

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE**  
**MINISTRY OF JUSTICE**

**TITLE I**

General provisions

**CHAPTER I**

Scope and definitions

Article 1

Scope

1 – Educational tutelary measures, hereinafter referred to in short as tutelary measures, regulated by this law are intended to educate children aged between 12 and 16 years old, guaranteeing them the rights and the special protection where they are in conflict with the law.

2 – Enforcement of tutelary measures contained in this law shall take into account the seriousness of the offense committed, the need to educate the child on his or her rights and duties in society as well as the principle of the respect for the superior interest of the criminally unimputable child.

3 – This law ensures a specialised criminal treatment for criminally unimputable youth aged between 16 and 21 years old with a view to a criminal policy that promotes the re-socialisation capacity of the youth where he or she is a defendant for having committed an offense qualified by law as a crime. At the moment of applying the penalty the provisions contained in this law shall apply subsidiarily and, whenever possible, shall transform the penalty into a correctional measure.

4 – The content of this law shall not apply to youth considered criminally unimputable by virtue of a mental disorder, pursuant to the criminal code.

## Article 2 Definition

1 – Based on the stages of growth, development and maturity, and for the purposes of this law:

a) A child in conflict with the law, hereinafter referred to as child, shall mean a person aged between 12 and 16 years old who commits an offense described by law as a crime and who, given his or her unimputability, is protected by mechanisms aimed at his or her education on his or her rights and duties in society and his or her insertion in community life in a dignified and responsible manner.

b) Youth shall mean a person who, at the date of the commission of the offense qualified by law as a crime, has completed 16 years of age but has not yet attained 21 years of age and deserves a specialised criminal treatment with a view to a criminal policy that promotes his or her re-socialisation capacity, particularly where he or she is still at the threshold of his or her maturity.

2. According to this law:

a) Educational tutelary measure shall mean the education mechanism for a child and his or her insertion in community life in a dignified and responsible manner. Whenever possible, such measure shall be extended to criminally imputable youths.

b) Correctional measure shall mean the approximation of the principles and rules of re-education law for children as applied to youths and shall translate a flexibility in the substitution and mitigation of penalties, enabling re-education and prevention measures to prevail over sanctions.

c) Multidisciplinary Technical Team, hereinafter referred to in short as Technical Team, shall refer to the co-adjutants in the educational tutelary process and shall be composed of professionals from diverse areas, including, whenever necessary, people from civil society sharing a common interest geared towards the need to protect the physical and psychological integrity of the child within the educational tutelary process and the process of inserting the child in community life in a dignified and responsible manner.

### Article 3

#### Temporal application of the law

A tutelary measure contained in this law shall only be applied to a child who commits an offense qualified by the law as a crime where such law exists prior to the moment of the commission of such offense.

### Article 4

#### Application of general law

The general law shall apply in all cases that are not contrary to this law.

## CHAPTER II

### Structure

### Article 5

#### Juvenile justice system

1 – The Juvenile Justice System shall be defined as a set of statutes aimed at ensuring the rights, liberties and guarantees of children and youths with the purpose of protecting children and youths in danger, as well as educating, training and correcting children and youths with a deviating behaviour, including educating them on their rights and duties in society through a specific procedure and a multidisciplinary network that relies on State structures, the family, the community, international organisations and agencies, civil society and religious confessions which, by integrating themselves with other related systems, ensure the respect for the fundamental rights of children and youths.

2 – The establishment of such a system aims at ensuring the following:

- a) As regards children, the observance of their rights as provided for in international documents ratified by Timor-Leste vis-à-vis the process of tutelary education on their rights and duties in society;
- b) As regards youths above 16 years of age accused of committing an offense qualified by the law as a crime, the application of the special treatment provided for in article 20.2 of the Criminal Code for observing the due legal process and the enforcement of correctional measures and measures of substitution of penalties and their execution as provided for in this law.

#### Article 6 Structuring elements

The following shall be structuring elements of the Juvenile Justice System:

- a) Crime prevention policies in the areas of education and professional training, culture, leisure, sports, social welfare, health, security, justice, human rights, communications and environmental protection;
- b) Social and economic development policies for families;
- c) Specific government policies for children and youths, particularly in terms of education on their rights and duties in society and their reinsertion in community life in a dignified and responsible manner;
- d) Policies and actions in the area of juvenile justice aimed at preventing and fighting trade in guns, drugs, tobacco and alcohol, preventing and fighting child prostitution and sexual exploitation of children and youth, fighting against human trafficking, preventing domestic violence and gender discrimination, preventing and combating environmental damage; preventing and fighting the recruitment of children and youth for the army, militias or military or paramilitary activities, promoting human rights and peace-building;
- e) The conventions, agreements, partnerships and exchanges of an academic nature, whether national or international, in the areas of juvenile justice, promotion of human rights and peace-building;

- f) The qualitative and quantitative data regarding the population under the age of 21 years in order to monitor, evaluate and plan Juvenile Justice System policies;
- g) The directives and regulations for the Juvenile Justice System Coordination Centre.

## Article 7 Agents of the Juvenile Justice System

The following shall be structuring agents of the Juvenile Justice System:

- a) The Courts, the Office of the Prosecutor General, the Public Defense Office, attorneys, police officers, and members of the Multi-Disciplinary Technical Team;
- b) District Administrators, Sub-District Administrators, Heads of Suco, members of Suco Councils and Village Chiefs;
- c) Partners from civil society, from international organisations and agencies and from religious confessions who develop specific projects for children;
- d) The Juvenile Justice System Coordination Centre;
- e) The National Commission for Children's Rights;
- f) The Ministries and Secretariats of State that develop and support activities for families, communities, children and youths, irrespective of personal, family or social vulnerability.

## CHAPTER III Juvenile Justice System Coordination and Technical Team

### Article 8 Establishment of the Coordination Centre

This law establishes the Juvenile Justice System Coordination Centre as a body with technical autonomy under the administrative tutelage of the Ministry of Justice. Its objective is to structure the Juvenile Justice System in Timor-Leste by operating in compliance with the guiding principles of the children's rights and the dignity of the human person.

Article 9  
Joint operation

In monitoring the children's and youth's rights protected by this law, the Juvenile Justice System Coordination Centre hereinafter referred to in short as the Juvenile System Coordination, shall operate in conjunction with:

- a) The Courts, the Office of the Prosecutor General, the Public Defense Office and the National Police;
- b) The governmental bodies that maintain services or policies related to Juvenile Justice;
- c) The National Commission for Children's Rights.

Article 10  
Specific responsibilities

The Juvenile System Coordination shall be responsible for:

- a) Defining guidelines for the implementation and evaluation of the Juvenile Justice System;
- b) Drafting and distributing all standardized documents pertaining to the area of Juvenile Justice;
- c) Registering, credencing, following up and evaluating the educational tutelary programs and the social and educational programs for children and youths initiated by civil society organizations, international organisations and agencies and religious confessions;
- d) Promoting specialized technical participation in the definition of guidelines for conducting campaigns in the area of educational programs for children;
- e) Registering non-governmental organizations working in the area of child law and youth law;

- f) Supporting the government and governmental bodies in the specific area of communication on children and youth in conflict with the law insofar as the national and international media is concerned;
- g) Defining indicators for the evaluation of protection programs, educational tutelary measures and human and material resources relating to the implementation of the Juvenile Justice System;
- h) Centralising information from Courts, the Public Prosecution, the Public Defense Office and the Technical Team for preparing statistical data to enable monitor the Juvenile Justice System and plan preventive activities;
- i) Organising and maintaining a database for the Juvenile Justice System.

#### Article 11 Definition of the Technical Team

1 – The Technical Team shall be part of the Juvenile Justice System and shall be linked to the Juvenile Justice System Coordination.

2 – The Technical Team shall comprise at least three persons with professional qualifications in the following areas:

- a) Welfare;
- b) Psychology;
- c) Education;
- d) Vulnerable People Unit of the Timor-Leste National Police;
- e) Members of civil society linked to child and youth protection.

#### Article 12 Technical Reports

1 – The Technical Team shall be responsible for the preparation of a Technical Report to be signed by at least two members of the Technical Team informing on the attention given to, and follow up of, children and shall be handed over to the

Public Prosecution with copy to the Juvenile Justice Coordination within a period of 10 days from the date of the commencement of its activities with the child.

2 – The report shall also be prepared whenever the presence of the Technical Team is requested, in special and justified cases, for following up a youth charged with committing an offense qualified by the law as a crime;

3 – The preparation of the report is signed by at least two members of the Technical Team and forwarded to the Public P- When classifying the child, mention shall be made of his or her age as certified through the presentation of the birth certificate or baptism certificate or witnesses, and the Technical Team may include in the report the need for the intervention of a specialized technique in order to determine the capacity of the child to understand the offense committed by him or her including, in particular, medical examinations and psychological evaluations.

5 – The Juvenile Justice System Coordination shall keep a record of all Technical Reports submitted to the Public Prosecution.

### Article 13

#### Participation in the Mediation Panel

1 - The Technical Team shall be part of the Mediation Panel through the participation of at least one of its members who may take over the coordination of the Panel.

2 – Where the parties so agree, the Technical Team may participate in the mediation process through the Community Tradition Practise or through Traditional Justice.

### Article 14

#### Territorial competence

1 – The Technical Team shall exercise its functions in all the districts of the national territory.

2 – The Juvenile Justice System Coordination shall ensure the physical and operational installation for each Technical Team through an integrated offense in Timor-Leste ion with the District Administrators.

Article 15  
Responsibilities regarding criminally unimputable children

The following shall be specific responsibilities of the Technical Team regarding children:

- a) To follow up children whenever caught in *flagrante delicto* and locate their parents or legal representatives where there is no Public Prosecution in the District;
- b) To attend to and provide support to children and their family in the enforcement of the educational tutelary measure and in the preparation and execution of the plan of conduct;
- c) To conduct a survey that enables the evaluation of the psycho-social status of the family of the child by advising the parents or the person in charge of following up on and accomplishing the educational tutelary measure;
- d) To prepare and forward a Technical Report to the Public Prosecution and forward a copy thereof to the Juvenile Justice Coordination for registry.
- e) To provide clarifications on the technical report during the jurisdictional stage whenever requested by the judge;
- f) To encourage the family of the child to participate in a community or official treatment program, or literacy or follow up program whenever deemed necessary;
- g) To follow up on the execution of the imposed measures with the educational centres;
- h) The Technical Team shall follow up on the criminally imputable youth whenever the Public Prosecution or the judge so determines.

Article 16  
Responsibilities regarding criminally imputable youth

Taking into account the superior interest of the youth, the Technical Team may be requested to follow up on the youth charged with committing an offense qualified by law as crime and its specific responsibilities shall be:

- a) To conduct a survey that enables to evaluate the psychosocial status of the family of the youth;
- b) To explain the correctional or educational nature of the measure, the multi-professional character of the support and the importance of the participation of the youth in the education programs on his or her rights and duties in society and on social reinsertion, and to support the youth in the implementation of such programs;
- c) To prepare and submit the Technical Report to the Public Prosecution and forward a copy thereof to the Juvenile Justice Coordination for registry.
- d) To appear in the hearing session in order to provide clarifications on the technical report whenever so determined by the judge.
- e) To present to the Public Prosecution and the Courts the civil society programs that are registered with the Juvenile Justice System for carrying out the educational tutelary measures and the correctional measures;
- f) To encourage the family of the criminally imputable youth to participate in the community or official treatment program, in the literacy program, or in the psychosocial follow-up program whenever deemed necessary.

#### Article 17 Integrated activities

In order to plan integrated activities, the Technical Team shall liaise with other agents of the Juvenile Justice System in accordance with the partnerships established by the Juvenile Justice System Coordination, notably:

- a) With the teachers and school boards through the planning of activities that strengthen the participation of children. This is in support of the educational tutelary measures and of the criminally imputable youth insofar as the applied correctional measures are concerned.
- b) With the health professionals and health assistants at the District level through the programming of activities to promote health and the right to life, health awareness programs and disease prevention programs;

- c) With the community authorities through the programming of integrated activities that value the civic participation of children in the accomplishment of the educational tutelary measures and the participation of the criminally imputable youth in the accomplishment of the correctional measures applied;
- d) With the program coordinators for promoting the rights of women through the definition of common activities for supporting female children and female youths;
- e) With the police at the District level through the integration of its members in the activities in support of the tutelary measures and correctional measures.

### Article 18 Referral of children

1 – Intervention of the Technical Team insofar as a child is concerned may initiate as follows:

- a) Exceptional intervention; or
- b) Ordinary intervention.

2 – Exceptional intervention shall occur where, in the absence of the representative of the Public Prosecution, the Police request the presence of at least two members of the Technical Team to follow up on the child.

3 – Ordinary intervention shall occur where, at the request of the Public Prosecution or where, officiously, the Court determines the follow up of a child by the Technical Team during the phase of investigation and, later on, during the jurisdictional phase.

4 – The Technical Team shall intervene ordinarily in the execution and accomplishment of the educational tutelary measure applied.

### Article 19 Exceptional intervention by the Technical Team

Whenever an exceptional intervention occurs, the Technical Team shall:

- a) Verify the physical integrity of the child and arrange for medical treatment. Where necessary, the Technical Team shall mention such measures in the technical report to be submitted to the Public Prosecution;
- b) Assist in locating the family of the child with the assistance of the Suco Chief or the Police;
- c) Take in the child until the arrival of the parents or guardian and, where applicable, conduct an interview with a view to collecting relevant information for the preparation of the report;
- d) Advise the parents and the child on the offense imputed to the child;
- e) Follow up on the delivery of the child to his or her parents or legal representative against a Term of Delivery, Counseling and Accountability;
- f) The report on the exceptional intervention by the Technical Team shall be prepared in a detailed manner.

## TITLE II

### Educational tutelary measures

#### CHAPTER I

##### General provisions

#### Article 20

##### Objective of the measures

1 – Educational tutelary measures, hereinafter referred to in short as tutelary measures, are intended to educate children on their rights and duties in society and to insert them in community life in a dignified and responsible manner.

2 - Causes excluding or reducing the unlawfulness or the fault shall be taken into consideration in the evaluation of the need for, and the type of, the measure to be applied.

#### Article 21

##### Principle of legality

1 – The following are tutelary measures:

- a) Admonition;
- b) Deprivation of the right to drive motorcycles or to obtain permission to drive motorcycles;
- c) Reparation of the victim;
- d) Payment of economic benefits or undertaking of community work;
- e) Imposition of rules of conduct;
- f) Imposition of obligations;
- g) Participation in training programs;
- h) Educational follow up;
- i) Confinement in an educational centre;

2 – The measure provided for in paragraph (i) of paragraph 1 shall be considered an institutional measure. The remaining measures shall be considered non-institutional measures.

3 – The educational centres shall be the object of a specific statute which shall contain their classification, functioning and competences, disciplinary regime, the rights and duties of the inmates, possible partnerships and the monitoring entity.

4 – Private entities operating as educational centres, including community residential units of a religious or a non-religious nature, may take in children for enforcing tutelary measures imposed on them and shall be subject to monitoring by the Juvenile Justice Coordination.

5 – The measure of confinement in an educational centre shall be applied in accordance with one of the following regimes of execution:

- a) Open regime;
- b) Semi-open regime;

- c) Closed regime.

Article 22  
Execution of tutelary measures

The duration of the tutelary measures may be last until such a time as the youth reaches 21 years of age, at which time it shall mandatorily cease.

Article 23  
Criteria for choosing tutelary measures

1 – When choosing the applicable tutelary measure from among those measures deemed appropriate and sufficient, the court shall give preference to a measure that represents the least intervention in the adolescent's autonomy to make decisions and lead his or her life and that is likely to obtain his biggest approval and the approval of his or her parents, legal representative or the person who has the *de facto* custody of the child.

2 – The provisions of the preceding paragraph shall be correspondingly applicable to the determination of the modality or the regime of execution of the tutelary measure.

3 – The choice of the tutelary measure to be applied shall be guided by the superior interest of the child.

4 – Where the child is considered to be the author of the commission of several offenses qualified as crimes the court shall apply one or more tutelary measures, in accordance with the concrete needs of education of the child on his rights and duties in society.

Article 24  
Determination of the duration of the measures

1 – The tutelary measure shall be proportional to the seriousness of the offense committed and to the need to educate the child on his or her rights and duties in society.

2 – Under no circumstance shall the duration of the measure of confinement in an educational centre exceed the maxim limit of the penalty of imprisonment provided for the crime corresponding to the offense committed by the child.

Article 25  
Application of several measures

1 – Where several tutelary measures are applied to the same child under the same or different proceedings, the court shall determine that they be served concurrently if it considers the measures to be compatible with each other.

2 – Where it considers that several tutelary measures may not be applied concurrently, the court shall, after hearing the Public Prosecution, replace all or some of the measures by other measures or determine the order in which they shall be served, pursuant to this law.

3 – In case of application of several measures to the same child under different proceedings the concurrent execution of which is not possible pursuant to paragraph 1, the court shall determine the order in which they shall be executed, pursuant to this law.

4 – In case of substitution of tutelary measures, the court shall take into account the provisions contained in the previous articles of this chapter.

5 – In case of successive execution of tutelary measures, the total time of duration shall not exceed the double of the time of duration of the most serious measure applied and, in any case, its execution shall cease on the date the person reaches 21 years of age.

CHAPTER II  
Content of the measures

Article 26  
Admonition

Admonition shall consist in a solemn warning made by the judge to the child, expressing the unlawful character of his or her conduct and respective consequences, calling upon him or her to adapt his or her behaviour to juridical rules and values and to insert himself or herself in community life in a dignified and responsible manner.

Article 27  
Deprivation of the right to drive

Deprivation of the right to drive motorcycles or to obtain permission to drive motorcycles shall consist in the suspension of the appropriate licence or in the prohibition to obtain one for a period of time between one month and one year.

## Article 28 Reparation to the victim

1 – Reparation to the victim shall consist in the act by the child of:

- a) Presenting his or her apologies to the victim;
- b) Compensating economically the victim, wholly or in part, for the damage caused;
- c) Carrying out, for the benefit of the victim, of an activity related to the damage whenever it is possible or adequate;

2 – The presentation of apologies to the victim shall consist in the expression by the child of his or her regret for the offense committed in any of the following forms:

- a) Expressing, in the presence of the judge and the victim, his or her firm intention not to commit again similar offenses;
- b) Giving moral satisfaction to the victim through an act that symbolically expresses regret.

3 – Payment of economic compensation may be made by instalments as long as it does not alter the meaning of the measure. When setting the compensation sum or the instalment, the judge shall consider only the economic capacity of the child and his or her family.

4 – The activity undertaken for the benefit of the victim shall not exceed two days a week and three hours a day and shall respect the resting time of the child, including a rest day each week. Consideration shall also be taken of his or her school schedule as well as other activities considered by the court to be important for the development of the child.

5 – The activity undertaken for the benefit of the victim shall not exceed twelve hours distributed over a maximum period of four weeks.

6 – The reparation measure in the modalities provided for in subparagraphs b) and c) of paragraph 1 shall require the consent of the victim.

#### Article 29

##### Economic benefits or community work

1 – The measure of economic benefit or community work shall consist in the child giving a certain amount of money or undertaking an activity for the benefit of a non-profit public or private entity provided it is registered with the Juvenile Justice system Coordination Centre.

2 – The activity undertaken shall not exceed sixty hours, distributed over a period of three months.

3 – Community work may be undertaken on weekends or holydays.

4 – The provisions of paragraphs 3 and 4 of article 28 shall be correspondingly applicable.

#### Article 30

##### Imposition of rules of conduct

1 – The measure of imposition of rules of conduct is aimed at creating or strengthening conditions enabling the behaviour of the child to be more adequate to the juridical rules and values essential to life in society.

2 – The following rules of conduct may, among others, be imposed, followed by the obligation of:

- a) Not to patronise certain places;
- b) Not to be in the company of certain people;
- c) Not to take alcoholic beverages;
- d) To not patronise certain groups or associations;

e) Not to possess certain objects.

3 – The rules of conduct cannot represent abusive limitations and shall not exceed two years.

### Article 31 Imposition of obligations

1 – Imposition of obligations seeks to contribute to improved school results or professional training, to education on his or her rights and duties in society, and to the development of the personality of the child.

2 – The imposition of obligations may consist in the child:

- a) Attending an education establishment in which he or she shall be subject to control of attendance and school results;
- b) Attending a professional training centre or undergoing a professional training, even if a not certified one;
- c) Submitting himself or herself to medical treatment programs;

3 – Submission to treatment programs shall notably aim treatment for the following conditions:

- a) Alcohol dependency;
- b) Usual consumption of stupeficients;
- c) Infecto-contagious or sexually transmitted diseases;
- d) Mental disorder.

4 – In all cases, the judge shall seek the approval of the child for the treatment program, with the consent of the child being necessary where his or her age is above 14 years.

5 – The provisions of article 30.3 shall be correspondingly applicable.

### Article 32

## Participation in training programs

1 – The measure of participation in training programs shall mean participating in programs in the following areas:

- a) Handicraft;
- b) Sexual education;
- c) Road traffic education;
- d) Professional guidance;
- e) Environmental Protection;
- f) First aid;
- g) Agriculture;
- h) Fisheries;
- i) Information Technology;
- j) Other training programs adapted to the personal reality of the child and likely to contribute to his or her civic and professional development.

2 – The duration of this measure shall not exceed 12 months, to be certified by a certificate of attendance to be attached to the personal file of the child with the Coordination Centre, a copy of which shall be forwarded to the Public Prosecution.

3 – Exceptionally, and in order to enable the implementation of the measure, the court may decide that the child reside with an idoneous person or at an open institution not depending on the Ministry of Justice that provides the necessary accommodation facilities for attending the program.

1 – The measure of educational follow-up shall consist in the implementation of a personal educational project covering the areas of intervention determined by the court.

2 – The court may impose a child under this measure to observe rules of conduct or obligations, including the attendance of training programs.

3 – The personal educational project shall be prepared by the Technical Team and shall be subject to judicial approval.

4 – The Technical Team, in partnership with the training entities and the social reintegration services, shall have the responsibility to supervise, guide and provide support to the child during the implementation of the personal educational project.

5 – This measure shall have a minimum duration of three months and a maximum duration of two years.

#### Article 34

##### Confinement under open and semi-open regimes

1 – Confinement in an educational centre under open and semi-open regimes shall consist in the child remaining, where the court so decides, in an educational centre or in a community residence belonging to a religious or non-religious institution registered with the Juvenile Justice System Coordination Centre in accordance with criteria determined by the latter.

2 – The measure of confinement in open and semi-open regimes shall be subject to follow up by the Technical Team, which shall submit quarterly reports, as determined by the court, containing also the information provided by the centre or by the community residential unit on the behaviour and development of the child under its custody.

#### Article 35

##### Confinement

1 – The measure of confinement aims at enabling the child, through his or her temporary removal from his or her habitual environment and the use of pedagogic programs and methods, to acquire legal values as well as resources enabling him or her to lead his or her future life in a socially and juridically responsible manner.

2 – The measure of confinement under open, semi-open, and closed regimes shall be implemented in an educational centre classified with the corresponding functioning regime and degree of openness to the outside world, to be defined in a specific statute and applied on the basis of the criteria contained in this article.

3 – Confinement under semi-open regime shall be applicable where the child has committed an offense qualified as a crime against persons corresponding to an abstractly applicable maximum penalty of imprisonment exceeding three years or where the child has committed two or more offenses qualified as a crime corresponding to an abstractly applicable maximum penalty exceeding three years.

4 – Confinement under closed regime shall be applicable where the following pre-conditions are verified cumulatively:

a) The child has committed an offense qualified as a crime corresponding to an abstractly applicable maximum penalty of imprisonment exceeding five years or where the child has committed two or more offenses against persons qualified as crimes corresponding to an abstractly applicable maximum penalty of imprisonment exceeding three years; and

b) The child is above 14 years of age at the date the confinement measure is applied.

#### Article 36

##### Duration of confinement

1 – Confinement under open and semi-open regimes shall have a minimum duration of three months and a maximum duration of two years.

2 – Confinement under closed regime shall have a minimum duration of six months and a maximum duration of two years, save the provisions of paragraph 3 below.

3 - Confinement under closed regime shall have a maximum duration of three years where the child has committed an offense qualified as a crime corresponding to an abstractly applicable maximum penalty of imprisonment exceeding eight years, or two or more offenses qualified as a crime against persons corresponding to an abstractly applicable maximum penalty of imprisonment exceeding five years.

CHAPTER III  
Regimes of the tutelary measures

Article 37  
Non-accumulation

1 – Tutelary measures shall not be applied cumulatively to the same child for the same offense.

2 – Deprivation of the right to drive motorcycles or to obtain permission to drive motorcycles may be applied cumulatively with another measure.

Article 38  
Economic benefits or community work

1 – Where economic benefits or community work is applied, the court shall, in its decision, determine:

- a) The modality of the measure;
- b) Depending on the case, the amount of, and the manner in which the economic benefit or the community work will be provided, including its duration and form;
- c) The manner in which the implementation of the tutelary measure shall be followed up by the Technical Team.

Article 39  
Imposition of obligations, participation in training programs and educational follow up

1 – Before applying measures relating to imposition of obligations and participation in training programs that include obligations, the court may request the Juvenile Justice System Coordination Centre to provide information on institutions or entities in which the child shall serve the measures applied, including their respective programs, timetables, conditions of attendance and available vacancies.

2 – The Juvenile Justice System Coordination Centre shall provide the court with such information within 20 days.

## Article 40

### Participation of the community in the implementation of the measures

- 1 – Whenever deemed possible and appropriate for educational purposes, the court shall associate the implementation of the non-institutional tutelary measures to the parents or other relevant persons in the community in which the child is inserted, irrespective of whether these people are related or not related to the child.
- 2 – The court shall delimitate the collaboration of the persons referred to in the preceding paragraph as regards services and entities with the responsibility to follow up and ensure the implementation of the measures with a view to guaranteeing the combination of efforts.
- 3 – The Technical Team shall follow up the implementation of the tutelary measures.

## CHAPTER IV

### Interactivity between penalties and tutelary measures

## Article 41

### Cumulative implementation of tutelary measures and penalties

- 1 – A child subject to a tutelary process who is simultaneously a defendant in a criminal proceeding shall serve cumulatively the tutelary measures and the penalties applied to him or her whenever the tutelary measures and the penalties are concretely compatible.

## Article 42

### Sentencing to effective imprisonment

- 1 – Implementation of tutelary measures shall cease where a youth above 16 years of age is sentenced to a penalty of effective imprisonment, save the provisions of paragraph 2 below.
- 2 – In case of measures of admonition and of reparation of the victim in the form of economic compensation or economic benefits in favour of the community, their implementation shall not cease with the sentencing to a penalty of effective imprisonment if the concrete situation of the youth during the implementation of

the penalty affords him or her economic possibilities that enable him or her to meet the charges resulting from the accomplishment of the measures.

3 – Where the implementation of the tutelary measure ceases pursuant to paragraph 1 of this article, the implementation of the penalty of imprisonment shall commence once the sentencing decision becomes final and unappealable.

### Article 43

Sentencing to confinement in a detention centre, placement on a free-days basis in a detention centre or placement in a detention centre under semi-confinement regime

1 – Where a penalty of confinement in a detention centre, or a penalty of placement on a free-days basis in a detention centre, or a penalty of placement in a detention centre under a regime of semi-confinement is applied to a youth above 16 years of age serving a tutelary measure of confinement, the execution of the referred penalties shall commence after the youth has served the tutelary measure.

2 – Where a non-institutional tutelary measure is applied to a youth above 16 years of age serving a penalty of confinement in a detention centre, or a penalty of placement on a free-days basis in a detention centre, or a penalty of placement in a detention centre under a semi-confinement regime and the tutelary measure applied is incompatible with the penalty being served, the non-institutional tutelary measure shall be executed after the latter penalty has been served.

3 – Where a tutelary measure of confinement under an open or semi-open regime is applied to a youth above 16 years of age serving a penalty of confinement in a detention centre, or a penalty of placement on a free-days basis in a detention centre, or a penalty of placement in a detention centre under a semi-confinement regime, the execution of the tutelary measure shall commence after the penalty has been served.

4 – Where a tutelary measure of confinement under a closed regime is applied to a youth above 16 years of age serving a penalty of confinement in a detention centre, or a penalty of placement on a free-time basis in a detention centre, or a penalty of placement in a detention centre under a semi-confinement regime, the penalty shall cease at the moment when the time remaining on the penalty is equal to, or less than, the duration of the tutelary measure the execution of which commences at that moment.

5 – Tutelary measures contained in this article shall be served in detention centres to be established specifically for youths above 16 years of age or, where this is not possible, in sections of the prisons specifically assigned to that end.

#### Article 44

#### Sentencing to a fine, community work, or suspension of execution of prison penalty

1 – Where a penalty of fine, or of community work, or a suspension of the execution of the penalty of imprisonment is applied to a youth above 16 years of age serving a tutelary measure of confinement, the court passing the sentence may suspend the penalty under the terms and circumstances provided for in article 67 and subsequent articles of the Criminal Code.

2 – In the cases provided for in the preceding paragraph, the court passing the sentence shall determine or alter the duties, rules of conduct or obligations, respectively, with a view to adapting them to the concrete situation of the youth.

#### Article 45

#### Preventive detention

1 – Application of preventive detention to a youth above 16 years of age shall not prejudice the cumulative execution of a non-institutional tutelary measure he or she is serving or that is applied to him or her as long as the non-institutional tutelary measure is not concretely incompatible with imprisonment.

2 – It shall be incumbent upon the judge ordering the preventive detention to concretely determine the compatibility of the cumulative execution of the non-institutional tutelary measure with the preventive detention.

### TITLE III

#### Courts

### CHAPTER I

#### Court

#### Article 46

#### Competence

1 – It shall be incumbent upon the family and children court:

- a) To undertake the acts relating to the inquiry;
- b) To examine acts qualified by the law as crimes committed by children aged between 12 and 16 years old, with a view to applying a tutelary measure;
- c) To execute and review tutelary measures;
- d) To declare the cessation or extinguishment of tutelary measures;

2 – Competence of the family and children court shall cease where:

- a) A penalty of effective imprisonment has been applied under a criminal proceeding for a crime committed by a youth aged between 16 and 18 years old;
- b) The youth reaches 18 years of age before the date the first instance court decision has been passed.

3 – In the cases provided for in the preceding paragraph, the proceeding shall no longer be initiated or, where it has already initiated, it shall be shelved.

4 – Until such a time as the family and children court is established, district courts shall have jurisdiction to examine the facts and apply tutelary measures.

#### Article 47 Territorial competence

1 – Competence to examine the facts and to apply tutelary measures shall rest with the court located in the area of residence of the child at the moment the proceeding has been filed.

2 – Where the residence of the child is unknown, the competent court shall be that of the residence of the holders of parental power.

3 – In the cases not provided for in the preceding paragraphs, the competent court shall be that of the place where the offense was committed or, where such place has not been determined, that of the place where the child is found.

#### Article 48 Urgent steps

The court of the place where the offense was committed and that of the place where the child is found shall take the urgent steps.

#### Article 49

##### Individual nature of the proceeding

1 – Without prejudice to the provisions of paragraph 2 below, one single proceeding shall be organised for each child, even where the child has been charged of committing several offenses occurred in the same or in different districts.

2 – The provisions of the preceding paragraph shall only apply in relation to proceedings that are simultaneously under inquiry, at the jurisdictional stage, or at the execution stage.

#### Article 50

##### Subjective connexion

1 – A single proceeding shall be organised where several children have committed one or diverse offenses, in co-participation or reciprocally, on the same occasion or at the same place, with some of the offenses being the cause or the effect of the other offenses or aimed at hiding the other offenses.

2 – In the case referred to in the preceding paragraph, the competent court shall be the court of the residence of the higher number of children and, if in equality of circumstances, the court in which the first proceeding was filed.

3 – The provisions of paragraph 2 of the preceding article shall be correspondingly applied.

#### Article 51

##### Separation of proceedings

The judiciary authority shall determine the separation of proceedings where the celerity of the process or the interest of the child so justifies.

#### Article 52

##### Attachment of proceedings

1 – Where several proceedings exist they shall be attached to the proceeding that was first established.

2 – Where several proceedings are prepared in relation to the same child, the proceedings, after a final court decision has been passed, shall be attached to the proceeding the final decision of which has first been passed.

### Article 53

#### Competent court for executing the measure

Execution of tutelary measures, including review thereof, shall be the competence of the court applying them.

### Article 54

#### Execution

1 – Execution of tutelary measures shall take place in the framework of the same proceeding, before the judge of the family and children court or of a court specifically established for that purpose.

2 – It shall be incumbent upon the judge:

a) To take such steps as deemed necessary to the effective execution of the tutelary measures applied;

b) To order the procedures deemed adequate in the face of events that may compromise the execution of the tutelary measures and that come to his or her knowledge;

c) To decide on the review of the tutelary measures applied;

d) To follow up on the development of the educational tutelary process of the child through the reports prepared by the Technical Team;

e) To decide on the appeals filed relating to the execution of the tutelary measures referred to in article 144;

f) To decide on the requests and complaints presented regarding any circumstances of the execution of the measures likely to jeopardise the rights of the children;

g) To conduct visits to the educational centres, public or private, and establish personal contacts with the children accomplishing the tutelary measures applied to them.

## CHAPTER II Public Prosecution

### Article 55 Competence

It shall be incumbent upon the Public Prosecution:

1 – To lead the inquiry;

b) To promote the steps deemed convenient and, where necessary, file appeals in defense of the law and the interest of the children;

c) To provide, on a mandatory basis, opinions on appeals, requests and complaints filed or presented pursuant to the law;

d) To provide, on a mandatory basis, opinions on the reports presented by the Technical Team on the educational follow up or on confinement in educational centres;

e) To conduct visits to educational centres and establish personal contacts with the children accomplishing the tutelary measures applied to them.

## TITLE IV Tutelary process

### CHAPTER I General principles

#### Article 56 Secrecy

1 – Tutelary proceedings shall remain in secrecy until such time as the order is issued indicating the date for the preliminary hearing, or for the hearing, where the first is not applicable.

2 – Publicity of the proceeding shall take place with due respect for the personality of the child and his or her private life. Where possible, his or her identity shall be preserved.

#### Article 57 Mediation

For the purposes of achieving the objectives of the proceedings in the form provided for in this law, mediation may be chosen as an alternative way of settling conflicts.

#### Article 58 Urgent proceedings

1 – Proceedings relating to a child subject to a precautionary measure of custody in a public or private institution, in an educational centre, or in confinement shall take their course during judicial holidays.

2 – Where a delay in the proceeding may be prejudicial to the child, the court shall decide, by a substantiated order, that the proceeding be considered urgent and take its course during judicial holidays.

#### Article 59 Children's rights

1 – Participation of a child in any procedural step, even where under detention or custody, shall take place in such a manner as to enable him or her to feel at ease with himself or herself and with the least degree of constraint.

2 – In any stage of the proceeding, the child shall specifically have the following rights:

- a) The right to be heard, officiously or at his or her own request, by the judicial authority;
- b) The right to not to answer to questions made by any entity on the acts charged against him or her or on the contents of the statements made on such charges;

- c) The right to not to answer about his or her conduct, character or personality;
- d) The right to be assisted by a defense attorney in all procedural acts in which he or she takes part and, where in detention, the right to communicate with his or her defense attorney;
- e) The right to be accompanied by the Technical Team in all procedural acts. Youths shall have this same right whenever so requested and the Public Prosecution so determines;
- f) The right to be accompanied by his or her parents, legal representative or whoever has his or her *de facto* custody, save where there is a decision based on his or her interest or on the needs of the proceeding;
- g) The right to offer evidence and request diligences;
- h) The right to be informed of his or her rights;
- i) The right to appeal, pursuant to this law, against the decisions not favouring him or her;
- j) The right to express himself or herself in his or her own language and, where necessary, to request the presence of a translator;

3 – Under no circumstance shall the child protected by this law take an oath.

4 – The rights referred to in subparagraphs f) and h) of paragraph 2 may be exercised on behalf of the child by the parents, legal representative, or whoever has the *de facto* custody, or defense attorney.

#### Article 60 Defense attorney

1 – A child, his or her parents, the legal representative or whoever has his or her the *de facto* custody may engage an attorney or request the appointment of a Public Defender at any stage of the proceeding.

2 – Where no attorney has been engaged or appointed, the judiciary authority shall appoint a public defender in the order in which it determines the hearing or the detention of the child.

Article 61  
Hearing

- 1 – Hearing of a child shall always be conducted by the judiciary authority.
- 2 – The judiciary authority may nominate a member of the Technical Team or any other person specifically qualified to follow up the child in a procedural act.

Article 62  
Unimputability on account of mental disorder

- 1 – Where, at any stage of the proceeding, the child is found to suffer from a mental disorder preventing him or her from understanding the purpose of the tutelary intervention, the proceeding shall be shelved.
- 2 – In the case provided for in the preceding paragraph, the Public Prosecution shall refer the child to the health services.
- 3 – The order for shelving the proceeding shall be made known to the child, his or her parents, the legal representative or whoever has his or her *de facto* custody, and the victim.

CHAPTER II  
Identification, detention and precautionary measures

SECTION I  
Identification

Article 63  
Formalities

Procedures to identify the child shall comply with the formalities provided for in the criminal code, with the following specificities:

- a) Where it is impossible to present any document and identification, the criminal police body shall immediately undertake to communicate with the parents, the legal representative, or the person in charge of the child or of the youth below 18 years of age;

b) Identification of the child shall preferably be made in the presence of the Technical Team, which shall be notified by the criminal police body;

c) No child shall remain in a police post for purposes of identification for more than five hours.

## SECTION II Detention

### Article 64 Prerequisites

1 – Detention of a child shall take place:

a) In case of *flagrante delicto* so that, at the earliest delay, without ever exceeding forty-eight hours, he or she can appear before a judge for interrogation or be placed under a precautionary measure;

b) To ensure his or her immediate presence or, where this is not possible, his or her presence at the earliest delay, without ever exceeding twelve hours, before a judge, in order to be interrogated, or to be placed under a precautionary measure, or in a procedural act presided over by a judiciary authority;

c) To be subjected to medical examination in case of suspicion of a psychic unimputability or of any other health disorder likely to be identified at the moment of detention.

d) Detention outside of *flagrante delicto* shall only occur where the appearance of the child cannot be ensured by the parents, the legal representative or whoever has his or her *de facto* custody and shall take place by order of a judge, at the request of the Public Prosecution during the inquiry and, thereafter, even officiously.

3 – The Technical Team shall be called to follow up the detention of the child where shall a measure is deemed necessary.

4 – The Technical Team may be called upon to follow up on the detention of the child in case its presence is justified.

### Article 65

### *Flagrante delicto*

1 – Pursuant to this law, a child may only be detained in *flagrante delicto* for committing an offense qualified as a crime punishable with penalty of imprisonment, without prejudice to the provisions of paragraph 2 below.

2 – Detention shall only be maintained where the child has committed an offense qualified as a crime against persons corresponding to an abstractly applicable maximum penalty of imprisonment exceeding three years or has committed two or more offenses qualified as crimes corresponding to an abstractly applicable maximum penalty exceeding three years the prosecution of which does not depend on presentation of complaint or on private accusation.

3 – In all other cases not provided for in the preceding paragraph only the identification of the child shall take place.

### Article 66 Communication

1 – Save where a risk exists to render it unviable, detention outside of *flagrante delicto* shall be preceded by a communication to the parents, legal representative or whoever has the *de facto* custody of the child.

2 – Without prejudice to the provisions of the preceding paragraph, any detention shall be communicated, as soon as possible and through the most rapid means, to the parents, the legal representative or whoever has the *de facto* custody of the child.

### Article 67 Custody of the child

1 – Where no possibility exists to present the child immediately to the judge, the child shall be entrusted to the parents, the legal representative, whoever has his or her the *de facto* custody or the institution where the child is confined.

2 – Where entrusting the child pursuant to the provisions of the preceding paragraph is not sufficient to ensure his or her presence before the judge or to ensure the purposes of the detention, the child shall be taken to the closest educational centre or to specific and adequate facilities of a police entity, and he or

she shall receive health care as well as medical, psychological, and social assistance appropriate for his or her age, sex and individual conditions.

3 – A child entrusted pursuant to the preceding provisions shall be presented to the judge within the delay and for the purposes laid down in subparagraph a) of article 64.1.

### SECTION III Precautionary measures

#### Article 68 Adequation and proportionality

Precautionary measures shall be adequate to the preventive or procedural demands required by the case and shall be proportional to the seriousness of the offense committed and the applicable tutelary measures.

#### Article 69 Type of precautionary measures

The following are precautionary measures:

- a) Handing over of the child to the parents, the legal representative, whoever has his or her *de facto* custody, or any idoneous person, with obligations being imposed on the child;
- b) Custody of the child entrusted to a public or private institution;
- c) Custody of the child entrusted to an educational centre.

#### Article 70 Prerequisites

1 – Applying precautionary measures presupposes:

- a) The existence of circumstantial evidence of the offense committed;
- b) Previsibility of application of a tutelary measure;

c) Substantiated danger of evasion or of commission of other offenses qualified by law as crimes.

2 – In the case provided for in the preceding paragraph, the measure shall be executed in a semi-open educational centre where the child is below 14 years of age. Where the child is equal to or above 14 years of age, the judge shall order the execution of the measure in a semi-open or in a closed educational centre.

#### Article 71 Formalities

1 – Precautionary measures shall be applied by order of the judge, at the request of the Public Prosecution during the inquiry and, subsequently, officiously.

2 – Application of precautionary measures shall require prior hearing of the Public Prosecution where the latter is not the entity requesting the application of precautionary measure, of the defense attorney, and, whenever possible, of the parents, the legal representative or whoever has the *de facto* custody of the child, and the Technical Team.

3 – The order of the judge referred to in paragraph 1 shall be communicated to the parents, the legal representative or whoever has the *de facto* custody of the child.

#### Article 72 Duration

1 – The measure of placing a child under the custody of an educational centre or in a place determined by the judge shall not exceed six months, renewable up to a maximum additional period of three months in cases of special complexity duly substantiated.

2 – The duration of the other precautionary measures shall be twelve months until the decision of the first instance court is passed and shall be of a similar period of time until that decision becomes final.

#### Article 73 Review

1 – Officiously or at request, the precautionary measures shall be substituted if the judge concludes that the measure applied does not meet the intended objectives.

2 – The precautionary measures shall be reviewed officiously every two months.

3 – Unless they are the requesting entities, the Public Prosecution and the defense attorney shall be heard for the purposes of the review.

#### Article 74 Cessation

Precautionary measures shall cease immediately after the prerequisites for their application are no longer in place.

#### Article 75 Request for information

In order to substantiate decisions on substitution and cessation of measures relating to a detention in a given educational centre, the judge, officiously or at request, may request information from the Technical Team of the district in which the educational centre operates or from the social reinsertion services.

#### Article 76 Extinguishment

1 – Precautionary measures shall extinguish:

- a) When their duration elapses;
- b) Following suspension of the proceeding;
- c) Following shelving of the proceeding;
- d) Following the final decision of the court;

2 – Precautionary measures shall also extinguish where the decision of the first instance court, even before it becomes final, has not applied any measure or has applied a measure that is less serious than the measure of educational follow up.

### CHAPTER III Evidence

Article 77  
Object of proof

Object of proof shall consist of juridically relevant facts enabling the verification of the existence or non-existence of the fact committed, the evaluation of the need for a tutelary measure and the determination of the measure to be applied.

Article 78  
Statements and inquiries

1 – The parents, the legal representative or whoever has the *de facto* custody of the child shall provide statements, but they shall not be bound by oath.

2 – Inquiry on acts relating to the personality and the character of the child, including on his or her personal conditions and on his or her previous and subsequent conduct, shall be permitted both for evidence of the act committed and for evaluating the need for a tutelary measure and for determining the measure to be applied.

3 – Where they are below 16 years of age, victims and witnesses shall be inquired by the judiciary authority.

4 – Victims shall be inquired when the judiciary authority, officiously or at request, deems it convenient for the good decision of the case.

Article 79  
Examinations and expert opinions

1 – Examinations and expert opinions shall be urgent in character and, save where a different delay is required by their nature, they shall be presented within a maximum period of two months.

2 – Expert opinions on the child may be undertaken under an ambulatory regime or under a regime of total or partial confinement and shall be authorised by judge order.

3 – Confinement for conducting expert examinations shall not exceed two months, renewable for one month, by a judge order, in case of duly substantiated special complexity.

Article 80  
Confrontation

Evidence by confrontation in which the child intervenes shall be ordered by the judiciary authority and shall take place in his or her presence.

Article 81  
Information and technical report

1 – Information and the technical report prepared by the Technical Team may be used as means for obtention of evidence.

2 – The purpose of the information and the technical report is to assist the judiciary authority in knowing the personality of the child, including his or her conduct and socio-economic, educational and family insertion.

3 – The judiciary authority may request complementary information from:

- a) Members of the Technical Team, whenever it requires updated information or information that is complementary to that contained in the technical report;
- b) The social reinsertion services or other public or private services;
- c) Complementary information should be presented within 15 days, thereby enabling the judge to obtain clarifications from the subscribers of the technical report without the latter being bound by oath.

CHAPTER IV  
Inquiry

SECTION I  
Opening of inquiries

Article 82  
Denunciation

1 – Save the provisions of paragraph 2 below, any person may denounce to the Public Prosecution or to a criminal police body any act qualified by law as a crime committed by a child criminally unimputable aged between 12 and 16 years.

2 – Where the act is qualified as a crime the prosecution of which is conditional upon the filing of a complaint, legitimacy to denounce it shall rest with the victim.

3 – Denunciation shall not be subject to a specific formalism. However, whenever possible, it shall indicate the means of proof.

4 – Denunciation presented to a criminal police body shall be transmitted as soon as possible to the Public Prosecution.

### Article 83 Mandatory denunciation

1 – Without prejudice to the provisions of paragraph 2 of the preceding paragraph, denunciation shall be mandatory:

- a) For the criminal police bodies as regards offenses that come to their knowledge;
- b) For functionaries, as regards offenses that come to their knowledge in the exercise of their functions and by force of such functions;
- c) Denunciation or transmission of the denunciation made by a criminal police body shall, whenever possible, be accompanied by available information on the prior conduct of the child and on his or her family, educational and social status. Where this information cannot accompany the denunciation, the information shall be presented within a maximum period of eight days.

### Article 84 Opening of inquiries

Once the notice of the act has been obtained, the Public Prosecution shall determine the opening of the inquiry.

## SECTION II Formalities

### Article 85 Direction, object and delay

1 – The inquiry shall be led by the Public Prosecution, with the assistance of criminal police bodies and the Technical Team, and it may also count on the assistance of the social reintegration services.

2 – The inquiry shall comprise the set of steps aimed at investigating the existence of the act qualified by the law as a crime and establishing the needs of education of the child on his or her rights and duties in society in order to decide on the application of a tutelary measure.

3 – The objective of the assistance from the Technical Team and the social reintegration services is to provide the methods of obtaining evidence referred to in article 81.

4 – The delay for the completion of the inquiry shall be three months and, depending on the complexity of the case, such delay may be extended for an additional period of three months following a substantiated order of the judge.

#### Article 86 Cooperation

The Public Prosecution shall take the necessary steps and shall ensure the means of proof deemed necessary for conducting the inquiry and may request the services and information it deems convenient from any public or private entity.

#### Article 87 Hearing of the child

1 – Once the inquiry is open, the Public Prosecution shall hear the child as soon as possible.

2 – The hearing may be dispensed with in case of *in limine* shelving of the proceeding. It may also be postponed in the interest of the child.

#### Article 88 *In limine* shelving

1 – The Public Prosecution shall shelve the inquiry *in limine* where the act having been qualified as a crime punishable with a penalty of imprisonment not exceeding one year, and in the face of the information referred to in paragraph 2 of article 83, the application of a tutelary measure reveals itself to be unnecessary taking into

account the reduced seriousness of the offenses committed, the previous conduct of the child, and his or her family, educational and social insertion.

2 – Where the crime is that of consumption of stupefacients or psychotropic substances, the Public Prosecution shall shelve the inquiry *in limine* and, where applicable, shall refer the child to appropriate services for support and treatment, provided it has no knowledge of the commitment or of the danger of commitment of an offense qualified as a crime of a different kind.

3 – The order to shelve the inquiry shall be communicated to the child and respective parents, to the legal representative, or to whoever has the *de facto* custody the child.

4 – The order to shelve the inquiry shall also be communicated to the victim.

#### Article 89 Services

The inquiry shall consist of the services deemed necessary and useful for the purposes of the proceeding.

#### Article 90 Procedural discipline

1 – The acts of inquiry shall take place in accordance with the order considered by the Public Prosecution to be the most convenient.

2 – The Public Prosecution shall dismiss by order any acts that are not relevant to the objective of the inquiry or that serve solely to delay the development of the proceeding.

### SECTION III Suspension of the proceeding

1 – Where the need exists for a tutelary measure, the Public Prosecution may decide to suspend the proceeding when, the act having been qualified as a crime punishable with penalty of imprisonment not exceeding five years, the child presents a plan of conduct that shows that he or she is ready to prevent the commitment in the future of any act qualified by the law as a crime.

2 – The Public Prosecution shall refer the child, his or her parents, legal representative or whoever has the *de facto* custody of the child to the Technical Team for the preparation and execution of the conduct plan.

3 – Whenever possible, the plan of conduct shall also be subscribed to by the parents of the child, the legal representative or whoever has the *de facto* custody of the child.

4 – The plan of conduct may consist in the following forms:

- a) Reparation of the victim, pursuant to article 28;
- b) Provision of economic benefits or of community work, pursuant to article 29;
- c) Imposition of rules of conduct or obligations, pursuant to articles 30 and 31;
- d) Pursuance of certain objectives of personal training in the academic or professional areas or in the occupation of free times, pursuant to article 32;

5 – The parents, the legal representative, or whoever has the *de facto* custody of the child shall issue their opinions on the plan of conduct where they have not subscribed to it.

6 – Suspension of the process shall take place for the maximum period of one year and shall interrupt the inquiry.

#### Article 92 Term

1 – Where, during the period of suspension, the Public Prosecution finds that the plan of conduct is not being adhered to, it shall determine that the process be resumed.

2 – Once the suspension period has elapsed and the plan of conduct has been complied with, the Public Prosecution shall shelve the inquiry; where this is not the case, the inquiry shall pursue with the necessary diligences.

3 – Where, during the suspension period, information is received of an act qualified as a crime committed by the child, the denunciation or complaint shall be

attached to the records and the inquiry shall proceed, and the object of the process shall be extended to the new acts.

4 – The provisions of article 88.4 shall be correspondingly applicable.

## SECTION IV Mediation

### Article 93 Basis

1 – For the purposes of the process, and with the effects provided for in the present law, mediation shall be accepted for some semi-public crimes against persons or against property the prosecution of which is conditional upon filing of a complaint.

2 – Irrespective of the type of crime, mediation shall be barred in the cases in which:

- a) The type of crime corresponds to an abstractly applicable maximum penalty of imprisonment exceeding five years;
- b) The proceeding relates to a crime against sexual freedom or sexual self-determination;
- c) The proceeding relates to a crime of peculation, corruption or influence peddling;
- d) The victim is below 16 years of age.
- e) A summary proceeding is applicable.

3 – Mediation shall take place where it has been suggested by the Public Prosecution if it is its understanding that, in this way, the objectives of prevention and awareness of the act committed are achieved more easily, or at the initiative of the parties, their parents, legal representative, whoever has the *de facto* custody of the child, or defense attorney.

### Article 94 Forms of mediation

This law provides for the following forms of mediation:

- a) Mediation Panel;
- b) Community Traditional Practice.

#### Article 95 Composition of the Mediation Panel

1 – The Mediation Panel shall be composed of a mediator who gathers the consensus of the parties, the Defender or Attorney, and at least one member of the Technical Team.

2 – The child or his or her legal representative shall have the right to request the presence of a representative of his or her community to follow up the Mediation Panel.

#### Article 96 Members of the Community Traditional Practice of Mediation

1 – The Community Authority in the Community Traditional Practice of Mediation shall be represented by the Village Chief or the Suco Chief of the place where the mediation takes place.

2 – In addition to the representatives referred to in the preceding paragraph, the mediation shall also comprise:

- a) A person recognised by the parties or their families as the Village Counselor;
- b) The victim and his or her relatives or representatives;
- c) The child and his or her relatives or representatives.

#### Article 97 Conditions for mediation

1 – In order for the mediation to take place in the educational tutelary proceeding, the following conditions shall be met:

- a) That the crime is subject to a filing of a complaint by the victim;
- b) That there is an informed consent of the victim, particularly on the consequences resulting from him or her desisting from the right to file a complaint;
- c) That there is an informed consent of the child and of his or her legal representative or whoever has the *de facto* custody of the child;
- d) That there is an indication of the form of mediation chosen, pursuant to article 94.

Article 98  
Term of consent

1 – Opting for the extra-judicial way of settling conflicts through mediation implies formalising the expression of will of the parties in a written and signed document handed over to the Public Prosecution.

2 – The term of consent shall expressly contain:

- a) The free and informed consent of the parties;
- b) The desistance of the right to file a complaint by the victim;
- c) The commitment to submit the agreement for approval by the Public Prosecution within a period of 30 days, on pain of the inquiry being shelved pursuant to subparagraph c), article 102.1;
- d) A criminal clause for the case of non-compliance with the mediation procedure and with the result obtained through it, which will have the value of an enforcement order in a civil proceeding.

3 – The term of consent shall be drafted in a specific form by the Juvenile Justice System Coordination.

4 – In the absence of a specific form, the document may take any free, but shall contain:

- a) The identification of the inquiry or of the proceeding;

- b) The qualification of the intervening parties and of the people in charge of them where they are children;
- c) The items contained in subparagraphs a) to d) of paragraph 2.

#### Article 99 Mediation process

1 – Mediation is an informal and flexible process conducted by an impartial third party, which promotes the approximation of the parties in the attempt to find an agreement that enables the reparation of the damages caused by the unlawful act and contributes towards the restoration of social peace.

2 – Revocation of consent by any of the parties shall be communicated to the Public Prosecution before the end of the period of time referred to in subparagraph c) of article 98.2 so that the inquiry can proceed.

3 – Where no agreement is obtained, or where the mediation process is not completed within 30 days, the parties shall communicate such fact to the Public Prosecution, on pain of the inquiry being shelved, pursuant to subparagraph c) of article 102.1.

4 – Signing of the agreement by the victim is equivalent to him or her desisting from filing a complaint and the signature shall be approved by the Public Prosecution within five days from the date the agreement is handed over to the Public Prosecution.

#### Article 100 Agreement resulting from mediation

1 – The instrument of agreement resulting from the mediation, which may be standardised by the Juvenile Justice System Coordination, shall contain the following elements:

- a) The identification of the parties including name, age and gender;
- b) The identification of the legal representatives of the parties;
- c) The identification of the mediator and other members of the mediation panel or of the community traditional practice;

- d) A summary of the facts and the solution found for the agreement;
- e) The venue, date and signature of the participants.

2 – In the absence of an agreement, a document of tentative agreement shall be submitted to the Public Prosecution containing the elements referred to in the preceding paragraph and narrating the reasons for the lack of consensus. Such document shall be attached to the inquiry, which shall pursue its course.

## SECTION V Closing of the inquiry

### Article 101 Modalities

The Public Prosecution shall close the inquiry either by shelving it or by requesting the opening of the jurisdictional phase.

### Article 102 Shelving

1 – The Public Prosecution shall shelve the inquiry as soon as it comes to the conclusion that:

- a) The alleged act is non-existent;
- b) No sufficient circumstantial evidence exists regarding the commission of the act;
- c) The agreement resulting from the mediation has been approved or the deadline for its submission has elapsed.

2 – The provisions of article 88.4 shall be correspondingly applicable.

### Article 103 Request for opening the jurisdictional phase

Where the proceeding is to proceed, the Public Prosecution shall request that the jurisdictional phase be established.

Article 104  
Requirements of the request

The request for opening the jurisdictional phase shall contain:

- a) The identification of the child, of his or her parents, the legal representative or whoever has the *de facto* custody of the child;
- b) The description of the act, including, where possible, the venue, the time and the respective motivation, as well as the degree of participation of the child;
- c) The juridico-criminal qualification of the act;
- d) An indication of the previous, contemporary or subsequent conduct of the child and of the status of his or her family, including the educational and social insertion of the child, to enable to evaluate his or her personality and the need for applying a tutelary measure;
- e) An indication of the measure to apply or of the reasons for not applying any measure;
- f) The means of proof.

Article 105  
Principle of the separation of proceedings

Civil claims shall be filed in separate before the competent court.

CHAPTER V  
Jurisdictional phase

SECTION I  
Nature and preliminary acts

Article 106  
Nature

1 – Jurisdictional phase shall comprise:

- a) Judicial certification of the facts;
- b) Evaluation of the need to apply tutelary measures;
- c) Determination of the tutelary measure;
- d) Execution of the tutelary measure.

2 – The jurisdictional phase shall be presided over by the judge and shall observe the adversary system.

Article 107  
Initial order

1 – Once the request for opening the jurisdictional phase has been received, the judge shall:

- a) Verify whether there are prior issues preventing him or her from examining the case;
- b) Shelve the proceeding where, the fact having been qualified as a crime punishable with a maximum penalty of imprisonment exceeding three years, he or she agrees with the proposal by the Public Prosecution in the sense that no need exists to apply a tutelary measure;
- c) Indicate the date and time for holding the preliminary hearing where, the application of a non-institutional measure having been requested, the nature and seriousness of the act, the urgency of the case, or the measure proposed justify an abbreviated treatment.
- c) Where no situation referred to in the preceding paragraph has occurred, the judge shall determine the pursuance of the process and shall order the child, his or her parents, or the legal representative and the defense attorney to:
  - a) Request that steps be taken within 10 days;
  - b) Make the allegations within the same period of time or adjourn the allegations for the hearing session;

c) Indicate, within the same period of time, the means of proof to be presented at the hearing;

3 – The contents of article 88.4 shall be correspondingly applicable.

## SECTION II Preliminary hearing

### Article 108 Indication of hearing date

1 – Preliminary hearing shall be scheduled for the date deemed to be the most compatible with the notification of the people who should participate in it.

2 – Where the child is subject to a precautionary measure, the date for the hearing shall be indicated with precedence over any other process.

3 – The order indicating the date for the preliminary hearing shall contain:

a) An indication of the acts charged against to the child and the respective criminal qualification.

b) The prerequisites of the conduct and the personality of the child that justify the application of a tutelary measure;

c) The proposed measure;

d) The indication of the venue, day and time of the hearing;

e) The indication of the defense attorney where no defense attorney has yet been engaged;

4 – The indications contained in subparagraphs a) to c) of paragraph 3 may be adjourned, entirely or in part, for the request for opening the jurisdictional phase presented by the Public Prosecution.

5 – The Public Prosecution shall be notified of the order.

6 – The order, with the request of the Public Prosecution where an adjournment exists, shall also be notified to the child, the parents or legal representative, and the

defense attorney, indicating that the means of proof may be presented in the preliminary hearing.

#### Article 109 Notifications

The order indicating the date for the preliminary hearing shall be notified to the people who should participate in the hearing with a minimum advance notice of ten days.

#### Article 110 Place of hearing and professional garment

1 – The judge may determine officiously or at request that the preliminary hearing take place outside of the court facilities taking into account, notably, the nature and seriousness of the offense as well as the age, personality and physical and psychological conditions of the child.

2 – Magistrates, attorneys and judicial officers shall wear professional garment in the preliminary hearing, save where the judge, officiously or at request, considers that given the nature or the seriousness of the offense, the personality of the child, or the purposes of the tutelary intervention, the use of professional garment is not advisable.

#### Article 11 Restrictions and exclusion of publicity

1 - The judge may, officiously or at request, restrict by a substantiated order the public audience or determine that the preliminary hearing takes place without publicity in order to safeguard the dignity of the people and the public moral or to guarantee the normal functioning of the court.

2 – Restriction or exclusion of publicity intended to guarantee the normal functioning of the court shall comprise the cases where the presence of the public may interfere with the psychological state of the child or with the authenticity of the evidence.

3 – The judge may, officiously or at request, prevent the media by a substantiated order from narrating or reproducing certain offenses or parts of the proceeding or from disseminating the identity of the child, on pain of disobedience.

4 – Reading of the decision shall always be made in public.

Article 112  
Separate hearing

1 – The judge may order the child to be temporarily removed from the place of hearing whenever reasons exist to believe that his or her presence may:

- a) Diminish his or her spontaneity or damage his or her capacity to reconstitute the facts;
- b) Inhibit any participant to tell the truth;

2 – On returning to the place of hearing, the judge shall provide the child with a summary of the developments occurred during his absence.

3 – The judge may hear the people in separate or together.

Article 113  
Audience

1 – The judge shall ensure that the evidence be produced in such a manner as to avoid hurting the feelings of the child or of other children involved and that the course of acts be made accessible to the child or children taking into account their age and the degree of intellectual and psychological development.

2 – For the purposes of the preceding paragraph, the judge may request the assistance of the Technical Team, of medical doctors or psychologists, or of other specialists or of a person of trust of the child.

Article 114  
Organisation and regime of hearing

1 – Preliminary hearings shall be continuous and shall take place without interruption or postponement until its termination, save the necessary suspensions to enable the participants to eat and rest.

2 – In planning the hearing sessions, the age and physical and psychological conditions of the child shall be the object of due consideration.

## Article 115

### Duty to participate and to attend

1 – The participation of the Public Prosecution and the defense attorney in the preliminary hearing shall be mandatory.

2 – The following shall be summoned to participate in the preliminary hearing:

- a) The child;
- b) The parents, legal representative or whoever has the *de facto* custody of the child;
- c) The Technical Team or at least one of the subscribers of the technical report;
- d) The victim;
- e) Any person whose participation is deemed necessary to ensure that the aim of the hearing is achieved.

3 – The judge may, officiously or at request, dispense with the presence of the child or of any other persons or hear them in separate if the interest of the child so justifies.

## Article 116

### Child's appearance before the court

1 – Where the child fails to appear in court the hearing shall be postponed and the parents, the legal representative, or whoever has the *de facto* custody of the child shall present a justification for such non-appearance on the same day specifying the reason for the non-appearance and the estimate duration of the impediment.

2 – Where possible, the justification for the non-appearance of the child in court shall be accompanied by a proof, and a medical certificate shall be required if the reason for the non-appearance is illness.

3 – The evidentiary value of the medical certificate may be challenged by another means of proof.

Article 117  
Compulsory measure

1 – Where it becomes necessary in order to ensure the holding of the hearing, the judge shall issue a warrant of arrest for the child and shall determine the steps deemed necessary so that the hearing takes place within a period not exceeding twelve hours.

2 – The provisions of article 64.2 shall be correspondingly applicable.

Article 118  
Formalities

1 – Once the hearing is open, the judge shall explain the object and the purpose thereof in a simple and clear language that can be understood by the child, taking into account his or her age and degree of development.

2 – Subsequently, where he or she finds the measure proposed by the Public Prosecution to be adequate and reasonable, the judge:

- a) Shall interrogate the child and ask him or her whether he or her accepts the proposal;
- b) Shall hear the parents or the legal representative of the child, the defense attorney, and, where he or she is present, the victim, on the proposal.

3 – Where no consensus has been obtained, the judge may:

- a) Look for consensus around another measure, save the tutelary measure of confinement;
- b) Suggest mediation as alternative, pursuant to the provisions of this law, and suspend the hearing for a period not exceeding 30 days.

4 – Where the agreement of everybody is obtained, the judge shall approve the proposal of the Public Prosecution or apply the measure proposed pursuant to the preceding paragraph.

5 – Where the judge considers that the measure proposed by the Public Prosecution is inadequate or where no consensus exists around such measure, the judge shall determine the presentation of the means of proof presented and:

- a) Shall hand down a decision when he or she considers that the proceeding contains all the elements;
- b) Shall determine the pursuance of the process in other cases.

6 – The decision shall be registered in the minutes.

7 – In case of complexity, a date shall be indicated for the reading of the decision within five days.

#### Article 119 Regime of proof

1 – The court's belief and the reasoning behind its decision shall rely solely on evidence produced or examined during the hearing.

2 – The provisions of the preceding paragraph shall not apply to evidence contained in procedural acts the reading of which during the hearing is allowed pursuant to the articles below.

#### Article 120 Statements and inquiries

1 – The child, his or her parents, the legal representative or whoever has the *de facto* custody of the child shall be heard by the judge.

2 – Where the interest of the child does not advise against, and if requested, the judge may authorise the Public Prosecution and the defense attorney to inquire directly the parents, the legal representative, or whoever has the *de facto* custody of the child.

3 – The witnesses, the experts and the technicians shall be inquired directly by the Public Prosecution and the defense attorney.

4 – The Public Prosecution and the defense attorney may always propose the formulation of additional questions.

Article 121  
Documentation

- 1 – Statements made during the hearing shall be documented in minutes.
- 2 – The judge shall dictate a summary of the statements made, and the Public Prosecution and the defense attorney may request the inclusion in the minutes of any elements deemed necessary to a good decision of the case.

Article 122  
Allegations

- 1 – Once evidence has been produced, the judge shall give thirty minutes each to the Public Prosecution and the defense attorney for allegations. Such period of time may be extended by an additional period of fifteen minutes if the complexity of the case so justifies.
- 2 – The judge may, officiously or at request, hear the child and his or her parents, the legal representative or whoever has the *de facto* custody of the child until such a time as the hearing is terminated.

Article 123  
Decision

- 1 – The decision starts with a report that contains:
  - a) Indications relating to the identification of the child and his or her parents, the legal representative or whoever has the *de facto* custody of the child, and the victim, where there is one;
  - b) The indication of the charges against the child, their qualification, and, where applicable, the proposed tutelary measure.
- 2 – The report shall be followed by the reasoning consisting of the enumeration of the proven and non-proven facts, a statement on their qualification, and a complete and concise exposition of the reasons justifying the shelving of the process or the application of a tutelary measure, indicating the evidence that formed the basis for the court's belief.

3 – The decision shall end with a dispositive part containing:

- a) Applicable legal provisions;
- b) The decision to shelve the process of to apply a tutelary measure;
- c) The nomination of the public or private entities and the Technical Team which will execute the tutelary measure and the respective supervision;
- d) The fate of the items or objects related to the act committed;
- e) The order to forward the bulletins for registry;
- f) The date and signature of the judge.

Article 124  
Nullity of the decision

The following decisions shall be null and void:

- a) A decision that does not contain the elements referred to in paragraph 2 and in subparagraph b) of paragraph 3 of the preceding article;
- b) A decision that applies a tutelary measure based on acts other than those described in the request for establishing the jurisdictional phase or that imply its alteration.

Article 125  
Correction of the decision

1 – The court shall correct the decision officiously or at request whenever:

- a) Outside of the cases provided for in the preceding article, the provisions of article 123 has not been observed entirely or in part;
- b) The decision contains an error, lapse, obscurity or ambiguity the removal of which does not affect its essential content;
- b) Where the appeal has been accepted, the correction shall be made by the competent court to examine the appeal.

3 – The provisions of the preceding paragraphs shall be correspondingly applicable to judicial orders.

#### Article 126 Publicity of the decision

1 – The presence of the child in the session publicizing or reading out the decision shall be mandatory, save where, in the interest of the child, his or her presence is dispensed with.

2 – The presence of the Public Prosecution and the defense attorney shall also be mandatory.

3 – The decision shall be explained to the child.

4 – The reading out of the decision shall be equivalent to its notification.

5 – After reading out the decision, the judge shall deposit it with the court clerk's office, and the court clerk shall mark the date and sign a declaration of deposit.

#### Article 127 Minutes

The minutes of the hearing shall contain:

- a) The place, the date and the time of the opening and closing of the hearing and the sessions that took place;
- b) The name of the judge and the representative of the Public Prosecution;
- c) The identification of the child, the parents, the legal representative, or whoever has the *de facto* custody of the child, and the defense attorney;
- d) The identification of the witnesses, experts, members of the Technical Team and other technicians, interpreters and people who have intervened to provide assistance to the child;
- e) An indication of the evidence produced or examined during the hearing;

- f) The decision to exclude or restrict publicity and the measures taken regarding the hearing of people in separate or the removal of the child from the hearing session;
- g) The requests, decisions and any other indications which, by virtue of law, are to be contained in the minutes;
- h) The signature of the chairperson and the bailiff drafting the minutes.

### SECTION III Hearing

#### Article 128 Notifications

Where, after the preliminary hearing has been held, the proceeding is to proceed, the provisions of article 107.2 shall be correspondingly applicable.

#### Article 129 Vistos

1 – After the necessary steps have taken place, the judge shall indicate a date for the hearing.

2 – Without prejudice to the provisions of subparagraph c) of article 107.2, the child, his or her parents, the legal representative or whoever has the *de facto* custody of the child or the defense attorney shall, within five days from the date of notification of the order indicating the date for the hearing, indicate the means of proof and the list of witnesses, where they exist.

#### Article 130 Regime

1 – Once the hearing is open, the judge shall expose the issues that he or she considers to be relevant for the settlement of the case and shall indicate the ones under dispute.

2 – Subsequently, the judge shall indicate the means of proof to be produced and shall give the floor to the Public Prosecution and the defense attorney to enable them to state whether they have any complementary evidence to present. The judge

shall approve any complementary proof that he or she considers to be necessary to clarify the case.

3 – Evidence shall then be produced, and the judge shall decide, by order, the incidents arising thereof.

### Article 131 Decision

1 – Once the hearing is closed, the judge shall read out the decision.

2 – Where a measure of confinement is applied, the court shall indicate the regime for its execution.

### Article 132 Standard rules

The provisions contained in the preceding section shall apply on a suppletive basis.

## SECTION IV Appeals

### Article 133 Admissibility of appeals

1 – Appeals shall only be allowed in relation to decisions that:

- a) Terminate proceedings;
- b) Apply or maintain a precautionary measure;
- c) Apply or review a tutelary measure;
- d) Refuse impediments moved against the judge or the Public Prosecution;
- e) Order the payment of any monies;
- f) Affect personal or patrimonial rights of the child or of third parties.

2 – The appeal shall be filed with the Court of Appeal that judges definitively *de facto* and by law.

3 – The judge of the appealed court shall determine provisionally the effect of the appeal.

#### Article 134 Limit for filing appeals

1 – The time limit for filing appeals shall be five days.

2 – Where the appeal is filed by a declaration contained in the minutes, the reasoning may be presented within five days from the date of filing the appeal.

#### Article 135 Legitimacy

The following shall have legitimacy to appeal:

1 – The Public Prosecution, even where it is in the interest of the child;

2 – The child, his or her parents, the legal representative or whoever has the *de facto* custody of the child;

3 – Any person defending a right affected by the decision.

#### Article 136 Scope of the appeal

1 – The appeal shall apply to the entire decision.

2 – The appeal filed challenging a matter of fact shall benefit all the children put on trial under the same proceeding.

#### Article 137 Effects of the appeal

1 – During the preliminary examination the rapporteur shall verify whether the affect given to the appeal should be maintained and shall confirm it or alter it, in which case he or she shall determine the necessary steps to be taken.

2 – An appeal filed against a decision to apply or maintain a precautionary measure shall be decided on within a maximum period of 15 days.

## CHAPTER VI Supplementary law

### Article 138 Supplementary law and omissions

1 – The Criminal Procedure Code shall apply supplementarily to the provisions of this law.

2 – In omitted cases the rules of the Civil Procedure Code that are in harmony with the tutelary process shall apply.

## TITLE V EXECUTION OF MEASURES

### CHAPTER I General principles

#### Article 139 Enforceability of the decisions

Execution of the measures provided for in this law may only take place by force of a final decision establishing the applied measure.

#### Article 140 Entities in charge of following up and ensuring execution of tutelary measures

1 – The court's decision shall indicate the public or private entity in charge of following up and ensuring the execution of the applied measure, including the Technical Team in charge of following up the child.

2 – Except the cases where the applied measure is confinement, the court may entrust the public service or any idoneous social solidarity institution, religious or non-religious community residential units, non-governmental organisations, associations, clubs or sport associations, or any other public or private entity or

individual person to follow up the applied measure with a view to ensure its execution.

#### Article 141 Duty to inform

1 – The Technical Team and the entities in charge of following up and ensuring the execution of the measures shall inform the court, pursuant to and with the regularity established in the law or, where the law is silent, established by the court, on the execution of the applied measure and on the development of the educational process of the child. They shall also inform of any circumstance likely to substantiate a review of the applied measures.

2 – The child, his or her parents, the legal representative or whoever has the *de facto* custody of the child shall have access, pursuant to the law, to the information referred to in the preceding paragraph whenever they request and the court so authorizes.

#### Article 142 Child's individual file

1 – Information relating to a child under educational supervision or confined in an educational centre shall be contained in an individual file.

2 – A single file shall be organized for each child.

3 – The file shall always accompany the child in case of his or her transfer to another educational centre.

4 – Access to the individual file of the child shall be reserved to the entities and people provided for in the law, and the judge may determine a restriction to the right of access to the file where the intimacy of the child or of other people is at stake.

5 – The individual files shall mandatorily be destroyed after five years have elapsed from the date the respective youth reach 21 years of age.

#### Article 143 Successive execution of tutelary measures

1 – Where a successive execution of tutelary measures has been determined within the same proceeding, the order in which they shall be executed shall be determined by the court, which, to that effect, may hear the opinion of the Technical Team as well as the opinion of the people, the entities or the services deemed convenient by the court.

2 – In case of successive execution of tutelary measures, the execution shall take place by decreasing order of the degree of seriousness, save where the court is of the opinion that the prior execution of a given measure favors the execution of another applied measure or that the concrete situation and the interest of the child point to the execution of the measures in accordance with a different order.

3 – For the purposes of the preceding paragraph:

a) The execution of an institutional measure shall prevail over the execution of a non-institutional measure, the implementation of which shall be suspended, if applicable;

b) The execution of a measure of confinement of a more restrictive nature shall prevail over a measure of confinement of a less restrictive nature, the execution of which shall be suspended, if applicable.

4 – The degree of seriousness of the tutelary measures shall be inferred by the increasing order of their enumeration in article 21.1 and their individual modalities shall be inferred by the degree of limitation on the autonomy of decision and conduct of life of the child.

#### Article 144

##### Appeals

1 – The child, his or her parents, the legal representative or whoever has the *de facto* custody of the child, as well as the defense attorney, may appeal against any decision made during the execution of a tutelary measure that imposes restrictions higher than those resulting from judicial decision.

2 – The appeal shall be addressed, in writing, to the court with jurisdiction for the execution, which shall make a final decision.

3 – The court may determine a suspensive effect to the appeal with respect to the decisions likely to substantially alter the conditions of execution of the measure.

4 – The appeal shall be decided on within five days from the date of its reception, after hearing the Public Prosecution and the people the court considers necessary.

Article 145  
Extinguishment of the tutelary measures

The competent court for executing the measure shall declare the extinguishment of the measure by notifying in writing the child, his or her parents, the legal representative or whoever has the *de facto* custody of the child, the defense attorney and the entity and people in charge of monitoring and ensuring the execution.

CHAPTER II  
Review of tutelary measures

Article 146  
Prerequisites

1 – Tutelary measures shall be reviewed where:

- a) The execution has become impossible due to a fact not imputable to the child;
- b) The execution has become excessively onerous for the child;
- c) During the execution process the measure has become so inadequate for the child in such a manner that it manifestly frustrates the purpose for which its has been applied;
- d) Continuing to execute the measure has become unnecessary due to educational progress achieved by the child;
- e) The child has violated, in a gross and persistent manner, the duties inherent to the implementation of the measure;
- f) Having been submitted to a tutelary measure, the youth aged over 16 years has committed a criminal offense.

2 – The tutelary measure of confinement shall mandatorily be reviewed for purposes of evaluating the need for its execution where:

- a) The penalty or the tutelary measure is to be executed pursuant to article 43;
- b) A penalty of preventive imprisonment has been applied to a youth above 16 years of age serving a tutelary measure of confinement.

#### Article 147

##### Modalities and periodicity for reviewing tutelary measures

1 – Review shall take place officiously, at the request of the Public Prosecution, the child, his or her parents, the legal representative, or whoever has the *de facto* custody of the child or following proposal made by the Technical Team or the social reintegration services.

2 – Officious review may take place at any time, and it shall be mandatory one year after:

- a) The commencement of the execution of the measure;
- b) The last review;

3 – A measure of confinement on a semi-open and closed regime shall be mandatorily reviewed six months after the commencement of its execution or of its last review.

4 – Review, at request, of tutelary measures may take place at any time, save in the case of confinement.

5 – Review, at request, of confinement may take place three months from the date of commencement of its execution or from the date of the last decision to review.

6 – In case of a review at request of the people referred to in paragraph 1, the judge shall hear the Public Prosecution, the child and the entity in charge of executing the measure, including the Technical Team in case the latter has not requested the review.

7 – In the case provided for in paragraph 2 of the preceding article, the judge shall hear the Public Prosecution, the Technical Team or the social reintegration services, and the child.

8 – The judge shall hear the child whenever he or she finds it convenient.

9. The decision to review shall be notified to the child, his or her parents, the legal representative or whoever has the *de facto* custody of the child, the defense attorney and the entities in charge of executing the measure.

#### Article 148

##### Effects of the review of a non-institutional tutelary measure

1 – When reviewing non-institutional measures for the reasons indicated in subparagraphs a) to d) of article 146, the court may:

- a) Maintain the applied measure;
- b) Modify the conditions for the execution of the measure;
- c) Replace the measure by another, more adequate, equally non-institutional measure as long as such replacement does not represent a higher limitation to the autonomy of decision and conduct of life of the child;
- d) Reduce the duration of the measure;
- e) Terminate the applied measure by declaring its extinguishment.

2 – When reviewing a non-institutional measure for the reasons indicated in subparagraph e) of article 146, the judge may:

- a) Solemnly warn the child of the seriousness of his or her conduct and of the possible consequences resulting thereof;
- b) Modify the conditions of the execution of the measure;
- c) Replace the measure by another, more adequate, equally non-institutional measure;

d) Order the confinement of the child under a semi-open regime for a period of one to four weekends.

3 - The replacement of a measure pursuant to subparagraph c) of paragraph 1 and subparagraph c) of paragraph 2 may be determined for a period of time equal to or shorter than the period of time remaining for serving the replaced measure.

#### Article 149

##### Effects of the review of a measure of confinement

1 – When reviewing a measure of confinement for the reasons indicated in subparagraphs a) to d) of article 146, the court may:

- a) Maintain the applied measure;
- b) Reduce the duration of the measure;
- c) Modify the regime of the execution, establishing a more open regime;
- d) Replace the measure of confinement by any non-institutional measure for a period of time equal to or shorter than the period of time remaining for serving the measure;
- e) Suspend the execution of the measure for a period of time equal to or shorter than the period of time remaining for serving the measure on condition that the child do not commit again any offense qualified as a crime;
- f) Terminate the applied measure by declaring its extinguishment.

2 – When reviewing a measure of confinement in an educational centre for the reasons indicated in subparagraph e) of article 146, the judge may, without prejudice to the provisions of paragraph 3 below:

- a) Solemnly warn the child of the seriousness of his or her conduct and of the possible consequences resulting thereof;
- b) Extend the applied measure, without altering the respective regime, for a period of time not exceeding one sixth of its duration, but never exceeding the maximum legal limit provided for the duration of the measure;

c) Modify the regime of execution by replacing it by another immediately more restrictive measure for the period of time remaining to serve it.

3 – Substitution of the regime of execution pursuant to subparagraph c) of the preceding paragraph may only be determined where, depending on the case, the prerequisites provided for in paragraphs 3 and 4 of article 35 are verified.

4 – The provisions of paragraph 1 shall be applicable with the necessary adaptations to the cases of mandatory review of the measure referred to in article 146.2.

### CHAPTER III

#### Rules for the execution of non-institutional measures

##### Article 150

##### Admonition

1 – Admonition shall be executed immediately where the interested parties have renounced to their right to appeal, or within a period of eight days from the date of the final decision.

2 – Admonition shall take place in the presence of the defense attorney, the child, the Public Prosecution and of at least one member of the Technical Team, and the judge may authorize the presence of other people in case he or she considers it to be convenient.

3 – The parents of the child, the legal representative, or whoever has the *de facto* custody of the child may be present, save where it is the understanding of the judge that it would be against the interest of the child.

##### Article 151

##### Reparation of the victim and undertaking of economic benefits

1 – Where a measure of reparation of the victim is applied in the modalities provided for in subparagraphs b) and c) of article 28.1, the court may entrust the Technical Team or the social reintegration services to follow up the execution of the measure.

2 – Where a measure of undertaking economic benefits or community work is applied, the court may entrust the Technical Team or the social reintegration

services to follow up the execution of the measure whenever such follow up cannot be adequately ensured by the entity receiving the economic benefit or the task.

## Article 152 Educational follow up

1 – Within three days from the date of the final decision applying the measure of educational follow up, the court shall notify the Technical Team and the social reintegration services and shall forward a copy of the elements necessary for the execution of the measure.

2 – The Technical Team shall prepare the personal educational project in coordination with the social reintegration services and shall forward it to the court within a period not exceeding one month for approval.

3 – The child and his or her parents, the legal representative or whoever has the *de facto* custody of the child shall be encouraged to participate in the preparation of the personal educational project.

## CHAPTER IV Confinement in an educational centre

### SECTION I General provisions

#### Article 153 Scope

The provisions of this section shall be applicable to the execution of the measure of confinement in an educational centre as well as to any measure of confinement determined in the framework of tutelary proceedings provided for in this law that are to be executed in educational centres.

#### Article 154 Educational centres

1 – Educational centres are establishments organically and hierarchically placed under the dependence of the Juvenile Justice System Coordination.

2 – Intervention in educational centres shall take place in compliance with a general regulation and pedagogical guidelines for all educational centres with a

view to a unified materialization of the principles contained in the law on tutelary education.

3 – Within the limits referred to in the preceding paragraph, the intervention shall generally be guided by the project of educational intervention of the centre and, in particular, by the personal educational project for the child.

4 – The establishment, organisation and competence of the organs of the educational centres and their functioning, including the general regulation and the disciplinary regime of the educational centres, shall be contained in specific legislation.

#### Article 155

##### Objectives of the educational centres

Depending on their classification and scope, educational centres are intended to:

- a) Execute tutelary measures of confinement;
- b) Execute precautionary measures of custody in educational centres;
- c) Serve the detention;
- d) Confinement on weekends.

#### Article 156

##### Precautionary measure de custody and detention

Confinement and custody in an educational centre shall be served in an educational centre under semi-open or closed regime, preferably in a residential unit intended to that effect.

#### Article 157

##### Confinement on weekends

Confinement on weekends shall be served in educational centres under semi-open regime, in a residential unit of the type provided for in the preceding article.

#### Article 158

##### Definition of educational centre fit for confinement

It shall be incumbent upon the Juvenile Justice System to define the educational centre for the purposes indicated in article 155 or for the transfer of the child between educational centres having a similar regime.

#### Article 159

##### Presentation of the child at the educational centre for executing the confinement measure

1 – Once the information on the date and time for admission at the educational centre is received, the court shall notify the child, his or her parents, the legal representative or whoever has the *de facto* custody of the child and the defense attorney of such information.

2 – Where the measure to be applied is to be executed in an open or semi-open educational centre, the court shall also notify the parents, the legal representative or whoever has the *de facto* custody of the child so that they present the child to the educational centre on the established date and time, informing the Technical Team from which they may request assistance.

3 – The court shall issue an order, to be executed by police entities, in case the measure is to be executed in a closed educational centre or where the presentation of the child, pursuant to paragraph 2, cannot or has not been able to take place due to a fact imputable to the child, his or her parents, the legal representative or whoever has the *de facto* custody of the child.

#### Article 160

##### Presentation of the child to the educational centre for execution of other measures of confinement

The court shall issue an order for the child to be presented to the educational centre, to be executed by police entities, for executing the measure of detention and the measure of custody, and unless prohibited by the court, the child may be accompanied by one of the parents, the legal representative or by whoever has his or her *de facto* custody of the child, if the conditions of the vehicle allow it.

#### Article 161

##### Reports on the execution of the measure of confinement

1 – The director of the educational centre shall forward to the court, with the periodicity established in paragraph 2 below, reports on the implementation of the confinement measure applied and on the progress of the educational process of the child.

2 – The reports shall be prepared on a trimestrial basis in the case of measures lasting from six months to one year and on a semestrial basis in the case of measures lasting more than one year.

3 – The reports referred to in the preceding paragraphs may be accompanied by proposals to review the applied measure.

4 – The director of the educational centre shall provide the court with the final report of implementation of the measure 15 days prior to the date of its end. Such report shall replace the periodical report which, pursuant to paragraph 2, was to be submitted in the same trimester or semester.

5 – For the purposes of article 196 of the Criminal Procedure Code, the reports referred to in the preceding paragraphs shall also be submitted to the judge who ordered the pre-trial detention.

## Article 162

### Non-authorized absence of the child

1 – Non-authorized absence shall mean evasion and non-return to the centre following an authorised leave.

2 – Implementation of the measure of confinement and of weekend confinement shall be interrupted where the child is absent from the educational centre without authorisation. The time of absence without authorisation shall not be deducted from the period of duration of the measure.

3 – Absence of the child from the educational centre under closed regime shall be immediately communicated to the court by the respective director. Absence from an educational centre with a different regime shall be communicated by the respective director within a maximum period of 24 days from the date the occurrence was known.

4 – It shall be incumbent upon the court to determine that the tracing and re-conduction of the unauthorized absent child be made, where necessary, by police entities by issuing a bench warrant.

#### Article 163 End of confinement

1 – The director of the centre shall inform the court, at least 15 days in advance, of the date for the cessation of the confinement, in accordance with the decision that determined it.

2 – The cessation of the measure of confinement may only take place by court decision expressly communicated in writing to the director of the educational centre.

#### SECTION II Principles of intervention in educational centre

1 – The activities of the educational centres shall be subordinated to the principle according to which the confined child shall be subject to rights and duties and that he or she retains all personal and social rights the exercise of which are not incompatible with the implementation of the applied measure.

2 – Life in educational centres should, as much as possible, have as reference the common social life and minimize the negative effects that confinement may pose to the child and his or her relatives by favoring social links, contacts with his or her relatives and friends and the collaboration and participation of public or private entities in the educational and social reinsertion process.

3 – The general regulation of the educational centres and the internal regulation of each educational centre shall establish the ordinary and exceptional authorisations the child shall enjoy to maintain beneficial contacts with the outside world.

#### Article 165 Scholarship

1 – Children in confinement shall continue to be subject to the duties arising from mandatory scholarship and shall be encouraged to pursue or to complete their

studies in schools outside of the educational centre provided the confinement regime so allows.

2 – Where the confinement regime does not allow the child to attend a school outside of the educational centre, official school activities may be developed in educational centres in such a manner as to adapt them to the particular needs of the children and to facilitate their social reinsertion.

#### Article 166

##### Vocational guidance and professional and occupational training

Depending on their age, the regime and duration of the confinement, children in confinement shall participate in vocational guidance activities and in professional or occupational training, within or outside of the educational centre, in accordance with the needs specifically provided for in the personal educational project.

#### Article 167

##### Internal regulation

It shall be mandatory for each educational centre to have an internal regulation the observance of which is intended to guarantee the peaceful and orderly interaction and to ensure the fulfillment of the project of educational intervention of the centre and the program of activities.

#### Article 168

##### Personal educational project

1 – A personal educational project shall be prepared for each child under a measure of confinement within 30 days from the date of his or her admission. The project shall take into account the regime and the duration of the measure, as well as its specific motivations and the educational and social reintegration needs.

2 – The personal educational project shall be prepared in a clear and simplified manner so that the child can understand the objectives to be achieved and also to enable to evaluate his or her progress.

3 – The personal educational project shall be mandatorily submitted to court for approval within a maximum period of 45 days from the date of admission of the child in the centre.

## Article 169

### Activities for children not subject to confinement measures

1 – Children confined for the reasons referred to in subparagraph b) of article 155 shall attend a diversified program of activities on a daily basis with a view to acquiring social skills and meeting the needs of physical and psychical development common to their age level.

2 – The provisions of the preceding paragraph shall be correspondingly applicable to children confined on weekends, with the necessary adaptations.

## Article 170

### Open regime

1 – In educational centres with an open regime children shall reside and be educated in the same educational centre but shall preferably go outside of the educational centre for scholarly, educational or training activities, notably work and sporting activities, provided for in their personal educational project

2 – Children may be authorised to leave the educational centre unaccompanied and to spend holidays or weekends with their parents, legal representatives, whoever have the *de facto* custody or other idoneous people.

## Article 171

### Semi-open regime

Children in semi-open educational centres for serving measures of confinement shall reside, be educated and attend educational and free-time activities inside the educational centres, but may be authorised to attend school activities as well as educational or occupational training, sporting or other activities outside of the educational centres so long as this is deemed necessary for the initial or phased execution of their personal educational project.

## Article 172

### Closed regime

During their confinement in a closed educational centre, children shall reside, be educated and undertake training activities as well as free-time activities exclusively within the educational centre, and their leaves shall be conditional upon monitoring

and strictly limited to the observance of judicial obligations, for health reasons or for other reasons equally ponderous and exceptional.

Article 173  
Preventive and vigilance measures

In order to ensure tranquility, discipline and security, the personnel of educational centres, pursuant to the general regulation, may undertake:

- a) Inspections to areas and to individual or collective places;
- b) Personal searches, including to clothes and objects pertaining to children under confinement measures.

SECTION III  
Rights and duties of the children

Article 174  
Rights

1 – Children under confinement in educational centres shall have the right to respect for their personality, ideological and religious freedom, as well as for their rights and legitimate interests non-affected by the contents of the decision to confine them.

2 – Confinement in an educational centre shall not imply deprivation of the rights and guarantees recognised by the law to children unless the court expressly suspends or restricts them for the protection and defense of the interests of the children.

3 – In accordance with the provisions of the preceding paragraph and the type of confinement and respective regime, and pursuant to the regulations, the child shall have the following rights:

- a) The right to have his or her life, physical integrity and health looked for by the educational centre;
- b) The right to a personal educational project and to participate in the respective preparation, which shall mandatorily take into account his or her

specific training needs in terms of civic education, scholarship, professional preparation and useful occupation of the free times;

- c) The right to compulsory education;
- d) The right to preserve his or her dignity and intimacy;
- e) The right to exercise his or her civil, political, social, economic and cultural rights, save where these are incompatible with the purpose of the confinement;
- f) The right to use his or her own clothes, whenever possible, or the clothes provided by the educational centre;
- g) The right to maintain contacts, in private, with the judge, the Public Prosecution and the defender;
- h) The right to be heard before any disciplinary sanction is imposed on him or her;
- i) The right to be informed periodically of his or her judicial status and of the progress and evaluation of his or her personal educational project;
- j) The right to make petitions, present complaints, make claims or file appeals;
- k) The right to be informed personally and adequately, at the moment of admission, on his or her rights and duties, of the regulations in force, of the disciplinary regime and of the manner in which to make requests, present complaints or file appeals;
- m) In case of a mother, the right to have her children under 3 years old with her.

#### Article 175

##### Duties

1 – The following shall be duties of the child in an educational centre:

- a) The duty to respect people and property;
- b) The duty to remain in the educational centre;

- c) The duty to obey;
- d) The duty to be correct;
- e) The duty to collaborate;
- f) The duty to be assiduous;
- g) The duty to be punctual.

2 – The duty to respect people and property shall consist in not committing damaging acts or acts that jeopardize other people or property.

3 – The duty to remain in the educational centre shall consist in not leaving without authorisation of the educational centre or the facilities where the activities provided for in the personal educational project take place.

4 – The duty to obey shall consist in observing the regulations, the activities provided for in the personal educational project, as well as the legitimate guidelines from the people in charge of the educational centres.

5 – The duty to be correct shall consist in dealing with other people in an educated manner and in presenting himself or herself adequately.

6 – The duty to collaborate shall consist in participating in the activities of a collective nature undertaken in the educational centre, notably in cleaning activities and stowage of the materials, equipment and facilities of the educational centre.

7 – The duty to be assiduous shall consist in the child participating regularly and continuously in the activities provided for in his or her personal educational project or in other activities provided for his or her type of confinement.

8 – The duty to be punctual shall consist in the child appearing, at the indicated time, in the activities referred to in the preceding paragraph and in the educational centre following upon return from authorised leave.

Article 176  
Rights of the parents or legal representative

1 – During the period of confinement, the parents or the legal representative shall keep all the rights and duties relating to the person of the child that are not incompatible with the tutelary measure, save the restrictions or prohibitions imposed by the court.

2 – Pursuant to the regulations, and save the restrictions or prohibitions imposed by the court, the parents or legal representative shall have the right:

a) To be immediately informed by the educational centre of the admission, transfer, unauthorized absence, granting or suspension of authorised absence, as well as to be informed of any case of illness, accident or of any other serious circumstance relating to the child;

b) To be informed of the implementation of the measure of confinement and of the progress of the educational process of the child, pursuant to article 141.2;

c) To be informed by the educational centre, in due time, of the cessation of the confinement.

#### Article 177

##### Hospital assistance and admission

1 – Children shall enjoy hospital assistance or other assistance whenever so required.

2 – Admission in a hospital pursuant to the preceding paragraph shall be authorised by the director of the educational centre who shall inform the court thereof.

#### Article 178

##### Freedom of religion

1 – Freedom of religion of the child shall be respected during the period he or she is in confinement.

2 – Whenever possible, timetables for the activities of the educational centres shall allow confined children to practice acts pertaining to their religious confession.

#### Article 179

##### Intimacy protection

1 – Children in confinement in educational centres shall have the right to not to be photographed or filmed, as well as not to make statements or give interviews against their will to the media.

2 – Before expressing a will referred to in the preceding paragraph, children shall have the right to be unequivocally informed by a manager of the educational centre of the contents, intention and objectives of the request for interview addressed to them.

3 – Irrespective of the consent of the children, the following shall be prohibited:

a) Interviews focusing on the acts that originated the tutelary intervention;

b) The dissemination, by any means, of images or phonographic records that enable the identification of their person and the status of confinement.

## TITLE VI

### Registry of educational tutelary measures

#### Article 180

##### Object and purpose of the registry

1 – Judicial decisions applying, reviewing or declaring the cessation or extinguishment of educational tutelary measures shall be subject to registration.

2 – Registration of educational tutelary measures is intended to collect, process and maintain judicial decisions so that the handed down may be known.

3 – Educational tutelary measures applied shall be annotated in statistical maps to be forwarded to the Juvenile Justice system Coordination Centre.

4 – The Juvenile Justice System Coordination Centre shall keep a central file with copies of the maps of the tutelary educational measures for statistical purposes.

5 – The registration of educational tutelary measures shall be processed in strict respect for the principles of legality, authenticity, veracity, clarity and safety.

#### Article 181

##### Central registry

1 – Registration of educational tutelary measures shall be organised in a central registry, which may be computerized.

2 – Registry of educational tutelary measures shall be composed by elements of civil identification of the child and by excerpts of decisions subject to registry, pursuant to this law.

3 – Excerpts of the decisions shall indicate:

- a) The court that handed down the decision and the number of the proceeding;
- b) The civil identification of the child;
- c) The date and form of decision;
- d) The contents of the decision and the applied precepts.

4 – The data shall be precise, pertinent and up-to-date and shall be selected prior to its computerized registration.

#### Article 182 Communication to the registry

1 – Communications to the registry shall be made bulletins for registration of educational tutelary measures.

2 – Communication of decisions subject to registry shall be made immediately after they become final.

3 – Without prejudice to the provisions of the preceding paragraph, where an appeal is filed with a mere devolutive effect, the decision shall be communicated before the appeal is accepted.

#### Article 183 Access to information

Access to the data contained in the registry of educational tutelary measures shall only be allowed to:

- a) The data subject and the respective defense attorney;

- b) The parents of the child and his or her legal representative until such a time as the child is 18 years old;
- c) A third person, on behalf of and in the interest of the data subject over 18 years of age, in situations of his or her proved absence or impossibility;
- d) Judges and prosecutors to initiate the tutelary educational proceeding;
- e) The Technical Team and the social reintegration services, following request by their leading bodies to enable establish the individual file;
- f) Entities authorised by the Ministry of Justice for scientific research or statistical purposes.

Article 184  
Cancelation

1 – Information contained in the registry shall be cancelled in the computerized file or removed from the manual registry after two years from the date of cessation or extinguishment of the educational tutelary measure.

2 - Information contained in the registry shall be cancelled on the date the respective data subject reaches 21 years of age.

Article 185  
Professional secrecy

Any person who, in his or her functions, takes knowledge of registered data shall be obliged to keep professional secrecy, pursuant to article 126 of the Criminal Procedure Code.

TITLE VII  
Special criminal regime applicable to imputable youths

CHAPTER I  
Regime on criminal matters applicable to youths aged between 16 and 21 years

Article 186  
Object

1 – Pursuant to article 20.2 of the Criminal Code, which stresses the interest and importance of a specialised criminal treatment for youths that covers their social reinsertion and education on their rights and duties in society, criminal law for imputable youths shall, to the extent possible, get close to the principles and rules of the “re-educating law” for youths, enabling a greater flexibility in the application of correctional measures to imputable youths up to the age of 21, in accordance with the prudent will of the judge when analyzing the seriousness of the committed fact.

2 – The measures proposed do not remove the application of the penalty of imprisonment to imputables above 16 years of age where it becomes necessary for an adequate and firm defense of society and crime prevention.

#### Article 187 Special mitigation

Where a penalty of imprisonment is applicable, the judge shall mitigate the penalty on an exceptional basis pursuant to article 57 of the Criminal Code if he or she has strong reasons to believe that mitigation of the penalty will result in advantages for the social reinsertion of the convicted youth.

#### Article 188 Subsidiary application of legislation relating to minors

1 – Where the crime is punishable with a penalty of imprisonment not exceeding six months, or is punishable only with a penalty of fine not exceeding 120 days, the court may declare that the youth is guilty and but apply the principles and rules of the “re-education law for minors” and dispense with the penalty if:

- a) The unlawfulness of the fact committed and the fault of the youth are diminute;
- b) The damage has been repaired; and
- c) Dispensing with the penalty is not opposed by prevention reasons.

2 – Whenever the case corresponds to a penalty of imprisonment not exceeding 2 years the judge may, after considering the personality and the circumstances of the

fact, apply to the youth with less than 18 years the measures provided for in this law either in an isolated or cumulative manner.

3 – At the request of the youth and after hearing the management of the respective educational centre, the judge authorize the youth to remain in the educational centre after he or she has completed 18 years of age where whenever this results in unequivocal advantages for his or her formation and education. Remaining in the centre shall not go beyond the date on which the youth reaches 21 years of age, pursuant to article 22.

#### Article 189 Correctional measures

1 – Where from the circumstances of the case and the personality of the youth above 18 years of age and below 21 years of age one concludes that the penalty of imprisonment up to 2 years is neither necessary nor convenient to his or her social reinsertion, the judge may impose correctional measures.

2 – For the purposes of the preceding paragraph, only the following shall be considered correctional measures:

- a) Admonition;
- b) Imposition of certain obligations;
- c) Confinement in a detention centre.

#### Article 190 Admonition

Admonition shall consist in a solemn warning, which shall be made in public, but with a minimum of protection for the social sphere of the youth, taking into consideration his or her dignity and the purposes of his or her social reinsertion.

#### Article 191 Imposition of certain obligations

1 – Obligations imposed by the judge shall take into account the dignity and the social reinsertion of the youth and shall, as much as possible, translate into obligations the accomplishment of which should not be excessively long.

2 – Willful non-compliance with any of the obligations imposed by the judge shall determine the confinement in a detention centre for the period of time deemed necessary, within the limits provided for in article 192 below.

#### Article 192

##### Confinement in detention centres

1 – Confinement in detention centres may take place for a minimum period of 3 months and a maximum period of 6 months.

2 – Once the period of confinement imposed by the sentence has elapsed, the judge may decide to impose a period of guidance and vigilance not exceeding one year.

3 – Confinement in detention centres may take place under a regime of confinement or of semi-confinement or be served under a regime weekend detention, depending on which one is considered to be more convenient, taking account the personal condition of the youth.

4 – During the period of guidance and vigilance in freedom the youth may be subject to the obligation to attend the centre for a given period of hours per week not exceeding 6 hours.

#### Article 193

##### Revocation of confinement in detention centres

1 – Confinement in detention centres may be revoked by the judge, on proposal of the centre, where the youth goes absent unlawfully from the institution, or does not abide by, voluntarily and repeatedly, the established timetables and regulations, or frequently has a behaviour that seriously affect the internal discipline of the institution, or does not keep good behaviour in society.

2 – In case of revocation of the measure, the judge shall apply the penalty corresponding to the crime and may deduct from that penalty the time of continued confinement effectively accomplished.

#### Article 194

##### Confinement in special institution for youth

Execution of penalties of imprisonment applicable to youths shall take place in special institutions for youths between 16 and 21 years of age.

Article 195  
Detention centres for youths

The establishment, organisation and competence of the organs of the specialised institutions for youths, including their location, competence, functioning, general regulation and the regulation of the disciplinary regime of the detention centre shall be the object of a specific statute.

TITLE VII

Transitional provisions

Article 196

1 – Until such a time as the Juvenile Justice System Coordination Centre is established, its competences shall be exercised by the National Commission for the Rights of the Children with the support of the National Directorates of the Ministry of Justice.

2 – Even as it is provisionally integrated in the competences of the National Commission for the Rights of Children, the Juvenile Justice System Coordination Centre shall establish partnerships for the establishment of the Multidisciplinary Technical Teams as well as other teams necessary to the implementation of this law.

3 – The Juvenile Justice System Coordination Centre shall undertake the classification of the educational centres as well as establish the general guidelines for the internal regulation of such institutions, including the establishment of partnerships for the implementation of this law.

Article 197  
Educational and detention centres

1 – The location, classification and functioning rules of the educational and detention centres shall be the object of a specific statute.

2 – The general regulation of the educational centres and the internal regulation of each centre shall be submitted to the Juvenile Justice System Coordination Centre for approval as a guarantee of the uniformity of functioning and of respect for the rights and guarantees of children and youths.

3 – Public and private institutions dedicated to education and formation of children and youths shall be registered with the Juvenile Justice System Coordination Centre so that they may take in children and youths protected by this law.

4 – Until such time as the detention centres start operating, confinement referred to in this law shall take place in adequate institutions or in autonomous sections of other institutions and, as a measure of last resort, where it is a youth above 16 years of age, in autonomous sections of the prisons specifically established for that purpose.

#### Article 198 Technical team

Until such time as the Juvenile Justice System Coordination Centre is able to capacitate the technicians deemed necessary for integrating the Multidisciplinary Technical Teams, the latter shall be composed of professionals from diverse sectors through partnerships of cooperation between the Ministry of Justice and other Ministries and Secretariats of State for following up the children, preparing the plans of conduct and personal educational projects, and implementing the measures provided for in this law.

#### Article 199 Special instance

Until such time as no special instance is established with jurisdictional competence in the framework of the rights of children, the competence for applying educational tutelary measures to children aged between 12 and 16 years shall rest with District Courts.

#### Article 200 Standardized documents and forms

The standardized model of documents and forms contained in this law shall be approved by ministerial statute of the Ministry of Justice and shall be drafted in Portuguese and Tetum.

TITLE VIII  
Final provisions

Article 201  
Application of subsidiary law

The general law shall apply subsidiarily to the provisions of this law in all that is not contrary to it.

Article 202  
Retroactive application

This law shall apply to pending proceedings as long as it does not prejudice or aggravates the situation of the child or youth.

Article 203  
Application in space

This law shall apply to all the national territory.

Article 204  
Entry into force

This law shall enter into force 90 days after its publication.

Approved by the Council of Ministers on

The Prime Minister

Kay Rala Xanana Gusmão

The Minister of Justice