

# GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY<sup>1</sup>

## I. Children deprived of liberty within the administration of justice<sup>2</sup>

### 1) What is the minimum age of criminal responsibility in your country?

If the minimum age of criminal responsibility varies within your country, please provide details.

The minimum age of criminal responsibility [MACR] in India, as given in the Indian Penal Code, is 7 years under Section 82, Indian Penal Code. It states:

Act of a child under seven years of age.—Nothing is an offence which is done by a child under seven years of age.

The presumption of *doli incapax* is recognized in Section 83, Indian Penal Code in respect of children over the age of seven years but under the age of 12 years. It states:

Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

### 2) Are there separate juvenile justice processes and/or facilities for children in conflict with the law? Please describe juvenile justice arrangements at all levels of the criminal justice system (police, courts, corrections).

Yes, separate juvenile justice processes and facilities are prescribed for children in conflict with law under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) and the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJ MR, 2016).

Under the law, separate authorities and agencies have been envisaged to deal with children in conflict with the law. As regards Corrections, separate residential facilities are to be established for children alleged to be in conflict with law, and those found to be in conflict with law. In addition, the JJ Act, 2015 envisages the establishment of administrative structures at the State

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<sup>1</sup> This submission contains contributions made by two civil society organizations – i.e. HAQ Centre for Child Rights based in New Delhi and Prayas based in Mumbai; and three individuals - Ms. Swagata Raha, Senior Legal Researcher and independent Consultant; Ms. Arlene Manoharan – independent Child Rights Consultant; and Shruthi Ramakrishnan – Legal Researcher and independent Consultant – with assistance from Ms. Aishwarya Birla, IV Year, B.A.LLB (Hons), NALSAR. Credits for each of the Sections are also given.

<sup>2</sup> Ms. Swagata Raha, Senior Legal Researcher and independent Consultant; Ms. Arlene Manoharan – Independent Child Rights Consultant, Ms. Shruthi Ramakrishnan - Legal Researcher and independent Consultant contributed to this section, with assistance from Ms. Aishwarya Birla, IV Year, B.A.LLB (Hons), NALSAR (except the answer to question 15, which was provided by Prayas).

and District level that would ensure the effective implementation of the law. More detailed information about these arrangements is given in the first part of this answer. In the second part of this answer, the Key differences between the Juvenile Justice System and Criminal Justice System in India is explained in brief.

### **A: ‘Courts’ for Children in Conflict with Law in India**

The JJ Act, 2015 envisages two judicial bodies that have the mandate to adjudicate matters related to such children, depending on certain conditions- the Juvenile Justice Board and the Children’s Court.

#### **Juvenile Justice Board (JJB or Board):**

State Governments have been vested with the responsibility of constituting one or more JJBs in every district.<sup>3</sup> The JJB is a multidisciplinary body comprising of a judicial member and two non-judicial members (vested with the power of a Judicial Magistrate of the First Class)<sup>4</sup> who sit as equals and function together as a bench of Magistrates.<sup>5</sup> The JJB has the power to exclusively deal with proceedings under the JJ Act, 2015 related to children in conflict with the law, in their jurisdiction except as otherwise provided in the Act.<sup>6</sup> The JJB’s power should be read together with Section 1(4)(i) of the JJ Act, 2015, which pertains to the application of the Act. It states:

“Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning ....children in conflict with law, including –  
(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;”

According to the JJ Act 2015, the venue of the JJB should not be intimidating and should not resemble regular courts.<sup>7</sup> The sitting arrangement should facilitate face-to-face interaction with the child.<sup>8</sup> The JJB should not sit on a raised platform and there should be no barriers like witness box or bars between the JJB and the child.<sup>9</sup> The JJB should also ensure that the proceedings are conducted in a simple manner and that a child-friendly atmosphere is maintained during the proceedings.<sup>10</sup> In their communication as well, the JJB should deploy child-friendly techniques and attitudes in respect of their body language, facial expression, eye contact, intonation and volume of voice while interacting with the child.<sup>11</sup>

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<sup>3</sup> JJ Act, 2015, Section 4(1).

<sup>4</sup> JJ Act, 2015, Section 4(2).

<sup>5</sup> JJ Act, 2015, Section 4(2).

<sup>6</sup> JJ Act, 2015, Section 8(1).

<sup>7</sup> JJ Act, 2015, Section 7(1).

<sup>8</sup> JJ MR, 2016, Rule 6(4).

<sup>9</sup> JJ MR, 2016, Rule 6(6).

<sup>10</sup> JJ Act, 2015, Section 14(5)(b).

<sup>11</sup> JJ MR, 2016, Rule 6(5).

## Children's Courts:

A Children's Court means courts established under the Commissions for Protection of Child Rights Act, 2005 and a Special Court under the POCSO Act, 2012, where they exist.<sup>12</sup> Where they do not exist, the Sessions Court having jurisdiction to try offences under the JJ Act, 2015 would come within the ambit of a Children's Court.

## B: Police

**Special Juvenile Police Unit and Child Welfare Police Officer:** The Special Juvenile Police Unit (SJPU) is "a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107".<sup>13</sup> The State Governments have been entrusted with the responsibility of constituting SJPUs in every district and city. The SJPU should be "headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated" as Child Welfare Police Officer (CWPO) and "two social workers having experience of working in the field of child welfare, of whom one shall be a woman."<sup>14</sup>

The purpose of a designated CWPO and a SJPU is to ensure that there is a sensitized and dedicated cadre of police officers to deal with children.

The CWPO and the SJPU have very specific functions to perform vis-à-vis a child in conflict with the law:

- **Production:** Soon after a child alleged to be in conflict with the law is apprehended by the police, such child should be placed under the charge of the SJPU or the designated CWPO.<sup>15</sup> It is their duty to produce the child before the JJB within 24 hours of apprehension excluding the time necessary for the journey.<sup>16</sup>
- If the child cannot be produced before the JJB or a Member of the JJB because of apprehension at odd hours or distance, the CWPO should keep the child in the Observation Home or a fit facility and then produce the child before the JJB within 24 hours of apprehension.<sup>17</sup>
- **Information to parents and Probation officer:** Under Section 13(2), as soon as possible after apprehension, the designated CWPO or the SJPU should inform:
  - (i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and
  - (ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the

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<sup>12</sup> JJ Act, 2015, Section 2(20).

<sup>13</sup> JJ Act, 2015, Section 2(55).

<sup>14</sup> JJ Act, 2015, Section 107(2).

<sup>15</sup> JJ Act, 2015, Section 10(1).

<sup>16</sup> JJ Act, 2015, Section 10(1).

<sup>17</sup> JJ MR, 2016, Rule 9(6).

child and other material circumstances likely to be of assistance to the Board for making the inquiry.

The parent or guardian should be provided the address of the JJB as well as the date and time when they need to appear before the JJB.<sup>18</sup>

- **Preparation of Social Background Report (SBR):** The CWPO or SJPU is also required to prepare a SBR in Form 1 for submission to the JJB and should contact the parents or guardian of the child to collect the best available information.<sup>19</sup>
- The CWPO should “be in plain clothes and not in uniform.”<sup>20</sup>

### **C: Correctional facilities**

Under law, separate institutions are provided for children in conflict with the law and they cannot be detained in jails, police-lock ups, or with adults. However, children above 16 years and below 18 years found guilty after trial as an adult can be sent to jail if they are found not to have reformed and capable of making meaningful contribution to society.

The child care institutions in which they can be kept are briefly described below:

#### **1. Observation Homes (OH)**

An Observation Home is a child care institution “for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of an inquiry.”<sup>21</sup> The State Government should establish and maintain Observation Homes in every district or group of districts, either by itself, or through voluntary organisations or NGOs.<sup>22</sup> There should be separate OH for boys and girls and age-based segregation with consideration to physical and mental status and nature of offence committed.<sup>23</sup>

If due to odd hours or distance, a child cannot be produced before the JJB or a single member, the CWPO should keep the child in the OH or fit facility and produce the child before the JJB within 24 hours of apprehension.<sup>24</sup> A child who is denied bail can be directed to be placed in an OH.

#### **2. Special Homes**

A Special Home is an institution for “housing and providing rehabilitative services” to children who have been found to have committed an offence and ordered to be sent to such an institution by the JJB or the Children’s Court.<sup>25</sup> The State Government should establish and maintain Special Homes in every district or group of districts, either by itself, or through voluntary organisations or NGOs.<sup>26</sup>

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<sup>18</sup> JJ MR, 2016, Rule 8(2).

<sup>19</sup> JJ MR, 2016, proviso to Rule 8(1), Rule 8(5).

<sup>20</sup> JJ MR, 2016, Rule 8(4).

<sup>21</sup> JJ Act, 2015, Section 47(1).

<sup>22</sup> JJ Act, 2015, Section 47(1).

<sup>23</sup> JJ MR, 2016, Rule 29(1)(i).

<sup>24</sup> JJ MR, 2016, Rule 9(6).

<sup>25</sup> JJ Act, 2015, Section 2(56).

<sup>26</sup> JJ Act, 2015, Section 47(1).

There should be separate Special Homes for girls above 10 years and boys between 11 to 15 years and 16 to 18 years.<sup>27</sup> Children in the Special Home should be segregated based on nature of offences and their mental and physical status.<sup>28</sup>

### 3. Place of Safety

A 'Place of Safety' is a child care institution meant for children alleged or found to be in conflict with the law.<sup>29</sup> It cannot be a police lockup or jail.<sup>30</sup> It can be established separately or attached to an Observation Home or Special Home.<sup>31</sup> The State Government should establish at least one place of safety in the State.<sup>32</sup> The person in-charge of the place of safety should be willing to receive the child based on an order of the JJB or Children's Court.<sup>33</sup> Persons can be kept in a place of safety during the pendency of inquiry and ongoing rehabilitation after having been found guilty.<sup>34</sup>

Separate arrangement and facilities should be made for children or persons whose inquiry is underway and children or persons convicted.<sup>35</sup>

There are six situations in which a person can be ordered to be sent to a place of safety by the JJB or Children's Court:

- (a) for children in the age group of 16 to 18 years alleged to have committed heinous offence pending inquiry<sup>36</sup>;
- (b) for children in the age group of 16 to 18 years found to be involved in heinous offence upon completion of inquiry<sup>37</sup>;
- (c) for persons above 18 years alleged to have committed offence when they were below the age of 18 years pending inquiry<sup>38</sup>;
- (d) for persons above 18 years found to be involved in offence upon completion of inquiry;<sup>39</sup>
- (e) for children as per the orders of the Board under clause (g) of sub-section (1) of Section 18 of the Act whose conduct and behavior is such that in the JJB's opinion it would not be in the child's interest, or the interest of other children to keep the child in a Special Home<sup>40</sup>;

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<sup>27</sup> JJ MR, 2016, Rule 29(1)(ii)(a).

<sup>28</sup> JJ MR, 2016, Rule 29(1)(ii)(b).

<sup>29</sup> JJ Act, 2015, Section 49(1).

<sup>30</sup> JJ Act, 2015, Section 2(46).

<sup>31</sup> JJ Act, 2015, Section 2(46).

<sup>32</sup> JJ Act, 2015, Section 49(1).

<sup>33</sup> JJ Act, 2015, Section 2(46).

<sup>34</sup> JJ Act, 2015, Section 2(46).

<sup>35</sup> JJ Act, 2015, Section 49(2).

<sup>36</sup> JJ Act, 2015, Sections 19(3) and 49(1); JJ MR, 2016, Rule 29(1)(iii)(a).

<sup>37</sup> JJ Act, 2015, Sections 19(3) and 49(1); JJ MR, 2016, Rule 29(1)(iii)(b).

<sup>38</sup> JJ Act, 2015, Section 6(2); JJ MR, 2016, Rule 29(1)(iii)(c).

<sup>39</sup> JJ Act, 2015, Section 49(1); JJ MR, 2016, Rule 29(1)(iii)(d).

<sup>40</sup> JJ Act, 2015, Section 18(1)(g) proviso; JJ MR, 2016, Rule 29(1)(iii)(e).

(f) for a person whose claim of being a child is being inquired into and is required to be kept in protective custody.<sup>41</sup>

However, most State Governments have not established a separate Place of Safety. When the Place of Safety and the Special Home is not established in the District where the child's family lives or in the District where the concerned JJB/Children's Court has jurisdiction in the child's case, this results in the denial of the child's right of contact with family, and/or, the child may not be produced before the Children's Court on a regular basis, as often escorts and/or transport may be unavailable to bring the child to the JJB or the Children's Court.

#### 4. Fit facility

A "fit facility" is defined to mean "a facility being run by a governmental organisation or a registered voluntary or non-governmental organisation, prepared to temporarily own the responsibility of a particular child for a specific purpose, and such facility is recognised as fit for the said purpose, by the Child Welfare Committee<sup>42</sup>, as the case may be, or the Juvenile Justice Board, under sub-section (1) of section 51". The JJB, after due inquiry into the suitability of the facility and the organization to take care of a child, can recognize the facility as a fit facility.<sup>43</sup> Recognition can also be withdrawn by them for reasons recorded in writing.<sup>44</sup>

Upon finding a child to be in conflict with law, the JJB can under Section 18(1)(f), "direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years". Based on the JJB's recommendation and bearing the child's best interest, the State Government can transfer a child from the Special Home or fit facility to a fit facility or Home within the State with prior intimation to the concerned JJB.<sup>45</sup> A child can be transferred outside the State only after consultation with the concerned State Government.<sup>46</sup> The total duration of the child's stay cannot be increased by such transfer.<sup>47</sup> If a child is suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the JJB can send the child to a recognized fit facility for required treatment.

If the child requires therapeutic treatment, an advocate can request for a list of recognized/registered organizations providing such therapeutic services in the District from the District Child Protection Unit (DCPU), and move an application before the JJB for an order to send

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<sup>41</sup> JJ Act, 2015, Section 9(4).

<sup>42</sup> The Child Welfare Committee is the authority constituted in pursuance to Section 27 of the JJ Act, 2015 -vested with the power of a judicial magistrate of the First Class, and empowered to pass orders as to whether a child is a child in need of care and protection by the State or not, and also on what kind of care and protection would be in the child's best interest. The CWC is also empowered to recognize facilities as fit facilities for children in need of care and protection.

<sup>43</sup> JJ Act, 2015, Section 51(1).

<sup>44</sup> JJ Act, 2015, Section 51(2).

<sup>45</sup> JJ Act, 2015, Section 96(1).

<sup>46</sup> JJ Act, 2015, Section 96(2).

<sup>47</sup> JJ Act, 2015, Section 96(3).

the child to such a facility. If such facility has not been registered/recognized as a fit facility, the advocate could even request the JJB to recognize as a “fit facility”.<sup>48</sup>

#### **D: Administrative Structures to ensure effective implementation of the Act**

##### **District Child Protection Unit (DCPU) and State Child Protection Society (SCPS) :**

The State Government must also establish DCPU and the State Child Protection Society (SCPS) to ensure implementation of the JJ Act, 2015<sup>49</sup> consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of the Act. These include the establishment and maintenance of institutions under the Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed in the State Rules that are to be framed under the Act. Rule 85(2), JJ Model Rules, states that the District Child Protection Officer shall be the Nodal Officer in the district for the implementation of the Act and the rules.

#### **Key Differences between the Juvenile Justice System and Criminal Justice System in India**

Some of the key differences between the Juvenile Justice System and the Criminal Justice System were highlighted by the Supreme Court in *Dr. Subramanian Swamy v. Raju*.<sup>50</sup> This judgment was in the context of the Juvenile Justice (Care and Protection of Children) Act, 2000. The relevant provisions in the JJ Act, 2015 and JJ Model Rules, 2016 are indicated in blue.

1. FIR and charge-sheet in respect of juvenile offenders is filed only in ‘serious cases’, where adult punishment exceeds 7 years. Under Rule 8(1), JJ Model Rules, a First Information Report (FIR) should be lodged only in case of heinous offences, i.e., offences for which the minimum punishment is imprisonment for seven years or more.
2. A child alleged to be in conflict with the law is not “arrested”, but “apprehended,” and that too only in case of allegations of a serious crime. The JJ Act, 2015 has replaced “juvenile in conflict with the law” with “child in conflict with the law.”
3. Once apprehended, the police must immediately place such child under the care of a Child Welfare Police Officer, whose duty is to produce the child before the Board. Thus, the police do not retain custody over the child alleged to be in conflict with law. Under Section 10(1), JJ Act, 2015 the police should hand the apprehended child over to the designated Child Welfare Police Officer or the Special Juvenile Police Unit.

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<sup>48</sup>JJ Act, 2015, Section 2(27), read with 51(1).

<sup>49</sup>JJ Act, 2015, Section 106

<sup>50</sup>(2014) 8 SCC 390.

4. Under no circumstances is the child alleged to be in conflict with law to be detained in a jail or police lock-up, whether before, during or after the Board inquiry. This is provided for under the proviso to Section 10(1), JJ Act, 2015

5. Grant of bail to children alleged to be in conflict with the law is the Rule. This is provided for under Section 12(1), JJ Act, 2015. All children alleged to be in conflict with the law are entitled to bail irrespective of whether the offence is bailable or non-bailable.<sup>51</sup> Bail can be denied only if the JJB has reasonable grounds to believe that the release would bring the child into association with any known criminal or expose the person to moral, physical or psychological danger or the child's release would defeat the ends of justice.<sup>52</sup>

6. The JJB conducts a child-friendly "inquiry" and not an adversarial "trial". This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour. Section 7(1), JJ Act, 2015 requires the JJB to ensure that procedures are child-friendly and Rule 9(7), JJ Model Rules, 2016 requires that when witnesses are for examination, inquiries are "not conducted in the spirit of strict adversarial proceedings".

7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of the 'inquiry' conducted by the JJB is to find the guilt/innocence of the child and to investigate the underlying social or familial causes of the alleged crime, and to pass orders to enable the child's rehabilitation and re-integration into the community. Thus, the aim of juvenile sentencing is to reform and rehabilitate the child alleged to be in conflict with law. Under Section 8(3)(h), final orders passed by the JJB when the matter is disposed, should include an Individual Care Plan for the child's rehabilitation and follow-up by the Probation Officer, DCPU, or a NGO.

8. The adult criminal system does not regulate the activities of the offender once s/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the child in conflict with law, it also establishes avenues for the child to make an honest living.

### **3) From what age are children subject to detention in the juvenile justice system? From what age are they subject to detention in the adult criminal justice system?**

Under the juvenile justice system, children alleged to be in conflict with law aged 7-18 years are subject to detention.

All children from age 7-16 years, if ordered to be detained, can only be detained in an Observation Home while under inquiry by the JJB, and in a Special Home - if found to have committed an offence, irrespective of its gravity.

For children aged 16-18 years, alleged to have committed a heinous offence and whose cases are adjudicated by either the JJB or the Children's Court (which decides to treat the child as a

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<sup>51</sup> JJ Act, 2015, Section 12(1).

<sup>52</sup> JJ Act, 2015, proviso to Section 12(1).



‘child’ and not an adult), such child can be detained in a Place of Safety while under inquiry.<sup>53</sup> When a child aged 16-18 years is alleged to have committed a heinous offence, and transferred by the JJB to a Children’s Court for trial as an adult after a preliminary assessment, such a child may be tried as an adult by the Children’s Court, if the said Children’s Court decides to treat the child as an adult under Section 19(1)(i) of the JJ Act, 2015. During this period pending trial by the Children’s Court, and afterward, if found to have committed the heinous crime alleged, then the child will be detained in the same Place of Safety, till the age of 21 years.

A child found to be in conflict with law alleged to have committed a heinous crime, tried by the Children’s Court as an adult, and found guilty of such an offence, can however ultimately be detained in jail. However, such child cannot be sent to jail directly. The child will have to be sent to a Place of Safety till the child attains 21 years of age.<sup>54</sup> When the child attains the age of 21 years, the Children’s Court will have to provide for a follow up by the PO, DCPU or a social worker or by itself, to evaluate if the child has undergone reformatory changes and if the child can be a contributing member of the society.<sup>55</sup> The Children’s Court should also interact with the child to assess whether the child has undergone reformatory changes and if the child can be a contributing member of society.<sup>56</sup> The progress records of the child and evaluation of relevant experts should be taken into consideration and based on this the Children’s Court could decide whether the child should be released or whether the child should complete the remainder of the term in jail.<sup>57</sup>

#### **4) Please provide the number of children deprived of liberty on 26 June 2018:**

- A) in police custody for suspected offenses
- B) in pre-trial (remand) detention
- C) in prison or other detention facilities after a conviction and sentence (or their equivalent in domestic law)

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

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<sup>53</sup> JJ Act, 2015, Sections 19(3) and 49(1); JJ MR, 2016, Rule 29(1)(iii)(a).

<sup>54</sup> JJ Act, 2015, Section 19(3).

<sup>55</sup> JJ Act, 2015, Section 20(1).

<sup>56</sup> JJ MR, 2016, Rule 13(8)(vi).

<sup>57</sup> JJ Act, 2015, Section 19(3) proviso.

**Table 1: Children deprived of liberty in the criminal justice system on 26 June 2018**

	Under 10			10-11			12-13			14-15			16-17			Total (ages 0-17)		
	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total
<b>A) In police custody</b>																		
Male																		
Female																		
Total police custody																		
<b>B) Pre-trial detention</b>																		
Male																		
Female																		
Total pre-trial detention																		
<b>C) Prison</b>																		
Male																		
Female																		
Total prison																		
<b>Total children in deprived of liberty in the criminal justice system</b>																		
Total males																		
Total females																		
Total children																		

Unable to collect this information.



5) Please provide the total number of children aged 0-17 taken into police detention for suspected offences in each of the last 10 years.

**Table 2: Children taken into police detention for suspected offences, 2008-2017**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male										
Female										
<b>Total</b>										

Unable to collect this information.

6) Please provide the total number of children aged 0-17 taken into pre-trial detention in each of the last 10 years.

**Table 3: Children taken into pre-trial detention, 2008-2017**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male										
Female										
<b>Total</b>										

Unable to collect this information.

7) Please provide the total number of children aged 0-17 taken into prison or other correctional detention facilities in each of the last 10 years.

**Table 4: Children taken into prison or other correctional detention, 2008-2017**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male										
Female										
<b>Total</b>										

Unable to collect this information.

8) What sentencing options are available for children convicted of a criminal offense?

If the child is found to have committed a:

- petty offence, or
- serious offence, or
- if a child below 16 years if found to have committed a heinous offence,
- if a child above 16 years and below 18 years is not transferred to the Children's Court and is found to have committed a heinous offence.

the JJB can pass any of the following orders under Section 18(1):

(a) **Admonition:** It can allow the child to go home after advice or admonition by following appropriate inquiry and counselling to the child and to the parents or the guardian.

(b) **Counselling:** It can direct the child to participate in group counselling and similar activities. Instructions should be issued to the DCPU to arrange for counselling.<sup>58</sup>

(c) **Community service:** It can order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board. Instructions should be issued to the DCPU to arrange for community service.<sup>59</sup>

(d) **Fine:** It can order the child or parents or the guardian of the child to pay fine. However, in case the child is working, the JJB should ensure that the provisions of any labour law for the time being in force, are not violated.

(e) **Probation and release under care of parent/guardian/fit person:** It can direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, for the good behaviour and child's well-being for any period, not exceeding three years.<sup>60</sup> The JJB can also order the child to be placed under the supervision of a PO for a maximum period of three years.<sup>61</sup> The PO will have to submit periodic reports to the JJB.

(f) **Probation and release under care and supervision of fit facility:** It can direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period, not exceeding three years. The JJB should place the child in a fit facility closest to the residence of the child's parent or guardian unless it is not in the best interest of the child to do so.<sup>62</sup>

(g) **Release on execution of personal bond:** The JJB can release the child on execution of a personal bond without surety.<sup>63</sup>

(h) **Special Home:** It can direct the child to be sent to a Special Home, for a period not exceeding three years, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the Special Home. However, if the conduct and behaviour of the child has been such that, it would not be in the child's interest or in the interest of other children housed in a special home, the Board can send the child to the Place of Safety. Under no circumstances can the period of stay in a Special Home or Place of Safety exceed three years.<sup>64</sup> The JJB should place the child in a Special Home closest to the residence of the child's parent or guardian unless it is not in the best interest of the child to do so.<sup>65</sup> If the child does not comply with the probation conditions, the

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<sup>58</sup> JJ MR, 2016, Rule 11(5).

<sup>59</sup> JJ MR, 2016, Rule 11(5).

<sup>60</sup> JJ MR, 2016, Rule 11(6).

<sup>61</sup> JJ MR, 2016, Rule 11(9).

<sup>62</sup> JJ MR, 2016, Rule 11(8).

<sup>63</sup> JJ MR, 2016, Rule 11(7).

<sup>64</sup> JJ MR, 2016, Rule 11(11).

<sup>65</sup> JJ MR, 2016, Rule 11(8).

JJB can order the child to be produced before it and send the child to a Special Home or Place of Safety for the remaining period of supervision.<sup>66</sup>

The JJ Act, 2015 does not give the JJB the discretion to reduce the period of stay in the Special Home with reasons in writing that was earlier recognised under the JJ Act, 2000.

Additionally, the JJB could also pass orders to require the child to:

- attend school,
- a vocational training centre,
- a therapeutic centre,
- undergo a de-addiction program,
- prohibit a child from visiting, frequenting or appearing at a specified place.<sup>67</sup>

A JJB can pass any of the rehabilitative disposition orders under Section 18(1) after finding that a child above 16 years has committed offence, only if it has retained jurisdiction after a preliminary assessment and not transferred the child to a Children's Court.

No JJB or court cannot impose death penalty or life imprisonment without the possibility of release for any offence i.e., parole.<sup>68</sup>

The JJB is mandated to undertake a preliminary assessment to decide within three months whether a person between 16 and 18 years alleged to have committed a heinous offence, should be transferred to a Children's Court for trial as an adult.<sup>69</sup> The assistance of psychologists, psycho-social workers or other experts can be taken by the JJB. The preliminary assessment should be conducted with respect to the child's mental and physical capacity to commit the offence, ability to understand the consequences of the offence and the circumstances in which the child allegedly committed the offence. The JJB can transfer children to the Children's Court for their trial as adults, based on the preliminary assessment under Section 15, or decide to retain the children and deal with them under the juvenile justice system. The purpose of the preliminary assessment is to enable the JJB to decide whether the matter should be disposed by the JJB or the child should be transferred to the Children's Court for trial of the child as an adult.<sup>70</sup>

According to the JJ Act 2015, a preliminary assessment is not a trial. Its purpose is not to determine guilt, but to "assess the capacity of ...child to commit and understand the consequences of the alleged offence."<sup>71</sup>

Upon the conclusion of the preliminary assessment, the JJB can pass either of two following orders:

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<sup>66</sup> JJ MR, 2016, Rule 11(10).

<sup>67</sup> JJ Act, 2015, Section 18(2).

<sup>68</sup> JJ Act, 2015, Section 21.

<sup>69</sup> JJ Act, 2015, Section 15(1).

<sup>70</sup> JJ Act, 2015, Section 19(1).

<sup>71</sup> JJ Act, 2015, Section 15(1), Explanation.

- It can decide to hear and dispose the matter and follow the procedure for trial in summons case,<sup>72</sup> or
- It can decide that there is a need for trial of the child as an adult and order transfer of the trial of the case to the Children’s Court.<sup>73</sup>

The JJB should provide reasons for its order and provide a copy of the order to the child immediately.<sup>74</sup>

The Children’s Court is required to decide whether there is a need for trial of the child as an adult as per provisions of the Criminal Procedure Code, 1973 (Cr.P.C).<sup>75</sup> If it decides that there is no need for trial as an adult, it can conduct the inquiry as a JJB and pass orders under Section 18(1) detailed above.<sup>76</sup>

The procedures that the Children’s Court should follow if it decides that there is no need for trial of the child as an adult are as follows:

- **Nature of proceedings:** The Children’s Court should conduct an inquiry as a Board if it decides that there is no need for the trial of the child as an adult.<sup>77</sup> It should follow the procedure for trial in summons case under the CrPC in such a situation.<sup>78</sup>
- **Child-friendly measures:**
  - Proceedings should be conducted *in camera*, in a child-friendly atmosphere.
  - The Children’s Court should address the child in a child-friendly manner to put the child at ease and encourage the child to fearlessly state the facts and circumstances of the offence as well as the home, social surroundings and influences on the child.<sup>79</sup>
- **Prohibition on joint trials:** The Children’s Court should ensure that a child alleged to be in conflict with the law is not jointly tried with a person who is not a child.<sup>80</sup>
- **Non-adversarial:** The proceedings should not be conducted in an adversarial manner while examining witnesses and the powers under Section 165, Indian Evidence Act should be exercised.<sup>81</sup> This provision empowers judges to put questions in any form, at any time, to any witness. The parties cannot object to the questions put by the judge or cross-examine the witness with respect to the answer given to the judge’s question, without the court’s permission.

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<sup>72</sup> JJ Act, 2015, Section 15(2).

<sup>73</sup> JJ Act, 2015, Section 18(3).

<sup>74</sup> JJ MR, 2016, Rule 10A(4).

<sup>75</sup> JJ Act, 2015, Section 19(1)(a); JJ MR, 2016, Rule 13(1).

<sup>76</sup> JJ Act, 2015, Section 19(1)(b).

<sup>77</sup> JJ MR, 2016, Rule 13(7)(i).

<sup>78</sup> JJ MR, 2016, Rule 13(7)(ii).

<sup>79</sup> JJ MR, 2016, Rule 13(7)(v).

<sup>80</sup> JJ MR, 2016, Rule 13(7)(iii).

<sup>81</sup> JJ MR, 2016, Rule 13(7)(iv).

- **ICP:** An Individual Care Plan prepared by the PO, CWO or recognized voluntary organization based on interactions with the child and family wherever possible, should accompany the dispositional order passed by the Children’s Court.<sup>82</sup>
- **Dispositions:** If the child is found to have committed an offence, the Children’s Court can pass orders stipulated in sub-sections (1) and (2) of Section 18.<sup>83</sup>

If the Children’s Court decides that the child needs to be tried as an adult, the following procedures should be followed:

- **Procedure:** The Children’s Court should follow the procedure for trial by sessions under the CrPC if it decides to try the child like an adult.<sup>84</sup>
- **Prohibition on joint trials:** The Children’s Court should ensure that a child alleged to be in conflict with the law is not jointly tried with a person who is not a child.<sup>85</sup>
- **Considerations:** The Children’s Court should consider the special needs of the child, the tenets of fair trial and maintain a child friendly atmosphere while trying a child as an adult.<sup>86</sup>
- **Orders that cannot be passed:** Children’s Court cannot impose death penalty or life imprisonment without the possibility of release for any offence.<sup>87</sup>
- **Individual Care Plan(ICP):** An Individual Care Plan prepared by the PO, CWO or recognized voluntary organization based on interactions with the child and family wherever possible, should form part of the final order passed by the Children’s Court.<sup>88</sup>
- **Placement and Reformative Services:** If the child is found to be involved in the offence, the child could be sent to the Place of Safety till the child attains 21 years.<sup>89</sup> Reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support should be provided to the child during the period of stay in the Place of Safety.<sup>90</sup>
- **Tracking of Progress:**
  - The progress of the child should be evaluated by the PO, DCPU or social worker on a yearly basis and a report should be submitted to the Children’s Court for review.<sup>91</sup>
  - The purpose of the tracking is also to ensure that no ill-treatment is meted out to the child.<sup>92</sup>
  - The psycho-social progress of the child will have to be assessed with the help of psycho-social experts.<sup>93</sup>

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<sup>82</sup> JJ MR, 2016, Rule 13(7)(v).

<sup>83</sup> JJ Act, 2015, Section; JJ MR 2016, Rule 13(7)(vii).

<sup>84</sup> JJ MR, 2016, Rule 13(8)(i).

<sup>85</sup> JJ Act, 2015, Section 23.

<sup>86</sup> JJ Act, 2015, Section 19(1)(a).

<sup>87</sup> JJ Act, 2015, Section 21.

<sup>88</sup> JJ MR, 2016, Rule 13(8)(ii).

<sup>89</sup> JJ MR, 2016, Rule 13(8)(iii).

<sup>90</sup> JJ Act, 2015, Section 19(3) proviso.

<sup>91</sup> JJ Act, 2015, Section 19(4 and 5).

<sup>92</sup> JJ Act, 2015, Section 19(4).

<sup>93</sup> JJ MR, 2016, Form 13.



- The Children’s Court can also direct the periodical production of the child and at least once every three months to assess the progress made and the facilities provided by the institution for implementation of the individual care plan.<sup>94</sup>

After the child in conflict with the law attains 21 years, and before the term of stay is yet to be completed, an evaluation will be carried out by the Children’s Court to assess if the child has undergone reformatory changes and can be a contributing member of society.<sup>95</sup> The Children’s Court should interact with the child to make this assessment<sup>96</sup> and should also consider the progress records of the child prepared by the PO, DCPU or social worker<sup>97</sup> and the evaluation of experts.<sup>98</sup> It can also direct the institutional mechanism, if inadequate, to be strengthened.<sup>99</sup>

After this evaluation, the Children’s Court can decide to release the child, on conditions it deems fit, which includes the appointment of a monitoring authority for the remainder of the prescribed term of stay.<sup>100</sup> Alternatively, it could decide that the child should complete the remainder of the term in a jail.<sup>101</sup> As per the JJ MR, 2016, there are four options available to the Children’s Court. It can<sup>102</sup>:

- release the child immediately;
- release the child on execution of a personal bond with or without sureties for good behaviour;
- release the child and issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;
- release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.

Or as per Section 20(2)(ii) direct the child to complete the remainder of the term in jail.

A child found to be in conflict with law alleged to have committed a heinous offence, tried by the Children’s Court as an adult and found to have committed the said offence after a trial, cannot be sent to jail directly. The child will have to be sent to a Place of Safety till the child attains 21 years of age.<sup>103</sup> When the child attains the age of 21 years, the Children’s Court will have to provide for a follow up by the PO, DCPU or a social worker or by itself, to evaluate if the child has undergone reformatory changes and if the child can be a contributing member of the society.<sup>104</sup> The Children’s Court should also interact with the child to assess whether the

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<sup>94</sup> JJ MR, 2016, Rule 13(8)(v).

<sup>95</sup> JJ Act, 2015, Section 20(1).

<sup>96</sup> JJ MR, 2016, Rule 13(8)(vi)(a).

<sup>97</sup> JJ MR, 2016, Rule 13(8)(vi)(b).

<sup>98</sup> JJ Act, 2015, Section 20(1).

<sup>99</sup> JJ MR, 2016, Rule 13(8)(vi)(b).

<sup>100</sup> JJ Act, 2015, Section 20(2)(i).

<sup>101</sup> JJ Act, 2015, Section 20(2)(ii).

<sup>102</sup> JJ MR, 2016, Rule 13(8)(vi).

<sup>103</sup> JJ Act, 2015, Section 19(3).

<sup>104</sup> JJ Act, 2015, Section 20(1).

child has undergone reformative changes and if the child can be a contributing member of society.<sup>105</sup> The progress records of the child and evaluation of relevant experts should be taken into consideration and based on this the Children’s Court could decide whether the child should be released or whether the child should complete the remainder of the term in jail.<sup>106</sup>

### **9) What is the longest period of custodial detention (imprisonment or other form of detention) to which a child can be sentenced?**

The period of detention in a Special Home should not exceed three years, and this is sacrosanct, as reiterated under the Model Rules 2016: “In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-Section (1) of Section 18 of the Act.”<sup>107</sup>

The JJ Act, 2015 is silent on the maximum duration for which a child can be kept in an Observation Home. The Act however, specifies that inquiries should be completed within four months and can be extended by a period of two months. This would suggest that a child in conflict with the law cannot be detained in the OH beyond six months. Inquiries into serious and heinous offences can, however, be further extended, if permission is granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate, for reasons to be recorded in writing. The period for which a child involved in a serious or heinous offence can be kept in an Observation Home is thus not definite. It should, however, be noted that under Section 18(1), after a child has been found to have committed an offence, the child can be placed in a Special Home for a maximum period of three years. The JJB should bear in mind the principle of institutionalization as a measure of last resort and for the shortest appropriate period of time under Article 37(b), UNCRC. It should also be noted that the Supreme Court of India has upheld the right of undertrials to be treated with dignity and has passed directions to ensure effective implementation of the provisions of the Code of Criminal Procedure related to maximum period for which an undertrial prisoner can be detained “so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason.”<sup>108</sup>

However, with the introduction of the “transfer system”, children between 16 and 18 years on the date of the commission of the offence, found guilty by a Children’s Court after being tried as an adult, can be sentenced upto life imprisonment with the possibility of release.<sup>109</sup>

### **10) Can children be sentenced to capital punishment?**

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<sup>105</sup> JJ MR, 2016, Rule 13(8)(vi).

<sup>106</sup> JJ Act, 2015, Sections 20(1) and 20(2)(ii).

<sup>107</sup> Rule 11(11), JJ Model Rules, 2016.

<sup>108</sup> In Re: Inhuman Conditions in 1382 Prisons, AIR 2016 SC 993

<sup>109</sup> Section 21, JJ Act, 2015.

No. Section 21, JJ Act, 2015 relates to orders that may not be passed against a child in conflict with the law. It prohibits the imposition of death or life imprisonment without the possibility of release.<sup>110</sup>

**11) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 sentenced to life imprisonment and capital punishment.**

**Table 5: Children sentenced to life imprisonment and capital punishment, 2008-2017**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Children sentenced to life imprisonment</b>										
Male										
Female										
<b>Total</b>										
<b>Children sentenced to capital punishment</b>										
Male										
Female										
<b>Total</b>										

Unable to collect this information.

**12) Please provide the rate (per 100 000 population) of criminal offending (all offenses) by age for the most recent calendar year available.**

**Table 6: Rates of criminal offending by age, [2016]** *Kindly note – the original Table provided in the questionnaire has been amended and the Table below is included with the information available.*

**Juveniles Apprehended: Information sourced from [NCRB Crime in India 2016 Table 5B.4]**

	Under 12	12- 16	16 - 18	Total
Male	31	854	3299	4184
Female	1	21	79	101
<b>Total</b>	32	875	3378	4285

**13) Please provide information on all alternatives to the deprivation of liberty of children for juvenile or criminal offenses (such as restorative justice approaches,**

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<sup>110</sup> Section 21, JJ Act, 2015.

**diversion, non-custodial programmes and services) that are provided for by law, policy or practice, whether in police custody, pre-trial detention, or imprisonment after conviction.**

Section 39(1), JJ Act, 2015, specifies that the process of rehabilitation and social integration of children under this Act shall be undertaken, based on the Individual Care Plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care.

**Sponsorship:** Sponsorship could be provided to families to care for their children within the family context as an alternative to institutionalization; and also to enable children living in Child Care Institutions (CCIs) under the JJ Act, 2015, to be restored to their families along with the financial support such children may need to improve their quality of life (JJ Act, 2015, Sections 2(58) and 45(4)).

**Foster Care:** Children alleged or found to be in conflict with law are not eligible for foster care services. This is because though Section 39(1) enables foster care for ‘children’, Section 44(1) restricts foster care for only children in need of care and protection dealt with by the Child Welfare Committee.

**Diversion:** Historically, the Juvenile Justice System in India – was envisaged as ‘Diversion’ from the formal Criminal Justice System itself, - a separate system based on juvenile jurisprudence and a rehabilitative philosophy. With the introduction of the transfer system, which enables a child aged between 16-18 years and alleged to have committed a heinous crime to be transferred by the JJB to a Children’s Court for possible trial as an adult, this diversion is now restricted for certain children who fall into this category treated as adults and sentenced as adults.

Though Section 3, JJ Act, 2015, provides the Principle of diversion – “Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.”, the Act does not provide any substantive procedures to enable or guide diversion procedures. Rule 10(1)(i), JJ Model Rules, 2016 - Post-production processes by the Board – states “dispose of the case, if on consideration of documents and record submitted at time of first appearance, his being in conflict with law appears to be unfounded or where child is alleged to be involved in petty offences.” Rule 8, JJ Model Rule, 2016 dealing with Pre-Production action of Police and other Agencies also states that no First Information Report shall be registered, except in cases involving an alleged heinous offence, or when such an offence is allegedly committed jointly with adults.

Two additional principles also enable and support diversion. Section 3 (vii): Principle of Positive measures: “All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.” Additionally, Section 3 (xii) provides the Principle of institutionalisation as a measure of last resort: “A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.”

Informal diversion takes place already as some SJPU's have initiated diversion practice.

**14) Have there been any major legislative or policy changes related to children in conflict with the law during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?**

Yes, the Juvenile Justice (Care and Protection of Children) Act, 2000, was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 1<sup>st</sup> January 2016. The most significant change has been the introduction of the highly contested “transfer system” which allows some children between 16 and 18 years accused of heinous offences to be tried as adults. In the wake of the Delhi gang-rape case of 2012 in which a young woman was brutally raped by a gang comprising adults and one child aged 17.5 years, public demands for retributive action against the child involved led to challenges to the JJ Act, 2000 which allowed all persons below 18 years to be dealt with as children irrespective of the nature of the offence as well as demands for legislative amendment. In *Salil Bali v. Union of India*,<sup>111</sup> the constitutionality of the JJ Act, 2000 was upheld and the Supreme Court observed:

The essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society. The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future.

The **Department-Related Parliamentary Standing Committee on Human Resource Development on The Juvenile Justice (Care and Protection of Children) Bill, 2014** invited comments from the public, considered submissions, and arrived at the following conclusions:

**3.21 ... the Committee can only conclude that the existing juvenile system is not only reformatory and rehabilitative in nature but also recognises the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to different or adult judicial system as it will go against Articles 14 and 15(3) of the Constitution.**

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<sup>111</sup> (2013) 7 SCC 705.

3.34 The Committee, while taking note of the observations of the stakeholders about the commitments of the country in the context of various international conventions and the compliance status as indicated by the Ministry, would like to emphasize that the universal truth which nobody can dispute is that a child who has committed an offence requires protection and treatment differential from that of an adult. CRC states that a child is a person who has not completed 18 years of age. With the advent of CRC, on the international platform, persons under 18 years have been recognized as children. Ambiguity, if any, has been ended vide the General Comment No. 10 which categorically states that principles relating to juvenile justice should apply to all persons below 18 years of age, without exclusion.

**3.36 The Committee finds no merit in the contention of the Ministry that lot of societal changes have taken place with the signing of UN Convention the Rights of the Child in 1992 and relook at our laws was required so as to revise them as per the current needs. The Committee is somewhat surprised to note the apparent contradiction in the above position and the ....Preamble in the Bill.... The Committee can only conclude that as per the well-established practice, the proposed legislation has to contain provisions which adhere to all the enumerated objectives in the real sense.**

Despite stiff opposition from child rights groups on ground of violation of the right to equality and non-discrimination as well as rights of children in juvenile justice and the Standing Committee's conclusions, the law was re-enacted to introduce the transfer system for children between 16 and 18 years alleged to have committed heinous offences.

According to Section 2(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. According to Section 2(45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years. According to Section 2(54) "serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years.

Contrary to popular belief, heinous offences do not imply just murder or rape as at least 46 offences fall within this definition.<sup>112</sup>

According to Advocate Maharukh Adenwalla<sup>113</sup>:

"The description of 'petty offences', 'serious offences' and 'heinous offences' has resulted in confusion as many offences do not fall within the four corners of any of

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<sup>112</sup> <http://www.nls.ac.in/ccl/jjdocuments/childrenoffences2016.pdf>

<sup>113</sup> Maharukh Adenwalla, "Chapter 10: Transfer of Child in Conflict with the Law from the Juvenile Justice System", pp.148-174 at 151-153 in CCL-NLSIU, *Handbook for Advocates working with Children in Conflict with Law in India under The Juvenile Justice (Care and Protection of Children) Act, 2015 & Juvenile Justice (Care and Protection of Children) Model Rules 2016* (2018).

these definitions. Hence, it is problematic to definitively treat the same within any of the aforementioned categories. For example, ‘assault or criminal force to woman with intent to outrage her modesty’ is punishable with imprisonment “for a term which shall not be less than one year but which may extend to five years”<sup>114</sup> - it does not fall within the category of ‘serious offence’ (as the minimum period of imprisonment is less than three years) nor does it fall within the category of ‘petty offence’ (as the maximum period of imprisonment exceeds three years). Another example, ‘sexual intercourse by a person in authority’ is punishable with imprisonment “for a term which shall not be less than five years, but which may extend to ten years”<sup>115</sup> - such offence does not fall within the ambit of ‘serious offence’ (as the maximum period of imprisonment is more than seven years) nor under ‘heinous offence’ (as the minimum punishment is less than seven years).

The adversities are graver if, due to ambiguity, a case is treated as ‘heinous offence’ - such child may be deprived of the protection of the juvenile justice system. There are several offences which fall within this ambiguous zone - the maximum punishment is more than seven years and no minimum punishment has been mentioned or the minimum punishment is less than seven years - such offences do not fall within the ambit of ‘heinous offence’ nor ‘serious offence’ (as the maximum period of punishment is more than seven years) nor ‘petty offence’ (as the maximum period of punishment is more than three years). For example, ‘attempt to murder’<sup>116</sup> is punishable with imprisonment “for a term which may extend to ten years”. As only the maximum period of imprisonment, and no minimum period is mentioned under section 307,IPC, the offence will not fall within the category of ‘heinous offence’. Another such example is the offence of ‘robbery’ which is punishable with “imprisonment for a term which may extend to ten years...and, if the robbery is committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.”<sup>117</sup> Yet another example of such offence, ‘kidnapping, abducting or inducing woman to compel her marriage’ - it is punishable “for a term which may extend to ten years”.<sup>118</sup> Under Section 14(4) of the POCSO Act, 2012, which provides punishment for using a child for pornographic purposes and committing sexual assault while directly participating in the pornographic act, the minimum punishment is less than seven years (six years) and the maximum punishment is more than seven years (eight years) - should such offence be treated as ‘serious offence’ (as the minimum punishment is less than seven years) or should it be treated as ‘heinous offence’ (as the maximum punishment is more than seven years)?”

Further, determination of mental capacity under Section 15(1), JJ Act, 2015 and whether or not a person has “undergone reformatory changes” or “can be a contributing member of the society” under Section 20, JJ Act, 2015 are decisions that are highly subjective and prone to arbitrariness. Evaluation of mental capacity is a complex process which cannot be done accurately by the JJB even with the help of experienced psychologists. Such assessments will

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<sup>114</sup> IPC, 1860, Section 354.

<sup>115</sup> IPC, 1860, Section 376C.

<sup>116</sup> IPC, 1860, Section 307.

<sup>117</sup> IPC, 1860, Section 392.

<sup>118</sup> IPC, 1860, Section 366.

be fraught with errors and arbitrariness and will allow inherent biases to determine which child is transferred to an adult court. When psycho-social maturity or mental capacity cannot be measured or assessed accurately, it will be a travesty of justice if children alleged to be in conflict with the law are transferred to an adult criminal court and ultimately sent to an adult prison based on such a flawed assessment.

**15) Please provide examples of good practices aimed at preventing the detention of children, reducing the number of children deprived of liberty within the administration of justice or shortening the period of detention<sup>119</sup>.**

Prayas is a field action project of the Centre for Criminology and Justice, School of Social Work, Tata Institute of Social Sciences, Mumbai, working in the criminal justice system towards the protection of legal rights and rehabilitation of vulnerable sections coming in contact with the criminal justice system. One of the areas of work of Prayas is the rehabilitation of Children in Conflict with Law (CCL) in Mumbai. Towards this objective, Prayas social workers visit the Observation Home, Umerkhadi, Mumbai, on a regular basis where they have been given space. The social workers are referred cases by the Juvenile Justice Board to submit social enquiry reports of CCL to assess the rehabilitation requirements of the children. The children are also released under the supervision of Prayas by the JJB while passing bail or supervision orders. Children released under Prayas supervision are provided the following services and supports under the rehabilitation programme of Prayas:

- A) Home visits, visits to police stations, and educational and training institutions to mobilize support and plan rehabilitation.
- B) Counselling sessions on career guidance, educational and vocational training options.
- C) Emergency financial assistance to families wherever necessary.
- D) Legal aid and guidance to the child or his family.
- E) Identifying NGOs working in the area of child rights and linking the child to the services provided by these organisations, as per need.
- F) Family counselling to improve relations between the child and his family.
- G) Enrollment in skill based training courses, arranging shelter, and increasing connections in mainstream society.
- H) Organising Parent-Children Meetings to facilitate interaction between children and parents in contact with Prayas.
- I) Workshops/exposure visits with children to facilitate social reintegration.

The main focus of the programme is:

- 1) To improve connections between the CCL and their family, including providing emergency / subsistence support to the family and providing educational / vocational training support to siblings, wherever required.
- 2) Support the CCL to continue their education and help them acquire vocational skills through government recognised vocational training courses. Prayas sponsors the educational fees, tuition fees, course fees, etc. as well as travelling expenses, as per need. In cases of older children (between 17 and 18 years), along with sponsorship of fees and travel, Prayas provides a monthly stipend of Rs. 3000/- pm for a period

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<sup>119</sup> Submission in response to this question was made by Prayas, Mumbai.



ranging from 3 months to a year, or till they are able to find a job after completion of 18 years. This is done based on assessment of the financial situation of the family or in case of children without family support. Prayas also arranges for shelter for such children.

The results of this programme have been very positive. Most children have not been re-arrested or faltered on their dates of hearing (if on bail). Majority of the children have improved relations with their families and have completed their schooling or vocational courses and taken up jobs, as per their abilities. The major block in rehabilitation is the near absence of rehabilitation facilities for those in substance abuse. These children often drop out of the rehabilitation programme due to their addiction problem.

## **II. Children deprived of liberty for migration-related reasons**

Unable to collect this information.

## **III. Children living in places of detention with their parents<sup>120</sup>**

**29) Are persons (adults or children) detained in the context of the criminal justice system allowed to have their children stay with them in their place of detention? What is the legal basis? Does this apply to all places of detention in the country? Does this apply to fathers as well as mothers? Are there any age limits for children to be allowed to stay with detained parents? Can children enter prison with a parent or are only those children born in prison allowed to stay?**

Children of women prisoners or women staying in government shelter homes/protective homes are allowed to bring their children below 6 years to stay with them while they are in custody. This is allowed as per the rules laid down in the state prison manuals and state rules for women's shelter homes. This facility is only available to mothers in detention. Children can enter prison with their mothers and can even request the judge/magistrate to admit her children into prison to stay with her after she has been admitted inside.

**30) Which authorities decide whether a child can stay with a parent in a place of detention?**

This is a right for women in detention and so there is no question of authorities deciding on it.

**31) What is the review process for these decisions?**

In case the woman wants her children below 6 years to come inside prison after she has been admitted, she has to apply for the same to her trial court magistrate/judge who shall then order the police to escort her children inside prison.

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<sup>120</sup> Contribution to this Section was made by Prayas, Mumbai.

**32) Which authority is responsible for the child's protection while the child is living in prison facilities?**

The prison authorities are responsible for the child's protection.

**33) Which criteria are taken into account in the decision to allow children to stay with parents detained in the context of the criminal justice system?**

If the mother feels that she wants her children below 6 years to stay with her, it is permitted as per the rules – there are no other criteria.

**34) Please describe the facilities children stay in when they live with their parents in prison.**

Children live in the barracks along with their mother. In some prisons, there is a separate barrack for women with children. Children are entitled to a separate diet, and regular medical check-up as per laid down diet scale in the state prison manuals. They are also provided children's clothing if needed. As per the guidelines laid down by the Supreme Court in the R.D. Upadhyay Vs. State of Andhra Pradesh and Others (orders passed in 2006, based on suggestions submitted to the SC by Prayas), children are to be provided immunisation facilities, toys, and a crèche/ play school facilities, preferably situated outside the prison but within the prison premises.

**35) Please provide details about the following aspects of children's care while living in detention with their parent/s:**

**Education:** Play school with teacher is to be provided.

**Health care:** Regular medical check-up and immunisation. As per the Bombay High Court orders passed in Suo Moto PIL on children of women prisoners (107/2014) where Prayas (TISS) was appointed as Amicus Curae, a panel of doctors including a gynecologist and a pediatrician are to visit the prison once a week to look into health care needs of pregnant, lactating women and children in prison.

**Protection:** The prison authorities are responsible for the care and protection.

**Rest:** They are allowed to rest as per requirement.

**Leisure:** The children are to be provided toys and play school facilities.

**Play and recreational activities:** The children are to be provided a play area and toys and allowed to move around under the open sky in the morning and afternoon for a few hours, along with the prisoners (provided the same facilities).

**Nutrition:** As per prison manual, children are to be provided separate diet as per the laid down diet scale for children.

**Developmental and other needs:** These children are growing up in a custodial environment, where they have no idea of a home, a kitchen, a family, etc. The only male figures they come in contact with are prison officials. Lot more needs to be done in terms of creation of play areas, allowing children to go out for a few hours every day to a play school (this is not implemented across prisons), use of audio-visual aids to help them understand the 'outside' world, excursion trips to a park or recreational facilities, etc.

**36) Please provide the total number of children (aged 0-17) living with parents detained in the context of the criminal justice system on 26 June 2018.**

Last data available as on 31<sup>st</sup> December 2015: 1866 children living with their mothers in prison  
 (Source: Prison Statistics India Report, National Crime Records Bureau, Ministry of Home Affairs, Government of India)

	Infant (<12 months)			1-2			3-4			4-5			5-6			6-17			Total 0-17			
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	
National																						
Non-national																						
<b>Total</b>																						

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Not available

**Table 11: Children living with parents detained in the context of the criminal justice system, 26 June 2018**



**37) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 who entered correctional custody (prison) with parents detained in the context of the criminal justice system<sup>121</sup>.**

**Table 12: Children entering justice sector detention with their parents, 2008-2017**

Sex disaggregated data is not available

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male										
Female										
<b>Total</b>	2135	1904	1705	1760	1813	1933	1817	1866	NA	NA

Source: Prison Statistics India Report, National Crime Records Bureau, Ministry of Home Affairs,  
Government of India

**38) Are there any specific sentencing guidelines for parents who are caregivers? For example, are parents eligible for suspended sentence, home detention, electronic monitoring, or other measures aimed at avoiding the accommodation of children in places of detention with their detained parents?**

There is no specific sentencing guideline for parents who are caregivers laid down in the law. However, courts do consider the circumstances and the situation of the convicted person and/or their family at the sentencing stage. The Probation of Offenders' Act, 1958, is an excellent legislation that could have been widely used in such situations but it remains in almost complete disuse by the judiciary. There are Supreme Court directions to consider pregnancy of a woman as a condition for grant of bail or parole, so that she may deliver outside the prison, as far as possible. Under Section 437(1)(ii) Criminal Procedure Code, women are to be given preference at the time of grant of bail. Women can also be granted bail by the court on Personal Recognisance Bond (PR Bond) on grounds of having children left outside with no guardian to take care of them.

**39) Which authority decides that children who have been living with detained parents shall move out of the place of detention, for instance when they reach the maximum age to remain with their parents? What preparation or support is provided to children and their parents when children are required to move out of the place of detention?**

When a child attains the age of 6 years, the mother can hand over custody of the child to a relative / guardian of her choice, by writing an application to the prison superintendent informing them of her decision. In case there is no guardian or relative available or willing to take custody of the child, the prison authorities have to inform the Child Welfare Committee of the district and hand over the child to the children's home. The CWC would then take a decision keeping in mind the wishes of the mother and the best interests of the child.

<sup>121</sup> Include children born to incarcerated women.

Normally, this child would be kept in a child care institution till they complete 18 years of age or till the mother is released and requests for custody of the child.

## II. Children deprived of liberty in institutions<sup>122</sup>

For the purposes of this survey, 'institutions'<sup>123</sup> are defined as facilities in which children are deprived of liberty:

- by action of the state (either directly or through licensing or contracting of non-state actors)
- where the state has assumed or accepted responsibility for the care of the child.

This excludes facilities in which parents may voluntarily place their children into the care of a private institution (not licensed or contracted by the state). Justice sector institutions should also be excluded in this section (as they are considered elsewhere in this survey).

**40) Which residential and institutional facilities, whether private (state-licensed) or public, exist in your country where children are placed and thereby can be deprived of liberty for their own protection, for reasons of their education, health or disability, drug or alcohol abuse, poverty, for being separated from their parents, for being orphans, for living in street situations, for having been trafficked or abused, or for similar reasons?**

Children in India are primarily catered through the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as "JJ Act"). The JJ Act prescribes treatment for two categories of children; namely (i) Children in Need of Care and Protection and (ii) Children in conflict with law.

### **Children in Need of Care and Protection**

Children in need of care and protection have been defined under Section 2(14) of the JJ Act and such children are dealt by the Child Welfare Committees (CWCs). As per Section 2(14) of the JJ Act, child in need of care and protection have been defined as:

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
  - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
  - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
  - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

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<sup>122</sup> Contribution to this Section was made by HAQ Centre for Child Rights, New Delhi.

<sup>123</sup> Institutions may include, but are not limited to, orphanages, reform schools, closed remand rooms or other correctional institutions, institutions for children with disabilities, for children with health problems (e.g. facilities dealing with behavioural disorders, psychiatric facilities), for children with drug, alcohol or other addictions, for the protection of victims of abuse including trafficking, for children without parental care, from which the children are not permitted to leave at will.



- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Juvenile Justice Board or the Child welfare committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Child welfare committee or the Juvenile Justice Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

Those children who are found to be in need of care and protection are produced before the Child Welfare Committees (CWCs). CWCs have been defined under Section 27 of the JJ Act. As per Section 27(1) and (2):

(1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

(2) The Child welfare committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children.

During the inquiry by the CWC, such children are placed under child care institutions, which include the following:

**Children’s Home:** means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered under the JJ Act.

**Open Shelter:** means a community based facility for children in need of residential support on short term basis, with the objective of protecting them from abuse or weaning them or keeping them, away from a life on the streets. These institutions are established and maintained by the State Government, either by itself, or through a voluntary or non-governmental organization.

### **Children in Conflict with Law**

Child in conflict with law has been defined under Section 2(13) of the JJ Act. As per the provision, a child in conflict with law means:

*A child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.*

Those children who are allegedly found to be in conflict with law, are dealt by the Juvenile Justice Boards (JJBs), the sole body authorised to conduct inquiry into such cases. The provision for JJBs has been defined under Section 4(1) and (2) of the JJ Act. As per Section 4:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Juvenile Justice Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years of experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

During the pendency of inquiry or upon completion of the inquiry in to the cases of children in conflict with law, such children are kept under following institutions:

**Observation Home:** means a home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, for the purpose of temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry before the Juvenile Justice Board.

**Special Home:** means an institution established by a State Government or by a voluntary or non-governmental organisation, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Juvenile Justice Board.

**Place of Safety:** means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Juvenile Justice Board or the Children's Court<sup>124</sup>, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

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<sup>124</sup> Children's Court: "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act; [S. 2(20)]

## Preliminary Assessment

Apart from the treatment and placement of children who have allegedly committed an offence, the JJ Act also provides for separate provision for those children who have allegedly committed any heinous offence<sup>125</sup>. The JJ Act, under S. 15 prescribes a separate mechanism for treatment of such children. Section 15 of the JJ Act:

S. 15(1): In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Juvenile Justice Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and if the Juvenile Justice Board is satisfied, may pass an order for trial of the said child as an adult and subsequently the case will be transferred to the children's court.

During the pendency or after the completion of trial by the Children's Court, such child will be placed in the "place of safety" till the age of twenty-one years and after attaining 21 years of age, the Children's Court may: [Section 20 of JJ Act]

- Decide to release the child on such conditions as it deems fit which includes appointment of monitoring authority for the remainder of the prescribed term of stay (sentence) OR
- Decide that the child shall complete the **remainder of his term in the jail.**

## 42) What procedures are available to either children or their families to appeal or challenge their placement in such institutions?

The children who have been placed under the child care institutions and are entitled to file Appeals before the trial courts. The provision for Appeal has been mentioned u/S. 101 of the JJ Act.

### Appeals & Revision [S. 101 & 102 of JJ Act]:

**Section 101(1):** Subject to the provisions of this Act, any person aggrieved by an order made by the Child welfare committee or the Juvenile Justice Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Child welfare committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate: Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

**Section 101(2):** An appeal shall lie against an order of the Juvenile Justice Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of

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<sup>125</sup> "Heinous Offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. [S. 2(33)]

experienced psychologists and medical specialists other than those whose assistance has been obtained by the Juvenile Justice Board in passing the order under the said section.

**Section 101(3):** No appeal shall lie from,—

(a) any order of acquittal made by the Juvenile Justice Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Child welfare committee in respect of finding that a person is not a child in need of care protection

**Revision [S. 102]:** The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any child welfare committee or juvenile justice board or Children’s Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit.

43) Please provide the total number of children (aged 0-17) deprived of liberty in each of the following types of institutions on 26 June 2018:

Year	Number of Juveniles whose cases are pending disposal at the beginning of the year	Arrested & Sent To Courts	Juveniles Apprehended During the Year	Total Number of Juveniles Apprehended	Sent To Home After Advice Or Admonition	Released On Probation And Placed Under Care of		Sent To Special Homes	Dealt With Fine	Acquitted or Otherwise Disposed of	Percentage of Juveniles held Guilty	Pe Di
						Parents/ Guardians	Fit Institution					
2008	NA	34507	NA	NA	3964	6022	1143	5764	1362	1755	NA	1
2009	NA	33642	NA	NA	4986	4822	1241	5420	1113	1507	NA	1
2010	NA	30303	NA	NA	4145	5729	1047	5798	1089	1685	NA	1
2011	NA	33887	NA	NA	4045	6333	1627	7292	1201	2311	NA	1
2012	NA	39822	NA	NA	5927	7290	2183	9677	1452	2572	NA	1
2013	NA	43506	NA	NA	6613	8599	1689	9549	1756	3198	NA	1
2014	12309	-	48230	60539	7345	8159	2276	8700	1857	3509	NA	1
2015	15116	-	41385	56501	7354	8842	1918	9665	2578	4582	NA	2
2016	21488		44171	65659	10019	9932	2025	10247	2552	5658	86.0	2

Source: National Crime Record Bureau

- A) Orphanages
- B) Reform schools or other correctional institutions outside the justice system
- C) Institutions for children with disabilities
- D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)
- E) Institutions for children with drug, alcohol or other addictions
- F) Institutions for the protection of victims of abuse including trafficking
- G) Other institutions for children without parental care

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

**No centralized data is managed and made available by the government on any of the indicators listed from A to G.**

**Table 13: Children deprived of liberty in institutions (as defined), 26 June 2018**

	Less than 3 years old			3-5			6-9			10-13			14-17			Total (ages 0-17)			
	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	
<b>A) Orphanages</b>																			
Male																			
Female																			
Total (A)																			
<b>B) Reform schools or other correctional institutions outside the justice system</b>																			
Male																			
Female																			
Total (B)																			
<b>C) Institutions for children with disabilities</b>																			

Male  
Female  
Total (C)

**D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)**

Male  
Female  
Total (D)

**E) Institutions for children with drug, alcohol or other addictions**

Male  
Female  
Total (E)

**F) Institutions for the protection of victims of abuse including trafficking**

Male  
Female  
Total (F)

**G) Other institutions for children without parental care**

Male  
Female  
Total (G)

**Total children deprived of liberty in institutions (as defined)**

Male  
Female  
Total (G)

44) Please provide the total number of children aged 0-17 placed into institutional detention, in each of the following institution types, in each of the last 10 years.

- A) Orphanages
- B) Reform schools or other correctional institutions outside the justice system
- C) Institutions for children with disabilities
- D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)
- E) Institutions for children with drug, alcohol or other addictions
- F) Institutions for the protection of victims of abuse including trafficking
- G) Other institutions for children without parental care

No centralized data is managed and made available by the government on any of the indicators listed from A to G.

**Table 14: Children deprived of liberty in institutions (as defined), 2008-2017**

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P			
A) Orphanages																														
B) Reform schools, etc.																														
C) Institutions for children with disabilities																														
D) Institutions for children with health problems																														
E) Institutions for children with drug,																														



- alcohol or  
other  
addictions
- F) Institutions  
for the  
protection of  
victims of  
abuse
- G) Other  
institutions  
for children  
without  
parental care

**44) Please provide information on all alternatives to the deprivation of liberty of children in institutions.**

Foster Care: means placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child's biological family, that has been selected, qualified, approved and supervised for providing such care [S. 2(29) JJ Act]

**45) Have there been any major legislative or policy changes related to the (de-) institutionalization of children during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?**

**46) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children deprived of liberty in institutions.**

**V. Children deprived of liberty in the context of armed conflict<sup>126</sup>**

**47) Is your country interning children as Prisoners of War (POWs) or civilians for security reasons in the context of an international armed conflict?**

NO. No such data available to indicate this situation.

**48) If yes, please provide the total number of children (aged 0-17) who have been interned as POWs or civilians on 26 June 2018 for security reasons in the context of an international armed conflict.**

	Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total (ages 0-17)		
	Na	No	Tot	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To
	t	n-	al	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal
		nat			nat			nat			nat			nat			nat			nat	
	.			.			.			.			.			.			.		
<b>Prisoners of war (POW)</b>																					
Male																					
Female																					
Total POW																					
<b>Civilians</b>																					
Male																					
Female																					
Total Civilians																					
<b>Total</b>																					
Male																					
Female																					

<sup>126</sup> Contribution to this Section was made by HAQ Centre for Child Rights, New Delhi.

Total

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

**Table 15: Children deprived of liberty in the context of armed conflict, 26 June 2018**

**49) For each of the last 10 years (2008-2017), please provide the total number of children aged 0-17 taken into internment as POWs or civilians for security reasons in the context of an international armed conflict.**

**Table 16: Children deprived of liberty in the context of armed conflict, 2008-2017**

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P			
Prisoners of War																														
Civilians																														

**50) Is your country currently detaining children for actual or suspected involvement with non-state armed groups? If so, please specify the legal basis.**

if children associated with left wing armed groups are detained during counter-insurgency operations they may be at risk of further human rights violations. According to India’s Juvenile Justice Act, such children should be treated either as “children in conflict with the law” (with a requirement to be brought before a Juvenile Justice Board (JJB) within 24 hours and a prohibition on being placed in a police lockup, etc.) or a child “in need of care and protection” (with a requirement that their case be dealt with by a Child Welfare Committee). Indeed, the same Juvenile Justice Act, 2015, criminalises the recruitment and use of any child for any purpose by a non-state, self-styled militant group, or any adult or adult group using children for illegal activities. However, the Act also stipulates that children in conflict with the law aged between 16-18 years of age who have committed “heinous offences” may be tried as adults if so directed by a JJB. **This could include children who are detained and charged under the Unlawful Activities (Prevention) Act and/or other security legislation due to associations with non-state armed groups.**

**Further, in Jammu & Kashmir**, administrative detention appears to be used by the Jammu and Kashmir authorities to circumvent the protections of ordinary criminal procedure. Introduced in 1978 to primarily deal with timber smugglers, the Jammu and Kashmir Public Safety Act, 1978 (PSA) is the most commonly used law for the purpose of administrative detention. PSA authorizes the authorities to impose an administrative detention order for a broad range of activities that are vaguely defined, including “acting in any manner prejudicial to the security of the State” or for “acting in any manner prejudicial to the maintenance of public order”. PSA allows for detention without charge or trial for up to two years in some cases. PSA has reportedly been widely used by the authorities in Jammu and Kashmir to stifle dissent. It has been used to target human rights defenders, journalists, separatist political leaders, suspected members of armed opposition groups and people involved in protests. In 2012, the Jammu and Kashmir State Assembly amended PSA to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA.<sup>127</sup>

**On the other hand**, in the state of Chhattisgarh, which is a heavily Left Wing Extremist affected area has also witnessed children suspected to be a part of such non-state armed group, being detained by the State authorities. Such detentions are completely in contravention with the National and International child safeguarding standards. According to a study conducted by the Human Rights Watch in Chhattisgarh in the year 2008, Government security forces have detained and tortured children suspected of being Naxalites, recruited former Naxalites to work as police informers and Special Police Officers (SPOs) while still children, and failed to develop a scheme for the identification, rescue, demobilization, and rehabilitation of child Naxalites<sup>128</sup>.

North-Eastern part of India has witnessed a long stride of tussle between the various non-state armed groups and the State government security forces. The presence of much controversial **Armed Forces Special Powers Act (AFSPA)** has given the unprecedented impunity to the security forces and such unparalleled impunity has resulted in great amount of Human Rights violations, including the rights of children. Children in Manipur have been denied justice under the Juvenile Justice (Care and Protection) Act. Children have been regularly apprehended, detained and subjected to torture while many were killed in fake encounters. Others were abused in fake surrender ceremonies organized by State Armed Forces. In these events children are being lured to attend and are detained as fake members of insurgent groups<sup>129</sup>.

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<sup>127</sup> OHCHR Report on the Situation of Human Rights in Kashmir;

<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

<sup>128</sup> “*Dangerous Duty: Children and Chhattisgarh Conflict*”; Human Rights Watch; <https://www.hrw.org/report/2008/09/05/dangerous-duty/children-and-chhattisgarh-conflict>

<sup>129</sup> “*Impact of Conflict on Children in Assam and Manipur States of India*”; *The Northeast Research & Social Work Networking, Kokrajhar*;

[https://www.redhandday.org/fileadmin/user\\_docs/Study\\_Impact\\_of\\_Conflict\\_on\\_Children\\_in\\_Assam\\_and\\_Manipur\\_States\\_of\\_India\\_NERSWN\\_tdh\\_final\\_E.pdf](https://www.redhandday.org/fileadmin/user_docs/Study_Impact_of_Conflict_on_Children_in_Assam_and_Manipur_States_of_India_NERSWN_tdh_final_E.pdf)

**51) May children be detained solely for affiliation with a non-state armed group, or only for an additional offense committed as part of a non-state armed group?**

Mostly children are detained if they are found to be a part of the non-state armed groups.

**52) Under whose authority are children detained for involvement with non-state armed groups?**

Children who are alleged or suspected to be involved with non-state armed groups, are detained by the State Security Forces. However, the treatment of such children varies from state to state. At some instances, children are placed under the Juvenile Justice System but there have been instances in Jammu & Kashmir, where children have also been detained and kept in jails, completely in contravention with national and international safeguarding standards.

**53) What type of facilities are used to detain children for involvement with non-state armed groups?**

- Jails
- Observation Homes
- Place of Safety
- Special Homes
- Detention Camps

**54) Please provide the total number of children (aged 0-17) deprived of liberty on 26 June 2018 for involvement with non-state armed groups,**

- A) having been charged with a criminal offense
- B) in administrative/security detention (i.e. to prevent their return to the armed group and/or participation in hostilities)

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Year	State	Act			
		Arms Act, 1959	National Security Act, 1980	Unlawful Activities Prevention Act, 1967	Terrorism and Disruptive Activities Act
2016	Arunachal Pradesh	1	-	0	-

	Assam	7	-	0	-
	Chattisgarh	9	-	0	-
	Jharkhand	11	-	0	-
	Manipur	0	-	1	-
<b>2015</b>	Assam	6	0	1	-
	Chattisgarh	4	0	0	-
	Jharkhand	2	0	0	-
	Manipur	0	0	4	-
	Nagaland	3	0	0	-
<b>2014</b>	Assam	5	0	0	-
	Chattisgarh	6	0	1	-
	Jammu and Kashmir	1	0	0	-
	Manipur	0	0	1	-
	Nagaland	1	0	0	-
<b>2013</b>	Assam	10	-	-	0
	Chattisgarh	10	-	-	0
	Nagaland	1	-	-	0
<b>2012</b>	Assam	2	-	-	0
	Chattisgarh	17	-	-	0
	Jharkhand	3	-	-	0
<b>2011</b>	Assam	1	-	-	0
	Chattisgarh	11	-	-	0
	Jharkhand	4	-	-	0
	Nagaland	1	-	-	0
<b>2010</b>	Chattisgarh	17	-	-	0
	Jharkhand	19	-	-	0
	Nagaland	1	-	-	0
<b>2009</b>	Chattisgarh	24	-	-	0
	Jammu and Kashmir	1	-	-	0
		14	-	-	0

	Jharkhand Meghalaya	<b>1</b>	-	-	<b>0</b>
<b>2008</b>	Chattisgarh	<b>17</b>	-	-	<b>0</b>
	Jharkhand	<b>19</b>	-	-	<b>0</b>
	Meghalaya	<b>1</b>	-	-	<b>0</b>
<b>Source: National Crimes Record Bureau</b>					

**Table 17: Children deprived of liberty for involvement with non-state armed groups, 26 June 2018**

Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total (ages 0-17)		
Na	No	Tot	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To
t	n-	al	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal
	nat			nat			nat			nat			nat			nat			nat	
.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

**A) Charged with a criminal offense related to involvement with armed groups**

Male  
 Female  
 Total charged

**B) Administrative/security detention related to involvement with armed groups**

Male  
 Female  
 Total administrative

**Total**

Male  
 Female  
 Total

No disaggregated data is available in context of the table mentioned above.

55) For each of the last ten years (2008-2017), please provide the total number of children taken into detention for involvement with non-state armed groups,

- A) having been formally charged with a criminal offense
- B) in administrative/security detention (i.e. to prevent their return to the armed group and/or participation in hostilities)

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
------	------	------	------	------	------	------	------	------	------



Charged with a  
criminal offense  
Administrative/security  
detention

**Table 18: Children deprived of liberty for involvement with non-state armed groups, 2008-2017**

**56) If children affiliated with non-state armed groups are charged with a specific offense, are they subject to military or civilian courts?**

In such situation, children are not subjected to military courts, but they are dealt by civil courts and also by the special authority mentioned under the JJ Act.

**57) What sentencing options are available for children convicted of offenses related to their involvement with non-state armed groups?**

Those children who are found to be involved with non-state armed groups, are sometimes considered as “Children in Need of Care and Protection” under the JJ Act and thus, they are sent to children’s home for their rehabilitation and main-streaming. Further, Section 37 of the JJ Act prescribes for the orders which can be passed regarding the child in need of care and protection. As per the provision, the Child Welfare Committee may pass following orders:

- (a) Declaration that a child is in need of care and protection;
- (b) Restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- (c) Placement of the child in Children’s Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- (d) Placement of the child with fit person for long term or temporary care;
- (e) Foster care orders
- (f) Sponsorship orders
- (g) Directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid,

educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) Declaration that the child is legally free for adoption

However, most commonly, children who are found to be involved with non-state armed groups, are most often considered as “Child in Conflict with Law” and the law prescribes different treatment for them. Section 18 of the JJ Act provides for punishment for such children and more specifically, S. 18(1)(g) directs the Juvenile Justice Boards to direct the child to be sent to a **special home**, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

**58) For each of the last ten years (2008-2017), please provide the number of children deprived of liberty in relation to their involvement with non-state armed groups and sentenced to the following:**

- A) Prison sentence (except life imprisonment)
- B) Life sentence
- C) Capital punishment

Children in conflict with law are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which prohibits the award of life sentence and capital punishment to children involved in any kind of offence.

**Table 19: Children sentenced to prison, life sentence or capital punishment in relation to involvement with non-state armed**

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
Prison																														
Life sentence																														
Capital punishment																														

**groups, 26 June 2018.**

**59) What processes are available to either children or their families to appeal or challenge their detention due to involvement with armed groups?**

In the Indian Criminal Justice System, in cases of illegal detention of children, the families can go for Appeal to the High Court of their respective States and to Supreme Court as well. The Code of Criminal Procedure provides for the provision for such appeal under Section 482, which talks about the inherent powers of the High Court and empowers the High Court to pass any such necessary order to prevent the abuse of due process of law.

Also, in case of illegal detention of such children, the Constitution of India provides the families to file the writ of *'Habeas Corpus'*<sup>130</sup> in the High Courts. This provision becomes more crucial in context of children who have been detained under the Public Safety Act. The PSA does not include a provision granting the detainee a right to judicial review of the grounds of detention or the right to appeal their detention, the Constitutions of India ensure that all persons have the right to seek remedy for violation of their rights via the extraordinary process of petitioning the High Court of the state or the Supreme Court of India.

**60) Please provide information on all alternatives to the deprivation of liberty of children involved with armed groups that are provided for by law, policy or practice.**

Children who are found to be in detention and further considered as “Child in Need of Care and Protection” under the JJ system, are placed under the institutional care for their rehabilitation.

But, on the contrary, in the State of Chhattisgarh, which is also a heavily left wing extremist affected state, it has been found that Children who desert Naxalite (LWE) ranks and surrender to the police seeking protection find themselves in a vicious cycle. Not only are they subject to brutal reprisals by Naxalites, but they may be re-recruited as informers or SPOs by the Chhattisgarh police, under the garb of “rehabilitation for surrendered Naxalites”<sup>131</sup>.

**61) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children deprived of liberty for involvement with armed groups.**

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<sup>130</sup> The writ of Habeas Corpus is issued for an illegal detention of a person. It is an order to produce before the Court the person who has been detained and the Court examines such person and if the detention is found illegal, the Court sets free such person hence protects the fundamental right to liberty of the person which was infringed by the illegal detention.

<sup>131</sup> “India: All Sides Using Children in Chhattisgarh Conflict”; Human Rights Watch; <https://www.hrw.org/news/2008/09/05/india-all-sides-using-children-chhattisgarh-conflict>

## VI. Children deprived of liberty on national security grounds<sup>132</sup>

	Less than 10 years old			10-11			12-13			14-15			15-16			
	Na t	No n- nat	Tot al	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal	N t
<b>A) administrative/security detention</b>																
Male																
Female																
Total charged																
<b>B) pre-trial detention (police custody and remand detention)</b>																
Male																
Female																
Total administrative																
<b>C) Imprisonment after conviction and sentence</b>																
Male																
Female																
Total																
<b>Total</b>																
Male																
Female																
Total																

62) Please describe the legal framework related to the deprivation of liberty of children on national security grounds, including any special provisions related to children.

63) Under your penal law, is association with a terrorist organization or other criminal group considered a criminal offense? If so, please provide details.

64) Please provide the total number of children (aged 0-17) deprived of liberty on 26 June 2018 on national security grounds in:

- A) administrative/security detention?
- B) pre-trial detention (police custody and remand detention)?
- C) imprisonment after conviction and sentence?

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

**Table 20: Children deprived of liberty on national security grounds, 26 June 2018**

65) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 taken into detention on national security grounds in:

- A) administrative/security detention

<sup>132</sup> Contribution to this Section was made by HAQ Centre for Child Rights, New Delhi

- B) pre-trial detention (police custody and remand detention)
- C) imprisonment after a conviction and sentence

**Table 21: Children deprived of liberty on national security grounds, 2008-2017**

	2008			2009			2010			2011			2012			2013			2014			2015	
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	
Administrative/security detention																							
Pre-trial detention																							
Imprisonment																							

**66) Are children charged with terrorism/national security offenses subject to military or civilian courts?**

Civilian Courts.

**67) What sentencing options are available for children convicted of terrorism/national security offenses?**

The sentencing of those children convicted of terrorism/national security offences are primarily governed by the punishment prescribed as per the offence, but the sentencing will be regulated in the light of Juvenile Justice Act, 2015.

**68) What is the longest prison sentence that can be applied to a child convicted of terrorism/national security offenses?**

Children who are convicted of terrorism/national security offences by children’s court upon transfer by the Juvenile Justice Board, can be sentenced for the maximum period of jail term prescribed for that particular offence. Once these children are awarded the sentences, they are placed at “place of safety” till they complete 21 years of age and after attaining 21 years is yet to complete the term of stay, their sentencing period is reviewed by the appropriate authority and if it is found that the child has been reformed and the child is ready to contribute to the society in positive manner, then the child will be released or else, the child will be shifted to the jail for remainder of the sentencing period. [S. 20(1) of JJ Act]

**69) May they be sentenced to life imprisonment?**

Children who are allegedly found to be involved in the of the terrorist activities or any such activity punished under the National Security Act, will be governed by the Juvenile Justice Act, 2015. As per the provisions of the JJ Act, the JJ Board can transfer such matters to the Children’s Court. But at the same time, the JJ Act also provides that no child in conflict with law can be awarded life imprisonment or capital punishment.

**70) May they be sentenced to capital punishment?**

Children are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which provides that children who are found to be in conflict with law, cannot be awarded capital punishment.

**71) How many children have been sentenced to life imprisonment or capital punishment in each of the last ten years (2008-2017), either by a civilian or a military court?**

	2008	2009	2010	2011	2012	2013	2014	2015

	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M
<b>Life sentence</b>																						
Civilian court																						
Military court																						
Total Prison																						
<b>Capital punishment</b>																						
Civilian court																						
Military court																						
Total Capital Punishment																						

**Table 22: Children sentenced to life sentence or capital punishment by a civilian or a military court on national security grounds, 2008-2017**

72) Please provide information on all alternatives to the deprivation of liberty for children considered to pose threats to national security that are provided for by law, policy or practice (whether in police custody, pre-trial detention, or imprisonment after conviction).

73) Have there been any major legislative or policy changes related to children suspected of terrorism/national security offenses during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?

74) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children considered to pose threats to national security who are deprived of liberty.

## VII. General

**75) Please provide the estimated resident population for your country for each of the last 10 years (population as at the midpoint), disaggregated by age, sex and nationality (citizens/non-citizens).** *(If data is not available for the each of the last 10 years, please provide the 3 most recent population estimates).*

Data collection type (e.g. Census, administrative records, etc.):

Organisation responsible for producing population estimates:

**Table 23: Estimated resident population by age and nationality, 2008-2017**

	Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total children (0-17)			18+			Total population (all ages)		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
2008																											
National																											
Non-national																											
2009																											
National																											
Non-national																											
2010																											
National																											
Non-national																											
2011																											
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Non-national																													
2015																													
National																													
Non-national																													
2016																													
National																													
Non-national																													
2017																													



National																								
Non-national																								

- 1) Please provide any recent reports or recommendations from relevant monitoring bodies with authority to monitor children’s deprivation of liberty (all kinds) in your country.
- 2) Have there been any studies or research on the impact of deprivation of liberty (all kinds) on children? If so, what are the results?
- 3) For each of the last ten years (2008-2017), please provide the total number of deaths of children
  - A) deprived of liberty within the administration of justice
  - B) deprived of liberty for migration-related reasons
  - C) living in places of detention with their parents
  - D) deprived of liberty in institutions
  - E) deprived of liberty in the context of armed conflict
  - F) deprived of liberty on national security grounds.

**Table 24: Chi**

	2008			2009			2010			2011			2012			2013			2014			2015
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M
A) Justice sector																						
B) Migration-related																						
C) In detention with parents																						
D) Institutions																						
E) Armed conflict																						
F) National security grounds																						
<b>Total child deaths during deprivation of liberty</b>																						