- (i) the priority for preventing abuse, neglect, exploitation of all children;
- (ii) the role of the family (including parental responsibilities) and goals of family preservation;
- (iii) the procedural protections required to protect parental rights AND child rights; and
- (iv) the scope and nature of government intervention in the family.

36. Specifically the legislative and policy provisions need to:

- (i) establish mechanisms for remedial intervention within the home and
- (ii) establish the delivery infrastructure for domestic child protective services (i.e. through counseling, continuous interaction and follow up till the matter is resolved).
- (iii) operationalise mandatory reporting by professionals working with children (police, doctors, nurses, teachers etc);
- (iv) establish the threshold standards for coercive state intervention; through temporary or permanent removal of a child from the home

37. With regard to children affected and infected by HIV, establish and operationalise targeted policies and procedural guidelines that address permanency planning, placement processes and guardianship rights and responsibilities. Implement initiatives (based on strong linkages with community based organisations) that provide for short term and longer term residential and non-residential support to vulnerable families and 'at-risk' children.

38. For children who have been displaced either due to civil unrest, natural disasters, or the like, steps need to be taken to:

- (i) bring such children within the purview of the JJ system,

- (ii) ensure provision and continuity of services towards care and protection, and no gap in their education
 - (iii) set up a separate CWC in such areas where the State needs to respond immediately to the CWC recommendations.
39. With regard to child labourers-for children who have been rescued as child labourers, the following steps need to be taken:
- (i) CWC to provide immediate shelter and facilitate case-wise plan for rehabilitation of such children in coordination with labour, education and welfare departments.
 - (ii) Strict enforcement of all relevant legislations such as the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour System (Abolition) Act, 1976 and the Juvenile Justice (Care and Protection of Children) Act, 2000
 - (iii) Amendment to the Child Labour (Prohibition and Regulation) Act 1986, to prohibit all forms of child labour and raise the age of children from 14 years to 18 years in consonance with the JJ Act and the UNCRC.
40. With regard to children apprehended under security legislation, there is an urgent need to challenge the basis of the emerging judicial view¹⁵ on the overriding powers of such legislation [National Security Act (NSA), Prevention of Terrorist Act (POTA) etc] with regard to the application of the JJ Act upon these children. It needs to be explicitly clarified that when there is a conflict between special laws such as POTA and the JJ Act, it is the JJ Act which must prevail. As a priority, human rights bodies in all the states need to identify the individual cases and circumstances of affected children currently being so detained and act to ensure their access to due process in line with juvenile judicial principles and protection of fundamental human rights.¹⁶
41. With regard to children who are victims of child trafficking-
- (i) Bring such children within the purview of the JJ system
 - (ii) CWC to track such children and families of rescued children
 - (iii) Ensure strict enforcement of the law and provide legal aid for victims.
 - (iv) All arrangements for reintegration into the family and rehabilitation through education
 - (v) Provide for counseling and restorative justice
42. Children affected by drug usage/ substance abuse
- (i) de-addiction plan for each child through concerned department
 - (ii) implementation/ enforcement of relevant legislation and prosecution of drug pushers
43. With regard to street children
- (i) provide such children all the options of care and protection (both institutional and non-institutional)-the same would be decided on a case-to case basis
 - (ii) education until the age of 18 years

44. Children married at an early age
- (i) Ensure that the child's education is not disrupted and if illiterate provide for access to education
 - (ii) Link the child to the adolescent girl child program of ICDS and empower her to assert her rights
 - (iii) Counsel and support the child against abuse and domestic violence through women's groups and local bodies
45. With regard to children in registered and unregistered homes, undertake a mapping of all providers of residential and non-residential care and have a comprehensive procedure for assessment of care providers for either penal action on the one extreme or providing support on the other, as the case may be:
- (i) Establish a new joint government-civil registration body in each state, to regulate care provision within the JJ system
 - (ii) Establish registration criteria for multiple care formats and develop multiple procedures for registration in order to include a wide range of sound care provision formats with differentiated registration standards for care providers/facilities (for example; small group foster care, special needs homes, assisted living homes etc).
 - (iii) Launch transparent processes of registration by the new body which will encompass registration of existing JJ providers with children in care, new entrant care providers into the JJ system and on-going monitoring for renewal/cancellation/probation of all registered providers.
- 46. Strengthen the JJ system by institutionalising processes, regularising operations, increasing capacity and by ensuring professionalisation of actors and development of strong oversight of procedural bodies.**

a. Key Issues

47. As an 'institution', the JJ system has a tremendous capacity to benefit the lives of children through processes and resources which are accountable and capable of standardised procedural management and targeted individualized case management as well as adjudication on disposition/placement outcomes which are meaningful. Such institutional 'capacity and memory' requires systemization which includes clear definition of roles, development of dedicated cadres of resources, establishment of strong, multi-layered oversight mechanisms and strong record-keeping, precedent capture and knowledge sharing mechanisms.
48. Currently, there is a significant lack of institutional capability within the JJ system. In particular this is due to the lack of:
- (i) procedures that capture experience and expertise - exemplified by the significant number of CWC's and JJB's across the country that are operating without the benefit of shared, consistent guidance on statute (i.e. Act &

Rules), application and inquiry protocols as well as capture of and access to precedent decisions.

- (ii) professionalisation within child protection – exemplified by the large number of resources working within the system without the support of clearly defined roles, career path opportunities, specialised tertiary and other training curriculums, in-service training and dedicated peer networks.
- (iii) appropriate procedural oversight of the adjudicating bodies - exemplified by the limited substantive monitoring of the appropriate discharge of their adjudication obligations by CWC's which are currently not guided by any formal, consistent judicial oversight of their orders which encompass decisions on child/parent re-unification, alternate care placement, referral to specialist rehabilitation/medical treatment services etc.

b. Key Recommendations

- 49. Initiate the development and issue of JJB and CWC 'Benchbooks' by the High Courts nationally. The Benchbooks will provide an important resource to JJB members on guidance on legal and regulatory precedents and guidelines on key aspects of the inquiry process and application of the JJ Act.
- 50. Establish judicial oversight mechanism for the operation of CWCs through the appointment of a senior nodal officer from the Legal Services Authority who will report to the Chief Justice of the High Court on a monthly basis. Nationally, the High Courts should also appoint 'Special CWC Commissioners' (a person who has had significant experience with the rescue and rehabilitation of children and is considered to be a strong CWC interface) who will report to the Chief Justice on procedural and operational gaps and issues.
- 51. Develop juvenile justice judicial career specialisation and expertise development through:
 - (i) the establishment of special scholarships and clerkships for high performing graduates demonstrating an interest in juvenile jurisprudence
 - (ii) Introduce course specialisation in juvenile jurisprudence within the curriculum of national law schools
 - (iii) Establish state and national peer bodies of child jurists and experts
- 52. Support professionalisation of 'child protection' personnel through establishment of
 - (i) peer bodies and certification and in-service continuing education processes
 - (ii) merit based scholarships

- (iii) high profile clerkships and internships and awards within tertiary schools of law, social work, education, medicine, psychology etc for students showing aptitude and interest in child protection as a career path
- (iv) Establish a multi-disciplinary 'Child Protection Studies Council' with the aim of developing the child protection and JJ profession in India. The Council should make expert submissions on proposals for development of courses for professionals in this regard, to the UGC
- (v) Establish systemic reforms within the judiciary to include setting up a Juvenile Justice Academy which will address the following:
 - a) JJB magistrates, their tenure and track, (delineated roles, appointment, reporting line),
 - b) clear definition on delineation of tasks between magistrate and non judicial members in assisting diversion,
 - c) diversion and dismissal of cases,
 - d) establishment of child courts, child jurisprudence, use of the Criminal Procedure Code., etc.

53. Set up a special committee by the Judiciary to examine the efficacy and implementation of systemic reforms mentioned in clause (vi) above, from a child jurisprudential perspective.

54. **Reform JJB procedural implementation (intake, adjudication and disposition) to ensure procedural fairness and support of child and adolescent development considerations in line with child jurisprudential principles.**

a. Key Issues

- 55. There are procedural weaknesses and significant gaps in the capacity and/or effectiveness of the probation function within the JJ system. A significant number of children in conflict with law (i.e. 'CICL') are not being provided targeted and appropriate interventions which negatively impacts their well-being. They are being confined unnecessarily and/or long periods in violation of the JJ Act and Supreme Court orders.¹⁷
- 56. Unwarranted exposure and processing within the JJ system even of those children who should be diverted either upon their first contact with the JJ system (usually the police) or their initial contact with the juvenile procedural authority of the JJB.
- 57. Unwarranted confinement in secure custody detention where non-institutional alternate detention options could have been explored
- 58. release or exit from the system without adequate remedial focus on the causes of delinquency
- 59. poor quality legal representation during the JJB inquiry process

b. Key Recommendations

60. Establish guidelines which define the basis for early dismissal at police or initial JJB contact stages of intake. Also develop guidelines and criteria for case gradation. Both these guidelines need to address application obstacles arising from perceived conflict with CrPc procedures. The Law Ministry needs to establish procedures within the framework of the JJ Act for case gradation and dismissal of cases where possible.
61. Develop and operationalise alternate, non-institutional placement or disposition alternatives (e.g. day or evening reporting centres, community service etc) and restorative justice mechanisms through strong panchayat / civil society collaboration and funding of developmental schemes.
62. Establish a dedicated juvenile justice probation cadre nationally with appropriate training, protocols, policy guidelines and regulation under specific juvenile probation provisions.¹⁸
63. Establish external training provision in child rights, accreditation system and code of ethics for all attorneys involved in child representation. Strengthen the available Legal Aid capacity through the expansion of dedicated juvenile justice attorneys and their in-depth in-service training.
64. **Comprehensively operationalise a range of non-institutional, alternate care provision AND reform procedural and operational placement processes to ensure**
 - (i) stable and durable placement outcomes for children without access to parental care
 - (ii) appropriate re-unification processes for children returning to parental care

a. Key Issues

65. Currently, neither the placement ‘orders’ of most procedural authorities within the JJ system NOR the decisions of most NGO’s acting ‘outside’ the formal JJ system are based on systematic, individualised case planning and assessment with a view to working toward the ultimate placement within a ‘permanent home’ in the best interests of the child (whether through family re-unification, adoption, legal guardianship, foster care or other alternate care).
66. CWC’s are often faced with only two placement options – adoption or institutionalisation – in the absence of viable alternates that can provide stable and durable long-term alternate care. Where ad hoc alternate care provision is available through NGOs, the lack of procedural integration of these initiatives into the formal juvenile justice system can prevent their ability to provide stable and durable long-term care for children who will not be adopted or re-unified. Limited ad-hoc provision of emergency, short-term, and long-term alternate care facilities also hinders a transitional process for re-unification and effective temporary and permanent placement in alternate care. This results in a number of children being deprived of placement outcomes which can provide the benefits of long term ‘parenting’ in their best interests.

67. There is an absence of ‘permanency planning’ as the unifying principle to guide the placement of children in need of care and protection. This results in a number of cases where family re-unification is either not pursued when it should be (inter-state trafficking/movement etc) or is initiated without appropriately assessing the risks to the safety of the child (abuse and neglect cases etc). Currently, there is, at best, limited, or at worst, no follow-up and monitoring by child protection personnel responsible for children in alternate care placements or in family re-unification settings.

b. Key Recommendations

68. Establish a comprehensive policy framework and undertake policy and operational reform to establish multiple ‘alternate care’ options, which support a range of alternate care models that ensure welfare, development and ‘parenting’ in the best interests of children living without parental care. All states need to launch significant investment programmes for the development of appropriate emergency, short term and long term non-institutional alternate care options (such as emergency shelters, transit care, kinship care, small group foster care, supervised or assisted living etc). Specific alternate care policies and legislative reforms need to address the allocation and exercise of temporary and permanent guardianship rights and responsibilities. It also needs to address the protection of child rights on issues such as inheritance and property rights.
69. Establish permanency planning as a core objective of CWC assessment and placement processes. Strong permanency planning would require strong implementation and development of the following processes and capacities:
- (i) individualised case management addressing the child’s living circumstances before she came in contact with the JJ system and continuing until a stable and safe placement outcome is achieved. It also needs to integrate the involvement of the child and her parents or guardian(s) (where appropriate) in this assessment and planning process
 - (ii) child welfare professionals who maintain contact with the child and family or guardian(s) beyond the initial intake and placement and to review the child’s placement situation follow systematic on-going monitoring protocols
 - (iii) clear criteria and guidelines for JJ authorities to determine consideration for adoption or selection of appropriate alternate care placements (kinship care, group foster care etc)
70. Develop case specific procedural guidelines for the assessment, rehabilitation and placement decisions of the CWC through the development of procedural checklists and protocols for specific major child intake groups, for example:
- (i) child labourers or trafficked children
 - (ii) children suffering from abuse and neglect
 - (iii) abandoned children

71. Establish hostels and transitional education centres as an important alternative to be utilised by the JJ system (particularly in cases of children with parental care in vulnerable families that need support). Strengthen linkages between JJ and education, labour and welfare department procedures and programmes.
72. Build strong after care support through 'independent living' assistance schemes and grants e.g. scholarships and other assisted living grants.
73. Establish dedicated nodal capacity in Childline for tracing and repatriation processes for children within inter-state and inter-country jurisdictions. One dedicated police resource should be appointed to at least one major Childline unit in each state to facilitate strengthening of collaboration with law enforcement on child trafficking, etc.
74. **Transform the quality of care in existing 'Homes' to eliminate child rights violations and ensure consistent standards through reform of governance, schooling re-integration and education provision, mental health provision and rehabilitation programming.**

a. Key Issues

75. Several studies have highlighted the continuing denial of children's access to their fundamental entitlements (health, education, nutrition, safety etc) and violation of their rights within the existing institutional care facilities. The key causal factors include:
 - (i) Lack of adequate programmes and linkages to support a consolidated child rights entitlement framework (JJ Act, Right to Education Bill, Child Labour Act etc). Education is a pivotal element in addressing the conditions of children in Homes. Currently the lack of any remedial education and attempts to mainstream them into formal schools results in increasing the vulnerability of a significant number of children within the institutionalised setting and their being denied their fundamental right to education.
 - (ii) In most cases, only children who can enter into age appropriate classes on placement within the Homes are typically enrolled in formal schooling. The remainder are provided with adhoc educational inputs and/or engaged in activities which are termed as vocational training but often involve surreptitious forms of engagement of children in 'work' within the institution (for example; kitchen duties, washing, cooking, mending, cleaning, etc). Alternatively, they receive instructions in activities which have neither linkages to vocational skills and aptitudes nor potential access to employment opportunities nor support the development of sectoral skills.
 - (iii) Lack of adequate child specific rehabilitation within a family and community context
 - (iv) Lack of adequate governance structures and protocols underpinning effective public-private partnerships
 - (v) Lack of multiple monitoring or oversight mechanisms focused on both input AND outcome indicators of care standards (e.g. periodic monitoring of food rations occurs without meaningful assessment of child nutritional status)

(vi) Lack of resource management, training, professionalisation of services and capacities of all concerned personnel on children's issues.)

b. Key Recommendations

76. Establish formal linkages within all Children's and Observation Homes with Sarva Shiksha Abhiyan to operationalise remedial education and support mainstreaming into formal education through systematic school readiness assessment, preparedness and enrolment for all children.
77. Strong governance requires multiple mechanisms for monitoring and oversight by a broad range of actors (peers, civil society, the community, the government etc). In addition to existing audit processes, the Commission recommends the establishment of a 'public' audit process for Homes based on assessment of both inputs and child outcomes (nutritional status, health status, schooling etc). Such processes would also provide the basis for extended, detailed operational monitoring and rectification.
78. Leading independent experts (from recognised national agencies or bodies) should be appointed jointly by a governmental-judicial appointment committee and report their findings to government departments, the Courts, the NCPCR and State Commissions. These findings should be publicly disseminated and the government should publish an annual JJ Performance Score Card. The key audit categories should include:
- (i) Child nutritional status
 - (ii) Sanitation and hygiene
 - (iii) Environmental safety
 - (iv) Health (Mental / Physical)
 - (v) Education
 - (vi) Financial
79. Appoint joint industry civil-government committees in each state for vocational training ('VT') for juveniles. These committees should select and appoint approved VT providers with industry or trade certification credentials and the ability to guide trainees into recognized employment paths. The basis for selection should include necessary development of industry or sector recognised qualifications and skills and strong linkage with further apprenticeship and employment paths through support of industry councils, polytechnics, trade bodies and corporate partnerships. All Homes should be directed to select from the approved list of providers or nominate a provider for vetting, with VT placements only for children in the 16-18 years age group. Children should be linked to appropriate VT opportunities based on assessment of a child's aptitudes and interests.
80. Apart from preparation for or inclusion in formal schooling and/or vocational training, it is essential to necessarily provide creative activities, e.g. music, sports, fine arts, performing arts, etc; for children who are 'at risk' or have been subject to 'abuse' to constructively channelise their talents and energies and develop their well-rounded personalities at an impressionable age
81. As part of the migration path to district and block level coverage of community based child protective services, establish family and child counseling centres, health

clinics and after-school support programmes in Homes to expand their care services that will be open to the local community.

82. Both milieu based interventions which create an enabling environment for children as well as individual therapy should be provided to children with mental health problems in all institutions. All persons involved in taking care of juveniles or children in an institution should participate in facilitating an enabling environment and work in collaboration with the therapists. Every institution should have the services of trained counselors or collaboration with external agencies such as child guidance centres, psychology and psychiatric departments or similar government and non-governmental agencies, for specialized and regular individual therapy for every juvenile or child in the institution. A mental health care plan should be developed for every juvenile or child by the child welfare officers in consultation with mental health experts associated with the institution and integrated into the individual care plan of the concerned juvenile or child. No juvenile or child should be administered medication for mental health problems without a psychological evaluation and diagnosis by appropriately trained mental health professionals. A mental health record of every juvenile or child should be maintained by the concerned institutions. The recommendations of mental health experts should be maintained in every case file and integrated into the care plan for every child. Mental health care record and plan of concerned children should be reviewed by the concerned Child Welfare Committee from time to time, but not less than in a quarter, with assistance from mental health expert.
83. Establish a process for frequent child hearings through the appointment of a jury by the NCPCR or NHRC, which will hold 'in confidence' hearings for children within the JJ system, including those in institutional care.
84. Each home must be proactive and not reactive in reaching out to all children in need of care and protection. The relevant departments, government officials and staff must be equipped to offer technical support to all other care providers in institutional and non-institutional settings.
85. Each home must be equipped provide training support to all other 'alternate care' intervention providers.
86. **Establish a strategy for prevention of children falling into categories requiring specific interventions under the JJ system as a cornerstone of the juvenile justice system through systemic early intervention and targeting of 'at risk' children and families by community based child protective services mobilised at district and block levels**

a. Key Issues

87. Prevention is currently NOT a core objective of the juvenile justice system. Child protection actors, processes and infrastructure currently provide limited support to prevention of child delinquency, abuse, neglect, exploitation etc through targeting of 'high and at risk' families and children and utilization of 'early intervention' mechanisms.
88. Significantly there is no 'outreach' capacity within the existing institutionalised infrastructure for child protection services that can support child protection actors to

extend their services outside institutional care facilities and reach children and families in the community. Even with regard to the children that do come into contact with the juvenile justice system, there is a significant degree of recidivism and many children continue to suffer from repeated cycles of maltreatment as a result of return to child labour, re-trafficking, return to circumstances of abuse and neglect etc.

89. There is a need for a systematic, localised approach for prevention of children falling into the category of children in need of care and protection or in conflict with law.

b. Key Recommendations

90. Develop 'outreach' capacity within current child protection resources and infrastructure which equips and allows probation officers and social workers to deliver 'at home' early intervention and follow-up support to vulnerable families (counseling, referral, monitoring) and at-risk children
91. Develop 'early intervention' initiatives, which allow local bodies to trigger care and placement support for families under duress and 'at risk' children. As a priority establish direct linkages between each Childline and primary and secondary schools in the catchment area through appointment of responsible teacher as liaison contact.
92. Operationalise district and block level coverage of child protective services through focus on strong linkages with the panchayat administration, which must be equipped to identify local child protection requirements and track provision of appropriate services.
93. Operationalise multi-sectoral collaboration for appropriate referrals across all child relevant departments and ministries and law enforcement agencies.
94. Invest in expansion and roll-out of government and NGO/CBO led prevention initiatives – e.g. drop-in recreation centres, youth volunteering programmes, child sensitive education initiatives on high risk behaviour, emergency shelters etc.

V PHASING OF REFORM RECOMMENDATIONS

95. The following is the plan to phase of key reform initiatives:

- a. **Short-term reform:** should be focused on initiatives that will drive operational reform, improve implementation effectiveness and build capacity within the mandate of the existing policy and legislative framework:
 - (i) Develop and utilize across the country JJB and CWC Bench Books by the High Courts
 - (ii) Transform Children's and Observation Homes through the launch of pilot initiative with appointment of Special JJ Reform Commissioners to lead key reform initiatives in pilot sites nationally:
 - Link Homes to Sarva Shiksha Abhiyan to provide educational services and infrastructure in each of them
 - Initiate community based 'outreach' and support follow-up capacity development
 - Institute processes for individualised case management

- Enable the existing homes take on the role of technical support agency to provide support to all alternate facilities for children through foster care, sponsorship, kinship care, and so on.
- (iii) Create and support dedicated juvenile probation units nationally with requisite development of juvenile probation regulation, policies and guidelines
 - (iv) Set-up independent expert-led social audit process nationally for government Homes
 - (v) Launch a country-wide review to identify 'best practice' alternate care models and community based care and protection initiatives (based on their performance and impact on the child) for their replication and development through scalable government schemes
- b. Medium-term reform** including legislative, policy and structural reform of existing operations:
- (i) Create a Law Commission with a special one year appointment based on the recommendations of the Law Commission Report on Juvenile Justice legislative reform from child jurisprudential perspective, including addressing compliance with international human rights standards
 - (ii) Transform existing institutional care based systems to a community based 'out-facing' child protective services system with district and block level coverage
 - (iii) Continue roll-out of non-institutional, alternate care schemes with the requisite infrastructure
 - (iv) Develop a juvenile judicial academy through the development of dedicated juvenile jurists

End Notes

¹ Under the Chairpersonship of Ms. Dipa Dixit (Hon'ble Member NCPCR), the Committee Members of the 'Working Group of Juvenile Justice System' met in NCPCR office on 8 January 2008, 29-30 October 2008 and 26-27 November 2008. The JJ Homes Sub-Committee met in NCPCR Office on 6 November 2007, 12 November 2007, 19 November 2007, 1st February 2008, 24 March 2008 and 29 April 2008. The Round Table Meetings were held in Patna (Bihar) on 14 December 2007, Chennai (Tamil Nadu) on 10 January 2008, Mumbai and Pune (Maharashtra) on 22-23 January 2008, Delhi on 24 January 2008 and Lucknow (U.P.) on 5 February 2008. JJB Sub-Committee's Round Table Meetings were held in Tirunelveli, Chennai(Tamil Nadu) on 26 March 2008 and Nagpur (Maharashtra) on 22 May 2008, followed by visits to TISS and JJB, Maharashtra on 13 March 2008 and Kakkanaad, Ernakulam (Kerala) on 5 April 2008.

² For example, An Unfinished Journey, Evaluation of the Scheme for Juvenile Justice, a Study by Child Rights and You (CRY) along with the Ministry of Social Justice & Empowerment, Government of India across 159 institutions in 9 states of India, with the intent of enabling a broad-based understanding of the situation of children in institutions and juvenile justice reform processes in the country. The task was to contribute to the then ongoing debate of whether the Juvenile Justice Act, 2000 was being implemented in its true spirit. The study draws attention to some difficult truths and the challenging tasks in re-evaluating juvenile justice policy.

³ The JJ Act does not specifically address child victims of domestic ('at home') abuse, neglect, children orphaned and affected by HIV, children affected by conflict and displacement, children rescued from child labour and bonded labour, children apprehended under security legislation, children affected by trafficking (in particular sexual exploitation), children affected by substance abuse, migrant children, disabled children, etc.

⁴ The National Security Act [1980] especially in the context of such children apprehended under the NSA with arms in zones of conflict.

⁵ All forms of physical, sexual, emotional and mental abuse. The study conducted by the Women and Child Development Ministry in 2007⁵ reveals the extent of physical, sexual and emotional abuse:

- (1) Physical Abuse: Two out of every three children have reported to be physically abused. Boys are especially vulnerable. Out of those children physically abused in family situations, 88.6 percent were mistreated by their own parents.
- (2) Sexual Abuse: 65 percent of school going children reported facing corporal punishment.⁵ 53.22 percent of children reported having faced one or more forms of sexual abuse. Children on the streets, children at work and children in institutional care reported the highest incidence of sexual assault. 50 percent of abuses were from persons known to the child or in a position of trust and responsibility. Most children did not report the matter to anyone.
- (3) Emotional Abuse: Every second child reported facing emotional abuse. Equal percentage of both girls and boys reported facing emotional abuse. In 83 percent of the cases parents were the abusers. 48.4 percent of girls even wished they were boys.

⁶ A draft Offences Bill relating to all offences against children, has been prepared on the initiative of the Women and Child Development Ministry ('WCD') and is still under consideration.

⁷ India today is home to the largest number of AIDS orphans in the world (the UN estimates children orphaned by AIDS as those under the age of 18 who have lost one or both parents to the disease). Though there are no government figures in the country for the number of children affected by AIDS, World Bank and UN estimates suggest that the number of children in India orphaned by AIDS is approaching 2 million and is the largest in the world. According to National Aids Control Organization (NACO), there were an estimated 0.055 million HIV infected 0-14 year old children in India in 2003. UNAIDS, however, puts this figure at 0.16 million children.

⁸ ILO estimates that 218 million children were involved in child labour in 2004, of whom 126 million were engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced or bonded labour.

⁹ Special Court (Prevention of Terrorist Act (POTA) (Anwar Abdullah Kalandhar, 2007 POTA case no 8/2004; Orissa High Court (V.A. Mohta, C.J. & R.K. Dash. J. v Distt. Magistrate, Cuttack & Ors O.J.C. No. 220 of 1995)

¹⁰ 1.8 million Children are estimated to be victims of prostitution and pornography and 1.2 million were victims of trafficking. 40 per cent of sex workers enter into prostitution before 18 years

¹¹ India is estimated to have the largest population of street children in the world.

The number of street children alone is estimated to be 18 million, with twice as many boys as girls. (See CES (2008), No Direction Home, in the report 'Include the Hungry: What Governments and Civil Society Must Do to Combat Social Exclusion in Food and Work Schemes, New Delhi: Centre for Equity Studies (mimeo) and Lal, Neeta. (2007), 'On the streets where they live', <http://infochangeindia.org/20070701248/Children/Features/On-the-streets-where-they-live.html> (last checked by the author May 2008) and also United Nations High Commissioner for Human Rights estimate quoted in Lal, Neeta. (2007), *ibid*

¹² National Family Health Survey (II) data suggests that the median age for the marriage of girls in India is 16.4 years. The survey also found that 65% of the girls are married by the time they are 18 years old. http://www.childlineindia.org.in/cr_CPI_childMarriage_3.htm

¹³ Under Section 37 of JJ Act the State Government may (1) recognise, reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required. (2) The shelter homes referred in sub-section (1) shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes through such persons as are referred to in sub-section (1) of section 32. (3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.

¹⁴ A number of care providers are currently registered under the broader statutes such as 'The Societies Registration Act' or 'Charitable Trusts Act' whilst other are registered under care specific statutes such as 'Orphanages & other Charitable Homes (Supervision & Control) Act' or authorized/regulated by schemes under relevant ministries.

-
- ¹⁵Special Court (POTA) (Anwar Abdullah Kalandhar, 2007 POTA case no 8/2004; Orissa High Court (V.A. Mohta, C.J. & R.K. Dash. J. v Distt. Magistrate, Cuttack & Ors O.J.C. No. 220 of 1995 which has ruled that when a juvenile stands accused of offences under POTA, he will be tried under POTA and not the JJ Act.
- ¹⁶Reference to International Law/ Treaty/ UN Conventions like International Labour Organization Convention No. 182 (adopted on 17 June 1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, (ii) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (General Assembly resolution A/RES/54/263 of 25 May 2000) (iii) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly of the United Nations by resolution A/RES/57/199 of 18 December 2002).
- ¹⁷Supreme Court Judgment on Sheela Barse & Ors. Vs. Union of India & Ors, date of Judgment 13/08/1986, directs that Criminal trial on investigation of offences by children should complete within three months of lodging complaint and FIR- Trial must complete within six months. Children held under any offences should not to be kept in Jail, they should be kept in remand homes or released on bail (Children Act, 1960). Taking a serious view of the delay in proceeding of cases registered against children, the Delhi High Court in 2008 sought details from the [Juvenile Justice](#) Board on pending matters before it. Directing the board, justice S Ravinder Bhat asked to prepare a comprehensive consolidated chart entailing names of juveniles, their age and the nature of cases they are facing and to place the chart before the [court](#) within six weeks.
- ¹⁸Reform Probation of Offenders Act, 1958 to incorporate separate section on juvenile probation or introduce new legislation or regulation for juvenile probation.