



*Defensoria del Pueblo*

OMBUDSMAN OFFICE OF PERU: CHILDREN'S DIVISION

*“The development of Restorative Justice  
for Children in Peru”*

Bali, 26th June 2013

## Objective



To share the progress,  
challenges and some  
recommendations for  
“Restorative Justice for Children”  
in Peru

# Outline



1. Extent of the problem
2. Implementation of: legislation, jurisprudence and policies
3. Challenges
4. Recommendations

# Extent of the problem

## □ Children in conflict with the law

### Ombudsman's report N° 157

- Population: 2278 adolescents
  - 1558 (closed facilities: juvenile detention centers)
  - 720 (open detention facilities: without deprivation of liberty)
- Average Age: 17 years
- Level of education: more than 50% have not completed high school
- Gender: 96.8% men and 3.2% women

### Progress Report PNAIA 2012-2021

- Complaints to 2012: 21,222 to Domestic Crimes Prosecutors
- Judicial Districts with the highest number of complaints:
  - Lima - 5,675 (26.7%),
  - Lima North - 3,462 (16.3%),
  - Lambayeque - 1,005 (4.7%) and
  - Callao - 837 (3.9%).

## Extent of the problem

- Profile of adolescents in conflict with the law.**
- Most common crimes committed.**
- Social perceptions of juvenile delinquency.**

# Implementation of legislation



□ **Constitution Act:** Protection of children and ensuring the right to liberty and personal security.

□ **Children and Adolescents Code:** art. 183 ° to 242 °

## **Measures for children or adolescents who break the law**

- Under 14 years old: protection measures
- Between 14 years old and 18 years old: social and educational measures

**Substantive, procedural and executive guarantee.**

**Protecting your identity and integrity.**

## **Application of the measure of DIVERSION**

- The prosecutor can use it before judicial proceedings
- The judge can use it when judicial proceedings have been initiated

□ **Judicial resolutions**

## Implementation of legislation



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- **Development of Bill No. 495-2011-CR: New Code for Children and Adolescents**
  - Eliminates the crime of association with gangs.
  - Promotes restorative youth justice.
  - Ensures internment only used in exceptional cases.
  - Incorporates the measure of early termination.
  - Ensures the presence of an attorney in every process.
  - Ensures that the measure of diversion is applied only with the consent of the adolescent and their parents or guardians.

### □ ***Jurisprudence of the Constitutional Court***

*“... un mecanismo de responsabilidad penal juvenil se basa en que el adolescente no sólo es sujeto de derechos sino también de obligaciones hacia la sociedad. Sin embargo, este sistema debe obedecer a determinados parámetros respetuosos del interés superior del niño y de los principios rectores de derechos humanos”.*

... a mechanism of juvenile criminal responsibility takes into account that the adolescent has both rights and obligations in society. However, this system must follow certain parameters which respect the best interests of the child and the guiding principles of human rights. (Exp STC No. 03247-2008-PHC/TC)

## Implementation of jurisprudence



*“...se prioricen programas para reducir los índices de institucionalización de niños fomentando que se preserve la unidad familiar, promoviendo alternativas basadas en la comunidad y garantizando que la atención institucionalizada se utilice sólo como último recurso”.*

... prioritized programs to reduce rates of institutionalization of children by encouraging the preservation of the family unit through the promotion of community-based alternatives and ensuring that institutionalized care is used only as a last resort. (Exp STC No. 03247-2008-PHC/TC)

*“... considera indispensable destacar que la medida de internamiento es la medida más severa que se le puede aplicar a un adolescente que se le imputa la comisión de una infracción penal, motivo por el cual su aplicación debe tener un carácter excepcional, en virtud de que se encuentra limitada por el derecho a la presunción de inocencia, así como por los principios de necesidad y proporcionalidad”*

[The court] considers it important to emphasize that internment is the most severe measure that can be applied to a teenager who is charged with the commission of a criminal offense. The application of internment should be exceptional, because this measure is limited by the right of the presumption of innocence, and the principles of necessity and proportionality. (STC No. 03386-2009-PHC/TC Exp)

## Implementation of jurisprudence



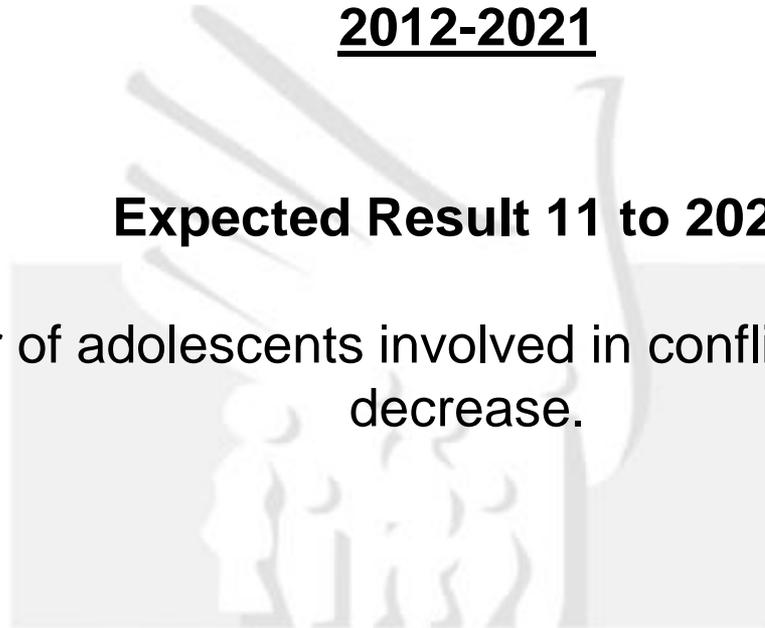
*“considera que ordenar el internamiento de un niño, niña o adolescente en un centro especializado, alejado de su domicilio y lejos de su familia, no solo viola el artículo 4º de la Constitución, sino que afecta el propio objeto y propósito de la Convención sobre los Derechos del Niño.”*

[The court] considers that requiring the placement of a child or teenager in a specialized center, away from his/her home and away from his/her family, violates article 4 of the Constitution Act and affects the objective and purpose of the Convention on the Rights of the Child. (STC No. 03386-2009-PHC/TC Exp)

**National Action Plan**  
**for Children and Adolescents**  
**2012-2021**

**Expected Result 11 to 2021:**

The number of adolescents involved in conflict with the law is to decrease.



□ **Status:**

- Public attorney,
- Judiciary
- Ministry of Justice,
- Others.

□ **Civil Society:**

- Terre des Hommes Foundation,
- Latin American Institute for Restorative Practices
- PUCP
- Association Meetings - Youth House,
- Others.

# Challenges

- Some of the rules that are implemented continue to follow the irregular situation doctrine.
- Legislative proposals that aim to reduce the age of criminal responsibility violate the anonymity of children in conflict with the law.
- Internment is not a measure of last resort.
- Non-application of educational measures which do not deprive children of their liberty.
- Lack of use of the diversion.
- Insufficient interdisciplinary teams taking care of and monitoring the living conditions inside the juvenile detention centers.

# Challenges



- Lack of statistical data on adolescents in conflict with the law.
- Lack of implementation of education and training programs on restorative justice.
- Lack of commitment among some operators in restorative juvenile justice project.
- The media gives a distorted view of news related to children in conflict with the law.
- Low interest of regional and local governments in the restorative juvenile justice policies.

# Recommendations



- Fulfill the recommendations of the Committee on the Rights of the Child and the UN Guidelines on the subject.
- Technical and economic resource allocation to regional and local governments.
- Further development of restorative justice programs in public institutions. These programs should be evaluated when they are completed.
- Implementation of new restorative juvenile justice strategies.

## Recommendations

- More training for legal operators.
- Further development of research that offers more knowledge related to the development and practices of restorative justice.
- Sensitization of the media on the treatment of news related to children in conflict with the law and the benefits of using restorative justice.
- Awareness within society to eliminate the perception of impunity for adolescents in conflict with the law.

**Thank you very much**

