

The creator of the cover design is Kevin Veal. Kevin, who lives in Atlanta, USA, was 6 years old when he painted this picture. He called it "Man in Chains".

The painting was part of an exhibition on the rights of children at the Youth Art Gallery of Atlanta (for more information on the exhibition, please contact Youth Art Connection, Mrs. Rebecca Des Marais, 63 Auburn Ave., NE Atlanta, GA, 303303, USA).

We are most thankful to Tevin, his parents and the art gallery for kindly allowing us to use this painting.

ISBN 2-930176-35-0

© Mai 2005, *Éditions Jeunesse et droit*
12, rue Charles Steenebruggen, B-4020 Liège

Diffusion : DCI Holland
PO BOX 75297, NL 1070AG Amsterdam

GEERT CAPPELAERE

**with the assistance
of Anne Grandjean
and Yasmin Naqvi**

**CHILDREN DEPRIVED
OF LIBERTY:
RIGHTS AND REALITIES**

2005

*“(...) I begged to wear something else, but you refused to budge.
‘Visiting the Statue of Liberty isn’t like playing in the backyard’, you said.
‘It’s the symbol of our country, and we have to show it the proper respect’.
Even then the irony of the situation didn’t escape me.
There we were, about to pay homage to the concept of freedom,
and I myself was in chains.
I lived in an absolute dictatorship, and for as long as I could remember my
rights had been trampled underfoot”.*

Paul Auster, *Leviathan*,
Penguin Books Ltd UK, 1992, p. 37

Contents

Abbreviations	14
---------------------	----

GENERAL INTRODUCTION

Deprivation of liberty	17
A particular focus on juvenile justice	18
Why start from the perspective of the rights of children ?	19
A constructive approach	20
Plan of the book	21
Just another book?	22
Author's note for the English Edition	22
Acknowledgments	23

PART ONE - CHILDREN DEPRIVED OF LIBERTY ACROSS THE WORLD

Introduction	27
--------------------	----

Chapter 1 - Deprivation of liberty : a tentative definition

1. Children and liberty	29
2. Children and placement in closed establishments	30
3. The large variety of closed establishments	30

Chapter 2 - Various features of the deprivation of liberty of children

Introduction	33
1. Children can be deprived of liberty for a variety of reasons	34
2. Children can be deprived of liberty in various types of establishments	41
3. Children can be deprived of liberty by a variety of authorities	42
4. Children can be deprived of liberty for very long periods of time	43
5. Children can be deprived of liberty at any age	44
6. The number of children deprived of liberty across the world is very high	44
Conclusion	45

Chapter 3 - The deprivation of liberty of children and the juvenile justice system

Introduction	47
1. A brief overview of the juvenile justice system	48
2. The juvenile justice system and the extension of social control to all children and all families	55

CHILDREN DEPRIVED OF LIBERTY

3. The juvenile justice system and the deprivation of liberty	57
4. The ages of criminal responsibility, criminal majority and “institutional majority”	58
Conclusion	67
Conclusion to Part One	69
PART TWO - THE RIGHTS OF CHILDREN DEPRIVED OF LIBERTY : THE INTERNATIONAL NORMATIVE FRAMEWORK	
Introduction	73
Chapter 1 - The Rights of the Child and new challenges	
Introduction	75
1. The Convention on the Rights of the Child: basic principles	76
2. Protection: from a favour to a right	77
3. Structural interventions with regard to children as social group	80
4. The child as fully-fledged citizen	82
Conclusion	84
Chapter 2 - Children deprived of liberty and their rights : The international normative framework	
Introduction	85
1. The international normative framework	86
2. Children deprived of liberty are entitled to all rights: the principle	91
Conclusion	98
Chapter 3 - The rights of the child deprived of liberty: general principles	
Introduction	101
1. Four general principles	102
2. Non-discrimination	102
3. The best interests of the child	103
4. Survival and development	103
5. The child’s opinion	103
6. Conditions of detention: general principles	105
Chapter 4 - The right to a family, a family environment and alternatives	
Introduction	107
1. Raising a child is primarily the responsibility of parents	108
2. The necessity to take into account the child’s capacities	108
3. Assistance to parents in their educational task	109
4. Children separated from their parents have the right to a special protection	110

RIGHTS AND REALITIES

Chapter 5 - The right to an adequate standard of living

Introduction	115
1. Physical conditions and the environment	116
2. The right to the enjoyment of the highest attainable standard of health	118
3. Food and drinking water	111
4. Social security and social benefit	121
5. Contact with the outside world	121
6. Rehabilitation and social re-integration	122
7. International co-operation	123

Chapter 6 - Civil and political rights and freedoms

Introduction	125
1. Name, nationality and the preservation of identity	125
2. Freedom of expression and access to all information	126
3. Freedom of thought, conscience and religion	128
4. Freedom of association	129
5. The right to privacy	129
6. The right to human dignity and personal integrity	131
7. The right to legal protection during the process leading to deprivation of liberty	135
8. The right to legal protection during the deprivation of liberty	139
9. Measures of restraint and force	142
10. Disciplinary measures and procedures	143
11. The transfer of the juvenile and legal protection	145

Chapter 7 - The right to education and recreational activities

Introduction	147
1. The right to education	147
2. The objectives of education	149
3. Recreational activities	150
4. Work	151

Chapter 8 - Other issues relating to the conditions of detention

Introduction	155
1. The personnel of institutions	155
2. Classification and treatment	158
3. Information on the juvenile	160

Chapter 9 - Children in special situations

Introduction	161
1. Child refugees	162
2. Disabled Children	162
3. The children of minority groups or of indigenous origin	163

CHILDREN DEPRIVED OF LIBERTY

4. Children in armed conflicts	163
5. Children in conflict with the law	164
6. The protection of children from the illicit use of narcotic drugs	164

Chapter 10 - General measures of implementation and monitoring

Introduction	165
1. The obligation of implementation: some conditions	165
2. Follow-up and monitoring at an individual level	167
3. Follow-up and monitoring at the structural level	169
Conclusion to the second part	173

PART THREE - RESPECT FOR THE RIGHTS OF CHILDREN DEPRIVED OF THEIR LIBERTY

Introduction	177
--------------------	-----

Chapter 1 - Methodology

Introduction	181
1. Non-governmental sources	182
2. Governmental sources in the context of monitoring the Convention on the Rights of the Child	187
3. The questionnaire	189
4. Some observations in relation to the different sources and to the information gathered	190

Chapter 2 - The rights of children deprived of liberty : an overview of the situation before 1989

Introduction	193
1. Children in prison with adults; a survey of Defence for Children International (DCI)	194
2. The United Nations Special Rapporteur on the application of international standards concerning the human rights of detained juveniles	200
3. Several years and a convention later: Has the situation changed regarding the observance of the rights of children deprived of their liberty?	203

Chapter 3 - The Convention on the Rights of the Child: reservations and declarations of interpretation by States Parties

Introduction	205
1. Reservations to article 37 of the Convention	206
2. Reservations to article 9 of the Convention	209
3. Other reservations with no explicit link to the rights of children deprived of liberty, but likely to have consequences for them	210

RIGHTS AND REALITIES

Chapter 4 - The rights of children deprived of liberty :

guiding principles

Introduction	213
1. Non-discrimination	215
2. The Best Interests of the Child	220
3. Survival and Development	220
4. The child's views	222
Conclusion	225

Chapter 5 - The right to a family; family environment and alternatives

1. Parents have the primary responsibility for the upbringing of the child	227
2. Ensuring regular contact between the child and his family	229
Conclusion	236

Chapter 6 - The right to an adequate standard of living

Introduction	237
1. Clothing	237
2. Physical conditions and the environment	238
3. The right to enjoy the highest attainable standard of health	242
4. Food and drinking water	246
5. Going out in the open air	248
6. Contact with the outside world	248
7. Rehabilitation and social re-integration	249
Conclusion	251

Chapter 7 - Civil and Political Rights and Freedoms

1. Name, nationality and protection of identity	253
2. Freedom of expression and access to all forms of information	254
3. Freedom of thought, conscience and religion	256
4. The right to privacy	257
5. The right to human dignity and personal integrity	260
Conclusion	264

Chapter 8 - Civil and Political Rights and Freedoms: Legal Protection

1. The right to legal protection during the procedure that leads to the deprivation of liberty	275
2. The right to legal protection during the deprivation of liberty	288
3. The possibility for making a complaint	297
4. Reviewing the placement	302

Chapter 9 - The right to education and recreation

1. The right to education and vocational training	305
2. Recreation	310
3. Work	311

CHILDREN DEPRIVED OF LIBERTY

Chapter 10 - Other aspects related to the conditions of detention

Introduction	315
1. Personnel in establishments	315
2. Classification and treatment	320

Chapter 11 - Children in special situations

Introduction	329
1. These children are more likely than others to be deprived of liberty	329
2. These children form a more vulnerable population inside closed establishments	330
3. The problem of substance abuse	331

Chapter 12 - Monitoring at the structural level

Introduction	333
1. What type of monitoring and by whom?	334

Chapter 13 - The topic of children deprived of liberty in UN programmes on the prevention of crime and criminal justice, human rights and in the concluding observations of the Committee on the Rights of the Child

Introduction	343
1. The concluding observations of the Committee on the Rights of the Child	344
2. United Nations programmes for the protection and the promotion of human rights	351
3. United Nations Programme for the prevention of crime and criminal justice	356
4. The work of UNICEF	358
Conclusion	359

Conclusion to Part Three	361
--------------------------------	-----

PART FOUR - ALTERNATIVES TO THE DEPRIVATION OF LIBERTY

Introduction	365
--------------------	-----

Chapter 1 - The international normative framework

Introduction	369
1. The key principle: minimum intervention	370
2. General prevention	371
3. Extra-judicial settlement	373
4. Elements for a humane, constructive and respectful administration ..	375

Chapter 2 - Did you say alternatives ?

Introduction	383
1. A climate unfavourable for humane, respectful and constructive alternatives	384

RIGHTS AND REALITIES

2. “Military” camps: the example of “boot camps”	386
3. “Scared straight”: visits to jails as a preventive measure	389
4. Restriction of liberty instead of deprivation of liberty	390

Chapter 3 - General prevention

Introduction	393
1. The right to grow up in his family: some preventive initiatives	394
2. The right to an adequate standard of living: some preventive initiatives	396
3. The right to integrity: some preventive initiatives	398
4. The right to leisure: some preventive initiatives	399
5. The right to education	399
6. The right to information and legal protection: some preventive initiatives	400

Chapter 4 - Diversion

Introduction	403
1. Diversion	404
2. Restorative justice	407
3. Measures of diversion at the level of the police: police warning	408
4. Programmes of reconciliation between victim(s) and young offender	409
5. Family Group Conferencing	410

Chapter 5 - Alternatives at the level of pre-trial detention, the judgment and early release

Introduction	415
1. Some alternatives mentioned in the international legal framework ...	416
2. Alternatives: cheap measures	416
3. Community service	417
4. Supervision orders, probation and conditional release	419
5. The assistance of a voluntary “coach”	422
6. Intermediate treatment	424
Conclusion to Part Four	427

GENERAL CONCLUSION	431
---------------------------------	-----

ANNEXES

I. Convention on the Rights of the Child (CRC)	437
II. UN Rules for the protection of juveniles deprived of their liberty	455
III. Questionnaire for national studies	469
Bibliography	485

Glossary

AJJ :	The UN Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”) (1985)
CC :	United Nations Code of Conduct for Law Enforcement Personnel (1979)
CRC :	United Nations Convention on the Rights of the Child (“The Convention”) (1989)
CAT :	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
ICCPR :	International Covenant on Civil and Political Rights (1966)
JDL :	The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)
NCM :	United Nations Standard Minimum Rules for Non-Custodial Measures (1990)
UN :	United Nations
PJD :	United Nations Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh Guidelines”) (1990)
PPDI :	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
TP :	Standard Minimum Rules for the Treatment of Prisoners (1955)
UNICEF :	United Nations Children’s Fund

GENERAL INTRODUCTION

GENERAL INTRODUCTION

We all hear from time to time about children who are deprived of liberty. We may have even considered at one point that prison represents an appropriate response to the delinquent behaviour of some children. But what do we actually know about these children? Do we know how or whether their human rights are respected when they are deprived of their liberty?

Deprivation of liberty

How should the deprivation of the liberty of children be defined? If one takes the broad view, the deprivation of the liberty of children could relate to every situation in which a child is stopped from doing what he or she wants. This interpretation would include a large range of daily situations such as children being banned from eating sweets or being made to go to school rather than play. In this context, the issue of the limits of parental authority in relation to the autonomy of the minor arises. This issue is particularly relevant to the promotion and the protection of the rights of children to participation, recognized in the United Nations Convention on the Rights of the Child (1989) (“the Convention”).

This book, while not disregarding such fundamental rights of children, is focused upon a discussion of the deprivation of liberty of children in those cases in which a child is placed by a judicial or administrative authority in a closed institution which they cannot leave of their own free will.

CHILDREN DEPRIVED OF LIBERTY

Closed establishments vary greatly by their denomination, their structure, their level of security or by the priority of their objectives. In this book, establishments are considered from the child's perspective. In this respect, it is important to keep in mind that for a child forced to reside in a closed establishment, even a "*rehabilitation centre*" with educational objectives and without bars on the windows, may truly be a prison.

Although the legal proceedings leading to the decision to deprive a child of liberty are extremely important, the first three parts of the book deal with the actual period of deprivation of liberty of children itself.

The fourth part includes a discussion of alternative responses to anti-social juvenile behaviour to the use of measures involving the deprivation of liberty.

A particular focus on juvenile justice

Even though children can be deprived of liberty in different ways, the book focuses specifically on the deprivation of children's liberty through the juvenile justice system.

This focus does not necessarily mean that conditions of confinement are different for these children. In fact, one finds that however children find themselves deprived of liberty, the situation of children inside closed establishments tends, in general, to be the same for them all.

The focus on juvenile justice is of particular importance for several reasons. Firstly, a major proportion of children in closed establishments are placed there as a result of action taken in the context of the criminal justice system. Secondly, and especially in the context of specialised administration in the juvenile justice system, the deprivation of a child's liberty is often "justified" by what is considered as being in the interests of the child himself. Finally, it is in the criminal domain that calls can be heard globally, and in an increasingly forceful manner, for the creation of high-security institutions for children.

These calls are somewhat surprising in a period when the rights of children are more recognized than ever. This observation leads to the central challenge that we seek to address in this book which is to analyse the deprivation of liberty of children from the perspective of their rights as children.

The purpose of this approach is to ensure that the movement for the defence of children's rights does not exclude the more vulnerable children.

RIGHTS AND REALITIES

Why start from the perspective of the rights of children?

The reality which many children face today is disturbing and at the same time full of promise. The reality is disturbing on the one hand, because of the degree to which the rights of children as a social group and of the child as an individual are violated. On the other hand, the situation of children is full of promise because the rights of children enshrined in the Convention and other international instruments provide legal and moral tools for the international community to better prevent the violation of children's rights and to serve as a basis for changing the current situation.

More than fifteen years after the adoption of the Convention on the Rights of the Child by the United Nations General Assembly in 1989 and given the almost universal ratification of this instrument, it is instructive to note the reality of children deprived of liberty across the world.

It would not be accurate to infer that the situation of children deprived of their liberty has been ignored until now. Even before 1989, the issue of the deprivation of liberty of children was discussed at national and international levels. The discussion of the problematic aspect of the situation of these children focused mainly at that time on the detention of children in prisons for adults.

The issue has rarely been examined from the perspective of the rights of children. This rights-based perspective is crucial in examining the situation of children deprived of liberty as it is in the case of other children, as all children benefit from the same rights.

The rights of the child stated in the Convention provide an effective way to analyse and evaluate the whole situation of children deprived of their liberty. In addition, given the legal character of the instruments enshrining these rights, they constitute persuasive tools to influence decisions made at the domestic level 'in the best interests of the child' such as the decision whether or not to deprive a child of liberty or the implementation of certain conditions of detention.

The rights and principles enshrined in the Convention may also be instructive in identifying and modifying conditions in a child's background which may put him at risk of confinement.

The more specialised topic of children deprived of liberty in conflict and post-conflict situations is not dealt with in this book, despite the importance and growing awareness of this issue due to the more general approach to

CHILDREN DEPRIVED OF LIBERTY

the topic of children deprived of liberty and the constraints of the primary focus of the book.¹

A constructive approach

We have chosen to adopt a positive and constructive approach to the issue of children deprived of their liberty for four primary reasons.

First, the grave situation faced by many children deprived of liberty throughout the world has been documented and denounced in numerous well-researched studies by non-governmental organisations. Among the more recent studies, the Defence for Children International study on juvenile justice (2001), the survey of Prison Watch International (1998) and of the campaign of Amnesty International in November 1998 are worth noting.

Second, the deprivation of liberty of children is examined as a universal problem. A universal study reveals that the same or broadly similar issues arise in several countries and some problems are evident in all countries. The book concentrates therefore on the causes and consequences of the problems rather than on their country-specific peculiarities. As the observations made in this book may concern any State and are sometimes common to all States, there is no attempt to denounce the actions of particular States. Respect for the rights of children deprived of liberty is a universal challenge, with which *all* States are concerned. For this reason, and in order not to discourage the open and cooperative attitude displayed by some countries during the research stage of the book, the names of countries in which certain observations are made are not disclosed. In the same way, countries in which positive examples may be found are not named.

Third, the positive approach seeks to foster and contribute to efforts to improve the situation of children deprived of liberty rather than to merely denounce the grave situation faced by many children or to lay blame on any particular country or political system for such situations. For this reason, examples of positive and constructive contributions to improving the situation of children deprived of liberty from all over the world are given.

1 For a discussion of this issue, see Brett, R., "Children and War/Militarised Violence: Juvenile Justice Issues: An identification of situations", DCI, Geneva, 2001; Hoffman, M., "Juvenile Justice in Post-Conflict Situations: A Huge Challenge", *DCI Monitor*, Vol. 14, No. 3, September 2001. The UNICEF International Research Centre in Florence organised a conference on "Juvenile justice in post-conflict situations" from 23 to 25 May 2001.

RIGHTS AND REALITIES

Finally, it is important in our view to consider young people, independently of their acts, as human beings to be respected and therefore to concentrate on their potential and their capabilities. In fact, studies indicate that the most effective way to find constructive solutions to juvenile delinquency is to involve young people in the process itself and not to consider them as merely “trouble makers” or “problem children” in need of punishment. Recognition of and respect for their rights is an important step in this direction.

This constructive approach should not, however, be interpreted as concealing the realities and the inherent difficulties in dealing with the delinquent behaviour of juveniles.

Plan of the book

The book is composed of four parts. The first part introduces the theme of deprivation of liberty of children. This includes a detailed description of the “categories” of children that reside in closed establishments across the world. Part 1 also contains an introduction to the juvenile justice system, which is responsible for the deprivation of liberty of a major proportion of children.

Part 2 describes and explains in detail the international legal framework concerning the rights of children deprived of liberty. In the first chapters, we seek to answer the fundamental question of whether a child deprived of liberty has legal rights, and if so, what are they?

The third part of the book examines the degree to which the rights of children deprived of their liberty in closed establishments across the world are respected. To this end, various reports and studies on the subject are reviewed, including the reports of the United Nations Committee on the Rights of the Child, as well as our own studies conducted in more than twenty countries.

The primary objective of Part 3 is to provide a general picture of the situation faced by children deprived of liberty throughout the world since the adoption of the Convention in 1989.

Article 37 of the Convention and provisions of other international standards state that the deprivation of liberty of children must be a measure of last resort and for the shortest possible period of time. Respecting the rights of children therefore requires States Parties to find alternatives to the deprivation of liberty of children or to replace confinement with alternatives

CHILDREN DEPRIVED OF LIBERTY

at the earliest possible opportunity. This issue constitutes the fourth and final part of the book.

Just another book?

The reader may feel from time to time a sense of *deja vu* while reading the book. Is not well-known information being repeated?

It is indeed possible that some of the information presented in the book, in particular, information regarding the conditions of deprivation of liberty and the alternatives to measures involving the deprivation of liberty, is not new for some readers. This is not surprising given the fact that much of the information reflects a synthesis of a large number of studies and research already conducted on the topic.

However, even though some of the information may be familiar to some readers, it is nevertheless important to restate such information as long as the problems persist and the information remains accurate. Indeed, information regarding fundamental human rights and, in particular, the rights of the child can never be over-emphasised. One of the particular characteristics of the book is its global approach to the issue of children deprived of liberty throughout the world.

In our view, the book is important and innovative in its attempt to address the problem of the deprivation of the liberty of children from the perspective of the rights of children, and to examine the different challenges that this perspective raises. The approach, which uses the rights of children as a permanent framework for analysis and which focuses on positive and constructive solutions to the problems of juvenile delinquency, sheds new light on the topic and leads to some surprising observations. It is hoped that this approach will help to both revitalise and stimulate debate on this important issue and will encourage efforts aimed at improving the situation of children deprived of liberty.

In an effort to simplify the construction of sentences, it was decided to use only the masculine gender when referring to children deprived of liberty. However, unless the contrary is explicitly stated, the information refers to children of both sexes.

RIGHTS AND REALITIES

Author's note for the English Edition

This book was originally published in French under the title “*Enfants privés de liberté : droits et réalités*”, Editions Jeunesse et Droit, Paris-Liege, 2000.

A Spanish translation followed in 2001 entitled “*Ninos Privados de Libertad : Derechos y Realidades*”, Ministerio de Trabajo y Asuntos Sociales, Subdireccion General de Publicaciones, Madrid.

The English translation presented here is published four years after finalising the first edition. It was therefore important to update the book in several parts.

Acknowledgments

We would like to thank all the people who helped in the preparation of this book and, in particular, Jean-Pierre Bartholomé, Nigel Cantwell, Claudia Demaerschalk, Marie-Françoise Lücker-Babel, Guillemette Meunier, Marta Santos Pais, Paul Rietjens, André Roberfroid, Frans Spiesschaert, Ray Virgilio Torres, Philip Van Haecke and Benoît Van Keirsbilck. A special thanks to our national partners, as well as to Caroline Bourquin, and Colleen MacNeil for their important contributions.

This book has been accomplished due to the financial support of the United Nations Children's Fund (UNICEF) and the Ministry of Foreign Affairs of Belgium.

The contents reflect the views of the authors only.

Geert Cappelaere
July 2004

PART ONE

**CHILDREN DEPRIVED OF LIBERTY
ACROSS THE WORLD**

Introduction

The view that the deprivation of liberty of young people who have committed serious crimes is an appropriate measure, or perhaps even the only conceivable one, is relatively widespread. From this view, many will leap to the conclusion that all children deprived of liberty are dangerous criminals. Have all children deprived of liberty committed grave offences? Is the view that all children deprived of their liberty are “serious delinquents” correct? These are the questions addressed in the first part of the book, particularly in the second chapter.

The first Chapter defines the term “deprivation of liberty”. This definition is based on the United Nations Rules for the Protection of Children Deprived of their Liberty (1990).

Juvenile justice, as part of a specialised system or as an integral part of the criminal law system, is correctly perceived as the major means by which children are deprived of liberty. This observation led us to focus specifically on this aspect of the issue. In the third chapter, juvenile justice is defined and explained, including a discussion of its origins and the pitfalls of this system.

Chapter 1

Deprivation of liberty : a tentative definition

1. Children² and liberty

Article 9 of the International Covenant on Civil and Political Rights 1977 provides that every person has the right to liberty. As the Covenant refers to the rights of all human beings, the right to liberty equally applies to children.³

In the context of this book, the deprivation of liberty does not cover the numerous situations in which a child can be deprived of the ability to act in any desired way without hindrance or restraint (this being the definition of liberty, according to the Oxford English Dictionary, 2nd ed.).⁴ However, while the concept of deprivation of liberty is limited in this book to situations where children are forced to reside in closed establishments, the social and legal status of children and the limits in respect of their liberty, are in no

2 A child is any human being under the age of 18, unless, under the law applicable to the child, majority is attained earlier (Article 1 of the Convention on the Rights of the Child and Rule 11 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

3 The right to liberty is not explicitly included in the Convention on the Rights of the Child. The right of the child to liberty may be inferred from article 37(b) of the Convention which provides that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily”.

4 Oxford English Dictionary, 2nd ed., Oxford University Press, Oxford, 1989.

CHILDREN DEPRIVED OF LIBERTY

way disregarded in our analysis of whether children placed in closed establishments have rights, nor in the analysis of the respect for these rights.

2. Children and placement in closed establishments

Article 11 of the United Nations Rules for the Protection of Children Deprived of their Liberty defines the deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

It is this definition of the deprivation of liberty that is applied in order to restrict the subject matter within the object of the book.

The book will be limited to an analysis of situations in which the child is placed in a closed establishment (from which he is not permitted to leave at will).

This restriction is important for the simple reason that, seen from the child's perspective, any placement can be considered as a deprivation of liberty. The book is concerned solely with establishments legally defined as such.

In cases where the available information did not specify the nature of the establishment as open or closed, it was decided that such establishments would still be considered in the analysis.

This choice is consistent with the objective of the book to assess the respect for the rights of the child and by the previous remark according to which the difference between an open or closed establishment is often not appreciated by the children themselves.

In a general sense, our analysis of the respect for the rights of children placed in closed establishments can also apply in some respects to open establishments.

3. The large variety of closed establishments

Article 11 of the United Nations Rules for the Protection of Children Deprived of their Liberty covers different establishments corresponding to the closed character described previously. All these places are contemplated when referring to closed establishments :

- Arrest cells : "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.⁵ Arrest cells are generally places in which people are deprived of liberty,

RIGHTS AND REALITIES

mainly within the police station, before an arrest warrant or a temporary measure is granted by a judicial or other authority.⁶

- Detention centres : “Detained person” means any person deprived of personal liberty except as a result of conviction for an offence.⁷ These are generally places in which people are detained after a warrant or temporary measure has been granted but before a judgment on the merits has been pronounced by a judicial or administrative authority.
- Prisons : “Imprisoned person” means any person deprived of personal liberty as a result of conviction for an offence.⁸ Prisons are generally institutions in which people are imprisoned after a judgment on the merits has been pronounced.
- Other closed institutions : These are generally all other institutions, public or private, in which people are placed by order of a judicial, administrative or other public authority and from which they cannot leave at will. Examples of these other closed institutions include : educational institutions, rehabilitation centres, psychiatric institutions, establishments for the disabled, reception centres for illegal immigrants, etc.

In addition, closed establishments in which children are placed may be exclusive for minors or not. When adults are also placed in the institution, there may or may not be a separate section for minors.⁹ The range of closed establishments in which children find themselves can therefore be very wide.

However, distinctions between the different establishments must not be considered in too absolute a manner. For example, they are not always used for the purpose in which they were built. Children can be found carrying out their punishment by being detained in a police station or waiting for a judgment in a prison. Some buildings have been especially designed to accommodate children while other rehabilitation centres for juveniles may

5 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly, Res. 43/173, 9 December 1988 (hereinafter “Body of Principles”).

6 The expression “a judicial or other authority” means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence. See Body of Principles, *ibid.*

7 *Ibid.*

8 *Ibid.*

9 The issue of minors being detained with adults is dealt with in the third part, in Chapter 10.

CHILDREN DEPRIVED OF LIBERTY

be installed in old prisons without the slightest modifications having been made to take into account the age and particular needs of children. Prisons, centres for juveniles or other establishments are therefore not necessarily very different in terms of the respect for children's rights.

The distinctions between the different closed establishments may in fact hide a similar reality for the children inside the institutions.

Chapter 2

Various features of the deprivation of liberty of children

Introduction

The words “children deprived of liberty” do not evoke the same image for everybody. It is likely that the view of some people has been distorted by images conveyed by the media or by certain political leaders who sometimes attempt to make political mileage from promoting certain viewpoints. The image commonly portrayed by the media is of the violent and criminally-minded teenager who is a danger to society and who should, thus, be confined within an institution.

Our analysis of the identity of the children deprived of their liberty began with the following hypotheses :

- Children may be deprived of liberty for a variety of reasons
- Children may be forced to reside in various types of establishments
- Children can be deprived of liberty by different types of authorities
- Children can be deprived of liberty for very long periods of time
- Children can be deprived of liberty at any age
- The number of children deprived of liberty across the world is very high

CHILDREN DEPRIVED OF LIBERTY

At the outset, it should be stated that accurate information on the subject of children deprived of liberty is extremely difficult to find. The number of countries for which it is possible to get, within a reasonable time frame, statistics on the number of children deprived of liberty, the motives for their deprivation of liberty, their age, the length of confinement, is very limited. Available information is often inadequately detailed. For example, it can be very difficult in certain cases to get information on the sex of children, their level of education, or their family and socio-economic background. The reader will find a description of sources consulted and the methodology used in this study in Part 3, Chapter 1.

These observations on the availability of data are extremely important considering the impact of inadequate statistics on the quality of information that appears in the book. The lack of reliable statistics and information is gravely concerning because it entails that this category of children is frequently ignored by state authorities. The availability of systematically gathered and centralised information is crucial for devising policies which take into account the perspective of the children concerned.

1. Children can be deprived of liberty for a variety of reasons

Introduction

The reasons employed to deprive children of liberty are numerous. Not all detained or incarcerated minors are criminals. On the contrary, many children deprived of liberty have not even committed an offence.

The following categories of reasons to deprive a child of liberty have been identified :

- delinquency
- status offences (offences associated with the status of the child)
- children at risk from the environment in which they live
- children presenting physical or mental troubles
- children deprived of liberty with their parents
- other reasons

Another distinction could be made between reasons which take into account which and whose interests are at stake in depriving a child of liberty. Children can be placed in closed establishments :

RIGHTS AND REALITIES

- in their own interest
- in the interest of society
- in the interest of the establishments

This last possibility may appear surprising. The interests of the establishments in keeping children deprived of their liberty are, however, very real. Such interests are evident, for example, when efforts aimed at de-institutionalisation threaten the employment prospects of personnel or the economic interests of public or private organisations or companies who own and manage such institutions.

In addition, in the majority of countries, closed establishments are financed on the basis of the number of detained children. In such cases, neither the responsible authorities nor the staff members of the institutions have any particular interest in the reducing the number of children deprived of liberty. This is especially so where no redeployment scheme is provided for personnel where de-institutionalisation occurs. It is extremely important to take account of such realities in the development of policies aiming to promote alternatives to the deprivation of liberty of children.

It is worth noting that while any one of the above stated reasons may constitute sufficient grounds for depriving a child of liberty, each of the reasons infer further problems in the child's background, which taken as a whole, leads to the decision to deprive him of his liberty.

1.1 Delinquency

a. Offences¹⁰ leading to the deprivation of liberty

The vast majority of offences committed by juveniles, in all regions of the world, concern threats to the property of others, such as theft, and often fall into the category of minor offences. Most children deprived of their liberty are confined after having committed these types of offences. Serious crimes, such as murder, represent a very small percentage of the offences committed by children. A variety of sources show that only 5 -10% of detained children are deprived of liberty for committing serious offences.

The following examples illustrate the types of minor offences which may lead to the deprivation of liberty of a child :

10 We use in the text several terms for delinquent acts, including "crimes", "infractions", and "offences". These terms are used in a generic sense without taking account the levels of gravity that these terms may derive from criminal law.

CHILDREN DEPRIVED OF LIBERTY

- travelling on public transport without a ticket or identity papers
- telephone harassment (even after a single call)
- uttering threats against a teacher
- participating in fights (even non-violent ones) in school
- drawing graffiti

The vast majority of young people deprived of their liberty (up to 90% in certain countries) are in pre-trial detention. A telling sign that the deprivation of liberty was not necessary for most of them is that a significant number are acquitted after judgment (as many as 90% in certain countries). Moreover, when the courts impose a punishment on the child after pre-trial detention, deprivation of liberty is most often not used. To justify pre-trial detention, magistrates often invoke the needs of the investigation, the risk of flight, of recidivism, of collusion or the gravity of the alleged crime.

It is important to note here that children can sometimes be confined not only after having committed an offence but also on suspicion of committing an illegal act.

b. Criminals or victims?

Children may be deprived of liberty for having committed offences for which their responsibility can be seriously questioned. For example, children are sometimes used by adults in criminal activities (for example, in drug trafficking or spying). During our research, we met a 7 year old boy, detained with adults, accused of having been hired by rebels to disassemble the rifles of the regular army.

In some countries girls who have been raped may be condemned for adultery. Others, after voluntary abortion, can have their act designated as infanticide. The question “criminals or victims?” can also apply to working children, street children, and children forced into prostitution, etc.

1.2 Status offences

Children may be deprived of liberty for acts that, if committed by adults, would not be considered as infringements of law. Examples of these acts would include the violation of child-related curfews, running away from home, repeated school truancy, lack of respect for authorities, marriage before legal age, the consumption of alcohol or cigarettes, disobedience or threats to the ‘moral order’, such as visiting places where alcohol is served or that are used for prostitution or betting without being accompanied by an adult. Sometimes children whose behaviour is deemed uncontrollable,

RIGHTS AND REALITIES

unruly, deviant or antisocial are deprived of liberty without the grounds being specified to them, at the request of the parents, the guardian, or the institution in which they live.

An example, by no means unique, is of a 16 year old child deprived of liberty for not having respected rules established by her father and having thrown objects across her room and for missing school.

1.3 Children at risk from the environment in which they live

a. Vagrancy

A common reason for depriving children of liberty, especially in developing countries, is vagrancy. For example, a child who cannot provide his home address or who is in a place considered dangerous (for example, at a bus terminus or in the vicinity of an area known for prostitution) at an hour deemed inappropriate may be arrested by the police. Street children are often targets for this type of arrest. Due to the lack of facilities capable of receiving them, such children are regularly placed in prison or in centres for delinquents. A 13 year old child found sleeping in a park and imprisoned for one year following his arrest is an extreme but not unique example of this phenomenon.

b. Children at risk

Children may be deprived of liberty simply because they are in need of protection and assistance. They may be orphans, or children who have been mistreated, raped, malnourished, abandoned or abducted. Their parents may be in prison, have disappeared or are considered incapable of taking care of them. In some cases, one or both of their parents may be out of work, or the child's parents are separated or are considered to have too low an income to support the child.

These minors who are sometimes categorised under the vague terms of children "at risk", "in an irregular situation", "in a problematic education situation" or "in danger", are often placed in the same establishments as those children accused of an infringement of the law. Laws which are based on such doctrines as the "irregular situation" fail to make a clear distinction, in terms of judicial procedures and treatment, between children in need of care and protection and those in conflict with the law.¹¹ Such children may

11 See the Concluding Observations of the Committee on the Rights of the Child in UN Doc. CRC/C/15/Add.173, 1 February 2002.

CHILDREN DEPRIVED OF LIBERTY

constitute a large proportion of minors deprived of liberty. The predominant reason that children “at risk” and children accused of having committed crimes are housed together is the lack of separate facilities. In some countries, these children are at risk of being sent to psychiatric hospitals.

The deprivation of liberty of children can also be motivated by reason of their own security. For example, girls in some countries who have been raped may be confined to protect them from the reaction of their own family. Children presumed to have participated in acts of genocide may be deprived of liberty in view of protecting them from social hatred. Unaccompanied refugee children may be deprived of their liberty as a measure to protect them against possible exploitation, including trafficking.

1.4 Children with physical or mental problems

Children may be deprived of liberty for medical reasons. They may be disabled children, psychiatric patients or merely children considered “maladjusted”, “unbalanced” or “disorientated”. They may also be drug addicts undergoing detoxification.

These children may be placed in prisons, in centres for minors or interned in medical institutions. In this regard the case can be mentioned of a teenage deaf-mute who, according to one of our sources, was arrested when he was wandering in the streets and who was kept indefinitely in an establishment for juveniles.

Children who are a little different, for example, children affected by orthopaedic problems or who have difficulties in speaking, can be considered abnormal and placed in units for psychiatric patients. Many children interned in mental hospitals or centres suffer from no serious physical or mental handicap.

1.5 Children deprived of liberty with their parents

Very young children – as young as new-borns – may be deprived of liberty with their mother or, in rare cases, with their father. In certain prisons, mother and children can come and live with the incarcerated father. This may lead to extremely harmful consequences. For example, the case of a girl child who arrived in a prison with her mother, but then remained in prison after her mother’s death.

In the opinion of certain commentators, these young children cannot be considered as truly deprived of liberty because they are not deprived of liberty in their own name. However, from the child’s perspective – the

RIGHTS AND REALITIES

approach taken in this book – it is clear that this situation still constitutes a deprivation of liberty for the child.

1.6 (Illegal) immigration

Children may be found in closed establishments in countries in which they arrive as refugees or in which they live illegally. They may be detained according to immigration laws while awaiting a decision to be taken in their case. Children are detained both in closed centres reserved for children as well as in prisons for adults or closed establishments for minors.

1.7 Other reasons

a. Disciplinary measures

The deprivation of a child's liberty is also used as a disciplinary measure. Common examples of this use of the deprivation of liberty is for young people who have infringed their military service or for children living in an open home whose behaviour has been judged uncontrollable.

b. Political reasons

In many countries, juveniles may be deprived of liberty for political reasons. They may either be sympathisers or members of opposition groups or of banned organisations or minors having taken part in peaceful demonstrations or in strikes. They may be deprived of liberty for reasons of “lack of respect for the security of the State”, “incitement of hatred towards the government” or conspiracy. Such measures may also be taken against children for any activity of opposition to the regime in power such as the writing of graffiti, the distribution of propaganda, the transmission abroad of information on the situation of the country or the wearing of the colours of a flag of a minority group. Some countries conduct mass arrests of juveniles during demonstrations and detain them “incommunicado” for prolonged periods of time.

The case of a 14 year old child sentenced to 13 years in prison for having pasted up “anti-governmental” posters in his school is an example of such measures.

In certain situations of emergency and crisis, young people can be arrested on suspicion of having committed serious terrorist acts, and also for related offences such as having carried weapons or having burned tires.

CHILDREN DEPRIVED OF LIBERTY

c. Threats and exploitation by the authorities

Street children are sometimes arrested by policemen whose objective is to extort money from them or demand sexual favours in return for the children's liberation. Children who have a home but work in the street (including prostitution) undergo similar treatment.

Cases have been reported in which young people have been arrested and detained by the police after having argued with the son of a policeman or because they have refused to polish the shoes of law enforcement officers for free. Children may also be arrested to prevent them from making a complaint when they know of, are witness to, or a victim of, an illegal act of a law enforcement official.

d “Social cleansing”

Street children are regularly victims of police round-ups in the context of “social cleansing” campaigns which are commonly carried out prior to a national festivity, the tourist season or the visit of a foreign dignitary.

e. Children as scape goats

Some children are accused of crimes in order to protect adults or to mask an illegal arrest or detention. Street children can also be victims of mass arrests when a crime has been committed and authorities feel it is necessary that a “guilty” person be seen to be arrested or as a preventive measure to protect citizens from young people considered as having “negative past-time”.

f. Child hostages

Some children are detained or held as hostages in order to force one or several members of their family to surrender to the police, or to intimidate parents who oppose the political regime or who work to promote human rights. Some minors are even arrested by policemen who try to extort money from parents through demanding a ransom. At times of conflict, young people are frequently arrested and exchanged later to the opposing side for prisoners of war or for ransom.

g. Various additional reasons

Some children are also deprived of liberty because :

- they are witnesses in judicial proceedings
- they are former soldiers and have been demobilised

RIGHTS AND REALITIES

- they are of indigenous or foreign origin or belong to an ethnic, racial, religious or linguistic minority
- they do not speak the official state language

Children are often deprived of liberty where another more appropriate solution is possible.

2. Children can be deprived of liberty in various types of establishments

As a result of the multitude of reasons that can lead to a child being deprived of liberty, the establishments in which they are forced to reside also vary greatly.

Throughout the world, children are detained or imprisoned in police stations, detention centres, prisons and other types of establishments. In practice, children are frequently placed in establishments reserved for adults. Some children are placed in distinct separate sections within the establishment while others share a cell with adults.

The centres reserved for the care of minors may be categorised by reference to their different objectives. These objectives range from security, correction, adjustment, rehabilitation, supervised education, educational action, education by work, rehabilitation and assessment, to observation, diagnostic, orientation, classification, placement, internment, therapy, care and treatment centres.

Minors are also placed in work camps, boarding schools, penitentiary colonies, specialised technical schools, military camps, and religious schools. A variety of other places can also be used to confine children : airport transit zones, detention centres for immigrants, psychiatric establishments, hospitals, orphanages, institutions for the physically or mentally disabled, social defence centres for people considered as “abnormal”. This list is by no means exhaustive.

The living conditions of children deprived of their liberty and the respect accorded to their rights are not always related to the type of establishment in which they are placed. For example, a rehabilitation centre for juveniles is not necessarily preferable to the reserved section of a prison for adults. Whether establishments are named rehabilitation centres, reformatories, prisons, police stations or technical schools, they may well hold the same reality for the children detained within. There is no *a priori* guarantee that a rehabilitation centre offers more educational programs than a prison or

CHILDREN DEPRIVED OF LIBERTY

that a place of rehabilitation is more likely to promote the social reintegration of a young person than a reformatory.

It is therefore prudent to be cautious in making assumptions about establishments housing children because of the terminology used to describe them. Such assumptions are often misleading and may suggest a certain standard of living conditions very different from those existing in reality. Besides, from the perspective of the children themselves, deprivation of liberty remains a deprivation of liberty regardless of the title of the institution. For example, children have commented “here, it is more a prison than an orphanage”.

These different establishments can generally receive the same children, notwithstanding the divergent reasons for the deprivation of their liberty. This observation means that a prison can house young delinquents as well as children “at risk” who cannot live at home, street children who have not committed any offence or foreign juveniles in irregular situations.

This mixing of children detained for different reasons in the same establishments often means that absurd situations are created such as the cohabitation in the same cell of an 8 year old child victim of rape and a 17 year old teenager accused of rape.

3. Children can be deprived of liberty by a variety of authorities

According to Article 11 of the United Nations Rules for the Protection of Children Deprived of their Liberty, placement of a child in a closed establishment can be ordered by judicial, administrative or other authorities.

With regard to the judicial authorities, the deprivation of liberty of a child can be decided in the context of the juvenile justice system by judges, courts or tribunals. The juvenile justice system is discussed in detail in Part 1, Chapter 3. Other competent judicial authorities who may decide to institute a measure involving deprivation of liberty of a child are justices of the peace, civil courts or military courts.

The administrative authorities that may decide on the deprivation of liberty of a child are numerous. It can be the police, local political authorities, immigration services, medical or social services, physicians, mental health advisory boards or commissions, administrative commissions or councils for juvenile justice or child protection services, or even the managers of the establishment (who decide, for example, on the transfer of a child).

RIGHTS AND REALITIES

Military authorities or even parents or any other person who is in care of children can also decide on the deprivation of liberty of a child.¹² It may also be possible for the competent Minister to make the decision.

4. Children can be deprived of liberty for very long periods of time

The time spent by a child in a closed establishment can be very long. It is impossible to estimate how much time, on average, young people remain in these establishments but periods of one, two, three or four years are regularly reported by different sources. Several sources also report even longer periods. Some minors are confined for 10 or 20 years. Detained children are not necessarily released at the age of majority. Most at risk of facing inordinately long periods of confinement are young people who have been convicted of serious offences, those who are deemed to have psychiatric problems and those for whom no appropriate alternative assistance exists.

The length of the period of deprivation of liberty of a child can in some cases be indeterminate. This is generally the case where children have been confined for purposes of rehabilitative punishment. A period of detention or internment dependent on the rehabilitation of the juvenile or his recovery means that the period of detention is dependent on a subjective judgment of the child. Minors are generally released at the age of majority. In certain countries, judges may deprive a child of liberty for an indeterminate period “at the pleasure of His or Her Majesty”. Sometimes, when the law proscribes confinement for life for minors¹³, convicted minors are nonetheless detained indefinitely. Cases have been reported of convicted persons having spent twenty or thirty years in prisons for adults for offences committed when they were children. Moreover, some countries still impose life detention for children convicted of certain offences.

If these long periods of deprivation of liberty of children are related to the reasons for which children are mostly detained, one may conclude that in

12 It is interesting to see that the European Court of Human Rights does not consider the placement of a child in a closed institution, such as in a secure psychiatric institution, at the instigation of a parent, as a deprivation of liberty: *Nielson v. Denmark* (Judgment (Merits)), Application No. 00010929/84, 28 November 1988, European Court of Human Rights Report A144.

13 Life imprisonment is forbidden by the Convention on the Rights of the Child, article 37(a).

CHILDREN DEPRIVED OF LIBERTY

general, the periods of deprivation of liberty of children are excessively long and disproportionate to the gravity of the offences. Even children who have not committed any offence have been known to spend several years in prison or in a specialised centre.

5. Children can be deprived of liberty at any age

A child is never too young to be deprived of liberty. Children of all ages find themselves in closed establishments, from new-borns who arrive with their parents, to children confined for infringement of the law. It would be a mistake to assume that the youngest children are always placed in the least severe establishments. It is not rare in a number of countries to find young children serving time in adult prisons for minor offences such as drawing graffiti.

The majority of children in closed establishments are between 14 and 18 years old. This raises the question of how many children are confined in closed establishments in the world as a whole.

6. The number of children deprived of liberty across the world is very high

It is impossible to know the exact number of children deprived of their liberty across the world. Figures of children deprived of liberty in some countries are extremely difficult to obtain : they are not communicated by authorities or data is simply not collected. It may also be that the available statistics do not cover the totality of closed establishments in a given country.

According to the documents consulted, numbers can vary between more than 80,000 minors deprived of liberty in one country to about 100 in another. Of course, the population size of the country and the population under 18 has to be taken into account, as does the definition used by statisticians or researchers when they are reporting on deprivation of liberty. It is unlikely that, in all countries, official figures represent precisely the same categories of children deprived of liberty. In some countries, the figures include all children deprived of liberty while other countries limit official figures to reporting the number of young people in prisons for adults. It is of limited use, then, to compare statistics from one country to another.

According to the available numbers in our sources, the proportion of juveniles in the total prison population varies between 0.5% to 30%

RIGHTS AND REALITIES

depending on the country. A high percentage can be explained in part by the proportion of juveniles in the population as a whole. In certain countries, juveniles represent half the population.

The number of minors in closed establishments is decreasing in certain countries and increasing in others. In countries in which it appears that this number is decreasing, it would be important to confirm that the reduced figures represent all forms of deprivation of liberty of children, not only the most extreme forms of the deprivation of liberty, such as imprisonment. It is sometimes the case that countries make efforts to decrease the resort to imprisonment but nevertheless continue to confine children in other types of closed establishments.

Considering all the information at our disposal, we estimate the number of children deprived of liberty in closed establishments throughout the world to be more than 1 million.

Conclusion

The problem of children deprived of liberty is universal. The issue is regulated by the United Nations Convention on the Rights of the Child which provides, in article 37(b), that “no child shall be deprived of his liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law, and shall be used only as a last resort and for the shortest appropriate period of time”.

Unfortunately, these international standards are rarely practiced in reality. As already shown, the multitude of reasons for depriving a child of liberty, the numerous types of closed establishments and the number of possible procedures, lead to a very high number of children deprived of their liberty. A very important observation is that the image of the child deprived of liberty as a serious criminal is generally not justified. Only a small proportion of children deprived of liberty have been confined for having committed serious criminal acts. Most offences committed by children are minor. Moreover, a large number of children are deprived of liberty because of status offences or on the vague basis of being “at risk”, “in an irregular situation” or “having educational problems”.

The juvenile justice system is one of the main ways by which children are deprived of liberty. Indeed, the vague notions mentioned above, as well as the concept of status offences, have been invented and used in the context

CHILDREN DEPRIVED OF LIBERTY

of the creation of specialised systems of juvenile justice, aiming to prevent juvenile delinquency and to respond to it in an appropriate way.

One of the peculiarities of this new approach is the particular attention paid to situations that could lead to delinquency and to all “pre-delinquent” behaviour. The juvenile justice system is no longer limited to intervening when young delinquents commit offences, but also intervenes earlier in situations deemed problematic, with a view to preventing juvenile delinquency. While there are some advantages to such an approach, the juvenile justice system is not always the most appropriate means to tackle juvenile delinquency. The inordinate number of children from problem backgrounds living in closed establishments is evidence enough that alternative methods must be found.

The remainder of the book focuses on children deprived of liberty in the context of the juvenile justice system, in view of the high number of children deprived of liberty as a result of the workings of this system.

Chapter 3

The deprivation of liberty of children and the juvenile justice system

Introduction

Several sources confirm that a large proportion of juveniles are deprived of liberty either because they have committed an offence or because they are suspected to be about to commit an offense. A number of these children are considered as delinquents or as being in an irregular situation. They are “in conflict with the law” and are thus brought to into contact with the justice system.

Depending on the countries in which they live, these children will fall within the jurisdiction of the system of ordinary criminal justice, with or without distinct treatment from that of adults, or within the jurisdiction of a system exclusive to juveniles, the juvenile justice system.

Children who have committed offences are sometimes treated in the same way as adults and given similar sentences. Children in some countries, both developing and industrialised, may even be sentenced to death. In other countries, children who are accused of offences are treated differently from adults, receiving lighter sentences on account of their age, and not being subject to certain punishments, such as the death penalty or life imprisonment.

CHILDREN DEPRIVED OF LIBERTY

A large number of countries, predominantly since the beginning of the 20th century, have adopted a special justice system for juveniles. The concept of juvenile justice was first developed in industrialised countries at the end of the 19th century. The notion has since extended to all regions of the world. Within the juvenile justice system, “children in conflict with the law” appear before a specialised jurisdiction or administration.

Juvenile justice is not limited necessarily to intervention following acts of delinquency; the system may intervene earlier in other situations deemed problematic.

The observation made at the end of the previous Chapter that juvenile justice is one of the main ways by which children are deprived of liberty can seem a contradiction when considering that the respect for and protection of the interest of the child is the *raison d'être* of that system. This issue is dealt with in detail in the following sections.

1. A brief overview of the juvenile justice system

Introduction

The term ‘juvenile justice system’ signifies different realities and systems in different countries. There is no one definitive juvenile justice system. The reasons for intervention, the ages taken into consideration, the intervening bodies, the reactions, the organisation, etc. can vary substantially from one country to the other. It is therefore impossible to give a universal description of just what is the juvenile justice system in the different countries in the world.

For this reason, our analysis is limited to common elements that can be identified in the system of administration of justice in different countries.

One of the common elements of the juvenile justice systems is that they all derive their origins from the criminal law or social control system, or in other words, the formal legal system existing in all cultures to enforce respect for social norms and rules. The fact that the juvenile justice system has its origins in the criminal system being based on sanctions and other repressive means is often forgotten or neglected in the debates concerning juvenile justice and delinquency. Such origins are concealed by the very different objectives of the juvenile justice system, such as providing support and aid to children and families in difficult circumstances.

RIGHTS AND REALITIES

1.1 The reasons for intervention

The juvenile justice system is often perceived as a specialised system with the single objective of intervening in cases where crimes have been committed by children. This is not always the case, however, and this misperception can be explained by the origins of the system. It is possible to distinguish three main categories of behaviours or situations that can lead to an intervention by the juvenile justice system :

- juvenile delinquency
- children in danger by virtue of their behaviour/status offences
- children in danger from the environment in which they live

The definitions of specific crimes or irregular situations are not always the same from one country to another. The last category is particularly vague and allows for a number of divergent interpretations. Expansive interpretations of such behaviours or situations can lead to an intervention by the mechanisms of the juvenile justice system for almost any reason whatsoever, with regard to any child or any family. This problem is especially acute with regard to children whose families are in lower socio-economic classes, or are unable to influence decision-making authorities in such matters.

While an expansive interpretation of these categories may be motivated by a desire to guarantee protection to a broad range of children in problematic situations, such an interpretation substantially raises the risk of depriving a large number of children of their liberty.

A member of the Committee on the Rights of the Child, in charge of monitoring the Convention on the Rights of the Child within the United Nations, has commented on the subjective character of interventions with regard to children in the context of the juvenile justice system. In practice, such interventions tend “to open the way for the deprivation of liberty of poor and needy children and those in particularly difficult circumstances, while closing the doors to detention for those children in the higher income sectors of populations (...)”.¹⁴

A similar observation is made in the initial report presented by Australia to the Committee on the Rights of the Child that interpretations of what constitute irregular and dangerous situations for children prompting the deprivation of liberty “can derive (...) from a combination of history and

14 UN Doc. CRC/C/SR 54.

CHILDREN DEPRIVED OF LIBERTY

culture, prejudice and ignorance and lack of family resources (social and financial) to negotiate the juvenile justice system”. This observation was made particularly in respect to Aboriginal juveniles and other disadvantaged children.¹⁵

1.2 The objectives of intervention

“Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society”.¹⁶

Article 1.4 of the Beijing Rules clearly expresses the twin objectives that juvenile justice should be aimed towards. A good example of the coexistence of these two interests is expressed in the Initial State Party report for the Committee on the Rights of the Child submitted by Trinidad and Tobago : “When a juvenile is apprehended and it is not possible to take him before a magistrate immediately, the officer in charge of the relevant police station has an obligation to release the juvenile (*interest of the child*) on sufficient recognisance (*interest of society*), unless the charge is one of homicide, or a grave crime (*interest of society*). The officer also has discretion not to release the juvenile if it is in his own interest to be removed from associating with a reported criminal (*interest of the child*), or if the officer has reason to believe that his release would defeat the ends of justice (*interest of society*)”.¹⁷

The coexistence of the objectives of maintaining peace and order in society and protecting the juvenile is related again to the origins of juvenile justice being rooted in the criminal system. Juvenile justice is therefore part of the system for the maintenance of public order, above all other objectives.

With the creation of a specific justice system for juveniles, an attempt was made to incorporate the needs of the child into methods of social control. In accordance with article 3 of the Convention on the Rights of the Child¹⁸, the child’s best interests must be a primary consideration in all actions concerning him. Rehabilitation and aid should always be a priority. In other

15 UN Doc. CRC/C/8/Add.31.

16 United Nations Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules) (1985) article 1(4).

17 UN Doc. CRC/C/11/Add.10. Emphasis added.

18 Article 3 of the Convention provides: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

RIGHTS AND REALITIES

words, whenever judicial and/or administrative authorities intervene in the context of the juvenile justice system, due consideration must be given to the child's interests, alongside the traditional concerns of criminal law, being the interests of society in the prevention and punishment of crime and of the victim for redress. It is clear that the Convention does not state that the child's interests must be the only interests to be considered in this context. It is one consideration among others but it is a "primary" one, that is, one of prime importance.

In reality, however, there are several reasons to doubt whether the child's interests are always considered of primary importance. The first reason to doubt such prioritising of considerations is the generally frequent resort to the deprivation of the liberty of children. It may be that the child's interests is taken into account only when these interests happens to coincide with the interests of society. Another reason is that in certain cases it is possible to transfer the file of a delinquent minor from the juvenile justice system to the criminal system for adults in the interests of society. A Canadian legislative provision quoted in the Initial State Party report to the Committee provides for such a transferral : "Pursuant to section 16 (1.1) of the Young Offenders Act, a young person over 14 years of age who is alleged to have committed a serious offence will be transferred to the adult court if the objectives of the protection of the public and rehabilitation of the young person cannot be reconciled by the youth remaining in the juvenile system; protection of the public is the paramount consideration".¹⁹

1.3 A specialised system

The juvenile justice system is a specialised system for the "treatment" of certain groups of children. Important differences may exist in the type of specialisation of the system. Types of specialisation may be distinguished on several levels : the legislation, the intervening bodies, the organisation, the measures or the involvement of the family or other people.

a. The legislation

A legal framework exclusively concerning children may be in force. This may cover three sections :

- A criminal section on interventions with regard to young delinquents (including acts which are punishable when committed by children but

19

UN Doc. CRC/C/11/Add.3.

CHILDREN DEPRIVED OF LIBERTY

not when committed by adults i.e. status offences) or young people in an irregular situation.

- A social section on voluntary and/or coercive interventions with regard to children in danger or in a problematic educational situation. These interventions may be directed towards children as well as parents.
- A civil section on specialised interventions that concern minors in civil affairs, such as adoption, the loss of parental authority or the right of custody or of visits of children after a divorce. Civil matters will not be examined in this book.

In certain countries, the legislation on the juvenile justice system covers the three sections. In other countries, the juvenile justice legal framework may be limited to the ‘criminal’ section. In these cases, the law of juvenile justice substitutes or substantiates the penal law and criminal procedure law.

b. Intervening bodies

In certain countries, the juvenile justice system functions through specialised intervening bodies such as youth magistrates, juvenile liaison police, social services, committees or commissions for child protection, specialised “educators”, psycho-medical centres, etc. In others, in spite of the existence of a specialised legal framework, magistrates and civil servants dealing with children may have no particular training in juvenile justice.

In some countries specific legislation on juvenile justice may not exist, but intervening bodies specialised in the treatment of cases of children operate in the context of the criminal system.

c. Organisational structure : an administrative system and/or a judicial system

Because it may cover a range of interventions, some of which are not judicial, the term ‘juvenile justice’ may be misleading.

In certain countries, the juvenile justice system even takes place largely outside the judicial system. Committees, commissions or administrative councils, such as child protection committees, are then responsible for addressing the problems concerning children, including delinquent behaviour. It is, however, rare that administrative organs can order coercive measures for children who have committed crimes. Administrative organs function mainly in situations involving children in danger and in cases where the child admits the facts and consents to an extra-judicial process. Often, such organs may operate only with the agreement of the child’s parents.

RIGHTS AND REALITIES

In certain cases the child's consent may also be necessary. Intervention by means of an administrative system therefore frequently has a voluntary character.

Reference to justice can be explained by the fact that in a significant number of countries the juvenile justice system is the exclusive prerogative of the judicial system. It may be, depending on the country, that specialised systems of courts for children are put in place or that the criminal judicial system has jurisdiction over juveniles. In this case, they may or may not be dealt with by specialised intervening agents such as a youth or children's judge.

In most countries, however, the juvenile justice system in force is a mixture of administrative and judicial measures. It is important to underline that the measures taken by both the administrative and judicial systems may be similar. The deprivation of the liberty of children, for example, is often possible in both systems.

The two types of interventions can be distinguished from each other by the coercive character of judicial intervention and the voluntary character of administrative intervention.

The distinction, however, is not always clear. In fact, in a mixed system, a 'voluntary placement' by the administrative system can, for example, be induced by threats of judicial intervention with regards to the child and his family. The existence of genuine free choice in such cases may be questioned.

d. Special measures adapted for children

Within the juvenile justice system, measures suitable to the age and the situation of the child may be instituted. Specialised services, as well as an institutional framework, including institutions reserved for children or distinct sections in establishments for adults, may facilitate the application of these measures.

Such measures include :

- probation
- the requirement to perform certain duties
- being prohibited from frequenting certain places or meeting certain people
- placement in a foster family
- placement in family homes
- placement in open establishments
- placement in closed establishments

CHILDREN DEPRIVED OF LIBERTY

- educational assistance
- specialised treatments and therapies
- reprimands

e. The involvement of the family and other people close to the child

When the State acts to punish, to rehabilitate or to assist a child, it very often also intervenes, directly or indirectly, in the child's family life. This is often the case where the child's social environment (including school) and family background may be considered negative factors, although the potential of the family to solve its problems may also be reviewed.

In certain countries, the juvenile justice system allows parents to be held criminally responsible for acts committed by their children and punished accordingly. In some cases parents even risk being deprived of their parental authority, which would have significant consequences for the child, such as placement within a foster family or an institution.

But the family or others close to the child may also be involved in a positive sense in dealing with delinquency or situations where children are in danger. The family may be a very important support for the child and can contribute in a substantial manner to the development of a constructive and humane response. The family may also be fully involved in the intervention, for example, when measures take the form of educational support.

1.4. Legal protection

Within the juvenile justice system, legal protection of children is not always a primary concern. The objective of taking measures in the child's best interests is often used to justify the absence of any legal advice or assistance during the different procedures. Given that all the parties intervening are supposed to act in the child's best interests, a lawyer or any other legal counsellor's presence is sometimes deemed unnecessary. Legal defence is, in this context, sometimes even perceived as risking the process of re-socialisation of the concerned child. According to this point of view, a lawyer would plead, for example, for a minimal measure due to the minor character of the crime and the lack of responsibility of the child whereas psychologists, social workers or educators may consider a long period of deprivation of liberty worthwhile in order to achieve re-socialisation of the child, which, from their perspective, the child is in need of since he doesn't respect the law.

RIGHTS AND REALITIES

The objectives of rehabilitation and social reintegration may also be used to justify the considerable discretionary power of authorities who take measures with regard to children. This discretionary, and often arbitrary power makes the legal protection of children all the more important. Nevertheless, in the context of the juvenile justice system, this discretionary power is preferred over a rigid legal system which would determine in advance a definite response to a given problem : the system, procedures and measures must be flexible and capable of adapting to the minor's needs. The absence of sufficient legal protection is especially problematic when the juvenile justice system is geared towards an extension of social control and the increase in measures involving deprivation of liberty.

2. The juvenile justice system and the extension of social control to all children and all families

The juvenile justice system thus has scope for intervention beyond cases of delinquency.

In an effort to prevent offences being committed by children, juvenile delinquency may be interpreted as including acts in addition to those constituting criminal offences. Juvenile delinquency also encompasses those acts that are only treated as offences when they are committed by children : status offences.

In fact, all situations judged problematic for children and their family can, in certain countries, be sufficient to justify an intervention by the juvenile justice system. In such instances, intervention is motivated by the belief that some behaviours and/or certain situations lead to (juvenile) criminality. An Australian legal provision illustrates this line of reasoning. The provision "enables a police officer to remove from a public place a person whom the police officer believes on reasonable grounds to be under the age of 15 years and not subject to the supervision or control of a responsible adult, where the officer considers that to take that action would reduce the likelihood of a crime being committed or the child being exposed to some risk. The officer will escort the child to the residence of a parent or carer or to a place of refuge".²⁰

Historically, this widening of social control to "irregular situations", "status offences" or children in danger from their environment was motivated by

20 Part 3 of the Children (Parental Responsibilities) Act 1994 (UN Doc. CRC/C/8/Add.31).

CHILDREN DEPRIVED OF LIBERTY

the need to protect the child better in cases where (social) services were either inefficient or inadequate. In reality, the widening of measures of social control has not extended protection to a larger number of children. The problems which many children face at home and in the broader social environment have not diminished while an increasing number of children and their families are confronted with an ever more pervading social control system.

One of the effects of this widening of social control is that children and families who come in contact with the juvenile justice system for problems other than delinquency, are all seen as associated with delinquency. Another negative consequence is that the ordinary social services are either partially or completely removed from their responsibility for and obligations towards children and their family. In addition, widening social control also risks removing emphasis on structural changes which could prevent at risk situations for children as a social group.

Critiques of the doctrine of the “irregular situation”²¹ are thus pertinent to the discussion of the role of the juvenile justice system in tackling social problems facing children.

“The “irregular situation” doctrine is a legacy of the obsession with correctional measures. From this viewpoint, every social problem has a corresponding detention response. “Minors” are no exception. “Antisocial” acts committed by “minors” are perceived as manifestations of pathological inclinations. This represents a culture of “compassion-repression” in which the most vulnerable group in society becomes stigmatised and condemned to some sort of institutional confinement. This largely explains the excessive and disproportionate use of the deprivation of liberty.”²²

The juvenile justice system should not detract from the wider background of underlying socio-economic problems, which lead to the creation of irregular or risk situations for children. The juvenile justice system, which should be the last means of State assistance at the end of a chain of possible reactions, too often becomes the only help for many children in distress or at risk.

21 The doctrine of “irregular situation” justifies the intervention of the juvenile justice system in situations outside those involving the criminal law. The notion of “irregular situation” is often used in Latin America and covers situations considered as pre-delinquency or “children in danger”. For more information on this doctrine see Garcia Mendez, E., 1998.

22 Garcia Mendez, E., 1995, p. 99.

3. The juvenile justice system and deprivation of liberty

While in theory the legal framework of juvenile justice treats the child's best interests as a primary consideration and intervening parties work in this spirit, in reality there is no guarantee of such prioritising. The setting up of special systems for the protection of juveniles and young people in danger can have other negative effects beyond the widening of measures of social control. It is worth recalling our previous observation that the juvenile justice system is one of the main means by which children are deprived of their liberty.

Another disadvantage of a specialised system is that the juvenile justice system often involves a degree of "semantic mystification". Traditional terms have been replaced by more "politically correct" phrases : children are not "imprisoned" but "placed in closed establishments"; the stated objective is not punishment, exclusion or repression but treatment and rehabilitation. The terms of reference may change, but from the child's perspective, the conditions of his deprivation of liberty remain the same.

"In keeping with the hypocrisy of the 'irregular situation' doctrine, deprivation of liberty was camouflaged by euphemisms such as 'detention', 'institutionalisation' and 'institutional placement'. However, this ostensibly semantic subtlety had very real consequences. When someone is deprived of their liberty, the law and culture see to it that they are detained no longer than the amount of time stipulated by law. When someone is 'placed in an institution', concern over their particular plight abates or disappears entirely".²³

Because the terms used can be confusing or deceiving, this semantic mystification risks marginalising the discourse over the living conditions of children deprived of liberty. It is easier to call attention to the presence of children in prisons for adults than to the situation of children placed in rehabilitation centres. Yet, from the child's perspective these two situations may involve a similar experience, notwithstanding the name of the institution.

The possibility of semantic mystification adds to the other possible negative effects of a specialised system of justice for juveniles : the widening of social control and the increased risk of being deprived of liberty.

23 *Ibid.*, 1995, p. 95.

CHILDREN DEPRIVED OF LIBERTY

The Initial State Party Report of Croatia submitted to the United Nations Committee on the Rights of the Child illustrates the reciprocal reinforcement of the increased resort to the deprivation of liberty *and* the widening of social control. The Report justifies the confinement of juveniles, among other reasons, by the objective of deterring “other minors from perpetrating [criminal offences]”.²⁴

Finally, it should be kept in mind that the child’s legal protection is often weak in the juvenile justice system. The excessive recourse to the deprivation of liberty for indeterminate periods, as well as semantic mystification become, for this reason, much more problematic.

4. The ages of criminal responsibility, criminal majority and “institutional majority”

Introduction

The setting up of a special system of justice for juveniles is based on the recognition in nearly all countries of the legal principle of non-responsibility of the minor or at least of reduced responsibility because of a person’s age. In addition to the age of civil majority (which distinguishes an adult held to be legally capable from the “legally incapable” child), there very often exists an age of criminal responsibility which is not necessarily the same as the age of civil majority. In some countries the gap between the age of civil majority and the age of criminal responsibility can be surprisingly wide. Indeed, the child is often deemed responsible for his actions long before being judged capable of making choices, such as entering into contracts independently. For example, a 14 year old child generally does not have the legal capacity to buy a moped by himself but if he steals one, he can be held criminally responsible for this infringement and convicted and punished accordingly.

Article 40(3) of the Convention on the Rights of the Child provides that “States Parties shall seek to promote the establishment (...) of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (...)”. Article 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice requires the age

24

UN Doc. CRC/C/8/Add. 19.

RIGHTS AND REALITIES

of criminal responsibility not to be fixed at too low an age level bearing in mind the state of emotional, mental and intellectual maturity.

The requirement to establish a minimum age of criminal responsibility is respected in most countries but nevertheless does not in itself give sufficient guarantee of a justice “adapted to the child”, nor does it provide any guarantee against the deprivation of children’s liberty. It is worth posing the question whether the importance attached to this legal construction²⁵ is not exaggerated. The establishment of a minimum age of criminal responsibility is not in any way a “magic wand” that makes the difficulties facing children disappear. The fact remains that children deprived of liberty still suffer from the effects of stigmatisation and the difficulties of social re-integration. Furthermore, the establishment of an age of criminal responsibility can have divergent effects. It may mean in some countries that a child over the age of criminal responsibility is subject to penal sanctions or it may mean that he is guaranteed a system of rights and an appropriate response rather than arbitrary treatment at the hands of State officials.

It is necessary to be careful that the discussion on the criminal majority and criminal responsibility of children doesn’t mean ignoring the real problems facing children which may lead to their being in conflict with the law. By concentrating the debate only on the search for the most appropriate minimum age, there is the risk of forgetting that the real problem to be solved is the one of finding a humane and constructive reaction to juvenile delinquency.

4.1 Terminology

The ages of criminal majority, criminal responsibility and institutional majority should be distinguished. These notions are complex and can easily give rise to confusion. The term ‘institutional majority’ is new and does not presently exist in domestic laws or jurisprudence.

a. The age of criminal responsibility

The age of criminal responsibility refers to the age from which a person is considered capable of discernment (the capacity to distinguish right from

25 Criminal majority is an artificial legal construction that does not necessarily correspond to a stage in the cognitive and moral development of children in general and corresponds even less in each particular child. One attains criminal majority without being aware of it. It is only through the penal reaction after having committed the offence that one may observe any difference.

CHILDREN DEPRIVED OF LIBERTY

wrong) and therefore of bearing the responsibility for his criminal acts. It is the age from which the child is judged capable of contravening the criminal law.

There can be different thresholds of the age of criminal responsibility in the same country or legal system. Often, these differences depend on the gravity of the act : the minimum age decreases when the gravity of the act increases, thus putting the interest of society before that of the child. In the world today, there are 25 countries that have a separate, lower age of responsibility for serious crimes.²⁶ However, it should be noted that although most of these countries count offences such as murder and rape as serious crimes, they also frequently include offences such as the sale and use of drugs, hooliganism, theft, and robbery.

What happens when a child below the age of the criminal responsibility commits a criminal act ?

The establishment of a minimum age of criminal responsibility does not necessarily mean that below this age a criminal act will not entail a formal reaction by the authorities. In fact, the creation of a juvenile justice system aiming to rehabilitate rather than to punish the young delinquent may mean that it is not necessary to discuss the question of responsibility. To know if a child is responsible for his acts is not, in this context, a priority question : it is rather about identifying his needs and appropriate measures for rehabilitation and integration. The authorities will therefore take some sort of action with regards to the child, notwithstanding his age. In the context of the juvenile justice system, bearing in mind that its logic and philosophy differ from those of the criminal justice system (the primary objective of repression in the criminal system is replaced by one of rehabilitation in the juvenile justice system), the question of the age of criminal responsibility diminishes in importance.

There is also the risk which children below the age of criminal responsibility face of being handled informally by the police which may imply full discretion and no accountability for police actions such as the arbitrary and indeterminate detention of minors. This means that such children do not

26 “Age, Responsibility, and Children’s Rights: A Study on the Age of Criminal Responsibility and Related Juvenile Justice Measures Around the World”, UNICEF Innocenti Research Centre, Working Draft 24 August 2001 (on file with the author), p. 8.

RIGHTS AND REALITIES

benefit from due process rights and since they are not formally part of the juvenile justice system, official actions against them may not be recorded or registered.

The UN Committee on the Rights of the Child has decided that it wishes to issue a General Comment on the minimum age of criminal responsibility. In its recommendations to States Parties to the Convention, the Committee has cautioned that ages of criminal responsibility it considers as too low (e.g. 7, 8, 9, 10, and 11 years old) are in violation of the Convention. In general, the Committee tends to support the highest possible age of criminal responsibility.

The UNICEF Innocenti Research Centre undertook an exploratory study of the age of criminal responsibility around the world from May to August 2001, in which it found that the average age of criminal responsibility is approximately 11.6 years old. It also found that over a third of the countries studied fail to safeguard due process rights for children and almost 40% of the countries studied fail to guarantee the separation of children from adults in correctional institutions. The study concluded that many justice-oriented models of the juvenile justice system designate the age of criminal responsibility at an age when children are assumed to be mature enough to bear responsibility for their actions, whereas the welfare-oriented models use the age of criminal responsibility as a cut-off point to prevent the criminal prosecution of minors. The study underlines the fundamental paradox of the establishment of a minimum age of criminal responsibility : one the one hand it creates the very foundation for children as subjects with individual rights under the law, while on the other hand, it may be the gateway to a full range of serious children's rights violations.²⁷ One particularly notable example is the arbitrary enforcement or application of the minimum age of criminal responsibility based on status, predominantly on gender and on socio-economic status.

b. The age of criminal majority

The age of criminal majority is the age from which a person will be prosecuted before a criminal court for adults. The age of criminal responsibility and that of criminal majority do not necessarily coincide, which can lead to confusion.

27 *Ibid.*, p. 6.

CHILDREN DEPRIVED OF LIBERTY

It is possible that a child who has not yet reached the age of criminal majority may still be prosecuted (in particular instances) before a criminal court for adults. This is, for example, the case in Belgium where the question of criminal responsibility is not raised until a person reaches the age of 18 years since a system of juvenile justice takes jurisdiction over young people until this age. Criminal majority is fixed at 18 years but the law still provides for the possibility of the youth judge to withdraw from the case and to transfer it to a criminal court. This is the case, for example, when the child has committed a murder and when a psycho-medico-social investigation has proven his “maturity” as regards criminal responsibility, provided that he has reached the age of 16 years.

The UNICEF Innocenti Research Centre found that 93 countries specify or imply an age for trial in adult courts, with an average age of 16.8 years. However, for a large number of countries, the difference between trial in juvenile court and adult court is negligible due to various reasons such as : certain crimes are always tried in adult courts regardless of the defendant’s age; children may be tried in adult court if they are co-defendants with adults; there is no separate or specialised system of juvenile courts; or juvenile courts may not be available in all parts of a country.

c. The age of “institutional majority”

Article 11(a) of the United Nations Rules for the Protection of Children Deprived of their Liberty provides that “the age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law; (...)”.

In order to define this legal standard, the term of “institutional majority” which determines the age from which a child can be deprived of his liberty in a closed establishment, public or private, may be introduced.

The Convention Reporting Guidelines instruct State Parties to disclose the official age of criminal responsibility and the minimum age for the deprivation of liberty, reflecting the close relationship between the two measures. To our knowledge, as of the date of publication of this book, no country provides a minimum legal age for the deprivation of liberty in general. The conclusion which can be made is that “institutional majority” is reached at birth.

Some countries, however, fix a minimum age threshold for the deprivation of liberty of persons in certain defined establishments, such as prisons or detention centres. Since these thresholds do not prevent the confinement of children in establishments other than those constrained by age limits, they

RIGHTS AND REALITIES

do not constitute a legal barrier to the deprivation of liberty of children in general.

According to the UNICEF Innocenti Research Centre study, 48 countries specify an age limit for semi-open/non-custodial institutions, the average age limit being 10.8 years. Some 67 countries specify an age limit for closed/custodial institutions, the average age being 11.2 years which is below the world average minimum age of criminal responsibility of 11.6 years.²⁸

Such anomalies in the age limits are explained in part by the ambiguous differences between educational/welfare/medical institutions and correctional/penal institutions, and also between semi-open/non-custodial and closed/custodial institutions.

As the study points out :

“Despite detailed descriptions of sentencing options and other state responses, it is often unclear if institutions operate as mechanisms of treatment or of punishment. Even if the relevant criterion is the deprivation of liberty of children, it can be equally nebulous whether or not placements in a given type of centre imply the deprivation of liberty.”²⁹

4.2 Why have age thresholds?

The aim of introducing an age threshold was to avoid the recourse to the criminal system in cases involving children, which was judged as devastating for their development. The repressive approach and philosophy of the criminal system had to be replaced by approaches based on rehabilitation and re-education. The offence had to be considered as linked to a personal, domestic and/or social problem, and the social reaction to delinquency had to attempt to remedy the problem rather than to punish the child offender.

The establishment of minimum ages of criminal majority and criminal responsibility therefore further expressed a desire to establish a social reaction which emphasised respect for the human being rather than value judgments on a person's capabilities (for example, his capacity to distinguish good from evil). This is reflected in the trend around the world in recent years to raise the minimum age of criminal responsibility and criminal majority.

28 *Ibid.*, p. 11.

29 *Ibid.*, p. 12.

CHILDREN DEPRIVED OF LIBERTY

This same observation holds for the establishment of an age of “institutional majority”. Establishing a minimum age for a child’s confinement reveals a concern with the conditions of detention and their effects on children. For this reason, the age of “institutional majority” is most often applied to prisons. However, children can still be confined in other closed establishments.

4.3 Age thresholds and the deprivation of liberty

Neither the establishment of a minimum age of criminal responsibility, nor of a criminal majority is sufficient to prevent the deprivation of liberty of children. On the contrary, these legal constructions can contribute to the semantic mystification that accentuates the problem : such terms may suggest that the deprivation of liberty only concerns children above a certain age and that younger children always experience adequate treatment. It is necessary to keep in mind that, in spite of these legal thresholds, children who are below the ages of criminal responsibility and/or that of criminal majority are still placed in closed institutions. Since thresholds of age only concern certain establishments – most often prisons – they in no way prevent the deprivation of liberty of children of any age in other types of institutions, for example, in the centres for juveniles. And, as previously noted, a centre for minors can be, from the perspective of the children themselves, a prison in a very real sense.

4.4 What is the most suitable age threshold?

The question of the child’s criminal responsibility must be considered with a great deal of care, because the recognition of the responsibility of the child cannot be disassociated from the question of his competence, and of his involvement in all social domains.

“(…) [T]he decision to make and the criteria for making a child responsible are entirely within the exclusive preserve of the adult society based on adult value judgment. The validity of this process and situation were seriously called into question, bearing in mind that there was a greater proportion of youths in the population of most countries of the world today (…). The question, therefore, arises : how legitimate is it for the minority adult to legislate for, decide for and judge the majority youth with reference only to minority adult norms and culture (or subculture)? (…)”³⁰

30 UN Doc. A/Conf.87/14/Rev.1

31 Bol, M., 1991; Van Sloun, T., 1988.

RIGHTS AND REALITIES

Arguments have been put forward for the establishment of the minimum age of criminal responsibility to be 12 years of age. These arguments are based partly on developmental psychology and more especially in studies and research on the moral development of the child in industrialised countries.³¹ According to these studies, moral development of a person is established at around this age.

Given that age thresholds do not adequately fulfil the function for which they were established (that is, to protect children below a certain age against the negative effects of the criminal system), discussions on the establishment of a most appropriate age are of secondary importance. Moreover, the attribution of criminal responsibility at a determined age of maturity is dependant not only on psychological studies, but on cultural mores and political factors. The energy spent on reaching a consensus on this issue would be better invested in the search for humane, constructive and respectful reactions for all children, regardless of age. In other words, rather than focusing on the designation of a minimum age of criminal responsibility which represents a distinct vision of children and responsibility based on notions of individual responsibility, capacity and intention, the juvenile justice system should be centred on the idea of children being in need of welfare-based services, and courts should not even take the concept of discernment into account.

As for the most appropriate age of “institutional majority”, this is less often discussed, in part because of the rarity or the absence of research which could guide thinking on the subject. In this respect, it would be more useful to pose the fundamental question whether it is legitimate to continue to deprive children of their liberty, whatever their age.

4.5 A particular problem : the use of children for criminal purposes

The non-responsibility of a minor – determined legally or judicially – and the “impunity” or the reduced severity of the punishment that may result, may create an incentive for adults (in certain cases, parents) to use children to commit crimes with them or in their place. This is not of course a new phenomenon and one need only read Charles Dickens’ *Oliver Twist* to find a famous fictional example of this reality. This phenomenon occurs all over the world.

Children are sometimes used as part of a criminal gang (international in certain cases), for example, as traffickers and drug dealers. Children are valuable gang members because they are less quickly spotted and suspected

CHILDREN DEPRIVED OF LIBERTY

by authorities. In case of arrest, the penalty inflicted on a child (or the measure applied) will probably be less grave than that which would be applied to an adult.

The use of children for criminal purposes is an additional example of how their vulnerability is exploited. Every child runs a risk of being exploited, but especially vulnerable are those children in situations of poverty or social marginalisation (street children, illegal immigrants, ethnic minorities, etc.). In order to tackle this phenomenon at the base level, the socio-economic and cultural conditions likely to lead to child exploitation must be identified and addressed. At the same time, the illegal use of children by adults must be considered an extremely serious crime under national and international law. A legal basis for the crime of exploitation is fundamental to holding those adults involved responsible.

4.6 Calls for the recognition of an increased responsibility of minors

Demands for the lowering of the age of criminal responsibility and/or of that of criminal majority, as well as for increased use of measures of imprisonment, are not rare. The recent calls for the recognition of increased responsibility of minors when they commit crimes represents a commonly held view that in order to address the problem of juvenile delinquency the relevant laws should be more repressive.

“Incapacitation, deterrence, and to some extent accountability, have been the driving sanction philosophy in countries where rehabilitation has fallen into disrepute, and where there is increased concern about escalating serious juvenile crime.”³² Such views are unquestionably dangerous for the children concerned.

However, the question of holding children responsible should also be considered as a way of taking them more seriously. If one is to consider a child as a human being with rights and responsibilities, this leads to the question of how to guarantee him a fully-fledged place in relation to social norms. This guarantee involves several elements : the involvement of children as a social group in the establishment of these norms; their involvement in the determination of reactions to transgressions of these norms; and the recognition of the responsibility of every child when he is in conflict with the law. The tendency to adopt repressive measures takes into

32 United Nations Crime Prevention Branch, 1995, p. 50.

RIGHTS AND REALITIES

account this last element only and is restricted to exclusively negative reactions.

Conclusion

A so-called system of “juvenile justice” is not in itself a guarantee for respect for the rights of the child, nor for the abandonment of or reduction in the recourse to the deprivation of liberty of children. In the same way, the absence of such a system does not automatically imply violations of children’s rights or a more frequent recourse to confinement.

The establishment of specialised systems of justice for juveniles is certainly motivated by the desire to protect children and to react in a constructive way towards those who are in difficult situations. However, the reality of children’s situations throughout the world demonstrates that these objectives are far from being fully realized. The frequent recourse to the deprivation of liberty of children in the context of the juvenile justice system is a worrying example of this often misguided reaction.

Conclusion to Part One

The first part of this book aims for a better understanding of who are children likely to be deprived of their liberty. They are not necessarily the dangerous delinquents confined in prisons for adults that are often conjured as images by the media. The problem of juvenile delinquency extends well beyond this picture. In fact, any child runs the risk of being deprived of his liberty. It may be sufficient justification for the authorities to judge that a child is exposed to a danger or an irregular situation for him to be confined. This simple observation is extremely important and, for many, a surprising revelation.

The question of whether the deprivation of liberty may serve the child's interests remains and will be further examined in later sections.

A large number of children who are deprived of their liberty find themselves in closed establishments as a result of the juvenile justice system, whose declared *raison d'être* is the preservation of the child's best interests. The danger of semantic mystification was discussed in this context. The term "juvenile justice" does not necessarily imply improved conditions and respect for the rights of children : the system often remains primarily based on criminal justice, and establishments for juveniles can be old prisons that have merely been given a new name, without any change occurring within.

In the next two parts, we seek to determine if the deprivation of liberty can truly meet the interests of the child. In the second part, the interests of the child deprived of liberty are examined in a general sense. The third part, examines the reality of detention conditions in order to assess to what extent these interests are respected.

The interests of society and those of the child who committed an offence are not necessarily irreconcilable. Indeed, a constructive, humane and respectful reaction vis-à-vis the child may guarantee a much more effective justice system which serves all parts of society. A respectful, humane and constructive reaction to children and their actions increases the credibility of a justice system and contributes to the creation of a society in which the respect for human rights is the objective and the result of all State intervention.

Finally, the community should be invited to play an active role in developing constructive reactions to juvenile delinquency. This point is discussed again in the fourth and last part of the book, in the context of developing alternatives to the deprivation of liberty.

Part Two

**THE RIGHTS OF CHILDREN
DEPRIVED OF LIBERTY :**

**THE INTERNATIONAL NORMATIVE
FRAMEWORK**

Introduction

One of the objectives of this book is to better appreciate the situation of those children throughout the world who have been deprived of their liberty. Part One concluded with an important observation : children deprived of liberty are not just those children who have committed serious crimes, and the issue of children deprived of liberty extends well beyond the prison setting. These traditionally held assumptions are thereby challenged.

In Part Two, answers to the following fundamental questions will be sought : do children deprived of their liberty have rights and, if so, what are their rights? Whether deprived of their liberty or not, children are above all human beings. The very question of respect for their rights must therefore be asked.

To answer these questions, various international standards have been identified in order to develop a legal framework on the rights of children deprived of their liberty. Referring to these instruments is essential to an analysis of the rights of children deprived of liberty, particularly in view of their universal character. With a view to structuring this normative framework, rights have been classified into different categories. These categories are similar to those used by the United Nations Committee on the Rights of the Child in its monitoring of the Convention, but have been adapted in order to correspond to the focus of this book.

This normative framework enables us to address the fundamental question : can the deprivation of liberty be reconciled with the child's best interests? Can the deprivation of liberty be reconciled with respect for all the rights of the child?

CHILDREN DEPRIVED OF LIBERTY

Part Two begins with a brief introduction to the concept of children's rights. What is meant by this concept? What are the new challenges involved?

Chapter 1

The Rights of the Child and new challenges

Introduction

Today, children's rights are high on the international agenda. As a result of the adoption and almost universal ratification of the United Nations Convention on the Rights of the Child (1989) greater recognition has been given to children's rights in recent years. Criticisms of such rights are rare and those who contest children's rights run the risk of being frowned upon in the international arena.

Nevertheless, the first part of this book demonstrated that the realization of rights for all children is far from having been achieved. For the group of children that form the subject matter of this book, the mere existence of their rights is sometimes questioned.

For children who commit criminal offences, their duties and obligations are in general evoked more readily than their rights. The commonly held belief that children are increasingly committing serious offences is one of the justifications for questioning the very notion of the rights of these children. In particular, those rights guaranteeing participation in social life are frequently attacked. This supposed increase in the offending rates of children is often linked to an excess of freedom being given to children. In fact, an excess of freedom is sometimes considered as one of the negative consequences of recognising children's rights. Such arguments for the non-recognition of rights of so-called "deviant" children can be, and should be,

CHILDREN DEPRIVED OF LIBERTY

linked to the very question of the rights of children in general. These arguments demonstrate a need for the public at large and the international community to be better informed about human rights in general and the human rights of children in particular.

It is self evident that the promotion and defence of the rights of children should not prevent a discussion on their liabilities and responsibilities. Liabilities and responsibilities make sense, however, only when weighed against legal rights.

It is beneficial to briefly summarize what is meant by the concept of the rights of the child. What prompted the “evolution” – or even the “revolution” – from protective measures for children to recognising the rights of the child?

The main challenges arising from the fundamental principles of the Convention on the Rights of the Child may be summarised from three perspectives :

- The evolution of protection : from a favour to a right
- Structural interventions with regard to children as social group
- The child as a fully-fledged citizen

1. The Convention on the Rights of the Child : basic principles

The preamble to the Convention on the Rights of the Child states the objectives of this legal instrument for the international protection of children. The basic principles of the innovative conception of the child contained in the Convention are :

- The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. All human beings owe each other total and mutual respect.
- The child, without exception, is entitled to all fundamental rights and freedoms. The child also has a right to special safeguards and care, including appropriate legal protection.
- The child, for the full and harmonious development of his personality, has the right to grow up in a family environment. The family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

RIGHTS AND REALITIES

Children have all the fundamental human rights of adults but, in addition, they have a right to special protection and care.

The child has the right to grow up in a family but he also has the right to develop as an individual, with respect to his own qualities and competences.

However, the legal protection of each child entails more than just a statement of rights. Several other conditions are necessary so that protection is effective :

- sufficient means must be available to put the rights of children into practice
- every child must be informed of his rights
- every child must have the possibility of exercising his rights
- every child must have the possibility to appeal to an impartial and independent authority in cases of non-respect or of violation of his rights
- the legal protection of each individual child must be complemented by the defence of the rights and interests of children as a social group

The Convention on the Rights of the Child presents several different strategies for effective legal protection, and these can be grouped into two categories :

- **reactive** efforts to protect the rights of the child, to be put in place after rights have been violated (action “because rights have been violated”)
- a **pro-active** policy in order to promote the rights of the child, to be put in place before violations have taken place (action “so that children’s rights are respected”)

2. Protection : from a favour to a right

2.1 Special protection for children : a necessity everywhere and at all times

The protection of the child, as an expression of the respect and care that is due to him, is an objective that has always existed and is universal. Such special protection has even been formally recognized in many countries for some time. Examples include the creation of specialised medical services; the prohibition of child labour and the development of specialised juvenile justice systems. Children must be protected against all the risks that threaten them, such as abuse, exploitation and any other forms of violence of which they may be victims, both within and outside their home environment.

CHILDREN DEPRIVED OF LIBERTY

This also applies for general and natural risk situations to which children are often the most powerless victims, such as road traffic accidents, or illnesses or epidemics – such as HIV/AIDS – which often affect them severely.

The desire to protect children can be explained by the child's physical and psychological "immaturity" but also by the image that society maintains of this particular social group. The child is more often seen and treated as a human being without the means, knowledge and capacities to face most social situations. Judged incapable of coping with the world outside his immediate social environment, the child therefore has a need for protection.

This perception of children and approach to them varies with the age of the child and the culture in which he belongs. In certain cultures, the child is integrated very early into "adult" life in all its aspects : social life, work, sexuality, etc. In other societies the child is kept apart from this "adult world" much longer and special protection extends until his eighteenth birthday, or even later.

From a more general and structural perspective, the need of the child for protection and the institutionalisation of protective efforts can also be explained by the level of threats generated by a society to its youngest members. A society created mainly by and for adults can generate many dangers for children. If we consider in particular the trend towards urbanisation and its effects on children, research has shown that for many children this leads to poverty and difficult living conditions. Urbanisation, amongst other things, has also contributed to create and increase the phenomenon of street children. It can also be noted that the street doesn't belong to young people, but mainly serves adults and their need to go from one place to another as quickly as possible, creating traffic hazards for the young. In the same way, the rationalisation of urban planning dictated by economic development often entails a reduction in play areas for children.

Considering the industrialised world in a wider perspective, "modernisation" over the last century has brought, to a large degree, an improvement in material life conditions for the majority of the population, including children. This progress is, however, a double-edged development because industrialisation has created further threats and dangers against which children in particular must be protected. Considering that these social developments in the industrialised world had and continue to have significant negative repercussions on development in other parts of the globe, children in these countries are also victims of such developments, often without reaping the associated benefits.

RIGHTS AND REALITIES

Thus, the structural efforts directed at the protection of children in general (in contrast to individual relationships with children) have for a long time sought to soften the effects of certain economic developments.

2.2 The child's right to protection

The Convention on the Rights of the Child confirms in several of its articles, the need for the protection of children. The Convention makes it clear that this protection is not simply a favour that adults can choose to assign to the child by virtue of their good will or their sense of charity, but is a right of every child. This represents a new line of thinking. Every child has a right to protection and this protection is owed to every child. We all have the obligation to provide for this right.

The Convention states that above all it is States Parties that have the obligation to protect the child. The family and any other person concerned for the child must be helped and supported in this task. This principle is provided in article 3(2) of the Convention :

“States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.”

The following are some examples of rights linked to protection contained in the Convention :

“States Parties recognize that every child has the inherent right to life.” (article 6)

“States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.” (article 27)

“States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”. (article 32)

Therefore, the child is no longer the object of protection granted by well-intentioned adults. Protection for the child can in no way be conditional. Every child, or a third party on his behalf, must be able to demand from the authorities concerned appropriate and adequate protection and be able to

CHILDREN DEPRIVED OF LIBERTY

contest inappropriate protective measures. Furthermore, every child must be involved in deciding the arrangements for his own protection.

For two main reasons, this evolution to a rights-based approach is very important for children deprived of their liberty.

Firstly, as noted in Part One, the deprivation of liberty can be seen by some adults as being in the child's best interests as a protective measure. The example of street children who find themselves in confinement to protect them against the dangers of a living on the street illustrates such a viewpoint. However, from the children's rights perspective, this justification for depriving a child of liberty is not necessarily valid because the children's own opinion has to be taken into account. If the child does not agree with the decision to confine him or if he judges the measure to be in violation of his rights, the child is able to contest it. It is his right. In the case of street children, from a rights-based point of view, it becomes a question of looking with them for solutions to their situation. By involving children in the decision-making process, sustainable solutions which correspond to the reality with which they are confronted are more likely to be found.

Secondly, to guarantee the child's protection by recognising positive rights implies that interventions with regard to children should not only be reactive. A child does not have to be confronted with difficulties before being able to assert his social, economic, cultural or other rights. This point will be discussed further in the next section.

3. Structural interventions with regard to children as social group

The protection owed to every child is not and never will be alone sufficient to guarantee a life in which their rights are respected for each of them. Our obligations towards children cannot therefore be limited to the *individual*, reactive level. From the perspective of the rights of the child, structural change is required. It is necessary to act on *social* structures and to adopt a preventive approach.

Policies and strategies aiming at protecting children have implemented all over the world. Many have had some positive results such as the reduction of the illiteracy rate due to educational programs and the reduction of infant mortality rate due to immunization campaigns and other policies. Though such policies have contributed very important and necessary humanitarian aid, they are not by themselves sufficient to tackle the problems facing children at the systemic level.

RIGHTS AND REALITIES

To be immunized against certain illnesses will have only a limited benefit for a child if he lives in unsanitary conditions that threaten his well-being. Humanitarian aid for children does not make these threats disappear. In the same way, to be able to read and to write will benefit a child to a limited degree if he does not have access to secondary school or higher education. The same argument applies if the social and economic conditions in which a child lives are such that he has little chance to find a job in which to make good use of his abilities when he grows up.

To truly serve the interest of children as a social group, humanitarian assistance should be part of a structural development policy aimed at improving the present and future circumstances of children in general. By way of an analogy, it is far better to repair the road than to repeatedly repair the tyres of a bicycle.

The perspective of the rights of the child implies precisely this structural approach. The child's right to the highest attainable standard of health does not only involve the right to be immunized against diseases but also the right to sufficient food, clean water, proper housing, etc. In the same way, the right to education requires that all necessary facilities and conditions for its realization be in place. As a result of the indivisible character of the rights of the child, a rights-based perspective examines all aspects of the child's life, so that all rights necessary for his healthy growth and development are legally guaranteed.

From the perspective of the rights of the child, underlying social divisions and socio-economic inequalities are the fundamental problems to take into account in parallel with humanitarian intervention (including the protection of the child). It should not be forgotten that, in addition to all the inequalities with which a large part of the world population is confronted (inequalities between rich and poor, between men and women, between immigrants and nationals, etc.), children experience another type of inequality : inequality in the social relationships between children and adults.

The acceptance of human rights as a universal reference has contributed to the public awareness of prevailing inequalities and injustices. In addition, the recognition of the human rights of children is an important element in the increasing awareness of children as a distinct social group. Full respect for the rights of the child implies structural challenges for society. The central question is therefore how to organise society so that respect for the rights of children is the objective and result of every action regarding them.

As just discussed, to concentrate on the child as an individual without examining the social conditions in which he lives is often not sufficient to

CHILDREN DEPRIVED OF LIBERTY

guarantee his rights. To take account of children as a social group with their own abilities and limitations, their interests and rights, is necessary to deal with a number of social difficulties. The analysis of social phenomena is another important dimension that the perspective of the rights of the child allows.

To put a child in an institution is often a simple social reaction : institutions are available, and there are many ways through which children can find be confined. But does this measure solve, even partially, the situation that led a young person to be considered as so different or “deviant” that he has been removed from society?

To deprive a child of liberty removes him from a difficult or irregular social situation without questioning the situation itself. To deprive the child of liberty isolates him from the environment in which he must learn social skills to become an integral part of society. To deprive a child of liberty lays responsibility on him and his family for their problems and for finding solutions, without sufficiently questioning societal structures in general and more particularly, the respect – or the lack of respect – for human rights.

4. The child as fully-fledged citizen

The perspective of the rights of the child is innovative for a third reason, which was briefly touched upon in the context of the right of street children to protection : “it will rather be about looking with them for solutions”. Children do not only have the right to be protected - they also have the right to participate and to contribute to the society in which they live.

This is why the following rights are recognized in the Convention on the Rights of the Child :

“(…) the right [of the child] to express [his/her] views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child” (article 12)

“(…) the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” (article 13)

“(…) the right of the child to freedom of thought, conscience and religion” (article 14)

“(…) the rights of the child to freedom of association and to freedom of peaceful assembly” (article 15)

RIGHTS AND REALITIES

These civil rights express the recognition of the right of the child to a degree of autonomy. The foundation of such recognition is that all human beings are equal. The child has the right to participate in the development, the construction, and the management and evaluation of his social environment. He has a say in what surrounds him and it is not solely up to the adult to decide for him. On the contrary, decisions concerning him must as far as possible be taken in conjunction with him. He must have, like all other citizens, access to the means and structures enabling him to play an active role in every aspect of social life.

However, the civil and political rights of children have limits. Appeal to the respect for the rights of the child is not in any way an appeal to the tyranny of the child. The exercise of the right to freedom of expression may, for example, be subject to legal restrictions, with a view to respecting the rights or the reputation of others, the maintenance of national security, public order, health or public morality. The recognition of the rights of the child accords to children's interests no more and no less the same importance than other fundamental human rights.

Protection and participation of children are complementary strategies for better living conditions. Let's take the example of the child and work. A protective strategy is necessary to avoid the situation of the child being exploited or subjected to inhuman or degrading work conditions. At the same time, the child must, from a certain age (15 years at present, according to the article 2(3) of the Convention No.138 of the International Labour Organization concerning the minimum age for admission to employment) be able to earn his own income in order to assure his survival or to gain a little more freedom if he wishes, provided that this work is accomplished in fair and decent conditions. Similarly, the involvement of children in strictly artistic performances, theatre or other shows, or their contributions to domestic tasks can be recognized as legitimate work.

It is a delicate balance. On one hand, participation without protective guarantees can be dangerous. To make children participate without proper preparation or in an unfavorable atmosphere can be more negative than beneficial and reflects an irresponsible attitude. On the other hand, protection without the direct and active involvement of the juvenile might be unduly restrictive for the child.

To view the child as a fully-fledged human being also implies that he should be allowed, in his thinking and behavior, to be an individual, even if this means being different from what adults may expect. These differences must

CHILDREN DEPRIVED OF LIBERTY

be respected and the involvement of youngsters in society must not in any way be considered as inferior (or superior) to that of adults.

Conclusion

With the adoption of the Convention on the Rights of the Child, the international community confirmed that children are fully-fledged human beings and that they are entitled to all human rights. In addition, they have the right to special consideration and special protection because of their particular vulnerability.

Are children deprived of liberty also entitled to all these rights? An answer to this question is attempted in the following chapter.

Chapter 2

Children deprived of liberty and their rights : The international normative framework

Introduction

Although the international community has always been concerned about the fate of children deprived of their family environment and, in particular, children deprived of their liberty³³, the attention of international legislators has only quite recently been specifically directed at the problem of deprivation of the liberty of children. In the last fifteen years, the United Nations has adopted the Convention on the Rights of the Child (1989) and the Rules for the Protection of Juveniles Deprived of their Liberty (1990). These two instruments are essential legal tools for an analysis of this topic. However, they are not the only international rules applicable.

The deprivation of liberty of people in general had been the focus of attention of international legislators much earlier : the Standard Minimum Rules for the Treatment of Prisoners was adopted by the United Nations General Assembly in 1955. It took 35 more years before special rules on the deprivation of liberty of children were adopted. The delay is not particularly

33 It is important to consult in this regard the works of the United Nations in the field of the prevention of crime and criminal justice. See Queloz, N., 1987, pp. 299-320.

CHILDREN DEPRIVED OF LIBERTY

surprising given the slow and complicated character of the rule-making process in the United Nations.

In the second part of the book, the legal analysis is limited to the normative texts adopted by the United Nations (particularly in the domain of the juvenile justice system). This choice to refer only to United Nations documents, treaties and conventions limits the analysis to international standards. This means that national and regional norms are not part of the analysis, such as the plethora of work produced by the Council of Europe on the subject, based on the European Convention of Human Rights.³⁴ These national and regional rules are, however, also important, and may include additional complementary rules not covered at the international level; rules that are more detailed or better adapted to regional situations and cultures. It may also be that these rules are more restrictive.

The universal rules are minimal rules upon which the international community has agreed. They do not in any way prevent better standards being put in place at the regional and national levels. The Convention on the Rights of the Child, in article 41, is very clear on this point :

“Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in

- a) The law of a State Party; or
- b) International law in force for that State”

The provision that guarantees the best (legal) protection must take precedence.

1. The international normative framework

1.1 What does the international framework consist of?

In order to appreciate the the international standards applicable in the domain of the deprivation of liberty of children, it is necessary from the outset to take into consideration :

34 See “Recommendations of the Parliamentary Assembly in the field of Childhood policies”, Project III.8, Council of Europe, 25 June 1992; “Texts drawn up by the Council of Europe in the field of Childhood policies: Resolutions, recommendations of the Committee of Ministers”, Council of Europe, 7 December 1992.

RIGHTS AND REALITIES

- Rules applicable to all persons³⁵, as well as rules particular to children;
- Rules with binding force, as well as simple directives;
- Rules adopted in the context of the promotion and protection of human rights in general, as well as the rules particular to children's rights;
- Rules exclusively concerning the deprivation of liberty and/or those children deprived of liberty, as well as the rules applicable in any situation and/or for every child;
- Rules adopted in the context of the promotion and protection of human rights, as well as those adopted in the framework of criminal justice and crime prevention.

All these rules in one way or another concern children deprived of liberty.

The following international conventions and texts adopted by the United Nations in the setting of the relevant human rights programs and in relation to crime prevention and to criminal justice are part of the normative analysis :

- The Convention on the Rights of the Child (CRC - 1989)
- The International Covenant on Civil and Political Rights (ICCPR- 1966)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-1984)
- The United Nation Rules for the Protection of Juveniles Deprived of their Liberty (JDL - 1990)
- The Standard Minimum Rules for the Treatment of Prisoners (TP - 1955)
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (PPDI - 1988)
- The Code of Conduct for Law Enforcement Officials (CC - 1979)

Two normative texts specifically concerned with juvenile justice were also considered :

- The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (PJD - 1990)
- The United Nation Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (AJJ - 1985).

35 See for example, article 13(3) in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice: "Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations".

CHILDREN DEPRIVED OF LIBERTY

The international legal framework outlined below is a summary of the main provisions applicable to children deprived of liberty that can be found in these texts. When the same right is provided for in several documents, only the one (or those) specifically concerning juveniles deprived of their liberty has been mentioned (for this reason, for example - no provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is mentioned in the legal framework).

1.2 Some important features of the international legal framework

a. The international legal framework is applicable almost universally

Given the adoption of these instruments by the United Nations, many unanimously³⁶, the normative texts considered in this book have a universal character.

The normative framework has been established using the Convention on the Rights of the Child as the basis. The Convention was, at the time of writing, ratified by 191 States.³⁷ With the exception of Somalia and the United States of America³⁸, it is applicable in all countries of the world.

b. The international legal framework gives comprehensive (legal) protection

Children deprived of liberty are, above all else, children. The international standards link the particular situation of children deprived of liberty with the challenges and obligations existing in relation to all children and their rights, in all domains.

The international legal framework has been conceived and should be implemented as a pyramid, with several interdependent levels concerning different groups of children and different actions to be undertaken in relation to them.

36 For example the Convention and the JDL, PJD et AJJ.

37 Augustus 2004.

38 Having signed the Convention in 1995 the United States of America has agreed to operate within the spirit of the Convention.

RIGHTS AND REALITIES

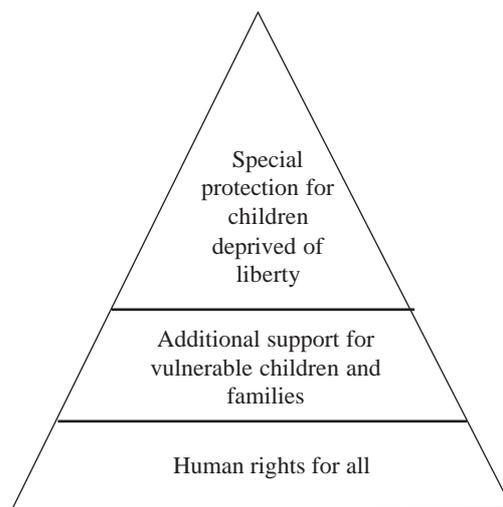
At the base of this pyramid (see schema below), are rules aiming to guarantee to every child a life in which all his human rights are respected, whether they are civil, political, cultural, economic or social rights. These rights apply to all human beings. This fundamental level is the one that requires the most attention, energy and efforts for implementation. In the context of the deprivation of liberty of children, we find at the base level those rights that must be realized and those challenges to be met so as to avoid situations which may lead to the deprivation of liberty.

The next level encompasses those rules and measures aiming to guarantee to children and families in difficult situations or “at risk” assistance, to avoid extreme measures such as the deprivation of liberty.

At the highest level are rules specifically applying to children deprived of liberty. These types of rules are provided in article 3 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty :

“The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.” (JDL, article 3)

Figure : *The international legal framework regarding children deprived of their liberty*



CHILDREN DEPRIVED OF LIBERTY

c. The international legal framework is built on a binding basis

It is important to distinguish between legally binding norms and non-binding norms.

A norm is binding if it is contained in an international agreement such as conventions, pacts or treaties. In the case of such instruments, the State ratifies the treaty and commits itself to its application within its jurisdiction. The Convention on the Rights of the Child is an example of such an instrument. The binding value of a norm can also be measured on the basis of the possibilities to monitor its application and, in cases where rights contained in a convention are not respected, the opportunity for an individual to appeal to an impartial and independent authority. One may therefore distinguish rules of *legal* authority (binding) and rules of *moral* authority (non-binding).

Rules of *moral* authority, although approved by the international community by way of adoption by the United Nations General Assembly, are not legally binding. Such rules are recommendatory in character. States agree on the content of the text but are not legally required to apply it. This is the case of the Standard Minimum Rules for the Administration of Juvenile Justice and those other rules and principles adopted in the field of juvenile justice in the context of the United Nations program on crime prevention and criminal justice.

Norms concerning children deprived of liberty contained in the binding instruments such as the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment serve as the normative base on which to build the international legal framework relating to children deprived of liberty. The norms contained in instruments of “quasi-legal” authority as mentioned above (point 1.1), have been added to this base, as far as they introduce some new and more specific considerations. The resulting legal framework guarantees strong and comprehensive (legal) protection for children deprived of their liberty.

It is very important to underline that the foundation and the remaining parts of this structure are inextricably linked. Several elements in the norms (for example, the explicit reference from one text to another) reveal that these international standards should be considered as an interdependent whole. Non-binding rules very often help to complete, to better understand, and to provide further detail for the provisions contained in the binding instruments. These rules and guidelines are “designed to serve as convenient standards of reference and to provide encouragement and guidance” (JDL, article 5).

RIGHTS AND REALITIES

Another example of this interdependence is demonstrated in article 9 of the JDL : “Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons” (JDL, article 9). The Convention itself makes explicit reference in its Preamble to the Beijing Rules adopted in 1985.³⁹

2. Children deprived of liberty are entitled to all rights : the principle

Introduction

“The child, the subject of rights...” : This principle is one of pillars of the Convention on the Rights of the Child. Article 2 of the Convention, which expresses the principle of non-discrimination, confirms that all children are holders of rights and that States must guarantee them to every child within their jurisdiction, without any distinction and independently of their situation. What is the situation of children deprived of their liberty ? Are they entitled to all rights, as are other children ?

2.1 A potential double obstacle

If the adoption of legal instruments and the almost universal ratification of the Convention has contributed (and continues to contribute) to an increasing awareness of the rights of the child, their implementation remains questionable.

A plea for the recognition of rights of children deprived of their liberty can therefore come up against a double obstacle :

- a general reluctance vis-à-vis the complete realization of the rights of the child in their entirety
- a more particular reluctance vis-à-vis the recognition of rights of children judged “deviant” and isolated from society

It is important to take account of this double obstacle. A reluctance to recognize the rights of children deprived of their liberty may be the reflection of a position taken on the whole question of children’s human rights.

39 The absence of any reference to the Riyadh Guidelines or to the JDL can be explained by the fact that they were adopted in 1990.

CHILDREN DEPRIVED OF LIBERTY

2.2 The right not to be deprived of liberty

Prior to addressing the issue of the rights of children deprived of liberty, it is worth discussing whether there exists a right not to be deprived of liberty. The International Covenant on Civil and Political Rights provides that “[e]veryone has the right to liberty and security of person (...)” (article 9(1)). However, this right is not absolute : neither the Convention on the Rights of the Child nor the other instruments forbid the deprivation of liberty of children for being contrary to human rights.

The Convention, in article 37(a), certainly outlaws life imprisonment without the possibility of release, however, even on this point, the prohibition is soft. Indeed, the very existence of possible release, whether or not this eventuates is sufficient to make a sentence for life imprisonment legal.

Although the deprivation of liberty in itself is not forbidden, article 37(b) of the Convention states that such a measure should only be used as a last resort and for the shortest appropriate period of time. These conditions are discussed in detail in further chapters.

It is interesting to note that at the time of the preparatory phases of the Convention, attempts were made repeatedly to include a principle prohibiting the deprivation of liberty. The proposal of the United Nations Centre for International Crime Prevention was one of the furthest reaching attempts : “States Parties recognize that all forms of deprivation of liberty are detrimental to child growth and development. In principle, children should not be deprived of their liberty (...)”.⁴⁰ The reason as to why this proposal was ultimately not adopted is unclear.

In the light of every person’s right to liberty, it is regretful that the international conventions and standards do not prohibit in principle the deprivation of children’s liberty. It shows the way international law makers may accept an existing reality (children are deprived of their liberty) despite the existence of contrary rights (the right to liberty) and the high risk of violations of other rights.

2.3. To be deprived of liberty and to have rights

Parallel to this discussion on the deprivation of the right to liberty is the question of whether children who have been locked up can be deprived of

40

UN Doc. E/CN.4/1989/WG.1/CRP.1/Add.2.

RIGHTS AND REALITIES

rights other than the right to freedom of movement (deprivation of that right being inherent to the confinement situation).

Different international provisions shed light on this question :

“The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles (...).” (JDL, article 12)

“Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.”⁴¹ (JDL, article 13)

Article 37(c) of the Convention adopts the underlying principle on a legally binding basis :

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person (...).”

To treat someone with humanity and with the respect due to him as a person implies respect for his rights. In the same way, the principle of non-discrimination (CRC, article 2) requires that all children, including those deprived of their liberty, benefit from the same rights.

These provisions confirm therefore that the stated rights of the Convention apply to children deprived of liberty as to all others. The deprivation of liberty must in no way entail the deprivation of rights for the child in question, with the exception of liberty of movement. This conclusion is the basis for the remaining chapters of this book.

The following are examples found in national legislation or in official declarations made to the Committee on the Rights of the Child which restate the principle of recognition of the rights of children deprived of liberty.⁴²

“Apart from being deprived of their freedom, juvenile offenders in detention enjoy the same rights as when at liberty (...).”

“(...) adolescents in detention enjoy, in their own name, rights and liberties (...) accompanied with special guarantees.”⁴³

41 We will return to this issue later.

42 Names of countries are not given, due to our previously stated aim to concentrate on the facts, rather than to point at specific countries.

43 Unofficial translation.

CHILDREN DEPRIVED OF LIBERTY

“Fundamental and human rights belong also to children who have been taken into care.”

“According to the penitentiary legislation, the execution of measures involving deprivation of liberty, for all those detained, has social integration as its main aim. The personality of detainees must be respected, just as their rights and legal interests must not be affected by their detention.”⁴⁴

“(…) detainees who are subject to sanctions or protective measures involving the deprivation of liberty remain entitled to the fundamental rights, within the limitations imposed by their sentence and its implementation.”⁴⁵

“Fundamental rights also belong to persons in welfare and medical care institutions as well as to those deprived of liberty for reasons of criminal justice, although their rights may be subject to restrictions as provided by law.”

It should be pointed out that the deprivation of certain rights may be explicitly provided for by law or by a court judgment. For example, the deprivation or the suspension of the exercise of certain civil and political rights and freedoms, such as the management and the enjoyment of properties or the right to drive a vehicle. Conviction of a criminal offence can also mean the curtailment of certain civil and political rights such as the eligibility to hold public posts, the right to vote, etc.

The recognition of the rights of children (deprived of liberty) is an obligatory principle and a necessary condition in order to achieve the fundamental objective that, according to the international rules, must guide all decisions involving the confinement of children, including the treatment of a child in an institution : “(…) instilling a sense of justice, self-respect and respect for the basic rights of every person” (JDL, article 66).

In conjunction with this principle concerning the deprivation of liberty of children is the principle applicable to any intervention of the juvenile justice system : the child has the right “(…) to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society” (CRC, article 40(1)).

44 Unofficial translation.

45 Unofficial translation.

RIGHTS AND REALITIES

Respecting the rights of children deprived of liberty is perhaps one of the best means to reach these objectives, and to put an end to marginalisation, violence towards and perpetrated by children and to instill in children this sense of respect for others. Thereby the vicious circle that often involves children making others undergo the same experiences that they have been subject to may be broken.

The importance of the recognition of the rights of children deprived of liberty is all the greater given the coercive nature of the measures to which they are subject and the fact that they are going through proceedings that are often entirely foreign to them and in which they have very little influence. The very fact of having rights takes on enormous importance for children since they face a basic inequality. Rights exist to protect children against the negative effects of this inequality. There is absolutely no question of rights being a luxury. They are a necessity in terms of the child as well as of society, because a child confronted with injustice risks becoming, and remaining, a citizen with little respect for his social environment.

The recognition of the rights of children (deprived of liberty) does not imply a threat to authority or a direct road to anarchy, as some commentators in the international community seem to fear. Rather, the recognition of the rights of children compensates for the inequality facing children and helps to avoid the negative consequences of such inequality.

2.4 Are the rights of children deprived of liberty conditional ?

At this point in the analysis, another question is raised : are the rights of children deprived of liberty and the exercise of these rights subject to conditions different to those for any child?

This is a legitimate question. Indeed, such thinking can be noted from national laws or official declarations of States Parties to the Convention on the Rights of the Child submitted to the Committee on Rights of the Child previously mentioned whereby several States impose conditions on children's rights such as the compatibility of rights with the deprivation of liberty or the necessity to obtain authorization on the part of those responsible for the institution.

To answer the question of the conditional character of the rights of children deprived of their liberty, the international legal framework must be analysed. The first principle to be noted is that of non-discrimination (CRC, article 2). According to this principle, rights apply to all children independently of their situation, "without any discrimination of any kind", irrespective of any status of the child, including whether they are deprived of liberty or

CHILDREN DEPRIVED OF LIBERTY

not. Consequently, the rights of children deprived of their liberty can be subject to no special condition.

However, article 13 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty takes a more restrictive approach. It stipulates that “juveniles deprived of their liberty shall not for any reason related to their status be denied the (...) rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty”.

This vaguely worded condition requires authorities to examine the compatibility of the rights of the child deprived of liberty with the deprivation of liberty itself. How should this rule be interpreted in light of the principle of non-discrimination?

We would argue that this condition must not be interpreted broadly nor as *a priori* applying to all children. This interpretation does not, however, absolutely exclude restrictions of certain rights judged incompatible with the deprivation of liberty of a particular child. A broad interpretation would too easily allow the deprivation of liberty to be invoked to deny certain rights or to impose excessive conditions on the exercise of rights. Which rights are compatible with the deprivation of liberty and which rights are not? The vague wording of the provision suggests that judgments of which rights are compatible with the deprivation of liberty may be done arbitrarily. Would the director of a prison be able to claim that the right to education is not compatible with the deprivation of liberty under the pretext that “prison is not a school”?

An examination of the international standards leads to the conclusion that article 2 of the Convention (the principle of non-discrimination) prevails over article 13 of the Rules for the Protection of Juveniles Deprived of their Liberty (including the principle of the compatibility of rights with the deprivation of liberty). Indeed, article 9 of the Rules, states that “nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons” (JDL, article 9). By virtue of article 10 of the Rules, article 9 JDL prevails over all other articles in the Rules, including article 13 (see JDL, article 10).

With regard to the realization of the rights within a given institution, it is necessary to specify that all rights are applicable to all juveniles in the same way as they apply to all children and that the rights cannot in any way be subjected to conditions that apply to only some of them (such as good

RIGHTS AND REALITIES

behaviour). In this context, reference may be made not only to article 2 of the Convention, but also article 4 of JDL that states that “the Rules should be applied impartially”.

To recognize the rights of the child deprived of liberty in no way implies that these rights are absolute and without limitations. The limitations on each right also apply to children deprived of their liberty. Every process of socialisation and every provision of help and assistance in this process can impose prohibitions and restrictions on behaviour. This is also the case of the process of socialisation inside the institutions. But these limits and restrictions must not suppress or put in question the enjoyment of rights and must be discussed with children, within the family, as well as in the institutions in which they are placed. It must not be forgotten that the child has the right to express his own views (CRC, article 12).

2.5 Exercising one’s rights

To hold rights does not guarantee children the autonomous exercise of these rights. Given their *legal* incompetence (given their status as minors), the problem of not being able to freely exercise their rights is one that exists for all juveniles. For example, every child has, in accordance with article 15 of the Convention, the right to freedom of association. However, in most countries in the world, a child can only create a formal association through the intermediary assistance of a legally competent adult. In the same way, every child has the right to education but requires his legal representative(s) to enroll him in a school.

The deprivation of liberty can be detrimental to the autonomous exercise of rights for additional reasons other than the juvenile’s legal incapacity. His mere presence in a closed institution can constitute an obstacle, for example, to the “freedom to seek, receive and impart information and ideas of all kinds (...)” (CRC, article 13) or makes it impossible for him “to participate freely in cultural life and the arts” (CRC, article 31).

However, in the case of children deprived of liberty, the principle of non-discrimination must still apply. According to the international legal framework, a child deprived of liberty must be able to exercise his rights in an equal manner as other children. The obligation to ensure the exercise of the rights of children in confinement therefore requires research into the means to eliminate any obstacles that exist in institutions for the exercise of children’s rights.

CHILDREN DEPRIVED OF LIBERTY

2.6 Children deprived of liberty and the right to special protection

A child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance provided by the State (CRC, article 20). The vulnerable situation of children deprived of the family environment necessitates such special protection. In the preamble, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty recognize for children deprived of liberty the right to special care and attention and protection during and after the period when they are deprived of their liberty.

The special protection applicable to children during the period that follows the deprivation of liberty is extremely important. The return to social life can be very difficult for the child whose social reintegration has not been a priority during the period of detention. It is not easy for him to get used to his new life, to readjust to his family, to fit in with the normal school cycle, to look for work, a home, etc. or to take “responsibilities” when he comes out of an institution in which he has often been completely taken care of and has had all individual responsibility taken away.

2.7. Effective control

“All measures affecting the human rights of a child deprived of liberty shall be subject to the effective control of a judicial or other authority” (PPDI, principle 4). This significant principle is discussed in further chapters.

Conclusion

This discussion on the rights of children deprived of liberty is concluded with the words of an educator which underline the necessity of never questioning the rights of these children and the respect due to them :

«To face young people who ‘don’t listen any more’ there is the right, the duty to listen to them. Is it not especially the case when there is a problem of communication that the right is of prime importance? Is it not for the adult, for professionals to listen to the young, to decode, to reflect on a form of communication with them and maybe then we won’t have to resort to the law any more? I think that

RIGHTS AND REALITIES

experience suggests it is worth having a go in every case. If not, it is our profession that is put in question and not the law.”⁴⁶

Children deprived of liberty have rights and nothing justifies discrimination with regard to them. What are these rights? How can they be exercised in the reality of a closed institution?

46 Unofficial translation of a quote from an educator published in the *Journal du Droit des Jeunes*, 1996, p. 301. Original text: “*Pour faire face à ces jeunes ‘qui n’écotent plus’, il y a le droit, le devoir de les écouter. N’est-ce pas plutôt quand il y a un problème de communication que le droit est mis en avant ? N’est-ce pas à l’adulte, aux professionnels à écouter le jeune, à décoder, à réfléchir au modèle de communication et peut-être qu’alors l’étendard du droit n’aura plus lieu d’être ? Je pense que l’expérience vaut en tout cas le coup d’être tentée. Sinon, c’est notre profession qui est à remettre en question et non le droit*”.

Chapter 3

The rights of the child deprived of liberty : general principles

Introduction

Basing our argument on international standards and, in particular, on the principle of non-discrimination, it was concluded in the previous chapter that children deprived of liberty in principle enjoy all the rights of children (with the exception of freedom of movement inherent to a confinement situation).

In the chapters that follow, the rights of children deprived of their liberty are further specified. The analysis is made taking one right at a time, in order to outline all the nuances, in as detailed a manner as possible. This analytical approach must not, however, let us forget that all rights are interdependent. The rights of the child form an indivisible whole that does not allow fragmentation or the isolation of one or another element. The analysis categorises the rights of children in a similar manner to the system used by the United Nations Committee on the Rights of the Child.⁴⁷ The seven categories are :

1. General principles
2. Family, the family environment and alternatives

47 UN Doc. CRC/C/5, 15 October 1991.

CHILDREN DEPRIVED OF LIBERTY

3. Standard of living
4. Civil and political rights and freedoms
5. Education and leisure; work
6. Children in special situations
7. General measures of implementation

To establish the international legal framework, normative international texts cited in the first chapter of this part are analysed. Some norms appear in more than one legal instrument. When this is the case, only one source is mentioned, the preference being the rules especially applicable to juveniles and those guaranteeing the best legal protection.

1. Four general principles

The Committee on the Rights of the Child has identified in the Convention four general principles in the light of which all articles of the Convention must be read. These are :

- non-discrimination (article 2)
- the best interests of the child (article 3)
- the right to life, survival and development (article 6)
- the child's opinion (article 12)

It goes without saying that these general principles also concern children deprived of their liberty. The consequences of this shall be explained further in this chapter.

A fifth principle may be added, which assumes particular importance in the context of this book : article 37(c) CRC concerning conditions of detention as a whole.

2. Non-discrimination

The international legal framework applies in its entirety to all children, with no distinction. This principle, provided for in article 2 of the Convention, is confirmed in other texts which have as their concern children deprived of liberty (see JDL for example, article 4).

All children deprived of liberty must therefore be treated equally, irrespective of any consideration of race, colour, sex, age, language, religion, the child's or his parent's political or other opinion, national, ethnic or social origin,

RIGHTS AND REALITIES

beliefs or cultural practices, property, disability, birth, domestic situation or any other status.

In recognition of the fact that girls generally do not benefit from the same treatment as boys, article 26(4) AJJ provides further that “[girls] shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.”

In addition, article 45(3) TP stipulates that the transport of prisoners shall be carried out “in equal conditions”.

This illustrates that the principle of non-discrimination must apply in all circumstances.

3. The best interests of the child

The best interests of the child must be a primary consideration in all actions concerning him (CRC, article 3(1)). With regard to children deprived of their liberty, the best interests of the child must be taken into consideration at several stages, including the following :

- at the time of the procedure leading to the deprivation of liberty;
- when the decision is made as to the type of institution;
- when decisions are made inside the institution;
- every time the possibility of release is discussed.

4. Survival and development

Article 6 CRC recognizes the child’s inherent right to life, as well as the responsibility of States Parties to ensure the survival and development of the child. This right and this responsibility do not come to an end when children enter closed institutions.

5. The child’s opinion

5.1 Every child deprived of liberty has an opinion

Every child, including those deprived of their liberty, has an opinion (on what happens concerning him, on what should happen, on what should

CHILDREN DEPRIVED OF LIBERTY

have happened, etc.). The opinion of the child deprived of liberty is extremely important and especially so at the following stages :

- at the time of the procedure leading to the deprivation of liberty
- when the decision is made as to the type of institution
- when decisions are made inside the institution
- every time the possibility of release is discussed

The child must be able to express himself freely, either directly or through a representative or suitable organisation. This rule is discussed further in Chapter 6.

5.2 The child's opinion must be taken seriously

While the right to give his opinion is an important right in itself, it is of little significance if adults are not obliged to listen to the child and to take his opinion into account in decision-making. Article 12 CRC is in this respect fundamentally important.

The child's opinion of course develops with age and/or the degree of maturity. However, every opinion is important. Age or a supposed lack of maturity must never be invoked as an argument not to listen to the child and/or not to take his opinion seriously. Rather, it is the responsibility of adults to make the effort to appreciate this opinion for its fullest worth, even when the child is very young. One way to better understand the child's perspective would be to try to learn more about his personal and social development.

Below are some examples of the domains in which, according to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the opinion of children deprived of liberty must be taken in consideration.

- They have the right to choose the type of work they wish to perform in the institution (JDL, article 43).
- They must agree with the administration of medicines or with medical treatment (JDL, article 55).
- They have the right to talk in confidence to any inspecting officer evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles (JDL, article 73).
- They have the right to make requests or complaints and to be informed of the response without delay (JDL, article 75, 76 and 77).

RIGHTS AND REALITIES

The international legal framework also supports the argument that the child's opinion should be taken seriously on other related issues, such as the planning of children's institutions, for example, or the establishment of internal rules. Giving the opportunity to children to participate fully in the setting up of their environment can in effect contribute to improving their situation and to preventing complaints or denunciations being made to inspection boards or services.

To recognize the child's right, even when deprived of liberty, to express his opinion implies that institutions must adjust to children as much as children are expected to adjust to institutions! The rights of the child require that we re-establish, precisely where it is necessary, a balance between the interests of all concerned.

5.3 Is this right conditional?

The child's right to express his opinion is, in certain cases, conditional. The international rules themselves impose certain conditions. These conditions apply both to children in general (for example : the child must be capable of forming his own views - CRC, article 12) and in particular to those that are deprived of liberty. Thus, the child's right to choose the type of work that he wishes to perform in the institution can only be realized "with due regard to proper vocational selection and to the requirements of institutional administration (...)" (JDL, article 43).

However, these conditions are secondary to the rights and must be interpreted as strictly as possible. It can never be the case that the realization of the child's right to express himself and for his opinions to be heard becomes an exception.

Certain other conditions are indispensable so that the child can state his opinion. The child must receive all information necessary to make an informed choice. For example, the juvenile (deprived of liberty) should only give his agreement to medical treatment if he has been informed previously of the nature of the treatment, its consequences, advantages and disadvantages, and the available alternatives (JDL, article 55).

6. Conditions of detention : general principles

The principles below concern the conditions of detention in general and assume a special importance for children deprived of their liberty. We considered them, in the context of this book, as principles to take into account

in every aspect of the deprivation of liberty, as in the case of the four previous ones :

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (...)” (CRC, article 37(c)).

“The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles (...)” (JDL, article 12).

“States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision” (CRC, article 3(3)).

Chapter 4

The right to a family, a family environment and alternatives

Introduction

Children have the right to a family and to regular contact with family members. These rights have a special significance for children deprived of their liberty.

The Preamble to the Convention describes the family as “(...) the fundamental group of society and the natural environment for the growth and well being of all its members and particularly children (...)”. It recognizes that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.

An important issue is to know at what point the deprivation of liberty is a serious obstacle for the carrying out by parents of their responsibilities with regard to their children and for the achievement of the tasks that derive from these responsibilities. Must the personnel in the institution replace the parents in the exercise of this responsibility once children have been entrusted to them? Or is their role limited to helping parents in the exercise of their responsibility, within the walls of the institution? How do we avoid the situation where the deprivation of liberty becomes synonymous with either unstable or very limited family relationships, or even that it precludes

CHILDREN DEPRIVED OF LIBERTY

children making any relationship possible? The answer to this last question is simple, as a principle : by respecting the rights of the child.

1. Raising a child is primarily the responsibility of parents

Every child has the right to be cared for by his parents (CRC, article 7(1)). Article 18(1) of the Convention on the Rights of the Child confirms that “(...) parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child”.

Article 5 of the CRC also embodies this principle :

“States Parties shall respect the responsibilities, rights, and duties of parents (...) or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”.

Parents also have the right and the duty to provide direction to the child in the exercise of the right to freedom of thought, conscience and religion “in a manner consistent with the evolving capacities of the child” (CRC, article 14(2)).

These are some of the principles underlying the rule that no child must be removed from parental supervision, whether partly or entirely, unless the circumstances of his case make this necessary (AJJ, article 18(2)).

Article 9(1) of the Convention provides for the right to be cared by a family, although it is formulated negatively : “States Parties shall ensure that a child shall not be separated from his or her parents against their will (...)”.

This article does not exclude separation but makes it conditional. The decision must be taken :

- By competent authorities
- Subject to judicial review
- In accordance with applicable law and procedures
- When the separation is necessary for the best interests of the child

2. The necessity to take into account the child’s capacities

Article 5 of the CRC underlines at the same time the importance of the role of parents for the child *and* how relative is this importance. The relative character resides in the recognition of the child’s own capacities, notably in

RIGHTS AND REALITIES

the exercise of his rights. Article 5 does not allow for the omnipotence of parents. Parental authority is in no way absolute but must be consistent with the development of the child's capacities. It is a functional authority (the function being to develop the child's capacities) that is realized by "guidance" and "appropriate direction".

These principles are also extremely important when they are transposed to the relation between children deprived of liberty and the team in charge of their education in institutions.

3. Assistance to parents in their educational task

There are parents who lack the resources or capacities to raise their children, which in certain cases results in their being removed from home. Such a situation can of course require intervention. However, rather than remove the child from his family, it is far better to help parents in their parental task and to offer them educational support, in their own home and in the presence of their children. The best means for parents to learn to raise their child is to have the child very near them. This intervention should take place as soon as possible, before more serious difficulties emerge.

The provisions that follow are supplementary arguments aiming to discourage the placement of children.

The United Nations Guidelines for the Prevention of Juveniles Delinquency repeatedly confirm the principle of the non-separation of the child from his parents and the necessity of suitable support for all families, in order to prevent "deviant" behaviour by young people (articles 11-19).

Article 18(2) CRC provides for the public support necessary to enable parents to undertake their parental tasks. Such support is, according to this article, an indispensable condition for realising all the rights accruing to children : "For the purpose of guaranteeing and promoting the rights set forth in the (...) Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (...)."

With particular regard to the right to a sufficient standard of living, article 27(3) CRC further specifies the help to be given to parents in view of realising this right. This help may be in the form of material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

In the case of abuse and neglect on the part of parents or other people to whom the child has been entrusted, article 19 of the CRC specifies that in

CHILDREN DEPRIVED OF LIBERTY

such a situation all appropriate measures must be taken to provide necessary support for the child and for those who have the care of the child. Support for parents, within the context of social programmes, can be a necessary condition for preventing the child being placed in care.

The deprivation of liberty may in no way mean the cessation of support and assistance to parents, according to the international legal framework. The continuation of this assistance is extremely important as supporting the domestic environment increases a child's chance at social reintegration and a shorter period of placement.

4. Children separated from their parents have the right to special protection

4.1 The principle

Article 20(1) CRC provides that every child who is temporarily or permanently deprived of his family environment, or in whose own best interests cannot be allowed to remain in that environment shall be entitled to special protection and assistance provided by the State.

4.2 'Replacing' the family

Article 20 obliges States Parties to ensure alternative care for any child temporarily or permanently deprived of his family environment, in accordance with national laws. Placement in a family and when necessary, placement in a suitable institution are mentioned as examples in this respect. The article does not provide an exhaustive list of alternatives, leaving open the possibility for creative solutions, the only condition being that "when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background".⁴⁸

We note that "substituting" the family still carries the risk of relieving the natural family entirely or in part from its tasks and responsibilities, with respect to children.

Other alternatives are discussed in detail in the fourth part of the book.

48 Article 20(3) CRC.

RIGHTS AND REALITIES

4.3 Guaranteeing regular contact between the child and his family

a. The principle

“States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (CRC, article 9(3)). Article 37(c) CRC reasserts this rule : “(...) every child deprived of liberty (...) shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

The child’s regular and direct contacts with his family can therefore only be forbidden if it is “contrary to the child’s best interests” (CRC, article 9(3)) or in “exceptional” circumstances (CRC, article 37(c)). It would have been desirable had these exceptions been more clearly defined, in order to avoid the risk of too broad an interpretation. Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty nevertheless specifies that the restriction or denial of contact of juveniles with family members should be prohibited for any purpose, including disciplinary measures.

Further details on the manner in which regular personal relations and direct contacts must be sustained when a child is deprived of liberty are provided in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. They are outlined below.

b. Two necessary conditions : decentralising institutions and reducing their size

Detention facilities for juveniles should be decentralised and of such size as to facilitate access and contact between the juveniles and their families (JDL, article 30).

c. Another condition : parents must be informed

Parents must be informed without delay of the place where their child is detained (JDL, article 22).

When a child is detained, the State must, upon request, provide the parents or, if appropriate, another member of the family, with the essential information concerning the whereabouts of the child unless the provision of the information would be detrimental to his well-being (CRC, article 9(4)).

CHILDREN DEPRIVED OF LIBERTY

d. Family visits

The child must have the possibility of receiving his family in the institution, and in the best conditions possible. Visits must be frequent, in principle once a week and not less than once a month.

The international standards also specify certain conditions in which visits must take place : the circumstances of the visit must respect the need of the juvenile for privacy, contact and unrestricted communication with his family (JDL, article 60).

e. Exchange of information and correspondence

Every child has the right to communicate in writing or by telephone at least twice a week with the person of his choice (JDL, article 61). The United Nations Rules for the Protection of Juveniles Deprived of their Liberty put significant emphasis on the sustained and permanent exchange of information of children with parents (or, where the child doesn't have any parents or when they are absent, his guardian, family or other relatives) (see for example articles 22 and 56-59 JDL). This information can concern :

- The juvenile's apprehension (AJJ, article 10(1))
- His admission, place, transfer and release (JDL, article 22)
- His state of health and any important changes in his state of health
- Any condition requiring clinical care within the detention facility for more than 48 hours
- Any illness or accident requiring transfer to an outside medical facility
- The juvenile's death (JDL, article 56)

The child must be informed at the earliest possible time of what is happening at home, for example the death, serious illness or injury of any immediate family member (JDL, article 58).

f. Visits to the family

The child must not only receive visits from his parents, but also be able to visit them himself. Juveniles must be allowed to leave the detention facility for a visit to their home and family (JDL, article 59).

They must also be provided with the opportunity to attend the funeral of a deceased parent or to go to the bedside of a critically ill relative (JDL, article 58).

RIGHTS AND REALITIES

g. Assistance from the family

Every child deprived of liberty has the right to request assistance from family members, for example, in order to make a complaint (JDL, article 78).

h. Return to the family : a priority and permanent objective

Return to the family must be a priority objective from the first day the child is taken into care in an institution (JDL, article 79).

4.4. A juvenile's death during detention

Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body (JDL, article 57).

Chapter 5

The right to an adequate standard of living

Introduction

The Convention on the Rights of the Child guarantees for every child the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (CRC, article 27(1)).

The Convention provides the principle that "the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development" (CRC, article 27(2)).

The problem of how to enjoy and enforce the right to an adequate standard of living remains for children deprived of their liberty. How are these rights guaranteed with regard to them?

In this chapter some of those rights that aim at the realization of a decent standard of living are discussed, the scope being limited mainly to physical conditions. Other issues that are also relevant to the realization of a decent standard of living, such as education are developed in further chapters.

The international norms on rehabilitation and social reintegration form a major part of the analysis.

CHILDREN DEPRIVED OF LIBERTY

1. Physical conditions and the environment

1.1. Clothing

To the extent possible juveniles should have the right to use their own clothing (JDL, article 36). This right is not absolute, however (see “right to privacy”, Chapter 6).

Arrangements must be made at the time of admission to the institution to ensure that personal clothes are clean and fit for use (TP, article 18). All clothing must be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene (TP, article 17(2)).

If children are not allowed to wear their own clothes, they shall be provided with appropriate clothing (TP, article 17(1)).

Detention facilities should ensure that every juvenile has personal clothing suitable for the climate and adequate to ensure good health. Such clothing shall in no manner be degrading or humiliating (JDL, article 36).

1.2. The physical environment and accommodation

a. The principle

Detained juveniles must be accommodated in conditions meeting all the requirements of health and human dignity (JDL, article 31). All areas regularly frequented by detainees must be properly maintained and kept scrupulously clean at all times (TP, article 14). More specifically, “all accommodation provided for the use of detainees and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation” (TP, article 10).

The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment (JDL, article 32).

b. The design of the institution

As for the design of institutions for juveniles and the physical environment, several elements must be taken into consideration, for example, security. It is also important that the design of the institution and the physical environment give due regard to :

RIGHTS AND REALITIES

- The need of the juveniles for privacy
- Their need for sensory stimuli

The institutions should also offer :

- The possibility for association with peers
- The possibility for participation in sports, physical exercise and leisure-time activities

c. Windows

Windows must be large enough to enable the detainees to read or work by natural light. They shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation. Artificial light must be provided sufficient for the detainees to read or work without injury to eyesight (TP, article 11).

d. Sanitary installations

Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner (JDL, article 34). Adequate bathing and shower installations must be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate (TP, article 13).

e. Personal hygiene

Detainees must be provided with water and with such toilet articles as are necessary for health and cleanliness (TP, article 15). Facilities shall be provided for the proper care of the hair and beard; men shall be enabled to shave regularly (TP, article 16).

f. Sleeping accommodation

Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards (JDL, article 33). Where dormitories are used, they shall be occupied by prisoners carefully selected as suitable to associate with one another in those conditions (TP, article 9(2)). Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for

CHILDREN DEPRIVED OF LIBERTY

the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room (TP, article 9(1)).

Every juvenile must, in accordance with local or national standards, be provided with a separate bed (TP, article 19) and with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness (JDL, article 33).

During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile (JDL, article 33).

g. Security

The design and structure of juvenile detention facilities for juveniles should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks (JDL, article 32).

h. Creches

Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers (TP, article 23(2)).

1.3 Transport

The transport of juveniles should be carried out in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity (JDL, article 26).

2. The right to the enjoyment of the highest attainable standard of health

2.1 The right to receive medical care

Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated (JDL, article 49).

RIGHTS AND REALITIES

2.2 Medical care must be dispensed as a priority in the community

All medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration in the community (JDL, article 49).

2.3 Minimal medical services and qualified medical personnel within the institution

Notwithstanding the right stated in the previous paragraph (on the merits of medical care in the community rather than in the institution), it is important that every institution can also administer minimal medical care in case of emergencies. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies (JDL, article 51).

In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity. In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency (TP, article 52).

2.4 The juvenile's access to medical care and health care

a. An obligatory medical exam upon admission

The medical officer shall see and examine every juvenile as soon as possible after his admission and thereafter as necessary (TP, article 24).

This medical exam has the following objectives :

- the discovery of physical or mental illness (TP, article 24)
- the determination of the physical capacity of every detainee for work (TP, article 24)
- the recording of any evidence of prior ill-treatment (JDL, article 50)
- the detection of substance abuse that may hinder the integration of the juvenile into society (JDL, article 51)

CHILDREN DEPRIVED OF LIBERTY

b. Regular medical follow-up

The medical officer should daily see all sick detainees, all who complain of illness, and any detainee to whom his attention is specially directed (TP, article 25(1)). Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly (JDL, article 51).

The medical officer shall visit daily detainees undergoing punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health (TP, article 32.3). Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile (JDL, article 52).

Detainees suspected of infectious or contagious conditions must immediately be segregated from the other detainees (TP, article 24).

c. The administration of medicines

Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. The administration of any drug should always be authorized and carried out by qualified medical personnel (JDL, article 55).

If the juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it (JDL, article 35).

2.5 Hospital treatment

Sick detainees who require specialist treatment shall be transferred to specialised institutions or to civil hospitals (TP, article 22.2).

2.6 Psychiatric treatment

A juvenile who is suffering from mental illness should be treated in a specialised institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release (JDL, article 53).

RIGHTS AND REALITIES

2.7 Prenatal and postnatal care

In women's institutions, there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution (TP, article 23(1)).

3. Food and drinking water

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time (JDL, article 37).

The reduction of diet as disciplinary measure should be prohibited for any purpose (JDL, article 67).

4. Social security and social benefits

Article 26 CRC recognizes every child's right to benefit from social security. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

The deprivation of liberty must in no way prevent the child from enjoying this right. Family allowances must continue to be paid, without excluding that part of the sum which can be claimed by the institution in order to partly cover living expenses for his stay.

5. Contact with the outside world

Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society (JDL, article 59).

This principle is like a thread running through the international legal framework. Education, vocational training, health services, leisure, treatment, etc. : every aspect of the life of a child deprived of liberty must

CHILDREN DEPRIVED OF LIBERTY

as far as possible be implemented in a natural environment, or at least in contact with it.

Juveniles should be allowed to communicate with their families (see Chapter 4) and with other persons or representatives of 'reputable' outside organisations. They should also be allowed to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons (JDL, article 59).

The concept of "the unfinished institution"⁴⁹ illustrates well the international requirements : it implies making institutions as dependant as possible on the outside world. Youngsters should be allowed to leave, when possible, to carry out activities outside and should be encouraged to resort to community services, such as health, education, vocational training and leisure.

6. Rehabilitation and social re-integration

6.1 *The principle*

Article 39 CRC stipulates that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment that fosters the health, self-respect and dignity of the child".

While juveniles deprived of their liberty are not mentioned explicitly in article 39 CRC, this provision may still be invoked where children deprived of liberty are victims of neglect, exploitation or abuse.

The link between re-integration and respect for the juvenile's dignity is also made in article 87(f) of the JDL :

"[a]ll personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings".

49

Garcia Mendez, E., 1995, p. 100.

RIGHTS AND REALITIES

6.2 *Support to juveniles*

Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community (AJJ, article 28(2)).

In fact, all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Special courses should be devised to this end (JDL, article 79).

Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself upon release in order to facilitate successful reintegration (JDL, article 80).

The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community (JDL, article 80).

6.3 *Public Awareness*

The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end, active steps should be taken to foster open contacts between the juveniles and the local community (JDL, article 8).

7. International co-operation

The realization of a sufficient and decent standard of living depends in an important way on the economic and social situation of every country. In the different instruments that compose the international legal framework, States are invited repeatedly to ensure respect for this right “within the limits of their possibilities and available resources”.

For countries in which the means are not sufficient to achieve this right for every child, article 4 CRC provides for the possibility to appeal to international support and co-operation. To a State that invokes the lack of resources to justify the non-respect of the right to a decent standard of living (and of the rights of the child as a whole), this article should be emphasised as a way to ensure that children still have their rights fulfilled.

It is also true that detainees in general and juveniles deprived of their liberty in particular will often be among the first affected by a lack of public resources. Article 4 is therefore of utmost importance in their case. A parallel reading of article 2 (principle of non-discrimination) and article 4 of the CRC confirms that international co-operation must be utilised in order to achieve the economic, social and cultural rights of all children deprived of liberty.

Chapter 6

Civil and political rights and freedoms

Introduction

The child deprived of liberty must be able to enjoy and to exercise all the civil and political rights applicable to all children (with the exception of the right to liberty of movement).

In this chapter, we review the civil and political rights and freedoms of all juveniles. Those provisions specific to the situation of children deprived of liberty are specifically outlined. Particular attention has been paid to legal protection.

1. Name, nationality and the preservation of identity

Every child has the right to a name, an identity and a nationality (CRC, article 7(1)). States Parties undertake to respect the right of the child to preserve his identity, including nationality and name (CRC, article 8(1)).

Where a child is illegally deprived of some or all of the elements of his identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his identity (CRC, article 8(2)).

2. Freedom of expression and access to all kinds of information

2.1 The right to freedom of expression

Each child has the right to freedom of expression (CRC, article 13(1)).⁵⁰

Very often, full respect for this right is a necessary condition for the effective monitoring of the other rights of the child (deprived of liberty). Indeed, it allows children, amongst other things, to actively take part in an assessment of their situation.

2.2 Access to information of all kinds

a. The principle

Every child shall have the freedom to seek and receive information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice (CRC, article 13).

States Parties shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his social, spiritual and moral well-being and physical and mental health (CRC, article 17).

b. The child must be informed of the internal regulations upon admission

On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance (JDL, article 24).

c. A library in every institution

Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it (JDL, article 41).

50

See also CRC, article 12 and Chapter 3 on the General Principles

RIGHTS AND REALITIES

d. Communication and correspondence

Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence (JDL, article 61).

e. The child must be kept informed of the news

Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juveniles is interested (JDL, article 62).

2.3 *Help to understand the information*

All juveniles should be helped to understand the regulations governing the internal organization of the facility and all other matters as are necessary to enable them to understand fully their rights and obligations during detention (JDL, article 25).

For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension (JDL, article 24).

Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings (JDL, article 6).

The director, his deputy and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of detainees, or a language understood by the greatest number of them (TP, article 51(1)).

2.4 *Limits to the freedom of expression*

The exercise of the right to the freedom of expression may only be subjected to restrictions that are provided by law and are necessary :

- a) For respect of the rights or reputations of others; or
- b) For the protection of national security or of public order, or of public health or morals (CRC, article 13(2)).

3. Freedom of thought, conscience and religion

3.1 The right to freedom of thought, conscience and religion

a. The principle

Every child has the right to freedom of thought, conscience and religion (CRC, article 14(1)).

First, this right must be respected when selecting the institution in which the juvenile will be placed. Article 20(3) of the CRC which concerns the separation of children from their parents requires that, in the search for alternative care, due regard be paid to the desirability of continuity to the child's ethnic, religious, cultural and linguistic background.

Second, within the institution, the religious and cultural beliefs, practices and moral concepts of the juvenile should be respected (JDL, article 4).

b. Meals

Every detention facility shall ensure that every juvenile receives food that satisfies as far as possible, religious and cultural requirements (JDL, article 37).

c. Religious services

Every juvenile should be allowed to satisfy the needs of his religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his own services and having possession of the necessary books or items of religious observance and instruction of his denomination.

If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request.

Every juvenile should have the right to receive visits from a qualified representative of any religion of his choice (JDL, article 48).

3.2 Limits to the right to freedom of thought, conscience and of religion

Freedom to manifest one's own religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect :

RIGHTS AND REALITIES

- public safety, order, health or morals, or;
- the fundamental rights and freedoms of others (CRC, article 14(3)).

3.3 A free choice, not an obligation

Every juvenile should have the right not to participate in religious services and freely to decline religious education, counselling or indoctrination (JDL, article 48).

4. Freedom of association

4.1 The principle

Every child has the right to freedom of association and to freedom of peaceful assembly (CRC, article 15(1)).

4.2 Limits to freedom of association

No restrictions may be placed on the exercise of the rights to freedom of association and peaceful assembly other than those imposed in conformity with the law and which are necessary :

- in a democratic society
- in the interests of national security or public safety, public order, the protection of public health or morals
- for the protection of the rights and freedoms of others (CRC, article 15(2)).

5. The right to privacy

5.1 The principle

No child will be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor of unlawful attacks on his honour and reputation.

The child has right to the protection of the law against such interference or attacks (CRC, article 16).

CHILDREN DEPRIVED OF LIBERTY

5.2 The possession of personal effects

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well being of minors, particularly those who are deprived of liberty. Therefore, the right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected.

Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he has been authorized to spend money or send such property out of the facility (JDL, article 35).

5.3 The right to use one's own clothing

To the extent possible juveniles deprived of liberty should have the right to use their own clothing (JDL, article 36) (see also Chapter 5, physical conditions and the environment). It may be that the authorization to use their own clothes is limited to the time spent out of the institution : juveniles removed from or leaving a facility should be allowed to wear their own clothing (JDL, article 36).

5.4 Confidentiality

a. Personnel

All personnel should respect the right of the juvenile to privacy and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity (JDL, article 87(e)).

b. Records and files

All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be accessible only to authorized persons.

Upon release, the records of juveniles must be sealed and, at an appropriate time, expunged (JDL, article 19).

RIGHTS AND REALITIES

c. The birth certificate of the child born in prison

If a child is born in prison, this fact shall not be mentioned in the birth certificate (TP, article 23(1)).

5.5 Protection from public view

When detainees are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form (TP, article 45(1)).

6. The right to human dignity and personal integrity

6.1 The right to protection against abuse and ill-treatment

a. The principle

Every child has the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who has the care of the child (CRC, article 19).

There are several ways in which to consider the problem of the maltreatment and the exploitation of children in institutions. One of the ways to tackle the problem from a legal point of view, rarely used but very important, is to deal with the issue under article 19 of the CRC, which characterizes the personnel of the institution as people having the care of the child. In effect, the personnel of institutions replace to a certain extent the parents in the exercise of their parental authority during the period of the child's confinement.

b. Support for the personnel

With a view to preventing maltreatment and abuse on the part of the personnel towards children who are entrusted to them and in order to discourage the use of violence, all necessary support should be provided to the staff (CRC, article 19).

CHILDREN DEPRIVED OF LIBERTY

6.2 *Exploitation*

a. Economic exploitation

All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty (JDL, article 44).

Article 32 CRC is one of these norms. This article first recognizes the right of each child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

This article of the Convention also obliges States Parties to provide for a minimum age for admission to employment and for appropriate regulation of the hours and conditions of employment. They must also provide for appropriate sanctions to ensure the effective enforcement of these obligations.

Some of the other international norms on the matter, such as those emanating from the International Labour Organization, are dealt with in Chapter 7.

b. Sexual exploitation

Every child has the right to protection from all forms of sexual exploitation.

States Parties shall take all appropriate measures to prevent :

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials (CRC, article 34).

On 25 May 2000, the UN General Assembly adopted an Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography⁵¹ which extends the measures that States Parties should undertake in order to guarantee the protection of the child from sale, prostitution and pornography. The Optional Protocol prohibits the sale of children, child prostitution and child pornography and obliges States Parties, *inter alia*, to ensure that those acts enumerated under the Protocol are criminalised in their domestic laws and to adopt appropriate

51 GA Res. A/RES/54/263 of 25 May 2002.

RIGHTS AND REALITIES

measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process. The Protocol entered into force on 18 January 2002.⁵²

c. The use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances

States Parties shall take all appropriate measures to prevent the use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances (CRC, article 33).

d. The abduction of, sale of, and traffic in children and all other forms of exploitation

States Parties shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (CRC, article 35).

More generally, they shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (CRC, article 36).

6.3 Torture and other cruel, inhuman or degrading treatment or punishment

a. The definition

Torture has been defined in the widely ratified Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted in 1984 by the United Nations General Assembly.⁵³

According to this international instrument, an act of torture must have the following characteristics :

- 1) Severe pain or suffering endured, whether physical or moral;
- 2) The act must be intentionally inflicted;
- 3) The author must seek to achieve certain goals or must be guided by certain motives (to obtain information or a confession, to punish, to intimidate, to coerce, or any other reason based on discrimination);

52 As of 8 February 2002, there were 17 States Parties to the Optional Protocol.

53 As of 8 February 2002, there were 128 State Parties to the CAT.

CHILDREN DEPRIVED OF LIBERTY

- 4) It must be inflicted by, or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity;
- 5) The term “torture” does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

With regard to this definition, it is important to keep in mind the fact that the “consent” or “acquiescence” of a public official is sufficient for such an agent of the State to be held responsible for an act of torture. It is therefore not necessary that he actively participated in the act of torture. In addition, we must not lose sight of the fact that the determination of the severity of the pain must take into account the child’s age. A pain or suffering that can be considered relatively light by an adult can actually put the child, by reason of his young age, in a state of extreme anxiety and stress.

b. The principle

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (CRC, article 37(a)).

c. Clothing

The clothes of children deprived of liberty should in no manner be degrading or humiliating (JDL, article 36).

d. Experimental medical treatments

Juveniles shall never be testees in the experimental use of drugs and treatment (JDL, article 55; ICCPR, article 7).

e. Means of restraint and force

The use of instruments of restraint and force, whatever the reason, is forbidden, except in exceptional cases.⁵⁴ In any case, instruments of restraint and force should not cause humiliation or degradation (JDL, articles 63 and 64). For example, chains, irons and medicines shall not be used as means of restraint (TP, article 33; JDL, article 55).

f. Disciplinary measures

All disciplinary measures constituting cruel, inhuman or degrading treatment must be strictly prohibited, including corporal punishment, placement in a

54 This issue is treated in more detail later in this chapter.

RIGHTS AND REALITIES

dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juveniles concerned (JDL, article 67).

The Standard Minimum Rules for the Treatment of Prisoners add that handcuffs, chains, irons and strait-jackets shall never be applied as a punishment (TP, article 33).

Similarly, medicines must not be administered with a view to eliciting information or a confession, or as a punishment (JDL, article 55). The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose and labour should not be imposed as a disciplinary sanction (JDL, article 67).

g. Transport

The transport of juveniles should be carried out in conditions that should in no way subject them to hardship or indignity (JDL, article 26).

6.4 The particular responsibility of the personnel of the institution

All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual, and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required (JDL, article 87(d); see also CRC, article 19 cited above).

6.5 Compensation

States should provide compensation when injuries are inflicted on juveniles deprived of liberty (JDL, article 7).

7. The right to legal protection during the process leading to deprivation of liberty

While the subject matter of this book is concerned mainly with the child's legal protection once he has been deprived of liberty, there are a few elements that relate to the proceedings leading to the deprivation of liberty which should be raised. These elements are not dealt with exhaustively. For example, legal aid during the proceedings, though a very important factor, is not dealt with here.

CHILDREN DEPRIVED OF LIBERTY

7.1 The minimum age

The age limit below which it should not be permitted to deprive a child of his liberty should be determined by law (JDL, article 11(a)).

7.2 Protection against unlawful and arbitrary deprivation of liberty

No child shall be deprived of his liberty unlawfully (CRC, article 37(b)). No one shall be deprived of his liberty except on such grounds as are established by law (ICCPR, article 9(1)).

No child shall be deprived of his liberty arbitrarily (CRC, article 37(b)).

It is interesting in this context to recall article 9 CRC (see Chapter 4 above) which subjects the separation of children from their parents to several conditions, one of which is that any such decision must be made by a competent authority. It is surprising to note that this condition is not specifically required in the case of a decision to deprive a child of liberty in general.

This raises the question of what exactly the prohibition against the “arbitrary” deprivation of liberty means. According to the *Oxford English Dictionary*, 2nd ed.⁵⁵, the word “arbitrary” means : “1. To be decided by one’s liking; dependent upon will or pleasure; at the discretion or option of anyone; 2. Relating to, or dependent on, the discretion of an arbiter, arbitrator, or other legally-recognized authority;”. If the word “arbitrary” is taken in its everyday meaning, then a decision to deprive a child of liberty based on reason, necessity or principle may be sufficient. However, if “arbitrary” is taken to mean a decision dependent on the discretion of a “legally-recognized authority”, then any decision to deprive a child of liberty would have to be made according to law and legal procedure. Given the object and purpose of the Convention, and the context of article 37(b) within a binding legal instrument, it is argued that article 37(b) of the Convention should be interpreted in the latter fashion. This means that any decision to deprive a child of liberty must be taken by a competent authority, according to law and legal procedure.

7.3 A procedure in conformity with the law

The arrest, detention and imprisonment of a child shall be in conformity with the law (CRC, article 37(b)).

55 Oxford English Dictionary, 2nd ed., Oxford University Press, Oxford, 1989.

RIGHTS AND REALITIES

The International Covenant on Civil and Political Rights is more explicit : no one shall be deprived of his liberty except in accordance with such procedure as is established by law (ICCPR, article 9(1)).

7.4 A measure of last resort

a. The principle

The arrest, detention and imprisonment of a child shall be used only as a measure of last resort (CRC, article 37(b); see also CRC, article 20(3); JDL, articles 1, 2 and 17; AJJ, articles 13(1) and 19(1); PJD, article 46).

The International Covenant on Civil and Political Rights further specifies this principle by stating basic rules which should govern any arrest or pre-trial detention. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear before trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment (ICCPR, article 9(3)).

The principle of last resort requires several considerations to be taken into account in determining whether a child should be deprived of liberty.

b. In the best interests of the child

Very often, the international standards underline that the deprivation of liberty may only be resorted to if the best interests of the child are a primary consideration in making the decision (see PJD for example, article 46; this article even speaks of the best interests of the child as being of “paramount importance”).

c. Unless there is no other appropriate response

Deprivation of liberty shall not be imposed on a juvenile unless there is no other appropriate response (see for example AJJ, article 17(1)(c)).

d. After careful consideration

Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration (AJJ, article 17(1)(b)).

e. The grounds on which to deprive a person of liberty must be limited

In the international standards, there are several limitations on the grounds leading to the deprivation of liberty :

CHILDREN DEPRIVED OF LIBERTY

- Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences (AJJ, article 17(1)(c)).
- No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation (ICCPR, article 11).

Article 46 of the United Nations Guidelines for the Prevention of Juvenile Delinquency limits the situations which may lead to a decision to place a child in an institution to the following :

- where the child or young person has suffered harm that has been inflicted by the parents or guardians
- where the child or young person has been sexually, physically or emotionally abused by the parents or guardians
- where the child or young person has been neglected, abandoned or exploited by the parents or guardians
- where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians
- where a serious physical or psychological danger to the child or young person has manifested itself in his own behaviour and neither the parents, the guardians, the juvenile himself nor non-residential community services can meet the danger by means other than institutionalisation.

7.5 The duration of deprivation of liberty

a. Who determines the duration ?

The length of detention should be determined by the judicial authority (JDL, article 2).

There is, in this respect, a possible confusion in the international legal framework : the length of deprivation of liberty must be determined by a judicial authority, but the decision to deprive a child of liberty does not necessarily have to be taken by such an authority. This ambiguity raises the question of what happens in cases where the measure of deprivation of liberty is decided by an administrative or other authority. It would be somewhat illogical to require in such a situation that a judicial authority determines the length of the period of detention. It is therefore desirable that this situation be clarified.

RIGHTS AND REALITIES

b. As brief a measure as possible

The arrest, detention or imprisonment of a child shall be used only for the shortest appropriate period of time (CRC, article 37(b); see also JDL, article 2; AJJ, article 13(1) and 19(1); PJD, article 46). When preventative detention is used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention (JDL, article 17).

Should the juvenile be serving a sentence, the time spent outside a detention facility (for visits to his family for example) should be counted as part of the period of sentence (JDL, article 59). This article is restricted to juveniles serving a sentence. One may well wonder why children in pre-trial detention, as well as those confined for reasons other than having committed an offence and those placed in detention following an “educational measure”, could not benefit from this provision as well.

c. The banning of life imprisonment

Life imprisonment without the possibility of release shall not be imposed for offences committed by persons below eighteen years of age (CRC, article 37(a)).

d. Early release

Early release of the juvenile must always be possible (JDL, article 2).

8. The right to legal protection during the deprivation of liberty

8.1 Arrest and notification of charges

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him (ICCPR, article 9(2)).

8.2 Admission to an institution

a. The necessity of a commitment order

No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority.

CHILDREN DEPRIVED OF LIBERTY

The details of this order should be immediately entered in the register (JDL, article 20).

b. The necessity of a register within the institution

No juvenile should be detained in any facility where there is no register (JDL, article 20; see also Chapter 8).

8.3 *Legal assistance*

Every child deprived of his liberty shall have the right to prompt access to legal and other appropriate assistance (CRC, article 37(d)).

Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications (JDL, article 18(a)).

8.4 *The right to challenge the legality of the deprivation of liberty and its execution*

a. The principle

Children shall have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority (CRC, article 37(d)).

The International Covenant on Civil and Political Rights, in article 9(4), specifies that authorities shall order the release of a person if the detention is not lawful.

The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority (JDL, article 14).

b. The right to a prompt decision

Children have the right to a prompt decision on any such action (CRC, article 37(d)).

c. Juveniles under arrested or in pre-trial detention

In addition to the general principle, the International Covenant on Civil and Political Rights contains an additional guarantee for any person arrested or provisionally detained. This guarantee is that of *habeas corpus*, according to which anyone arrested or detained on a criminal charge shall be brought

RIGHTS AND REALITIES

promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release (ICCPR, article 9(3)).

d. Compensation

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation (ICCPR, article 9(5)).

8.5 *Review of the placement*

Every child who has been placed by the competent authorities has the right to a periodic review of the treatment and all other circumstances relevant to his placement (CRC, article 25; see also Chapter 4 and article 9 of the CRC that requires judicial authorities to review all measures leading to a separation of children from their parents).

Article 25 of the CRC requires State Parties to conduct a periodic review only in the case of placements for the purpose of care, protection or treatment of physical or mental health .

Are children deprived of liberty for reasons of public order excluded from this right to a review of their placement? There is a strong argument that the spirit of the Convention conveys the intention that these children are also covered by article 25. Often an intervention with regard to “deviant” juveniles has their rehabilitation and their eventual social integration as its primary objective. As broad an interpretation as possible of the right to review of placement is justified in the light of such an objective.

8.6 *Release*

a. The principle

The judge or other competent official or body shall, without delay, consider the issue of release (AJJ, article 10(2)). Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time (AJJ, article 28(1)).

b. The release of detainees (pre-trial detention)

It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgement (ICCPR, article 9(3)).

9. Measures of restraint and force

9.1 The use of means and instruments of restraint and force

Means and instruments of restraint and force can only be used :

- in exceptional cases
- where all other control methods have been exhausted and failed
- only as explicitly authorized and specified by law and regulation
- if they don't cause humiliation or degradation
- if used restrictively
- if used for the shortest possible period of time
- if used by order of the director of the administration (JDL, article 64)

9.2 The objective of measures of restraint and force

Means and instruments of restraint and force might be resorted to in order to :

- prevent the juvenile from inflicting self-injury
- prevent the juvenile from inflicting injuries to others
- prevent the juvenile from inflicting serious destruction of property (JDL, article 64).

In the Minimum Rules for the Treatment of Prisoners, other situations are mentioned in which the use of means of restraint and force may be permitted :

- As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- On medical grounds by direction of the medical officer (TP, article 33);
or
- in self defence cases (TP, article 54(1)).

However, because these situations have not been included in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty – a very significant exclusion – and because these additional situations do not guarantee to children deprived of liberty any supplementary protection (on the contrary), these possible reasons for the use of means of restraint or force should remain excluded for juveniles.

RIGHTS AND REALITIES

9.3 Measures of restraint and force must be provided for in a law or a regulation

Means and instruments of restraint and force can only be used as explicitly authorized and specified by law and regulation (JDL, article 64).

9.4 Who can apply measures of restraint and force?

Means and instruments of restraint and force can only be used by order of the director of the administration. The director should at once consult medical and other relevant personnel and report to the higher administrative authority (JDL, article 64).

9.5 The banning of certain measures of restraint and force

Measures of restraint and force that cause humiliation or degradation must be prohibited (JDL, article 64). The international standards specify several examples of unacceptable instruments of means of restraint and force (see above in this Chapter, the right to human dignity and personal integrity).

9.6 The carrying and use of weapons

The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained (JDL, article 65). The international legal framework is not so categorical with regard to the carrying and use of weapons by personnel in adult detention centres (see, for example, TP, article 54(3), therefore juveniles detained with adults do not benefit from such a rule.

10. Disciplinary measures and procedures

10.1 The principle

Discipline and order shall be maintained with firmness, but with no more restrictions than is necessary for safe custody and well-ordered community life (TP, article 27).

10.2 The objectives of disciplinary measures

Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the

CHILDREN DEPRIVED OF LIBERTY

fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person (JDL, article 66).

10.3 Sanctions must be provided for in regulations

No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force (JDL, article 70).

Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following elements, taking full account of the fundamental characteristics, needs and rights of juveniles :

- Conduct constituting a disciplinary offence;
- Type and duration of disciplinary sanctions that may be inflicted;
- The authority competent to impose such sanctions;
- The authority competent to consider appeals (JDL, article 68).

10.4 The banning of certain disciplinary measures

Any disciplinary measure that is not consistent with the upholding of the inherent dignity of the juvenile must be forbidden (JDL, article 66; see also above in this Chapter, the right to human dignity and personal integrity).

10.5 A procedure without undue delay

A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay (JDL, article 69).

10.6 A thorough examination of the case

The competent authority should conduct a thorough examination of the case (JDL, article 69).

Complete records should be kept of all disciplinary proceedings (JDL, article 70).

10.7 The juvenile must be informed

No juvenile should be sanctioned unless he has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile (JDL, article 70).

Where necessary and practicable the juvenile shall be allowed to make his defence through an interpreter (TP, article 30(3)).

RIGHTS AND REALITIES

10.8 The juvenile must be able to defend himself

No juvenile should be sanctioned unless he has been given a proper opportunity of presenting his defence, including the right of appeal to a competent and impartial authority (JDL, article 70).

10.9 Other necessary conditions for the application of certain disciplinary measures

No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever (JDL, article 87(a)).

According to article 32 of the Standard Minimum Rules for the Treatment of Prisoners, punishment that may be prejudicial to the physical or mental health of detainees shall never be inflicted unless the medical officer has examined the juvenile and certified in writing that he is fit to sustain it.

10.10 “Ne bis in idem” and collective sanctions

No juveniles should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited (JDL, article 67).

11. The transfer of the juvenile and legal protection

Juveniles should not be transferred from one facility to another arbitrarily (JDL, article 26).

Chapter 7

The right to education and recreational activities

Introduction

The child deprived of liberty can in no way be deprived of his rights to education and recreation. The Convention on the Rights of the Child provides that these rights must be realized “on the basis of equal opportunity”.

Therefore, the State must, in accordance with international legal standards, take all necessary measures to guarantee rights to education and recreation.

1. The right to education

1.1 The principle

Article 28 CRC recognizes for every child the right to education. With a view to achieving this right on the basis of equal opportunity, State Parties shall :

- Make primary education compulsory and available free to all;
- Make different forms of secondary education, including general and vocational education, available and accessible to every child;
- Take appropriate measures for the introduction of free secondary education and financial assistance in case of need;

CHILDREN DEPRIVED OF LIBERTY

- Make higher education accessible to all on the basis of capacity by every appropriate means;
- Make educational and vocational information and guidance available and accessible to all children;
- Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Every juvenile of compulsory school age who is deprived of liberty has the right to education suited to his needs and abilities (JDL, article 38). Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes (JDL, article 39).

In addition, inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalised juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage (AJJ, article 26(6)).

1.2 Continuity in the child's education

Article 20 CRC deals with situations where the child is separated from his parents or his home environment; the situation in which children deprived of their liberty most often find themselves. Paragraph 3 of this article provides that, at the time of the choice of solution for alternative care, regard shall be paid to the desirability of continuity in the child's upbringing.

1.3 Education must not be imposed

Article 18(b) JDL provides that children deprived of liberty should be provided with opportunities to continue education or training, but "should not be required to do so".

1.4 Education must not cause the continuation of the detention

Article 18(b) JDL states that education or training should not cause the continuation of the detention.

1.5 Education integrated with education system of the country

Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers

RIGHTS AND REALITIES

through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty (JDL, article 38).

Similarly, diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalised (JDL, article 40).

1.6 School discipline

School discipline must be administered in a manner consistent with the child's human dignity (CRC, article 28(2)).

1.7 Vocational training and exploitation

The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party (JDL, article 46).

1.8 Special attention to marginalised children

Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education (JDL, article 38).

1.9 The right to education and international co-operation

States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world (CRC, article 28(3)).

2. The objectives of education

The education of the child (deprived of liberty) shall be directed to :

- The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- The development of respect for human rights and fundamental freedoms;

CHILDREN DEPRIVED OF LIBERTY

- The development of respect for the child's parents, his own cultural identity and language and for diverse cultural values;
- The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples;
- The development of respect for the natural environment (CRC, article 29(1))

Education must be designed to prepare the child for return to society (JDL, article 38). According to article 26(1) AJJ, the training of juveniles placed in institutions must assist them to assume socially constructive and productive roles in society (see also JDL, article 42).

It is useful to note that the objectives of education and training often go hand in hand with the objectives of the whole treatment and assistance that juveniles in institutions should receive, with a view to their social reintegration.

3. Recreational activities

3.1 *The right to rest*

Every child has the right to rest (CRC, article 31).

3.2 *The right to leisure*

a. The principle

Every child has the right to leisure, to engage in play and recreational activities appropriate to his age and to participate freely and fully in cultural and artistic life. State Parties shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity (CRC, article 31).

Every confined juvenile should have the right to a certain amount of time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development (JDL, article 47).

b. Leisure and recreational materials

Juveniles should receive and retain materials for their leisure and for their recreation as are compatible with the interests of the administration of justice (JDL, article 18(c)).

RIGHTS AND REALITIES

This requirement of the materials for leisure being compatible with the interests of the administration of justice should be construed in a strict sense, in order to avoid the discrimination of children deprived of their liberty in relation to this right.

c. The library

Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it (JDL, article 41; see also Chapter 6, freedom of expression and access to information).

d. Exercise and physical training

Every juvenile deprived of liberty should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities.

The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it (JDL, article 47).

4. Work

4.1 Child labor

Every child has the right to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (CRC, article 32). This protection is in addition to the prohibition on economic exploitation (see Chapter 6, the right to human dignity and personal integrity).

4.2 The juvenile must be able to work if he wants to

Where possible, juveniles under arrest or awaiting trial should be provided with opportunities to pursue work with remuneration, but should not be required to do so. Such work should not cause the continuation of the

CHILDREN DEPRIVED OF LIBERTY

detention (JDL, article 18(b)). Article 45 of the JDL provides that all juveniles deprived of liberty should be provided with the opportunity to perform remunerated labour, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities.

The authorization to work must, however, be considered in light of the international requirement according to which a minimum age or minimum ages to employment should be provided for (CRC, article 32). Convention 138 1973 of the International Labour Organization (ILO) concerning the Minimum Age for Admission to Employment fixes this age at 15 years. In addition, the ILO No.182 Worst Forms of Child Labour Convention 1999 prohibits the employment of children in certain types of situations including all forms of slavery; prostitution; illicit activities, in particular for the production and trafficking of drugs; and any work which by its nature or the circumstances in which it is carried out, it likely to harm the health, safety or morals of children.⁵⁶

4.3 The type of work

In order to enhance the possibility of finding suitable employment when he returns to his community, the juvenile must, as far as possible, be able to take up work which :

- completes his vocational training
- is done, if possible, within the local community
- provides appropriate training that will be of benefit following the detention period

The organisation and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life (JDL, article 45).

4.4 The objective of work

Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him for return to the community (JDL, article 67).

56 Article 3, ILO No.182 Worst Forms of Child Labour Convention 1999.

RIGHTS AND REALITIES

4.5 The banning of certain work

No juvenile should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes (JDL, article 71).

The interests of juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party (JDL, article 46).

Convention No. 29 of the International Labour Organization (ILO) concerning forced or compulsory labour forbids work imposed during pre-trial detention.

4.6 The juvenile must be remunerated for his work

Every juvenile who performs work should have the right to equitable remuneration. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his own use or to indemnify the victim injured by his offence or send it to his family or other persons outside the detention facility (JDL, article 46).

4.7 Work must not be imposed as a disciplinary sanction

Labour should not be imposed on the child as a disciplinary sanction (JDL, article 67).

Chapter 8

Other issues relating to the conditions of detention

Introduction

This chapter covers aspects of the deprivation of liberty that, due to their specificity, we could not classify in one of the categories used by the Committee on the Rights of the Child in monitoring children's rights. This does not mean however that these aspects are not relevant. On the contrary, they are indispensable to achieve the complete respect for the rights of children deprived of liberty.

1. The personnel of institutions

1.1 A qualified personnel

The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work (JDL, article 82). The personnel shall possess an adequate standard of education and intelligence. Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests (TP, article 47).

CHILDREN DEPRIVED OF LIBERTY

The necessity for qualified personnel can be explained by the requirement for the detention facility to make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles (JDL, article 81).

1.2 A diversified personnel

Personnel should include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists (JDL, article 81).

More broadly, the personnel of the juvenile justice system as a whole should reflect the diversity of children who come into contact with it. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies (AJJ, article 22(2)).

1.3 Personnel employed on a permanent basis

The above mentioned personnel and other specialist staff should normally be employed on a permanent basis, which should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial (JDL, article 81).

1.4 The director

The director of a facility should be adequately qualified for his task, with administrative ability and suitable training and experience and should carry out his duties on a full-time basis (JDL, article 86). He shall reside on the premises of the institution or in its immediate vicinity (TP, article 50(3)).

When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions (TP, article 50(4)).

1.5 Female personnel in institutions/units for girls

Female detainees shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women (TP, article 53(3)).

In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible female officer

RIGHTS AND REALITIES

who shall have the custody of the keys of all that part of the institution (TP, article 53(1)). No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a female officer (TP, article 53(2)).

1.6 The status of and remuneration for personnel

The personnel shall have civil service status, with security of tenure subject only to good conduct, efficiency and physical fitness (TP, article 46(3)). Salaries shall be adequate to attract and retain suitable women and men (JDL, article 83); Employment benefits and conditions of service shall be favourable in view of the exacting nature of the work (TP, article 46(3)).

1.7 An attitude respectful of children's rights

In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles (JDL, article 87). The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective (JDL, article 83).

1.8 Communication and co-operation between staff

The administration should introduce forms of organisation and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfillment of their duties (JDL, article 84).

1.9 In-service training

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service

CHILDREN DEPRIVED OF LIBERTY

training, to be organised at suitable intervals throughout their career (JDL, article 85).

Prison officers shall be given special physical training to enable them to restrain aggressive detainees (TP, article 54(2)). It is important to underline that this proposal has not been kept in the Rules for the Protection of Juveniles Deprived of their Liberty.

1.10 Corruption

All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities (JDL, article 87(b)).

2. Classification and treatment

2.1 The principle

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being (JDL, article 28).

2.2 Placement based on individual reports

The psychological and social report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued (JDL, article 27).

2.3 An individualised treatment plan

When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualised treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached (JDL, article 27).

RIGHTS AND REALITIES

2.4 Separation from adults

a. The principle

Every child deprived of liberty shall be separated from adults (CRC, article 37(c)). “Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults” (AJJ, articles 13(4) and 26(3)).

b. Exceptions

According to the Convention, every child deprived of liberty shall be separated from adults “unless it is considered in the child’s best interests not to do so” (CRC, article 37(c)).

The Rules for the Protection of Juveniles Deprived of their Liberty are more precise : juveniles should be separated from adults, unless they are members of the same family, or if, under controlled conditions, they are brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned (JDL, article 29).

2.5 Separation of juveniles awaiting trial from those who have been convicted

Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Consequently, untried detainees should be separated from convicted juveniles (JDL, article 17).

2.6 Separation based on the grounds for deprivation of liberty

Persons imprisoned for debt or other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence (TP, article 8(c)).

This provision is only of indirect concern to juveniles but the principle of separating those detainees who have been convicted of serious criminal offences from those convicted of minor or civil offences still has important significance. Indeed, although children who are in closed institutions throughout the world are very often stereotypically associated with juvenile delinquency and criminality, it has already been noted that detained children are not by any means all delinquents who have committed infringements of the criminal code in the strict sense. In fact this is far from being the case (see Part One).

3. Information on the juvenile

3.1 The record

In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received :

- a) Information on the identity of the juvenile;
- b) The fact of and reasons for commitment and the authority responsible;
- c) The day and the hour of admission, transfer and release;
- d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- e) Details of known physical and mental health problems, including drug and alcohol abuse (JDL, article 21).

3.2 The file

As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration (JDL, article 23).

Chapter 9

Children in special situations

Introduction

According to the Convention, “children in special situations” are the following groups of children :

- child refugees
- disabled children
- children of minority groups or of indigenous origin
- children in armed conflicts
- children in conflict with the law
- children using narcotic drugs and psychotropic substances

The international legal framework contains several provisions aiming to ensure that children in special situations lead a normal life, to guarantee special protection to them and therefore to discourage recourse to the deprivation of liberty. We have synthesized below these provisions, found in the Convention on the Rights of the Child and in other international texts. Nevertheless, it should not be forgotten that all the other rights of the child apply to these minors as well.

CHILDREN DEPRIVED OF LIBERTY

1. Child refugees

A child who is seeking refugee status or who is considered a refugee shall receive appropriate protection and humanitarian assistance in the enjoyment of his rights (CRC, article 22(1)).

In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason (CRC, article 22(2)).

Detainees who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. Detainees who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any other national authority whose task it is to protect such persons (TP, article 38).

2. Disabled Children

Mentally or physically disabled children should enjoy the right to a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community (CRC, article 23(1)).

States Parties recognize the right of the disabled child to special care provided free of charge whenever possible, and, subject to available resources, to assistance which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. Such assistance shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his cultural and spiritual development (CRC, articles 23(2) and 23(3)).

In order to avoid the condition on fulfilling the rights of disabled children "subject to available resources" being used excessively and to justify inaction, it is important for States to recall article 4 of the Convention that invites recourse to international co-operation if a State judges itself ill-equipped to achieve the social, economic and cultural rights of children.

RIGHTS AND REALITIES

It is also important to underline that with regard to disabled children as well, placement must only be decided as a last resort : it is necessary to first guarantee to the child and his parents all the necessary aid in their normal living environment.

3. The children of minority groups or of indigenous origin

A child of indigenous origin or belonging to an ethnic, religious or linguistic minority shall not be denied the right, in community with other members of his group, to enjoy his own culture, to profess and practice his own religion, or to use his own language (CRC, article 30).

Article 38 of the Minimum Rules for the Treatment of Prisoners also applies to this category of children in so far as they are not nationals (see above, child refugees).

4. Children in armed conflicts

States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces (CRC, article 38(3)).

In accordance with their obligations under international humanitarian law, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict (CRC, article 38(4)).

On 25 May 2000, the General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁵⁷ The Optional Protocol entered into force on 12 February 2002. States Parties are under an obligation not to compulsorily recruit children under the age of 18 years into their armed forces and must take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the Protocol within its jurisdiction. Where children have taken a direct part in hostilities contrary to the Protocol, States Parties are required to accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration. In recognition of the financial and material difficulties often experienced by countries in conflict or post-conflict situations, the Optional Protocol provides in article 4 that : “States Parties

⁵⁷ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, GA Res. A/RES/54/263 of 25 May 2000. As of 8 February 2002, there were 14 States Parties.

CHILDREN DEPRIVED OF LIBERTY

shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance.”

5. Children in conflict with the law

Article 40 CRC on the administration of juvenile justice provides for several guarantees for children in conflict with the law, adopting the principle that the deprivation of liberty is a measure of last resort and the protection of the rights of these children. These guarantees will be further developed in Part 4 of the book.

6. The protection of children from the illicit use of narcotic drugs

States Parties shall take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances (CRC, article 33).

Juvenile detention facilities should adopt specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug or alcohol dependent juveniles (JDL, article 54).

Chapter 10

General measures of implementation and monitoring

Introduction

Up to this point, we have mainly discussed the content of the international legal framework in terms of principles and rights. However, international legal instruments also provide rules designed to assist implementation and the monitoring of their application.

1. The obligation of implementation : some conditions

1.1 legislation

Where appropriate, States should incorporate the international legal framework into their legislation or amend it accordingly and provide effective remedies for their breach (JDL, preamble and article 7).

Provisions in the international legal framework shall not affect any provisions which are more conducive to the realization of the rights of children deprived of liberty and which may be contained in the law of a State Party or in other international law in force (see CRC, article 41)

CHILDREN DEPRIVED OF LIBERTY

1.2 Resources

States are requested to allocate the necessary resources to ensure the successful application and implementation of the international legal framework (see JDL, preamble).

Article 4 CRC, in this context, should be given particular attention in that it requires States, in the case of economic, social and cultural rights, to take all measures “to the maximum extent of their available resources”.

As already discussed in Chapter 5 on the right to an adequate standard of living, detainees, including children, are often considered to be second-class citizens. In times of economic hardship, they are frequently among the first to have their social and economic rights violated (lack of food, drinking water, denial of education, etc.). This is of course in no way the objective of article 4.

On the contrary, article 4 of the Convention states that for those States Parties who are in need, there is the possibility of assistance from the international community. Both articles 4 and 45 of the CRC provide for the possibility of international co-operation for countries in which resources are not sufficient to fully achieve all the rights of the child.

1.3 To raise awareness about the content of the international legal framework

States are obliged to provide comprehensive, detailed and accurate information on the rights of the child in their country and the objectives that are being pursued through the adoption of international and national texts on this topic. They must also provide information on the beneficial effects that ensue from the respect of children’s rights not just for children, but also for society as a whole (see CRC, article 44).

States Parties undertake to make the principles and provisions of the international legal framework widely known by appropriate and active means, to adults and children alike (CRC, article 42; see also JDL, preamble). Relevant professionals, as well as the public and children themselves, must thus be informed about the rights of children and their implementation (see also Chapters 6 and 8).

2. Follow-up and monitoring at an individual level

2.1 Control of the legality of the execution of detention measures

The protection of the individual rights of juveniles, with special regard to the legality of the execution of detention measures, shall be ensured by a competent authority (JDL, article 14).

2.2 The possibility for the juvenile himself (or his representatives) to make a complaint

Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his authorized representative (JDL, article 75). Article 36(1) TP specifies that children shall have the opportunity of making requests or complaints each week day :

- to the central administration;
- to the judicial authority;
- to other proper authorities (JDL, article 76);
- to an independent office (ombudsman)⁵⁸ who can receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements (JDL, article 77).

There are many reasons for making a complaint. The complaint can relate to a violation of a right of the juvenile, but also, for example, to any fact or opinion contained in his file. In such a case, in order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request (JDL, article 19). It should be noted that this provision does not provide for the possibility for the juvenile to consult his own file by himself.

So that a juvenile can himself enter a complaint, the following conditions may be necessary :

- The assistance of a third party : every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate

58 A mediator or ombudsman is a person with responsibility for monitoring the respect for the rights of all children. This function may also be the responsibility of an authorized body. One of the essential characteristics in the monitoring involved is independence.

CHILDREN DEPRIVED OF LIBERTY

juveniles should be provided with assistance should they need to use the services of public or private agencies and organisations which provide legal counsel or which are competent to receive complaints (JDL, article 78).

The juvenile must be informed : on admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organisations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension (JDL, article 24). All juveniles should be helped to understand the regulations governing the internal organization of the facility and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention (JDL, article 25; see also Chapter 6).

2.3 The possibility of making a complaint at the time of inspections

It shall be possible to make requests or complaints during his inspection to the inspector visiting the establishment. The detainees shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present (TP, article 36(2)).

2.4 Denunciation by inspectors

Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution (JDL, article 74).

2.5 Delay

Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay (TP, article 36(4)). The juveniles should be informed of the response without delay (JDL, article 76).

RIGHTS AND REALITIES

2.6 Death of a juvenile during or after detention

Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his release from the detention facility and there is reason to believe that the death is related to the period of detention (JDL, article 57).

3. Follow-up and monitoring at the structural level

3.1 The principle

States should monitor the application of the international legal framework (see JDL, article 7). Regular inspections and other means of control shall be carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility, with a view to securing the objectives of social integration (JDL, article 14).

3.2 Modes of inspection

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty contain several articles relevant to procedures of inspection (JDL, articles 72-74). These articles contain recommendations on all aspects of inspection :

a. Who inspects?

The task of inspection must either reside in qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections.

b. The necessary conditions for an effective inspection

- inspections must be conducted on a regular basis
- the initiative must be taken by inspectors
- inspections must not be announced
- inspectors must enjoy full guarantees of independence in the exercise of their function

CHILDREN DEPRIVED OF LIBERTY

- inspectors must have unrestricted access to all persons employed by or working in the facility, to all juveniles and to all records.

c. Results of the inspection

After completing each inspection, inspectors should be required to submit :

- a report on their observations. The report should include an evaluation of the compliance of the detention facility with the national and/or international legal framework.
- recommendations regarding any steps considered necessary to ensure compliance with this legal framework.

d. The child's involvement

Juveniles should have the right to talk in confidence to any inspecting officer.

3.3 The possibility for the personnel to make a complaint

All personnel should respect the international legal framework. Personnel who have reason to believe that a serious violation of the international standards has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power (JDL, article 87(c)).

3.4 Medical inspection

A medical officer shall regularly inspect and advise the director on :

- The quantity, quality, preparation and service of food;
- The hygiene and cleanliness of the institution and the detainees;
- The sanitation, heating, lighting and ventilation of the institution;
- The suitability and cleanliness of the detainees' clothing and bedding
- The observation of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities (TP, article 26(1)).
- The medical services
- Any other aspect or conditions of institutional life that affect the physical and mental health of juveniles (JDL, article 73).

The director shall take into consideration the reports and advice that the medical officer submits and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he

RIGHTS AND REALITIES

shall immediately submit his own report and the advice of the medical officer to higher authority (TP, article 26(2)).

3.5 An independent office (ombudsman) for children

Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements (JDL, article 77; see also PDJ, article 57).

In addition, an ombudsman should also have the authority to take position on the overall situation of children deprived of their liberty.

3.6 The obligation to report

States Parties are invited to inform the Secretary General of the United Nations of their efforts to apply the international legal framework in law, policy and practice (see JDL, preamble).

The United Nations Committee on the Rights of the Child examines the reports that States Parties submit on the measures they have adopted which give effect to the rights recognized in the Convention and on the progress made in the enjoyment of those rights (CRC, articles 43, 44 and 45).

These reports are examined in the third part of the book : they constitute one of the sources that are used to evaluate the reality of the respect for the rights of the child in closed institutions.

Conclusion to the second part

Children deprived of liberty have rights, because they are, above all, children. The international legal framework is comprehensive on this subject and it is important to recall that these rules and guidelines are *minimum* rules. National governments can go even further in the promulgation and protection of these rights.

It is essential to underline that the fact that recognising the rights of children deprived of liberty must on no account serve as a justification for their continued detention. The deprivation of a child's liberty must remain a measure of last resort and for the shortest appropriate period of time, especially since the existence of rights for children does not always mean that these rights are respected.

It is exactly this issue that the third part of the book deals with : To what extent can the full realization of the rights of the child be guaranteed in the context of the deprivation of liberty?

Part Three

**RESPECT FOR THE RIGHTS OF CHILDREN
DEPRIVED OF THEIR LIBERTY**

Introduction

In the second part of the book the principal international norms and standards relating to the rights of children deprived of their liberty were reviewed. This part of the book examines the degree to which these rights are respected in reality, and what barriers may stand in the way of the full implementation of these rights (Chapters 4 to 12).

It is not the primary aim of this part to serve as a denunciation, but rather to give as objective a picture as possible of what the reality of children deprived of their liberty is.

It should be remembered that one of the principal aims of the book is to contribute to a greater awareness of the issues relating to the deprivation of liberty of minors, taking as a starting point the firm and near-universal commitment to respect the rights of all children. In addition to such awareness, we felt it important to provide tools to those who are working at the governmental and non-governmental level to improve the situation; tools that may help them to achieve their objectives. The international legal framework as outlined in the second part is one of these tools. It indicates clearly, among other things, that the efforts made to bring about improvements in the situation of children deprived of liberty must no longer be a matter for the charity or goodwill of certain organisations or individuals, but that they reflect an obligation of States which must be fulfilled.

The reality within establishments in which children are detained is hugely varied, and not always negative, therefore positive and constructive examples are also shown. These examples are the result of the energy invested by certain governments, groups, and individuals in reaching a higher level of

CHILDREN DEPRIVED OF LIBERTY

respect for the rights of children. They can serve as important sources of inspiration to improve the situation faced by many children living in closed establishments and to identify alternative ways of achieving objectives.

It is important to emphasise that the priority is to encourage all efforts aimed at the abolition of measures of deprivation of liberty of children in the long term, given the barrier that this measure represents against total respect for all the rights of the child. These positive examples of children in closed establishments should not therefore be considered representing as the ultimate objective. Such examples can be useful during the transition period, guaranteeing children deprived of their liberty the greatest possible respect for their rights whilst working towards the abolition of measures involving the deprivation of liberty of children.

To abolish the institutionalisation of juveniles without having valid alternatives would risk both putting certain young people in a difficult situation and weakening the public support that is necessary for this goal to be achieved. There have been particular examples of mass releases in a certain country which confirms this view : in the country concerned, all minors in preventive detention were freed overnight. This initiative, although laudable in some respects, had negative consequences such as children being left without support and social welfare services being overwhelmed by new arrivals that they were unprepared for (shortage of space and qualified staff etc.).

For these reasons, amongst others, supplementary tools and alternative solutions are proposed in the fourth and final part of the book.

In the first chapter of this Part we explain how we collected and analysed the information that is summarised for each of the rights of children deprived of their liberty.

In the second Chapter, a brief overview of the situation of children deprived of their liberty before the coming into force of the United Nations Convention on the Rights of the Child and the adoption of other international standards and norms is given. The information gathered comes from two sources, non-governmental and governmental. Firstly, Defence for Children International, an NGO that was among the first to raise awareness worldwide on the subject of children deprived of their liberty, undertook in the mid-1980s a study in several countries on the presence of children in adult prisons. This study gave a major impetus to the development of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Secondly, a special United Nations Rapporteur was designated in 1989 and has produced two reports on the situation of children deprived of their liberty, based mainly on information gathered prior to that date. This brief overview

RIGHTS AND REALITIES

of the period prior to the Convention (and other instruments) should, in the course of reviewing the “current” situation in the following chapters, help the reader to compare, albeit at a very basic level, the changes that may have taken place after the establishment of an international legal framework.

The third Chapter presents a synthesis of the reservations and declarations of interpretation directly related to deprivation of liberty, issued by the States Parties at the time of the ratification of the Convention. This synthesis is important in itself but it also helps in grasping the situation of children deprived of liberty in the countries concerned.

Chapters 4 to 12 give an overview of the realities of the situation of children in closed establishments and constitute the main body of the third part. These chapters are structured in the same way as the international legal framework (Part 2). This mode of presentation is intended to facilitate the comparison of the actual situation with international requirements.

The third section of the book ends with an overview of the concluding observations made to date by the Committee on the Rights of the Child with regard to the respect and/or non-respect for the rights of children deprived of their liberty in the countries that have submitted their reports. The observations of the Committee are invested with some authority and the Committee’s recommendations provide an indication of the level of neglect or direct violation of CRC rights in terms of children deprived of liberty .

Before embarking on the third part of the book, some preliminary points should be made. Firstly, it would be a mistake to regard the information given in this part as the unique and sole truth. The facts presented here can without a doubt contribute to a greater awareness of the rights of the child, but they are far from being exhaustive and certainly do not reflect all the necessary finer points. In addition, the selection of information presented is determined by our approach, that of the rights of the child.

Secondly, we have chosen not to identify the countries from which the information has originated. This deliberate choice is explained by the fact that the fundamental problems confronting the rights of children deprived of liberty seem to be the same everywhere, even if there are variations in the way or degree in which they are manifested. Hence it is both too easy and inappropriate to point the finger at one particular country or another. This process would risk giving the impression of absolving unmentioned countries of responsibility for bad practices, whereas the message of this book is that all countries in world, without exception, need to advance together towards a greater respect for the rights of all children.

CHILDREN DEPRIVED OF LIBERTY

Not naming individual countries allows us also to avoid condemning those States who make public certain information which may be detrimental to their international image. Each State must be encouraged to share its successes but also its difficulties in respecting the rights of children. In confronting the admission of such difficulties, the international community must be capable of discussing them in a constructive manner without the immediate threat of international condemnation. For example, in the spirit of articles 4 and 45 of the Convention, the international community must prioritise co-operating to improve the situation of children world-wide.

A third and last point concerns the need to regard with caution the information, positive or negative, which we provide, in the sense that we have not been in a position to verify it in all cases. For example, we have not always checked whether the rights established in national laws were not in one way or another made conditional for children deprived of their liberty. In the same way, we have not always been able to check if the right in question was respected in practice. This third part therefore does not purport to present an absolute truth but rather to give an indication – based on a wide and varied range of sources – of what might be the current reality experienced by children in closed establishments.

Chapter 1

Methodology

Introduction

In order to successfully carry out this exploration of the reality of children deprived of liberty, our observations have been based on a large number of separate and independent sources. This multiplicity of sources was necessary both to guarantee a comprehensive overview of the situation and also to avoid reproducing viewpoints that are partial or miss some important nuances.

In the first place, we researched the information published on the subject by non-governmental organisations. A large number of reports from NGOs, principally international ones, which are active in the field, were studied. We have taken into account only information gathered since 1990, since our objective was to cover the period since the coming into force of the Convention on the Rights of the Child. Of course the actual state of affairs in terms of respect for the rights of children did not change overnight on this date, but the event certainly strengthened and accelerated the process of regarding children as subjects of rights, a process which is still continuing. It is particularly from that date that the children's rights approach became more visible and the promotion of those rights more widespread.

Secondly, it seemed important to also take into account the point of view of governments. To that end, we examined a large number of the initial and periodic reports submitted by States Parties to the UN Committee on the

CHILDREN DEPRIVED OF LIBERTY

Rights of the Child, which monitors the implementation of the Convention. The governments that have ratified the Convention have primary responsibility for putting in place conditions which will permit movement towards total respect for the rights of the child.⁵⁹ They can therefore provide interesting data, through their reports, on the situation of children deprived of their liberty in their countries and on the measures taken relating to those children.

Thirdly, we developed a questionnaire aimed at assessing the situation of children deprived of liberty from the specific perspective of children's rights.⁶⁰ The information which we had available, although extremely useful, had very often been gathered and presented from the point of view of the needs of children – for treatment, for support, for compassion – rather than from that of their rights. The questionnaire that we drew up examined the respect paid to four rights in particular : the right to contact with the child's family, the right to education, the right to legal protection and the right to personal integrity. The questionnaire invited respondents to note violations of these rights, but also the barriers to their realization as well as positive examples. It also aimed to elicit information on the alternatives to deprivation of liberty.

We sent this questionnaire to twenty carefully selected national partners. These partners included academic experts, lawyers, members of non-governmental organisations as well as UNICEF country offices. Sixteen completed questionnaires originating from all parts of the world are reported in the book.

Finally, we have also included from time to time our personal impressions, gathered during the course of missions for UNICEF or other United Nations agencies. Examples of countries visited during recent years are Albania, Argentina, Namibia, Rwanda and Zambia.

The methodology adopted is detailed below.

1. Non-governmental sources

We have taken into consideration the studies on children deprived of liberty conducted by international non-governmental organisations since 1990 that seemed to us the most comprehensive. The studies that constituted the most

59 All States except the United States of America and Somalia (as of April 2005)

60 This questionnaire is contained in the Annexes.

RIGHTS AND REALITIES

important sources of information for the book are synthesised below, with some details on their methodology.

1.1 International Prisons Watch (Observatoire International des Prisons/OIP)

International Prisons Watch, based in Lyon (France), published in 1998 a comprehensive report on children in prisons world-wide. "Children in Prison" is a report on observations of the conditions in which juveniles are detained in 51 countries.⁶¹ The information contained in the report was gathered in the countries concerned by local organisations or national sections of the organisations by means of a questionnaire, as well as from reports of other NGOs (Association for the Prevention of Torture, Amnesty International, Human Rights Watch, Rädna Barnen, World Organisation Against Torture).

For each country the following points are, as far as possible, briefly addressed :

The state of the ratification of the United Nations Convention on the Rights of the Child and the examination of their initial report by the Committee; the different minimum ages for criminal responsibility, criminal majority, imprisonment, etc.; the number of juveniles in prisons; the legislation in force; the relevant tribunals and bodies; the types of institution and their management; the presence of children in the various establishments who are accompanying their parent(s); the attacks on physical and moral integrity including the application of the death penalty, summary and extra-judicial executions, torture and other cruel, inhuman or degrading treatment or punishment; the occurrence of illegal and arbitrary arrests; the conditions of detention from arrest to release; the maintenance of family links; medical care; the opportunities for education and training; the different activities offered; the alternatives to detention; the legal defence which children do or do not benefit from.

This report serves as a denunciation of the treatment meted out to minors in the police stations, detention centres, prisons, streets and tribunals of the countries examined. It "deliberately leaves the facts to speak for themselves". The report therefore does not present an analysis of the situation, but only facts. Because its main aim is to denounce bad practices, it rarely reports positive aspects and experiences.

61 International Prisons Watch, "Children in Prison", Lyon, 1998.

CHILDREN DEPRIVED OF LIBERTY

1.2 World Organisation against Torture (Organisation Mondiale contre la Torture/OMCT)

The World Organisation against Torture, based in Geneva, has undertaken since 1992 to organise “specific interventions when the victims of human rights abuses brought to its attention are children”. The extension by the organisation of the concept of cruel, inhuman or degrading treatment or punishment, to encompass any act, condition or situation which could compromise the psychological or physical integrity of children allows the organisation to cover the violation of numerous rights of the child, for example, conditions of detention, mixing with adult prisoners and sentencing excessive punishments, etc.

The World Organisation against Torture, as organiser of the SOS Torture Network, disseminates the information that it receives from its partners in the field to Network members, asking them to intervene urgently with the relevant authorities. The OMCT publication “The Hidden Crimes” compiles the urgent appeals between 1995 and 1998 concerning children.⁶² We have taken into account all the urgent appeals from 1995 to the end of 2001. The organisation also publishes counter-reports that present its remarks and observations on the implementation of the Convention on the Rights of the Child in certain countries before they come before the United Nations Committee on the Rights of the Child. These reports cover the fields which relate directly or indirectly to the organisation’s mandate, namely protection against torture and other cruel, inhuman or degrading treatment or punishment, summary executions, arbitrary and illegal arrests and detentions, conditions of detention which are “conducive to cruel, inhuman or degrading treatment”, etc.

1.3 Human Rights Watch (HRW)

HRW is an American NGO that is active world-wide. One of the sections of the organisation concentrates particularly on the rights of the child. In this book we have covered all the reports published on children deprived of their liberty by Human Rights Watch up to January 2002.

Certain reports from HRW relate to children deprived of their liberty in specific establishments : police stations, detention centres for young people, adult prisons, immigration services, or orphanages. Others concern human

62 OMCT, *The Hidden Crimes: Children: Torture, Summary Executions, Disappearances*, 1995-1998, Geneva.

RIGHTS AND REALITIES

rights in a given place, with a section reserved for children deprived of liberty. The reports deal with countries in various parts of the world.

To provide an overview, albeit not an exhaustive one, of the subjects dealt with in these reports, we report, in general terms, the procedures which deprive minors of their liberty, the conditions in which they live, the abuse and violence on the part of the police and guardians, the impunity which is often the outcome of investigations, and cases of illegal and arbitrary detention. HRW reports are generally very complete in their approach to the situation.

The methodology adopted by HRW is as follows. In most of the reports we examined, HRW conducted interviews with children in establishments (or who used to be in an institution), the staff of the establishments, representatives of local NGOs, social workers, human rights activists, lawyers, prosecutors, judges and magistrates dealing with young people or Government representatives. HRW also considered official documents, legal provisions, press articles and various reports, and legal proceedings.

The approach followed by HRW was found to be very positive in talking to children in custody about their experiences. The point of view of the children makes reading these reports a particularly interesting and vivid experience.

1.4 Rädta Barnen (RB)

The organisation Rädta Barnen (Save the Children - Sweden) has conducted surveys of the situation of children in conflict with the law in nine countries (up to June 1999). For certain of these surveys, the local offices of the organisation or partner organisations completed questionnaires, and local professionals were interviewed. Similarly, reports from other organisations or experts were consulted, as well as national laws, and in certain cases, the initial reports of States Parties to the United Nations Committee on the Rights of the Child.

The aim of these surveys is to raise awareness of the problem among the wider public and to contribute to the debate on the international stage. The organisation also intends that these reports should be used during the training of professionals. In each of these reports, certain articles applicable to the United Nations Convention on the Rights of the Child are addressed, as is national legislation on the issue and the deficiencies of the situation of children in prison. Finally, brief mention is made of the responses of the government concerned to the Committee on the Rights of the Child in relation to the questions it has posed, and of the concluding observations of the Committee, if any.

CHILDREN DEPRIVED OF LIBERTY

1.5 Amnesty International (AI)

Like the World Organisation against Torture, AI sends out appeals on particular cases, some of which concern children, asking for an urgent intervention, to the implicated government. We have examined a selection of these appeals. It should be noted that the particular attention paid by AI to children is relatively recent in the existence of the organisation.

AI launched in November 1998 an international campaign on the violation of children's rights in the context of juvenile justice. AI has also produced reports dealing in part with cases of torture and ill-treatment of children deprived of liberty, arbitrary detention and disappearances.

1.6 Terre des Hommes (TdH)

In 1996, The Terre des Hommes Foundation (Lausanne) set up files on children in closed establishments in thirteen countries. The files, 2-3 pages long, are intended as a "snapshot" of the situation of children deprived of their liberty in a given country at a given moment. They give a very succinct overview of, among other things, legislation, judicial structures for juveniles, pre-trial detention, sanctions applicable to minors and prison conditions.

This information was collected by means of a questionnaire and, depending on the country, from NGOs working locally. Information was also gathered from United Nations documentation, the initial reports of the State Parties to the Committee on the Rights of the Child, and from relevant ministers and professionals in contact with children in conflict with the law (such as children's judges, lawyers, and social workers).

1.7 Association for the Prevention of Torture (APT)

APT (Geneva) has produced reports on ill-treatment and conditions of detention in various countries. These reports relate mainly to adults, with a relatively short section devoted to children. The reports are based on surveys conducted among people holding information on the subject in the country concerned (jurists, NGOs, staff in places of detention, almoners, doctors, representatives of various administrative bodies etc.), as well as related publications and press articles and, in some cases, short visits.

RIGHTS AND REALITIES

1.8 Casa Alianza (CA)

Casa Alianza is the Latin American branch of the North-American organisation Covenant House. Among its activities for the protection and rehabilitation of street children in Guatemala, Honduras and Mexico, the organisation publishes urgent appeals denouncing the ill-treatment (and killings) of which these children are victims, mainly at the hands of the police and armed forces. They also publish information on arbitrary arrests and of children being held with adults while in detention. Casa Alianza has produced a report in which it presents a résumé of the violations of the rights of street children during the period 1990 - 1997 ("Report on the torture of street children in Guatemala and Honduras" (1997)).

In the context of this book, we have paid particular attention to the appeals made to national or regional tribunals on behalf of children whose rights have been violated during a period of deprivation of liberty, for example, being imprisoned with adults, being subjected to torture and even murder. From the point of view of the book, this is a major and particularly interesting aspect of the work of Casa Alianza.

2. Governmental sources in the context of monitoring the Convention on the Rights of the Child

2.1 The selection of documents

There exists, in the context of the international process of monitoring the implementation of the Convention by the Committee on the Rights of the Child, several sources of information :

- The initial (and periodic) report submitted by each State Party to the Committee
- The alternative reports of the NGOs submitted to the Committee
- The supplementary list of issues posed by the Committee to the State Party and the latter's responses
- The discussion between the Committee and a delegation of the State Party
- The concluding observations of the Committee

We confined ourselves in our study to considering a number of initial and periodic reports of the States Parties, the summary records from the discussions between the Committee and the national delegations and the

CHILDREN DEPRIVED OF LIBERTY

concluding observations of the Committee. The information covered runs from the third session of the Committee on the Rights of the Child (January 1993) to the 29th session (February 2002).⁶³

The decision not to consider here the alternative reports of the NGOs was made for two principal reasons :

- The confidential nature of a number of these reports and of the discussions between the NGOs and the Committee during the pre-sessions.
- The attempt at a balance between governmental and non-governmental sources. Given that considerable space is already devoted in this book to information originating from NGOs (see above), it was decided to lay more emphasis, in the context of the proceedings before the Committee, on governmental contributions. That does not mean that we are unaware of the important, indeed essential, role of NGOs in the process of monitoring the Convention. It must also be borne in mind that when a discussion takes place between the national delegation and the members of the Committee, the latter have previously heard the views of the NGOs during the pre-session and have thus been made aware of their concerns. Accordingly it is to be expected that the questions of the Committee during the discussion and their conclusions will reflect, to some degree at least, these concerns, together with those expressed in the alternative reports.

2.2 The selection of countries

The choice of countries that have submitted their initial/periodic report was made by applying three criteria :

- Countries which had presented their initial report to the Committee and have been covered by our own survey through the questionnaire (see below), in order to be able to verify our information
- Countries which had presented their initial report to the Committee and were not already covered in the most recent survey undertaken by the International Prisons Watch, assuming that this organisation had already verified its information and that we could therefore cover new countries

63 The first two sessions were devoted to establishing the Committee's working methods and the mechanisms for the submission of reports.

RIGHTS AND REALITIES

- Countries which had presented their initial report and first periodic report to the Committee on the Rights of the Child. This exercise permitted verification whether the observations and recommendations of the Committee concerning the rights of the children deprived of their liberty that were made after the presentation of the initial report had been taken into account by the States concerned.⁶⁴

2.3 Modes of research

Information in both written and electronic format was studied. Indeed, thanks to the efforts of the Secretariat of the Committee on the Rights of the Child, most of the reports, summary records and the concluding observations are currently available on the Internet site of the Office of the High Commissioner for Human Rights.⁶⁵

3. The questionnaire

To complete questionnaires prepared for the research of this book, we solicited local partners in 16 countries : Belgium, Belarus, Brazil, Spain, Jamaica, Nicaragua, New Zealand, Uganda, the Philippines, the Former Yugoslav Republic of Macedonia, Republic of South Africa, Russia, Sri Lanka, Switzerland, Turkey and Zambia. A national partner list and their addresses are included in the appendices.

Questionnaires were completed during the period of June to December 1998. Considering our objective to present the situation of those children deprived of liberty from the perspective of their rights and the respect, or non-respect, of these rights, we identified four rights from the Convention, by way of examples. These are : the right to education, the right to contact with the family, the right to protection against violence and neglect and the right to legal protection. We were careful that the selected rights included both rights pertaining to the protection from which children must benefit due to their vulnerability (such as the right to the protection against violence) and positive rights (such as the right to education and the right to contact with the family) as well as the right to participation (the right to legal protection).

The questionnaire is made up of six chapters. The first chapter tries to gather some general data on the deprivation of liberty of children (legislation,

64 19th session, September-October 1998.

65 See <<http://www.unhchr.ch/tbs/docs.nsf>>.

CHILDREN DEPRIVED OF LIBERTY

specific data on children and establishments concerned, procedures leading to the deprivation of liberty, etc.). Chapters 2 to 5 aim to present the state of the living conditions in different closed establishments, from the perspective of the child's rights. The last chapter is dedicated to alternatives to the deprivation of liberty. Provisions of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and which could help to identify issues on which to especially concentrate during our assessment of the application of the rights in question are included in the appendices. Countries with federal systems which have laws and administration on the deprivation of liberty of a child which may differ from one region/state/canton/etc. to the other, were invited consider the situation in only one entity (region/state/canton/etc.). However, they could also examine legislation or administration applicable or competent in the whole country. The national partners were also invited to add any document and useful information to the research.

4. Some observations in relation to the different sources and to the information gathered

This chapter on the methodology would not be complete without making some important observations concerning information on which the remainder of the book is based.

4.1 *General observations*

In the last few years, efforts have increased to better appreciate the reality of children deprived of their liberty. We noted this as much at the time of our research in the context of the juvenile justice system as in other domains such as the care of refugee children and asylum seekers, the care of the disabled, children with psychological problems, and others.

However, in spite of these efforts, the available information is far from being complete and systematic. It is very often the product of *ad hoc* initiatives and most of the time the information gathered only covers a limited part of the problem, in particular in the time-scale. In addition, these *ad hoc* initiatives often result from impetus coming from outside the system rather than from policies emanating within the system. As for basic data, it is still difficult in most countries to find comprehensive and updated information on the actual number of children deprived of their liberty, their age, the reason for their placement, their sex, the length of the deprivation of their liberty, etc. This situation can also be found in the countries more accustomed

RIGHTS AND REALITIES

to data collection and able to electronically, store and organise this kind of data.

It is also regrettable that the child's perspective is rarely considered in studies in this field. For example, none of our national partners were able, in spite of an explicit question on our part, to name initiatives in which children deprived of their liberty had been invited to express their opinion.

Yet, information on the situation of children, gathered in a systematic manner and at regular intervals, is one of the prerequisites for a policy respectful of the rights of the child. The area of the deprivation of liberty can in no way avoid this elementary principle.

4.2 Non-governmental sources

All non-governmental organisations mention from time to time the difficulty of obtaining precise information. This problem is linked of course to the general observation made above. However, it can also be the result of the reluctance on the part of certain authorities to reveal information that they possess on children deprived of their liberty in their countries.

The NGOs also report difficulties of visiting establishments and of speaking in private with children. In certain cases, access to establishments is openly refused, which (justified or not) makes us fear the worst as to what is going on inside.

4.3 Governmental sources : reports submitted by States Parties to the Committee on the Rights of the Child

It is above all important to note that the deprivation of liberty does not receive very great attention in the reports of States on the measures taken with the view of applying the Convention on the Rights of the Child. In addition, the information submitted is far from exhaustive. By way of example, not even a quarter of the countries that had submitted their initial report to the Committee give figures or numbers on the number of children deprived of liberty. In addition, most of those that do so limit themselves to very summary information. More detailed information, for example, information with regard to the sex of the child, the reason for detention, age, the degree of schooling, etc. is most often absent.

In spite of this, government reports are a valid information source, although very often they emanate only from official State records. Information is for this reason quite different from that which one finds in NGO reports or other independent sources. For example, they generally take a more positive

CHILDREN DEPRIVED OF LIBERTY

view of legislation and practice in regards to the respect for children's rights than do NGO reports.

Reports of States Parties are also important for the data that they contain with regard to the applicable legal framework in the country. On the other hand, it is often necessary to look elsewhere (in studies from NGOs for example) for information on the implementation of these legal provisions.

A final observation is that information presented in State Parties reports is not necessarily reliable. Without questioning the good faith of every State to provide to the Committee on the Rights of the Child exact and verified data, it is possible to identify, in certain cases, contradictions between the content of the report and remarks made by the national delegation at the time of the discussion with members of the Committee.

Chapter 2

The rights of children deprived of liberty : an overview of the situation before 1989

Introduction

Before beginning the analysis of the current respect for the rights of children deprived of their liberty, it is instructive to learn of the situation before the adoption of the Convention on the Rights of the Child, although, as has been previously stated, the advent of the Convention did not change the reality for children deprived of liberty overnight.

This overview of the situation before 1989 is based primarily on a survey of children in prison with adults published in 1986 by Defence for Children International (DCI). This book can be considered as one of the landmark initiatives in this field. With its publication, several years before the adoption of the Convention, the author, Katarina Tomasevski, and her colleagues shook the world of child protection and made an important impact on the public awareness of the living conditions of children in prison with adults. Secondly, the reports of Mary Bautista, United Nation's Special Rapporteur in 1990 charged with analysing the legal protection of those children deprived of liberty, are examined.

1. Children in prison with adults : a survey of Defence for Children International (DCI)

Introduction

In 1986, Defence for Children International published one of the first important works aimed at mobilising opinion on the fate of children deprived of liberty, and more especially of those children in prison with adults.⁶⁶ This exploratory survey by DCI constituted one of the first attempts to consider in a systematic manner the situation of children jailed with adults throughout the world. Co-ordinated by Katarina Tomasevski, it undoubtedly contributed to attracting the public attention on the rights of these children. The impact of this survey was very important as the data gathered in 26 countries gave an impetus to the preparation of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted in 1990. The survey is composed of large sections. In the first, several themes closely linked to the problem of deprivation of liberty of children are developed, such as the minimum age of criminal responsibility, the international standards and the protection of children within the system of criminal justice. The second part contains general observations based upon by investigations led in 26 countries. The survey consisted of investigations in the field, answers provided by governments as well as information coming from various sources, intergovernmental and non-governmental, on the effective respect for the rights of children.

Below, some observations and comments have been summarised, in order to make a basic comparison with the situation almost two decades later, after the adoption of an international legal framework.

1.1 The confinement of children with adults : a universal phenomenon

a. General observations

“The study started from the assumption that imprisonment of children with adults – for whatever reason, for whatever length of time, in whatever facilities – does occur everywhere. Research and information-gathering

66 Tomasevski, K., 1986.

RIGHTS AND REALITIES

activities confirmed the initial assumption : imprisonment of children with adults is a universal phenomenon.”⁶⁷

The theme of children in prison had been rather neglected in the 1980s by intergovernmental and non-governmental organisations. DCI noted an absence of systematic compilation of data or any concerted action in the international arena. “Gaps in legislative protection of imprisoned children and similar gaps in statistical coverage of the youngest inmates testify to the urgency of the protection of rights of children in this area where they are jeopardised most.”⁶⁸

The survey revealed that children were imprisoned with adults in all countries.

The results of the DCI survey underlined the validity of the preoccupation as much with the principle of detention as its effects on the children concerned. For example, the physical and sexual violence on the part of other convicts or of the personnel, the physical and emotional neglect, the considerable malnutrition, the absence of treatment for physical or mental illness, suicides, the psychological traumas, the entrance to the world of criminality, etc. The survey also confirmed the assumption according to which jailed children generally come from relatively underprivileged groups, and that detention only serves to reinforce the handicaps which they endure and makes their situation worse : “(...) the act of putting children in prison can be the first step towards the violation of a vast range of their fundamental rights, from health and protection from violence, to family life and harmonious development”.⁶⁹

Another interesting assumption on which the survey is based, and which runs through the book like a thread, is that “the way in which a State treats children who are explicitly or implicitly confided to its care must be judged according to the same criteria as those employed to establish if parents are capable or not of taking care of their children”.⁷⁰

This assumption is interesting because it evokes the picture of the State that at the same time condemns parental treatment of children but does not always succeed in being a better “parent”. When the State acts as “super-parent” and children are objects of a measure involving deprivation of liberty, parents are judged, directly or indirectly, incapable of managing the problem. But,

67 *Ibid.*, p. 2.

68 *Ibid.*

69 *Ibid.*, p. 3.

70 *Ibid.*, p. 7.

CHILDREN DEPRIVED OF LIBERTY

considering the living conditions of a large number of children deprived of their liberty and the ineffectiveness of the measure in many cases, the State, judged under the same criteria, does not always represent the better solution. However, the value of State intervention seems to have been under-evaluated in studies to date.

b. The principle of not imprisoning children

The study “Children in Adult Prisons” testifies to the fact that in the middle of the 1980s the imprisonment of children was already explicitly forbidden in principle, unless it was in special units separated from adults.⁷¹

However, this principle was often not respected and a number of children were detained in prisons with adults. Investigations in the field, for the purposes of the DCI book, revealed how different practices were from legal requirements. As these practices constituted a violation of the letter and spirit of the law, it proved difficult to collate data in a comprehensive and methodical manner.

The survey reports cases of some countries which had lowered the minimum age at which a child could be imprisoned. “The underlying reasoning is not a change in the process by which children acquire maturity sufficient to expose them to prison conditions, but an increase in juvenile delinquency, which tempts states to lower the limits for the penalty of imprisonment and apply the ancient ‘medicine’ of deprivation of liberty to isolate the delinquent juveniles from society. (...) The reasoning is acceptable from the viewpoint of the protection of society from crime, but – at least – doubtful from the viewpoint of the rights and interests of children. (...) The lowering of the minimum age for imprisonment of young delinquents does not solve the problem. It does not even address the problem – it just tackles the consequences and postpones dealing with the same problem again after the release of juveniles from imprisonment. The lowering of minimum age for imprisonment vividly shows the predominance of the interests of the state at the expense of the interests of children and juveniles”.⁷²

c. Reasons for the deprivation of liberty : some examples

According to the DCI survey, the detention of children in the company of adults rested on a large number of different motives. For example, children

71 See article 8(d) of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955.

72 Tomasevski, K., pp. 59-60.

RIGHTS AND REALITIES

could be detained as suspects (pre-trial detention) or witnesses for the investigation. They could be jailed for breaking administrative rules such as curfews or “laissez-passer”. They could be incarcerated for “offences” such as vagrancy, interned or jailed for security measures, as individuals “dangerous to the State” or as hostages. They could also be detained for infringement of rules on compulsory education.

The national investigations of DCI revealed the case of detained children, either jailed or interned, although they had not been charged, nor even suspected of having committed an offence. In certain cases, imprisonment was based on the application of security or military provisions, and fits therefore in the category of political repression. Many children were detained on the basis of immigration laws, for offences such as illegal entry into a country or staying beyond the permitted duration of stay. Others were confined for having contravened the regulations relevant to emigration (crossing a border without authorization).

In several countries studied, juveniles in irregular situations and beggars could be deprived of their liberty and could be placed in prisons or prison-like establishments, such as “centres of rehabilitation”. The detention of babies and young children with their mother was also observed.

This brief summary of motives remains the same today, as examined in the first part of the book. Indeed, the similarity with the present situation, more than fifteen years later, is remarkable to such a degree that nothing – or very little – seems to have changed with regard to the range of motives to deprive a child of liberty. It should be noted that the survey of DCI especially concentrated on the deprivation of liberty in adult prisons and that the other closed establishments were not always taken into consideration.

Our research confirms that currently one finds more or less the same categories of children deprived of liberty but they are not necessarily all in prisons.

1.2 Rights of the children deprived of their liberty

a. The principle

The survey “Children in Adult Prisons” contains several examples of the position that States have adopted on the question of the rights of children deprived of liberty.

For example : “prisoners (...) have no rights, only privileges. Exercise, human companionship, minimum standards of accommodation, sanitation,

CHILDREN DEPRIVED OF LIBERTY

light and ventilation are deemed to be privileges to be granted or taken away.”⁷³ In other States, the rights of detainees and the exercise of these rights are recognized, with the exception of those that are “necessarily lost as an incident of imprisonment”.⁷⁴

b. The right to physical integrity

Among the violations of the rights of children deprived of liberty, the DCI survey particularly identifies sexual abuses, torture, inhuman and degrading treatments, etc. These violations do not occur only in prisons : “The removal of juveniles without education and employment from cities might sound reasonable, were it not for reports of deaths from starvation and ill-treatment in such ‘re-education camps’.”⁷⁵ There are numerous detained children who undergo corporal punishment, in spite of the fact that this practice is only rarely explicitly authorized by law.

The survey mentions in this context the work of the European Commission on Human Rights which, already in 1976, had decided that beating humiliates and shames the delinquent and constitutes a degrading punishment or treatment and an attack on human dignity without any compensating value.⁷⁶

c. The separation of minors from adults

Before the adoption of the Convention on the Rights of the Child by the United Nations, reports submitted by governments on the implementation of the International Covenant on Civil and Political Rights constituted a fundamental source of information on the manner in which States Parties interpreted their responsibilities as to the treatment of the detained child, and especially the obligation to separate them from adults (see ICCPR, article 10(2)(b)).

An analysis of these documents led DCI to conclude that about a fifth of governments who had ratified the Covenant were not able, or did not wish, to apply the principle of separation. Tomasevski gives the example of a report which stated that “(...) the principle of segregating adults from juveniles as set out in this article is no longer so widely recognized.

73 *Ibid.*, p. 70.

74 *Ibid.*, p. 65.

75 *Ibid.*

76 *Anthony M. Tyrer v United Kingdom*, Application No. 5856/72, (1976), Report of the European Commission for Human Rights.

RIGHTS AND REALITIES

International forums are increasingly coming to the conclusion that there is a need for selection to be based on personality criteria rather than on age”.⁷⁷

According to the survey, the confinement of children and the non-separation from adults was most often motivated for reasons such as the lack of adequate establishments or specialised establishments for minors or by the danger that some young people presented to society or to themselves.

d. Legal protection, arrest and pre-trial detention

All national investigations revealed the absence of legal protection, more particularly during the period preceding the “criminal” proceedings. The information gathered in the survey showed that rules concerning periods of arrest and pre-trial detention were little known by the authorities and that the treatment of children by the police, including detention, was not subject to monitoring nor a complaint procedure. “Usually, police custody is deemed to be so exceptional and brief that it is left out of legal guarantees for the rights of children.”⁷⁸

In practice, children did not often have access to legal assistance, which seriously compromised their right to defence. Several obstacles stopping them from being properly defended were identified. Children detained by the police or placed in pre-trial detention were frequently subjected to cross-examination by the police, without understanding the significance and consequences of their responses.

There are many elements that make police custody and pre-trial detention a domain of prime importance for the protection of children and their rights. These elements include the extended powers of the police, the vague provisions governing the protection of those arrested and detained and the almost total absence of responsibility of civil servants directly or indirectly guilty of the ill-treatment of children.

e. Conditions of detention

The DCI survey further touched on two particular issues concerning children detained in establishments for adults : work and education. In these domains, investigations revealed a generally low level of child instruction and a high number of situations involving forced work.

77 Tomasevski, K., p. 76.

78 *Ibid.*, p. 104.

CHILDREN DEPRIVED OF LIBERTY

f. The monitoring of the respect for the child's rights

The national investigations did not systematically profile the existence or the effectiveness of complaint procedures. However, as a result of the observation of the lack of power of children within the justice system and the frequent absence of a proper defence for child detainees, the author of the survey makes the following remark : “it would be difficult to envisage an effective procedure whereby the imprisoned children themselves initiated complaints. Most of them have no access to legal assistance, insufficient knowledge of laws and regulations and fear revenge by prison guards”.⁷⁹ The DCI national investigations arrived at the general conclusion that in the countries considered, no effective control over the conditions of detention or the treatment of children existed, either by prison authorities or by independent outside bodies.

The exploratory survey singled out free access to information on detained children in establishments for adults as the key to the protection of their rights. The conclusion of Tomasevski is the following : “Unless there is information on the (ill) treatment of children in prison, it is impossible to implement a scheme securing the rights of those children”.⁸⁰ This opinion is strongly supported by the present authors and underlies the principle of this book.

2. The United Nations Special Rapporteur on the application of international standards concerning the human rights of detained juveniles

2.1 Why a Special Rapporteur?

Since 1985, the United Nations Sub-Commission for the prevention of discrimination and the protection of minorities⁸¹ has made investigations on the incarceration of people below the age of 18 years in prisons for adults.⁸² The Secretary-General of the United Nations has solicited Member

79 *Ibid.*, p. 73.

80 *Ibid.*, p. 122.

81 This is a sub-commission of the United Nations Commission on Human Rights. Since 1999, the name of the sub-commission is the Sub-Commission on the Promotion and Protection of Human Rights.

82 See Resolution 1985/19 and the report on the incarceration of children below 18 with adults, UN Doc. E/CN.4/Sub.2/1987/30.

RIGHTS AND REALITIES

States, United Nations agencies and non-governmental organisations to provide data and reports on this issue through the use of questionnaires.

In 1989, the Secretary-General repeated this request and the Sub-Commission, in its resolution 1989/31 of 1 September 1989, designated a Special Rapporteur charged with monitoring the application of the international norms concerning the human rights of detained juveniles. It is interesting to note that, despite creating the position of a Special Rapporteur, the Sub-Commission indicated that the Special Rapporteur would not receive any financial support to fulfil his role!

As a result, some NGO initiatives served as the basis of the work of the Special Rapporteur.

2.2 Reports

The two reports of the Special Rapporteur concentrate mainly on four aspects of child detention : the separation of juveniles and adults in penal establishments; detention pending trial; the least possible resort to institutionalisation; and the objectives of institutional treatment.

The first report contains a section reviewing the international norms governing the four above-mentioned aspects and examining the compatibility of the practice (based on replies received from States to the questionnaire (45 replies)) with the international norms.⁸³

The second report contains more detailed information on efforts by States to implement the international norms, as well as observations on the practices incompatible with these norms and recommendations on measures that should be taken by States and the international community to enhance the protection of detained children. The second report also examines new replies to the questionnaire received after the first report (10 replies).⁸⁴

2.3 The main observations of the Special Rapporteur

a. Detention pending trial

Most States agree that the deprivation of liberty must be a measure of last resort and for the shortest possible period of time. However, the Special Rapporteur noted that pre-trial detention was a popular response to juvenile delinquency and often used without taking into consideration its

83 E/CN.4/Sub.2/1990/25 + Add.1 et Add.2.

84 E/CN.4/Sub.2/1991/24 (2 July 1991); E/CN.4/Sub.2/1992/20 (3 June 1992); E/CN.4/Sub.2/1991/50.

CHILDREN DEPRIVED OF LIBERTY

counterproductive effect on young people. The Special Rapporteur herself was quite alarmed by the significant number of young people detained while awaiting trial in the countries examined. In the second report, the Rapporteur emphasised that the principle according to which youngsters who were not yet convicted should be separated from those who had been found guilty was not sufficiently taken into account.

b. Institutionalisation as a last resort

In about half of the States examined in the first report, there existed legal measures of diversion to dispose of cases involving minors (without having recourse to the formal proceedings by the authority concerned). Similarly, in the majority of countries, national legislation contained provisions for non-institutional measures. Many States indicated that although there are no formal obstacles to a total respect for the relevant international norms, there were other reasons – sometimes financial – which prevented them from applying the principle of institutionalisation as a last resort.

According to the replies received for the second report, twenty to thirty per cent of the young delinquents in contact with the justice system were deprived one way or another of their liberty. The resort to institutionalisation varied greatly from one country to the other : in some of them minors were never placed in closed settings, whereas in others the majority of juveniles were incarcerated.

c. The objectives of institutional treatment

About half of the countries included in the first report affirmed that they were not confronted with obstacles preventing a total respect for the principle according to which rehabilitation and reintegration should be essential objectives of the deprivation of liberty of a young person.

Among the obstacles mentioned by other countries, the lack of financial and/or human resources, as well as the lack of co-ordination between such resources were the most common. Other obstacles included the lack of economic stability or endemic poverty, the lack of stability of the family and of family support, the lack of opportunities for employment and the lack of qualified personnel, as well as different socio-cultural attitudes displaying a negative view of young delinquents (such as the view that juvenile delinquents might not be able to be rehabilitated).

In the ten countries examined in the second report, the primary objective of detention seemed to be rehabilitation rather than punishment. All these governments affirmed that detention in an institution implied the involvement

RIGHTS AND REALITIES

of youngsters in educational programmes and training courses. However, the Special Rapporteur expressed regret that psychological assistance did not appear to be sufficiently employed.

d. The separation of juveniles from adults in penal establishments

According to the Special Rapporteur the vast majority of countries applied the international norms related to this principle. She was worried, however, that in a certain number of countries in which the national legislation forbade juvenile detention with adults, the lack of financial resources prevented the observance of these rules. This observation is stated in both reports. States claimed the existence of obstacles such as the absence of adequate facilities and qualified personnel, the overcrowding of prisons and the lack of financial resources specifically allocated to projects for young people. The Special Rapporteur regretted that this fundamental right is not fully respected and that a number of countries do not provide the necessary resources for the construction of premises guaranteeing such separation.

3. Several years and a convention later : Has the situation changed regarding the observance of the rights of children deprived of their liberty?

The international legal framework has been greatly reinforced and strengthened since 1989. Has this legal protection also translated into an increased respect for the rights of the child and better protection against violations of these rights? The following chapters present an idea of what the current situation for children deprived of their liberty is.

As shown in the first part of the book, the phenomenon of deprivation of the liberty of the child, and in particular, in prisons for adults, persists. The situation is very similar to the observations made several years ago on the situation of children deprived of their liberty, which gives the impression that little has changed in this respect.

The basic principle of the DCI survey was the view that children should not ever be imprisoned, and especially not in company of adults. This standpoint put into question those laws and practices that permit the detention of children. Faced with the reality of detained children, the organisation was forced to examine the treatment of imprisoned children and to advocate palliative measures to offset some of the worst effects of imprisonment : “This does not mean the betrayal of the principle that children should not

CHILDREN DEPRIVED OF LIBERTY

be imprisoned at all, but pragmatic recognition that plenty of time and effort have to be devoted to the realization of that objective, and that imprisoned children have to be helped in the meantime".⁸⁵

The basic principle for our survey is the same : children should not be deprived of their liberty. However, since children are subject to measures depriving them of their liberty in reality, it is imperative to know the conditions of treatment of children living in closed establishments in order to hold governments to their obligations under international and national laws which protect the rights of children. How are the rights of children deprived of their liberty respected today? To what extent have alternatives been developed in order to avoid measures of deprivation of liberty? What is the situation of children fifteen years after the adoption of the Convention on the Rights of the Child?

85 Tomasevski, K., p. 4.

Chapter 3

The Convention on the Rights of the Child : reservations and declarations of interpretation by States Parties

Introduction

By means of a reservation, any State may subscribe only partially to the provisions of a convention. A reservation to an international convention is defined by the Vienna Convention on the Law of Treaties (1969) as “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State” (article 2(1)(d)).

A State can also make an interpretative declaration, by which it indicates that it will interpret and will apply a provision of a convention in a specific or limited manner. An interpretative declaration is not defined by the Vienna Convention. Its goal is similar to a reservation, but it has a less legal scope : it does not modify or limit a State’s obligation, but it indicates how a State will interpret an obligation and may signify the importance that a State will give to the obligation.

Reservations and declarations of interpretation must never be incompatible with the object and purpose of the convention concerned.⁸⁶

86

Article 19(c) Vienna Convention on the Law of Treaties 1969.

CHILDREN DEPRIVED OF LIBERTY

For the purpose of this book, only reservations and declarations of interpretation made by States Parties to the Convention on the Rights of the Child which concern or affect the rights of children deprived of their liberty are discussed.⁸⁷ This does not mean that other reservations and interpretative declarations with a more general scope could not also possibly have an impact on children deprived of liberty. Among such reservations are, for example, reservations made by many Islamic States concerning articles of the Convention that are considered incompatible with provisions in Islamic law, of the *Shariah* or with the beliefs and principles of Islam which do not specify the scope of these reservations. Similarly, some countries specify that the Convention only applies if provisions are consistent with the national constitution, domestic laws, or traditional values. Others declare that the Convention “will be applied to the extent that it is financially possible” or within the limit of available means.

A general reservation which has been entered by several countries is that “(...) a child’s rights as defined in the Convention (...) shall (...) be exercised (...) in accordance with the customs, values and religions of [the country’s] multiracial and multi-religious society regarding the place of the child within and outside the family”.

The general and indefinite character of these reservations, their unlimited scope and their lack of precision pose a problem, in the sense that they cast doubt on the commitment of countries to the object and purpose of the Convention. It would be interesting to examine case by case the particular consequences these reservations might have for children deprived of liberty.

1. Reservations to article 37 of the Convention

1.1 Reservations with regard to article 37 CRC as a whole

Article 37 of the CRC concerns the prohibition of torture, cruel, inhuman and degrading treatment or punishment and governs measures involving the deprivation of liberty.

87 We based this analysis on the document “Reservations, Declarations and Objections relating to the Convention on the Rights of the Child”, CRC/C/2/Rev.7, 12 March 1998.

RIGHTS AND REALITIES

Two countries have made a reservation to article 37 as a whole. A third withdrew the declaration that it had made on this topic.⁸⁸

For the first country, article 37 (amongst others) will be applied only if it complies with “the Constitution, national laws and national policies of the Government”. It would be necessary to examine the national laws of this country to determine if certain of its provisions concerning children (deprived of liberty) run counter to those of the Convention.

As for the second country, it “considers that articles 19 and 37 of the Convention do not prohibit : (a) the application of any prevailing measures prescribed by law for maintaining law and order [within its territory]; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or (c) the judicious application of corporal punishment in the best interests of the child”.

The formulation of this reservation not only generally opens the door to the non-observance of several rights of children but it carries particular additional risks for children deprived of liberty, on the broad and vague basis of “interests of public order” or “the protection of public health”. How can the rights of children be guaranteed in situations considered by the government as being a matter for its “national security”, “public safety”, “public order”, “protection of public health” or of its “protection of rights and freedoms of others”? For example, article 37(b) of the Convention provides that States Parties must ensure that “no child should be deprived of liberty unlawfully or arbitrarily”. It also states that “arrest, detention or imprisonment of a child shall be in conformity with the law, and shall be used only as a measure of last resort, and for the shortest appropriate period of time”.

Moreover, the possibility of submitting the child to “judicious application of corporal punishment” “in its best interests” runs counter to the provisions

88 In its declaration, eventually withdrawn, this country stated that “[n]othing contained in article 37 shall prevent, or be construed as preventing, the Government (...) from assuming or exercising, in conformity with the laws for the time being in force in the country and the procedures established thereunder, such powers as are required by the exigencies of the situation for the preservation and strengthening of the rule of law, the maintenance of public order (ordre public) and, in particular, the protection of the supreme national interest, namely, the non-disintegration of the [State], the non-disintegration of national solidarity and the perpetuation of national sovereignty, which constitute the paramount national causes of the [State]. Such powers shall include the powers of arrest, detention, imprisonment, exclusion, interrogation, inquiry and investigation.

CHILDREN DEPRIVED OF LIBERTY

of the Convention according to which States Parties must ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (CRC, article 37(a)). They must take “all appropriate (...) measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (...) while in the care of parent(s), legal guardian(s), or any other person who has the care of the child” (CRC, article 19). Children in this country therefore risk not being protected against such abuses, more so since the term of “judicious application” can be open to all sorts of interpretation. The Convention forbids corporal punishment whether it is judiciously applied or not.⁸⁹

1.2 Reservations to article 37(c) CRC

Article 37(c) CRC sets out basic principles to which measures involving the deprivation of liberty of a child must conform. This article stipulates, for example, the separation of adults from children during the period of deprivation of liberty.

The rule concerning the separation of children and adults during the period of deprivation of liberty is among those provisions to which States Parties have most frequently made reservations. These countries are mostly industrialised countries. The majority of these countries reserve for themselves the possibility of not separating children from adults when this separation is, according to them, neither feasible nor appropriate. This is the case, for example, where there exists no appropriate facilities for juveniles, or where such premises are overcrowded or when it would involve too big a distance between the young person and his family. Other States judge that the detention of adults and children together may in certain cases be mutually beneficial or that it is necessary to be able to place a young person with adults where the interests of other juveniles in an establishment require the removal of a particular juvenile offender. One State Party specifies that, according to national legislation, separation must generally be imposed with adults from the age of 20 years, and another State Party declares that the criminal law for adults can under certain conditions be applied to minors of 16 years and above. According to the law of another country, separation of children and adults in closed establishment is not obligatory.

89 While the CRC does not explicitly forbid the use of corporal punishment, the Committee on the Rights of the Child found that any corporal punishment is incompatible with the Convention. Report of the Seventh Session, Committee on the Rights of the Child, UN Doc. CRC/C/34, Annex IV, September-October 1994, p. 63.

2. Reservations to article 9 of the Convention

Article 9 recognizes the child's right not to be separated from his parents.

2.1 Reservations to article 9(1) CRC

Three countries have formulated reservations to article 9(1) concerning the principle that a child shall not be separated from his parents against his will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Indeed the law in these three countries does not (always) provide for judicial review when a decision is taken to separate a child from his parents. These States reserve the right for the authorities concerned (social services/welfare authorities) to decide on the separation of a child from his parents without previous examination by a judicial body. Another State Party that had made the same reservation later withdrew it.

A State Party made a declaration with regard to article 9(1) CRC on the basis that the national law allows the administrative authorities to act as a last resort in certain cases. The decisions in question may be subject to judicial review, in the sense that it is a principle of that State's law that courts can nullify administrative decisions if based on unlawful grounds.

The absence of judicial review can be dangerous especially when one considers that separation from the parents (which may be the consequence of a measure of deprivation of liberty) by the administrative authorities may be arbitrary (even more so given that legal guarantees are not necessarily respected and that the child often has no legal defence).

2.2 Reservations to article 9(3) CRC

One State Party to the Convention does not consider itself bound by the provisions of the article 9(3). This country is therefore not bound to respect "the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis (...)". The implication of this reservation for children deprived of their liberty can be significant. They risk being deprived of a legal basis to maintain contact with their family during the period of separation (while deprived of liberty). The negative consequences of the absence of family contact for the child and his chances of rehabilitation and reintegration are obvious.

CHILDREN DEPRIVED OF LIBERTY

In addition, as shown in the following chapters, detained children may depend on their parents for provision of food and other necessary products.

2.3 Reservations to article 9(4) CRC⁹⁰

In a reservation to article 9(4) CRC concerning the provision of essential information concerning the whereabouts of an absent member of the family unless the provision of the information would be detrimental to the well-being of the child, one State Party adds the terms “or to public safety”. This reservation implies that the parent(s) of a detained child, or as the case may be, another family member, will not be able to receive any information from the State on the place where the child is if the State judges that the disclosure of this information would be a threat to public safety. It is clear that the utilisation of such a justification would violate the child’s right to contact with his family, as well as the principle of the child’s best interests as a primary consideration, since it puts the interest of the State above his.

3. Other reservations with no explicit link to the rights of children deprived of liberty but likely to have consequences for them

By way of conclusion, the following are examples of other reservations that can also affect children deprived of their liberty, without the link being immediately obvious.

3.1 Reservations to article 32(2)(b) CRC

One State Party to the Convention reserves for itself the right not to apply paragraph 2(b) of article 32, which requires States Parties to “provide for appropriate regulation of the hours and conditions of employment”.

90 Article 9(4) CRC provides: “Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. (...)”. See also Finkenauer, J.O. and Stevens, C.C., 1995., at p. 29.

RIGHTS AND REALITIES

This reservation applies where the application of this paragraph “might require regulation of the hours of employment of young persons who have attained the age of 15 years in respect of work in non-industrial establishments”.

This reservation therefore raises a serious possible risk for youngsters who have reached the age of 15 years and who are put to work in prisons, centres of detention or work-camps of not benefitting from the protective provisions concerning the hours of work or work conditions.

3.2 Reservations to article 40(2)(b) (ii) and (v) CRC

One country declares that article 40(2)(b)(ii) and (v) will be applied in such a way that, in the case of minor infringements of the penal law, there shall not in each and every case exist a right to have legal or other appropriate assistance, nor an obligation to have a sentence not calling for imprisonment reviewed by a higher competent authority or judicial body.

Children who are the subject of a decision involving deprivation of liberty in establishments other than a prison therefore risk being deprived of certain essential legal guarantees.

3.3 Reservations on all the rights defined in the Convention, and especially articles 12 and 17

One State considers that “(...) a child’s rights as defined in the Convention, in particular the rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised [among others] with respect for the authority of parents, schools and other persons who are entrusted with the care of the child (...)”.

The personnel in the different establishments in which children can be deprived of their liberty are considered “other people who are entrusted with the care of the child”. Thus, respect for child rights in general, in particular those foreseen in articles 12 and 17 (the right to express his views freely in all matters affecting him and to have these views being given due regard, and the right to access to information), is to a large degree subject to the good will of those responsible for the management of these establishments.

Chapter 4

The rights of children deprived of liberty : guiding principles

Introduction

Chapters 4 to 12 examine how the rights of children deprived of liberty are respected in reality. By “reality” we mean the situation according to our own observations or according to the different sources consulted. Such information concerns mainly the area of juvenile justice, since, as we have seen, a significant number of children are deprived of their liberty through such systems. Most of the information is, however, equally valid in other confinement contexts.

As much as possible, we have followed the same structure for the international standards developed in the preceding section. The following chapters therefore correspond with those categories identified by the Committee on the Rights of the Child. However, as previously stated, some changes to those categories have been made, so that they are better adapted for analysing the situation of children deprived of their liberty. The category concerning standards of living (Chapter 6) thus includes both information on rehabilitation and contact with the outside world. An additional category has been created which takes into account specific aspects of an institution, such as specialised staff or the classification of inmates, since these aspects did not exactly correspond with categories which already exist (Chapter 10).

CHILDREN DEPRIVED OF LIBERTY

In order to facilitate clear comprehension, the category on civil and political rights and freedoms is divided into two chapters : one chapter deals mainly with legal protection; the other is concerned with other civil and political rights.

It should also be pointed out that in order to give this overview of the reality of the living conditions of children deprived of liberty, the book pays attention both to where the rights of the child have been respected as well as to violations of child rights and obstacles which make the respect of child rights difficult. In addition, consistent with the approach of this book and taking into account the universality of the problem, the countries concerned are not named, whether the country has been identified with practice conducive to respecting the rights of the child or not. This decision was also made partly to avoid damaging the spirit of co-operation with the concerned countries which make studies such as this possible - this cooperation coming from all levels including governmental, judicial and administrative authorities and professionals (legal counselors, social workers, educators, the police etc.).

The following chapters should not be seen as an “encyclopedia” on the deprivation of liberty of children. Rather, we have sought to show different aspects of the reality in which children deprived of liberty find themselves. The examples given should be useful when raising awareness on the issue of deprivation of liberty of children from the perspective of their rights. These examples are particularly related to young people placed in closed establishments within the framework of the juvenile justice system, but they frequently demonstrate patterns of practice in many other areas.

Finally, it is essential to take into account the social and legal position of children as a group. The violations of rights of children deprived of liberty also concern in some cases the whole population of minors in a particular country. In this context it is important to stress that those measures envisaged to improve respect for the rights of children in closed establishments ought either to be preceded, or accompanied, by similar policies applied to all children in the country.

In the final analysis, it is acknowledged that a large proportion of national laws and internal regulations appear to be in line with the international legal provisions. When the information we were presented with was merely confirming the international legal framework, it is generally not repeated.

The fourth chapter deals with the first category : guiding principles. As explained in Part 2, all articles of the Convention have to be read in the light of these guiding principles identified by the Committee on the Rights of the Child.

1. Non-discrimination

It is not surprising to find discriminatory practices in establishments where minors are confined. This violation of the principle of non-discrimination affects different groups of children and takes varying forms.

1.1 Which groups of children are discriminated against?

Discriminatory practices in establishments where minors are confined are particularly directed against :

- Children from ethnic, religious or linguistic minorities
- Children from indigenous populations
- Young foreigners
- Young people from disadvantaged families or low castes
- Children deprived of family or guardian care
- Disabled children

Of course this list is not exhaustive. These young people and their families belong to socially vulnerable groups and are victims of discrimination in other aspects of their lives. In addition, discriminatory practices can also be based on the sex of the child.

The motive underpinning the measure of deprivation of liberty of a child can also give rise to discrimination within establishments. For example, children accused of political offences can suffer harsher treatment.

1.2 What forms can discrimination take?

A distinction can be made between discrimination which is connected with the decision to restrict a child's liberty and discrimination which relates to the modalities of such deprivation of liberty.

a. Groups particularly exposed

It is clear that all children are not equal when it comes to the risk of confinement. Some groups of children, such as young foreigners and those from disadvantaged families, are definitely more likely to be arrested than others. According to various sources, such children are more frequently arrested, sometimes for offences that would not involve measures of arrest and detention or other children. A striking example is that of street children who are particularly vulnerable to arbitrary arrest, sometimes as part of State sponsored campaigns for "social cleansing".

CHILDREN DEPRIVED OF LIBERTY

These identified groups of children are also more often detained. An illustration of this can be found in statistical data which show that the proportion of children from minority groups in establishments for juveniles, in certain countries, represent as much as half or even in some cases 90% of the children detained, whereas this minority group may only account for a minimal percentage of the national population (not even 5% in some cases). One source revealed that 85% of confined children come from disadvantaged families, whereas these families represent only 15% of the overall population.

“A rich boy will not go to prison, even for a crime as serious as deliberate homicide. On the other hand a poor boy can spend two months there because he stole a necklace. The poor are being criminalised. Being poor is the clearest indicator that any child who gets into the system will end up in prison” (Magistrate’s comment).

The causes of this situation are various. In the first place, there is a reduced possibility that poor children will avoid detention. In fact, in order to be freed it is sometimes necessary to pay a sum of money whether as bail, as reparation for damage done, as a fine or as a bribe which are impossible for those who do not have any means.

Secondly, because of the discrimination and misunderstanding to which these social groups, their culture and values are often subjected, the authorities may be more inclined to arrest or impose a penalty restricting liberty. In these cases for instance, where an underprivileged or young person belonging to a minority is concerned, the authorities are at times less willing to search for alternative responses.

Thirdly, these groups of juveniles have a limited number of alternatives available to them. For example, the adoption of measures of probation, or conditional release can prove impossible for homeless children when the family must be called upon to check that the measures are appropriately applied and to look after the minor. Such alternatives may also require a sum of money to be paid to the authorities which may be impossible for a homeless child to provide. Foreseeing such an eventuality, some national laws expressly forbid substituting confinement in a closed institution for a fine. Other domestic laws, however, state the contrary, that the minor who is unable to afford bail should be sent to an institution such as a detention centre.

RIGHTS AND REALITIES

b. Forms of discrimination

We have identified below some of the forms which discrimination can take in closed establishments, placing them alongside the rights to which they correspond.

The right the deprived of liberty for the shortest possible period of time

Since they do not have the means to pay a sum of money as bail or as bribe for their release, disadvantaged children sometimes stay in confinement for longer periods than those who are able to pay. The right to the shortest appropriate period of time for detention may also be further flouted in the case of children who are not supported by parents or a guardian, or those without (legal) assistance. It sometimes happens that these children may, for example, have to wait a longer period of time before appearing before a judge. In the same way, children from ethnic minorities or of foreign origin can be perceived as posing a more significant threat to society and therefore are at risk of spending a longer time in confinement (see also Chapter 8).

The right to protection against abuse and ill-treatment

Children from ethnic minorities, foreigners, underprivileged children (including street children), young people from so-called lower castes, and disabled children, amongst others, are all especially vulnerable to attacks on their integrity and their dignity in closed establishments. These may be physical and/or psychological attacks (insults, humiliation, etc). In this context, a rather surprising example is that of children confined for their own protection after suffering ill-treatment. They are sometimes abused for a second time in detention, as scapegoats for the co-detainees or for the wardens, instead of being looked after in the humane fashion that their situation especially requires (see also Chapter 7).

The right to contact with family

An underprivileged young person is visited less often than others, particularly when these visits depend on bribes paid by him or by his family to the authorities. It is also possible that the parents are not able to pay travel costs (see also Chapter 5).

The right to an adequate standard of living

Young people with no money are subject to worse conditions of detention than other people in so far as, in some establishments, everything has to be

CHILDREN DEPRIVED OF LIBERTY

paid for. Sometimes they are refused access to showers, toilets, sleeping facilities and medical services.

Many of those aspects necessary for an adequate standard of living are dependent on the support that the family can offer the child held in confinement. It is apparent from numerous sources that the juvenile is sometimes only able to get enough to eat thanks to food brought to him by relatives, and that only the toiletries provided by family enable him to wash. Any absence of or irregularity in this support may therefore prove a significant obstacle to an adequate standard of living for many juveniles.

There are also cases of children, placed for protection purposes after ill-treatment at home, who are refused the right to food or to have a bed, on the pretext that they are not officially recognized by the authorities since they have not been sentenced (see also Chapter 6).

The right to education and to leisure activities

Young foreigners in irregular situations do not, in some cases, receive any education or training in the countries in which they are residing. They are also deprived of this right when courses are not taught in their own language. In some establishments, when wardens require payment for access to education, this right, for those children without financial means, becomes unavailable. Sometimes girls are excluded from educational programmes or from opportunities for training or recreation : because of the scarcity of funds available, it is not unusual that priority is given to boys.

In general, children deprived of liberty may also be subjected to many forms of discrimination as compared to children living outside of establishments in terms of access to health services and education. In one country the law relating to establishments for detained juveniles proscribed that children who are under 17 must have at least 15 class hours per week, whereas school pupils in general are entitled to 35 hours per week (see also Chapter 9).

The right to legal assistance

As further discussed in Chapter 8, many children are unable for financial or other reasons to benefit from the services of a lawyer during the period of their confinement. As a consequence, they will have less chance, amongst other things, of being cognizant of their rights, taking legal steps against the measure of deprivation of liberty, or lodging a complaint against those responsible for violations of their rights during their stay in the closed establishment.

RIGHTS AND REALITIES

The right to have access to information, including information about one's rights

Children who do not speak the language used in the institution – for example foreigners or those belonging to indigenous groups – are at a severe disadvantage : they have no effective access to information and are therefore often unaware of their rights. They run the risk of not understanding what is happening to them, and of being unable to read books or newspapers, which are occasionally made available to them (see also Chapter 7).

This situation may well greatly exacerbate the psychological stress under which they are already placed.

The selection of the closed institution

There are less often establishments specifically for girls because generally a lower number of them are deprived of liberty. As a result, they are more often mixed with adults than boys, and are more likely to suffer the consequences of this lack of separation (lack of educational infrastructure, abuse etc.).

As a result of a deliberate decision to treat them more severely than other children, children belonging to socially vulnerable groups tend to be placed in establishments which have regimes reputed to be more repressive, notably adult establishments. The same applies to children accused of political crimes such as participating in the activities of an opposition group or illegal organisations : in some countries, these children are more or less systematically incarcerated in adult prisons whereas young people sentenced for ordinary offences are sent to specialised centres.

In countries where there are no appropriate reception centres, juveniles seeking asylum are often placed in closed centres for young delinquents, even if the reason for detention is of a purely administrative nature. Young people from ethnic minorities are sometimes sent to establishments for the disabled.

Arbitrary and discriminatory choice of institution may have obvious negative consequences, particularly where the treatment is severely repressive and devoid of educational programmes. However, the consequences may also be less evident. For example, the existence of avenues for reviewing measures of deprivation of liberty, or of the possibility for children to take advantage of conditional release can vary quite widely from one institution to another.

2. The Best Interests of the Child

The best interests of the child must be considered when the decision is made to deprive him of liberty, as well as when the modalities of the confinement are determined and implemented.

Whether or not the child's best interests are the primary consideration is best measured by assessing whether or not his rights are respected. In the course of the following chapters, the reader may judge for themselves, case by case, if the best interests of the child are considered as a primary consideration in the context of the decision to deprive a child of liberty or if other interests such as those of society or of public order have the highest priority, or if a balance between these different interests is sought.

3. Survival and Development

Prisons and other closed establishments are obviously not the most appropriate places for a child to develop. In extreme cases, various sources have reported deaths of juveniles during their confinement in violation of their right to life.

3.1 Failure to respect the right to protection against torture and ill-treatment

Torture and ill-treatment of children deprived of liberty in many countries is frequently reported by various sources including the United Nations Special Rapporteur on Torture, the European Committee against Torture and national and international non-governmental human rights organisations. Such treatment is most commonly practiced in police stations during interrogation and prolonged periods of pre-trial detention. Particularly severe torture sometimes causes the death of children. Several cases of juveniles, often very young, who died after hours of police torture, are reported by various sources. The motivation behind these acts of torture is usually intimidation to obtain information, to procure confessions or to extract goods or money.

In institutional confinement children are also frequently preyed upon by warders or co-detainees, whether these are adults or juveniles. Children often fall victim to shots fired by the police or by warders.

RIGHTS AND REALITIES

This may happen during arrest, when they are attempting to run away, or after they have escaped. Young people caught in the act of an escape attempt are sometimes gunned down on the spot. The fact of the impunity enjoyed in many cases by those authorities responsible for the torture, ill-treatment and deaths of minors, and the absence of counter-measures taking into account the gravity of the act, has been repeatedly identified as a major factor in the perpetuation of such practices.

The suffering which children undergo while deprived of liberty, and the problem of impunity are further discussed in Chapter 7.

3.2 Failure to respect the right to an adequate standard of living

Malnutrition and dehydration are also sometimes the causes of death and of development problems in closed establishments. Equally, poor living conditions can give rise to illnesses that may become life-threatening.

Other factors affecting children's right to an adequate standard of living are the lack of medical care and the absence or shortage of human and material resources which would permit adequate treatment (see also Chapter 6). Staff negligence can also contribute to the absence of adequate levels of care (see also Chapter 7).

3.3 Failure to respect the right to be held separately from adults

Adult fellow prisoners have in many cases inflicted ill-treatment on children detainees leading to the child's death. Such incidents of murder or manslaughter may or may not be premeditated (see also Chapter 10).

3.4 Suicide

Cases of suicide are not unusual for children living in confinement. The suicide rate amongst those held in adult prisons may, according to the findings of one study, be five times higher than that in the institution's adult population and eight times higher than the same rate amongst children sent to specialised centres. It is also current practice in many establishments that no particular attention is paid to minors who present a suicide risk. The object of some suicides is to bring an end to the ill-treatment that the child has suffered.

CHILDREN DEPRIVED OF LIBERTY

4. The child's views

Taking the child's opinion into account is still a taboo subject in most closed establishments. But it is also true that the situation is gradually changing in this regard.

An example :

The new management team of a high security prison for juveniles asked the young people to submit in writing any individual requests they might have concerning life in the institution. This initiative was part of an initiative to "get the dialogue started" within the institution, according to the manager, and had an educational value as well. This initiative has the merit of taking the children's opinion into account. The management responded favourably to such requests as were considered feasible, and some have been included in the institution's internal regulations. This consultation system was then formally adopted, and is still in force years later.

Some of the requests taken into account by the management are listed below :

- To be allowed to smoke cigarettes more often. The rules now allow more possibilities to smoke than before.*
- To spend as little time as possible in the cells and, in particular, not to have to eat there, next to the toilets. The young people have gradually been able to have lunch, tea and finally dinner outside of their cells (however, without this ever appearing clearly in the internal regulations).*
- To be allowed to watch cable television and videos. Video sessions are now included in the regulations, on specific days and at particular times.*
- To be able to celebrate birthdays. The rules now provide for the celebration of all the month's birthdays together on one day at the end of the month.*
- To be allowed to wear your own clothes. In the end, the rules only permit the wearing of your own shoes, so as not to make differences between under-privileged children and the others noticeable.*

The management did not take on board other requests made by young people because they did not see them as realistic. In this context, we were given the following example : the first request the young people made – and the one most often expressed – was to be able to go out in the open air, which is not allowed. This request was not adopted, since

RIGHTS AND REALITIES

the institution's infrastructure makes it impossible for inmates to go outside (there is no grid or wall).

According to the examples found, children within establishments can also express their views in the following situations :

- The determination of the measure to be applied. For example, the decision-making authorities do, in certain cases, take into account the suggestion of a child to resort to alternatives to confinement.
- The determination of the modalities of confinement. The child can, for instance, express a preference for one particular institution, giving reasons such as proximity to family, the need to continue his studies, etc.
- The choice of the personal treatment (medical, psychological, social) within the institution.
- The choice of activities – educational, recreational, cultural etc.
- Disciplinary procedures
- Complaints procedures consequent on any rights infringement
- Lay-out and furnishing of the institution
- Management of the institution

This is certainly not an exhaustive list. Each example is rooted in the principle that the child is a responsible individual with capacity to manage his own life.

An example :

Children from various establishments have gathered to hold a discussion about their rights. The room where the meeting is being held is in uproar, differing views are freely exchanged, subjects tackled are numerous (pocket money, sanctions, the right to communicate freely with one another, how their rooms may be used, the right to privacy, breaking out, etc.). The young people notice that rights and duties are not the same for everybody. Internal regulations are compared, discussed, analysed, criticised. Some participants are surprised and some are satisfied. They can see that plenty of questions remain unsolved, and some children learn for the first time that they actually have rights.

“Does this discussion about rights change anything? Young people are talking increasingly about their rights within establishments and directors, and educators have begun to think seriously about the topic. However, the project's complexity still does not go away. In addition and in spite of support and logistical help, it is not always easy for the young people to carry the project forward. While they want to be

CHILDREN DEPRIVED OF LIBERTY

militant, these young people are, in the first place, actors in facing up to their own personal situations, to their own suffering, to incomprehension and finally in recognising that they have to battle daily to defend their rights” (Comment by an educator).

A child in an institution may express his views, whether directly or indirectly, for example, in the course of social investigation undertaken by social services working in conjunction with decision-making authorities, or else within the closed establishments. In both cases the child may be assisted, if he so wishes, by third parties, such as his parents, the institution staff, or his lawyer or legal counselor.

The child's right is not, in any case, restricted to an expression of views : it is also his right that these views are taken seriously. Nor does it suffice that adults simply listen to the child; they must also give due consideration to what he says.

A notable example, in this context, is a closed institution in which one third of the members of the administrative council is made up of juveniles. They take an active part in discussions and in decision-making. By virtue of their representative proportion they are in a position to bring opposition to bear on some decisions.

In other cases, it may happen that children are elected by their peers to put their case to the management.

However, the few examples of genuine participation that we have come across in closed establishments are very often dependent on :

- The reason for deprivation of liberty : once the child is deemed to have committed a serious crime, his opinion is only very exceptionally taken seriously.
- The prime objective of maintaining public order in closed establishments : participation by detained children is very soon perceived as a potential threat, or as a serious obstacle to the realization of this objective.

In addition to these limitations particular to the situation of deprivation of liberty, the limitations of the child's age and maturity are frequently used to justify not taking children's views into account. Institution staff are sometimes requested to replace or to complement the guidance and assistance roles of parents, in terms of influencing the minor's sense of responsibility and his capacity for self-determination.

Listening to the confined child and seriously considering his views are very important elements when it comes to increasing his self-image. As shown, this approach is beneficial to rehabilitation, social re-integration and to the atmosphere within the institution.

RIGHTS AND REALITIES

Conclusion

Discriminatory practices with regard to some groups of children during their period of confinement, or during the proceedings that lead to it, reflect their general position in society. Their situation within establishments mirrors what goes on outside, but often in an exacerbated fashion.

These establishments, therefore, fail to respect the fundamental right to non-discrimination owing to every child. In fact the opposite effect is often the case, not only because deprivation of liberty may exacerbate the discrimination against children of certain groups, but also because any stay in such an establishment may give rise to greater discrimination when the child leaves, particularly given the effect of stigmatisation. Whatever the reason for confinement may have been, very often public opinion continues to perceive children coming out of a closed institution as dangerous criminals, even if, as demonstrated, this is untrue for the majority of children.

Secondly, it is shocking to be obliged to conclude that sending a child to a closed institution, as a consequence of some official intervention, may lead to his death rather than to the respect for his best interests. The question of closed establishments as places which encourage a violent atmosphere, should be raised here. Is it enough, in this respect, to point the finger at aggressive staff behaviour or at toleration of a pervading climate of aggression, or must one question the whole matter of confinement itself, in order to break with violence? Is it at all possible to have a non-violent culture prevail in a closed institution, or is it not the case that such establishments, the best of intentions notwithstanding, simply give rise to or encourage violence?

As a third point, children's participation – another guiding principle throughout the framework of international standards – perhaps provides the main challenge in the context of the rights of the child. This principle of participation offers the choice of breaking with the traditional approach to the child as an object of protection and guidance, to view the child as a subject with rights. The challenge posed is a huge one. Meeting that challenge in the context of closed establishments is even more testing.

Finally, we cannot but be struck by the extent to which rights are granted to children only under certain conditions. The realization of rights may depend on a range of factors : on a minor's income, or on that of his family, on the support which they give him, on his origins, on his/her sex, etc. The respect of the rights of children deprived of liberty is also made conditional in other situations, as discussed in the following chapters.

Chapter 5

The right to a family, family environment and alternatives

Introduction

Confining children in closed establishments means that the child is deprived of an important part of his family life. The Convention on the Rights of the Child emphasises, as does the international legal framework as a whole, the importance of the family environment for the development and well being of every child. Children are themselves often the first to confirm this.

1. Parents have the primary responsibility for the upbringing of the child

1.1 The principle

According to the international legal framework, parents, or as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. When a child is placed in confinement, the parents' (or the legal representatives') chance of playing any part in the development of a child can be seriously reduced. Establishments do exist, however, which attempt to respect the parents' responsibility so far as is possible.

CHILDREN DEPRIVED OF LIBERTY

In other establishments, this responsibility is entirely ignored. Parental authority is deemed to be temporarily transferred to those people within the institution in charge of the children.⁹¹ However, this transfer, although the basis is legal (imposing guardianship), should not allow us to forget the important role which parents can continue to play for their child during his period of confinement and afterwards. Parents can play an important role of his social reintegration both into the family as well as into society at large.

1.2 Respecting the parents' opinion in the decision-making process

Parents can play a very important part in the decision to deprive a child of his liberty, as well as in any review of that decision. Parents can contribute significantly towards avoiding placement of the child as well as being able to encourage such a measure.

In some countries, a measure of deprivation of liberty of a child can only be decided on after consultation with the parents. At times, the decision, if it emanates from an administrative authority, will not be taken unless the parents are in agreement.

It is also possible that the parents themselves may ask that the child be confined, for example, in the case of unruly behaviour by children, because of lack of respect for parental authority, on the grounds of truancy or because the minor wishes to marry below the legal age.

In addition, it should not be forgotten that children can be placed in closed establishments for reasons concerning their parents' particular situation, their behaviour or their status. Such a situation can arise when there is negligence, ill-treatment, abuse or exploitation of the child (including for criminal purposes) by the parents, but also when children are accompanying their parents in centres for refugees or asylum seekers or in prisons.

Parents may, on the other hand, help to prevent their children from being sent to a closed institution by expressing their opposition to such a measure (where such opposition is legally possible), or by guaranteeing to better

91 This approach may be legally correct. Civil law considers any person to whom a child has been entrusted as being responsible for looking after that child. It is, however, important to make a distinction between this general principle and the particular situation of the child confined after his parents have lost their parental authority on the grounds, for example, of ill-treatment or exploitation. In the majority of cases, however, parents still retain their full rights as guardians. In this situation, the exercise of the rights is temporarily shared.

RIGHTS AND REALITIES

look after the child, or to supervise him more efficiently,⁹² or by paying a fine, etc.

1.3 Respecting parents' opinion during the period of deprivation of liberty

During the confinement period, the parents may be able to participate in decisions that concern the child. Their agreement can be necessary before certain steps are taken. For example, they may be involved in the development and implementation of programmes which deal with treatment, education and social re-integration of the child, or with any follow-up to these programmes in the minor's future life. It may also be the parents' task to authorize action (e.g. medical treatment) with important repercussions for the young people.

In order to guarantee genuine and efficient participation, parents must be kept regularly informed of their child's situation. This information may, for example, concern the manner in which he is treated, his progress, the results of the measure and on how the family can help to make it more effective.

Parents can also be involved in matters beyond the individual case of their own child. For example, parental committees may exist within the institution in order to improve the treatment of the detained minors in general.

Unfortunately, however, parents are too often over-looked during the confinement period. This is even more the case when their children are placed in adult establishments. The parents' role is often limited to the child's maintenance, for example, through the provision of food and clothing.

It has to be recognized that parental participation is, in the majority of cases, a very significant factor in the maintenance of the child's morale, or for the success of reintegration into society on release.

2. Ensuring regular contact between the child and his family

2.1 The principle

Children in confinement have the right to maintain regular personal relations and direct contact with their parents or legal guardians, through

92 These conditions are especially important when measures such as probation or conditional release are under consideration.

CHILDREN DEPRIVED OF LIBERTY

correspondence and visits, unless it is considered contrary to the child's best interests. Inquiries carried out among children and discussions with them show that separation from their friends and family is one of the greatest hardships while deprived of liberty.

“Affection from someone on the staff isn't like affection from your mother or your father (...). The educator is doing his job, he's not supposed to be there to... well yes, he is supposed to comfort the youngest, but he's not there to give us affection all day long, that's not his job” (testimony from a young person in confinement).

The right of children deprived of liberty to remain in contact with their family is sometimes written into national laws, even into the constitution. In some of these laws, it is specified that this right is not subject to any restriction whatsoever. In some countries, the law stipulates that a child and his parents (or guardian) cannot in principle be separated by the pre-trial detention of either, and that it is therefore not possible to place the child in pre-trial detention.

2.2 Assistance envisaged to promote the re-establishment of family links

Help is sometimes given to minors and their families to re-establish family links where they have broken down, to identify families in cases where they are difficult to trace and, more generally, to ensure that one side remains in contact with the other. Social services linked to the establishments, probation officers and social workers, may assume responsibility for this task. Such tasks may also fall to local organisations, and in this case the maintenance of family links may become conditional on the presence of such external assistance.

2.3 An essential condition for improving contact with the family : that establishments be decentralised

The distance between the family home and the minor's place of confinement is often cited as one of the principal obstacles to the maintenance of family links. It is difficult for families, particularly those that are underprivileged and without means of transport, to reach the establishments where their children are being held. These are often located a considerable distance outside towns or in areas with little or no public transport. In many countries there are very few establishments – in some cases no more than one – which deal only with minors, and those held there are very likely to be living a

RIGHTS AND REALITIES

considerable distance from their family, especially if the country is large. Such a geographical separation is more often the case for girls because centres that take only female detainees are even less numerous. Overcrowding in local prisons may also be the grounds for placing minors in confinement at some considerable distance from their homes.

Such distance also makes it more difficult for children to visit home for the weekend or for the holidays. The distance may also have adverse consequences on the cost of telephone calls home.

Apart from the effect on contact with the family, distance from home can also have consequences for the child's upbringing and on the continuity of the child's ethnic, religious, cultural and linguistic background. This is so where, as it is the case in certain countries, changing region may mean adopting an entirely different way of life, a new language, and other customs. Steps may be taken in an attempt to avoid such a situation or to minimise its consequences. Some national legislation, for example, specifies that, when the place of confinement is chosen, consideration should be given to ease of access to the detainee's home community and to his family. Policies have been adopted, requiring the construction of smaller, decentralised establishments within a certain region. However, an increased number of decentralised establishments must not imply the creation of additional possibilities for the detention of minors. It should rather establish facilities in all regions of the country but of very small scale. Some countries, when appearing before the United Nations Committee on the Rights of the Child, state that in order to facilitate parental visits, establishments for minors had been moved closer to urban centres.

So that separation from family should affect confined children less, prison authorities are, in some establishments, more flexible when administering visiting rules for families who live some distance from the institution. Sometimes the institution itself provides means of transport for visiting families, or meets the travelling expenses incurred during the journey.

When an institution is being selected for a child, consideration may also be given to the possibility of sending him to an adult detention centre nearer his home, rather than to one for juveniles which is further away. This subject is further discussed in Chapter 10 of this part.

So far as institution size is concerned, detention centres are sometimes very large, particularly prisons. The population of juveniles held in one single institution can, for example, exceed 800 children.

CHILDREN DEPRIVED OF LIBERTY

2.4 Modalities of contact with the family

Family contact modalities can vary widely, including the following examples :

a. Family visits

The international legal framework gives the child the right to receive visits from his family in the institution. Visits are to be frequent and must take place in the best possible conditions. A number of national laws and regulations also recognize this right of minors. It is, however, interesting to note that in some cases the right to visit is recognized as pertaining to the family and not to the child.

As for what happens in reality, several sources mention that a significant number of minors receive only a few visits from family or none at all. Such visits are, in some cases, classified as “exceptional” or “extremely” rare, even non-existent. According to one example, it would seem that, in some cases, up to 60% of parents do not come to see their child.

It is true that, in addition to the very real problem of distance discussed above, other obstacles sometimes make visiting difficult, interfering with the maintenance of family links.

Visiting may be subject to authorization (granted by authorizing bodies to whom access is sometimes difficult) and limited as to duration and frequency. The authorized frequency of visits may be linked to the reasons for the deprivation of liberty or may be dependant on the paying of bribes by the family to the authorities or on the behaviour of the minor. Visiting rights may therefore depend on the authorities’ good-will. There are cases where the staff has asked for taxes to be paid. These taxes can be a “visiting tax” or a “food storage tax”, or even a tax on the “voice” of the staff member who calls the detainee in! In situations such as these, some families probably have insufficient financial means to provide the payments required.

Denial or restriction of visits are also employed as a disciplinary measure. In some cases, such disciplinary measures are even laid down in law, under which, for example, a three-month suspension of family visits can be authorized. Frequency of visits may also depend on the minor’s record, whereby the poorer the record, the less frequent the authorized visits.

Parents or guardians might be discouraged from visiting their child because the conditions under which the visit takes place are unfavourable. Visitors are sometimes humiliated or harassed by staff. The places where the parties meet sometimes scarcely lend themselves to contact or dialogue. Minors

RIGHTS AND REALITIES

and visitors can, for instance, each be placed behind grids, with a warder occupying the approximately one-metre space between them.

In some cases visits are simply forbidden in violation of the international legal framework. They may be disallowed on the grounds of shortage of staff or inadequate visiting facilities. For example the number of warders might be deemed insufficient for purposes of surveillance, or there might be a shortage of space available in the building to accommodate families. Visits may be forbidden in some types of closed establishments, such as high security prisons, or under certain circumstances, such as when a child is subject to solitary confinement, secret detention, remand or pre-trial detention. So far as pre-trial detention is concerned, the situation is all the more serious when long periods of confinement are involved (see also Chapter 8).

Visits can also be forbidden when they prove to be an obstacle to the juvenile's re-education programme or if they impede the protection he needs. They might also be forbidden when they could potentially be harmful to other parties, or likely to threaten the security and good order of the institution, and sometimes also when the interests of the investigation may be affected.

Because confinement is commonly perceived as shameful, family members themselves may refuse to have any contact with their detained child. In some cases, the detained child is completely abandoned by his family.

On the other hand, steps are also sometimes taken to promote frequent visiting in good conditions.

Examples can be cited where daily visiting, or sometimes even visiting at any time throughout the day, is permitted. Long visits, of three days for instance, can be organised, particularly for families coming from far away. In many establishments it is forbidden to use restriction of parental contact as a disciplinary measure. Sometimes there is an attempt to improve the conditions under which the meeting takes place; re-arranging the room to allow direct contact on more humane, intimate lines for example, or allowing the young person to go out of the institution with his family.

In some countries it is possible to legally contest visiting restrictions before the competent legal authorities.

b. Exchange of information

It is laid down in many countries' laws that parents or legal guardians must be informed of a juvenile's arrest or at least told when he arrives in the institution. Depending on the laws there is some variation as to the period

CHILDREN DEPRIVED OF LIBERTY

of time which may elapse before notification is given, for example “immediately” or “as soon as possible”. Conversely, in other countries, it is not obligatory to inform the parents as soon as the arrest of a child takes place.

Sometimes the juvenile is allowed to tell his relatives about his arrest by telephone. In situations where a child arrives unaccompanied from a foreign country, it may be the public prosecutor’s office’s duty to contact the embassy of the country from which he comes in order that efforts are made to find his family.

However, the family sometimes is not informed of where the juvenile is being held. In violation of the international standards, the family or the guardian may not have been informed either of the minor’s arrest or of where he is detained. Occasionally families are notified later (perhaps even several months after the arrest). Sometimes the juveniles are transferred to different establishments without their families’ knowledge. The shortage both of human and material resources (telephone, means of transport etc.), the impossibility of ascertaining the child’s address, as well as police negligence or ill-will, are all sometimes invoked to explain difficulties in finding where the family lives and keeping the family informed of what is happening to the child. The fact that families are ever kept informed at all depends in many cases on the zeal of local non-governmental organisations that attempt to identify the families of arrested juveniles. The juvenile may well be detained in secret, which necessarily precludes the giving of information as to his whereabouts to his family. In some cases, when it is felt that indicating where the child is being held might be damaging to the investigation, neither parents nor legal representatives are informed.

c. Access to telephone and correspondence

Although, according to the international legal framework, the child should be free to communicate with the person of his choice at least twice a week, use of the telephone and correspondence are regularly restricted, controlled and subject to authorization.

Depending on the institution, and on availability, use of the telephone may or may not be permitted. Some establishments allow calls at their expense (for example, once a month), whereas in others, the children must pay themselves, which limits the use of telephones to those who can afford it. Others only allow collect calls, which makes it impossible for many juveniles to call their parents, particularly those who are economically disadvantaged. Making a reverse-charge call can also be very difficult, if not impossible,

RIGHTS AND REALITIES

for children whose language is rarely used in the country, and who cannot make themselves understood by the operator.

The right to send and receive mail is in some cases violated when it is deemed that this obstructs the young person's re-education or is against the interests of the investigation. In Chapter 7, the circumstances in which correspondence may be censored by staff are described in greater detail.

As far as telephone calls and correspondence are concerned, and as is the case for family visits, authorizations can be subject to various conditions such as staff good-will or certain behaviour on the minor's part. The withholding of correspondence as a disciplinary measure (for three months for example) is contained in legislative provisions in some countries.

d. Home visits to the family

The child must be able to visit his family at home, and some juveniles are allowed to do so occasionally. This gives detained children the chance to maintain family links, and allows the authorities to check whether the child is capable of resuming life in the family environment. This authorization may, for example, be granted as the placement is coming to an end and may be for the weekend, for holidays or for special events in the life of the family. The frequency and the length of the stay vary widely; it may simply be a one-day visit per month, or several weeks each year.

The child's right to visit the family home depends, like all the rights considered above (and perhaps even more so), on the child's behaviour. It is even specified in certain cases that the child's behaviour should be "beyond reproach". Also, the right may not be granted until after the child has spent some time in the institution. Sometimes authorizations also depend on the motivation that the child shows, or on the reasons for the deprivation of liberty (for instance, in some countries only children guilty of minor offences can exercise the right to home visits). Finally, any considerable distance between the institution and the family home will make it difficult to implement this right.

2.5 Reintegration into the family : a constant objective with a high priority

Given that the juvenile's return to the family must be a priority objective from the very start of the period of deprivation of liberty, some establishments, through the intermediary of specialists such as social workers or psychologists, organise family gatherings. These meetings have a therapeutic aim, offering group or individual therapy for the children and

CHILDREN DEPRIVED OF LIBERTY

their families, or counselling services. The objective is to prepare both the child and the family for his release, and to reinforce family links. Sometimes NGOs visit the families of children who are in closed establishments in order to help prepare them for their release.

Conclusion

Article 5 of the Convention recognizes every child's right to be cared for by his parents. Depriving them of liberty makes the realization of this right difficult, sometimes even impossible. There is, in addition, the risk that some parents may lose all interest in their confined child.

The child's right to regular contact with his family, provided for in articles 9(3) and 37(c) of the Convention is, as we have seen, jeopardised when the child is sent to a closed institution. This contact is, however, indispensable when considering the need both to reintegrate the child back into family life and society and also to guarantee his well being and psychological health during his period in detention. Regular contact between children and their family is necessary if parents are to continue to do their duty and fulfil their responsibilities towards their children. The negative consequences for the child because of an absence of family contact and for his chances of rehabilitation and reintegration are clear, but they extend even further. As discussed in detail later, it is often on their parents or their legal guardians that confined children depend to supply food, medicines and other goods to meet their basic needs.

Realization of the right to contact with the family in many countries may well depend on aid from local non-governmental and governmental organisations who are trying to re-establish family links, as well as the juvenile's behaviour, the good-will of the staff within the institution, the reason for the confinement, the money available to the family for paying out possible bribes, and the distance from home to the institution.

The positive examples mentioned of establishments finding ways to facilitate visits are proof that, with thought and organisation, maintaining regular contact between children and their families does not need to be a difficult task.

Chapter 6

The right to an adequate standard of living

Introduction

Article 27 of the Convention on the Rights of the Child recognizes a child's right to an adequate standard of living. Similarly, the international legal framework provides several guarantees necessary to ensure that this right is respected in closed institutions. In this chapter we examine what is the reality so far as children in confinement are concerned.

1. Clothing

To the extent possible, children deprived of liberty must have the right to use their own clothing, unless of course these are no longer fit for use. These clothes ought to be clean, suitable for the climate, and in no way degrading or humiliating. Some institutions, in an attempt to conform, do see to it that the children's clothes are regularly changed and washed. The situation for many children in other institutions is, however, very different.

The following are some of the problems which have been reported :

- children wandering around naked in the institution
- young people wearing clothes in a poor state – dirty or torn
- children complaining of having to wear underclothes which are torn or have been dirtied by someone else

CHILDREN DEPRIVED OF LIBERTY

- clothes unsuitable to the prevailing temperatures
- children not being given a change of clothing

The availability of clean clothes in good condition sometimes depends on help from outside the institution. Clothes may be given by the minor's family or by local organisations, but aid can also come from the international community.

It would be wrong to think that such problems are only encountered in developing countries. Children in the Western world may also not be getting warm clothing for winter conditions nor adequate rainwear.

Whereas it may seem that clothing is only a secondary need, for example, to food, being adequately and decently clad is just as necessary if a child is to live with any sort of dignity. It should be kept in the forefront of our minds that being dressed in dirty rags or barely dressed at all can be very humiliating and damaging to one's self-esteem.

2. Physical conditions and the environment

2.1 *The principle*

The physical environment in which children live plays an important part in the quality of their lives. According to the international legal framework, places in which children live should meet the requirements of health and human dignity. They must be properly maintained and kept scrupulously clean at all times.

In this context, the problem of overcrowding presents a serious threat to an adequate standard of living for confined children. In fact, many sources view overcrowding as one of the main problems within closed institutions. Too often the number of minors detained far exceeds the institutions' capacity to take them in.

Some internal regulations in institutions for minors specify that adequate space must be provided to accommodate children. In most cases, the maximum capacity of each institution is fixed by law.

In reality, the overcrowding ratio may be very high, in some institutions reaching more than six times the accommodation capacity. Under these circumstances the young people may be obliged to remain standing in their cells, or be unable to sleep except lying on one side. Children report that lack of space means they have to sleep sitting upright, or next to the toilets. An urgent appeal of one of our sources condemns the detention of twenty-

RIGHTS AND REALITIES

two people, amongst them a pregnant 16 year old girl, in a six metre square cell.

Promiscuity amongst detainees tends to increase the abuse, ill-treatment and prevailing climate of violence to which the children often fall victim. Sexual activity among child detainees also has negative repercussions on hygiene, health and, in general, the dignity of those detained. The frequent resort to custodial measures is without doubt the most significant factor leading to overcrowding.

2.2 How the institution is laid out

In some cases the physical environment is arranged in such a way as to create a pleasant atmosphere, and this is especially so in centres for juveniles. The institution and its surroundings may be built and laid out in such a way as to imitate as closely as possible a “normal” environment, minimising as much as it can the constraining aspects of the place. The windows, for instance, might not have bars, the building may be surrounded only by a single fence, and the surrounding space made up of large open green areas or playing-fields.

However, no matter how beautiful and pleasant they may be, these establishments are still closed institutions which the children cannot leave at will. Deprivation of liberty remains deprivation of liberty, with all the consequences it entails and wherever it takes place.

It is also clear that such well-laid out establishments are the minority, and that many institutions in which children are confined are surrounded by high walls or grids, topped with barbed wire, watch-towers and surveillance cameras, and whose whole atmosphere resonates of punishment.

Other closed establishments regularly encountered have the following characteristics :

- Run-down institutions in poor condition, unprotected from wind, rain and dampness. For example, there may be roof-leaks, allowing rain-water to run down onto the children’s beds.
- Ventilation or air access which are inadequate or non-existent. Cells which are unbearably hot in summer and too cold in winter.

The organisation and renovation of institutions particularly in developing countries can sometimes depend on help from NGOs or the international community.

CHILDREN DEPRIVED OF LIBERTY

Other problems which have a bearing on the way an institution is organised will be discussed in subsequent chapters. For example, the lack of privacy is addressed in the section on the respect for privacy (Chapter 7).

2.3 Windows and lighting

Cell windows must allow access to daylight and fresh air. However, some children are held in cells which have no windows. In some cases, in high security blocks for instance, windows exist but are kept permanently bolted. Cells are sometimes badly lit or not lit at all, and if this is accompanied by an absence of windows, the children are in darkness by day and at night. Conversely, bright lights sometimes stay on continually, even throughout the night.

2.4 Sanitary facilities

Sanitary facilities must be adequate and clean. In accordance with the international legal framework, some internal regulations specifically provide for each child to have access to adequate sanitary facilities. Hygiene in closed establishments is often bad or even non-existent. In reports from various sources, reference is frequently made to very dirty conditions, to an unpleasant environment and to disgusting smells within the institution. Unhygienic conditions encourage insect (fleas, bed-bugs, cockroaches, lice etc.) and rat infestations.

The following are examples of a few chronic situations to which our attention has been drawn :

- Sometimes there are no toilets at all, or they do not work : detainees therefore have to relieve themselves in a hole in a corner of the cell or in a bucket which may already be overflowing. After having visited police cells, organisations reported that urine and faeces were floating down the corridor and that the children told of excrement running straight down the slope to the bottom, where they were sleeping on the bare ground.
- Children having no access to toilets during the night.
- Sewers overflowing into the central courtyard or into the cells.
- Sewerage collection in buckets reserved for drinking water.
- Showers not working or the institution poorly supplied with running water.

RIGHTS AND REALITIES

- According to another example, one communal bathroom in an adult prison was shared between a thousand detainees. Only one shower was provided for more than 60 minors.

2.5 Personal hygiene

Some children complain of skin infections as a result of not being able to wash properly. Often they do not get items necessary for maintaining personal hygiene such as soap, toilet paper, towels, shampoo, a toothbrush, toothpaste and, for girls, sanitary products.

Families, in some cases, provide these items. Personal hygiene of confined children can therefore be dependent on outside assistance, and those who are not supported by parents, guardians or friends are excluded from the enjoyment of the right to an adequate standard of living. NGOs can also assume responsibility for providing toilet articles in institutions, but in such a situation, the child's chance to exercise his right depends on external goodwill.

Sometimes the children are simply not permitted to wash.

2.6 Sleeping accommodation

Every child in custody should be provided with his own bed with sufficient bedding which should be clean when issued, in good order and changed often enough to ensure cleanliness as is required both by international standards and some internal regulations. They ought normally to sleep in small dormitories or in single rooms, depending on local practice.

Yet in spite of these rules there are frequent reports of institutions with insufficient number of beds and mattresses and not enough bedding in the various institutions where minors deprived of liberty reside. The main reason is overcrowding. Young people are forced to sleep two to a bed, or in turns. Sometimes they sleep on the floor, even on the bare ground; sometimes in the toilets or the corridors, sometimes on damp earth, or without a sheet or blanket. The fact that they must occasionally take off their shirts before going into the cell makes this situation even worse. Once again, cases of this sort are not confined to developing countries.

Sometimes children sleep in very large dormitories which are, for example, able to accommodate up to 500 young people.

CHILDREN DEPRIVED OF LIBERTY

3. The right to enjoy the highest attainable standard of health

Overcrowding, bad nutrition, lack of hygiene and water and the run-down condition of the sanitary installations which are to be found in a large number of institutions are the main obstacles to a good state of health for children deprived of liberty. The availability of medical care is also a significant factor.

3.1 The right to receive medical care

a. The principle

Minors held in confinement have the right to be given medical care, both preventative and remedial, including dental, ophthalmological and mental health care.

National laws or internal regulations sometimes provide for measures to be taken to ensure medical care for juveniles deprived of their liberty. Some legal provisions lay down that such attention must be free of charge; others state that it should also include any psychiatric, psychological or dental examinations and treatment considered necessary.

The right to receive care, however, is quite often and for various reasons also conditional. A distinction may be drawn between external and internal conditions.

Amongst the external conditions, the shortage of material and human resources is often acute, reflecting the general situation in many countries. It is important to look at the overall situation in the country rather than simply noting the situation prevailing inside closed institutions. Access to medical care is certainly not guaranteed to every person in the majority of the world's countries, and children deprived of liberty are in no way exempt from this ever-present reality.

Lack of means thus makes access to care and to medication, and therefore the realization of the highest attainable standard of health, dependent on the presence of outside assistance (family for instance, or some local organisation) and, critically, on the consistency of that assistance. Children supported by their family and whose parents have the means to pay, will have easier access to care than do less fortunate children. Sometimes local organisations provide medical help, for example by sending doctors or supplying medicines. When medical assistance depends on a voluntary

RIGHTS AND REALITIES

organisation – be it local or international – and should the organisation, for whatever reason, cease to operate or change its policy, there is no longer any guarantee that the right can be realized. Dependence on outside assistance carries with it this permanent risk and does not absolve a State from its obligation to provide children with their right to medical assistance. The right to medical care may also depend on other conditions relating more to the internal functioning of the institution, such as, for example, staff good-will. On occasion, access to care is in fact refused as a disciplinary measure, or because of poor – or even, in some institutions, non-existent – budgetary provision for medical care. It may even be that doctors or medical services refuse care to children in closed institutions.

b. The state of physical and mental health of children living in confinement

The deprivation of liberty sometimes poses a threat to children's physical and mental health. In fact many sources cite various symptoms and illnesses which affect children, most frequently connected with conditions of confinement.

Illnesses most often reported are skin conditions, particularly scabies. Intestinal conditions are also frequently reported, along with stomach problems, tuberculosis, malaria, haemorrhoids, respiratory complaints, venereal diseases and HIV/AIDS. Dental problems are also prevalent.

With regard to HIV/AIDS, the spread of the disease has become chronic in some detention centres and jails due to unsafe sexual activity (often linked to prostitution) and drug use. This chronic health problem has been exacerbated by the inability to seek health care among detained children and the absence of prevention strategies. There is an urgent need in many closed establishments for educational/advocacy campaigns and model STD/HIV clinical, diagnostic and counseling services.⁹³

Many minors appear to suffer from psychological problems such as depression, hyperactivity or post-traumatic disorders resulting from sexual abuse or other forms of violence. These may result in cases of self-harm or suicide attempts, amongst others.

The prevailing climate of violence in most institutions, and the abuse often inflicted on minors may also be the source of behavioural problems or of physical injuries. Sometimes no therapeutic help is offered to children who are the victims of acts of violence (see also Chapter 7).

93

Shakarishvili, A., 2001.

CHILDREN DEPRIVED OF LIBERTY

3.2 *Immediate access to adequate medical facilities and qualified medical staff*

According to international legislation, medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located. Unfortunately, as we observed, health care, when it exists at all, is provided first and foremost within the institution.

The international legal framework also lays emphasis on the importance of immediate access to adequate medical services and trained medical staff, be it only in emergencies.

Medical care is in fact available, giving more or less complete coverage, in many institutions. Such establishments, for example, can call on a range of adequately qualified medical staff attached to the institution, and on a fairly well equipped infirmary. A consultation room, which can also be used for dental treatment, a medical isolation room, and adequate equipment, are also in some cases available to the medical staff. Psychological/psychiatric consultations are possible in some institutions on a more or less regular basis.

But material obstacles sometimes make such care impossible : insufficient medicines, no means of transport to deliver them and no place to provide care, lack of medical staff, etc. A single doctor may be responsible for thousands of patients, particularly in adult prisons. Doctors and other staff may have other parallel responsibilities and can only spend limited time with children in confinement.

3.3 *The minor's access to medical assistance and health care*

a. An obligatory medical examination upon admission

In some countries, a minor undergoes a medical examination upon admission. Some regulations specify that a doctor can be appointed immediately for this purpose and that the minor should be examined as soon as possible or, at the latest, within a week after admission.

Unfortunately this examination does not always take place, or, in some cases, only if the child shows clear signs of infectious or serious illness.

b. Regular medical follow-up

Although a medical officer should see all sick detainees daily and all who complain of illness, ill children in closed institutions often wait a long time

RIGHTS AND REALITIES

before being examined. Sometimes they are never examined. Children in one instance reported that an adolescent suffering an asthmatic attack was not seen by staff until her condition was so serious that she lost consciousness. Regular medical examinations sometimes are automatic for all (once a month for example) providing follow-up on the physical and psychological state of each child.

Medical follow-up is important for several reasons : in order, of course, to monitor closely how the child's health is progressing, but also to ensure, for example, that contagious illnesses are identified. In this context, it is important to point out how infrequently steps are taken to stem the spread of these illnesses. Medical follow-up can have additional positive effects, such as that of dissuading those who inflict violence on children for fear of being prosecuted (see also Chapter 7).

c. Medical records

In some institutions, social, psychological and medical follow-up records are kept for minors. It is frequent, however, that individual medical records are not compiled, or are not updated.

3.4 Psychiatric treatment and psychological assistance

It is sometimes difficult or even impossible for children in confinement to obtain psychiatric or psychological treatment when they need it. Psychologically disturbed children are often punished or ignored instead of being treated. In some institutions, children who are seen as suicide risks are tied naked to the bed or shut in a cell in their underwear without sheets or blankets. We came across the example of one child who had piled faeces up in his cell, and had probably eaten part of it. In response to this behaviour, staff ordered him to clean the room and, faced with no reaction from the child, left him in the same state. A social worker responsible for assessing his mental state claimed he was acting. When the child was finally taken to a psychiatric centre several hours later, it turned out that he was suffering severe withdrawal symptoms from drugs. Minors with alcohol or substance abuse-related problems often receive no treatment (see also Chapter 11).

3.5 Raising awareness and providing information

Treatment specially geared to minors' personal problems (drugs, alcohol, violence) and sessions on these subjects should be provided, as should preventative programmes such as information and awareness raising

CHILDREN DEPRIVED OF LIBERTY

campaigns on subjects such as alcoholism, tobacco and drug addiction, AIDS and other sexually-transmitted diseases.

4. Food and drinking water

4.1 How this right can be respected

Children in confinement have the right to receive food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health. Clean drinking water should be available to every juvenile at any time.

These rights are in fact mentioned in some legislation or in internal regulations, as laid down in the international legal framework. It is even possible that food given to minors has to be of the level required by a charter established by the authorities. The fact that these requirements are contained in a written document is significant, for it is then easier to make complaints when they are not complied with (provided of course that children have been informed of the regulations' existence and contents).

On several occasions we were able to establish that those in charge in the institutions were doing their best to ensure that the food provided for the children was healthy and served at set times, in spite of the difficulties that this poses in some countries.

In some establishments a nutritionist draws up the menu every day; in others, the medical staff monitor the balance of nutritional components in the food served. Sometimes meals are prepared by the young detainees themselves as part of a professional catering training course. A programme of this sort is all the more interesting because it combines professional training for those who follow it with satisfying the food needs of the other children.

4.2 Non-respect of this right

The positive situation outlined above is unfortunately not common to all children in confinement. According to various sources, including interviews with children in different countries and State reports submitted to the Committee on the Rights of the Child, children often do not get enough to eat, and what they do receive is of poor quality. Cases of malnutrition are not rare. In some centres, malnutrition affects up to 50% of the juveniles. Shortage of food is all the more keenly felt because racketeering is widespread among older adolescents and adults, and the youngest and most

RIGHTS AND REALITIES

vulnerable children therefore often find themselves obliged to give up their share (see also Chapter 10).

Food has been described in different sources as “cold”, “indigestible”, “dreadful”, and “spoiled”. Often it is prepared in an unhygienic fashion. Food which has fallen on the floor, for example, is still served to the children, or foreign bodies such as hair, spittle, “bodily fluids” or pieces of gum have been found in food served to children. Sometimes the children have to eat with their fingers as no cutlery is provided.

In addition, young people deprived of liberty sometimes have no access to drinking water or have to drink dirty water. In one example, three children in a police cell had to share one glass of water per day.

4.3 Obstacles standing in the way of the realization of this right

Lack of material resources is a serious obstacle, preventing standards being respected so far as nutrition and the provision of drinking water to children in confinement are concerned. Yet again this situation in the institutions often reflects that in the whole country. But it is also possible that children in confinement are particularly exposed to malnutrition, given the scarcity of means allocated to the juvenile closed institutions. We have witnessed a situation in which the children were deprived of food because there was no wood to use for fuel for preparing it. In another case, the establishment had no drinking water because there was not enough money to pay the petrol for the water delivery truck.

As with many other rights, access to adequate food – or even access simply to food – may depend on the family or humanitarian organisations. With money, usually sent by his family, the minor can in some instances get more food. The family is often permitted to bring food when visiting the child.

The right to sufficient food is sometimes subject to conditions such as paying a bribe or good behaviour. Denial or reduction of food are used as disciplinary measures in some institutions, which is specifically forbidden by the international legal framework, and by some national laws. Inadequate, or conversely, over-rich food, may be used as a means of controlling the children.

When considering the right to adequate and healthy food, it can be observed that the violation of one right may turn into an obstacle to the realization of other rights. The violation of the right to adequate food may, for example, be an obstacle to the realization of the right to education : children who

CHILDREN DEPRIVED OF LIBERTY

have not eaten all day have difficulty in following the courses which are taught to them.

5. Going out in the open air

In some institutions children can only rarely get out into the open air – and sometimes not at all. Often going outside is restricted to one hour per day, but it is sometimes for even less, and it may only be allowed once a week. The external courtyards used for this purpose are sometimes completely inappropriate, resembling no more than a cell without a roof.

Imprisoned children have stated that their access to the open air is limited to what they are able to breathe in with their nose pressed against the wire netting in the communal room's wall during the daily hour they spend there. These children never go outside.

In a different establishment, the young people can never go out because there is not a wall in the courtyard which meets the institution's high security requirements. Those in charge of the institution have been waiting for more than a year for permission to build this wall, and for the means to do it. In some cases, the infrastructure for outside activity is inadequate : there being no external courtyard which the minors can go out into. Sometimes there is a courtyard, but it is used by adults so it cannot be used by juveniles.

6. Contact with the outside world

All means should be employed by the institution to ensure that children have sufficient contact with the outside world. Unfortunately such contact, apart from with their families, is often non-existent.

According to certain national laws or internal regulations, the minor should be able to receive visits from anyone not considered to have a bad influence on him. It is important to know who is responsible for identifying those whom the child is allowed to meet, and which criteria for identification are applied.

It is necessary to inform the children of the ways and means by which they can have access to the outside world. Such contacts may include correspondence with employers or diplomatic representatives, the opportunity to order publications, to send letters to the authorities and to international organisations. Minors may also have the chance to study or to work outside the institution (see Chapter 9).

7. Rehabilitation and social re-integration

7.1 The principle

Assistance should be provided to minors with a view to social re-integration both during the period of confinement and following the period when they are about to return home and into the community. For example, projects have been designed to help young people who have lived in confinement to find somewhere to live and a job. Some of these programs offer incentives to employers to take on these young people when released, such as exemption from social security charges.

Programmes preparing minors for release or providing assistance once they have been released are, in spite of legal provisions requiring such assistance, still often non-existent or ineffective. Moreover, existing programmes are sometimes isolated efforts and not framed in any genuine or comprehensive re-integration policy. Staff are often inadequately trained for this kind of service.

Often it is a lack of human and financial means which prevents the setting up of a framework which promotes and facilitates the reintegration of these young people into the community. If statements made by many professionals and by some of those in charge of closed institutions themselves are to be believed, establishments may just be 'warehousing' children, without setting up any schemes which might promote their re-integration into society.

Living conditions in institutions and respect (or lack of it) for children's rights can certainly have consequences for the children's development and chances of rehabilitation. It would even seem that, due to the atmosphere of violence, abuse, and contact with other youths more hardened than themselves, these conditions can transform "at risk" children or delinquents responsible for petty misdemeanours into juveniles capable of performing serious criminal acts (this is especially true where children are confined in prisons for adults). Prison has often been referred to as "a school for crime". Rehabilitation schemes are an important way to counteract these types of influences.

Another problem worth noting is the almost total absence among the general public of awareness-raising programmes directed towards easing the social reintegration of children who have been imprisoned.

CHILDREN DEPRIVED OF LIBERTY

7.2 The rehabilitation process before release

The child's rehabilitation process ought to start on the first day of deprivation of liberty within the institution. His return home and into society should be prepared from the very outset. Programmes are sometimes set up towards this objective such as counselling services, individual, family or group therapy, or programmes promoting constructive peer contact. In some cases the detention regime aims to deepen young people's sense of responsibility, for example, by encouraging increasing autonomy in everyday domestic tasks. Gradually the child may be allowed to leave the institution to go to work or study outside or to return home from time to time for a few days or weeks. In this way there is as little dissociation as possible between life inside the establishment and that outside of it.

In some cases, at the same time, efforts are made to prepare the child's family for his return home.

7.3 The process of reintegration after release

Programmes of assistance after release which aim to help young people overcome the difficulties they face when attempting to fit back into life outside also exist. Help may consist of finding the child a school, work, an apprenticeship, or accommodation as well as re-establishing contact with the family. The process of integration with the family may be followed up a few months or a year after the child's release to monitor and assess the situation and to intervene if needed. Sometimes young people leaving the institution are provided with the equipment they need to start their own small business.

In some cases (open) re-adaptation centres are set up where the young people can, once out of the institution, acquire the skills necessary to re-integrate into society. Various transitional arrangements exist between the situation of confinement and returning to the community. It is preferable that these intermediary stages are integrated into set-ups which are open to all children, so that places are not created which are only open to former inmates. These intermediary stages can make a big contribution to reducing the time spent in institutions and to making social re-integration increasingly effective. This issue is returned to in Part 4.

RIGHTS AND REALITIES

Conclusion

Of course the standard of living which the confined child is able to enjoy depends largely on that pertaining the country of residence as a whole. In this regard, to respect far children's rights to an adequate standard of living requires a greater international solidarity, as is stated in article 4 of the Convention. It also requires a structural and integrated approach as a whole to tackling prevailing problems of economic development and the fair distribution of resources in certain countries facing massive material and social-economic obstacles.

It is, however, also true that children deprived of their liberty are particularly vulnerable to any denial of their right to an adequate standard of living. The special protection that children deprived of parental care are entitled to is often lacking (CRC, article 20). In spite of many efforts which are made to guarantee a basic minimum of respect in institutions confining children, the realization of this right is often conditional on other factors. Too frequently it depends on elements such as external assistance, on how much money is available to the minor and his family, on his behaviour or on the good-will of institutional staff responsible for providing the children with those services to which they are entitled.

Chapter 7

Civil and Political Rights and Freedoms

Introduction

The category of civil and political rights and freedoms will be dealt with in this and the next chapter. Chapter 8 is devoted entirely to the legal protection of the child *stricto sensu*, that is, the protection provided by legal guarantees in the course of the procedure which may lead to the deprivation of liberty of a child, as well as those guarantees which contribute to respect for the child's rights during the period of confinement. Other civil and political rights are discussed in Chapter 7.

1. Name, nationality and protection of identity

To have a name and an identity is of particular importance to children in confinement, if only to avoid becoming just a number lost in the crowd. It is essential for the sake of his dignity as a human being that every child confined in an institution retains his own identity. This necessity is especially apparent in crowded – and overcrowded – detention centres in which there may be hundreds of children crammed together, sometimes without even having their names recorded on a register.

As a corollary to the child's right to an identity is the right to be registered immediately after birth, a right violated in many States, particularly in developing countries. One consequence of the failure to register the child's

CHILDREN DEPRIVED OF LIBERTY

birth is, the risks of being detained or treated as an adult when, in fact, a child is below the age of eighteen.

2. Freedom of expression and access to all forms of information

Introduction

Children deprived of liberty have the right to freedom of expression and to seek and receive information and ideas of all kinds. States must ensure that children have access to material and to information coming from different national and international sources.

In reality, however, such access is scarcely guaranteed, if at all. In the pages that follow, there is an overview of some areas in which children ought to be well informed, together with some of the reasons which could account for difficulties in realizing this right.

2.1 Information about rights in general

Children ought to be told of all the rights to which they are entitled under the terms laid down by the international legal framework and by national legislation. Several reports made by NGOs indicate that this is not always the case.

The information that a juvenile should receive, including that concerning his right to a lawyer, the right to integrity (and therefore the prohibition of ill-treatment inflicted on the child by any person), or the right to be released on bail, is crucial not only in terms of basic civil rights, but also in the context of children contesting measures of deprivation of liberty and their duration.

Sometimes non-governmental organisations come to detention centres and explain to children what their rights are.

The lack of provision of such information for minors may, in some cases, betray a more general ignorance as to the contents of these rights and what they mean both outside and inside institutions. Similarly, the difficulties in accessing the media may reflect difficulties that the population as a whole may encounter when trying to obtain information.

RIGHTS AND REALITIES

2.2 Information about internal regulations

Immediately when they arrive in an institution, children should be informed about internal regulations, organisation, and about their rights and obligations so that they know how to behave. But sometimes they do not get any of this information.

For instance, frequently children do not know how to make a complaint inside the institution, nor what the disciplinary rules are which they have to respect. Children often do not know how to get in touch with their family.

In systems based on good behaviour, children sometimes do not know which criteria have to be observed in order to get privileges.

The rules may be difficult to understand. In order that children become familiar with their rights and obligations, internal rules should be drawn up in a manner which is comprehensible to them and in a language they understand. However, this does not always occur. Rules may be unclear and barely accessible to the minors, or may not cover all the subjects that they ought, such as the procedures to be followed when disciplinary steps are taken.

The problem is particularly acute for illiterate children and for those who do not speak the official language. These children have the right to call on help to understand the rules fully, but staff will often not take the trouble to help.

One problem in particular arises when children in confinement do not have the right to discuss amongst themselves and tell each other about the formal and informal rules of the institution.

2.3 Ensuring that the child understands what is happening to him

Even though the international legal framework requires it, children are not always told of the reasons for their deprivation of liberty. In institutions, they are sometimes left without being told either of their fate or of the regime they will be made to follow.

They do not know when they will be released, or else the date for release passes without anyone informing them. Children tell of having been transferred in the middle of the night from one centre to another without knowing where they were being taken. Some have absolutely no idea what is happening to them.

CHILDREN DEPRIVED OF LIBERTY

2.4 Access to the media and to a library

Often, no library is available in the institution. Access to books, newspapers and publications may even not be allowed. As a result, confined children are often cut off completely from news of the outside world.

An obstacle to the full exercise of this right is that media access may be linked to good behavior. Denial of access to radio, television, newspapers, books etc. is sometimes employed as a disciplinary measure. In some cases, media access represents a privilege that is awarded on the basis of merit. Media access can also be restricted if it is considered to be necessary “in the interests of the investigation”. Thus, several situations may make the right to access to information conditional.

3. Freedom of thought, conscience and religion

Children in confinement have the right to freedom of thought, conscience and religion. Such freedom includes, for example, the possibility to satisfy the needs of his religious and spiritual life, to attend services provided in the institution, to have access to a qualified representative of his religion and to enjoy a diet which accords with its requirements. Some centres do offer young people in detention spiritual activity, organised for instance by a chaplain. Some establishments make adaptations to these activities to suit detainees from minority groups.

These rights are, however, for various reasons, not always respected in institutions. It may be that no provision is made to allow minors to practice their religion either inside or outside the centre. For example, the elements necessary for certain ceremonies or rites may not be available. There may be no place suitable for prayer or meditation. Some religious practices have to be approved by the centre’s director.

So far as diet is concerned, it is not unusual for special dietary restrictions to be ignored. On the other hand it is also possible that, going beyond the requirements of the international legal framework, some State’s regulations impose an obligation on the institution to adapt its food to fit in with detainees’ religion, and not simply to do so “as far as possible”, as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty stipulate. Legislation can also require that the child’s religion be recorded on admission to the institution.

Conversely, it can also happen that juveniles in confinement are forced to follow religious instruction which is not in accordance with their own beliefs

RIGHTS AND REALITIES

or that, deprived of their liberty in religious camps or schools, they have to spend whole days at prayer, to the extent of undergoing indoctrination or brainwashing. In some institutions, obligatory religious instruction is presented within the framework of treatment, as part of a rehabilitation programme.

4. The right to privacy

Children in confinement should not be subjected to arbitrary or unlawful interference in their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. They should be protected against such interference.

The right to privacy – and violations of this right – may occur in different forms, some of which are discussed below.

4.1 Privacy within the institution

The privacy of children within the institution is not always respected by staff. In addition, respect for that privacy may be made difficult by the layout of the establishment.

Dormitories are sometimes very large, on occasion accommodating several hundred children; showers are often communal and toilets not appropriately separated. If there are no sanitary blocks, minors are even sometimes forced to use a chamber pot while the other detainees in their cell are watching. Such conditions are yet another obstacle to exercising the right to privacy. Children also complained that they did not have the right to be left alone “to read or to think” in their cells but had always to stay part of a group.

*“My mate has to ask the educator for permission to come into my room; he’s never allowed to ask me. I’m never the one who’s able to decide.”
(Verbatim testimony from a young person in detention.)*

As a general rule, it is the warders who switch lights on and off at fixed times.

4.2 Personal belongings

Whereas in some centres, young people have no right to keep personal effects in their room or cell, the international legal framework recognizes this entitlement not only as a basic element of the right to privacy, but also as one essential to minors’ psychological well-being.

CHILDREN DEPRIVED OF LIBERTY

Inside institutions, this right is sometimes subject to conditions such as the minor's status in the institution, and the need not to offend against any code governing order and discipline, or create hygiene problems.

4.3 The right to wear one's own clothing

Children sometimes are not allowed to wear their own clothing, a right which, according to the international legal framework, should be granted to them to the extent possible. Instead, children wear a uniform or clothes provided by the institution. These clothes may be marked with the institution's initials, or may be of a particular colour in order, for instance, to reduce the likelihood of escapes.

There are centres for minors in which a points system has been established, allowing good behaviour to be rewarded by permission granted to the minor to wear his own clothes.

Juveniles' hair is sometimes shaved. Shaving of the head is also used as a disciplinary measure.

Such practices have the effect of stigmatising young people, and create a punitive atmosphere that is damaging to rehabilitation and future reintegration. It must be remembered that these children who are forced to wear uniforms or have their hair shaved have not all committed a criminal offence (see Part 1).

4.4 Monitoring of correspondence and telephone use

Correspondence received and sent by juveniles is regularly monitored, opened or censored. Some regulations even stipulate that every letter must be read by someone in authority in the institution, who can then censor it as to content or length.

According to some laws and regulations, interference with correspondence must be subject to rules such as to prevent forbidden objects coming into the institution, the creation and infiltration of criminal networks, or any incident taking place which might be prejudicial to the centre's, the minor's, or anyone else's safety. In an effort to limit possible violations of this right, the standards in question can require in addition that the decision concerning the correspondence be taken by someone in a position of authority. Such decisions may involve opening suspect mail.

Respect for privacy during telephone conversations, which is not addressed specifically in the international legal framework, is provided for in some national laws. However, staff sometimes monitor phone-calls between the

RIGHTS AND REALITIES

juvenile and his family or his lawyer. Telephones can be situated in places that preclude privacy, such as community rooms or even the director's office. Various legal provisions exist which allow the right to privacy to be waived, for example "in the interests of the juvenile's health or development".

4.5 Privacy during visits

The frequent lack of privacy for the minor's family or his lawyer during visiting hours must also be stressed. Visiting-rooms are often arranged so as to make it necessary to shout if people are to hear each other, or so that warders are able to listen to conversations.

Measures to guarantee privacy have, however, been adopted in some centres, and special steps are taken during lawyers' visits which occur in an area specially set aside for the purpose, so that conversations cannot be overheard by the supervising official. Inspection of the contents of the texts and documents brought in by the lawyer may also be forbidden.

4.6 Protection from exposure to the public

The law in some countries requires that a list of all detained persons be published. Viewed from the point of view of children's rights, this requirement has both a positive and a negative side : positive because it allows some sort of monitoring of the confined population, and negative because the child in confinement ought to be protected from exposure to the public.

When the media, seeking to denunciate violence inflicted on children in confinement, publish names and photographs or show images which might reveal the identity of such young people, they too are violating the child's right to protection from exposure.

Finally, when it comes to transferring children from one place to another, the person who accompanies the child to court or anywhere else outside the institution, might in some cases be required not to wear a uniform so that the juvenile's identity would be revealed as little as possible. For the same reason, the transfer is sometimes made in an ordinary, unmarked car.

4.7 Searches and fingerprinting

When techniques such as making searches and taking fingerprints are used on a child, it may constitute a violation of his right to privacy. Such practices are, however, not uncommon : some national provisions provide for the existence of "probable and reasonable" motives which can justify their use,

CHILDREN DEPRIVED OF LIBERTY

for example, in the case of emergency searches designed to detect dangerous or harmful contraband goods.

Measures can be taken to avoid as much as possible the negative consequences of these practices. Searches carried out by people of the opposite sex are sometimes not allowed. Similarly, bodily searches may not be made, as far as possible, in front of another detainee.

Such observations are equally valid in the case of finger-printing which can be limited to occasions where the child, his parents, or those looking after him, have given formal consent, or else as the result of a court order.

5. The right to human dignity and personal integrity

Introduction

Violations of human dignity and personal integrity can take different forms and be of varying intensity. We have, in accordance with the standards of the international framework, distinguished three types : torture; exploitation; and other forms of abuse, and ill-treatment which includes cruel, inhuman or degrading treatment. The value of this classification is only indicative, and some acts may be equally placed under more than one heading.

Recognizing the detained child's right to integrity puts the question of institutional violence in context.⁹⁰

90 Institutional violence can be found at three levels: "the first stage concerns the mental suffering inherent in the removal process and comes from the act of distancing the child from his natural surroundings. Faced with adaptation problems, the institution most often chooses to personalize the welcome, encouraging the maintenance of links with the family and possibly questioning the appropriateness of the placement.

The second stage corresponds to the chronic features of neglect and violence. This manifests itself as abandonment and neglect, lack of respect for privacy, humiliating corporal punishment. Such practices can be found in the context of endemic institutional dysfunction. Aggravating factors might be increased mechanization of acts, adults transferring attention to their own problems so that they become less available to those in their charge, the globalization of socio-educative action. Responses likely to counteract this situation depend to a large extent on collective re-appraisal of the entire project, on individual follow-up of those involved, on supervision of any intervention attempts and on resolution of group tensions. (...)

5.1 *Torture*

a. The principle

Although the international legal framework requires that no child be subjected to torture, children deprived of their liberty do sometimes fall victim to such treatment. A large proportion of urgent appeals made by the World Organisation against Torture on behalf of children in confinement denounces the torture of children in closed institutions, and in 1993 the organisation even claimed it had, during the previous years, recorded “a resurgence of cases of physical or psychological torture affecting children”.

This resurgence of violence does not necessarily correspond to a worsening of the situation but can as well be explained by increased rate of reporting of violations against children, since the adoption of the Convention, so far as problems affecting children in confinement are concerned.

b. Different forms of torture

The acts of torture perpetrated against children vary from being subjected to jets of cold water in the middle of the night and not being allowed to use the toilet, deprivation of sleep or drink, to amputations, and genital mutilations. Acts of torture also include the gouging out of eyes, being tied up in uncomfortable positions, immersion in a septic tank, cigarette burns to the face and body, being hung up by the ankles, wrists or hair, having objects inserted into the anus, and being forced to take sedatives and electric shocks.

One method of torture consists in hanging the victim by the hands and feet from a pole set between two chairs and beating him, making the body swing back and forward. Another method reported is to soak the cell so that the victim cannot sit down : the water comes up to his knees or freezes,

(...) The final stage addresses critical situations including brutality, sexual abuse, mental cruelty. That such ultimate violence emerges is due to at least three conditions: powerlessness, fear and the closing-in of the institution on itself, making internal processes exaggeratedly intense as a result. From then on, the crisis within the institution is close to eruption. Only one response is possible: a complete assessment of representations concerning the action taken from all those involved, of relations with authority and of distinguishing factors (between positions of differing status, function, job etc)“ : Durning, P. cited in Tremintin, J., *Journal du Droit des Jeunes*, 1998, no. 174, p. 25 (unofficial translation from French).

CHILDREN DEPRIVED OF LIBERTY

depending on the temperature which can go down to minus 20 degrees centigrade, the victim wearing only a shirt. Children are also placed in a hole the size of their body, where they must remain upright, sometimes for 24 hours.

These incidents appear to take place most often on police premises, during the arrest, or during pre-trial detention.

c. Motives

By committing an act of torture, the actor must be seeking to achieve certain aims :

The aim of forcing the child to confess or in order to obtain information

Minors may be forced to confess to offences for which they are often not guilty. They are also tortured to extract confessions from their parents. Torture can also be mental : one child told of being threatened with a firearm by a policeman who put pressure on the trigger in order to frighten him. Some children are threatened with life imprisonment if they do not confess.

Most national laws specifically forbid the use of torture to obtain confessions or information, and lay down sanctions for those responsible. These may go so far as imprisonment. Courts of law in general consider evidence obtained by such means to have no legal value. But it does happen that “moderate” or “reasonable” physical pressure is allowed under national law when other means of obtaining confessions or information have not been effective. These exceptions leave the door wide open for differences in interpretation and for abuse.

The aim of dissuading new offences

The reason sometimes given to justify torture is to intimidate the child so that he will be persuaded not to commit further offences. NGO reports cite numerous examples of children under police arrest who have been beaten and released without any formal record having been kept. Practices like this are also employed in the case of children who have not committed any offence at all.

When the police mistreat and torture a child in public, they may also be seeking to intimidate the population as a whole. There is the example of a juvenile tied to the back of a vehicle and towed for several hundred metres in front of people from his own community with this intention.

RIGHTS AND REALITIES

The aim of punishing the child

Police sometimes ill-treat and torture children to teach them a lesson, or as “pre-judgment”. They take on the role of judges to the extent, in the opinion of some NGOs, that inquiries, trial and sanctions all take place in the police station.

The aim of obtaining money by force from children

Corruption may be a pretext for the violent treatment of children : some are threatened with beating if they do not hand over such money or goods as they have on them. The police in some countries view the arresting and torturing of children as a means of earning money for themselves.

5.2 Other cruel, inhuman and degrading treatment

a. The principle

Children deprived of liberty must be protected from cruel, inhuman or degrading punishment or treatment. Unfortunately this principle is not always respected. Some examples of the sort of treatment practiced on children deprived of liberty are detailed below.

b. Work

No child ought to be forced to perform any work that is likely to be hazardous or to interfere with the child’s education or to be harmful to his health or his development.

Work done by children in confinement can, however, involve very long hours and difficult conditions. Children may be sentenced to hard labour and put in work camps where they work in the fields or perhaps in the construction industry on public projects. Work there can be extremely hard and tiring (seven days a week, rest periods exceptional, etc.).

c. Physical exercise

The keep-fit exercises which minors have to do in some detention centres can be extremely tiring and inhuman. Children are sometimes forced to continue their efforts to the point of exhaustion. Military-style discipline and physical exercises practiced in some centres illustrate this. Even though some young people think that this type of treatment is beneficial, others who are less physically fit are humiliated by these physical exercises and disciplinary measures. These types of exercises are also discussed in Part 4, in the context of “Boot Camps”.

CHILDREN DEPRIVED OF LIBERTY

d. Clothing

In Chapter 6 we saw how children detained in institutions are sometimes forced to remain naked or dressed in dirty, torn clothes. This can be genuinely humiliating for them, and can therefore be classed as degrading treatment.

e. Restraining measures

Recourse to instruments of restraint with minors is forbidden except in exceptional cases where, for instance, all other control methods have been exhausted. Under some national laws the use of handcuffs, straight-jackets and other methods of control are not allowed. It can happen that consultation with a mental health professional may be required when, for example, some means of restraint is used for an hour (or more).

Various NGO reports cite examples of the use of instruments such as handcuffs, foot irons and chains on children. Children can be tied together to a bed. On occasions chemical agents, pepper gas, sedatives or electric shocks are used as well. Another example is the “four-point restraint” being used, a practice which involves tying the minor to a chair or bed by his ankles and wrists or by the torso, facing towards the ground. Children are sometimes shackled like this without a break, even overnight. We recorded the case of a child who spent eleven of his twelve years in prison with chains on his feet.

Reasons given by those responsible for such treatment include the need to prevent escapes or suicide or as a disciplinary measure. In some countries handicapped children can be imprisoned legally and chained up “for remedial purposes”, until they are “cured”.

f. Carrying and using firearms

Although the international legal framework forbids the carrying and use of weapons in any facility where juveniles are detained, some national laws do authorise their use when, for example, a young person behaves in such a way as to endanger the lives of others.

g. Disciplinary measures

The international legal framework requires that order and discipline be firmly maintained, but without entailing more restrictions than are needed for the purposes of safety and an ordered community life.

Young people themselves are sometimes directly involved in disciplinary policy. In some facilities, for example, meetings are organised with the children who themselves evaluate disciplinary rules and discuss positive

RIGHTS AND REALITIES

and negative aspects which have been noted during the week. Minutes may finally be drawn up and signed by the young people so that any decisions they have made concerning suggestions for improvements put forward have more validity.

Any disciplinary measure must be consistent with the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person. The punishments listed below, which are related to different rights, and which are being discussed in several chapters of this third part, do not conform to those criteria.

- Denial or restriction of family visits or outings to the family
- Transfer to a facility further away from the family
- Denial of correspondence
- Refusal of medical help
- Denial of food
- Denial of education
- Exclusion from sporting activities and open air outings
- Not being allowed to read
- Arduous work
- Exhausting physical exercise
- Use of instruments of restraint
- Mixing with adults
- Imprisonment (for children detained in closed institutions for minors)

Solitary confinement and corporal punishment also figure amongst disciplinary measures which amount to cruel, inhuman or degrading treatment and are outlawed by the international legal framework.

Solitary confinement

Solitary confinement, although forbidden as a disciplinary measure, is still encountered fairly frequently in facilities for juveniles.

When isolated, juveniles do not generally leave their cell except to use the toilet or take a shower. However, very often, neither of these “excursions” are authorised. Cells may well have neither windows nor light. One child testified that he had been kept for two months in solitary confinement and had the impression of having slept and eaten in the toilets since these were next to his bed. Young people in isolation have mostly no distractions. Generally they have no right to visits nor the use of a telephone. They are thus cut off from all contact with their family and their lawyer. This sanction

CHILDREN DEPRIVED OF LIBERTY

can sometimes be extended for several weeks or even months. The child may also be placed in an isolation cell for a few hours in order to instill fear in him. Children in some institutions stated that solitary confinement was resorted to frequently.

Minor misdemeanors sometimes are given as the reason for isolation. Children told of having been put in isolation because they had talked when ordered not to, or because they had not put their hands behind their back when a warder had instructed so. A young person may also be put in solitary confinement because he is thought to be homosexual. As we shall see in Chapter 10, reasons for isolation are not always a matter of discipline : it may also be imposed in response to the need to separate juveniles from adults.

Some national laws permit solitary confinement provided it operates under some conditions; if, for example the juvenile's security or that of his fellow inmates require it, or because of the investigation. Such laws can also include the proviso that the decision must be taken by the institution's director or that isolation is only allowed for a limited period of time.

In some cases too, there is a sense of efforts being made to humanise isolation conditions. Criteria to which such a measure should conform are occasionally fixed by law. For example :

- Rooms where minors are to be confined must be heated, ventilated, naturally and artificially lit, of a minimum size, provided with fire-fighting equipment, and with a draining system, with adequate sanitary facilities to ensure proper hygiene, with at least one bed or sleeping platform, a table and a chair;
- The young person in isolation should receive a daily visit from both a member of the management team and a member of the medical team, as well as a visit every two hours (between 8 a.m. and 10 p.m.) from staff belonging to the education team who undertake to converse individually with him and to engage in some form of individual educational activity;
- The judge is to be invited to visit the young person; the latter has to receive the same attention so far as food, hygiene and medical care are concerned, as is paid to other young people in the institution's care;
- The institution must keep a register of young people placed in solitary confinement, and of everything which happens to them during their period there.

RIGHTS AND REALITIES

However, such attempts to alleviate the pernicious consequences of solitary confinement still do not make it into a measure that conforms to the international normative framework.

Corporal punishment

Despite being prohibited in the international legal framework, corporal punishment is sometimes used as a disciplinary measure by institution staff.⁹¹ Corporal punishment is even cited several times in NGO reports as the disciplinary sanction most frequently resorted to. In some countries it is the main source of children's complaints. In order to increase the humiliating aspect of this form of punishment even further, it is sometimes administered in public.

In some cases, national laws allow flagellation or corporal chastisement, claiming such treatment to be "in the interests of the child", or when it is a question of "disciplining" him, or if it has "proved to be necessary". In other countries, it is prohibited, sometimes even by the Constitution.

5.3 Exploitation

Exploitation of children in confinement can take several forms :

a. Economic exploitation

Every child who has been deprived of liberty has the right to be protected from economic exploitation. Diverse forms of such exploitation can, however, be observed in closed institutions :

- Non-remunerated domestic chores allotted to children are sometimes distressing and take up most of their time. They may be performed under a warder's direct and strict supervision. The dividing line between exploitation and general participation in the facility's maintenance is extremely thin.

91 Although not explicitly prohibited in the CRC, the Committee on the Rights of the Child considers corporal punishment as contrary to articles 19 and 37 of the CRC. Report of the Seventh Session, Committee on the Rights of the Child, UN Doc. CRC/C/34, Annex IV, September-October, p. 63. The UN Special Rapporteur on Torture has also stated that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment", Report of the Special Rapporteur, Commission on Human Rights, 53rd session, Item 8(a), UN Doc. E/CN.4/1997/7 (1997).

CHILDREN DEPRIVED OF LIBERTY

- Children are forced by fellow inmates to do domestic chores and other work in their place. The weakest children are the ones most often burdened with unrewarding and tiring tasks.
- Minors' education and training can sometimes be the pretext for exploitation (see Chapter 9). Under the guise of professional training, minors are in fact made to do work which is unlikely to be of any use to them in the future and which only benefits the institution.
- They are not paid or paid very little for their work (see Chapter 9), even when the products they make are sold.
- They are used as domestic slaves in the homes of some institution staff.
- Warders, or particularly the police, extort money or goods from them. This situation is especially true in the case of street children. A 9-year-old girl stated that a policeman had threatened to put her in a cell with adults if she did not give him her money. This money is sometimes spoken of as protection, but payment does not necessarily guarantee anything. Bribes can be demanded by warders or other inmates inside institutions to give access to various rights.

b. Sexual exploitation

Children in confinement have the right to protection from all forms of sexual exploitation. In particular, measures should be taken to prevent the inducement or coercion of a child to engage in unlawful sexual activity, or the exploitative use of children in prostitution or other unlawful sexual practices.

NGOs are repeatedly reporting and condemning sexual abuse practiced on minors in closed institutions. These practices are confirmed over and over again by children being questioned. Up to about a quarter of the children in a given place may be the victims of sexual abuse. It is as likely to be perpetrated by warders as by adult or older fellow inmates. In the latter case some children – generally the most vulnerable – may even become the regular sexual partner of a particular abuser, the cell leader for example. It was repeatedly made clear that abuse of co-detainees is tolerated by prison staff, who, according to the international legal framework, are duty-bound to ensure integral protection of minors' physical and mental health, including protection against sexual abuse.

Girls who are detained amongst men and/or supervised by male warders are under particular threat. However, we must recognize that girls in women prisons and guarded by women are by no means free from danger either.

RIGHTS AND REALITIES

The intention to abuse a child can even lead to that child's arrest. Indeed it seems that in some countries, girls are sometimes arrested simply to be raped. They are then released without a report being drawn up or any accusations made against them. Young girls are sexually propositioned in exchange for being set free.

Prostitution appears in different forms in prisons. The practice among children in detention can be "voluntary" or forced. In the first case, young people exchange sexual favours for food, money, cigarettes or drugs. The stronger boys may use food to force the most vulnerable to engage in homosexual relationships. Given the minimal quantity of food that children might be getting in the institution, one can see that such a suggestion of exchange implies no real choice at all. In the case of forced prostitution the business may be organised and controlled by adult detainees, or by the staff. For example, there are cases of warders ordering girls to leave prison to take up prostitution and then requiring a proportion of the girls' earnings to be handed to them.

c. Abduction of, sale of, or traffic in children, and all other forms of exploitation

Children should be protected against abduction, sale or traffic for any purpose and in any form.

Minors vanishing after being arrested is not a rare occurrence. Juveniles are arrested, then held in an unknown place. The authorities often deny keeping the young person, but he is never seen again.

Another aspect of the sexual exploitation of children is the use of children in sexual traffic.

5.4 Other forms of ill-treatment

a. The principle

Children in confinement have the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or maltreatment.

The reality within closed institutions may, unfortunately, be very different. Children deprived of their liberty are often victims of ill-treatment inflicted on them by institution staff and by fellow inmates. Staff are sometimes indifferent to the perpetration of ill-treatment on children within the institution. Staff members are, according to international standards, obliged

CHILDREN DEPRIVED OF LIBERTY

to ensure the integral protection of the children's physical and mental health, including protection from physical, mental and sexual abuse and exploitation.

b. Violence among inmates

Children may be victims of the violent atmosphere that often exists among inmates. In fact, in most detention centres the 'law of the jungle' prevails, determining how detainees relate to one another : the strongest – whether adults or children – bully the weakest, mistreating and abusing them.

Staff members in such circumstances may not take on the role of protector which they are supposed to play. Children reported that warders do not always intervene on their behalf when they are victims of fights or ill-treatment and that their complaints are often ignored. Staff tolerate inter-detainee violence, either because they are indifferent to it or because they are afraid to intervene. Some officials in centres for minors even go so far as to supply the young people with weapons.

The internal organisation of institutions which, in some cases, favour the rule of the strongest, may encourage ill-treatment practiced by inmates on each other. Cells may be run like a State with a captain or chief, a prime minister, a judge and a prosecutor. When a prisoner breaks the rules, he is judged first within the cell. Depending on the offence, sanctions may range from whipping to confinement in a discipline cell. If the crime is more serious, the head of the cell makes a report to the institution's senior management. All such procedures are arbitrary and depend solely on the prisoners running the cell.

For these reasons, amongst others, it is often the case that an atmosphere of insecurity prevails in such facilities. Some young people claim to be terrified either at the idea of leaving their cell, or of going back to it and many of them stated that they did not feel safe. The psychological consequences of such a situation are undoubtedly significant.

c. Other forms of ill-treatment inflicted by staff

In addition to the incidents of torture and exploitation already discussed, mistreatment may take the form of verbal aggression or blows delivered with all kinds of implements, sometimes resulting in death. In some countries, verbal attacks are permitted "in the child's interest".

Ill-treatment suffered by children in different establishments is often described as "constant", "very widespread", "common" or "routine". Children confirm the violence and abuse they are made to suffer. NGOs have conducted studies of children in police custody or detained elsewhere

RIGHTS AND REALITIES

which reveal that up to 80% of children claim to have been maltreated by staff. Many of them attempted to run away from the institution in order to escape ill-treatment. One State Party to the Convention mentions in its report to the Committee on the Rights of the Child that almost 20,000 children run away from closed institutions each year for this reason.

While not wishing to claim that detained children are all “models of good behaviour”, it does appear that they are often beaten for trivial reasons or sometimes for (almost) no reason at all. Whereas it is clear that no behaviour – even the most serious of transgressions – can justify physical abuse from those in authority, the fact that such abuse occurs apparently without significant reason can intensify the trauma which the child suffers. Children talking about abuse they have suffered very often refer to the unjust nature of the warders’ violence. For example, young people who have been beaten were so treated because they had looked at a warder in a way which the latter considered impertinent. They might have said a wrong word, or made a mistake in a dictation, or even threatened to commit suicide. According to some testimonies, they could be beaten for no reason at all. Minor behavioural indiscretions in no way justify the use of force. Looked at from the child’s point of view, the trauma produced by ill-treatment is aggravated even further because the punishment is gratuitous, and the injustice of it is all the more violently resented.

d. Staff employed to look after children

Ill-treatment inflicted on minors by institution staff presents an especially serious issue. As outlined in Part 2, staff members can, under the terms of article 19 of the Convention, be considered as people to whose care the child has been entrusted. The Convention includes a special article for abuse perpetrated by those responsible for the child – even if we are dealing with the same incidents as those caused by people with no particular responsibility – precisely in order to bring out the particular nature of this problem. The important distinction made is due to the responsibility that the adults have for the children in their care. This means therefore that they are expected not only to ensure that the child’s interests and rights are respected but also that they do not betray the confidence and trust that the children generally have in them.

5.5 *Elements that encourage violence within closed institutions*

Some reasons are listed below which may encourage ill-treatment as regards children, and violence in general inside closed institutions :

CHILDREN DEPRIVED OF LIBERTY

- Confinement conditions in general;
- Being imprisoned with adults (see Chapter 10);
- Inappropriate classification : the children are not always placed in the institution in a way which protects them from pernicious influences and risk situations (see Chapter 10);
- Promiscuity : overcrowding in many places encourages violent, including sexually abusive behaviour, as well as neglect or failure to intervene by staff (see Chapter 6);
- Lack of staff training (see Chapter 10);
- Staff impunity (see below).

5.6 Impunity

Ill-treatment, exploitation, torture and other cruel, inhuman and degrading treatment inflicted by warders or the police on detained children often goes unpunished.³⁷ This may appear as encouragement of such behaviour. Some of the reasons for this climate of impunity are listed below.

a. In certain ill-defined circumstances, the use of force by officers of the State may be permitted

National laws allow, in certain situations, for agents of the State to employ force and violence (corporal punishment for example) when exercising their functions. In order to use such force they only need to have a “legitimate motive”, to employ “slight” or “reasonable” force. The use of force should “accord with the interests of the child” or should not exceed what a “good parent” might do. Resorting to force, depending on the national legislation, can also be possible for legitimate defence; in order to protect the juvenile or others; to prevent damage to property; to prevent an escape; or when the arrest takes place.

Because of the vague and imprecise manner they are expressed, these legal provisions leave the door open to abuse. At what point does corporal punishment become unreasonable? What kind of punishment accords with the child’s interests? What does a good parent do? These ideas are not clearly defined, and are therefore open to very wide interpretation. As a result they can easily be used by the perpetrators as a pretext to reduce their responsibility or be completely relieved of it.

RIGHTS AND REALITIES

b. In the culture of some countries, corporal punishment is accepted

The weight of tradition can be an important obstacle in the pursuit of those responsible for this kind of violation of children's rights. In many societies, corporal punishment is still considered to be a legitimate means of upbringing. It is very unlikely in such cultures that the children or their family would make a complaint about such treatment, or that judicial or prison authorities would sanction such acts.

c. When State agents are obeying orders, their responsibility may be attenuated

Some national laws state that those who commit acts of violence or torture on minors can have their responsibility reduced in so far as they are obeying orders from a superior officer. A provision of this nature is contrary to article 2(3) of the Convention against Torture which stipulates that an order given by a senior officer or on public authority can in no way be invoked as justification for torture.

d. Those who carry out ill-treatment conceal the evidence of their actions

A torture incident is frequently transformed in official reports into suicide or the result of a confrontation between prisoners. This makes it extremely difficult to prove the guilt of those responsible.

e. Medical examinations of children are not carried out systematically and are not necessarily impartial

Obligatory medical examinations of children systematically carried out when they arrive in the institution after police detention and periodically during their period in confinement could help dissuade those who make them undergo ill-treatment. Unfortunately such examinations are not often made part of the procedure (see Chapter 6).

It is also possible that the medical staff who perform the examination may be employed by the facility administration. Exposed to institutional pressure, such staff no longer have the independence and objectivity needed to expose the abuse which may be discovered while examining the children.

CHILDREN DEPRIVED OF LIBERTY

Conclusion

The different sources we have studied do not in general provide extensive coverage of the respect for the civil and political rights of the child, with the exception of that to integrity which derives from article 37(a) of the Convention on the Rights of the Child.

Respect for the rights to participation (articles 12 to 15) is for the most part not examined at all, or dealt with very briefly. Such an observation is hardly surprising, since these rights in particular require a new approach to the child : the child as subject with rights and no longer exclusively as an object to be protected. This approach implies enormous challenges to the traditional methods of dealing with children's rights. The absence of information about the rights to participation of children inside detention facilities reflects the minimal amount of importance that is often accorded to them.

Chapter 8

Civil and Political Rights and Freedoms : Legal Protection

Introduction

To have rights only has real meaning if they can be exercised and if it is possible to contest their violation. This chapter discusses the ways to guarantee the rights of children deprived of liberty (ensuring that they can be exercised by children and that can be challenged non-respect before a court or other authority), as well as obstacles that need to be overcome to achieve the full respect of children's rights. A distinction is made between legal protection during the procedure that leads to the deprivation of liberty and legal protection during the deprivation of liberty.

1. The right to legal protection during the procedure that leads to the deprivation of liberty

Introduction

The deprivation of liberty is not in itself prohibited by the international legal framework. However, the procedure that leads to such a measure is subjected to several conditions such as the necessity to impose this measure only as a last resort and for the shortest period of time. The international

CHILDREN DEPRIVED OF LIBERTY

legal framework also requires States to establish an age of institutional majority.

1.1 The minimum age – institutional majority

At the time of our research, we did not encounter any country whose law set a minimum age for the deprivation of liberty, though this is required by the international legal framework.

On the other hand, an age limit is often established for the deprivation of liberty for certain establishments or for certain motives. This is especially the case for facilities accommodating adults, such as police stations, detention centres or prisons. This is to protect children from the negative effects of residing in such places. These ages vary a lot from one country to another. Some States laws set minimum limits concerning places reserved for juveniles.

Examples of minimum age limits include : 8 years for detention centres, 12 years for closed centres for juveniles, 14 years for arrest cells, etc. With regard to the minimum age at which a child can be imprisoned, we found examples varying from 12 to 18 years. Some countries have not established a minimum limit for duration of a stay in prison. However, national laws sometimes provide for the possibility of imprisoning children below the minimum age in certain situations, for example, where the child has been found guilty of serious offences involving violence or for “improper behaviour such as they could not be placed elsewhere”.

In certain countries, children below the age of criminal responsibility or criminal majority may not be sentenced to a measure involving deprivation of liberty, nor legally be detained while awaiting trial. This does not mean, however, that they cannot be placed in other closed establishments, for example, for assistance purposes.

1.2 Protection against unlawful and arbitrary deprivation of liberty

a. Unlawful deprivation of liberty

No child shall be deprived of liberty unlawfully. In spite of its prohibition in most national laws and regardless of the possible sanctions for persons responsible (for example confinement or being fired), cases of illegal arrests and detentions are reported regularly by NGOs. This illegal activity can be

RIGHTS AND REALITIES

explained to some degree by carelessness, ignorance of the law on the part of those persons responsible, or a lack of monitoring.

The illegality of the detention can be based on different factors :

Illegality based on the motives for the deprivation of liberty

The grounds that may lead to deprivation of liberty must be written down in law. However, this is not always the case. We have, in the first part of the book, reviewed several of these motives for deprivation of liberty that are not provided for in the national laws. These may relate for example to children who have been arrested and detained as hostages, those deprived of their of liberty for the purposes of extortion or sexual abuse, or political reasons, because they argued with a policeman's relation, because they refused to polish the shoes of a law enforcement officer for free, etc.

It thus appears that children are sometimes arrested and confined for reasons that cannot legally lead to a measure involving the deprivation of liberty. Sometimes, proof of guilt is either manufactured or confessional statements falsified in order to mask unlawful detention.

Some situations, such as those involving street children or children in so-called irregular situations, demand particular vigilance to verity of the legal basis employed for the deprivation of liberty.

Illegality based on the length of the deprivation of liberty

The deprivation of liberty may become unlawful when it exceeds the duration provided by the law or decided by the decision-making authority.

In the case of police custody and pre-trial detention in particular, it is not rare that children are detained beyond the legal limits. For example, they can be detained for several weeks instead of 24 or 48 hours in the case of police arrest and several years instead of one or two months in pre-trial detention.

Some are not released at the end of their sentence or at the end of the period of placement decided by the authority. For example, the case of a child who remained in jail five years after the end of his sentence. It also can happen in certain cases that the release order has been given but is not executed.

There also exist in practice several legal techniques to extend the period of confinement. From the perspective of the child's legal protection, these techniques should be challenged. It does sometimes happen that, when the investigation closes, the prosecutor orders its continuation. This type of process means that the child can be detained in pre-trial detention for an indeterminate length of time.

CHILDREN DEPRIVED OF LIBERTY

Illegality based on the child's age

The legal minimum age for imprisonment or deprivation of liberty is sometimes not respected.

In police stations, adult prisons and establishments for juveniles one finds children of 7, 8 or 10 years, below the age they can be legally confined.

Illegality based on the type of establishment

In spite of national laws that forbid placing juveniles in police stations or in adult prisons, children are still frequently placed there.

b. Proceedings must be in conformity with the law

The proceedings that lead to the deprivation of liberty must comply with legal requirements. In reality, this is not always the case. For example, proceedings, depending on the countries and national laws, will not conform with the law :

- When no formal decision has been taken by a competent judicial or administrative authority, for example : no warrant for arrest, no order for pre-trial detention or no judgment for the imprisonment;
- When the order for deprivation of liberty has not been given in writing;
- When the judicial or administrative authorities have not been informed. We found the example of a police force that sends youngsters suspected of small offences directly to centres for minors without informing the judge, the prosecutor or the competent social service;
- When the legal basis of the deprivation of liberty is not objectively and rigorously grounded;
- When the juvenile has not immediately been informed of charges against him;
- When the juvenile has not been taken before the authority within the legal time limit;
- When parents or guardians have not been invited to give their opinion on the case.

c. Arbitrary deprivation of liberty

No child may be deprived of his liberty arbitrarily. When there is arbitrary deprivation of liberty, the people who have been arrested and deprived of their liberty are picked up at random or for no legally justified reason by the authorities.

RIGHTS AND REALITIES

Rounding up street children is an example. These arrests can take place in the context of “social cleansing” operations, during the tourist season, holidays, when a foreign personality is visiting or when there is a large international event, in order to present a favourable picture of the country to outsiders. Some of these children are detained for several days in police stations, others are taken out of the city.

These arrests can be used also as a warning to all other street children, as an incentive to make themselves as invisible as possible. Such round ups can also take place when a crime has been committed and the police are searching for the guilty person, without much attention paid to whether the children arrested are genuine suspects.

These mass arrests are, in certain situations, opportunities for law enforcement officers to show to their superiors and the population that they are doing their job and are meeting the arrest quota that they are sometimes required to meet. For example, centres for young people that are not full enough are, in some countries, taken as a sign that the police are not doing their job. Street children are in this respect clear targets. They are generally young, small, poor, unaware of their rights and often do not have a family to either support them or notice their absence. Their vulnerability also relates to the picture that some law enforcement officers and a part of the population have of them : the perception that they are potential criminals and therefore automatically suspected when an offence is committed.

d. Impunity

The impunity that the police enjoy in certain cases can perpetuate the practice of the unlawful and arbitrary deprivation of liberty. Factors leading to this impunity are outlined in the previous chapter. In addition, there often remain no traces of a child’s time spent in a police station because arrests and detentions are not always recorded in the register.

1.3 A measure of last resort

a. The principle

The deprivation of a child’s liberty must always be a measure of last resort. Such a decision can only be taken after a meticulous assessment of whether the child’s best interests can justify such a measure and where no other solution is possible. Some national laws specify that other measures must have been put in place and have failed before deprivation of liberty can be applied.

CHILDREN DEPRIVED OF LIBERTY

However, the resort to institutionalisation is still frequently perceived as an adequate response to all forms of “deviance”, despite alternatives. The frequency of measures which resort to the deprivation of liberty, and the overcrowding of institutions that often results, affects the conditions of detention in general and therefore impacts on the realization of a number of rights. An explanation for this frequent resort to the deprivation of liberty is often the absence of viable alternatives within the criminal justice system (see Part 4).

A “solution” often proposed to combat the problem of overcrowding in institutions is the construction of new establishments. It is important to point out that this type of solution risks creating a vicious cycle, or a magnified problem, as is evidenced in many countries. Indeed, new establishments, in order to be profitable, must be filled to capacity and this generally entails an increase in the resort to the deprivation of liberty of children. Authorities have a tendency to pronounce custodial measures if beds are available. In such a situation, the risk of seeing the principle that the deprivation of liberty must be used as a last resort thwarted is even greater.

b. Pre-trial detention : a particular problem

Arrest and pre-trial detention seem to present the biggest obstacle to the obligation to use the deprivation of liberty as a last resort only. In many countries, the majority of children deprived of liberty for having violated the law are either waiting or undergoing judgment. The proportion they represent can be very great. In the countries that we examined, the percentage of juveniles in pre-trial detention out of the total number of children deprived of their liberty following an offence varied mainly between 70% and 90%. This in certain cases even reached 95%, or 98%, of all children deprived of their liberty.

At the announcement of the judgment, it is often the case that only a small minority of these children are incarcerated and most are acquitted. The rate of discharge in certain countries even reaches 95% of youngsters who have been detained provisionally. Similarly, the sentence inflicted on the child by the court will not necessarily involve deprivation of liberty. Some juveniles are even immediately released at the time of their court appearance or judgment because the sentence incurred for the offence did not involve deprivation of liberty. This high rate of discharges demonstrates that the deprivation of liberty was not necessary in such cases and therefore that such a measure is far from always been used only as a measure of last resort, particularly by police.

RIGHTS AND REALITIES

The frequent recourse to arrest and detention invites the supposition that so-called provisional or secure measures are sometimes used as sanctions. Some minors are sentenced to a period of time equal to the length of pre-trial detention then released, which indicates that pre-trial detention is used in certain cases as a lesson given to juveniles or “to break the spiral of delinquency”, according to the “short-sharp-shock method”.

This “short-sharp-shock” principle runs counter to the principle of last resort. This notion, increasingly used in certain countries, beses itself upon the hypothesis that the best reaction to minor delinquency or first time delinquents must be short and “sharp” to have any dissuading effect. A short length stay in a detention centre or a prison is frequently used in this context.

c. Motives to deprive a person of liberty must be limited and with fixed conditions

Children are often deprived of liberty for minor reasons and the motives to deprive them of their liberty are not always as limited as they should be.

We saw in the first part of the book that a number of juveniles deprived of liberty have not committed any offence. They are “in danger”, refugees, disabled. They are classed as “out of control” or have committed offences that would not be considered so if adults had committed them (status offences). Among infringements, the great majority involve threats to property or vagrancy. Crimes of violence against others generally make up a minor percentage of juvenile offences. We estimate, after consideration of different sources, that only 5% to 10% of children are confined for serious offences. This means that most youngsters in closed establishments represent minimal or no threat to public security and could benefit from alternative measures not involving the deprivation of liberty.

Professionals working in the juvenile justice system, as well as employees in relevant ministries, also recognize that a lot of these children do not need to be confined. According to different sources, other measures (not involving deprivation of liberty) would be sufficient and more suitable in their country for 60% or 70% of confined children. An investigation involving directors of closed establishments in a given country found that at least a third of their “clients” had no need of a placement in a closed institution. It should be noted that directors of institutions are in general less optimistic about alternative measures, which may be explained in part by the interest that they have to fill their establishments.

CHILDREN DEPRIVED OF LIBERTY

The very young age of some of the children deprived of liberty also begs the question of whether they are indeed so dangerous that it is necessary to confine them.

Some national laws discourage resorting to the deprivation of liberty while restricting occasions for its use. It is, for example, very important that the deprivation of liberty is not the only response provided for in the law or that resorting to such a measure is not obligatory. In certain countries, legal provisions seek to limit the resort to deprivation of liberty, imposing conditions that must be fulfilled at the time of the decision.

Certain conditions concern imprisonment in particular. National laws may establish, for example, that juveniles may not be put in prison unless there is no room elsewhere or that they are considered too unruly to be detained in an establishment that is not a penitentiary. It should be underlined that children are still deprived of liberty in places that are not called prisons but which can mean the same living reality as far as the conditions of detention are concerned. Such limitations in the law in this case only have a superficial impact on the actual situation experienced by children.

Certain conditions provided for by national laws with the goal of restricting the resort to the deprivation of liberty are sometimes formulated in a vague manner and open to interpretation, for example, they allow the deprivation of liberty “when such a measure is absolutely necessary”, “when some particular circumstances require it”, “for good reasons” or for “satisfactory reasons”.

These conditions may be grouped under different categories :

Conditions linked to the motive as such

To deprive a child of his liberty it is often necessary to consider the gravity of the offence. According to certain laws, such a measure is possible only when the offence committed is sufficiently serious. The offences which generally fulfil such criteria are those that involve violence against the person (murder, rape, assault, etc.). In order to evaluate the gravity of the infringement, the criteria used may also relate to the number of years in prison that such an offence attracts. The requisite sentence must be, for example, two to five years, according to the offence, in order to be able to deprive a child of liberty.

It may also be that the law excludes pre-trial detention for certain infringements, for example, those punished merely by a fine or a jail sentence with the possibility of release if they were committed by adults.

RIGHTS AND REALITIES

Conditions linked to the child himself

Here are examples of conditions linked to the child himself that must, in certain cases and depending on the countries, be fulfilled to be able to deprive the minor of liberty :

- The child must have a previous court record
- He must have breached a previously imposed measure (for example, a probation order or a socio-educational measure)
- He must have reached a certain age
- He must be violent
- He must be at risk of recidivism
- There must be reasons to believe that the minor would run away from an open establishment

Conditions linked to the procedure

The following are examples of conditions linked to the procedure that must, in certain cases and depending on the domestic legislation, be fulfilled to be able to deprive the minor of liberty :

- There must be strong indications that he committed the offence
- There must be good reason to believe that he might destroy evidence or proof or interfere with witnesses
- There must be reason to believe that his being free would run counter to the goals of justice
- There must be reason to believe that he won't appear before the court
- The deprivation of liberty must be necessary for the purpose of the investigation
- The minor must be represented by a lawyer

Conditions linked to the effectiveness of the measure and the availability of alternatives

The following are examples of conditions linked to the effectiveness of the measure that must, in certain cases and depending on the countries, be fulfilled to be able to deprive the minor of liberty :

- There must be reason to believe that no other measure would be effective
- There must be no alternative available
- The goal must be to reduce the probability that the child will commit another offence

CHILDREN DEPRIVED OF LIBERTY

1.4 The shortest appropriate period of time

“I have seen many young people here who are supposed to go home but who never leave – that worries me because it takes so much time” (quote from an adolescent)

a. The principle

Although a measure of deprivation of liberty must be for the shortest appropriate period of time, children are sometimes confined for very long periods : several months, or even several years (see the first part of the book). It is important to consider this from the point of view of children : days or weeks may seem like an eternity.

The detention before the judgment (during police or pre-trial detention) is often particularly long and therefore poses additional problems due to the fact that pre-trial detentions often take place in establishments that are not equipped for prolonged stays. For children placed in establishments for rehabilitation or recovery, the length can also be very long, given that the deprivation of liberty can last until the moment they are considered as “rehabilitated” or “healed”, with the unavoidable risks that such arbitrary criteria imply.

It has to be acknowledged that the conditions of deprivation of liberty described in the third part of the book can be experienced for long periods of time by children, which prolongs the situation of non-respect for their rights. If one relates these long periods of deprivation of liberty to the reasons for which children can be confined, it is clear how disproportionate some of these measures can be. In addition, the long periods spent in establishments add to the overcrowding of these places and therefore, as a consequence, to a deterioration in living conditions leading to the violations of children’s rights.

As we see below, the length of the deprivation of liberty may be determined (by the decision-making authority or by the law) or may be for an indeterminate length.

b. Deprivation of liberty of determinate length

The legal time limits that determine the length of the deprivation of liberty vary according to the stage of the proceedings. The legal length of arrest is generally between 24 and 72 hours, often renewable once, twice or three times, sometimes even for an indefinite number of times. It can also last for five or seven days or be linked to “local circumstances”. This last condition as well as the possibilities of (unlimited) extensions leaves considerable

RIGHTS AND REALITIES

room for manoeuvre for the authorities concerned as to the length of the deprivation of liberty of the minor, and therefore presents a major risk for the respect of his rights.

The legal time limits for pre-trial detention vary a lot from one country to another, roughly between one month and one or two years. In a certain number of countries, the law does not provide a maximum length.

Sentences involving deprivation of liberty can also be limited by law, for example between one and ten years. The maximum length may even extend to 25 years, generally for youngsters who would either have been sentenced to the death penalty or life imprisonment if they had been an adult. It may also be the case that there is a minimum time limit for the deprivation of liberty, for example, between six months and five years. It should be pointed out that this minimum sentence is not always accompanied by a maximum length. Life imprisonment for juveniles, outlawed by the international legal framework where there is no possibility of early release, is still permitted in certain countries.

It may be that the authority that placed the child, or the director of the establishment, decides to extend the period of deprivation of liberty beyond the initially foreseen length. If such a decision may be made, while remaining within the time limits imposed by the law, it runs counter to the principle that the deprivation of liberty must be for the shortest appropriate period of time.

The deprivation of liberty can be extended in the following cases, depending on the countries :

- As a sanction : if the child behaves badly, for example, if he runs away or a negative influence other children
- If it is judged contrary to the minor's interests that he be released, for example, because his parents or his guardian are not deemed able to take care of him
- If the complexity of the affair or the gravity of the offence requires it
- So that the minor finishes his education or training.⁹²
- When the trial has to be postponed in the absence of all the parties concerned (when, for example, there is no transport to take the child to court or when parents fail to appear)
- When parents do not want their child any more

92 As we saw in Part 2, an extension to the period of deprivation of liberty with the aim of ending his schooling or training is expressly forbidden by the international standards.

CHILDREN DEPRIVED OF LIBERTY

- In the absence of alternatives

In addition to the stage of the proceedings, the length of deprivation of liberty can depend on other factors such as the juvenile's age, the gravity of the offence, the punishment applicable if the offence had been committed by an adult, or the existence of a court record. Often, in the context of the juvenile justice system, the length of confinement or its extension is determined on the basis of a previous psycho-medico-social examination of the juvenile (and of his environment).

The length of detention can also be influenced by the following obstacles :

- The slowness of judicial proceedings. This may be due, among other reasons, to a backlog of cases;
- The lack of human, logistic and material resources to carry out investigations, to gather proof, to find witnesses, to establish the minor's identity. For example, some countries lack machines to photocopy files or vehicles to go to interrogate the minor's family or witnesses;
- The lack of available space in alternative programmes;
- The lack of co-ordination between the various responsible governmental agencies;
- Interests of the establishment in detaining juveniles. It may be, for example, that the establishment receives governmental subsidies according to the number of children that it accommodates. Juveniles may also represent cheap labour which the establishment would prefer not to lose;
- The weakness or the absence of an effective monitoring system for every child's situation.

These obstacles are extremely difficult for the juvenile to surmount when he is not defended by a lawyer. Finally, the period of deprivation of liberty can also depend on the income of the juvenile and his family and their capacity to pay a fine, bail or a bribe for release.

c. Deprivation of liberty of indeterminate length

It may be that the period of deprivation of liberty is not limited in time and that juveniles receive sentences or educational measures of indeterminate length. This may be the case for those who are placed in institutions of psychiatric internment or in centres of rehabilitation which they will be able to leave only when the authorities appraise that they are "healed", "educated" or "re-educated/rehabilitated". Consequently, and because the decision regarding the deprivation of liberty is sometimes not, or rarely, reviewed and the assessment of the minor's progress is not always routine,

RIGHTS AND REALITIES

children may remain in the establishment for a very long time. Youngsters may be released at the age of majority, but not in every case.

Children are also deprived of liberty, depending on the country, “at the pleasure of His Majesty”, or at the discretion of the governor or the State. This notion is used to detain juveniles indefinitely, in particular when a life sentence is not allowed.

When the period is not determined in advance, liberation can depend on :

- The recovery, re-education, rehabilitation, or training of the young person
- His behaviour
- His progress
- His school results or his professional qualifications
- His involvement in cultural activities
- His parents’ willingness to take him home

These types of criteria are at the discretion of the person who must authorize the release. The assessment of the juvenile is at the discretion of the judicial or administrative authority, the nursing team or the director. The length of the confinement is dependent therefore on their professionalism and their good will.

d. Provisions dissuading the deprivation of liberty beyond the legal limits

When legal limits are passed, the situation is one of unlawful detention as described earlier in this chapter. In such a situation, some national laws provide for the juvenile’s immediate release.

In order to encourage as brief a period of deprivation of liberty as possible, some national laws also provide for sanctions on the personnel or other civil servants who had not respected the time limits either specified in the law or decided by a judicial or administrative authority. These sanctions may consist of a fine, termination of contract or even imprisonment.

Some national legal provisions also stipulate that confessions made after a period of arrest or detention beyond the legal time limit cannot be used as evidence.

e. The possibility of an early release

As required by the international legal framework, the possibility of benefiting from an early release may be provided for in certain cases in the national laws, for example, up to half or two thirds of the sentence initially imposed.

CHILDREN DEPRIVED OF LIBERTY

This decision may be a matter for the consideration of the decision-making authorities, of those charged with the implementation of the sanction or may be requested for by the establishment or competent governmental authorities.

Early release may be subject to the following conditions, depending on the domestic legislation :

- The minor must have showed positive behaviour and satisfactory conduct
- The treatment must have had the expected results
- The release must comply with the child's interests, for example, not involving risks of the child being subjected to negative influences
- Arrangements have to be made for follow-up after release

In certain countries, measures are taken to accelerate procedures for an early release. For example, social workers may be located in prisons to intervene with the decision-making authorities and to put juveniles in touch with their families.

2. The right to legal protection during the deprivation of liberty

The child's legal protection should not be limited to the proceedings that lead to deprivation of liberty. During the period of arrest, detention, imprisonment or any placement in a closed establishment, the child also has in need of the right to legal protection.

Unfortunately, we found very little information on observance of some of the guarantees provided for by the international legal framework – such as the necessity of a detention order or of a register within the establishment – and we are therefore unable to address these questions here.

2.1. *The right to be informed*⁹³

In certain countries, the failure to respect the right to information can be invoked as a reason to annul the deprivation of liberty. It is also important to underline that some national laws explicitly provide that this information must be given in an accessible manner for the child and in a language that he understands.

93

See also Chapter 7.

RIGHTS AND REALITIES

However, the right to be informed is often not respected. For example, the small number of referrals to court following violations of the juvenile's rights in closed establishments may very often be largely explained by a lack of information on rights accessible and comprehensible to children. This can also be explained by the absence or the weakness of legal aid that could allow children to become informed of their rights.

From time to time, the national laws explicitly provide for reasons for the child not to be informed, for example, where there are security concerns.

2.2 *Legal aid*

Introduction

Children deprived of liberty have the right to prompt access to legal or other appropriate assistance.

Such aid during the deprivation of liberty is closely linked to the legal protection of children as a whole in the country concerned and, in particular, to the presence of a lawyer or other legal advisor during the proceedings that lead to the deprivation of liberty. If legal aid is absent during the procedure, there is a high probability that the child will not have legal protection during the period of his confinement either.

In general, a number of children are still deprived of their liberty without having had access to a lawyer. However, positive examples of legal protection for children in conflict with the law may also be found.

a. The national laws

Legal aid may be provided for in certain laws for the whole of the duration of the deprivation of liberty, including the proceedings. Thus, we found examples of constitutional rights or special legislation guaranteeing the presence of legal aid at all times, every time that a person is deprived of liberty and whatever the motive or the type of deprivation of liberty.

In other cases, this right and its exercise may depend on the type of deprivation of liberty (for example, legal aid may only be provided during imprisonment and not at the time of detention in other closed establishments).

b. The characteristics of legal aid

Legal assistance to the child may be, depending on the cases and the countries :

- Compulsory or optional

CHILDREN DEPRIVED OF LIBERTY

- Fully funded by the State, partially funded or not at all
- Chosen by the juvenile or appointed automatically (by the bar for example after it has been informed by the authorities concerned)
- Independent of the legal aid for parents or not. The same lawyer can be appointed for a whole family or the child may have the right to be represented by an independent lawyer in the case where the court judge considers that there is conflict between the interests of the child and those of his parents or that it would be preferable that the child be represented by his own lawyer; the judge must ensure then that the child is represented by a lawyer who has no tie with the parents. In other countries, the child has his own lawyer appointed from the very beginning.
- Guaranteed from the very beginning of the deprivation of liberty (for example from the time of arrest) or limited to appearance before a judge.

The right to legal aid can be exercised by the juvenile himself or through a third party, most often his parents or people responsible for his care.

c. The particular problem of arrest, initial cross-examination, isolation and administrative procedures

The situations mentioned above are especially problematic in the context of legal aid for children in the sense that, more than in other situations, they do not offer to children the possibility of having a full legal defence.

There are many countries in which the national legislation does not provide for the right of juveniles to be assisted by a lawyer at the time of the arrest and during the police interview. In certain countries, the rights exist, but are not fully respected. For example, in several countries, the right to a lawyer is not recognized in practice right up to the point of formal indictment or even up to the final judgment, which may take place several months, or even several years after the arrest, during which time the children have been in confinement.

When juveniles are detained in secret or in an isolation cell, they have no access to a legal counsellor. This isolation may last a very long time, sometimes for several months.

Finally, children deprived of liberty following administrative proceedings run the risk, more than those who are involved in judicial proceedings, of not being defended; legal aid often not being provided in the case of administrative proceedings.

RIGHTS AND REALITIES

d. Who ensures legal aid?

Legal aid may be guaranteed by lawyers or other qualified counsellors, legal or not (for example, representatives of social organisations). It may be provided by “generalists” or by those specialised in the domain of children and their rights.

A defence may also, depending on the case, be ensured by a member of the juvenile’s family, or another adult (see below).

e. The organisation of legal aid during the deprivation of liberty – its consequences

The ways in which legal aid can be organised during the deprivation of liberty are multiple. Lawyers or other legal advisors sometimes visit their clients in the establishments. Organisations, such as legal defence centres for children (see Part 4), may be on call in certain institutions.

In certain cases, the staff in detention facilities help juveniles to have confidential contact with a lawyer. Similarly, an accurate and updated list of lawyers or legal services prepared to provide free assistance is displayed and distributed to all juveniles.

The positive consequence of the presence of effective legal aid during the deprivation of liberty is that the length of the measure may in certain cases be reduced (for example, through bail or early release). The investigatory and legal procedure may also be accelerated when a lawyer has been present from the time of arrest.

Effective assistance guarantees permanent access to information for the child. Juveniles are thus able to better understand their situation and the possibilities for getting out of it. Such support can help the child, if necessary, to make complaints. It can guarantee that the child’s declarations are recorded accurately and that he is not forced into making confessions.

Legal or other appropriate assistance may of course also help to guarantee that the rights of children deprived of liberty are better respected. The presence of a lawyer also contributes considerably to a decrease in the use of violence, for example, at the time of cross-examination of the detainee during the investigation.

f. The absence of legal aid or its lack of effectiveness

The absence of legal aid or its lack of effectiveness may be explained by various factors :

CHILDREN DEPRIVED OF LIBERTY

- The number of lawyers in the country may sometimes be insufficient and/or only a few are interested or specialised in the defence of juveniles. As a result, lawyers who are interested in this work are overloaded with cases and only have limited time for working on each case;
- When there is no possibility of free aid, the main reason youngsters do not have a defence is often financial. Indeed, juveniles deprived of their liberty often cannot afford a counsellor. This problem is not unique to developing countries;
- Children often ignore their right to legal aid, or are ill-informed about what legal representation can offer them. They think, for example, that the period of liberty deprivation may be lengthened by an attempt to defend themselves legally and are therefore reticent to ask for legal aid or accept it when offered;
- Access to legal aid is especially problematic for children who do not speak the official language of the country. They may have, depending on their origin, enormous difficulties to get a lawyer who is able to communicate both with them and with the authorities. This makes it difficult for them to understand what their rights are and what the legal procedure will entail;
- It can be difficult for the child to ask for a lawyer. It is often judges who are responsible for assigning one to youngsters or to whom the request for legal representation must be made. This situation can be very frightening for the young person in having to face the intimidating figure that the judge presents;
- The possibility of legal aid for the child is sometimes not provided for by the law. The reason may be that, because of a paternalistic attitude, judges are considered as being there to protect minors (as “super parent”) and that children therefore do not need another counsellor.
- The necessity for legal aid may be left to the arbitrary judgment of the judicial authorities, or to the discretion of the director of the establishment;
- If the child is accompanied (or should be accompanied) by his parents or guardian, he will not necessarily have a right to legal aid.

Depending on the case, the availability of legal aid may also depend :

- on the motive for the deprivation of liberty (for example, aid is only provided for in serious offence cases)
- on the urgency of the situation (for example, where it is decided that cross-examination must begin immediately, resulting in no time to wait for a lawyer or other advisor to be present)

RIGHTS AND REALITIES

- on the age of the child (for example, the assistance of a lawyer or other defender is only provided for from a certain age)

When the presence of a lawyer or another legal advisor is compulsory, the consequences of their absence may be important : such an omission can annul the decision to deprive a child of his liberty or result in an interdiction on proceeding with the cross-examination. In certain countries, those in charge of a cross-examination who ignore this interdiction risk facing sanctions such as a fine, being fired and even confinement. In other countries, declarations made by the child in the absence of a lawyer have no legal value.

g. Reasons why it may be difficult for children to maintain regular contact with the lawyer while deprived of liberty

Some juveniles have access to legal aid, but various obstacles limit its effectiveness, as has just been outlined. One particular obstacle is the difficulty that the child may have in maintaining regular contact with his lawyer. Children do not always know their legal representative or how to contact him or her. Some of them are not even aware that they have a lawyer, which says a lot about the frequency of contact. It may also be that defence lawyers are simply not authorized to visit their clients who are residing in closed establishments.

Children are sometimes confined in inaccessible or remote places, making visits difficult. In certain cases, they are transferred to another establishment without the transfer being notified to their lawyer, which of course makes it difficult for him/her to locate where his/her client is. These transfers, which move the minor away from his lawyer, makes defence more expensive because of the journeys involved, the costs of telephone calls etc. Such a situation is especially difficult for children who are represented free of charge, because their lawyer may not be able to bear these additional expenses.

The staff in detention centres sometimes intentionally make access to legal aid difficult for children. They refuse to give the lawyers the names of children who need legal aid. Juveniles must ask for permission to be allowed to use the telephone, and this is sometimes refused. The staff do not pass on calls from legal representatives to children. It can also happen that the use of the telephone is explicitly forbidden or that it has been out of order for a long period. The use of the telephone may also sometimes be considered as a privilege and a reward for good behaviour. Several cases have also been

CHILDREN DEPRIVED OF LIBERTY

reported in which the staff in an establishment seek to discourage children from asking for a lawyer's services, telling them that they do not need one. A lawyer who tries to meet the child in an establishment may also find him/herself the subject of intimidation and harassment by the staff. In certain cases, lawyers must wait for 48 hours before they can enter a prison and must spend the night there. After such a wait, the lawyer may only be able to stay with the child for a few minutes, in the presence of a guard. The determination needed by the lawyer to fulfil his/her task in such a situation can be well appreciated. Sadly, in other cases, lawyers do not make the effort to remain in contact with the child.

On the other hand, measures are sometimes taken to improve the defence of children. For example, lawyers may make special arrangements for visits and this may even be outside normal authorized visiting times. Communication between a child and his lawyer may be, in the case of certain countries, completely without restriction.

h. The private and confidential nature of communications

Sometimes, children do not have the possibility of communicating in private, orally or in writing, with their lawyer. For example, this may be the case when there is nowhere reserved for children to meet with their lawyers or when children's letters are subject to censorship.

In several countries, inspection of the content of written and other documents that the lawyer carries with him or her into the establishment is not allowed.

i. The right to ask for the presence of parents or other people important to the child

Depending on the case, legal aid for a minor may be accompanied or, in certain situations (for example, when less serious offences or younger children are involved), replaced by the presence of :

- his parents or other people responsible for his care
- his school teachers
- members of social organisations
- members of religious bodies
- any other independent person

The presence of parents or other people important to the minor may also be organised automatically, without the child asking for it. Their presence may even be obligatory, for example, during cross-examination or during the court hearing. The presence of such people may facilitate the child's

RIGHTS AND REALITIES

immediate release (for example, when parents promise to uphold the supervision of their child) or guarantee better protection for the child's rights (see also Chapter 5).

2.3 The right to contest the legality and the modalities of the deprivation of liberty

a. The principle

As discussed, a measure involving deprivation of liberty must be provided for by law and the decision must be in conformity with the law as must be its implementation. The minor must have the right to contest any possible illegality. The possibility of contesting the legality of the deprivation of liberty before an independent and impartial authority is a basic civil right, often referred to as "habeas corpus".

Our overview of the reality confronting children in conflict with the law demonstrates that respect for this principle is little observed in a large number of countries. There are various reasons why the possibility of contesting any legality may be limited. For example, the lack of information as to such a procedure and the absence of effective legal aid present a major problem for children who have been arrested. Below are some examples of additional reasons :

- The possibility to contest the illegality of the arrest is not always provided for by the law. For example, the deprivation of liberty decided by an administrative authority may not be the subject of an appeal. This may also be the case in certain judicial decisions. Some countries have entered reservations to article 40 (2) CRC on this matter (see Chapter 3) ;
- The length and complexity of proceedings can inhibit starting such procedures : it may be that the procedure of appeal takes so much time that the child is released before it has run its course;
- The absence of legal proceedings or any other proceedings subject to outside control. For example, children are arrested by the police and released without being brought before a court. It may also be that the police send youngsters suspected of minor offences directly to specialised juvenile centres, without informing either a judge or the public prosecutor. These children risk being "forgotten" by the justice system;

CHILDREN DEPRIVED OF LIBERTY

- To contest the legality of the deprivation of liberty can be even more difficult, or even impossible, when it is decided by military authorities, by State security services or in the context of a state of emergency.

Finally, even when the possibility of contesting the legality of the deprivation of liberty exists, the process may be limited and there is no guarantee it will succeed. By way of illustration, we refer to the case of the NGO CasaAlianza which, in two years in one country, introduced close to one hundred procedures of “habeas corpus” to contest either the legality or the arbitrary character of child detention. According to the organisation, only one of these proceedings succeeded in these two years.

b. Who can contest legality?

The right to contest legality can be exercised by :

- the minor
- parents or other people with parental authority
- the public prosecutor (in the child’s interest)

It is rather exceptional that the juvenile himself may contest the legality of the measure of deprivation of liberty or its implementation. This situation can be explained largely by legal incapacity (the impossibility of exercising his rights autonomously) which very often characterises the legal status of children. However, in some countries, we found examples where the juvenile from a certain age (for example, 12 years in several countries) has standing to contest the legality of deprivation of liberty.

c. Before whom?

The authority before whom the legality of a measure of deprivation of liberty or its implementation may be contested varies. The first instance will very often be before the authority that took the initial decision or before a superior authority.

Individual complaints may also be communicated to the administrative appeal bodies, such as councils, for complaints. These bodies are generally composed of people with particular expertise in contact with youngsters and who, through their training, their profession or their experience, are qualified for this function.

d. Compensation in the case of illegal deprivation of liberty

Although it is exceptional, there exist countries in which a child who has been illegally deprived of liberty has a right to (financial) compensation.

RIGHTS AND REALITIES

Child victims (or their representatives) must generally formally apply for the compensation; it is not given automatically.

This right to compensation is generally in recognition of an error committed by a judicial or administrative authority.

3. The possibility for making a complaint

3.1 The principle

As we have just seen, children have the right to contest the legality of the measure depriving them of liberty. They also have, as do their representatives, the right to present to competent, independent and impartial authorities, requests or complaints concerning any violation of their rights during their confinement.

Depending on the case, the possibility of complaint may relate to any violation of the child's rights provided by the law. Complaints may be laid before those responsible within an establishment (generally the director) or to outside authorities, such as the judge in charge of the follow-up of the measure, inspectors who visit the establishment, a lawyer, an ombudsman or even a governmental body (for example, the Minister of Justice). Some national laws – sometimes the Constitution itself – specify that the victim has the right to have his complaint examined promptly and that the violation be addressed, for example, through compensation. Certain laws provide that access to the complaint procedure must be unlimited.

Those who have regular contact with the juvenile – his parents, lawyer, probation officer, social services, teacher, etc. – can play an important role in supporting the child through the proceedings, or even taking his place in submitting the complaint.

In certain countries there exists no possibility of making a complaint at all.

3.2 Obstacles that make complaint procedures useless or ineffective

In spite of the existence of complaints procedures in certain closed establishments, the majority of violations of the rights of children occur in silence and those responsible escape with complete impunity.

“An investigation into a number of penal establishments or detention centres revealed greater recourse to excessive force and psychological harassment in relations with youngsters than with adults. Youngsters,

CHILDREN DEPRIVED OF LIBERTY

a lot more than adults, accept such ill-treatment as part of their treatment. Adults make a complaint more readily. Youngsters are however the victims of bad living conditions in establishments but don't make any complaints" (in Rowan, J.R., 1992, p. 7).

Indeed, the victims do not always use the possibility of making a complaint when it does exist. The bringing of complaints is particularly rare considering the extent of the violations against children's rights. In any case, when a complaint is made, it is not certain that it will lead to a fair resolution. There are numerous reasons for this state of affairs. The main ones are discussed below.

a. Children don't know their rights or the procedures

When the pursuit of those responsible depends on legal action undertaken by the victim, as is often the case, nothing will happen if the child or his representatives do not make a complaint. However, children are often unaware of this possibility. They do not know the procedures, which are not explained clearly to them and they do not know how to go about bringing a claim. Children do not always know that the law forbids actions of which they were victims. Often, they do not even know that they have rights.

On the other hand, such procedures are in certain cases in writing, for example, in a code of conduct of the establishment accessible to all, and explained to children when they are admitted.

b. Children do not always have access to effective legal aid

As we saw previously, children deprived of their liberty do not always have access to a lawyer who could inform them of the possibilities for making a complaint and strategies for a successful outcome. Street children in particular often do not have adults to support them in such actions and it is very difficult for them to bring a complaint alone. Yet this legal support is almost always indispensable given the complexity of complaint procedures.

c. Children must make a complaint through an intermediary

Children sometimes cannot make a complaint themselves but must use an intermediary, for example, their parents, a teacher, a guard, or the director of the establishment. The making of the complaint before an administrative or judicial body then depends on the presence and the good will of these third parties, who are not necessarily disposed to act in the child's favour. Many juveniles have reported that they have submitted written complaints to the staff, who tore them up or omitted to submit them to the responsible

RIGHTS AND REALITIES

person. These people may themselves be the object of the complaint, which of course makes any favourable outcome for the child unlikely.

d. The lack of necessary material to make a complaint

What can seem a small procedural detail is usually very significant in a legal context : it may be that complaints must be put down in writing and that children who do not possess paper or pencil are therefore not equipped to make one.

e. The fear of reprisals

Juveniles whose rights have been violated often fear reprisals from those responsible or their colleagues and withdraw from making complaints about them. Reprisals are even more likely when the only people to whom a child can complain in the establishment are those guilty of violations of their rights. For these reasons, children do not tell their parents of the violence they have experienced for fear that they might begin a complaints procedure.

We came across a case in which a television programme dedicated to juvenile delinquency and the role of the police sought to bring to the attention of parents the obligation that they have to protect and help their children and that they must not fear that the reporting of cases of police brutality might have damaging repercussions for their children. Of course, it is important that parents receive the guarantee that there will not actually be any reprisals. In addition, it would be useful to encourage children to watch such programmes.

The concern of children is legitimate : it is certainly true that complaints sometimes lead to sanctions against the plaintiffs. For example, it happens that, following a complaint against a law enforcement officer, the officer concerned and his colleagues arrest the child on false allegations and detain him for several weeks or even months in order to intimidate him or stop him from appearing in court to testify. Children have stated that they are punished severely if they tell what happens inside an establishment to visitors. One juvenile reported that after he and his friends spoke with the representative of a local organisation that visited the premises, they were beaten and put in an isolation cell. They receive the same treatment if they are discovered sending letters of complaints outside. Following a complaint by about forty children in an orphanage to a local NGO on illegalities and irregularities they had experienced, the director of the institution called the police who came to arrest several children.

CHILDREN DEPRIVED OF LIBERTY

Staff members sometimes hesitate disclosing violations of children's rights perpetrated by their colleagues for fear of losing their job or seeing their working conditions deteriorate.

f. Complaints are not taken seriously – the problem of impartiality

Many children in various countries feel that it serves no purpose to make a complaint to the personnel in an establishment.

“Making a complaint here is like a voice in the desert”
(quote from an adolescent)

When the authority receiving the complaint is part of the administration of the establishment has itself violated the rights of the child, has covered up these violations or has a vested interest in concealing them, it is then difficult for the minor to address his complaint to it. He will probably be dissuaded from making a complaint for fear of reprisals but also because he knows that he has little chance of a successful outcome. For example, when a complaint of abuse by a policeman must be submitted to the police, the pressure against proceeding is clearly enormous for children. The complaint has even less chance of succeeding when it is up to the police administration to determine if there is cause to begin a case against their accused colleague.

It is sometimes the administration of the establishment or employees in the same police station where the violations took place that lead the investigation. This greatly jeopardises the investigation's impartiality. This does not mean that investigators never try to be impartial but the institutional pressure is often too great.

Judicial authorities may also refuse to lead an investigation into violations of a child's rights by agents of the State. Those responsible, even when they have been identified, are able to escape any legal proceedings and keep their jobs.

Judicial systems are often overloaded and do not yet attach the necessary importance to violations of children's rights. This is even more the case when children are deprived of their liberty. Sometimes, investigations are initiated but never completed. Those responsible are often protected by their superiors or the court which, after considering superficial investigations, rules that the evidence is insufficient and dismisses the case.

Its should also be pointed out that an authority external to the establishment does not always guarantee impartiality. This is particularly the case when complaints made to an external authority are submitted through a biased

RIGHTS AND REALITIES

third party, such as the institution's administration. In addition, employees in the external authority may also give in to corruption and may conceal certain evidence.

Governmental leaders are also sometimes indifferent to the various violations of rights of children deprived of their liberty. This is much more problematic when the law requires the approval of such leaders to be able to indict people in charge of the application of the law.

g. The sanction against the author of violations is incommensurate with the gravity of the offence

Some national laws do characterise as a crime the failure of observance by people who have the responsibility to protect the life and health of children, in particular the personnel of juvenile establishments. As mentioned, some national laws impose sanctions on those who pose a threat to the physical and moral integrity of juveniles, as well as on those responsible for unlawful detentions or other violations of law. Sanctions may include termination of contract, imprisonment for several years, or the closing down of the establishment. Sanctions are sometimes also imposed on the superior of the person responsible for the violation/s. The severity of the sanction may depend on the age of the child victim or the gravity of the act and its consequences.

However, it frequently happens that the accused is recognized as guilty but the sentence is not proportional to the offence committed. The sentence may, for example, consist of a fine or possibly a short period of confinement, but often there are no lower limits either for the sum to be paid or for the period of incarceration, which means that both may be token in character. Often, those responsible are not removed from their posts. They are sometimes simply transferred to another establishment.

h. The victim has little chance of receiving compensation

Some national laws provide for the right of the victim to compensation for damages, material or other, following an illegal or incorrect action of a State agent, a State agency or a body fulfilling some public function.

Although one may find examples of compensation allocated to children following violations of their rights in a closed establishment, the different obstacles to bringing a complaint just reviewed should make us appreciate just how difficult it can be for the minor to get such compensation.

In March 1999, the Inter-American Commission on Human Rights ordered a country to compensate children detained in adult prisons between 1993

CHILDREN DEPRIVED OF LIBERTY

and 1997 to remedy violations of the American Convention on Human Rights. Only a few of the youth had actually received payment by September 2000.⁹⁴

4. Reviewing the placement

Every child deprived of liberty has the right to a periodic review of his treatment and all other circumstances relevant to his placement.

The objective of the review may be to ensure that the child receives the treatment, care, protection and education to which he has a right, to verify if those factors that had led to his placement are still present or to consider whether the conditions of the placement are contrary to his best interests or his social reintegration. The result of the review may be the modification of the measure or of its length, its substitution for another measure or even its annulment.

This review may be done at various intervals depending on the case. They can vary between every three months and every three years. The interval may vary according to the age of the child or the reason for the placement. The review may also take place, in certain cases, at the request of the minor, the court or the director of the institution. Some laws require that the review be constantly ongoing.

The authorities who initiate the review may be those who decided on the placement, those that are responsible for the implementation of the sanction, the director of the establishment, the probation officer or public or independent commissions or committees especially constituted for the purpose. It may also be a political leader (at the local or national level). We found an example in which the Minister of Social Affairs may remove a young person, including a young delinquent, from the care of a qualified person or of an authorized establishment, either completely or according to certain determined conditions. Although such a measure may facilitate the rehabilitation of such children and their reintegration into society, there is no regulation governing the exercise of this power. In addition, no body or identified agent is put in charge of monitoring these children or addressing recommendations to the Minister.

It may also be the case that there is no legal provision for a periodic review of the placement and its conditions or that the review is not done regularly.

94 Human Rights Watch, *World Report 2001*.

RIGHTS AND REALITIES

The absence of an effective review has particularly negative consequences for children who are deprived of their liberty for an indeterminate period of time. When this right to a periodic review of the treatment is not respected, the right to a deprivation of liberty for the shortest appropriate period of time is violated.

The existence of a review, and its regularity, may depend on different factors, including the following :

- The human and material resources available to the review authority;
- The good will of the review authority. Sometimes, the law stipulates that this authority may undertake a review, without being obliged to do so;
- The reason for which the child is confined. Children benefiting from a review of the placement may be, depending on domestic legislation, only those who are placed for care or protection, or only those placed by a judicial authority.

Chapter 9

The right to education and recreation

1. The right to education and vocational training

1.1 The principle

Children who are deprived of their liberty have the right to compulsory and free primary education as do all children and must have access to different forms of secondary education, both general and vocational, as well as to higher education on the basis of capacity.

Even though it is difficult to find information on this topic, it seems that many children deprived of their liberty have school problems : they are behind, they have dropped out of school and they have often benefited from only a basic education before arriving in the establishment. These difficulties are often due to a school system maladjusted to the needs of children deprived of liberty. In order to increase the chances of reintegration of the child in his community, and in society in general, it is fundamental that appropriate education is made available during the period of the deprivation of the child's liberty.

The relevant national laws or the internal regulations of institutions for minors usually require that arrangements be made within establishments to ensure the education of children and to give them a vocational training. The right of children deprived of liberty to education is specifically recognized in certain legislation. It is specified in certain cases that this education must

CHILDREN DEPRIVED OF LIBERTY

continue without interruption and take account of the age of the child and his capacities.

Establishments that accommodate juveniles deprived of their liberty may offer a more or less normal scholarly education. However, it is less common for juvenile establishments to offer secondary education. Courses can be organised by the administration but also by NGOs, volunteers, or given by adult prisoners. Similarly, training workshops may be organised, such as joinery, painting, masonry, shoemaking, weaving, locksmithing, sewing, mechanics, hairdressing, electrical work, cooking and others.

These schooling and training possibilities are often ineffective, irregular or incomplete, and subject to various constraints and conditions. It is useful to recall that the quality of education in establishments may also depend on the teaching staff available in the particular country.

1.2 The absence of education and training

Some juveniles deprived of their liberty receive no education or training. Particular categories of minors are especially vulnerable to violations of their right to education and to interruptions to their education or training. This is the case for children who do not speak the official language or for children detained for short periods of time.

In general, it can be said that the right to education is more frequently violated in pre-trial detention establishments, police stations and adult prisons, whereas there are more likely to be school or vocational courses in centres for juveniles (rehabilitation or other centres), although it is not always the case. The possibilities for education and training are in general less during pre-trial detention since these places are supposed to receive juveniles for short temporary periods only. As a result, there is a good chance that neither the necessary infrastructure nor the educational services are in place. We must not disregard the fact, however, that children may spend several months, or even several years, in these facilities, resulting in a significant interruption to their education or training. To remedy this problem, some countries have decided to create special pre-trial detention centres for juveniles in which they have access to education.

In prisons for adults, it may be that nothing is provided for the education of detainees in general but it is also possible that juveniles do not have access to the infrastructure or existing services, reserved for adults. The reason can be the absence of a budget dedicated to services for juveniles or the necessity of not putting them into contact with adults, in which case children will not have access to training workshops.

RIGHTS AND REALITIES

Children in general do not receive any education during periods of isolation.

1.3 Other violations of the right to education and vocational training

The right to education and training of the child deprived of liberty is also violated in a variety of situations the following of which are examples :

- Courses are not adapted to the age or a suitable level for children; continuity of education cannot be guaranteed;
- Teaching is offered only up to a certain level;
- Children cannot follow courses in their own language;
- There is no educational follow-up after their schooling;
- Children are not encouraged to attend the lessons;
- Modes of teaching or training do not provide an incentive for youngsters;
- Youngsters cannot choose amongst the different possibilities the area in which they would like to be trained;
- The material resources are lacking : there is a shortage of suitable rooms, books and other educational material, as well as tools or machines necessary for vocational training. This situation has to be seen in the context of the country as a whole. It is possible that, in general, access to education and training is a problem for all children. In addition, the financing of the education of minors deprived of liberty may be even more difficult to find than for the education of other children, because of negative attitudes towards them in the public;
- Teachers and educational personnel are too few. It may be that adult prisoners temporarily play the role of teacher with minors, which makes the realization of their right to education conditional on the presence of adults willing and capable of teaching them;
- Access to education or vocational training can also depend on :
 - payment : juveniles who do not have sufficient money to pay will be excluded from any benefit from this right;
 - good behaviour : education may be considered as a privilege for those that behave well. In certain countries, the law even allows the deprivation of training as a disciplinary measure;
 - the outside assistance of local organisations, the international community or on the availability of volunteers. Where this is the only means for children deprived of liberty to be educated, the day when this assistance ceases to be given, the right will no longer be realized.

CHILDREN DEPRIVED OF LIBERTY

1.4 The effectiveness of the teaching

The teaching provided to confined children is not always effective and knowledge acquired during their stay does not always have value for them. It may be that most children find it difficult to study or have lost all interest in studying. Of course, this situation is not necessarily unique to children deprived of their liberty.

In order to improve the effectiveness of the educational role, some initiatives are taken, such as :

- An educational project, which organises the week in a very structured manner, with professional training (woodworking, painting, electrical work, activities of occupational therapy, making objects and the renovation of furniture) and assistance in linking up with the formal education structures.
- Meeting individual demands, pupils can volunteer in programmes that are part of the normal curriculum. In other cases, some of the classes are obligatory (for example, classes teaching the national language and mathematics), whereas others are optional according to their interests.
- Some information technology experience is offered in order to develop skills useful for modern commercial life.

1.5 Education should not cause the continuation of the detention

According to the international legal framework, education or training must not cause the continuation of detention or placement. Nevertheless, in order to finish the professional training that they undertook, youngsters remain in certain cases within the establishment beyond the length determined by the judge or beyond the age of 18 if that was the agreed limit. This extension may be automatic if the training is not finished, or in some cases, if the juvenile makes the request himself, or if his teacher does so.

Some juveniles may choose to remain in the establishment in order to be able to finish their education. However, such a decision may say more about their expected quality of life outside the institution. In certain cases, the teaching offered in closed establishments is of a better quality than that offered in public schools. This difference may be a consequence of the specialised teaching in the institutions which is sometimes not integrated within the national education system.

1.6 Teaching integrated within the national education system

A first step toward integrated teaching is to guarantee that education within the establishment is provided by qualified teachers through programmes integrated within the education system of the country. In examples that we found, there are teachers who come from the ordinary school system and who therefore work in parallel with public schools.

Children may also have the possibility of going to schools or to follow a professional training outside the institution in establishments frequented by children and young people from the community. This may be the case in particular when no education is given in the closed institution or when it stops at a certain level.

Authorization to study or to follow training outside the establishment is often subject to certain criteria, such as :

- The child's abilities
- His behaviour
- The assessment that he does not represent a risk
- The length of his stay within the establishment

These conditions may be subject to a discretionary decision or evaluation by the personnel or persons responsible for the establishment. The problem is especially sensitive when there are no possibilities of education inside the establishment and only certain privileged children may visit schools outside.

1.7 Vocational training

Education and training offered to juveniles during their deprivation of liberty must, amongst other things, help them to prepare for their return to society and play a constructive role in the community. To meet this requirement, some establishments train minors in skills responding to the demand of the market and propose apprenticeships leading to a qualification. On the other hand, some children complain that professional training courses do not prepare them sufficiently to enter in the workplace due to the poor content or teaching of courses and their insufficient access to information and training.

CHILDREN DEPRIVED OF LIBERTY

The line between professional training and exploitation of child labour may be very thin. In the context of their training, children must in effect often manufacture products that will later be sold and for which they are almost never paid. A so-called training programme may actually disguise the exploitation of children for cheap labour (see Chapter 7).

2. Recreation

2.1 *The right to rest*

The right to rest for children deprived of liberty is frequently violated when they are exploited in their working conditions, such as mandatory work seven days a week with few resting times.

2.2 *The right to leisure*

Minors deprived of liberty sometimes benefit, but not often regularly, from sport, cultural and recreational activities. Activities, in addition to sports, may include photography, painting, music courses, computing, handicraft, artistic activities in workshops, etc. In certain establishments, children have their own radio station where they prepare and present programmes to the other children. Sometimes, recreational activities are organised by local bodies, and exist only because of their presence. These activities are in certain cases offered outside the institution.

However, inactivity and idleness are quite often the norm for children deprived of their liberty. There are numerous establishments in which no activity is offered to them. The absence of materials and a place reserved for recreation or the banning of the enjoyment of leisure time by way of sanctions are obstacles to the realization of this right. The problem is especially acute in establishments legally authorized for stays of limited duration, such as arrest cells or centres of pre-trial detention, as well as for youngsters placed in isolation.

Every establishment must make available to children a library that is sufficiently equipped with instructive and recreational books. It may, however, be very difficult for children deprived of their liberty to obtain reading material. Such libraries are often non-existent and, in certain cases, books and newspapers are forbidden in establishments, in particular, during pre-trial detention. Some legal provisions go as far as providing for the deprivation of reading as a disciplinary measure.

RIGHTS AND REALITIES

2.3 Exercise and physical education

Children deprived of their liberty have the right to a suitable amount of time for free exercise, in the open air whenever weather permits, during which time appropriate physical and recreational activities should normally be provided. In spite of these requirements from the international legal framework, children may remain for a very large part of the day shut in their cell, sometimes 23, or even 24 hours a day. Idleness is a serious problem in many establishments.

Adequate space, installations and equipment must be provided for exercise and physical training. The absence of such installations and equipment is an important reason for the frequent violation of this right, but it may also be that minors are denied access to exercise equipment as a disciplinary measure or when it would involve contact with adults. Children's exercise of their right to recreation may also depend on the good will of the personnel. Children have stated that they often spent their whole recreation hour sitting in the gymnasium without doing anything.

On the other hand, it may also be that sporting activities of all sorts are provided and that the establishment offers facilities for basketball, volleyball, handball, a gymnasium, a climbing wall or a body building area. Sometimes, recreational activities are organised by local bodies.

3. Work

3.1 The type of work

The work performed by children in the establishments in which they are deprived of their liberty can be ordered by a judge (forced work), by the administration, by the personnel or by adult or older prisoners, who take advantage of the vulnerability of juveniles. Children must often do some daily chores such as the cleaning of rooms, cutting the grass or chopping wood, collecting water or working in the fields. But juveniles may also be placed in work camps where they describe the work being done, in certain cases, as long and laborious.

But work during the deprivation of liberty should not necessarily be seen in every case as being negative. In order to improve their chances of finding employment at the time of their return to the community and to prepare them for a normal professional life, youngsters may have the opportunity to undertake employment during their detention that completes their training.

CHILDREN DEPRIVED OF LIBERTY

It may be that minors have permission to go to work outside the establishment during the day and to return in the evening, which also allows them to get gradually and progressively acquainted with their freedom again. The authorization to go to work outside the establishment may be subject to the same conditions as those concerning the authorization to follow training programmes or courses outside.

3.2 The objective of work and prohibited work

Work must always be considered as an instrument of education and as a means to instill self-respect in the juvenile in order to prepare him for his return to the community. Several types of work carried out by children deprived of their liberty are, however, in complete opposition with this objective. Among the most striking are examples work situations amounting to forced labour and economic exploitation (see Chapter 7).

Other types of work may be forbidden because they represent a threat to fellow detainees. We refer in particular here to disciplinary functions. Indeed, although according to the international legal framework, no minor can be put in charge of disciplinary functions within the establishment, it is not rare that some children are responsible for maintaining discipline in their cell or dormitory. These youngsters in certain cases carry truncheons to control others and are generally better provided for than the rest of the detainees (for example, they may have a bed of their own or sheets hung up to make a private area within the dormitory for them). This status gives them a particular prestige and various advantages, which tends to encourage abuse and discriminatory treatment of others.

Work must not be imposed as a disciplinary sanction. Nevertheless, it is sometimes imposed for this purpose. Tasks inflicted by way of punishment may be daily chores or more demanding jobs.

3.3 The minor must be remunerated for his work

The child who performs work has the right to an equitable remuneration. His interests must not be subordinated to the purpose of making a profit for the detention facility or a third party.

Indeed, some national laws following these principles provide that minors deprived of their liberty must be paid for the work they perform. Detained children sometimes work in fields or prepare goods which are later sold (tables, chairs, metal gratings, bricks, sheets, etc.) and for which they are under paid or receive no remuneration. Sometimes, they get a percentage of the profit and the rest is kept by the establishment. It may also be that

RIGHTS AND REALITIES

remuneration is only given if the work is considered as sufficiently deserving;
a criterion that involves a significant degree of arbitrariness and subjectivity.

Chapter 10

Other aspects related to the conditions of detention

Introduction

In this Chapter we have grouped together several elements that concern the situation of children deprived of their liberty but which are either not expressly addressed in the Convention on the Rights of the Child or are more difficult to place in the different categories that constitute the third part of the book.

In this Chapter the rule regarding the separation of children and adults provided in article 37(c) of the Convention is specifically analysed.

1. Personnel in establishments

Personnel in establishments that accommodate juveniles, as well as all other professionals who are involved with them, play a very important role in the realization of the objectives of rehabilitation and social reintegration. If, through lack of training, means or will, personnel is not equipped to contribute constructively to the child's preparation for his return home and to society then the process of rehabilitation and reintegration will be seriously compromised.

CHILDREN DEPRIVED OF LIBERTY

Below is an overview of problems that may occur in this respect. These different elements carry the risk that staff members do not play the educational role which they are required to perform and instead limit their roles to being guards.

1.1 Staff members lack training

The absence of qualified personnel appeared in the previous chapters as an obstacle to the realization of certain rights of children deprived of liberty (the right to the highest attainable standard of health, the right to education, the right to protection from abuse and maltreatment, etc.). Yet, according to the international legal framework, staff members of establishments that confine juveniles must be carefully recruited for their professional capacities, their integrity, their humanity, their capacity to deal with juveniles and their personal suitability for the work. They must have taken, before entering service, a course of general and special training, to be periodically improved later.

However, professionals in charge of children deprived of their liberty have very often not been effectively trained in juvenile issues and treatment. The lack of financial and material resources may be one reason for this : there may not be an available budget to organise training, nor specialists available for teaching personnel, nor institutions specialised in the basic and permanent training of professionals. The provisions of the Convention seem little known in this respect, and this applies as much to industrialised countries as to developing countries.

From time to time, personnel have even received no specialised training at all, either general or specific. We can refer to an example of certain police officers who were completely illiterate and lacking awareness of the laws.

The Committee on the Rights of the Child often recommends to States Parties who have submitted their report on the implementation of the Convention to organise programmes of systematic and periodic training for personnel, notably on the principles and fundamental norms contained in the Convention and other relevant international norms. It is sometimes even recommended to the State concerned to ask for technical support in order to be able to offer such a programme. This issue is discussed further in Chapter 13 in this part of the book.

To try to meet this concern, governments, regional or local NGOs, academic institutions, the international community or institutions specialised in the training of certain professions (police, penitentiary personnel, lawyers,

RIGHTS AND REALITIES

magistrates, etc.) may organise training courses for personnel by way of seminars, internships, training abroad, etc.

These courses may deal with the following areas :

- the national, regional and international legal framework
- the respect for the fundamental rights of citizens and persons deprived of liberty
- constructive and humane care of children deprived of their liberty
- concepts in psychology and sociology
- the prevention of violations and the protection of juveniles
- the juvenile's rehabilitation
- how to resolve conflicts without having recourse to force
- violence; substance abuse, etc.

These training sessions may lead to constructive exchanges and open debate between professionals. Some professionals find, for example, the rights of the child to be “excessive” and “preventing them from doing their work”. From the point of view of some, the recognition of the rights of children seems to excuse them for breaking the law. It is very useful that these doubts and differing points of view be expressed and that a debate takes place on the issues involved. It is in this way that prejudices and fears about children's rights may gradually be alleviated and dealt with.

1.2 Staff members have not been carefully recruited

The selection of staff members is not always made in the interest of children. For example, we can mention a programme of rehabilitation for marginal adults and former adult prisoners, in the context of which they are recruited as guards in centres for juveniles. Children complained repeatedly about abuse from such people.

Police officers may also be placed as warders in jails as a sanction. The consequences that such a practice may have on their motivation for work can be easily imagined. The lack of importance and sensitivity attached to working with juveniles is a major problem in this regard.

1.3 The personnel is too few and not varied enough

It may also be that the number of professionals present in the establishment to take care of children and to supervise them may be too few to be effective. We found an example of a per-person guard ratio of 1:86 detainees in a remand centre. This is due in part to the problem of overcrowding discussed

CHILDREN DEPRIVED OF LIBERTY

in Chapter 6 as well as the lack of necessary financial resources to employ more people. This situation also partly explains the neglect that juveniles often suffer in these establishments and the lack of educational or recreational activities offered to them.

Establishments sometimes try to solve this type of problem with rules stipulating that the group of juveniles over which each employee is in charge must not exceed a given number, for example 15.

The personnel must include a sufficient number of specialists such as qualified educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. Variations in the quality of personnel are great from one establishment to another, from a total lack of specialists in some establishments to a selection of qualified staff in others.

1.4 The personnel are neither employed on a permanent basis nor receive adequate remuneration

Although the international legal framework demands that employees of juvenile establishments must be employed on a permanent basis, the personnel is sometimes composed of temporary employees who have often neither the training nor the incentive to fulfil their function in a satisfactory manner. In addition, the intensity and sometimes the difficulty of the job often entails regular staff turnover. There are many educators, or other professionals, who leave their work in juvenile institutions due to burn out.

In order to decrease this risk, staff are encouraged to divide their time between work in the closed establishment and work elsewhere outside. This notion is sometimes referred to as the “incomplete professional”.

Advocates of the principle of the “incomplete professional” claim that most of the staff in closed institutions for juveniles, with the exception of a small number of administrative and executive employees, should not work full-time or on a permanent basis. In their view, exclusive work with placed children automatically encourages a “tendency towards negative solidarity or anti-educational complicity”. To have professionals exclusively dedicated to “abnormality” is, in their view, absurd.⁹⁴ Clearly, however, such a notion threatens the principle concerning the employment of staff defined by the international legal framework mentioned above.

94 Garcia Mendez, E, 1995, p. 100 (see also the principle of the “unfinished institution” – Part 2).

RIGHTS AND REALITIES

In addition, personnel are often poorly paid and this may lead, as a consequence, to a neglectful attitude and a lack of motivation for their work, as well as corruption and the employment of personnel under-qualified for the task.

1.5 Staff adopt a disrespectful attitude towards children

The lack of respect which staff sometimes display to children and their rights may be expressed in a very violent manner, but also more insidiously, through a general attitude of contempt and indifference. Children deprived of their liberty are sometimes considered by the staff as hooligans whose rights are not worth respecting. They see in them first the delinquent then the child. Children deprived of their liberty often display an emotional deficit and suffer from a lack of communication.

On the other hand, relations between children and staff may also be relatively good and can offer children a lot. For some children, their placement in an establishment is the opportunity to discover or rediscover what friendship, solidarity and confidence are, and this is sometimes due to the efforts of staff members.

In an increasing number of countries, codes of conduct have been developed for personnel in charge of children in closed establishments. These codes determine, for example, that :

- The personnel must be gender-balanced and composed of a mixture of cultures present in society as a whole
- The respect due to children and to their rights is essential
- The personnel have the duty to report all incidents or concerns about the risk of violations of the child's rights, as well as the actual violations of these rights;
- Responsibilities of each staff member must be clearly defined
- Self-awareness must be developed in the personnel on all aspects of their own life which can have an impact on their professional decisions;
- Staff must be conscious of the needs of confined children and these needs must be communicated to all intervening bodies, as much during the deprivation of liberty as afterwards
- Children must be considered as capable of participating fully in support and assistance programmes.

Professional and personal well-being is necessary for proper fulfillment of the professional role. The establishment must do as much as it can to guarantee staff well-being.

2. Classification and treatment

2.1 The principle

Within the establishment, children must be detained in conditions which take due account of their status and particular needs and which ensure their protection from negative influences and risk situations. Classification is necessary to avoid putting children in the same place as adults, girls with boys, young children with older children, delinquents with at risk children, or those accused of rape with victims of that crime.

At the time of the decision about the exact place where the juvenile should be accommodated within the establishment, the following considerations may be taken into account, depending on the national laws or internal regulations :

- respect for the child's best interests
- the prohibition of placing him with others against his will
- criteria of classification such as age, sex, the reason for the deprivation of liberty, whether the minor is a recidivist or not, his personality, his mental and physical state, his behaviour, the duration of the stay, the time already spent in the establishment, whether the minor wants to pursue his studies, the presence of accomplices, etc.

However, in certain establishments, there is no classification. For example, in adult prisons in certain countries, young people are not allocated a cell and must look for a place to get settled, having to follow a system of sale or renting of cells.

2.2 Classification on the basis of individual reports

When a classification is made, it may be as much based on arbitrary criteria as on objective criteria (for example, the reason for the placement, sex, language, age, etc.). It may also be that there is a classification only after the juvenile has gone through a medico-psycho-social examination (and a study of his environment), the objective being to determine the best possible allocation. Children may also, after admission and with the same purpose, pass some time in an observation and orientation wing.

2.3 *Separation from adults*

a. The principle

As underlined in the beginning of the third part of the book, the presence of children in adult prisons has been for some time the main preoccupation, or even unique concern, in discussions about children deprived of their liberty. The problem of the mixing of minors and adults in closed establishments is a universal and complex problem. Although it is clear in most cases that separation should occur for the well-being of the child, it appears that for some children it may be in their interest not to be separated from adults. In this respect, the Convention is not categorical and provides for the possibility that the child is not separated from adults if it is considered in the child's best interest. Reasons for such a decision can be various and will be discussed later.

Let us recall that because of the relatively small number of girls deprived of their liberty and therefore of the rarity of juvenile centres purposely made for them, they run a greater risk than boys of not being separated from adults. The question of separation is raised in all establishments in which there are adults, and not solely in prisons.

In what follows, we considered it appropriate to make a distinction between the mixing of adults and children, in the sense of residing in the same building but in separate sections, without direct contact, and that of true cohabitation in the same premises and with direct contact.

b. The deprivation of liberty in an establishment for adults, but in distinct quarters

Children may be housed in separate wings within establishments for adults. Such a situation is not in itself forbidden by the international legal framework; it is rather the consequences that can imply violations of the rights of children.

In a general way, conditions in adult prisons tend to be worse, more repressive and less directed towards education and rehabilitation, than in the centres specially reserved for juveniles. This observation is not, however, categorical, because no comparative survey has been undertaken to our knowledge, and the assessment should be made on a case by case basis.

It may be that, in establishments for adults, structures and activities are not adapted to minors or that their access to them is forbidden. The issue of the right to education illustrates the first case well : the existing educational

CHILDREN DEPRIVED OF LIBERTY

activities in adult centres are often not adapted to the needs of children. In the second case, training activities or sports activities may exist but minors are denied access to them in order to avoid all contact with adults in the different wings, workshops or sports halls. Consequently, children have to remain in their cells close to 24 hours a day. Their situation becomes equivalent to isolation. We found the example of a teenager, the only juvenile in a jail for women, held in total isolation to avoid all contact with adult detainees. Some establishments solved this type of problem with a system of rotation between adults and juveniles.

In addition, since some of these establishments do not anticipate the reception of juveniles, there may be no provision concerning them in the rules and regulations. As a consequence, children are at great risk of being treated like adults without their specific needs being taken into account. For example, with regard to disciplinary measures, though some measures may be forbidden or restricted for those detainees who are less than 18 years (such as reduction in food and frequency of visits; isolation, etc.) they may still be applied to them.

c. Direct contact with adults

From the moment minors are placed in mixed establishments, whether in separated quarters or not, it is quite difficult to exclude direct contact with adults. For example, in order to avoid the lack of activities mentioned above, an alternative solution might be in certain cases to mix adults and minors during educational or recreational activities. It may also be that children and adults are in contact during transportation.

In certain establishments, children are permanently in contact with adult detainees. They may share a cell, or even a bed, with them. We came across the situation in one cell, of about ten metres square, where children of seven and ten were detained amongst about twenty adults for several weeks. In certain places, non-separation has even become the norm. This has been made the subject of numerous demands for intervention and complaints from NGOs. Maltreatment, abuse and exploitation are the main consequences of this situation for children (see Chapter 7). We can mention a case in which more than a quarter of a number of children who had been forced to share their cell with adults in a given jail had been the victims of sexual abuse by their co-detainees.

RIGHTS AND REALITIES

d. For what reasons are children mixed with adults?

According to the different national laws and internal regulations, jurisprudence, and practice in force, a child could be confined with adults for the following reasons :

- When it is for the juvenile's own security. For example, the report of a commission of inquiry on the deaths of indigenous people in detention cited by a State party in its initial report to the Committee on the Rights of the Child reveals that it is generally preferable for these children to be detained in the company of adults, themselves indigenous, by reason of the fact that the presence of the adult reduces the risk of self-mutilation or suicide;
- If it is not possible to do otherwise;
- If it proves to be in the child's interest ;
- If the child has passed a certain age (for example, 14, 15 or 16 years);
- If, according to the organisation of the establishment, young adults between certain ages, for example, 18 and 20 years, are placed with those less than 18;
- If the child enters an establishment with one or both parents;
- If it is judged that these contacts do not expose the child to bad influences;
- If the adults are limited in number and are not considered dangerous;
- Following the neglect of the authorities or their lack of training or goodwill in the application of the law;
- When some privileged adult convicts are, in return for a sum of money, placed with minors for their own security and comfort;
- As result of an attempt by the institution to be more repressive to children. This policy may be more especially directed at a particular group of children, for example, those accused of terrorism or political offences or recidivists;
- With the goal of intimidating children;
- With the goal of disciplining children : for example, when the personnel assumes that the youngsters will listen to the adult prisoners more willingly than to the warders.

Finally, very important reasons for children being placed with adults are the material constraints on closed establishments, which makes separation financially difficult or impossible. As seen in the Chapter on reservations and declarations of interpretation (Chapter 3), some States Parties to the

CHILDREN DEPRIVED OF LIBERTY

Convention have made a reservation in order not to be bound to this obligation when there are no appropriate facilities for juveniles. When national legal provisions provide for separation “unless this is impossible”, the legislation is referring to such constraints. It has to be recognized that the industrialised countries complain of constraints of space and infrastructure as well as developing countries.

The material constraints promoting the mixing of juveniles with adults include the following :

- The lack of space in the establishments specifically reserved for juveniles or the absence of such establishments;
- The lack of means inside adult prisons to construct special quarters for juveniles or to reserve for them a section of the establishment;
- Overcrowding;
- The difficulty of correct classification when the juvenile does not have any papers and there are no other means to determine his age.

e. Is a separation in every case desirable?

As stated above, the requirement to separate minors from adults is not absolute and the Convention provides for an exception if it is preferable to do so in the child’s best interests.⁹⁵ In this regard, several tensions emerge between the necessity on the one hand to protect children against ill-treatment caused by adults and on the other, the necessity to respect other rights, such as contact with the family, involvement in educational and recreational activities, taking into account the opinion of the child or other important elements for the well-being of the juvenile. Ideally of course, children should be placed in establishments whilst allowing for the respect of each of these rights. However, in reality it is necessary to deal with such tensions and prioritise children’s rights. This should be resolved on a case by case basis while weighing up the various elements at play. In this respect, the child’s opinion will always have to be taken into consideration.

95 An example of an even wider exception to the rule on separation can be found in the Standard Minimum Rules for the Treatment of Prisoners adopted by the Council of Europe in 1973 (Resolution 1973/5). The Rules do not demand the separation of children and adults during detention. They only stipulate that young detainees must be held in conditions that protect them against any negative influences. It also states that they should benefit from a regime which takes account of their needs particular to their age, making age only one of a range of factors to be taken into consideration at the time of the allocation of prisoners to different institutions.

RIGHTS AND REALITIES

Tension between the obligation to separate minors from adults and distance from the family home

Is it preferable for the child to be placed in an establishment for adults close to the family home or in a centre for minors at a considerable distance from home?

Because of a lack of means or the small number of children deprived of their liberty, the institutions reserved for juveniles, when they exist, are generally very few in any given country. The placements are generally made in centralised locations and it may be difficult to place the child close to his home.

This distance between the institution and the child's home may have some negative consequences on the contact between the child and his family and community. It might have an impact on the frequency of visits, and therefore indirectly on his ultimate reintegration both with the family and with the community. This problem is addressed in more detail in Chapter 5.

Tension between the obligation to separate minors from adults and the availability of activities and treatment

Is it preferable for the child to be mixed with adults or to be kept separately and be deprived of the activities and treatment provided in the establishment for adults?

Earlier in this chapter, we mentioned the impact that the obligation to keep minors separately from adults can have on their access to the various activities offered by the establishment. The same reasoning can apply to therapy sessions and other available treatments. In such cases, would it not be in the child's interest to allow contact between children and adults, under supervision, so that all detainees have access to training, treatment and recreational and sports activities?

Similarly, in certain cases, activities may be more varied and better developed in establishments for adults (for example, professional training) in which case the question is posed again whether it is preferable for the child to be placed there rather than in a place reserved for juveniles but not offering any services. In any case, the availability of treatment, training and other activities must be taken into account, along with the risks of abuse by the adult prisoners, when selecting the establishment.

CHILDREN DEPRIVED OF LIBERTY

Tension between the obligation to separate minors from adults and isolation

Is it preferable for the child to be mixed with adults or to be put in isolation to avoid all contact?

This tension is linked to the previous one : when all contact between adults and minors is forbidden, children risk being excluded from activities within the establishment. Confined alone in their cell, without any opportunity to leave, minors may then be in a situation of isolation, with very limited human contact.

The obligation to separate children from adults can therefore imply “sensory deprivation” which has been found to have an impact on the rates of suicide. A disproportionately high suicide rate (four times the normal rate in one of the examples we found) amongst isolated children was noted in several countries, compared to that for children placed in centres of detention where they are less isolated.

Tension between the obligation to separate juveniles from adults and company sometimes beneficial to them

Would not the company of adults in certain cases be beneficial for the child?

Adults can play a protective role with regard to children. We should recall the example cited above of indigenous children for whom, according to a survey, the presence of adults of the same origin at their side reduces the risk of self-mutilation or suicide. It also appears that detained adults can be better placed in certain cases to convince the young person to “get back on the right track”.

It could also be beneficial for the child (although it may not always be the case) to remain with his parents, members of his family or other people whom he knows and values when they too are deprived of their liberty.

It should be emphasised that the beneficial character of adult’s company must first be judged by the child himself and not only by those responsible for the establishment on his behalf.

Tension between the obligation to separate minors from adults and the juvenile’s wishes

May a child be mixed with adults if he so wishes?

Minors themselves may ask to be placed with adults. The latter are sometimes considered more relaxed and less menacing to children than cellmates who are also minors. One has to be careful, however, that such a demand is not

RIGHTS AND REALITIES

influenced by manipulation and false promises by adult convicts anxious to attract children.

Similarly, youngsters confirm that they sometimes prefer establishments for adults in which they may have more liberties (to watch television, to smoke cigarettes, etc.) and in which they are less controlled.

2.4 Separation of accused and convicted

Because they are presumed innocent and must be treated as such, juveniles who have been arrested or are awaiting judgement must be kept separate from convicted juveniles. This does not always happen. Again, material constraints may make such separation impossible.

It regularly happens that some activities (school, professional, recreational, etc.) are not available in pre-trial detention, as discussed previously. Given the long periods sometimes spent in pre-trial detention, it may be more beneficial for the remanded child to join the convicted juveniles so that they may also benefit from the activities offered by the institution. Tension between the different interests should be treated on a case by case basis.

2.5 Separation on the basis of the reasons for the deprivation of liberty

According to some commentators, it does not really matter whether different categories of children are mixed or not because all are ultimately in need of help and protection. However, the generally accepted principle is that children guilty of serious offences should be separated from those who have committed only minor offences, and from children who have not committed any offence. This separation has as its objective the alleviation as far as possible of the phenomenon of stigmatisation and to protect the physical, moral and mental integrity, as well as the well-being, of every child. To this end, some national laws forbid the placement of children for protective purposes in places of detention for young delinquents.

However, this separation on the basis of motives is not always achieved. As in the case of mixing with adults, such a situation can become very dangerous for the more vulnerable children, susceptible to being subjected to all kinds of abuse and exploitation (see Chapter 7). If children who have been victims of maltreatment are placed with more dangerous juveniles, and if, in addition, the youngest are not separated from the oldest, one can have a situation where a child of 10, placed in an institution after having been raped, is in the same cell as a teenager of 17 accused of rape.

CHILDREN DEPRIVED OF LIBERTY

Reasons for this mixing of children regardless of the reasons for their deprivation of liberty may include the following :

- the establishment has not been informed by the court or other decision-making authority of the reason for which the child is deprived of liberty;
- the separation could involve isolation and non-access to activities for some children.

Chapter 11

Children in special situations

Introduction

In addition to the rights and protection granted to all children without exception, the Convention on the Rights of the Child identifies different groups which are differentiated by their particular vulnerability and who have a right to additional protection. These are children who are refugees, disabled, from minorities or indigenous peoples, those taking narcotics or psychotropic substances, and those in armed conflict or in conflict with the law. In situations of deprivation of liberty, the particular vulnerability of these children may be expressed in two different ways :

- These children are more likely than others to be deprived of their liberty
- These children form a more vulnerable population inside closed establishments

1. These children are more likely than others to be deprived of liberty

These groups of children are indeed often among the first to be threatened with having their liberty taken away. It is worth recalling here the range of reasons which can lead to a child losing his liberty and which are analysed in the first part of the book.

CHILDREN DEPRIVED OF LIBERTY

Child refugees may be deprived of their liberty in the country in which they arrived until a decision is taken as to their status or in camps in which they reside until they may return home. As for disabled children, they are frequently placed in institutions and in the absence of specialised institutions, even in establishments for delinquents, or jails. With regard to indigenous children or those belonging to a minority, the discriminatory measures to which they may be subject sometimes leads to their being placed in prison or in other closed establishments.

In the case of children who use narcotics or psychotropic substances, it is easy to understand how they risk finding themselves deprived of their liberty, whether in detoxification centres or in prison. In certain countries, the systematic confinement of young drug users is the main reason for the increase in the rate of incarceration and overcrowding in closed establishments.

Children in armed conflicts who are likely to be deprived of their liberty are those who are recruited into armed groups as well as those who do not play any part in the conflict. For the former group, being part of the army in itself may already constitute a deprivation of liberty when the children do not enlist of their own will. During hostilities, it is not rare that children are used in the first line of fire as “cannon fodder” or as spies, which subjects them much more to the risk of either being taken as hostages or made prisoners of war. They can also be confined in military camps. Children in the civil population, who do not participate in hostilities, are not always spared : they are sometimes also captured by the enemy and treated as prisoners of war.

Finally, as far as children in conflict with the law are concerned, the manner in which the juvenile justice system is administered is responsible for a great proportion of the instances in which children are deprived of their liberty. This is the reason why we chose in this book to consider this domain as an illustration of the situation of children deprived of liberty as a whole.

2. These children form a more vulnerable population inside closed establishments

The numerous violations of the child’s rights noted in this third part concern these children as much as all other juveniles deprived of their liberty. However, because of their differences, the traumatic experiences they have undergone or their state of health, and therefore by their particular needs, these groups are especially vulnerable to further violations. Some may run

RIGHTS AND REALITIES

a bigger risk than others to be treated as scapegoats and to undergo all kinds of ill-treatment. Chapter 4 of this part described what discriminatory measures might apply to some of these groups. Aggravating the difficulty of their situation, it may be that they do not receive protection, assistance or the particular treatments to which they are entitled.

For example, in the case of disabled children, they may be placed in premises in which treatment and the available activities are not adapted to their needs, such as in jails or centres for delinquents. In these establishments, in which their reception is not always provided for, the young disabled persons often do not receive any particular attention, nor the special care to which they are entitled. The access to education, to training, to health care and recreational activities can be especially problematic for them. Unfortunately, even the conditions in the specialised institutions for disabled children are not necessarily better. Treated inhumanely in certain extreme cases, disabled children may be left naked or linked in pairs, suffering extreme neglect – a situation far from the obligation to guarantee the dignity of children and allow them to lead a decent life as required by the international legal framework.

For child refugees, who often do not speak the language of the country where they find themselves, it is difficult to have access to education or legal aid, to mention only a couple of the obstacles facing this vulnerable group of children.

In conclusion, the deprivation of liberty often fails to provide these particularly vulnerable groups of children with the protection to which they are entitled. On the contrary, the living arrangements in certain establishments may even accentuate their vulnerability.

3. The problem of substance abuse

It is mentioned repeatedly by our sources that in establishments where there are minors, drugs and other psychotropic substances are usually in circulation. Such a situation appears particularly true in adult prisons. Drugs may pass through the juveniles' quarters, where a "levy" can be incurred. Trafficking in alcohol and substitute products such as mixed medications also commonly takes place. In a specialised rehabilitation school, there was evidence that children were taking medications that were supposed to give them "beautiful dreams".

In a number of closed establishments, no treatment is provided for youngsters who use these substances. The absence of psychological monitoring or

CHILDREN DEPRIVED OF LIBERTY

substitute medication can, in certain cases, explain the violent behaviour of young people once they are confined.

Abuse in the provision of medicines is also common among the personnel in the establishment, who sometimes use drugs as a means of constraint (see Chapter 7) or “to calm” children. In this context, the case was reported of a centre for demobilised child soldiers in which all children received tranquillisers because, according to the director, a psychiatrist, “they were all traumatised and needed psychiatric treatment”.

Chapter 12

Monitoring at the structural level

Introduction

When a State takes a young person in its care by placing him in a closed establishment, it has the obligation to assure his protection and respect for his rights (article 20, CRC). This obligation implies that every State has to control the application of the legal framework in force in its territory. With regard to the situation of children deprived of their liberty, the State must make sure that guarantees provided for them in the national or international rules are respected in all places where these children are found (prisons, centres for minors, police stations, etc.).

Monitoring of respect for the rights of children deprived of their liberty may be undertaken at different levels and in various ways. It may fall under the responsibility of the State but may also be carried out by impartial and independent bodies. Although an important part of civil society, the contribution to monitoring the respect of children's rights of the media and the academic world (through scientific research for example) is not developed in this book. However, such sources have been consulted for the research of this book, a full list of which may be found in the bibliography in the appendix.

Monitoring at the structural level is to be distinguished from monitoring at the individual level (see Chapter 8) primarily by objective. The means used are not necessarily different. Monitoring at the structural level aims to

CHILDREN DEPRIVED OF LIBERTY

supervise living conditions and respect for the rights of all children concerned in general, to report failings and to propose structural solutions.

Of course, the monitoring of every child individually and the individual complaints made by children (or by a third party in their name) also have importance at the structural level. Difficulties or concerns appearing regularly in individual cases may indicate a structural problem within the system. Thus, the violence repeatedly denounced by the youngsters deprived of liberty should not lead us to question their comments but rather to reflect on closed establishments as generating violence.

1. What type of monitoring and by whom?

Introduction

The monitoring of conditions in closed establishments may take place at four different levels and be the responsibility, for each of them, of another body or organisation. At every level, the object of monitoring may be different. These four levels are :

- Internal monitoring
- Monitoring by the decision-making authority
- Governmental monitoring
- Independent monitoring

1.1 Internal monitoring

Those responsible for an establishment sometimes do rigorously supervise the conditions of detention that prevail inside and, in particular, the application of the internal regulations regarding all children in the establishment. Several means can be used to this end such as the different procedures of internal complaints or regular interviews with the children, either directly or through the medium of educators (or other members of the staff) or the parents. In certain establishments, children's councils, representing the interests of all the juveniles in the establishment, have been established (see also Chapter 4).

The necessity for this internal supervision is not, unfortunately, always and everywhere taken so seriously. The objective of the administration is sometimes only the maintenance of order and the control of the children. From such a perspective, the status of these children may be compared to "warehoused objects".

RIGHTS AND REALITIES

1.2 Monitoring by the decision-making authorities

As for the judicial and administrative authorities, they may supervise the implementation of their decisions concerning the confinement of children. They remain, therefore, in a certain respect, responsible for children who they decided should be deprived of their liberty. In certain countries, this supervision can last even beyond the period during which the child is placed or detained : after his release, even when this is unconditional or after he completed his time, authorities may maintain supervision, for example, until the minor reaches the age of majority. This possibility is especially true in the context of the juvenile justice system.

The monitoring by decision-making authorities may be carried out by the authorities themselves or can be delegated to a social service or a probation service.

This supervision may consist of regular visits to establishments or interviews with children and their parents, or can be made through regular submission of reports by those responsible for the establishment on the situation of each minor.

In such a way, the decision-making authorities deal with individual situations but the recurrence of certain important issues allows them to develop a broad perspective on the situation of children deprived of liberty in a country at the structural level.

1.3 Administrative monitoring

The governmental authorities and their administrations can supervise the application of laws and regulations in this matter over all of the establishments under their authority (conditions, staff, treatment of juveniles, programmes, management, use of budgetary allocations, etc.). Inspectors, legal experts, commissions, divisions and other bodies can be appointed to visit establishments to make reports and recommendations. Inspections can be led also by “watch committees” or “visiting committees” established by the government. These may offer interesting alternatives to the administrative inspections, particularly in cases where regular inspections are difficult (for example, when access to establishments is difficult or when there is an insufficient number of inspectors).

The “visitors” are appointed by the governmental authorities. They can investigate any aspect of the situation of any person deprived of their liberty at any time. They may visit establishments more or less regularly. They have free access to the buildings at any time and can converse in private

CHILDREN DEPRIVED OF LIBERTY

with everyone. They inform the authorities of their observations and recommendations.

It may also be that monitoring is put in place at a senior governmental level. Thus, a Ministers Committee can be created, for example, following several denunciations of establishments systematically failing to observe children's rights. In one of the cases brought to our attention, all government departments concerned are represented in the Committee as well as independent experts and representatives of the non-governmental community. The Committee works independently. It visits all establishments in the country, presents a public report at the end of its work and makes concrete recommendations.

The inspection can be very detailed, covering the whole premises, as well as the verification of individual files. In certain cases, every child is examined; hygiene and living conditions are checked, as well as the stocks of medicines and food supply; and the personnel (director included) are submitted to a health inspection and a psychological test.

Inspections may lead in certain cases to the reduction or suspension of budgetary allocations and even to the closing of establishments. When certain serious infringements are noted, the judicial authorities may be informed and measures other than strictly disciplinary ones can be taken against those responsible.

However, inspections in many countries are not regular. NGO reports sometimes report that monitoring as a practice has little effect due to the irregularity of visits or the failure to follow-up recommendations.

Another means that the government has to control the conditions of minors in detention is to act earlier, for example, in requiring juvenile establishments to undergo a process of authorization, which includes the requirement that such establishments will observe the minimum international standards concerning personnel, the maximum number of children, the premises, management, treatment of children, etc.

Administrative supervision presents the difficulty of not being independent. There is a risk that some problems are not investigated so as not to be detrimental to the authorities. In addition, inspections are often announced early enough to allow preparations to be made and possibly to hide problematic circumstances. Inspectors in certain cases turn a blind eye to violations as a result of bribes, a welcome worthy of a high dignitary, or shows with the children used almost like puppets.

The human, financial and material means are sometimes lacking to put effective monitoring in place. We found a case in which the unit charged

RIGHTS AND REALITIES

that children are detained separately from adults only consists of one person, without a car, who therefore has to rely on the information given to her over the phone by the staff of the supervised institution. The effectiveness of the inspection may also depend on the availability within establishments of a well-organised system of individual files, a register of entrances and exits, a complaints register, etc.

In certain countries, due to lack of resources, qualified personnel or legislation, such monitoring may even be completely non-existent.

1.4 Independent monitoring

Introduction

It may also be the case that some independent bodies specifically monitor observance for the rights of all children or the rights of children deprived of their liberty in particular. We can distinguish in this category different bodies at different levels : the United Nations Committee on the Rights of the Child, mediators (or ombudsmen) for children and non-governmental organisations.

a. The UN Committee on the Rights of the Child

The Committee, whose role is to examine progress accomplished by States Parties in the fulfilment of their obligations under the Convention on the Rights of the Child, monitors the observance of children's rights in general by States Parties. To this end, it examines reports that States Parties submit regarding the application of the Convention in their territory, in response to which the Committee makes recommendations. Every State Party is required to submit reports, the first within two years of ratification of the Convention, thereafter every five years.

Criminal justice and deprivation of liberty are topics that especially attract the attention of the Committee. This is discussed in more detail in the following chapter, in which we outline the role of the Committee in monitoring the international community in this domain.

b. Mediators

Some countries have appointed a mediator (sometimes an ombudsman), or an equivalent service, charged with the protection of human rights in general or even of children's rights in particular. The mediator may, with complete independence, receive complaints formulated by children deprived of liberty, make an investigation and take relevant action. He or she may be allowed

CHILDREN DEPRIVED OF LIBERTY

to visit establishments at any time and have unlimited access to all files of children, buildings, members of personnel and to all children.

Several mediators for children have raised the problem of children deprived of liberty and the failure to observe their rights.

c. Non-governmental organisations (NGOs)

The NGOs active in the domain of the rights of the child, or in particular, of children deprived of liberty, also visit establishments, produce reports denouncing violations or apply pressure at the international level.

This pressure can take the form of urgent appeals. Several international NGOs (World Organisation against Torture, Casa Alianza, Amnesty International and others) deploy this method which has certainly been fruitful : the national and international communities are made aware of violations of child rights in a given place and are solicited to intervene in the situation and to demand a response from the authorities responsible.

Another strategy of certain local NGOs is to give identification papers to street children who are in contact with them, in order for the NGO to be notified by the police when a street child is arrested but also to make the police understand that the illegal arrest of the child and possible maltreatment will be communicated to the NGO and that silence will not be kept on any mistreatment. Unfortunately, the system of identification papers sometimes functions with difficulty because not all policemen respect the identification papers and the obligation to inform the NGO and not all children carry the papers with them or use them when they get arrested.

1.5 Appeals to national and international judicial bodies

Introduction

To lay an appeal before a court is also a means of monitoring the conditions of minors in detention at the structural level (see Chapter 8 for judicial appeals in individual cases).

The distinction between an individual or structural appeal can be quite vague. In fact, the individual appeals often constitute the necessary basis for the identification of problems at the structural level. An individual appeal before the national or international justice system can create a precedent in favour of the observance of the rights of children in general, and can be invoked thereafter in any similar case.

In the analysis that follows, we have made a distinction between appeals at the national level and those at the international level.

RIGHTS AND REALITIES

a. Appeals at the national level

In many countries, any individual or organisation can make an appeal before a court against procedures leading to the deprivation of liberty that they judge not to be in conformity with the law, as well as against unlawful conditions of detention.

Appeals can refer to violations of any of the rights of children. For example, appeals we have come across concern overcrowding within the establishment, disciplinary measures, dangerous and unhygienic environments, discriminatory practices, violations of the right to education, lack of heating, unsuitability of the sanitary facilities or the educational services, lack of security, and insufficiency of the medical and psychiatric services.

It is important to underline here the important role that non-governmental organisations and the children's legal representatives can play in this respect. NGOs and legal aid lawyers often initiate appeals proceedings. In certain cases, they can even themselves claim damages as plaintiffs on behalf of the children concerned.

Intervention through the court may bring real improvements to the living conditions in the concerned establishment. We found an example where the population of an establishment which had been the subject of a court order no longer exceeds the official capacity since the lodging of a complaint concerning its overcrowding. Another example is that of an establishment convicted for violation of the right to education, where every child must now undergo an assessment immediately after his admission and must begin an educational programme within three days after his arrival. In another case, an NGO that had made a complaint reached an agreement with the establishment concerned on the establishment of about thirty conditions to be fulfilled in the centre in question. This agreement has been accepted by a judge and has been inserted in a court order.

Below is an example of the important role that the judicial authorities can play in the monitoring of detention conditions, a role assumed by the supreme court of the country concerned. The Court made the following observations :

1. Every competent court must regularly visit the places where youngsters are detained;
2. Lawyers must be present at the time of these visits;
3. Each child must be questioned directly;
4. A report on the establishment and on the available services and activities must be prepared;

CHILDREN DEPRIVED OF LIBERTY

5. Every competent court must submit a report every year to the Supreme Court containing a detailed account of all affairs involving youngsters who have been deprived of liberty during the year.

b. Appeals at the international level

When the national appeal channels have been exhausted and the individual or the organisation did not achieve satisfaction, the case can be taken before a regional court, such as the Inter-American Court of Human Rights or the European Court of Human Rights.

Below are two detailed examples of such an action :

Recourse to the Inter-American Court of Human Rights

Casa Alianza, an NGO active in Central America, brings assistance to street children and fights for their (legal) defence before the police, judicial and political authorities.

One of the major problems that street children are confronted with is the deprivation of liberty, a measure decided very often in an unlawful and arbitrary manner. We saw in previous chapters what ill-treatment, brutalities and abuse children might experience, which sometimes may lead to the death of the child, as well as the inhumane and degrading interrogation methods to which they are sometimes subjected.

Casa Alianza endeavours to help these minors individually by ensuring the availability of drop-in centres and helping their social reintegration but also in fighting for the observance of their rights in the justice system. For example, during two years in one country, the organisation introduced close to one hundred procedures of “habeas corpus” to contest the legality and/or the arbitrary nature of the detention of children.

The organisation does not limit its involvement to the defence of individual cases but seeks to defend the interests of street children as a group also. In that context, we have summarised below the process followed by the organisation in a certain country, to ensure that respect for the right of children not to be confined with adults is observed. This process has been undertaken following a decision of the Supreme Court according to which judges could place juveniles in prison with adults. This was possible in the event that the punishment applicable for acts committed by the juvenile would entail more than five years imprisonment for an adult responsible for the same acts, in spite of the explicit prohibition of this practice in the national Constitution.

RIGHTS AND REALITIES

In reaction to this unconstitutional decision and after having exhausted available remedies at the national level, Casa Alianza entered an appeal before the Inter-American Commission of Human Rights asking for the annulment of the decision of the Supreme Court and the abandonment of the practice of confining minors with adults.

Under pressure from the international community, and at the invitation of the Inter-American Commission for the two parties to find an amicable solution, the Supreme Court annulled its decision and the government promised changes (including the creation of detention centres for youngsters) with a view to respecting the Constitution. These promises were not kept, however, and investigations in several prisons proved that the situation had not changed. A young person even died in one of the prisons where he was incarcerated with adults. Following this death, the Supreme Court decided that it was henceforth possible to take disciplinary measures against judges who continued to place children in prisons for adults.

Since these different approaches had not really been followed up effectively and following new concerns expressed by Casa Alianza, the Inter-American Commission asked the government, 17 months after the introduction of the appeal, to take measures such as the immediate prohibition of the detention of juveniles (convicted or in pre-trial detention) with adults, the protection of the right to integrity of every child deprived liberty and access to legal protection for all (including access to a lawyer).

Although the Commission limited these measures to only one jail in the country, the effects of its decision were positive. The Ministries of Justice and the Interior decided to produce a guideline forbidding directors of all jails to receive minors in their establishments. According to an investigation by Casa Alianza, this guideline had a positive impact on the number of children in adult jails.

However, although the number of children in adult jails has reduced, a number of children are still being placed in jails with adults. The Inter-American Commission has called the Inter-American Court of Human Rights for a final decision on the merits that may condemn the State. In the meantime, the Supreme Court of the country concerned has condemned certain judges for abusing public administration after they had jailed children with adults, or because they had not prevented such confinement. These judges have been divested of their functions.

In spite of the difficulties, this experience clearly shows that appeal to an international court of human rights can be an important strategy towards better respect for the rights of the children deprived of liberty.

CHILDREN DEPRIVED OF LIBERTY

Appeal to the European Court of Human Rights

The European Court of Human Rights has also commented several times on cases concerning children in detention. A prominent example of its position on this topic is its judgment in the case of B.

In 1985, young B had been placed fifteen consecutive times in a remand home. On the initiative of some lawyers, this practice had been brought to the attention of the European Commission and the European Court of Human Rights because the national legislation in force in the country concerned seemed to allow it. A legal provision permitted a minor's placement in a remand home as a temporary measure for 15 days maximum if it was impossible to find an individual or an institution able to receive him right away.

The European Court decided in 1988 that the simple deprivation of liberty was not contrary to the European Convention on Human Rights. Article 5 of this Convention actually provides that : "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty, save in the following cases and in accordance with a procedure prescribed by law : (...) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;".

However, the Court also judged that several successive placements in a remand home could in no way meet the purpose of educational supervision. It added that every procedure leading to a deprivation of liberty (of minors) had to provide for a defence and respect all legal guarantees. B had never been able to challenge the measure depriving him of his liberty before an independent and impartial authority.

Following the decision of the Court, the government concerned has been forced to change its legislation. Since 1994, the possibility of placing juveniles in a remand home has been limited to only one time during the same proceedings before the juvenile court; only children suspected of the most serious crimes can be placed there and even then only after their fifteenth birthday. The juvenile has a right to legal aid every time he must appear before a judge or a court, at the time of a provisional procedure as well as during procedures leading to a decision on the merits.

Chapter 13

The topic of children deprived of liberty in United Nations programmes on the prevention of crime and criminal justice, in programmes of the United Nations on human rights and in the concluding observations of the Committee on the Rights of the Child

Introduction

To conclude this third part of the book, we thought that it would be worthwhile to discuss several initiatives taken by the United Nations after the entry into force of the Convention on the Rights of the Child and directly concerning children deprived of their liberty. This Chapter will therefore review some projects that deal with children deprived of liberty in different United Nations programmes, as much in the setting of the promotion and the protection of human rights and in the prevention of crime and criminal justice area. The issue of the deprivation of liberty of children and the respect for their rights can indeed be found from time to time on the agenda of these different international programmes.

Before reviewing these projects and how they deal with the issue that interests us here, the concluding observations of the UN Committee on the Rights of the Child are looked at in closer detail. These observations are formulated by the Committee after examining the reports – initial or periodic – that

CHILDREN DEPRIVED OF LIBERTY

each State Party submits to it. They are a useful reference in the assessment of the problem of the deprivation of liberty of children and respect for their rights.

1. The concluding observations of the Committee on the Rights of the Child

Introduction

This summary is based on the concluding observations (areas of concerns and recommendations) formulated by the Committee on the Rights of the Child from its third session (January 1993)⁹⁶ to the twenty-eighth session (October 2001). As of April 2005, the Committee has considered the initial and periodic reports of the majority of States Parties to the Convention and has adopted concluding observations after examining the State Party report, and having taken into account the information from NGOs in the pre-session and discussed the issues with the national delegation during the session.

Four preliminary observations can be made in this respect.

First, we must underline that the concluding observations as a whole may concern children deprived of their liberty. All recommendations for better respect of children's rights apply of course as much to them as to all other children.

Secondly, it should be pointed out that the domain of juvenile justice is often of concern to the Committee. It is indeed exceptional if no recommendation is made on that topic. In the case of nearly all States that have come before it, the Committee has expressed its concern and/or has made a recommendation about juvenile justice. It is in the context of the juvenile justice system that the deprivation of liberty is most often considered as problematic by the Committee. We also note in the Committee's concluding observations several arguments that are developed in the first part of this book which explain why the juvenile justice system is the principal cause for children to be deprived of liberty.

Third, we have to point to the increasingly standardised character of the concluding observations of the Committee. Too little time and attention seems to be dedicated to the formulation of detailed observations and

96 The first two sessions had been dedicated to developing the working methods of the Committee and the mechanism for the submission of reports.

RIGHTS AND REALITIES

recommendations addressing particular problems and proposing targeted solutions. The use of standardised formulations omits the nuances necessary to effectively deal with particular situations.

Finally, the concluding observations of the Committee prove the importance, the necessity even, of NGO contributions to the monitoring of the implementation of the Convention. If the difficulties caused by the juvenile justice system and deprivation of the liberty of children are mentioned in the concluding observations, it is often because NGOs have drawn the attention of the Committee to them. Member States rarely report on the situation of children deprived of liberty.

1.1 Concluding observations concerning the juvenile justice system

Below are summarised some of the observations and recommendations of the Committee on the Rights of the Child concerning the juvenile justice system in general.

a. General observations

In half of the countries examined by the Committee, the entirety of the juvenile justice system poses problems in terms of respecting children's rights. This includes countries that do not have a separate juvenile justice system and where the young delinquents are sanctioned in the setting of the criminal procedure for adults.

For several countries across the globe, legislation on juvenile justice does not comply with international standards. From 1993 to 2000, out of 121 reports, the Committee asked 21 States to undertake "comprehensive" reform of their juvenile justice system, that is, every component of the system – the courts, police, prisons, alternative care facilities, etc. – and the interplay between the components, have to be thoroughly revised in order to bring the entire system into compliance with the CRC.⁹⁷

b. The ages of criminal responsibility and criminal majority

The Committee is critical of the low age of criminal responsibility in certain countries, but also sometimes the low age from which a child may be prosecuted before a criminal court for adults (irrespective of the fact that he is a minor).

97 Abrahamson, B., 2001, p. 2.

CHILDREN DEPRIVED OF LIBERTY

c. Proceedings and legal protection

Some examples of problematic situations raised by the Committee :

- The total or partial absence of legal guarantees
- The vague character of certain grounds for intervention, such as “child in danger”, “child in irregular situation” etc.
- The risk of discrimination towards certain groups of children, such as children living in poverty, children of minority groups, etc.
- The absence of legal aid
- The absence of the possibility of making a complaint
- The arrest and detention of children in relation to status offences who should instead receive protection from the State like other children deprived of a family environment

d. The child’s rights to integrity and dignity

Some examples of grave situations raised by the Committee :

- Torture and degrading and humiliating treatments
- Corporal punishment
- The application of the death penalty, or the possibility of its application
- Sanctions foreseeing the imposition of life imprisonment for offences committed by persons when they were below 19
- Abuse by and corruption of civil servants in charge of law enforcement
- The use of solitary confinement

e. Other topics mentioned in their concerns or recommendations

- The lack of training of personnel
- The lack of monitoring

1.2 The theme day on juvenile justice

In accordance with article 75 of its internal regulations, the Committee on the Rights of the Child dedicates one or more of its plenary sessions to a general debate on a particular article of the Convention or on a related project, to encourage a better understanding of the content and impact of the Convention.

RIGHTS AND REALITIES

In that context, the Committee on the Rights of the Child organised on 13 November 1995,⁹⁸ a general discussion on the theme of “the administration of juvenile justice”.

The theme of the administration of juvenile justice was chosen by reason of the fact that, in previous years, “the examination of the different reports presented by States Parties had revealed that the application of the general principles of the Convention relevant to the protection of the child in conflict with the law posed certain problems in most countries, and this whatever legal or institutional system was in place. These problems are linked to the adaptation of the national legislation to the Convention, to modes of application of the provisions contained in this instrument and to technical and financial support”.⁹⁹

The problem of the deprivation of liberty had been raised repeatedly during the discussion. Here are some examples of observations and proposals that were made :

“All countries having ratified the Convention should (...) put in place an independent institution to verify the conditions of detention for minors and insuring that they are not subjected to torture. This institution would be authorized to inform the competent judicial authorities of all infringements noted, so that an investigation is opened (...)”.¹⁰⁰

“(...) The abusive use that is often made of pre-trial detention means that it becomes a real punishment before the judgment. In this domain, the Association [International Association of Family and Juvenile Court Magistrates] recommends to respect the legal period of remand, to set objective criteria to order pre-trial detention, to establish guarantees in case of detention beyond 30 days, to impose the presence of a lawyer immediately and in any case after five days of pre-trial detention, to permit the access of independent monitoring bodies to pre-trial detention facilities and to impose the separation of children from adults, except in cases involving regrouping of families”.¹⁰¹

98 UN Doc. CRC/C/SR.253, 24 November, 1995. UN Doc. CRC/C/SR.254, 17 November, 1995; UN Doc. CRC/C/46, 18 December 1995.

99 UN Doc. CRC/C/SR.253, 24 November, 1995, p. 2. Unofficial translation from the original French version.

100 *Ibid.*, pp. 8-9 (proposal made by the World Organisation against Torture). Unofficial translation from the original French version.

101 *Ibid.*, p. 16 (proposal made by the International Association of Family and Juvenile Court Magistrates). Unofficial translation from the French version.

CHILDREN DEPRIVED OF LIBERTY

“(…) The placement of children is as expensive a measure as it is ineffective. In fact, rates of recidivism are high, which indicates that the objective of reintegration is not achieved (…)”¹⁰²

“(…) An increasing number of more and more young children are incarcerated and (…) resources are dedicated to this end instead of being used for programmes based in the community. Research has demonstrated that this approach might aggravate the problem of criminality (…)”¹⁰³

The general discussion organised by the Committee on the Rights of the Child in 2000 (22 September 2000) had as a topic State violence against children. One focus was on violence within public institutions. During the discussion, the following points were made :

“With regard to prevention and alternatives to institutionalization, States parties should promote the use of alternatives to child care in large, impersonal institutions, making particular use of “open houses”. Families should also be supported in their efforts to care for their own children. Where children had to be placed in institutions, the latter should be small and served by trained staff, ensuring that the child maintained contact with his or her family and the outside world.”

“Urgent attention should be given to the establishment – or effective functioning if already in existence – of systems to monitor the treatment meted out to children deprived of a family and to advise on their improved care. (….) Emphasis must be placed not only on care conditions but also on regular review of the justification for continued placement.”

“Regarding prevention and alternatives to institutionalization, recourse should be had to local and traditional mechanisms – when compatible with international human rights standards and rules – as a means of diverting children from contact with the formal criminal justice system.”¹⁰⁴

102 *Ibid.*, p. 16 (observation made by Human Rights Watch). Unofficial translation from the original French version.

103 *Idem*, p. 20 (observation made by the Council of the Children’s Rights Development Unit). Unofficial translation from the original French version.

104 Summary record of the 650th meeting, UN Doc. CRC/C/SR.650, 27 November 2000.

RIGHTS AND REALITIES

In October 2001, the Committee adopted guidelines regarding the initial reports to be submitted by States Parties on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict which entered into force on 12 February 2002. The guidelines include a request for States Parties to submit information on “the criminal liability of children for crimes they may have committed during their stay with the armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected”.¹⁰⁵

1.3 Concluding observations concerning the deprivation of liberty

The deprivation of the liberty of children is a topic that features regularly in the concluding observations of the Committee. Here is a summary of the areas of concern and recommendations :

a. General principle : respect for the child’s rights

Some examples of problematic situations raised by the Committee :

- Conditions of detention and violations of children’s rights in detention centres in general
- Incompatibility of penitentiary institutions regulations with international norms
- Excessive use of repression in certain establishments

The Committee underlines, for example, the necessity :

- Of paying particular attention to the protection of the rights of children deprived of their liberty, for example, the right to leisure and the right to contact with family
- Of transferring the responsibility of all establishments to the most suitable body to ensure the promotion and protection of children’s rights

b. Separation/classification

Some examples of problematic situations raised by the Committee

- Children are not separated from adults
- The accused are not separated from the convicted
- Delinquent children are not separated from children placed for reasons other than their own behaviour

105 UN Doc. CRC/OP/AC/1, para. 14(f).

CHILDREN DEPRIVED OF LIBERTY

c. Motives

Example of a problematic situation raised by the Committee :

- The possibility of depriving a child of his liberty because he is beyond parental control, because he has been abandoned or because he works on the street.

d. Legal protection

Some examples of problematic situations raised by the Committee :

- The absence of an age threshold below which it is forbidden to deprive a child of liberty
- The possibility of deprivation of liberty for an indeterminate period of time and, in general, the length of the confinement period
- Arbitrary arrest/detention.

e. Torture and inhuman and degrading treatment

Some examples of problematic situations raised by the Committee :

- The application of corporal punishment in establishments where children are placed
- The absence of the possibility of making a complaint before an impartial and independent authority
- The absence of sanctions against those guilty of torture or other cruel, inhuman and degrading treatments.

f. Monitoring

Some examples of problematic situations raised by the Committee :

- The lack of attention paid to the setting up of a system of systematic and complete data collection for the determination of suitable indicators and the creation of monitoring mechanisms for all domains covered by the Convention for children placed in institutions
- The absence or the weakness of an independent monitoring mechanism. Such a mechanism is necessary so that violations of children's rights, including when they are committed by members of the army, by law enforcement officers or members of the penitentiary personnel, are the object of a thorough investigation and that the situation of children placed in institutions or in detention centres is being monitored

RIGHTS AND REALITIES

g. Training and information

Example of a problematic situation raised by the Committee :

The lack of training and poor information given to law enforcement officers and penitentiary personnel or those working in institutions where children are placed

h. Alternatives

Example of a problematic situation raised by the Committee :

- The insufficiency of alternatives to imprisonment

2. United Nations programmes for the protection and the promotion of human rights

Introduction

The deprivation of liberty of children is a topic that also features from time to time in other UN programmes for the protection and promotion of human rights. This observation is in itself significant because it confirms that the deprivation of children's liberty is an issue at the heart of human rights in general. It is important to underline that the work of Mrs. Bautista as Special Rapporteur on the detention of juveniles (see Chapter 2) has significantly increased attention to the problem within the United Nations.¹⁰⁶

The World Conference on Human Rights (Vienna, 1993) recalled in paragraph 21 of its final declaration the importance of the reinforcement of national and international mechanisms and programmes for the defence and the protection of children, and in particular of children in detention.

In what follows, the different bodies of the United Nations which may deal with the issue of children deprived of liberty are outlined. The substantive information relevant to the problem of the deprivation of liberty in itself is discussed in previous chapters (Chapters 4 to 12).

106

For a synthesis of the follow-up to the Bautista report , see UN Doc. E/CN.4/Sub.2/1996/WG.1/CRP.1

CHILDREN DEPRIVED OF LIBERTY

2.1 *The Commission on Human Rights*

The deprivation of liberty of children is, particularly since the 49th session in 1993, a topic regularly addressed in resolutions adopted by the United Nations Commission on Human Rights during its annual sessions.

In its Resolution 1993/80, the Commission supported, in the context of its activities for the defence of human rights, the proposal of the Secretary General¹⁰⁷ to organise an experts meeting on the theme of the deprivation of liberty of children and the application of the international norms. This meeting was held in Vienna from 30 October to 4 November 1994, on the initiative of the United Nations Centre for Human Rights¹⁰⁸ and the United Nations Crime Prevention and Criminal Justice Branch.¹⁰⁹ In its resolution 1995/41, the Commission on Human Rights expressed its appreciation for recommendations made at the time of this experts meeting.¹¹⁰

During the sessions in 1995 and in 1996, the problem of the deprivation of liberty of children was once again on the agenda of the Commission. Resolutions 1995/41 and 1996/32¹¹¹ reaffirmed the direct link between the juvenile justice system and the problem of the deprivation of liberty and reiterated the fundamental principles recognized in the international rules. The resolutions also underlined the necessity of co-ordinated technical assistance in the field.¹¹²

Following resolutions adopted at the time of these sessions, member States have been invited to fully take into consideration the international norms in their legislation and their national practices and to make them widely known.

107 See the note of the Secretary General on this subject: UN Doc. E/CN.4/Sub.2/1992/20/Add.1

108 The Centre is today called the Office of the High Commissioner for Human Rights (based in Geneva).

109 The Branch is today called the Centre for International Crime Prevention (based in Vienna). See the document on the meeting: "Children in Trouble. United Nations Expert Group Meeting", Vienna, Austrian Federal Ministry for Youth and Family, 1995.

110 See UN Doc. E/CN.4/1995/100.

111 These resolutions were entitled "Human Rights in the administration of justice, in particular of children and juveniles in detention".

112 "[The Commission on Human Rights] urges the High Commissioner for Human Rights to consider favourably, requests by States for assistance in the field of the administration of justice and to strengthen system-wide co-ordination in this field, in particular between the United Nations programme of advisory services and technical assistance in the field of human rights and advisory services of the United Nations crime prevention and criminal justice programme."

RIGHTS AND REALITIES

Another consequence was the request by the United Nations Secretary General to governments to provide him with information on the question. Requests for information have also been addressed to the competent organs of the UN, to specialised institutions and intergovernmental and non-governmental organisations.¹¹³ These requests were in addition to a similar request made on the basis of a resolution in 1994 of the Sub-Commission on the prevention of discrimination and protection of minorities (this is discussed further below).

It is interesting to note that, on these two occasions, only a very limited number of governments, intergovernmental organisations and NGOs sent information. In our opinion, this does not indicate a lack of interest in the topic, nor does it question the usefulness of the exercise. But it could be that the method used to obtain information was not the most appropriate. States sometimes feel there is an “overdose” of requests when they receive several more or less similar requests, sometimes coming from the same organisations.¹¹⁴ This inevitably creates an overload in work for the governmental bodies which are given the task of responding to the requests and which are not always sufficiently equipped to do so. To address this problem, efforts should be made to rationalise and to better co-ordinate requests for information in accordance with the obligation of State Parties to report on the measures taken to implement the Convention.

Indeed, the report submitted to the Committee on the Rights of the Child by every State Party has to be considered as the core document on which the efforts of all intervening parties must concentrate (governments, non-governmental and intergovernmental organisations) in order to properly understand the State policies towards children’s rights. The State report has the advantage that it must be prepared at regular intervals¹¹⁵ and must cover all fields related to the rights of the child in a comprehensive and detailed manner.

At the fifty-eighth session of the Commission on Human Rights, the Secretary-General submitted a report on practical measures for the

113 “Children and Juveniles in detention”, Report of the Secretary General pursuant to resolution 1996/32 of the Commission on Human Rights, UN Doc. E/CN.4/1997/26; see also UN Doc. E/CN.4/1996/31 and Add.1.

114 In this respect, see, for example, the questionnaire sent more or less at the same time by the United Nations Centre for International Crime Prevention, concerning the implementation of juvenile justice international standards (see below).

115 The initial report must be submitted to the Committee within two years of the entry into force of the Convention and thereafter every 5 years.

CHILDREN DEPRIVED OF LIBERTY

implementation of the international standards in the field of human rights in the administration of justice, in particular regarding rebuilding and strengthening structures and capacities for the administration of justice in post-conflict situations, and in juvenile justice, following the request made in its resolution 2000/39.¹¹⁶

2.2 The Sub-Commission on the Promotion and Protection of Human Rights¹¹⁷

The Sub-Commission on the Promotion and Protection of Human Rights also addresses in its work the theme of the deprivation of liberty of children and juvenile justice. For example, the work of the Special Rapporteur on the application of international standards concerning the human rights of detained juveniles (in 1991 and 1992) deals directly with the issue, as mentioned at the beginning of this part (Chapter 2).

In 1994, the Sub-Commission adopted a resolution on the situation of the children deprived of liberty, comparable to resolutions adopted in 1995 and 1996 by the Commission on Human Rights (see above). Following this resolution, member States have been invited to provide information on the topic and a report on the subject has been prepared.¹¹⁸

More recently, in its Resolution 1997/25, the Sub-Commission asked for research on juvenile justice. A report was presented to the Commission on Human Rights at its 56th session in 2000.¹¹⁹

2.3 Treaty monitoring bodies

There are monitoring bodies other than the Committee on the Rights of the Child that may also be concerned with the problem of children deprived of their liberty. Among them are the Human Rights Committee and the Committee against Torture.

116 UN Doc. E/CN.4/2002/63, 11 February 2002.

117 In 1999, the Economic and Social Council changed the name of the Sub-Commission on prevention of discrimination and protection of minorities into Sub-Commission on the Promotion and Protection of Human Rights.

118 "Situation of children deprived of their liberty", Resolution 1994/9 of 19 August 1994, UN Doc. E/CN.4/Sub.2/1995/30 and Add.1.

119 "Human Rights in the administration of justice, in particular of children and juveniles in detention", Report of the Secretary-General submitted pursuant to Commission resolution 1998/39, Commission on Human Rights, 56th session, 13 January 2000, UN Doc. E/CN.4/2000/54.

RIGHTS AND REALITIES

Unlike the Committee on the Rights of the Child, the Human Rights Committee can receive individual complaints concerning violations of human rights. In considering the case law established by the Committee since 1977, we note that the right to liberty and security of person (ICCPR, article 9) and the right to be treated with humanity during the deprivation of liberty (ICCPR, article 10) are frequently used as grounds for appeal.¹²⁰ However, these appeals only very rarely concern children, indicating that children (deprived of liberty) are not put in a position to profit from this important monitoring process.

The treaty bodies are considering the establishment of follow-up procedures to their recommendations in order to assist national authorities in efforts to increase human rights protections, particularly in regard to the administration of justice.¹²¹

2.4 *The thematic mandates*

We can also find information on children deprived of liberty and the respect or non-respect for their rights in the works of the following special procedure :

- The Working Group on Arbitrary Detention
- The Special Rapporteur of the United Nations Commission on Human Rights on the question of torture (Mr. Manfred Nowak)
- The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions (Mrs. Philip Alston)
- The Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography (Mrs. Juan-Miguel Petit)
- The Special Representative of the Secretary General for children and armed conflict (Mr. O. Otunnu)

2.5 *Technical assistance*

The Office of the High Commissioner for Human Rights is involved in programmes of technical assistance, notably in the domain of juvenile justice,

120 de Zayas, A., Möller, J. Th. and Opsahl, T., 1994.

121 "Civil and Political Rights Including the Question of Independence of the Judiciary, Administration of Justice, Impunity: Human Rights in the administration of justice, in particular of children and juveniles in detention", Report of the Secretary-General, *op. cit.* (note 26), p. 3.

CHILDREN DEPRIVED OF LIBERTY

with in certain cases a particular focus on children deprived of liberty. Programmes of technical assistance in the domains of juvenile justice and deprivation of liberty of children are planned or are in progress in several countries.

The technical support consists in most cases of the organisation of training courses and in implementing legislative reform.¹²²

The Coordination Panel on Technical Advice and Assistance in Juvenile Justice was established pursuant to Economic and Social Council resolution 1997/30 with the objective to enhance, coordinate and strengthen technical cooperation in the area of juvenile justice. The members of the Panel are UNDP, UNICEF, OHCHR, CICP, the Committee on the Rights of the Child and the International Network on Juvenile Justice. The OHCHR recently proposed an international expert workshop on juvenile justice which would focus on three areas : access to accurate and comprehensive data and other information with regard to the administration of juvenile justice, perceptions relative to juvenile justice and raising awareness of the situation of children implicated in juvenile justice, including children in conflict with the law.

3. United Nations Programme for the prevention of crime and criminal justice

Introduction

The deprivation of liberty of children is a topic that features regularly in the context of the United Nations Programme for the prevention of crime and criminal justice, and particularly so with regard to juvenile justice.

This Programme falls under the authority of the United Nations Commission for the prevention of crime and criminal justice, created in 1992 by the Economic and Social Council. The Programme is carried out through the Centre for International Crime Prevention, based in Vienna.

The objective here is not to comment in detail on all initiatives taken on this matter in the context of this Programme. We will limit ourselves to presenting the different contexts within which these initiatives may be taken. Substantive information has already been considered in the previous chapters.

122 Preliminary survey of technical advice and assistance in the framework of the Convention on the Rights of the Child. Geneva, Office of the High Commissioner for Human Rights.

RIGHTS AND REALITIES

3.1 Standard-setting

The Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Guidelines for the Prevention of Juvenile Delinquency (1990) and the Standard Minimum Rules for the Administration of Juvenile Justice (1985) have been prepared in the context of the congresses that the United Nations organises every five years on the theme of the prevention of crime and the treatment of offenders. The first of these congresses, during which the Standard Minimum Rules for the Treatment of Prisoners was adopted, was held as far back as 1955. The tenth congress was held in Vienna in April 2000.

The themes of juvenile justice and deprivation of liberty of children were especially addressed during the seventh congress (1985, Milan) and the eighth congress (1990, Havana) during which the aforesaid instruments were adopted.

3.2 Awareness raising

The Centre for International Crime Prevention organised, with the support of the Austrian government, several conferences and experts meetings on the theme of juvenile justice in general and of deprivation of liberty of children in particular. We have already mentioned above the experts meeting held in Vienna from 30 October to 4 November 1994, organised in co-operation with the United Nations Centre for Human Rights. A second meeting was organised in February 1997 with the main objective being the improvement of technical assistance in the area of juvenile justice.

3.3 Technical assistance

The Centre for International Crime Prevention is also involved in programmes of technical assistance in the field of juvenile justice. It is one of the bodies, along with UNICEF and the Office of the High Commissioner on Human Rights, which are mentioned explicitly in the concluding observations of the Committee on the Rights of the Child when it recommends technical assistance in this area and to which the States concerned can refer to. This technical assistance may be limited to training or may cover the whole reform of the juvenile justice system. The Centre has also prepared a training manual on juvenile justice.¹²³

123 “The United Nations and Juvenile Justice: A Guide to International Standards and Best Practice”, *International Review of Criminal Policy*, No.s. 49 and 50, United Nations, New York, 1999.

CHILDREN DEPRIVED OF LIBERTY

In order to better co-ordinate the different efforts, as much between the different United Nations bodies as between international non-governmental organisations, the Centre was one of the main promoters of the creation of a Panel for co-ordination of technical assistance and advisory services in the area of juvenile justice. Today, UNICEF provides (provisionally) the secretariat of this Panel. Other members of the Panel are the Centre for International Crime Prevention, the Office of the High Commissioner for Human Rights, and the International Network on Juvenile Justice, which gathers NGOs active in this domain.¹²⁴

3.4 Monitoring

The Centre for International Crime Prevention is in charge of the monitoring of the application of the different norms and standards adopted by the United Nations in juvenile justice. The five-yearly congresses are, in this respect, privileged occasions to report on the progress and difficulties experienced by member States in the implementation of these norms and standards.

In 1997 a very detailed questionnaire was sent to all United Nations member States with the goal of better appreciating the observance of these rules at the global level.¹²⁵ A summary of 51 country replies was presented at the ninth session of the Commission for the Prevention of Crime and Criminal Justice.¹²⁶ The main substantive observations concerning the deprivation of liberty of children have been taken into account in the previous chapters.

4. The work of UNICEF

In addition to these programmes, the United Nations bodies also undertake work in this area at the country level. UNICEF is one of them : many of its country offices, prompted by governments or sensitised by NGOs, have projects in relation to juvenile justice and children deprived of liberty. Their work consists for example in supporting the development or harmonisation of the national legal framework in accordance with international standards, in bringing direct assistance to children deprived of liberty in the form of

124 The administration of the Network is provided for by the International Secretariat of Defence for Children International (Geneva).

125 On the basis of Resolution 1995/13 of the United Nations Economic and Social Council (24 July 1995).

126 "Use and application of United Nations Standards and Norms in Juvenile Justice", UN Doc. E/CN.15/1998/8/Add.1

RIGHTS AND REALITIES

food, health care or educational activities, in organising training seminars for professionals and, more generally, in making the community more aware about the rights of the child. UNICEF encourages its country offices to avoid setting up projects on juvenile delinquency itself but rather on the avoidance of delinquency through the promotion of childcare in areas such as health, education, sanitation, etc. Strategies have been adopted in four principal areas : (1) decriminalisation and diversion; (2) restorative justice; (3) alternative options to judicial sanctions; and (4) juvenile justice in post-conflict situations.

Conclusion

There is a constant necessity of raising the awareness of all United Nations bodies on the theme of children's rights in general. It is fundamental that all bodies in charge of the monitoring of human rights in the domains of justice, detention or torture, amongst others, do not omit to pay particular attention to the fate of children. The presence of specialised programmes or bodies for children must in no way relieve others of their responsibilities.

Conclusion to Part Three

Although it might be an exaggeration to conclude the third part of the book by saying that no child has ever benefited from a measure depriving him of his liberty, it can nevertheless be said that the observance of all the rights of the child is difficult, or even impossible, within a closed establishment.

On this basis, our conclusion is simple : the deprivation of liberty does not offer a favourable context to the respect for children's rights. These rights are easily violated within closed establishments, and particularly so in those which are not adapted for the reception of minors such as police stations, arrest cells or adult prisons.

Deprivation of liberty implies thus, for many children, more than just a loss of autonomy : it takes away from them the enjoyment of numerous rights. It also regularly transforms these rights into privileges, by subjecting their realization to the good will of other people, to assistance coming from outside or to therapeutic, disciplinary or other motives. The fact that the realization of rights is subject to conditions – which is incompatible with the very notion of a right – is a significant and recurrent aspect of the deprivation of liberty of children, which is permanently highlighted throughout the book.

Confronted with violations of his rights, the chances are that on release the child will be more traumatised, more damaged and more rebellious than he may have been at the time of his arrival in the establishment. He leaves also with a label of “marginalised” which generally risks seriously compromising his future.

For these reasons, we can only share the opinion according to which “prison only has value if you haven't been there”. Applying this observation to all closed establishments, only one option prevails : the search for alternatives.

PART FOUR

**ALTERNATIVES TO THE DEPRIVATION
OF LIBERTY**

Introduction

One of the objectives of this book is to offer tools to those who work for better respect of child rights, especially of those children who are deprived of liberty or at risk of being so. In the second part of the book, the international legal framework – a preliminary tool – was outlined, clearly indicating the commitments agreed upon by the international community to guarantee at the national level, legal protection to children during the deprivation of liberty. In the third part, concrete examples of the realization of certain of these rights for minors deprived of liberty all over the world, were presented, and could constitute additional tools.

In spite of the good intentions that can be at the origin of a measure involving deprivation of liberty and in spite of the important efforts made in certain institutions to respect the child and his rights, we concluded the third part by noting that the deprivation of liberty is hardly compatible with the respect for the rights of the child. In this respect, the normative framework states very clearly that the deprivation of liberty must always be decided as a last resort and for the shortest appropriate period of time.

In order to fulfil the obligation of States to respect children's rights, another tool is needed : alternative responses to the behaviour of children or situations involving children that lead too often to confinement.

Frequent resort to measures involving the deprivation of liberty or other severe and repressive reactions indicate :

- an anxiety with regard to problems that certain children can pose (the interest of society)
- a real concern for protection and support for children (the interest of the child).

CHILDREN DEPRIVED OF LIBERTY

Recourse to these extreme measures can be the result of poor information about the underlying problems and their causes in relation to juvenile delinquency, but also a lack of information on possible alternatives and therefore a lack of confidence in what alternative measures can achieve.

Nevertheless, numerous alternatives to measures involving the deprivation of liberty do exist and are regularly applied to problematic situations involving children in many countries.

To contribute to an increased awareness of alternative measures, we have compiled in this fourth and last part of the book alternatives from all over the world. Again, the alternative measures presented are mainly used in the domain of juvenile justice, which is the domain most responsible for depriving children of liberty.

In making a selection of alternatives, it was necessary to be careful about “semantic mystification”. An initiative presented as an alternative is not necessarily so. Some policies, considered as solutions, may sometimes entail more negative consequences than the “wrong” that they wish to correct. It is important for this reason to define what we mean by alternatives to measures involving the deprivation of liberty. Does the definition include corporal punishment, for example, as suggested in certain countries? Or is it something else?

The recourse to alternatives raises another risk : that of “net-widening”. With the introduction of constructive, humane and respectful alternatives within the administration of juvenile justice, the social control system could increase in scope and affect a larger number of juveniles. In offering answers to problems experienced and posed by children, it could attract an ever-increasing number of juveniles. Is this a desired outcome?

To answer this question, it is necessary to refer to the relevant international legal framework. We have identified several qualities that alternatives must have both in content and in implementation. The first Chapter contains a synthesis of the international legal framework in this regard. As the problems alternative measures have to address all have their own specificities, there is no ‘on size fits all’ alternative measure. Elements of the legal framework are extremely useful as guiding principles. Even in exceptional cases, such as those involving the “multi-recidivist” young delinquents or children who have committed very serious offences, there is a need for the international community to have the courage to stand by their responsibilities and to support – or initiate – a process towards the development of viable alternatives to measures involving the deprivation of liberty. The criteria from the international legal framework also provide important guidance in such cases.

RIGHTS AND REALITIES

The second Chapter concentrates on some examples of supposed alternatives to the deprivation of liberty that are excessively – or even exclusively – determined by considerations of public order. In such policies, the child's best interests are absent from the underlying concerns or, at the very least, difficult to identify.

Chapters 3 to 5 provide an overview of what these alternative measures may constitute. This overview does not go into detail because, despite our conviction as to the importance of such initiatives, it is not the objective of the book to be exhaustive. Our goal is rather to give, from concrete examples, the sense that it is possible to approach problems differently.

We relied mainly on information from NGO studies, reports presented by member States to the United Nations Committee on the Rights of the Child and replies to our own questionnaire on respect for the rights of the child during the deprivation of liberty. In addition, some of the recent literature on the subject was surveyed.

The alternative measures presented come from various regions of the world. Rather than elaborating particular measures in detail, we identified the main features or characteristics of several similar initiatives. In every case, it is the underlying principle of the alternative solution that is fundamental rather than the actual concrete modes of application because this principle can be applied universally, irrespective of cultural or material differences.

As in the rest of the book, countries in which initiatives have been identified are not named. The interest is focused on the project itself, rather than the place where it is put into practice. As is the case with violations of the rights of the child, the efforts to remedy these and to prevent them are numerous and occur globally.

Chapter 1

The international normative framework

Introduction

When searching for or putting in place alternatives to the deprivation of liberty, having in mind certain criteria to observe is extremely useful. Such criteria are indispensable firstly in distinguishing genuine alternatives from others and secondly, thereafter, in the supervision of their progress. A set of criteria can also serve to guide the efforts designed to put in place humane, constructive and respectful reactions to the problems of young persons and the difficulties posed by them. Having in mind such a set of criteria should not mean simply duplicating what already exists, but rather, on the basis of such criteria, encouraging creativeness in new initiatives.

In order to determine universally applicable criteria, both binding and comprehensive in scope, we considered the international legal framework relevant to juvenile justice, as detailed in the second Chapter of the second part of the book. The United Nations Convention on the Rights of the Child is the starting point and has served as the foundation for this work. Building on this foundation, it is necessary to consider the United Nations Guidelines for the Prevention of Juvenile Delinquency (PJD) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (AJJ). We also included in our analysis the United Nations Standard Minimum Rules for Non-Custodial Measures (NCM) adopted in 1990 by the United Nations General Assembly.

CHILDREN DEPRIVED OF LIBERTY

The criteria to observe in the setting up of alternative measures can be identified at three different levels. The first level, often forgotten or neglected, is that of general prevention. The second level is related to the possibility of resorting to extra-judicial means to deal with the problem. The third is on the level of the administration of juvenile justice and possible alternatives to the way it is carried out. These three levels are bound closely to each other. For example, the recourse to extra-judicial solutions (second level) may depend on social, educational and cultural services existing at the first level. The search for alternatives should be conducted at all three levels simultaneously.

The legal framework outlined below is neither exhaustive nor as detailed as that developed in the second part of the book. For this reason, we are anxious to emphasise that children subject to alternative measures very clearly have, as is the case for children deprived of liberty, all the rights of children and that the legal framework therefore applies to them as to the others in its entirety.

1. The key principle : minimum intervention

The principle of minimum intervention (NCM, article 2(6)) must be central, notably in the search for and the application of alternatives. “In many cases, abstention would be the best solution” (AJJ, Preamble).

This principle of minimum intervention can be explained by the observation that a number of problems are “self-regulating”. Juvenile delinquency is in this respect a good example. All over the world, most children commit a minor offence at one time or another (for example, petty thefts or traffic offences). These offences are, however, often not reported to the police or the judicial bodies. For most of these children, this type of behaviour is temporary and adopted during a period of adolescence when they are exploring social boundaries. Several studies nevertheless demonstrate that if these youngsters have the “misfortune” to enter into the mechanics of the social control system and are not removed from the system quickly enough, there is a risk that they will be marginalised from society. From then on it will be much more difficult to remedy their situation. It could be said with little exaggeration that the social control system then has to try to solve the behavioural problems it has caused in the child rather than the child’s initial behaviour.

The principle of minimum intervention does not apply only to the intensity of the intervention but also demands that intervention is for the shortest

RIGHTS AND REALITIES

appropriate period of time. There is a certain tendency within the juvenile justice system to react with long-term measures when negative behaviour is judged as serious. However, the length of the measure of intervention is not necessarily an indication of its effectiveness. A very short-term response can often be sufficient if the factors that led to the problematic situation are effectively addressed.

2. General prevention

2.1. The principle

Setting up alternatives to measures involving the deprivation of the liberty of children must above all consist of developing respectful global policies for all children and their families. The first step in this direction is therefore fully complying with the Convention on the Rights of the Child.

The United Nations Guidelines for the Prevention of Juvenile Delinquency confirm this principle while underlining that these efforts will contribute effectively to the prevention of later difficulties (see PJD, article 52).

According to the Guidelines, a policy of general prevention must be based on the following characteristics :

- It must be comprehensive
- It must be pro-active
- It must be open to the full participation of children

2.2 A comprehensive approach

A policy of general prevention must be comprehensive and therefore address every social domain. It must be multidisciplinary, co-ordinated and result from a dialogue between all relevant bodies. This dialogue and co-ordination must take place in every social domain, at the local, regional, national and even international level. Public bodies (governmental) as well as private initiatives (non-governmental), professionals as well as volunteers must be involved (PJD, articles 9 and 10). The United Nations Guidelines for the Prevention of Juvenile Delinquency contain recommendations for all partners actively involved in the socialisation of children : the family, school and community. According to the Guidelines, there should also be a focus on general social policy and on sectors such as the media.

CHILDREN DEPRIVED OF LIBERTY

2.3 *A pro-active policy*

A policy of general prevention must be pro-active and therefore have as a target *all* children and not solely those at risk of being exposed to difficulties or those who already are exposed. Rather, general prevention must contribute to avoiding the occurrence of these problematic situations and therefore to supporting every family and every child within the family. It must also aim for improvement in the quality of life for all children rather than limiting itself to certain narrowly defined groups of children. General prevention has as its prime objective the development of the social potential that is in every community and in every human being, however young he may be. Emphasis should be placed on preventive policies facilitating the successful socialisation and integration of *all* children, in particular through the family, community, peer groups, schools, vocational training and the workplace (PJD, article 10).

A pro-active approach also implies an attention to the teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilisations different from the child's own and for human rights and fundamental freedoms (PJD, article 21).

2.4 *A “participatory” policy*

The third feature of a general prevention policy is the attention and respect that must be shown to the full participation of children themselves. If children are part of the problem, they must also be part of the search for a solution. Children themselves must be involved in the formulation, development and implementation of plans and programmes of prevention (PJD, article 50). This principle is already included in the fundamental principles of the Guidelines : “Young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control” (PJD, article 3).

The following are some examples of the incorporation of this principle in the Guidelines :

- Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialisation and integration processes. (PJD, article 10).
- Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making (PJD, article 31).

RIGHTS AND REALITIES

- Prevention plans must provide for youth participation in delinquency prevention policies and processes, including recourse to community resources and youth self-help (PJD, article 9).

2.5 Attention to particular situations

A general prevention policy is a matter of priority but it does not exclude the need for specific attention to special situations and particular problems. For example :

“Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized” (PJD, article 24).

“Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons” (PJD, article 38).

These special policies must be in addition, where they are useful or necessary, to the general prevention policy, rather than being independent initiatives. They provide specialised assistance to particular groups who are most at risk, but in no way replace the general prevention policy.

3. Extra-judicial settlement

3.1 The general principles

a. Introduction

A second level on which it is possible to act to decrease recourse to measures depriving a child of liberty is through extra-judicial settlement of problems and conflicts.

Opting for such an intervention based on certain forms of traditional justice may reflect a wish not to de-personalise the offence or the problem posed. In the resolution of the conflict resulting from an offence, it is very useful for negotiations to be based on the resources, qualities and potential of the people concerned (accused and victim(s)), as well as their environment.

The criteria which extra-judicial settlement must meet are outlined below. Following formal intervention of the police, recourse to extra-judicial

CHILDREN DEPRIVED OF LIBERTY

settlement is qualified as “diversion”. This is addressed in the following section.

b. Legal protection

Setting up alternatives in the context of extra-judicial interventions can only be done provided that full legal protection is guaranteed and that the child runs no risk of any unlawful or arbitrary treatment.

Recourse to extra-judicial settlements must therefore embody the requirements of article 40(3)(b) of the Convention on the Rights of the Child which provides : “States Parties shall seek to promote the establishment (...) whenever appropriate and desirable, [of] measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”.

3.2 Setting up community-based programmes

Community-based services and programmes should be developed for the prevention of juvenile delinquency. Formal agencies of social control should only be utilised as a means of last resort (PJD, article 6).

Recourse to extra-judicial means from the outset is in certain cases the best decision. It is especially so when the offence (or the problem) is not serious in nature and when the family, the school or other community institutions able to exercise official social control have already responded as necessary and constructively or are ready to do so (AJJ, article 1(3)).

3.3 Decriminalisation – de-penalisation¹²⁷

To encourage recourse to extra-judicial resolution involves both decriminalisation and de-penalisation : “(...) any conduct not considered an offence or not penalised if committed by an adult [should not be] considered an offence and not penalised if committed by a young person” (PJD, article 56).

Neglect, substance abuse, truancy, should, for example, be treated preferably outside the formal system of justice. Attempts should be made to avoid criminalising and penalising a child for behaviour (including an offence) that doesn't cause serious damage to the child's development or harm to

127 Decriminalisation implies that a certain act is legally no longer considered as a crime. As for de-penalisation, this signifies that even if an act is considered as a crime, the criminal system no longer has jurisdiction over the proceedings or the sanction.

RIGHTS AND REALITIES

others (PJD, article 5). One of the reasons for this principle in the Guidelines is that “youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood” and that “in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons” (PJD, article 5).

3.4 The consent of interested parties

Any recourse to extra-judicial settlement requires the consent of the main interested parties, including the victim and the accused. Given the role that parents can play in the resolution of conflicts involving their children, their agreement to take part may also be important (AJJ, article 11(3)). In accordance with article 12 of the Convention, it has to be underlined that the child’s opinion is just as important.

4. Elements for a humane, constructive and respectful administration

Introduction

A third level on which the search for alternatives to measures involving the deprivation of the liberty of a child may concentrate is the administration of juvenile issues, that is, any formal administration solicited for the resolution of conflicts or problems involving delinquent children or children “at risk”. This may be the administration of criminal justice or any other general administrative system responsible for the maintenance of public order, the juvenile justice administration or even an administration of social affairs.

The humane, constructive and respectful nature of an administration is not determined solely by the final decision (the applied measure) but also during the procedure. In the international legal framework, one finds requirements involving these two dimensions. Some of these principles are developed further in this part.¹²⁸

However, firstly, it is worthwhile to mention a general principle that applies equally to both extra-judicial settlements and the administration of justice.

CHILDREN DEPRIVED OF LIBERTY

4.1 The general principle and its objectives

Every child has a right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (CRC, article 40(1)).

In the Convention, this principle is recognized for "every child alleged as, accused of, or recognized as having infringed the penal law", but in line with the spirit of the Convention, this principle can be extended to all children who risk, for whatever reason, coming into contact with the social control system, as well as to those who are in welfare and care proceedings (AJJ, article 3(2)).

This principle does not refer explicitly to the twin objectives (the interests of society and the interests of child) of the juvenile justice system, but the two are still discernable in the principle. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice confirm and support these twin objectives : "juvenile justice (...) at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society" (AJJ, article 1(4)).

The coexistence of the child's best interests on one hand and of public order or interests of society on the other can however be a source of confusion, especially for children. Taking the perspective of those who fear public order unrest, and considering the increasing preoccupation of the population in general for the maintenance of a strict and repressive public order, the frequency of recourse to the deprivation of liberty can be seen to be justified. But how do we convince children that this measure corresponds to their best interests? The risk of confusion is especially high when, in the context of child protection or juvenile justice, the claim is made that the interests of the society are not significant.

The most objective view is to recognize the significance of these different interests. In some situations, a mutual reinforcement of these respective interests may be achieved, as advocated in article 40(1) CRC. A response that is "consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's

128 For more complete and more detailed information on the criteria necessary for a more humane, more respectful and more constructive juvenile justice system, see Cappelaere, G. and Verhellen, E., 1996.

RIGHTS AND REALITIES

age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" is the best guarantee of respecting the child's best interests as well as ensuring the effective maintenance of social order.

4.2 Principles to take into account during the procedures

a. Special procedures

"State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law (...)" (CRC, article 40(3)).

It is suggested that the field of application of this provision should be widened to include all children who come into contact with any part of the social control system or who are at risk of being deprived of their liberty for whatever reason.

b. Diversion

Article 40(3) CRC encourages authorities to take measures without resorting to judicial proceedings. This principle should also apply once the juvenile has come into contact either with the police or the judicial system, specialised or not, in the treatment of juveniles.¹²⁹ The objective is to take the child out of this system as quickly as possible. The same community-based services can be used when there is extra-judicial settlement as when diversion applies.

Diversion can apply at all stages of proceedings, for example, before the court judges on the merits (before it decides on the most suitable response to the problem posed). The police, the public prosecutor's office, the other agencies dealing with juvenile justice and even judges, at the point of instituting some provisional measures, should be empowered to stop the judicial procedure and refer the young person to extra-judicial processes, whether under certain conditions or not. A set of criteria assisting in determining the decision must be fixed (NCM, article 5(1)).

Efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims (AJJ, article 11(4)).

129 We should remember that in the case of extra-judicial treatment as discussed above, the juvenile has not had any preliminary contact with the police or the judicial system.

CHILDREN DEPRIVED OF LIBERTY

c. Legal guarantees

Article 40 of the CRC provides a complete set of legal guarantees for the child. This article concerns children alleged as, accused of, or recognized as having infringed the penal law.

Again, it is proposed, in accordance with the spirit of the Convention, widening the application of these legal guarantees to all children who are involved in welfare and care proceedings (AJJ, article 3(2)).

The legal guarantees are numerous, including :

- “No child shall be alleged as, be accused of, or recognized as having infringed penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed” (CRC, article 40(2));
- The child has the right to be presumed innocent until his guilt is established” (CRC, article 40(2));
- “Throughout the proceedings the juvenile shall have the right to be represented by a legal advisor or the right to apply for free legal aid where there is provision for such aid in the country” (AJJ, article 15(1));
- The child has the right “to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians” (CRC, article 40(2));
- The child has the right “to have his or her privacy fully respected at all stages of the proceedings” (CRC, article 40(2)).

d. A previous social investigation

When a child enters into contact with the juvenile justice system, a social investigation can be carried out by an internal or external social service. This investigation can contribute to :

- Better understanding at the child’s personality
- Better understanding of his social environment (family, school, etc.)
- More accurate determination as to whether a response must be applied or not
- Better adapting of the measure the needs of the child

A social investigation sometimes reveals the social or personal problems of the minor and his family that have not been identified before or have not

RIGHTS AND REALITIES

been addressed. Thus, authorities may consider these problems in the determination of the sanction against the child. However, the child should never be punished or sanctioned more severely as a result of an investigation. It may be, for example, that a young person has committed a minor offence (for example, petty shoplifting), which should lead to nothing more than a reprimand from the decision-making authorities, but which has made him the object of a social investigation which reveals difficulties of such an extent (for example, the family lives in great poverty), that the final decision is the deprivation of liberty of the child (see for example, NCM, article 7(1)).

e. Records

In order to limit stigmatisation and its effects on a successful social reintegration as much as possible, records concerning children in contact with the official administration must be kept strictly confidential. They must not be communicated to third parties.

Access to such records must be limited to persons directly concerned with the disposition of the case or other duly authorized persons (for example, people who undertake research) (AJJ, article 21(1)).

Records of juvenile offenders must not be used in adult proceedings in subsequent cases involving the same offender (AJJ, article 21(2)).

f. Avoidance of unnecessary delay

Each case must from the outset be handled expeditiously, without any unnecessary delay (AJJ, article 20).

If the intervention is motivated by a difficult situation to which the child is confronted, nothing can justify any delay in the response. If the child committed an offence, the longer the delay the more the minor will find it difficult, or even impossible, to link psychologically the procedure and the judgment with the offence.

g. A grounded decision

In accordance with article 17(1)(c) AJJ, the judge, the court or any other decision-making authority may be invited, for example, by the child's legal counselor to expressly and comprehensively justify why a certain measure was taken.

The justification may explicitly be part of the decision and may then possibly be the object of an appeal.

CHILDREN DEPRIVED OF LIBERTY

h. The involvement of children

Children must be involved as much as possible in the implementation of the sanction that has been imposed on them. The judge's decision determines the setting and limits of the sanction, but children must be able to give their opinion on the modes of its implementation (CRC, article 12).

4.3 Principles to take into account regarding the measure

a. A non-custodial measure

As previously stated, the deprivation of liberty must be a measure of last resort and for the shortest appropriate period of time, a principle confirmed in several international instruments (see for example CRC, article 37(b)).

Without entering into the discussion about the utility or the necessity for certain children to be placed during a short period of time in home other than their own, the importance of the search for alternatives which ensure that children, as long as they want to, grow up with their own parents and family should be highlighted.

It is important to see in what manner the services and assistance provided in residential establishments could be guaranteed to the child and his family at home and in the community. Again, in this regard the necessity of developing and guaranteeing local social services on a permanent basis should be emphasised. The existence of such services is particularly significant if community-based work (outside a residential setting) is to be undertaken and be effective, and to be integrated within the general social services for all, thereby decreasing the risk of stigmatisation.

b. Respect for physical and mental integrity

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (CRC, article 37(a)).

The dignity of the offender submitted to non-custodial measures must be protected at all times (NCM, article 3(9)). Non-custodial measures must not involve medical or psychological experimentation on, nor undue risk of physical or mental injury to, the offender (NCM, article 3(8)).

c. The active involvement of the child and the community

Young people must not only be actively involved in the procedure (see above), but also during the actual implementation of any measure. Article 12 of the CRC in this respect provides an important legal basis.

RIGHTS AND REALITIES

Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process (AJJ, article 24(1)). Volunteers, voluntary organisations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit (AJJ, article 25(1)).

Suitable mechanisms should be involved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media (NCM, article 22(1)).

Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society (NCM, article 17(2)). Government agencies, the private sector and the general public should be encouraged to support voluntary organisations that promote non-custodial measures (NCM, article 18(1)). All forms of mass media should be utilised to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders (NCM, article 18(3)).

4.4 Training

Effective use of non-residential measures depends not only on the availability of adequate services but also largely on the appropriate training of the personnel, as much at the decision-making level as at the executive level. The necessity to train professionals is stated in most of the international instruments on the matter.

By way of example, article 58 of the United Nations Guidelines for the Prevention of Juvenile Delinquency stipulates that : “Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system”.

Training is a necessary condition to developing a culture open to alternative solutions, and is also crucial in raising awareness about the value of alternative measures for the human being concerned, as well as for society.

CHILDREN DEPRIVED OF LIBERTY

4.5. Monitoring

The juvenile has the right to make a request or complaint to a judicial or other competent independent authority on matters affecting his individual rights in the implementation of non-custodial measures (NCM, article 3(6)).

The development of new non-custodial measures should be closely monitored, and their use systematically evaluated (NCM, article 2(4)).

Chapter 2

Did you say alternatives?

Introduction

So-called “alternatives” to measures involving the deprivation of liberty do exist whose appropriateness, from the perspective of the children concerned and considering their rights, is not really convincing. This is especially the case in the context of responses to juvenile delinquency. For example, corporal punishment is sometimes used as a substitute for short periods of deprivation of liberty. This practice, reserved in general for boys, is applied in several countries. In certain cultures, it is an element in traditional customs. Another example of an inappropriate alternative measure is public humiliation.

Is it acceptable, in light of the international legal framework, that corporal punishment or public humiliation are proposed as alternatives? The answer is clearly no : these practices do not in any way respect the right to the physical and moral integrity of the child (CRC, article 37(a)).

It is useful to recall that the discussion on the deprivation of liberty of children is often concentrated solely on placement in certain establishments, such as prisons, and that it is frequently only judged as problematic in its most extreme expressions. In fact, for some, placement in an “educational”, “rehabilitation”, “correction”, “family type” or other institution represents a real alternative. Is this really the case? Again, the answer is emphatically no. A member of the Committee on the Rights of the Child, during a

CHILDREN DEPRIVED OF LIBERTY

discussion on the initial report of a State party, commented that institutions, notwithstanding how progressive they may be, could never in any way provide the child with the home environment that is so beneficial for him. Whatever its form, a placement is always difficult for the child to experience.

In this Chapter, we address two other examples of initiatives presented as alternatives, but which are not necessarily so when they are considered in light of the international legal framework. These are prevention programmes, sometimes called “scared straight” and rehabilitation programmes referred to as “boot camps”; a form of paramilitary camp for young delinquents.

Before turning to these examples, the context that can justify the existence of these types of programmes is set out. Such programmes are actually the expression of a certain view that influences the debate and the search for alternatives to the deprivation of child liberty.

1. A climate unfavourable to humane, respectful and constructive alternatives

Our remarks on the deprivation of liberty of children and on alternatives are determined by the approach adopted in this book : the child and the respect for his rights. As emphasised, this approach, in spite of its importance, is certainly not the only one that may be taken in the analysis of children deprived of liberty. Another important perspective on the problem is that of the maintenance of public order and the protection of the interests of society.

In discussions on alternatives to the deprivation of liberty, the protection of the public interest regularly occurs as a significant concern. The recent tendency is in fact a return to more repressive reactions and often a blind confidence is placed in the effectiveness of this type of response. The immediate recourse to measures involving the deprivation of liberty, as soon as a problem of social disorder appears, is evidence of this trend. It is surprising to see to what extent this belief in the necessity of a severe reaction is deeply rooted, in spite of the lack of results both with regard to individual rehabilitation and to the guarantee of a more secure society.

To enhance acceptance of alternative solutions and to better counter such convictions, it is necessary to convince people that minimum intervention can be at least as valuable in terms of effectiveness, as much in the context of general prevention as a whole as for the child’s rehabilitation (special prevention). An additional powerful argument to resort to real alternatives is that they are incontestably more conducive to the respect for human rights.

RIGHTS AND REALITIES

A study undertaken in 1994 with juvenile judges in an industrialised country revealed that 93% of judges were in favour of taking fingerprints of apprehended children. 91% approved the imprisonment of young people who had reached the age of majority for offences committed when they were minors. 85% wanted to set up a police file for offences committed during childhood and that the offences be taken into consideration if the person was prosecuted again when he had attained the age of majority. 68% supported the idea of making juvenile court sessions public and 41% approved the application of the death penalty for children. 55% of youth judges found their work extremely demanding.

In western countries, recent examples of a move towards more repressive options are numerous (policies such as “getting tough on youth”). Parents and the family are also the target of these new reactions. The following are some examples of such initiatives :

- The use of curfews : children below a certain age are not allowed to be outside after a certain hour if they are not accompanied by an adult who is responsible for them. The curfew is presented as a measure of prevention.
- The suppression of family allowances¹³⁰ to parents of recidivist delinquent children. According to advocates of this option, parents are as responsible for the acts of their young children as the children themselves. If children continue on a delinquent path, it is because parents do not do enough to put them back on the right track.
- Interventions involving parents ‘responsible for the behaviour of their children’ can go even further, and lead to the removal, partial or total, temporary or permanent, of parental authority (civil sanction) or to criminal prosecution (parents judged co-responsible and being punished for the acts of their children).
- More and more frequent recourse to a criminal procedure for adults. The public continues to press for the imposition of more severe punishments for youngsters guilty of serious crimes, in part because of the impression that young people are committing more violent crimes, and that soft punishments contribute to recidivism. The referrals to adult courts reflect this preoccupation to a certain extent. In certain

130 Family allowances are in some countries part of the social security system. This involves a sum of money distributed by the State to families and calculated on the number of children and their ages. Thus, children are entitled to family allowances but it is the parents who receive them. They are meant to use this money in the interest of their child.

CHILDREN DEPRIVED OF LIBERTY

countries where this possibility does not exist, its introduction is being considered. In others that already recognize and apply this principle, a wider application is under discussion.

- The principle of “zero tolerance” : in certain countries, following certain defined serious acts of violence, authorities have introduced a policy of “zero tolerance” implying that all persons infringing the law will be immediately prosecuted. Here again, young people risk being the first targets of these measures.
- The practice of “naming and shaming” : this involves making public the names of convicted children “so that they feel the weight of shame”.

Reasons for this hardening approach are varied. In addition to the obstinate faith in the effectiveness of stern measures, are also factors such as the supposed increase of problems posed by children and youngsters (for example, delinquency) to society together with the increase in insecurity in the population as a whole. This feeling of insecurity is, however, much more linked to social problems such as unemployment, isolation, poverty, immigration, etc. than it is to criminality. Children and young people themselves are not necessarily the reason for rising discontent and instability in the community. However, they are, along with other vulnerable groups, generally named as among the first responsible when there is a perception of rising criminality.

The logic that guides the recourse to such options is not always justified. For example, the fact that the effectiveness of the response is measured above all by the length and severity of the measure has to be questioned. The effect on the child can even be the complete opposite to the objective sought by the measure. Given the difficulty of being the object of strict surveillance during a prolonged period, a protected measure can encourage violent reactions in the juvenile. The feeling of injustice in a child arising from too stern a measure can develop into a real human delayed-action bomb, whose explosion will probably compromise all possible reintegration efforts with society. Humane treatment and a constructive attitude to young delinquents constitute without doubt the most effective approach to reintegrate the vast majority of them. To be capable of treating others with respect, it is necessary to feel that oneself is also respected.

2. “Military” camps : the example of “boot camps”

We are going to elaborate now on some fairly recent initiatives, which are presented as being alternatives to the deprivation of liberty. For each of them, we will make observations that may contribute to a discussion about

RIGHTS AND REALITIES

their value, from the point of view of the respect for the rights of the child. Alternatives which better respect the rights of the child are presented in Chapters 3 to 5.

“Boot camps”, or camps for military training, are usually organised within the army and have been used for dealing with juveniles since the first half of the 1980s. These are residential establishments in which regulation, discipline and structure are of a military style, although they are not officially linked to the army. Some refer to them as “shock incarceration”.

In the view of their advocates, “boot camps” the following merits : they protect society; they reduce prison overcrowding and allow for savings while decreasing the period of confinement; they punish the delinquent by placing him in a difficult environment without resort to placement in a jail; they reduce recidivism and dissuade criminal behaviour; and they rehabilitate the juvenile while teaching him self discipline, encouraging more social attitudes and improving his physical condition.

One of the arguments behind the placement of juveniles in “boot camps” is similar to the one behind life skills programmes, even though the way in which the problem is addressed is completely different. According to this argument, these youngsters lack certain faculties that have to be instilled in them so that they adopt behaviour compliant with the law : being responsible, working hard, knowing how to control themselves, etc. Another argument is the conviction that these children have need of a structured setting to be able to develop completely. The absence or the failing of structures and firm and clear guidance, according to advocates of this kind of programme, explain the deviant behaviour.

The methods used vary from one camp to the other. Some camps are criticised for using methods abandoned by the military itself because they are considered as inefficient and detrimental (degrading treatments, capricious commands, tasks imposed without good reason, etc.). On the other hand, some establishments have a regulation forbidding humiliating treatment or language. In addition to rigorous physical training exercises, military methods can include standing in rank, the obligation to answer a superior’s questions while shouting “yes, sir” or “no, sir”, marching, receiving summary punishments including immediate punishments such as “push-ups” or extra work; or receiving collective punishments. Sometimes there is a very difficult “welcome” day (sometimes called “Hell day”) which aims to give to youngsters a foretaste of what awaits them : intense verbal confrontation; living in huts; wearing a military uniform; etc.

Youngsters are often pushed to the limits of their resistance and their capacities and therefore sometimes necessarily beyond these limits,

CHILDREN DEPRIVED OF LIBERTY

particularly in the case of the more fragile children or those not in good shape. Humiliations can be frequent and numerous.

Camps for youngsters generally place the emphasis more on rehabilitation than is the case with adults. In addition to the military exercises and work, some camps also include a professional training or a preparation for work. Sometimes, camps also provide treatment for dependence on drugs or alcohol, and advisory services. Some camps monitor youngsters after their release with intensive supervision in the community.

These camps are aimed in principle at the “average delinquents” – that is those who failed the less hard sanctions, such as probation, but who are not hardened criminals. The juveniles guilty of serious crimes, as well as sexual delinquents, are generally not admitted. In certain cases, children are accepted from 12-13 years old, or even 10 years. They remain there in general for 3 to 4 months.

According to a report undertaken in 1994 in a country that uses them, there is no proof that “boot camps” really have any effect on recidivism.

Some observations

Some children confirm that they took some positive elements from their experience in a “boot camps”. For example, they judged that the camp taught them a lot, gave them skills and that they had been changed.

In spite of these reactions, and from the viewpoint of the rights of children, we question the value of such programmes. If the argument of the need of young persons for structure is truly valid and important, would it not be more useful, less expensive and more sustainable, to try to establish this structured setting – with parents and children – within their family and social environment? Why necessarily live in a military camp? We also have to acknowledge that on leaving the camp the young person could possibly be thrown back into an uncertain domestic environment if no work has been done with the family during the interval (see the Chapter on general prevention for propositions concerning policies in favour of the family).

Another criticism of this programme relates to the violations of the right to physical and moral integrity that are witnessed in most camps. Why put juveniles through humiliating and degrading treatments or environments to make them understand how to live in a way that is more compliant to social expectations? Are there really no other means of achieving this end ?

Finally, it is necessary to add that, even though the appellation of “boot camps” does not make it explicit, such a measure always implies deprivation of a child’s liberty.

3. “Scared straight” : visits to jails as a preventive measure

In certain countries, visits for groups of youngsters (delinquent or not) to jails are organised. The objective is to show these children, for a number of hours, what life inside a jail resembles and thus to dissuade them from delinquent behaviour. These visits are in certain cases conducted by prisoners themselves, generally by those serving long sentences, supervised by members of the prison personnel or chaplains.

There exist different types of approaches that are more or less “intensive”. They range from the very aggressive approach, with the goal of frightening youngsters, to “educational” approaches. In principle, the most aggressive approach is addressed to youngsters prosecuted for having committed offences whereas the “educational” approach targets ordinary children from schools.

Generally, children visit the whole prison site, from the cells to the sanitary installations, and generally are given a lecture on life in jail and conditions inside, with a particular emphasis on the brutal and depressing nature of this life. They are shown objects such as weapons made by convicts or chamber pots. They spend some time in handcuffs or are placed in restraining chairs. In the most intensive approach, generally reserved for delinquents (but not always), the visitors are even sometimes verbally abused. Sometimes a handcuffed detained juvenile is exhibited before the young visitors and forced to answer in front of them humiliating and aggressive questions from the guards.

Some observations

Such a programme does not meet the criteria established by the international legal framework. In isolation, that is, not accompanied by other preventive measures, it will probably only have a minimal effect on long-term deterrence. It offers nothing else to youngsters other than anguish and places therefore all the responsibility on them without presenting positive reasons for compliant behaviour. Moreover, incarcerated people are probably represented in a simplistic way without explaining the reasons for incarceration, which in turn could increase public resistance to the social reintegration of those deprived of liberty.

The approach is strictly negative and is justified only by the false conviction that showing no respect is the best way to instill in children the concept of respect for others.

4. Restriction of liberty instead of deprivation of liberty

Many commentators and policy-makers have advocated the replacement of measures involving the deprivation of liberty with measures involving the restriction of liberty. Such proposals are, however, often motivated by concerns over prison overpopulation rather than by the desire to promote a more humane, constructive and respectful solution.

Whatever the motive, advocates claim that a form of deprivation of freedom of movement can be achieved without having major consequences on the juvenile's education and family life.

The following are some examples of initiatives taken along these lines :

Confinement during the night, weekends or school vacations only

The juvenile may only be confined during the night, weekend or school vacations during a period determined by the judge.

Confinement at home and/or the use of an electronic bracelet

The objective of this measure is to avoid the "de-socialisation" deriving from the deprivation of liberty, while restricting the juvenile's liberty. He remains at home but his freedom of movement is reduced.

Surveillance can be guaranteed by regular telephone calls or by electronic means, the minor wearing on his ankle or wrist a bracelet-transmitter that triggers a signal when it moves a certain distance (about 40 to 50 meters) from the child's allocated confinement area.

The confinement can also be limited to nights, weekends or school vacations. An important condition for confinement at home is the willingness of parents to collaborate in the surveillance of their child and, in this way, to fulfil their parental responsibilities. Conditions of confinement can be discussed previously with the child and his parents.

Tasks that the minor must accomplish at home during confinement can be daily activities such as making his bed, cleaning his room or participating in domestic chores.

Other duties can be in reference to the child's work or studies (supplementary homework for example). He can also be invited to reflect on his behaviour and to write a text on this topic.

Designated individuals visit children and their family, sometimes without warning.

RIGHTS AND REALITIES

Open establishments and semi-institutional arrangements

Also in this context may be included any placement of children not including deprivation of liberty in the strict sense.¹³¹ In the international legal framework there are indeed incentives to create open establishments and semi-institutional arrangements. These types of solutions raise a certain sense of ambiguity however since from the child's perspective they can still represent a deprivation of liberty.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty define open establishments as those with no or minimal security measures. The population in such detention facilities should be as small as possible to enable individualised treatment. Such detention facilities should be decentralised and of such size as to facilitate access and contact between the juveniles and their families. Small-scale facilities should be established and integrated into the social, economic and cultural environment of the community (JDL, article 30).

Family houses are an example of such open establishments. Youngsters are placed there as an alternative to the deprivation of liberty. They learn skills that they lack (social, academic, professional skills, etc.) with the help of couples who are trained to be "parent-teachers". Only a small number of children (6 or 8 for example) live in a house. Family houses are situated in their community, which allows children to keep contact with their own family and to go to the local school. Foster parents are trained to work closely with parents, teachers and other members of the community.

As for semi-institutional arrangements, the Standard Minimum Rules for the Administration of Juvenile Justice list, for example, half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society (AJJ, article 29(1)).

Some observations

Advantages that measures of restricted liberty can have over total confinement are not negligible. Such measures in a general manner allow for a better realization of the rights of the child. For example, confinement during weekends only allows a child to attend a suitable school of his choice.

131 By the strict sense we mean "any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority" (JDL, article 11).

CHILDREN DEPRIVED OF LIBERTY

Similarly, placement in an open establishment generally permits more intense and more frequent contact with the family.

However, these measures are very often equivalent to a deprivation of liberty in the eyes of children themselves and they still represent, in spite of advantages mentioned above, an obstacle to the full realization of their rights. It is always advantageous to avoid the most extreme forms of deprivation of liberty, but this does not mean that less extreme measures do not still impact on the rights of children.

One must be careful that “false” alternatives do not confuse the debate over alternatives to measures involving the deprivation of liberty. It would be regrettable if policy-makers were satisfied with adopting these measures rather than searching for solutions that guarantee more respect for the rights of the child.

Chapter 3

General prevention

Introduction

The importance that we assign to general prevention in this part may be surprising. The significance attributed to general prevention is a consequence of our choice to consider the deprivation of liberty from the perspective of the rights of the child. As stated in the second part of the book, one of the challenges that this approach implies is the necessity to intervene in social structures in favour of children as a group.

Confinement will not solve delinquent behaviour, nor difficult living conditions. Problems must be dealt with where they occur, for example, in the family, social environment or school, and as much as possible in collaboration with young persons. Dealing with juvenile delinquent behaviour is not simply a question of how to respond to children in conflict with the law, but to respond to the situations which lead children to act in a socially deviant way. For example, confining street children in no way resolves the factors that led them to live in the street. Such a measure results rather in taking the responsibilities away from the State for dealing with the social problem and diverting attention away from questioning the very reasons for such a phenomenon.

Such questioning unfortunately arises often only after the problematic social situation has become impossible to ignore. The appeal for measures of general prevention is thus a call for a pro-active approach to the problems

CHILDREN DEPRIVED OF LIBERTY

facing youth. It is about taking children seriously at all times and not solely after they have affected society due to the difficulties that they are experiencing (as in cases of exploitation or abuse) or troubled the community with problems that they cause by their behaviour (juvenile delinquency for example).

General prevention involves the creation of a society respectful of its children. It is a necessary measure if one wants to avoid risk situations. General prevention can contribute to the reduction in the recourse to the deprivation of liberty, while reinforcing the potential of children and their home and social environment. Also, it can decrease, gradually, the responsibilities that society imposes upon children in terms of social success, survival, economic pressure, and productivity. General prevention can contribute to anticipating the factors that lead to the deprivation of the liberty of a child. Let's take the example of children who are confined because they refuse to go to school. In the context of general prevention, every society is invited to create school structures better adapted to children, in a manner as attractive as possible in their eyes. In this respect, the opinion of children, including those who have little or no access to school or those for whom ordinary teaching is problematic, must be solicited and taken in account.

In this chapter, we explore some basic pillars around which general prevention can be designed. These are support to the family, standard of living, education, physical and moral integrity, information, legal protection, and leisure.

1. The right to grow up in his family : some preventive initiatives

It is more and more extensively recognized that programmes that separate children from their family, social environment and all networks of support that they may have, are likely to fail. Programmes that seek to reinforce the child's social environment have a much better of long-term success.

1.1 Raising a child is not obvious

Every child has the right to grow up in his family. The Convention on the Rights of the Child already underlines this in the preamble : "(...) the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should

RIGHTS AND REALITIES

be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.

This paragraph recognizes implicitly that raising a child properly is not obvious. Every family may, from time to time, need aid or support of a third party and there is nothing wrong or strange about that. These third parties may be family members, such as grandparents, uncles or aunts, or friends. However, such help is not necessarily available and, in certain cases, more specialised assistance may be useful. It happens that parents, but also the outside world, may wrongly consider this request for assistance as an admission of failure.

The support to the family must be unconditional and must be granted independently of a risk situation in which it might find itself. Every family that seeks support must be able to benefit from it.

In addition to its beneficial preventive effects, the reinforcement of the family unit also has importance in the context of the search for constructive, humane and respectful responses to the difficulties that children may pose. Social services for families can therefore contribute to preventing and also to remedying the problems which children both pose and experience. Thus, the recourse to such services may be encouraged in the context of such measures as probation or the early release of a child.

1.2 “It takes a village to raise a child”¹³²

In several countries, programmes exist aiming to reinforce the family as the first responsible unit for the child’s well being, as well as to develop support networks in the neighbourhood, in order to avoid children being placed in institutions. The starting point, inspired by the organisation of some indigenous or traditional cultures, is that every member of the community has a responsibility towards the other members.

These programmes target children and families considered “at risk”, for which the placement of the child away from home is envisaged. The difficulties experienced in these families may be diverse. There could be strained relations between parents or between parents and children, financial problems, misbehaviour of children, school difficulties, lack of access to social services, etc.

132 African proverb.

CHILDREN DEPRIVED OF LIBERTY

Teams responsible for programmes may be multidisciplinary and composed of professionals as well as volunteers from the community. These programmes may take a variety of forms.

Their intention, for example, may be to bring 24 hour intensive support to the family in cases of crisis, in order to avoid the placement of the child. Flexibility is very important in these cases because the team must be able to intervene outside of “office hours”. They try especially, in spite of the difficulties, to build on the qualities and skills of the family. Some new or different skills may be developed in order to be able to deal with particular problems.

Services may also be offered in the home to help families take care of their child. For example, there are services for stimulation of the very young child, social workers specialised in helping families and other special services that assist parents to meet their child’s particular needs at home.

Certain members of the community may be designated as “mentors” for children, young people or families “at risk”. Their role is to support children and families under their “responsibility” (this is discussed further in subsequent sections).

1.3 The right to grow up in his family

In the context of general prevention and the importance of the child’s right to grow up in his family, mention should be made of the efforts in certain countries to facilitate the combination of parents’ work and their role with their children. Such efforts can contribute – in an indirect way – to better socialisation of children.

Work policies that allow parents to have an income and at the same time take care of their children are essential. This may involve changes in professional practices in order to permit maternal and paternal leave, the sharing of work between father and mother, the introduction of a flexible timetable during the week or the right of parents not to work during weekends.

2. The right to an adequate standard of living : some preventive initiatives

2.1 The right to a sufficient income

Children and their parents have a right to an adequate standard of living. This means that families must receive a minimum income that allows them to satisfy the subsistence needs of all their members. When family members are not able to generate sufficient income by their work or other legal means, in certain countries the State provides support, for example, financial assistance to people out of work or in search of employment. Assistance may also be granted through family allowances. Such arrangements should be managed in a non-stigmatising manner for the child, so that he is not forced to reveal in public that his family receives help (this may happen for example, with a system of vouchers for clothes or free meals in the school). This could possibly lead to marginalisation of the child by his peers.

2.2 Access to the labour market

Another aspect not to be disregarded in the context of general prevention is the guarantee for each youngster to have access to appropriate employment after having finished his studies (bearing in mind the minimal ages of admission to employment, see Part 2). Some young people who do not find employment or possibilities for training to integrate them into the workplace risk being quickly dissociated from the economic community and possibly resorting to delinquency. To avoid this situation, in certain countries, co-operation between schools and local industry or business has been established to offer possibilities of employment to young people and to give them the opportunity to acquire a professional experience.

2.3. Services for low income families

In some countries, there exist services for families on low incomes. For example, the aim of certain initiatives is to offer training and limited financial support to families to allow them to start their own income generating activities. Such economic support can go hand in hand with other activities, such as :

- putting in place an education system with flexible programmes for street children and working children
- teaching how to make family life more harmonious

CHILDREN DEPRIVED OF LIBERTY

- giving to youngsters and parents opportunities to build self-esteem and basic social skills
- explaining the principles of human rights and children's rights to community leaders and law enforcement officers.

These projects illustrate a comprehensive and integrated approach. The challenge from the outset is to guarantee economic independence to families but in addition, to strengthen the related domains of family life. The family is likely to be much more disposed to improve these other aspects of family life once its main pre-occupation – income generation – is no longer a critical concern.

3. The right to integrity : some preventive initiatives

3.1. Abolition of corporal punishments

Assistance is given to an increasing number of initiatives that promote non-violence and the prevention of violations to the physical integrity of children. These initiatives are of fundamental importance because they contribute to breaking the vicious circle of violence. It has often been observed that children who are perpetrators of violence are, or have been, themselves victims of neglect and abuse.

It is interesting in that context to see increased calls for the abolition of corporal punishment of children, including within the family. Questioning corporal punishment, whose legitimacy is evident in some cultures, is certainly the first important step to breaking the transmission of violent behaviour from generation to generation. Children raised by the conviction that such punishments are inappropriate probably will not have recourse to them with their own children. There is no better way to teach children respect for others than respecting their own integrity in every day life.

In this regard, some States have adopted laws making corporal punishment illegal, as much in public places such as schools, as in private contexts, such as within the family.

3.2 Changing the attitude of children towards violence

There are initiatives that aim to change the attitude of children regarding violence by teaching them to manage conflicts in a constructive manner and encouraging them to influence the behaviour of their parents.

These projects consist, for example, in introducing a programme of conflict resolution in primary schools. These seek to teach children to clearly express

RIGHTS AND REALITIES

what they feel, to listen to others, to understand them, to overcome their shyness and to dare to claim their rights. They learn to respect the rights of others, to control their impulses and other irrational behaviour, to work with others, to share, to make compromises and to accept their responsibilities. Varied, creative and interactive materials are in certain cases presented to children and teachers may receive special training in order to teach these courses. In classrooms, there may be a table around which children sit to resolve their conflicts.

The programme in schools may also be accompanied and sustained by exhibitions, contests or cultural events. Every year, a day of peace in the school may also be organised and a reward given to children who encourage peace in class.

4. The right to leisure : some preventive initiatives

The integration of families in the community can be encouraged by the existence of sports and leisure centres which offer opportunities for parents and children to have fun together. For example, sport and cultural centres can organise weekends during which parents and children can together try different sport and recreational activities. Swimming pools may organise timetables with periods reserved for families. Sport clubs may provide some reserved spaces for families during competitions, so that parents and small children can safely attend.

Activities that particularly aim to divert youngsters from delinquency should take into account the characteristics of this age group such as the importance of peers and their need for stimulation and excitement. With this in mind, programmes based on team work and spirit and offering exciting activities which children would not normally have a chance to participate in are generally very effective. For example, the organisation of car or motorcycle races in closed circuits allowing youngsters below the legal age to drive, appeared in certain cases to be very helpful in reducing the illegal driving of motor vehicles.

To be accessible to all young people and to all families, these activities should ideally be free of charge.

5. The right to education : some preventive initiatives

Every child has the right to an appropriate education. However, from time to time the traditional school structures may fail to reach their educational

CHILDREN DEPRIVED OF LIBERTY

aim for certain pupils. In such a situation, alternative education programmes adapted to the needs of these students may take the place of regular school and thus still guarantee the right to education for these children. It is in fact important that educational structures are able to adjust to children and their needs as much as children are supposed to adjust to them.

These alternative programmes, which may actually be physically situated within regular school buildings or in other places, while exposing them to non-traditional activities, may bring to pupils a sense of their own value and ability.

Activities covered by these alternative programmes include :

- The development of programmes and educational materials interesting for children through making them correspond as much as possible to their own interests and culture;
- The adaptation of the school programme to the labour market, in particular for pupils who will go on to further studies;
- The setting up of a means to generate and maintain the commitment of youngsters vis-à-vis the education system and common standards of behaviour by involving them for example, in planning and decision-making within the school;
- The identification and the reinstatement of pupils who have thus far failed in the school system or who do not behave well, while avoiding labelling these children as incapable of learning;
- The establishment of a close co-operation and co-ordination between the school, family and community.

In general, alternative education programmes that give good results share a certain number of features :

- Individualised teaching with programmes designed to suit the needs and interests of pupils, clear learning objectives and a rhythm of learning adapted to each child;
- Clear rewards for individual school progress;
- A small number of pupils by programme and in class.

6. The right to information and legal protection : some preventive initiatives

Other general prevention measures, frequently forgotten, include dissemination of information on rights and legal protection. It is fundamental

RIGHTS AND REALITIES

that every child knows what his rights are and the limits and restrictions on these. To know our rights makes it possible for us to act as responsible citizens and helps to channel claims that each of us may have. For example, youngsters who know that they have a right to an appropriate place reserved for their leisure will be able to take appropriate steps in a conscious and responsible manner for this right to be respected, rather than be tempted to express their discontent in a violent manner.

To illustrate programmes that implement such initiatives, one should mention resource centres for young people in several countries, which serve as focal points for youth activities and information. They can be accompanied by a network of reception centres that help to decentralise activities and disperse information throughout the whole region. Activities provided include leisure activities outside school hours, theatre, social skills reinforcement, advisory services or the availability of all sorts of information, for example, concerning professional orientation. Centres generally do not create any new activities but are based on existing resources while seeking to make them more accessible to youngsters.

To be informed of rights and complaint procedures is also a pre-condition to being able to contest a violation. Every child must have the possibility of being supported every time he judges that his rights are in jeopardy.

Centres for legal and social defence have been created to this effect in several countries. These initiatives, easily accessible to children, can offer a permanent telephone service but also the possibility of going there personally, in places open outside school hours. Children can keep their anonymity and all assistance is free.

The first assistance that should be given is informing the child. A whole range of easily comprehensible brochures may be available on a range of issues affecting young people. Often, those working in the centres go to schools or other suitable places to meet children and to inform them of their rights. When the child, with a particular problem (it does not matter in what domain or for what reason), makes contact with this kind of legal and social defence centre, he is listened to and a solution to his problems is searched for, encouraging discussion and negotiation above all. According to those responsible, the child remains in charge of his case, but must have the feeling at the same time of not being alone.

If formal procedures, for example, going to court, prove to be necessary, they are discussed with the child so that he can make an informed decision. He is helped to formulate his opinion as clearly and precisely as possible. In certain cases, if necessary, a lawyer may be put at his disposal for free.

CHILDREN DEPRIVED OF LIBERTY

The lawyer will assist the child at the time of the official, administrative and judicial procedures. In an increasing number of countries, there exist associations of lawyers who have as their goal the free defence of children in court. The legal and social defence centre can also suggest the child to contact other more specialised services, for example, in the area of social assistance.

Parents are not excluded from this process but the child is the starting point – the defence of his interests and rights being the overriding objective.

These social and legal defence centres do not necessarily limit their work to individual cases. From their practical experience, and particularly through the life experiences of the children, these centres can also sensitise and lobby the legislative, judicial and administrative authorities, the associations concerned, as well as the public at large, with a view to improving the social and legal position of all children.

For the children deprived of liberty more specifically, legal defence centres can :

- Have access to jails and other places of detention to identify children deprived of liberty
- Have access to the files of children concerned, to ensure their defence, to verify the legality of the measure taken against them, and to explore with the judicial or administrative authorities possibilities of a non-custodial measure (see Part 3, Chapter 8).

Chapter 4

Diversion

Introduction

Between general prevention measures and the point at which the juvenile comes into contact with the system of social control or child protection, there is a level of intervention which is extremely important, in order to reduce the deprivation of liberty of children as much as possible. This is the extra-judicial regulation of conflicts within the community. Extra-judicial settlement can take place before the official authorities are in charge of a situation, or after. In the latter case, “diversion” is the commonly used term.

Extra-judicial regulation may be inspired by the method of conflict resolution in certain indigenous and traditional cultures, for example, conciliation or mediation between the child and the victim(s), with the help of the chief of the village.

There exists an important movement towards a new form of juvenile justice, which would be based neither on the principle of retribution (as is the penal law) nor on rehabilitation (as is the juvenile justice system). Instead this method aims at restoring the material and moral damage caused by the offence. This model is known as “restorative justice”.

Resorting to diversion or extra-judicial settlement can contribute to a reduction in the recourse to the deprivation of liberty of children. However, in reference to the international legal framework, two caveats have to be made :

CHILDREN DEPRIVED OF LIBERTY

- There must be a guarantee that this recourse to diversion or extra-judicial settlement does not mean less legal protection for the children involved. It may be that, in the enthusiasm for these alternative measures, legal guarantees as provided for in article 40 of the Convention on the Rights of the Child are disregarded;
- At all costs it is necessary to avoid alternatives aiming at diversion which are harmful to the principle of minimal intervention. This warning may seem superfluous but it is not. The enthusiasm for alternatives and their potentially beneficial effect for many children may lead to an increasing number of children being brought into contact with the administration of justice (although in a limited manner only since the process is thereafter diverted). In some situations a case involving a minor may have been discharged if the alternative procedure had not been available.¹³³

Before discussing actual examples, the concepts of diversion and of restorative justice are further explored. The implementation of these concepts varies from one case to the other. They do, however, share some more or less universal features.

1. Diversion

1.1 The objective

Diversion seeks that the resolution of a conflict or a problem, for which the administration of justice has been solicited, be achieved outside the judicial system (diverted from the judicial system). Diversion is particularly applied in the context of responses to juvenile delinquency.

Diversion may be decided upon at any time during the procedure (arrest, pre-trial detention, indictment, referral to court, etc.) and by all concerned bodies (police, magistrates of the public prosecutor's office, judges, etc.).

1.2 An extra-judicial solution

The solution is sought with extra-judicial services, such as school, social services, therapeutic services, services for educational assistance, mediation, treatment related to substance abuse, sport or cultural organisations, etc.

133 On this topic see also the introduction on the juvenile justice system in Part 1.

RIGHTS AND REALITIES

The choice of venue for the resolution may also be made in consultation with the child. It will not only depend on the offence but also on the social and psychological observations regarding the offender and his living environment.

The family can be involved in implementing measures. It can be required to assist the child or to supervise any conditions imposed. The family may also be involved itself, together with the child, in the diversion measure and therefore also work with the different services mentioned above.

1.3 The child's confession : a prior condition

To be able to benefit from a diversion procedure the child must have admitted committing the offence. This condition is indispensable because the risk cannot be taken of imposing a measure on an innocent child. There are nevertheless still risks for the child's rights. There must be scrupulous management of the case and special training for those involved to avoid any coercion with regard to the young person and to be careful that his rights to a fair proceeding, such as the presumption of innocence and the right to remain silent, are respected. It is therefore necessary to explain very clearly to the child what will be the implications and consequences of his confession. It must be established clearly that while taking responsibility for the offence he could benefit from the procedure of diversion but that if, on the contrary, he is not guilty, it is preferable that the case goes to court so that he has the possibility of proving his innocence.

1.4 Guidelines – a contract

Guidelines are important to ensure that use of diversion is just and coherent and that the juvenile benefits from legal protection against arbitrary measures. However, these instructions must maintain a degree of flexibility as well.

In certain countries, commitments made by parties to the conflict during the diversionary process are recording in a contract and signed by each of them. The contract must include a description of duties of the young person (for example, attending courses regularly or beginning treatment), the length of the contract, the supervision arrangements that will be set up (for example, parents can be asked to guarantee that the child leaves on time every morning for school), as well as consequences of not respecting his obligations or of recidivism during the contractual period. Depending on the stage of the procedure at which diversion has been proposed, the juvenile may still be

CHILDREN DEPRIVED OF LIBERTY

prosecuted or be the object of a 'penal sanction' should he fail to observe his obligations under the contract.

Such a contract takes into account the wishes and the circumstances of the young person, while encouraging as much as possible a co-ordinated approach between the parties.

1.5 Recourse to traditional justice systems

In certain cultures, the regulation of less serious offences committed by children is dealt with by resorting to traditional systems. Affairs in general (civil and penal) are governed informally by the collective community.

In certain cases, the right of indigenous people to use, within their community, their own systems of justice, institutions for the resolution of conflicts, processes to establish peace and other legislation and customary practices is recognized legally. Such a right to use traditional conflict resolution methods is also recognized by the international community, as far as such methods are compatible with national legislation and human rights.

In several countries, it has been proposed that village "courts" play the role of first instance jurisdictions for certain minor offences (for example, thefts). The means employed to resolve the dispute, such as mediation or conciliation, are those that are traditionally used in order to resolve disputes between members of the community. In order to encourage the community to maintain an interest in their children and to take care of them, the responsibility to supervise them and to help them is sometimes vested in a person designated by the village "court". Another advantage of the village "court" is that matters are dealt with expeditiously, as these courts generally do not suffer the delays of the ordinary judicial courts.

1.6 An important warning

Advocacy for extra-judicial settlements gave inspiration and impetus to the creation of administrative juvenile justice systems. However, in reality, an administrative system does not always guarantee that there will be less recourse to the deprivation of liberty.

Commissions, councils, committees and other bodies established in certain countries as substitutes for courts in interventions with young delinquents or young people "in danger" are often responsible for as many placements as are judges and courts.

2. Restorative justice

From the perspective of restorative justice the offence is viewed as a conflict between two parties and the principle that a social equilibrium has been broken by the commission of the offence. According to this conception, the delinquent has the social responsibility to repair the damage, the reparation being considered as a symbolic step towards reconciliation. In order to re-establish the broken equilibrium, restorative justice therefore aims to “repair” the offence rather than to repress the offender, and to reconcile the two parties rather than to condemn. The very idea of conflict resolution – in contrast with a sanction – is a challenge to the traditional vision of a criminal justice system, or repressive justice.

This interactive model – a conflict between two parties – is not appropriate for all expressions of criminality, but functions in a large number of cases considered by the courts especially with regard to juvenile delinquency. According to this model, the focus must not be on the legal consequence of a violation of the law, but rather on the people directly concerned : the victim and the offender. The emphasis on the conflictual character of the criminal act leads those involved to look at the crime from the victim’s perspective : the crime as an act that has hurt them.

Traditional criminal procedure is sometimes criticised for victimising for a second time those who have been harmed or, for giving only cursory attention to the concerns of the victim. The judicial system only directs its response towards the offender. To avoid this criticism, programmes in the context of restorative justice include this interactive element in the response to the crime. The two parties have roles that are less stigmatising than those of being only “victim” or “aggressor”. Restorative justice meets the demand for active involvement of the victim in the process and the acceptance of responsibility by the aggressor. It does not stigmatise the juvenile but offers him the possibility of making a positive contribution towards a restoration of the situation. It does not denounce the young person himself but rather the offence committed by the young person.

Traditional criminal sanctions that are inflicted on juveniles seem often to only increase the indifference of the offender with regard to the victim and do not encourage the juvenile to accept responsibility for his acts. On the other hand, in reconciliation procedures the juvenile is in a better position to acknowledge his responsibility towards society, as a result of an active and face-to-face discussion with his victim(s) about the act and its consequences. A direct link is made between the offence and its

CHILDREN DEPRIVED OF LIBERTY

consequences, whereas in the setting of traditional repressive justice, this link sometimes remains too abstract to have any effect on the young offender. This approach does not mean that the crime is exclusively a private affair between the concerned parties. To act in a manner that is harmful to others violates social norms and conflicts with a general expectation of a certain behaviour within the community or society. Within this concept of “restorative” justice, individual and general acceptance of social norms is not achieved through a code of legal rules nor by the threat of sanction but rather by learning through personal experience about the social responsibility of every individual in society. The mechanism of social control by way of restorative justice demonstrates what norms mean and facilitates their recognition by means of positive measures.

In giving the main roles in the resolution process to the victim and the offender in having them face each other in person and in permitting them to express their respective feelings about the offence and its consequences, programmes of reconciliation and family conferences are examples of this restorative justice perspective.

3. Measures of diversion at the level of the police : police warning

In certain countries, the police have the discretion whether to start judicial proceedings with respect to young people who either confess to the commission of an offence or for whom it has been established that they committed an offence. Instead of setting up an official record or taking him before the justice system, the police can give a warning to the child. This may be done informally in the street, but also more formally in the young person’s home in the presence of his parents, or at the police station. The formal warning may be oral or written. Whereas it is not necessary to report in the case of an informal warning, a report must generally be made for a formal warning.

Good use of warnings requires a specialised training that is not yet available for every policeman. If this is the case, the policeman informed about an offence may in certain countries refer the child to a specialised office within the police, with a report describing the facts. Such an office may be a section that exclusively takes care of files involving juveniles and in which there may work not only policemen but also social workers.

Prior to a formal warning, information on the child may be gathered from social services, the school or any other body that may have useful

RIGHTS AND REALITIES

information. Someone, possibly from the specialised police office or the social services, may also go to the child's home. On the basis of this information, a decision is made by the police as to the most suitable action to be undertaken : judicial prosecution, formal warning or no action.

The criteria governing formal warnings may include the following :

- The available evidence must be sufficient
- The young person must acknowledge the offence and must admit that he has done wrong
- Parents of the young person must accept that he receives a warning instead of appearing in court
- The victim must agree to an extra-judicial settlement of the affair
- In certain countries, the prior agreement of the public prosecution is necessary.

4. Programmes of reconciliation between victim(s) and the young offender

Programmes of reconciliation between victim(s) and the young offender fall within the approach of restorative justice described above. It is about putting the delinquent and his victim(s) face-to-face to discuss together, with the help of a mediator, the act and its consequences and to come to an agreement on a means of reparation. Programmes of reconciliation between the delinquent and victim(s) can apply at each and every level of the police and judicial procedure.

The question is sometimes raised whether the meeting between the victim and the young offender should be made obligatory. What should happen in the case where one or the other should refuse to attend the confrontation? Would the mediator shuttle between the two parties and try to reach a compromise in this manner? Such a solution would not be desirable because one would lose what constitutes the very essence of these programmes and which makes them very specific : the face-to-face meeting. However, it is also true that it is important to respect the decision of the victim or the young offender not to meet, not only for legal reasons, but also because freedom of choice is essential for the success of the process. A dynamic process of conflict resolution cannot be obligatory. In the juvenile offender's case, a mediator's role is to inform the young person of the risks and advantages of a criminal procedure as well as those of the reconciliation process.

CHILDREN DEPRIVED OF LIBERTY

With regard to the victim, voluntary involvement is indispensable. Even though there may be in certain cases a moral pressure on the victim to participate (“if I don’t participate the young person will be punished more severely”), these concerns should be neutralised by the detailed information given by the mediator. For the victim to feel comfortable, it is very important that the mediator creates from the first meeting an atmosphere of security and mutual confidence.

Mediators may be volunteers. This element, in addition to reducing costs, symbolises the inclusion of the community and a feeling of responsibility on its part, which encourages a favourable welcome of this kind of programme by the public.

The mediator as quickly as possible organises a meeting with the different parties with the aim of reaching an agreement, such as the paying of compensation by the minor, which can be financial or consist of him being allocated some work. Often, the mediator also supervises the execution of the agreement, maintains communication with the judicial system and is in charge of public relations. If mediation did not lead to an agreement or if the agreement has not been observed, the affair can be pursued before a court.

A balanced approach to dealing with the parties involved is very important. The mediator should support people who have problems in communicating or compensate for other forms of inequities (verbal, social, etc.) in order to ensure an equal playing field. Moreover, in the event of the conversation becoming deadlocked, his or her ideas and ability to calm the respective parties while suggesting strategies to proceed can take the discussions out of the impasse. The role of mediator is very demanding and therefore meticulous selection, thorough training and a serious commitment of the mediator are very important for the procedure to work.

5. Family group conferencing

5.1 Objectives

Another programme of reconciliation between offender and victim, still in the context of “restorative” justice, is that of family group conferencing. The principle is in essence the same as the reconciliation programmes just discussed, the main difference being that family group conferences involve a larger number of people in the process. They are meetings that gather together the victim(s) accompanied by people of his/their own choice and

RIGHTS AND REALITIES

the juvenile offender(s), accompanied by his/their family members. Also present are, depending on the cases, the police, lawyer(s), social workers, and possibly other people able to play a meaningful role in the process. The objective is to discuss the offence in the presence of a mediator, and to search together for a means of resolving it. Parties must agree on a plan that, if applied correctly by the juvenile, removes the charges against him. An important supplementary objective of these conferences is to reinforce the family unit. The victim and the young offender's family (or other people who are important to him) are in the best position to influence him, so that he takes responsibility for his acts and tries to avoid re-offending.

This system of conferences had its origins in New Zealand at the end of the 1980s. It is based on conflict resolution techniques of the Maori population.

5.2 The procedure

The decision to organise a family group conference may be taken at two different stages in judicial proceedings :

- At the time of referral : the prosecution may be suspended until the plan arising out of the conference has been applied successfully. The conference may influence the prosecutor in deciding whether the minor's case must be pursued in court or if an extra-judicial solution is more appropriate.
- At the time of the judgment : in certain countries, in particular for the most serious cases and those in which the young person does not accept responsibility for the offence, the family group conference only intervenes after the trial, with the aim of determining a suitable sentence. The main difference between this system and the first system is that in this case the assigning of the young offender's responsibility is not done in the setting of the conference and the offence is registered in a convictions record. It is therefore not a diversion measure.

5.3 Conferences for which minors and for what offences ?

The question of to which minors and for what offences a family group conference should apply is much debated, particularly regarding the seriousness of the offence. For some policy-makers, juveniles who have committed the most serious offences should not be diverted from the judicial system. On the other hand, there is the view that family group conferences are less suitable for minor offences because of the low cost effectiveness

CHILDREN DEPRIVED OF LIBERTY

ratio. In our opinion, family group conferences can provide, in both cases, a constructive and effective alternative.

5.4 *The development of the conferences*

The conference is convened and led by a mediator who is supported by an administration in the tasks relevant to their organisation. The conference must be held in a place and at a time as convenient as possible for all participants. It generally lasts between 2 and 4 hours, but it is important that the juvenile and his family have the necessary time to reach a plan. The conference constitutes three phases, each having the same importance in the success of the process as a whole : preparation, mediation and follow-up.

a. The phase of preparation

Before the conference, there is a phase of preparation for every participant (the juvenile and his family, the victim and people who support him or her, the police, the lawyer, etc.). The mediator, who visits the different parties, does the preparatory work. This phase of preparation is fundamental as the success of the process depends largely on it. It has two objectives : to inform participants and to obtain information on the young person, the family and relations between each.

b. The phase of mediation

This phase is divided into three parts :

Sharing of information

The objective of this part is to introduce the concept of the conference and to prepare everyone for the process that is going to follow. Each participant introduces himself and the mediator explains the rules (confidentiality, non-violent language, only one person has the floor at a time, the mediator is in charge of the proper development of the proceedings, etc.), as well as the goals and progress expected.

If the conference takes place in the context of a diversionary measure, the police begin with reading charges against the young person. He then has the possibility of confessing to the offence or not. Should he declare himself not guilty, the affair is sent back to court. This stage is very important because, like any diversion option, the family group conference includes a certain risk of coercion : the young person could be put under pressure to confess an offence that he did not commit. It is important to create a climate in which he feels at ease and he must be clearly explained the stakes involved in his possible confession.

RIGHTS AND REALITIES

The victim then announces his or her feelings with regards to what happened, what s/he felt then and what s/he still feels today. The juvenile and his family also have the possibility to discuss the facts and their feelings. This dialogue must be as open and honest as possible.

Deliberation in the family and the establishment of a plan

The juvenile and his family meet then to establish, with the mediator's help, a plan of action aiming to repair the wrong done to the victim and society, as well as the harm caused by the young person to his family. The plan must also seek a means to prevent re-offending.

Finalising the plan

The family announces the plan to the remainder of the participants. Each of them can make comments and suggestions. A follow-up mechanism is organised and the final timetable agreed upon. The plan is then put in writing and is distributed to all participants. If one or several people present do not agree with the plan, it is sent to the prosecutor or the magistrate who may accept the family's plan or reconvene a conference.

In the case where the conference was held after the young person had been declared guilty by court, the case is sent back to court with the plan recommended by the conference. It is then the magistrate who makes the final decision to accept it or not.

c. The phase of follow-up

It is generally a family member who plays the central role in the monitoring of the implementation of the plan. In this manner, the family is made to assume its responsibilities towards the minor and his activities. This can contribute to restoring the parent's authority within the family, if needed. This person must report to the mediator on a regular basis, generally by telephone. The frequency of the reports must, however, be in relation to the resources of the family and its functioning (for example, it may be that the family does not have a telephone). The mediator can visit the family during implementation of the plan to offer encouragement and advice. Visits will be more frequent if the young person seems to have difficulty in applying the plan.

All who attended the conference must be informed of the progress of the plan. If the young person does not execute the plan that was agreed upon, his case can be sent back to court.

Below is an example of a real case which illustrates the dynamics involved in family group conferences :

CHILDREN DEPRIVED OF LIBERTY

By order of the prosecutor a family group conference was held following the arrest of a 16-year girl, for theft in a department store. Representing the victim, a representative of the store was present. The teenager came with her uncle, a niece, her brother and his wife. The victim begins to explain how shoplifting affects the store. The girl states that she took clothes because she needed them and didn't have money to pay for them. She confesses that she didn't weigh the consequences of her actions. She asks for forgiveness from her family for having shamed them, adding that she had not realized that her offence would harm them. The family then discusses a plan to compensate for the offence and it is decided that the girl will present some written apologies to the store. Her brother, a sculptor, suggests moreover that she make a sculpture that she will give to the store, with the aim of keeping her busy and possibly awakening in her a vocation for the future. It is also agreed that she will undertake community work in a local clinic and that she will sell sweets in school in order to earn the pocket money to satisfy her needs. Finally, the family and the girl decide that she will move out of her uncle's home and go to her brother, where his wife will be available to keep an eye on her.

This conference has been considered extremely effective by its organisers and participants for several reasons. First the family invested itself a lot in the search for a creative plan for the girl. Secondly, the victim also participated actively, even giving suggestions for the plan. Third, the conference made the girl aware of the consequences of her actions, both on the victim and on her family. Finally, the meeting allowed the victim to better understand the reasons for the offence.

Chapter 5

Alternatives at the level of pre-trial detention, judgment and early release

Introduction

When we speak of alternatives to the deprivation of liberty, the discussion and efforts are often concentrated at the stage of the judgment or the moment of early release, whether conditional or not.

This observation can also be made regarding the international legal framework. This concentration of efforts in the final stages of judicial proceedings would be regrettable if it meant an absence of alternative programmes aimed at general prevention and diversion.

In this last chapter, we present several alternatives that can be implemented at the time of the judgment or early release and other alternatives applicable in the stages of arrest and pre-trial detention. First, the initiatives recommended by international law makers are summarised.

The aim is not to be comprehensive in our coverage here. We only address some alternative programmes without going into detail. Several of these alternatives can be applied equally in the context of diversion or extra-judicial settlement.

CHILDREN DEPRIVED OF LIBERTY

1. Some alternatives mentioned in the international legal framework

Article 40(4) of the Convention on the Rights of the Child lists a certain number of responses as alternatives to the deprivation of liberty (in the setting of the juvenile justice system). “A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

Article 18(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice state that a large variety of measures should be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. The Rules add to what is mentioned in the Convention, proposals such as the possibility of handing down “community service orders”, “financial penalties, compensation and restitution”, “intermediate treatment and other treatment orders” or “orders to participate in group counseling and similar activities” (see also articles 8(2) and 9(2) NCM).

The Rules also specify that “whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home” (AJJ, article 13(2)). Note again in this article the ambiguity of the international law that proposes placement as an alternative to the deprivation of liberty.

2. Alternatives : cheap measures

Whatever the country, the deprivation of liberty is extremely expensive. The cost of a child’s placement in a closed establishment represents clearly more than the average daily income. For example, according to different sources, the average cost of keeping a child in a closed establishment in a developing country is about US\$10 per day and US\$60-130 in an industrialised country.

In addition, in most countries, the budget allocated to the measures involving deprivation of liberty constitutes a very important part of the budget for measures applied as a whole in the domain of the juvenile justice system. It is by no means exceptional that the budget for measures involving

RIGHTS AND REALITIES

deprivation of liberty represents three-quarters, or even more, of the total budget allocated for the juvenile justice system.

To resort to alternatives to deprivation of liberty therefore often allows for savings to be made in the juvenile justice system, a feature that should increase the attractiveness of such options for States looking to tighten fiscal spending in the justice area.

An economic survey undertaken in an industrialised country at the end of the 1980s, as a result of a policy of reducing placements in custody (introducing among other things community service), demonstrates that the increase in releases upon bail and the reduction in incarceration in favour of community service allowed the government to save about US\$400,000 in a period of 6 months.¹³⁴ This amount has been calculated after deducting the costs involved in alternatives or in employing social workers in districts where most of the children came from.

3. Community service

3.1 What is community service ?

Community service requires the young person to accomplish, during a specified period and if possible during his leisure time, certain defined tasks that are useful to the community and have a constructive character. The educational impact will be greater if the nature and the content of these activities are linked to the offence and/or to the damage caused.

Community service is a measure that may be decided for all sorts of offences and for all young people who come into conflict with the law. It may be imposed on first time offenders as well as recidivists. Tasks assigned can include repair and maintenance work in schools, youth clubs, district centres; kitchen or housekeeping work in hospitals, homes for the elderly, institutions for the disabled; maintenance work in parks, forests; voluntary work in charitable organisations; the repair of damage caused to public buildings, public transportation or private properties, etc.

3.2 The procedure

Community service is a sanction, involving a restriction of the free time of the child. It is therefore greatly advisable that the application of this sanction

134 Kids in Justice, 1991, p. 266.

CHILDREN DEPRIVED OF LIBERTY

should only be decided at the judicial level (in a judgment), in order to guarantee the best possible legal protection. However, the police, magistrates of the public prosecutor's office and the administrative authorities, including directors of closed establishments, may also resort to it. For the former it can be a condition for dropping the prosecution; for the latter it can be imposed as a disciplinary measure.

Community service should not be imposed on a young person who would have had an acquittal if this measure was not available. This condition aims to avoid the risk of "net widening" mentioned earlier. It is a fundamental principle that the introduction of alternative sanctions must on no account lead to an increase in the number of youngsters dealt with by the judicial system. For this reason, in certain countries, community service may only be decided in cases of serious crimes punishable by deprivation of liberty.

In order to avoid the qualification of this measure as forced labour and in order to guarantee maximum effectiveness, the possibility of community service as a sanction must be within the context of the national and international legislation in force, but also be discussed previously with the child. The judge, the social service, the child's advisor, or the organisation responsible for the implementation of community service orders may be responsible for this task.

The length of such a measure varies according to offences and countries, for example, between 10 and 240 working hours.

If the imposed tasks have not been accomplished properly, the judicial authorities, or if the case arises, other authorities who decided on the measure, must immediately be informed. In such a case, a traditional criminal sanction could possibly be applied.

3.3. The main objectives

One of the objectives of the imposition of community service is to promote a juvenile justice system that brings about a greater sense of responsibility in the offender. In order to reach this objective, the use of traditional criminal sanctions, particularly the deprivation of liberty, is restricted, with the aim of avoiding stigmatisation, separation from the family and the absence of positive stimulants. On the other hand, the imposition of community service places the emphasis of the sanction on several positive aspects such as :

- Youngsters are given personal responsibility for their acts. It is not merely a question of payment of a fine by a third party (parents for example) or of deprivation of liberty. Juveniles must themselves accomplish some useful tasks for others and for society. Real

RIGHTS AND REALITIES

commitment from the juvenile is demanded and non-observation of the obligations can lead to more traditional sanctions, without conditions.

- Every time it is possible, youngsters are confronted – in both a real and a symbolic way – with the wrong or damage that they caused. For example, a juvenile guilty of aggression can be required to work during weekends in the emergency room of a hospital. Also, those responsible for acts of vandalism in public places, could work during their vacations in parks. These children must repay their debt towards society by accomplishing a task of public utility. In this manner, a certain compensation is achieved.
- Youngsters gain new experiences. They learn to respect appointments, to have responsibilities, to work as a team, to meet people coming from other social backgrounds, to be appreciated for their work. In addition, they can sometimes acquire some professional experience through this activity.

3.4 The organisational aspects

The practical organisation of community services can be arranged by the existing social services or by services specifically established for this purpose. They are in charge of discussing the program with the young person and looking for establishments or services willing to offer work. In certain cases, they establish a contract determining the modalities and respective commitments and make a report on the progress of the measure to the authorities that decided on the community service order.

4. Supervision orders, probation and conditional release

4.1 The setting

Rather than a measure involving deprivation of liberty, the judge may decide to apply a supervision order. This maintains the child in his social environment while supervising him for a certain period.

A number of conditions can be imposed. At the minimum, he must promise not to commit any new offences, but very often, supplementary conditions are also considered. The child may for example be asked to keep to some obligation such as going to school or participating in sport and cultural activities. He may also have to submit to prohibitions, for example, not

CHILDREN DEPRIVED OF LIBERTY

taking any drugs or alcohol. The observation of the conditions imposed on the juvenile is normally supervised by a probation service, a court social service or another suitable service.

Probation is one of the supervision orders that can be decided by the judge. It is generally applied in the context of a criminal procedure (for adults), to which, as we saw, youngsters are sometimes subjected. A probation order is not a sanction in itself: it may come with a “respite”¹³⁵ or “suspension”¹³⁶ for example.

When the child has been deprived of liberty, he may, after a period determined by law, benefit from early release, conditional or not. Similarly, at the time of the periodic review of the measure, the court can decide to release the juvenile. In these two cases, it may be that the juvenile is put to the test once released. This may be associated with the same conditions and the same surveillance that are in force during a supervision order. The release is then conditional.

Supervision orders can also be used as an alternative to pre-trial detention. In this context, it serves an additional objective, which is to assure the availability of the young person charged before the authorities responsible for the investigation, until his appearance before the court.

4.2 *The role of the ‘supervisor’*

The service or the person in charge of the supervision must remain in contact with the offender, his family, school and/or his employer in order to verify the observance of the conditions imposed, to assess progress and, more generally, to show an interest and a continuing concern with regard to the young person. The supervision should represent more than a simple “threat”.

135 Respite: the juvenile is declared guilty and a custodial measure is decided but the judge decides to give him a respite in the execution of the penalty – either entirely or in part. The court determines the length of the respite and may decide on certain conditions. The minor is required to commit no more offences during the respite period.

136 Suspension: the juvenile has been declared guilty by the court, which has not however decided on a sanction. The court will decide in this case whether or not to lay down certain conditions. A considerable merit of suspension is that the decision of the judge will not appear in a criminal record.

RIGHTS AND REALITIES

If it is applied well, it can help the offender to understand what his responsibilities are and what society expects so that he does not repeat past mistakes.

4.3 Halfway houses and supervised accommodation

Two other examples of supervision orders are halfway houses and supervised accommodation. In these two cases, the child is not in his family environment but lives by himself or with peers.

Halfway houses were originally conceived to help adult prisoners make the transition from prison to freedom. Later, they were considered as intermediate solutions between institutional control of juveniles and their return to the community.

These halfway houses are ordinary lodgings. A limited number of youngsters reside there at the same time, for a short period. Youngsters receive individualised advice and participate in group sessions. They wear ordinary clothes, attend school or work in the community and gradually earn more freedom, in the form of holidays and excursions, until they are finally allowed to leave the place permanently. In certain cases, they return to the halfway house from time to time for meetings, the frequency of visits depending on individual progress and the decision of the court.

Another interesting example in this respect is programmes of supervised accommodation. A young person above a certain age (for example, 16 years) likely to be condemned to detention or who might stay in an institution for lack of appropriate accommodation may be offered the opportunity to live alone (under a judicial or administrative order). Support is offered to him, while not curtailing his autonomy. Such programmes can also be addressed to youngsters who experience difficulties in their relationships with their parents.

4.4 Programmes involving extreme challenges

In the context of a supervision order, different programmes can be offered to juveniles, such as those involving meeting extreme challenges. These offer to the young offenders or those in problematic situations an intense short lasting experience. Generally these take place in the wilderness, where they are expected to live in a way that challenges their current limits, with the aim of enhancing their self image, helping them to exercise self control, and developing their physical capacities and social skills (working in a group). This measure meets the developmental and cultural needs of

CHILDREN DEPRIVED OF LIBERTY

teenagers. Such a challenge may be for example climbing in the mountains, but may also include activities in an urban setting.

5. The assistance of a voluntary “coach”

5.1 The setting

In the context of a supervision order, probation or conditional release, the young person may be assisted by a voluntary adult (“coach”) in order to fulfil the obligations that were imposed on him. The coach can also offer his services during the proceedings that lead to these measures.

The coach can be useful as well in accelerating the release (conditional or non-conditional) of a young person by guaranteeing his follow-up or by assisting him at the time of his release. They can also offer assistance in cases where the judge decides that a juvenile cannot remain in the family home and needs assistance in setting down alone.

The coach’s assistance can also be provided outside the context of the juvenile justice system. For example, in certain countries, these volunteer coaches are associated with social organisations active in child protection. They can then be consulted and called upon by any juvenile in need of support (see Chapter 3 on general prevention).

5.2 The objective

Research demonstrates that problematic or “antisocial” behaviour of certain young people is due to a deficiency in their social skills or competencies in every day life.

The objective of the coach is to teach the young person to live independently. Aside from training activities, the young person and his coach spend some less formal time together (leisure, sport, etc.). For more effectiveness, the skills to be developed must be related to the functioning of the young person in every day life. The coaches, who are not professionals, are in a way the personification of this every day life.

5.3 The role of the coach

The coach is generally involved with only one young person at a time and maintains contact with him about once a week, usually at his or the child’s home. Their activities concentrate on different aspects of daily life. The

RIGHTS AND REALITIES

coach gives advice and information and explains how a problem could be solved in a manner that motivates the young person to act.

5.4 Situations in which the intervention of a coach may be desirable

The youngsters concerned are generally those who need more special attention than usually offered by the social services. They are often unemployed, they have few or no friends or family, destructive leisure pursuits, and generally do not manage their life properly. In brief, they have difficulty in being independent and run the risk of engaging in socially deviant behaviour. Having a “coach” is important for children who feel the need to have someone to turn to, before real problems occur and before deprivation of liberty is considered by judicial authorities as a way to deal with the child. The coach has much to offer these young people because s/he can give more time to these children and has greater flexibility than social services. His or her availability is not limited by office hours.

5.5 The recruitment, training and supervision of coaches

The coaches are volunteers. They may be recruited through announcements in the press. To be selected, the person must be open in his or her relations with youngsters, know how to listen to them and not impose him or herself too much on the child. They must be aware of the child’s potential, be capable of thinking and speaking in terms of everyday life, and be realistic in relation to the sometimes limited impact of the work of coaches on children’s behaviour.

In certain cases, coaches may themselves have been confronted to the judicial system in the past. Such coaches may have several advantages. The coach will find in his or her work an important means of valuing him or herself, s/he will be able to better understand a situation that s/he has himself experienced and the young person perhaps will respect and listen more to someone who has known the same kind of experiences.

The selected coaches must complete a short training, during which they are familiarised with principles and practice of coaching young people.

Periodically, (for example, every three weeks) every coach reports back to the court or to the social services on the progress of the young person. The coach and the court monitor together, systematically, what remains to be taught to the young person. This supervision is an essential element of the project in the sense that it allows the coach to follow some clear instructions

CHILDREN DEPRIVED OF LIBERTY

and to see his or her work integrated, if the situation arises, with the whole of the interventions made by the juvenile justice system into the life of the youth.

An example :

A 16 years old teenager returned to his mother after having lived a certain time in an institution. This situation is difficult for him because he fears this cohabitation and, because of the length of absence, he doesn't any more have friends. He risks being deprived of liberty once again. During his first week at home, a coach is introduced to him as per both his wish his mother's who then feels less alone in her educator role. The supervision starts very slowly because the youth misses several appointments. However, thanks to the perseverance of his coach, they end up meeting regularly.

Since he gets bored during his leisure time, this is the first aspect of his life that his coach helps to address. Given that the youth likes soccer a lot, they together look for a club in which he could register. They also discuss ways in which he could get closer to other youngsters. Consequently, he begins to see other young players outside the club. As the youth begins to go out with his new friends, new problems appear at home, such as rules concerning what time he should be home. His coach teaches him to better understand the point of view of his mother and they look together at how this situation might be managed. After about a year and half, the youth got used to his new home and life with his mother and the coaching period reaches a conclusion.

6. Intermediate treatment

Intermediate treatment, which is also a type of supervision order, is based on the assumption that the assistance that certain young offenders need must preferably be undertaken in the community. Youngsters are supported in their own living environment.

Intermediate treatment is an educational programme adapted to the young person (to his personality, behaviour, home and social environment, etc.) and accepted by him, which may take various forms that are more or less intensive. Intermediate treatment places the emphasis on group work and may specifically aim at the offender's social education (allowing him to acquire minimal knowledge of the law, social life, etc.), greater motivation,

RIGHTS AND REALITIES

better school or professional results or better use of leisure time. This measure covers both well structured programmes during the day, in the evening or the weekend, and leisure activities of the type proposed in centres or clubs for youngsters. The approach adopted depends on the individual situation : more or less intensive according to the danger posed by the young person to society, his domestic situation, his educational needs, etc.

Programmes of high intensity are those that interest us more in the context of this book because these are made for youngsters likely to be deprived of their liberty. The possibility of attending a programme in the setting of intermediate treatment is sometimes offered to these children instead. Programmes of high intensity are more structured. Youngsters must generally go every day to the place of treatment.

It is important to underline that the context described above is broad enough to permit all types of variations and that programmes in the context of intermediate treatment may take a variety of forms. By way of illustration, we summarise one of these possibilities below, which must not be considered as the only relevant model for intermediate treatment.

Intermediate treatment may be composed of various stages, including a stage during which attempts are made to understand why the young person behaves in a negative manner and how this behaviour could be changed. The theory is that the person best placed to identify the reasons for offending is the young person himself. The method employed may be the following : the young person is asked to outline the sequence of events relevant to the offence – this is then used as a script in a role play. The young person therefore reproduces before others the manner in which the commission of the offence took place, as well as the time preceding and following it. This role play is filmed and shown to a group of youngsters, who must identify collectively the points at which alternative behaviour could have been adopted and what this behaviour could have been. The young offender must then put in writing the advantages and disadvantages of having committed the offence, as well as those for not having committed it, which helps him to weigh up the pros and cons of his delinquent behaviour in a rational manner.

Conclusion to Part Four

Alternatives to measures involving the deprivation of liberty for juvenile offenders do exist and important efforts are made to apply them. This signifies an encouraging conclusion to the last part of the book!

This part of the book commenced with an overview of the international legal framework that provides several criteria that all social responses to children in conflict with the law should meet to be constructive and humane. The existence of such criteria should be used as a basis for the development of new creative options. A constructive and humane justice respectful of the child's rights is not measured by the range of available sanctions but by the quality and effectiveness of these measures.

As elaborated, alternatives can be put in place at different levels : prevention/extra-judicial settlement/diversion/judgment/release. The objective of the social integration of all citizens invites policy makers, at the first level, to consider recourse to initiatives integrated within the community, in the context of general prevention. For this reason, local basic services must be available for all.

If basic services are not freely available, a regrettable dynamic risks being set in motion. Their absence can in effect imply "a system of reward for the offence" – that is, the possibility of only having access to services once difficulties have appeared. For example, a young delinquent may be offered training to improve his social skills only after having been apprehended by police for socially deviant behaviour. In such a system this type of training or assistance is not available for children who are not in contact with the administration of justice but are still in need of such assistance. A similar situation occurs when educational services are provided for maltreated children and their family, but not for children who have relationship

CHILDREN DEPRIVED OF LIBERTY

difficulties in the family but in whose case abuse has not come to public attention.

To avoid falling into this trap and so that alternatives are not simply reactive, it is imperative that they are part of a global approach for the child in society. We are convinced that the problem of the deprivation of liberty of children may only be clearly reduced if States make the improvement of the social position of the child and his family a priority. Governments around the world must increase attention to general prevention policies so that the position of the child and the family are strengthened and situations which lead to delinquent behaviour are prevented from developing or dealt with at an early stage, prior to the commission of offences by the juvenile.

Nonetheless from the perspective of reducing recourse to the deprivation of liberty, it is important, in addition to general prevention, to encourage programmes and policies which aim to prevent the juvenile from coming into contact with the official bodies charged with law enforcement. As we have seen, the principle of minimal intervention by these bodies requires governments to implement policies of extra-judicial settlement and diversion.

The search for alternatives “at the end of the course”, at the final level of judicial proceedings, should not be disregarded. But to be efficient, these alternatives to the deprivation of liberty in the strict sense must largely be based on the services made available for all citizens in the community. Supervision orders for example are only applicable if services exist to help the juvenile (and his family) observe conditions that have been imposed on him. To allow the young person to remain in his environment while requiring him, for example, to pursue his education on a regular basis, necessarily implies the availability of teaching services adapted to him and to his needs.

For certain groups of children, more specialised assistance is indispensable. These children, often in a “negative spiral” for years, whom the public sometimes have the tendency to consider forever lost from society, also have potential to play a constructive role in society and also have rights. To discover this potential and to permit its development, governments have to provide some additional assistance. The institutional setting is not the most suitable place for such programmes by any means.

Finally, establishing and using alternatives also requires a culture open to different means of responding to social problems other than through repression. Such a culture needs time to evolve and societies need to become informed about the issues surrounding juvenile justice. We hope that this book will be able to contribute to taking another step in this direction.

GENERAL CONCLUSION

RIGHTS AND REALITIES

Juvenile offenders, children at risk, children deprived of their liberty and other vulnerable children are all human beings. As for all human beings without exception they have rights, which are the same for all. Whatever their status or their personal situation, whatever acts they may have committed, these rights cannot be abolished. They are inherent to the human condition and are not linked to any other consideration. Their enjoyment can never be made conditional.

Since rights necessarily imply liabilities, States are required to respect them as provided for in domestic legislation and in the international legal instruments to which they are party. More precisely, in ratifying the Convention on the Rights of the Child, the vast majority of States in the world are obliged to apply its provisions in relation to all children under their jurisdiction. Thus, to respect and guarantee the rights of all children, including those who are deprived of their liberty, is no longer a favour bestowed by the State as a result of good will or dependent on the availability of resources, but a binding legal obligation.

To address the problem of the deprivation of the liberty of children from this human rights perspective presents several considerable advantages.

First, this approach, by using the international legal framework as a reference, facilitates the clear identification of difficulties in implementing the rights and the violations of such rights. It has been seen that recourse to measures involving the confinement of children is frequent in spite of the international requirements (more than one million children across the world are affected) and that such a measure is often unnecessary. Within establishments, the rights of children are denied so frequently and in such a systematic manner that one can conclude that there is a severe incompatibility between a situation where a child is deprived of his liberty and respect for the child's rights.

To adopt the perspective of the rights of the child also promotes a holistic vision of the child and his environment. These rights form an interdependent whole and no single one may be disregarded. They are all bound closely to each other and a violation of one right necessarily results in the violation of another. This means that all the factors that impact on the realization of the rights of children must be taken into account in any decision concerning a child. Such an approach also assists in the identification of obstacles to the

CHILDREN DEPRIVED OF LIBERTY

full benefit of children's rights and guides States towards the proper resolution of such difficulties.

This brings us to a second important advantage in addressing the problem from the angle of human rights. Once the difficulties in implementing the rights are identified, this approach highlights the objectives to be attained in order to achieve complete respect for the rights of all children deprived of liberty. Rights provided by the international legal framework – in the same way as national legislation on the matter – are guiding principles to be followed to improve the situation of children and to reach this objective. Article 37(c) of the Convention stipulates that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person (...)”. To be treated with humanity and respect means first of all having one's rights realized.

The third advantage is that the human rights perspective encourages governments to act early, before difficulties appear. This advantage stems from the view that respecting the rights of every member of society, whether they are civil, political, economic, social or cultural rights is ultimately the best guarantee for preventing social problems. Situations in which many children deprived of liberty find themselves originate from a lack of respect for their human rights (violation of the right to integrity or violation of the right to a decent standard of living, for example). Delinquent behaviour itself is often a reaction to violations of the rights of children. The lack of respect for the child's human rights is located at the very beginning of a cause and effect chain, the outcome of which may be the deprivation of liberty of the child. Acting in the knowledge of this situation would certainly prevent to a significant extent the confinement of children.

Respect for the child also encompasses the right to express himself and have his opinion taken into consideration. Taking a child's opinion into account when deciding on issues in relation to the child is a necessary condition for the recognition of the child as a fully-fledged person, a subject with rights. It is also a means of encouraging the child's involvement in decisions about his own future and can be an important step towards reintegration with society. In addition, by respecting the child's opinion, he learns to respect the opinion of others.

Thus, by providing a reference point, the human rights perspective facilitates the identification of problematic aspects in the realization of children's rights. By providing guidelines, governments are able to act directly on the violations of rights and prevent them from occurring.

This approach identifies the gaps in governments policies and procedures regarding children and at the same time suggests solutions. Clearly, the

RIGHTS AND REALITIES

realization of all the rights of all children is an objective that can seem unattainable. It is true that the challenges are substantial, and that the realization of all the rights can be difficult. However, the realization of the rights of children is fundamental for humanity as a whole. In the context of children deprived of liberty, the measure itself has to be questioned. Since respect for the child's rights is not readily compatible with the deprivation of the child's liberty, and since governments are legally required to guarantee respect for children's rights, the ultimate goal could be a total banning of the resort to this measure. The move towards banning this measure for children will of course take considerable time because it implies a fundamental change of perception, linked to the social and legal position of children in general and also particularly to the negative public opinion of children in conflict with the law.

There are many who, in the name of public order, would strenuously oppose such a move. As discussed in the book, however, alternative measures to the deprivation of liberty exist and offer a more humane, effective and often less expensive solution than confinement. It is therefore possible to implement alternative measures, even for those children who have committed the most serious offences. For this reason, the desire expressed in this book to ban the use of measures involving the deprivation of children's liberty is not utopian : rather, it follows the spirit of the international legal framework to its natural conclusion.

To begin to operate in this direction, two steps need to be taken on two complementary levels :

- a. Taking measures running counter to the final objective should be avoided. For example, the adoption of new legal provisions that widen the possibilities of deprivation of liberty should be avoided, as should the construction of new (closed) establishments;
- b. The setting up of alternatives and the resort to non-residential measures, including the development of general prevention policies, should be encouraged and promoted.

Several strategies can be used to implement these approaches as presented below, some of which may seem so simple that they are sometimes disregarded. It is important to know that it has been demonstrated, in several countries, that these approaches are feasible and effective.

1. To encourage at the local, national and international levels, awareness of and public debate on the problem of the deprivation of liberty of children and the respect for their rights. This awareness-raising and debate require accurate information, an open climate and a constructive approach with regard to children deprived of their liberty. In this respect,

CHILDREN DEPRIVED OF LIBERTY

it is imperative to focus on children's capacities and their potential rather than treating them like passive victims or concentrating solely on the problems they may cause. Particular emphasis must be placed on involving children in the debate themselves.

2. To develop and to sustain an information database on the children deprived of liberty and respect for their rights at the national and international levels that should be complete, systematic and permanent. Reports that must be submitted for the purpose of the monitoring of the Convention on the Rights of the Child may offer the best context in this regard. Children's life experiences must be an integral part of this information.
3. To promote information and permanent training on the rights of the child in general. Special focus must be given to training and eventual redeployment of the personnel of closed establishments for children. Their experience and expertise should prove very useful for work in an open environment. Information on children's rights must at all times be accessible to all children.
4. To guarantee, at all levels, permanent monitoring of the implementation of the rights of children deprived of liberty, integrated with the totality of efforts guaranteeing the legal protection of children as a social group, as well as the rights and interests of every individual child.

At the international level, there is the need to launch a Global Campaign Against the Deprivation of Liberty of Children, aimed at fostering universal support from a range of actors including United Nations bodies and agencies, international and national non-governmental human rights organisations, governments, community groups and children themselves for a ban to the maximum extent possible on the use of such measures against all children. As long as children continue to be subject to the deprivation of liberty, they will continue to be at risk of having their rights violated. It is time for the world to face up to this reality and to take progressive steps towards reconciling children's rights and realities.

RIGHTS AND REALITIES

ANNEXES

Convention on the Rights of the Child (CRC)

*Adopted and opened for signature, ratification and accession by
General Assembly resolution 44/25 of 20 November 1989
entry into force 2 September 1990, in accordance with article 49*

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, ‘

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the

ANNEXES

Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows :

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of

ANNEXES

the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary :

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall :

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the

ANNEXES

upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall :

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

ANNEXES

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures :
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular :
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to :
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

ANNEXES

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular :
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent :

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that :

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

ANNEXES

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of : any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that :
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees :
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular :

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in :

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems. (amendment)

ANNEXES

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights :
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention :

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ANNEXES

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

1. Convention des Nations Unies relative aux droits de l'enfant (1989)

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly
resolution 45/113
of 14 December 1990

I. Fundamental Perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

ANNEXES

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and Application of the Rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

2. Règles des Nations Unies pour la protection
des mineurs privés de liberté (1990)

III. Juveniles under Arrest or Awaiting Trial

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. The Management of Juvenile Facilities

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

ANNEXES

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be

2. Règles des Nations Unies pour la protection des mineurs privés de liberté (1990)

pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

ANNEXES

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

2. Règles des Nations Unies pour la protection des mineurs privés de liberté (1990)

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it. G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral

ANNEXES

visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint.

2. Règles des Nations Unies pour la protection des mineurs privés de liberté (1990)

Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

ANNEXES

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;

2. Règles des Nations Unies pour la protection des mineurs privés de liberté (1990)

(c) The authority competent to impose such sanctions;

(d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

ANNEXES

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

2. Règles des Nations Unies pour la protection des mineurs privés de liberté (1990)

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

Deprivation of liberty of children and alternatives

Questionnaire for national studies

INTRODUCTION

This questionnaire has been developed in the framework of a book on the deprivation of liberty of children and the alternatives to deprivation of liberty. The book will be published on the occasion of the 10th anniversary of the adoption of the UN Convention on the Rights of the Child (1989) in 1999.

Why a book on the rights of children deprived of liberty ?

The reality that children are facing today is disturbing and at the same time promising. It is disturbing on the one hand because the recognition of the rights of the child makes us more and more realize that children as a social group – and the child as an individual – are still granted too little respect and that their rights are too often violated. The reality is promising on the other hand because the Convention on the Rights of the Child offer a binding instrument to society in general, and to children in particular, to be used to prevent and change this reality.

In the entire world, hundreds of thousands of children are deprived of their liberty. Their rights are particularly ignored. Their situation or behaviour, often seen as “social deviations”, are even sometimes used as pretexts to reopen the whole question of the respect of those children as human beings and subjects of rights.

ANNEXES

Ten years after the adoption of the UN Convention on the Rights of the Child by the UN General Assembly, and considering its almost universal ratification, the book intends to evaluate to what extent the rights of children deprived of their liberty in the world are respected, but mainly to identify ways of better guaranteeing these rights.

Deprivation of liberty in closed custodial settings

The placement of a child can take various forms. A child can be placed in an open institution from which he or she can freely go out, in order to follow vocational training or leisure activities for instance.

However, placement can also take place in a closed custodial setting from which the minor can not go out as he or she likes. These settings can be arrest cells, detention facilities, prisons or any other closed institution.

The choice of a closed custodial setting is generally motivated – implicitly or explicitly – by security and public order reasons. It also happens however that the public order objective is accompanied – or even hidden – by another goal : the re-education and rehabilitation of the child. So-called re-education centers can be “prisons” as well.

Although each form of deprivation of liberty can pose a problem, we decided to limit the scope of the book to the deprivation of liberty of children in closed custodial settings (see definitions below).

The rights of children deprived of their liberty

The UN Convention on the Rights of the Child enunciates the rights that States Parties shall ensure to each person below the age of eighteen without discrimination of any kind and irrespective of the child’s status.¹

Therefore, the underlying principle throughout the book will be that children deprived of their liberty in closed custodial settings have rights and are entitled to exercise these rights. Along the same lines, article 37(c) of the UN Convention provides that “every child deprived of his or her liberty shall be treated with humanity and respect for the inherent dignity of the human person (...)”.

To be treated with humanity and respect means to have one’s rights respected.

1 Articles 1 and 2 of the UN Convention on the Rights of the Child

3. Questionnaire pour les études nationales

Structure of the book

The first part of the book will give a review of the way in which the rights of children deprived of their liberty in closed custodial settings are respected. This will be done by examining various existing reports and studies on the topic and through the analysis of the work of the UN Committee on the Rights of the Child, as well as national studies in some twenty countries around the world. The objective of the research is not a denunciation of the conditions of detention of juveniles but rather to provide a general picture of the situation worldwide after the adoption of the Convention in 1989, as a starting point for a search for alternatives.

The information provided by the national studies will open the debate concerning the search for constructive solutions to violations of the rights of children deprived of their liberty in closed settings, as well as alternatives to deprivation of liberty. Indeed, article 37 of the Convention (and other international standards) presents deprivation of liberty as a measure of last resort. Therefore, the respect for the rights of the child entails trying to avoid the deprivation of liberty or to replace such a measure as soon as possible with alternatives. The research results will constitute the second part of the book.

The book reflects a positive spirit of international cooperation and mutual assistance in the promotion and protection of the rights of the child.

The national studies and the questionnaire

The national studies that will serve to assess the overall situation in some twenty countries will be based on this questionnaire. The questionnaire will be completed by local partners in each selected country.

We have chosen to evaluate the overall situation by starting from the rights of the child and the extent to which those rights are respected. To this end, we have drawn four rights from the Convention as examples : the right to education, the right to keep contact with one's family, the right to protection against violence and neglect and the right to legal protection.

We made sure that the selected rights cover the **protection** that children because of their vulnerability have to benefit from (the right to protection against violence and neglect) as well as the **provisions** they are entitled to (the right to education and the right to keep contact with one's family) and the **participation** they have to be guaranteed (right to legal protection).

However, one has to keep in mind that the Convention has to be tackled in a comprehensive manner and that no right should be considered in isolation.

ANNEXES

They are all interdependent. The findings related to the implementation of those four rights in closed custodial settings will only be examples of what the overall situation might be.

Definitions

Child : every human being below the age of eighteen years (Article 1 of the UN Convention on the Rights of the Child; Rule 11 of the UN Rules for the protection of juveniles deprived of their liberty).

Deprivation of liberty : any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (Rule 11 of the UN Rules for the protection of juveniles deprived of their liberty).

Closed custodial setting : arrest cell, detention facility, prison or any other closed institution according to the definitions below.

Arrest cell : cell, usually within police premises, in which a person is detained before a warrant for arrest or a provisional measure has been delivered against him or her by a judiciary or administrative authority.

Detention facility : facility in which a person is detained after a warrant for arrest or a provisional measure has been delivered against him or her by a judiciary or administrative authority, but before that a sentence or decision regarding the substance of the case has been passed.

Prison : institution in which a person is incarcerated after a sentence regarding the merits of the case has been passed.

Other closed institution : any other institution, public or private, in which a person is placed upon the decision of a judiciary, administrative or other authority and from which he or she can not go out at will. Examples : closed re-education centres, psychiatric institutions, etc.

The Convention : the UN Convention on the Rights of the Child (1989).

Structure of the Questionnaire

The Questionnaire is divided into six chapters. The first Chapter intends to collect general data on the deprivation of liberty of children in closed custodial settings in the selected countries. Chapters two to five aim at assessing the conditions of deprivation of liberty in the different closed custodial settings, starting from the rights of the child. The last Chapter is devoted to the alternatives to deprivation of liberty of children. For some of the questions, you will find details on the left page regarding the information

3. Questionnaire pour les études nationales

we are looking for. You will also find articles of the UN Convention on the Rights of the Child that will help you in defining the right to education, the right to keep contact with one's family, the right to protection against violence and neglect and the right to legal protection.

We attached in annex various rules taken from the UN Rules for the protection of juveniles deprived of their liberty that can be useful in identifying issues to which particular attention should be paid when assessing the implementation of the concerned rights (Chapters 2 to 5).

We recommend also to consult the initial (or periodic) report presented by your country to the UN Committee on the Rights of the Child, if applicable.

Countries in which different laws concerning the deprivation of liberty of children are in force

Some countries, such as those with with federal systems, have legislation/administration related to the deprivation of liberty of children differing from region/state/etc. to another. If this is the case in your country, we invite you to consider the situation in one entity only (e.g. one region/state/etc.) but also to include, if relevant, the legislation applicable and the administration involved for the country as a whole. Please indicate clearly the region/state/etc. that is covered.

Please be as complete as possible. We would greatly appreciate if you enclose any useful information or document. Please mention bibliographical references on recent studies made on the topic in your country, if any. If possible, we would appreciate to receive the full documents.

Thank you very much for your collaboration.

**Geert Cappelaere
Anne Grandjean**

PRELIMINARY INFORMATION

- A) The answers given in the questionnaire cover :
- the whole country
 - a specific region/state/etc. in the country (please indicate which one)
- B) The questionnaire has been completed by :

ANNEXES

Name :

Organisation :

Address :

Phone :

Fax :

Email :

Bank account (please give all useful information for the transfer of honorarium) :

Chapter 1 : GENERAL DATA

1. Can children in your country be deprived of their liberty in closed custodial settings such as :
 - a. Arrest cells ?
 - b. Detention facilities ?
 - c. Prisons ?
 - d. Other closed institutions ?

Please detail what is meant by “other closed institutions” under point d.

A. Legislation

a. Ages

2. What is/are the minimum/a age(s) of criminal responsibility in your country ? Please specify if different minima ages are in place (e.g. according to the seriousness of the offence)
3. What is the age of civil majority ?
4. What is/are the minimum/a age(s) at which a person may be prosecuted before an adult court ? Please specify if different minima ages are in place (e.g. according to the seriousness of the offence)
5. What is/are the minimum/a age(s) for a child to be deprived of liberty in a closed custodial setting ? Please specify if different minima ages are in place (e.g. according to the seriousness of the offence)

If relevant, please specify for :

- a. Arrest cells
- b. Detention facilities
- c. Prisons
- d. Other closed institutions

3. Questionnaire pour les études nationales

b. Legal basis/causes for deprivation of liberty

6. What are the causes/legal basis applicable in your country allowing to deprive a child of his or her liberty in a closed custodial setting ? (*see left page*)

7. Are there situations in which children are deprived of their liberty in a closed custodial setting without legal basis ? Please explain.

c. Decisional procedure and legal assistance

8. What authorities (administrative and judicial) in your country can decide to deprive a child of liberty in a closed custodial setting ? (*see left page*)

9. Have those authorities received a specialized training in dealing with children cases ? Have they received a training in children's rights ? Please explain.

10. Does legislation foresee the possibility of legal assistance for the child – lawyer or other – when the decision to deprive him or her of liberty in a closed custodial setting is taken ? Please explain.

11. Is the legal assistance compulsory ? Please explain.

12. Is legal assistance free of charge ? Please explain.

13. Have the persons in charge of the legal assistance of children received a specialised training in dealing with children cases ? Have they received a training in children's rights ? Please explain.

14. Does legislation foresee the possibility of review by a higher authority when a decision to deprive a child of liberty in a closed custodial setting is taken ? Please explain.

See principle in article 40.(2).(b)(v) of the Convention .

15. Does legislation foresee periodic review of placement ? Please explain.
See principle in article 25 of the Convention on left page.

d. Maximum length of deprivation of liberty/Measure of last resort

16. Does legislation explicitly express the obligation to chose the deprivation of liberty of a child in a closed custodial setting as a measure of last resort only ? Please explain.

See principle stated in article 37 (b) of the Convention on left page.

17. What is, according to the legislation, the initial maximum duration of a measure depriving a child of liberty in a closed custodial setting ?

If relevant, please specify for :

ANNEXES

Arrest cells
Detention facilities
Prisons
Other closed institutions

18. Can the measure depriving a child of liberty in a closed custodial setting be extended beyond the initial maximum period of time ? Please explain for how long and for what reasons.

If relevant, please specify for :

Arrest cells
Detention facilities
Prisons
Other closed institutions

19. Is the deprivation of liberty of a child in a closed custodial setting really used by administrative and judiciary authorities for the shortest period of time ? Please explain.

e. Integration of the provisions of the Convention within national legislation

20. Has the national legislation regulating the deprivation of liberty of children in closed custodial settings been :

- i) reviewed following the ratification of the Convention by your country ? Please explain.
- ii) adjusted following the ratification of the Convention by your country ? Please explain.

f. Personal assessment

22. What are for you the positive aspects of the legislation regulating the deprivation of liberty of children in closed custodial settings in force in your country ? Please refer to the UN Convention on the Rights of the Child.

23. What are for you the negative aspects of the legislation regulating the deprivation of liberty of children in closed custodial settings in force in your country ? Please refer to the UN Convention on the Rights of the Child.

B. Information on children deprived of liberty

24. How many children are deprived of liberty in closed custodial settings each year in your country ?

3. Questionnaire pour les études nationales

Please specify the total amount of children in :

- Arrest cells
- Detention facilities
- Prisons
- Other closed institutions

25. Please classify the total number of children by :

- sex
- nationality
- age
- motives for the deprivation of liberty (for the causes of deprivation of liberty see question 6)
- average length of stay in the custodial setting

If such a classification is not possible please specify why.

26. What percentage the total number of children deprived of liberty in closed custodial settings represent in relation to the total population of children (persons below eighteen) in your country ?

27. How do you evaluate the data you collected (reliability, variety, etc.)

C. Budget

28. Does an analysis of the yearly budget allocated to the deprivation of liberty of children in closed custodial settings exist (on a national and/or decentralized level) ? If so, please summarize the findings and provide us with all relevant information.

Chapter 2 : THE RIGHT TO EDUCATION

A. Legislation and internal regulations

Please see on left page the principles stated in article 28 of the Convention.

29. Do national legislation and closed custodial settings' internal regulations guarantee the rights stated in article 28 of the Convention to children deprived of their liberty in closed custodial settings ?

If relevant, please specify for : Arrest cells, detention facilities, prisons or other closed institutions. Please quote or join in each case the concerned provision (from national legislation and internal regulations).

ANNEXES

B. The right to education during deprivation of liberty

Please give as detailed examples as possible. In the annex, you will find rules taken from the UN Rules for the protection of juveniles deprived of their liberty . They can be useful in identifying examples of constructive and positive measures taken in order to realize the right to education or to assist the child in the exercise of this right, as well as in identifying examples of violations of this right (Chapter 2).

30. Could you give two **positive** and **constructive** examples (as detailed as possible) of concrete measures taken in order to realize the right to education or to assist the child in the exercise of this right while he or she is deprived of liberty in a closed custodial setting ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

31. Could you give two examples (as detailed as possible) of **violations** of the right to education while children are deprived of liberty in closed custodial settings ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

32. What are the main **obstacles**, if any, to the realization of the right to education while children are deprived of liberty in closed custodial settings ? Could you give concrete examples (as detailed as possible) ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

C. Monitoring/views of the child

33. Is there any internal (within the closed custodial setting) and/or external (including independent bodies) monitoring of the implementation of the right to education in closed custodial settings ? Please explain, giving examples as detailed as possible.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

34. What are the possibilities for children themselves to complain – within or outside the setting - about violations of the right to education while deprived of liberty ? Please explain.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

Chapter 3 : THE RIGHT TO KEEP CONTACT WITH FAMILY

A. Legislation and internal regulations

Please see on left page the principles stated in article 9 of the Convention.

35. Do national legislation and closed custodial settings' internal regulations guarantee the rights stated in article 9 of the Convention to children deprived of their liberty in closed custodial settings ?

If relevant, please specify for : Arrest cells, detention facilities, prisons or other closed institutions. Please quote or join in each case the concerned provision (from national legislation and internal regulations).

B. The right to contact with family during deprivation of liberty

Please give as detailed examples as possible. In the annex, you will find rules taken from the UN Rules for the protection of juveniles deprived of their liberty. They can be useful in identifying examples of constructive and positive measures taken in order to realize the right to contact with family or to assist the child in the exercise of this right, as well as in identifying examples of violations of this right (Chapter 3).

36. Could you give two **positive** and **constructive** examples (as detailed as possible) of concrete measures taken in order to realize the right to contact with family or to assist the child in the exercise of this right while he or she is deprived of liberty in a closed custodial setting ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

37. Could you give two examples (as detailed as possible) of **violations** of the right to contact with family while children are deprived of liberty in closed custodial settings ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

38. What are the main **obstacles**, if any, to the realization of the right to contact with family while children are deprived of liberty in closed custodial settings ? Could you give concrete examples (as detailed as possible) ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

ANNEXES

C. Monitoring/views of the child

39. Is there any internal (within the closed custodial setting) and/or external (including independent bodies) monitoring of the implementation of the right to contact with family in closed custodial settings ? Please explain, giving examples as detailed as possible.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions)

40. What are the possibilities for children themselves to complain – within or outside the setting – about violations of the right to contact with family while deprived of liberty ? Please explain.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions)

Chapter 4 : THE RIGHT TO PROTECTION AGAINST VIOLENCE AND NEGLECT

Note : “violence” is used here as a general term covering all situations of abuse, exploitation and torture. Moreover, it does not mean only physical violence but also moral and verbal violence. Neglect refers to situations in which the basic needs of children are not taken care of.

A. Legislation and internal regulations

Please see on left page the principles stated in articles 19.1, 32, 34, 35, 36 and 37 (a) of the Convention.

41. Do national legislation and closed custodial settings internal regulations guarantee the rights stated in articles 19(1), 32, 34, 35, 36 and 37 (a) of the Convention to children deprived of their liberty in closed custodial settings ?

If relevant, please specify for : Arrest cells, detention facilities, prisons or other closed institutions.

Please quote or join in each case the concerned provision (from national legislation and internal regulations).

B. The right to protection against violence and neglect during deprivation of liberty

Please give as detailed examples as possible. In the annex, you will find rules taken from the UN Rules for the protection of juveniles deprived of

3. Questionnaire pour les études nationales

their liberty. They can be useful in identifying examples of constructive and positive measures taken in order to realize the right to protection against violence and neglect or to assist the child in the exercise of this right, as well as in identifying examples of violations of this right (Chapter 4).

42. Could you give two **positive** and **constructive** examples (as detailed as possible) of concrete measures taken in order to realize the right to protection against violence and neglect or to assist the child in the exercise of this right while he or she is deprived of liberty in a closed custodial setting ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

43. Could you give two examples (as detailed as possible) of **violations** of the right to protection against violence and neglect while children are deprived of liberty in closed custodial settings ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

44. What are the main **obstacles**, if any, to the realization of the right to protection against violence and neglect while children are deprived of liberty in closed custodial settings ? Could you give concrete examples (as detailed as possible) ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

C. Monitoring/views of the child

45. Is there any internal (within the closed custodial setting) and/or external (including independent bodies) monitoring of the implementation of the right to protection against violence and neglect in closed custodial settings ? Please explain, giving examples as detailed as possible.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

46. What are the possibilities for children themselves to complain – within or outside the setting – about violations of the right to protection against violence and neglect while deprived of liberty ? Please explain.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

ANNEXES

Chapter 5 : THE RIGHT TO LEGAL PROTECTION

A. Legislation and internal regulations

Please see on left page the principles stated in articles 37 (d) and 40(2) of the Convention.

47. Do national legislation and closed custodial settings internal regulations guarantee the rights stated in articles 37(d) and 40(2) of the Convention to children deprived of their liberty in closed custodial settings ?

If relevant, please specify for : Arrest cells, detention facilities, prisons or other closed institutions. Please quote or join in each case the concerned provision (from national legislation and internal regulations).

B. The right to legal protection during deprivation of liberty

Please give as detailed examples as possible. In the annex, you will find rules taken from the UN Rules for the protection of juveniles deprived of their liberty. They can be useful in identifying examples of constructive and positive measures taken in order to realize the right to legal protection or to assist the child in the exercise of this right, as well as in identifying examples of violations of this right (Chapter 5).

48. Could you give two **positive** and **constructive** examples (as detailed as possible) of concrete measures taken in order to realize the right to legal protection or to assist the child in the exercise of this right while he or she is deprived of liberty in a closed custodial setting ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

49. Could you give two examples (as detailed as possible) of **violations** of the right to legal protection while children are deprived of liberty in closed custodial settings ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

50. What are the main **obstacles**, if any, to the realization of the right to legal protection while children are deprived of liberty in closed custodial settings ? Could you give concrete examples (as detailed as possible) ?

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

3. Questionnaire pour les études nationales

C. Monitoring/views of the child

51. Is there any internal (within the closed custodial setting) and/or external (including independent bodies) monitoring of the implementation of the right to legal protection in closed custodial settings ? Please explain, giving examples as detailed as possible.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

52. What are the possibilities for children themselves to complain – within or outside the setting – about violations of the right to legal protection while deprived of liberty ? Please explain.

If necessary please specify the type of custodial setting (arrest cells, detention facilities, prisons or other closed institutions).

Chapter 6 : ALTERNATIVES TO DEPRIVATION OF LIBERTY

Although this question is the last one in the Questionnaire, it is a very important one. We strongly hope that you can provide us with as much and as detailed information as possible !

53. What are the alternatives to deprivation of liberty of children in closed custodial settings applied in your country ?

Please enclose as much information related to the alternatives available as possible (activity reports, addresses, leaflets, etc.).

See on left page the principle stated in article 40(4) of the Convention.

- ABRAHAMSON, B., *Juvenile justice : The 'unwanted child' of State Responsibilities*, Defence for Children International, Geneva, 2001.
- ALAM, S., *Rapid Survey on Children in Prison*, UNICEF, Lahore, 1993.
- A Safe World for Children*, World Vision International, 2001.
- Australia. Silence on Human Rights : Government responds to "Stolen Children" inquiry*, Amnesty International, London, 1998.
- BEUZE, J., "Rapporteurs reach out to children", *CRIN Newsletter*, No. 15, March 2002, p. 14.
- Betraying the young : Human Rights Violations against Children in the US Justice System*, Amnesty International, London, 1998.
- BLACK, M. and SMITH, C., *Rights of institutionalised children*, UNICEF, Bucharest, 1997.
- BOL, M., *Leeftijdsgrenzen in het jeugdstrafrecht*, Gouda Quint, Arnhem, 1991.
- BRAITHWAITE, J., *Restorative Justice and Responsive Regulation*, Oxford University Press, Oxford, December 2001.
- BRANKEN, N. and BATLEY, M., *Family Group Conferences : Putting the wrong right. A Practice Research Study and Implementation Manual*, The Family Group Conference Pilot Project of the InterMinisterial Committee on Young People at Risk, Pretoria, s.d.
- BRON, E., and SOTTAS, E., *Exactions et Enfants*, World Organisation Against Torture (OMCT), Geneva, 1993.
- Burma : Children's Rights and the Rule of Law*, Human Rights Watch/Asia, New York, 1997.
- BURRELL, S., *Pathways to Juvenile Detention Reform : Improving Conditions of confinement in secure juvenile detention centres*, A Project of the Annie E. Casey Foundation, Baltimore.
- CADDLE, D. and CRISP, D., *Imprisoned women and mothers*, Home Office Research Study, London, 1997.
- CAPPELLAERE, G and VERHELLEN, E., *Human rights, juvenile justice and children in conflict with the law*, Austrian Federal Ministry for Youth and Family Affairs, United Nations Centre for International Crime Prevention, Vienna, 1997.

BIBLIOGRAPHIE

- CAPPELAERE, G. et.al., *Les Enfants de la rue en Europe*, Conseil de l'Europe, Strasbourg, 1994.
- CAPPELAERE, G and SANTOS PAIS, M., "The observance of human rights in the practical application of juvenile and family justice" in *Young Offenders and their families : The human rights issue*, Forum Verlag, Godesberg, 1998, pp. 193-204.
- CAPPELAERE, G. , SPIESSCHAERT, F. and VERHELLEN, E., "Le mouvement des droits de l'enfant", *Journal du Droit des Jeunes*, No. 9, 1988, pp. 1-7.
- CAPPELAERE, G., SPIESSCHAERT, F. and VERHELLEN, E., "Effet direct et primauté de la Convention relative aux droits de l'enfant", *Journal du Droit des Jeunes*, No. 126, 1993, pp. 33-36.
- CAPPELAERE, G. , SPIESSCHAERT, F. and VERHELLEN, E., "La Convention relative aux droits de l'enfant, son effet direct et son application directe en droit (interne)", *Journal du Droit des Jeunes*, No. 117, 1993, pp. 55-57.
- CAPPELAERE, G., SPIESSCHAERT, F. and VERHELLEN, E., "La Convention relative aux droits de l'enfant et la capacité juridique des enfants", *Journal du Droit des Jeunes*, No. 128 1993, pp. 16-17.
- CAPPELAERE, G., "Des alternatives à l'emprisonnement", *Projets et Perspectives*, No. 1, 1987, pp. 14-15.
- CAPPELAERE, G., "Des sanctions alternatives dans la protection de la jeunesse en Belgique" in *Changement de société et délinquance juvénile*, Acco, Leuven, 1987, pp. 59-74.
- CAPPELAERE, G. and GRANDJEAN, A., *Juvenile Justice*, UNICEF, Country office Moscow, 1998.
- CAPPELAERE, G., "Juvenile justice and children's rights", *Transnational Law and Contemporary Problems*, University of Iowa, Iowa, 1998.
- CAPPELAERE, G., "Juvenile punitive law" in *The future of the juvenile justice system*, Acco, Amersfoort, 1990, pp. 275-284.
- CAPPELAERE, G., "La petite maison à différents portails" in *Le placement des mineurs en institution psychiatrique*, Publications des Facultés Universitaires de Saint-Louis, Brussels, 1990, pp. 17-24.
- CAPPELAERE, G., "Les enfants et les lois dans une perspective internationale", *Enfance*, No. 3, 1992, pp. 265-277.
- CAPPELAERE, G. and MARY, P., "Le programme des Nations Unies pour la prévention du crime et la justice pénale", *Revue de Droit Pénal et de Criminologie*, No. 1, 1996, pp. 54-79.
- CAPPELAERE, G., "Recurrent variations on a youthful theme", *Beyond the pale, Behind bars : Special Issue of Paedagogica Historica*, XXVI, No. 2, 1990, pp. 247-266.
- CAPPELAERE, G., *United Nations Guidelines for the prevention of juvenile delinquency : prevention of juvenile delinquency or promotion of a society respectful for children too?*, Defence for Children International (DCI), Geneva, 1993.
- CAPPELAERE, G. and VERHELLEN, E., "Prevention of juvenile delinquency and respect for children's rights", *International Journal of Children's Rights*, No. 4, 1996, pp. 57-67.
- CAPPELAERE, G., "Vers un code pénal de la jeunesse ? La responsabilité de l'enfant comme point de départ" in *Travail d'intérêt général et médiation pénale*, Bruylant, Brussels, 1998.
- Changes in society and juvenile delinquency*, Acco, Leuven, 1987.

BIBLIOGRAPHIE

- Children Appeal Leaflets*, Children Action 2001, Amnesty International, ACT 70/007/2001.
- Children deprived of their liberty - Annual report 2000*, BICE.
- Children in adult prison : A situational analysis*, Community Law Centre, University of the Western Cape, Cape Town, 1997.
- Children in conflict with the law : A survey of the situation in Bangladesh*, Rädda Barnen (Swedish Save the Children), Stockholm, 1995.
- Children in conflict with the law : A survey of the situation in Ethiopia*, Rädda Barnen (Swedish Save the Children), Stockholm, 1996.
- Children in conflict with the law : A survey of the situation in El Salvador*, Rädda Barnen (Swedish Save the Children), Stockholm, 1997.
- Children in conflict with the law : A survey of the situation in Pakistan*, Rädda Barnen (Swedish Save the Children), Stockholm, 1995.
- Children in conflict with the law : A survey of the situation in Peru*, Rädda Barnen (Swedish Save the Children), Stockholm, 1997.
- Children in conflict with the law : A survey of the situation in South Africa*, Rädda Barnen (Swedish Save the Children), Stockholm, 1996.
- Children in conflict with the law : A survey of the situation in South Africa*, Rädda Barnen (Swedish Save the Children), Stockholm, 1996.
- Children in conflict with the law : A survey of the situation in the West Bank*, Rädda Barnen (Swedish Save the Children), Stockholm, 1995.
- Children in conflict with the law : A survey of the situation in Vietnam*, Rädda Barnen (Swedish Save the Children), Stockholm, 1995.
- Children in conflict with the law : A survey of the situation in Yemen*, Rädda Barnen (Swedish Save the Children), Stockholm, 1997.
- Children in conflict with the law : A survey of the situation in Yemen*, Rädda Barnen (Swedish Save the Children), Stockholm, 1997.
- Children in Confinement in Louisiana*, Human Rights Watch Children's Rights Project, New York, 1995.
- Children in Northern Ireland : Abused by Security Forces and Paramilitaries*, Human Rights Watch, New York, 1992.
- Children in Prison in South Africa. A Situational Analysis*, Community Law Centre, University of the Western Cape, Cape Town, 1997.
- Children in South Asia : Securing their rights*, Amnesty International, London, 1998.
- Children in Trouble : United Nations Expert Group Meeting*, Austrian Federal Ministry for Youth and Family, Vienna, 1995.
- Children of Bulgaria : Police Violence and Arbitrary Confinement*, Human Rights Watch Children's Rights Project, Human Rights Watch/Helsinki, New York, 1996.
- Children's Rights : Juvenile Justice*, Human Rights Watch, available at <<http://www.hrw.org/children/justice.htm>>.
- Children's Rights - turning principles into practice*, Rädda Barnen (Swedish Save the Children), Stockholm, 2000.
- CLARKE, N., *Economic Appraisals of Capital Works Projects (1989-1990)*, Department of Family and Community Services, Sydney, 1989.

BIBLIOGRAPHIE

- Concerns in Europe July-December 1997*, Amnesty International, London, 1998.
- CRIPPEN, G. L., "The rights of children and the juvenile court" in Schwartz, I. (ed.), *Juvenile Justice and public policy : Towards a national agenda*, MacMillan, New York, 1992.
- CRONIN, R., *Boot Camps for Adult and Juvenile Offenders : Overview and Update*, U.S. Department of Justice, National Institute of Justice, Washington D.C., 1994.
- DAY, C., *Children in Prison in England and Wales*, The Howard League for Penal Reform, paper presented at the Defence for Children International Experts Meeting, Amsterdam 22-23 February 2002.
- DCI-Paraguay Report on the Appalling Conditions of Children in Detention, *DCI Monitor*, January 2002, Vol. 15, No. 1.
- DE BOER, W. et. al., (eds.), *Children's Rights and residential care in international perspective*, Defence for Children International, Amsterdam, 1996.
- DE GOUYON, A., "Enfants en détention. Lorsque la société enferme ses enfants", *Enfance*, No. 38, 1997, pp. 8-12.
- «De la prévention des traitements inhumains et dégradants en France», *Les cahiers de l'Institut des droits de l'homme*, No. 2, Université catholique de Lyon, Lyon, 1996.
- DE ZAYAS, A., MOLLER, J. T. and OPSAHL, T., *Application of the International Covenant on Civil and Political Rights by the Human Rights Committee*, Center for Human Rights, Geneva, 1994.
- Death by Default : A Policy of Fatal Neglect in China's State Orphanages*, Human Rights Watch/Asia, New York, 1996.
- DeMURO, P., *Pathways to Juvenile Detention Reform : Consider the Alternatives, planning and implementing detention alternatives*, A Project of the Annie E. Casey Foundation, Baltimore.
- DETRICK, S., *The United Nations Convention on the Rights of the Child : A Guide to the Travaux Préparatoires*, Martinus Nijhoff Publishers, Amsterdam, 1993.
- DROOGLEEVERFORTUYN, M., "The role of the Children's Rights Shop in monitoring children's rights" in *Monitoring Children's Rights*, Kluwer Law International, The Hague, 1996.
- Easy Targets : Violence Against Children Worldwide*, Human Rights Watch, New York, September 2001.
- EMPEY, L.T., *The future of childhood and juvenile justice*, University Press of Virginia, Charlottesville, 1979.
- Enfants en Prison : Rapport d'observation sur les conditions de détention des mineurs dans 51 pays*, Observatoire International des Prisons, Lyon, 1998.
- Etudes sur les enfants privés de liberté dans 13 pays*, Terre des Hommes, Lausanne, 1996.
- FATTAH, E. and PARMENTIER, S., *Victim Policies and Criminal Justice on the Road to Restorative Justice*, Leuven University Press, Leuven, 2001.
- Final Justice : Police and Death Squad Homicides for Adolescents in Brazil*, Human Rights Watch/Americas, New York, 1994.
- FINCKENAUER, J.O. and STEVENS, C.C., "Detention/sanctioning and rehabilitation of children in conflict with the law", United Nations Crime Prevention and Criminal Justice Branch, "Juvenile Delinquency and youth crime : some issues and policy implications" in *Children in Trouble : United Nations Expert Group Meeting*, Austrian Federal Ministry for Youth and Family, Vienna, 1995, p. 48.

BIBLIOGRAPHIE

- FOTTRELL, D. (ed.), *Revisiting children's rights : 10 years of the UN Convention on the Rights of the Child*, Kluwer Law International, The Hague, 2000.
- FOUCAULT, M., *Surveiller et punir. Naissance de la prison*, Editions Gallimard, Paris, 1975.
- France—Excessive force : A summary of Amnesty International's concerns about shootings and illtreatment*, Amnesty International, London, 1998.
- FREEMAN, M., "The rights of children when they do 'wrong'", *British Journal for Criminology*, No. 3, 1981, pp. 210-229.
- GARCIA MENDEZ, E., "Children and juveniles in detention" in *Children in Trouble : United Nations Expert Group Meeting*, Austrian Federal Ministry for Youth and Family, Vienna, 1995, pp. 95-100.
- GARCIA MENDEZ, E., *Child rights in Latin America : From irregular situation to full protection*, Essay No. 8, UNICEF, International Child Development Centre, Florence, 1998.
- GeoDE (Groupe d'Etude et d'Observation des Droits de l'Enfant, Les droits de l'enfant en detention preventive), Actes de la Journee Thematique du 6 Mars 2001, *Les cahiers des droits de l'enfant*, Vol. 8, Editions Defense des Enfants-International (DEI), Section Suisse.
- GERARD, P., OST, F. and VAN DE KERCHOVE, M., *Droit et intérêt*, Volumes 1-3, Facultés Universitaires Saint-Louis, Brussels, 1990.
- GEZELIUS, H., Gow, M. and Cecchetti, R., "Tackling violence against children", *CRIN Newsletter*, No. 15, March 2002, p. 22.
- Global Report- International Dimensions of the Sexual Exploitation of Children*, BICE, available at <<http://www.web.net/tribunal>>.
- GOFFMAN, E., *Total institutions*, Holt, Rinehart and Winston Inc., London, 1961.
- GOLDSON, B., "Reconfigured 'justice' : reconstructed childhood", *The Howard League Magazine*, Vol. 19, No. 4, 2001, p. 5.
- «Gross violations against children : Cases and Statistics to supplement Human Rights Commission proposal (1995/1996)», *SOSTorture*, No. 6263, World Organisation Against Torture (OMCT), 1997, p. 547.
- Guatemala's Forgotten Children : Police Violence and Abuses in Detention*, Human Rights Watch Children's Rights Project, Human Rights Watch/Americas, New York, 1997.
- HACKLER, J., et. al., "Closed custody for juveniles : comparisons between Canada and France. University of Alberta", *Centre for Criminological Research, Discussion Paper 7*, 1986.
- HARVEY, R., "Unseen and unheard : the case for a Children's Rights Commissioner", *Childright*, Issue 178, 2001, pp. 18-20.
- Hidden Scandal, Secret Shame : Torture and Ill-Treatment of Children*, Amnesty International, AI Index ACT 40/38/00, 2000.
- High Country Lockup : Children in Confinement in Colorado*, Human Rights Watch Children's Rights Project, New York, 1997.
- HODGKIN, R. and NEWELL, P., *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, New York, 1997.
- HUDSON, B., *Justice through punishment : A critique of the 'Justice' Model of Corrections*, Macmillan, London, 1987.
- Human Rights Watch World Report 2001*, Human Rights Watch, New York, 2000.

BIBLIOGRAPHIE

- India, Manipur : The silencing of youth*, Amnesty International, London, 1998.
- Informations sur les conditions de détention en Angleterre et au Pays de Galles*, Association pour la prévention de la torture (APT), Geneva, 1994.
- Interim Policy Recommendations*, InterMinisterial Committee on Young People at Risk, Pretoria, 1996.
- Investigacion sobre Ninos, Ninas y Adolescentes Privados de Libertad en el Paraguay*, Defence for Children International (DCI), Pretoria, 1998.
- JAHANGIR, A. and DOUCET, M., *Children of a lesser God : Child prisoners of Pakistan*, Vanguard Books, Lahore, 1993.
- Jamaica : Children Improperly Detained in Police Lockups*, Human Rights Watch Children's Rights Project, Human Rights Watch/Americas, New York, 1994.
- JOHNSTONE, G., *Restorative Justice : ideas, values, debates*, Willan Publishing, UK, August 2001.
- JONCKHEERE, A., "Droits des jeunes en institution. Paroles volées", *Journal du Droit des Jeunes*, No. 164, 1997, p. 158.
- JONES-BROWN, P., "\$2.4 billion spent on juvenile corrections", *Corrections Compendium*, 1992, p. 8.
- JUNGERTAS, J. et al. (eds.), *The future of the juvenile justice system*, Acco, Amersfoort, 1991.
- Justice for the children : No child should be caged*, Community Law Center (University of the Western Cape) NICRO and Lawyers for Human Rights, Cape Town, 1992.
- Justice for the children : No Child Should Be Caged*, Community Law Center (University of the Western Cape) NICRO and Lawyers for Human Rights, Cape Town, 1994.
- Juvenile Injustice : Police Abuse and Detention of Street Children in Kenya*, Human Rights Watch/Africa, Human Rights Watch Children's Rights Project, New York, 1997.
- Juvenile Justice*, Report of a UNICEF training seminar held in Florence from Oct.12 to 22 1997, Florence, UNICEF International Child Development Centre, 1999.
- «Juvenile judges say : time to get tough», *The National Law Journal*, No. 49, 1994.
- «Juvenile justice in international perspective», *International Review of Criminal Policy*, Special Double Volume, United Nations, New York, 1990.
- «Juvenile Justice. Deinstitutionalizing Status Offenders : a record of progress», *Journal of the Office of Juvenile Justice and Delinquency Prevention*, No. 2, Washington, 1995.
- «Juvenile Justice : Pretoria, South African Law Commission», *Issue paper 9*, 1997 [unpublished - on file with the author].
- Juveniles on Remand : Recent trends in the remanding of juveniles to prison service custody*, Penal Affairs Consortium, London, 1996.
- KAKAMA, P.T., *Children in conflict with the law in Uganda*, Save the Children, Kampala, 1997.
- KEIMEUL, J.P., "Droits des enfants en institution. Paroles 'd'ados' ...discours 'd'éducs'", *Journal du Droit des Jeunes*, No. 156, 1996, pp. 300-301.
- KERSTEN, J. and VON WOLFFERSDORFF-EHLERT, C., *Jugendstrafe. Innenansichten aus dem Knast*, Fischer, Frankfurt am Main, 1980.
- Kids in justice : A blueprint for the 90's in Australia*, New South-Wales, 1990-1991.

BIBLIOGRAPHIE

- KLEIN, M. W., "Thoughts on Juvenile Justice Systems and Research", *European Journal on Criminal Policy and Research*, Vol. 9, No. 3, pp. 273-281.
- LEE, M., "Admonestation policière et justice des mineurs : au mieux des intérêts de qui?", *Déviance et Société*, Vol.18, No.1, Geneva, 1994, p. 4354.
- Legislative history of the Convention on the Rights of the Child (1978-1989)*, United Nations Centre for Human Rights, Geneva, 1995.
- Les enfants et la détention*, Amnesty International, London, 1997.
- «Les enfants en prison», *Les enfants du monde*, No. 129, Revue du Comité français pour l'Unicef, 1996.
- LLOYD, C., "To scare straight or educate? The British experience of day visits to prison for young people", *Research Findings*, No. 30, Home Office Research and Statistics Department, London, 1996.
- LOADER, I., *Youth, Policing and Democracy*, MacMillan, London, 1996.
- Lockups in Romania*, Human Rights Watch, New York, 1993.
- LUCKER-BABEL, M.F., "Les réserves à la Convention des Nations Unies relative aux Droits de l'Enfant et la sauvegarde de l'objet et du but du traité international", *Journal européen de droit international*, No. 4, 1997, pp. 664-682.
- MARY, P., *Travail d'intérêt général et médiation pénale. Socialisation du pénal ou pénalisation du social?*, Bruylant, Brussels, 1997.
- Mc.CARNEY, W., *The United Nations Instruments Concerning Juvenile Justice : the Importance of International Norms and Standards*, paper presented at the World Congress on Family Law and the Rights of Children and Youth in Bath (UK), 21 September 2001.
- Memorandum sur les conditions de détention en Espagne*, Association pour la prévention de la torture (APT), Geneva, 1993.
- «Mineurs en prison. Dossier», *Journal du Droit des Jeunes*, No. 156, 1996.
- Modern Capital of Human Rights? Abuses in the State of Georgia*, Human Rights Watch, New York, 1996.
- MWESIGE, P., "Left at God's mercy at Nagaruru remand home", *Child-Link*, No. 1 1997, pp. 3-9.
- Nothing Unusual : The Torture of Children in Turkey*, Human Rights Watch, New York, 1992.
- Observation report on detention conditions of minors in 51 countries : Children in Prison*, International Prison Watch, 2000 (on file with the author).
- O'DONNELL, D., *The Convention on the Rights of the Child and other international standards concerning juvenile justice*, Defence for Children International (DCI), Geneva, 1992.
- «Old enough to be a criminal" in *The Progress of Nations*, UNICEF, New York, 1997, pp. 56-57.
- Outline of the InterMinisterial Committee and Family Group Conferences*, Pilot Programme on Family Group Conferencing of the InterMinisterial Committee on Young People at Risk (South Africa), Pretoria, 1997.
- PALME, L., "No age of innocence : justice for children" in *The Progress of Nations*, UNICEF, New York, 1997, pp. 51-55.
- PARENT, et al., "Conditions of confinement, a study to evaluate conditions in juvenile

BIBLIOGRAPHIE

- detention and correction facilities”, *Final report submitted to the Office of Juvenile Justice and Delinquency Prevention*, Office of Juvenile Justice and Delinquency Prevention, Washington D.C., 1993.
- PIAGET, J., *Le jugement moral chez l'enfant*, Presses Universitaires de France, Paris, 1973.
- PITTS, J., *The politics of juvenile crime*, Sage Publications, London, 1988.
- Police Abuse and Killings of Street Children in India*, Human Rights Watch Children's Rights Project, Human Rights Watch/Asia, New York, 1996.
- Prison Conditions in Romania*, Human Rights Watch, New York, 1992.
- «Programme d'assistance juridique des enfants en conflit avec la loi à Bucarest (Roumanie)», *Rapport d'activité*, Terre des Hommes, Lausanne, 1997.
- QUELOZ, N., “La détention sous l'angle des travaux des Nations Unies pour l'administration de la justice pour mineurs”, *Revue Pénale Suisse*, No. 3, 1989, pp. 303-311.
- QUELOZ, N. “L'évolution de la conception de la délinquance juvénile et de son contrôle à travers les congrès des Nations Unies pour la Prévention du Crime et le Traitement des Délinquants”, in *Changements de société et délinquance*, Vol. II, Acco, Leuven, 1987.
- Rapport général des Journées d'étude sur “les enfants en conflit avec la loi et les enfants en difficulté au Cameroun”*, Defence for Children International (DCI), Geneva, 1993.
- Rapport sur les conditions de détention en Belgique*, Association pour la prévention de la torture (APT), Geneva, 1993.
- Rapport sur les conditions de détention en Hongrie*, Association pour la prévention de la torture (APT), Geneva, 1994.
- Rapport sur les conditions de détention et les mauvais traitements en Italie*, Association pour la prévention de la torture (APT), Geneva, 1995.
- Rapport sur les mauvais traitements et les conditions de détention en Roumanie*, Association pour la prévention de la torture (APT), Geneva, 1996.
- «Remarques de l'OMCT/SOSTorture concernant l'application de la Convention relative aux droits de l'enfant par l'Indonésie/Madagascar/Paraguay”, *SOSTorture*, No. 49, World Organisation Against Torture (OMCT), 1995, p. 1028.
- Report of a Visit to the Youth Wing of the Abu kabir Jail*, Defence for Children International (DCI) Israel, Jerusalem, 1997.
- Report of Follow-Up Survey on Children in Jamaican Jails*, Jamaica Coalition on the Rights of the Child, Kingston, 1996.
- Report of the international seminar on children in prisons with adults*, Defence for Children International (DCI), Geneva, 1984.
- Report on detention conditions in the Republic of Ireland*, Association pour la prévention de la torture (APT), Geneva, 1993.
- Report on Places of safety, Schools of industry and Reform schools*, Inter-Ministerial Committee on Young People at Risk, Pretoria, 1996.
- Report on the Pilot Projects*, InterMinisterial Committee on Young People at Risk (South Africa), Pretoria, 1998.
- Report on the torture of street children in Guatemala and Honduras 1990-1997*, CasaAlianza, San José, Costa Rica, 1997.
- Research on children in police custody in Kampala*, Defence for Children International (DCI), s.d.

BIBLIOGRAPHIE

- Research Workshop on Alternatives to Imprisonment*, Volumes I and II, United Nations Interregional Crime and Justice Research Institute, Rome, 1990.
- Rights of the Child in Ethiopia*, World Organisation Against Torture (OMCT), Geneva, 1997.
- Rights of the Child in Ghana*, World Organisation Against Torture (OMCT), Geneva, 1997.
- Rights of the Child in Guatemala*, World Organisation Against Torture (OMCT), Geneva, 1996.
- Rights of the Child in Nepal*, World Organisation Against Torture (OMCT), Geneva, 1995.
- Rights of the Child in Nigeria*, World Organisation Against Torture (OMCT), Geneva, 1996.
- Rights of the Child in Senegal*, World Organisation Against Torture (OMCT), Geneva, 1995.
- Rights of the Child in the Federal Republic of Yugoslavia*, World Organisation Against Torture (OMCT), Geneva, 1995.
- Rights of the Child in Turkey*, World Organisation Against Torture (OMCT), Geneva, 2001.
- ROBERTSON, A. and McCLINTOCK, D., "The Community Based Alternative : Intermediate Treatment for Young Offenders" in *Children and Young People in Conflict with the Law*, Jessica Kingsley Publishers Ltd, London, 1996.
- RODLEY, N., *The Treatment of Prisoners under International Law*, Oxford Clarendon Press, Oxford, 1987.
- ROHFRITZCH, A. and SATTAR, N., *A critical review of judicial institutions in relation to the rights of the child*, Rädda Barnen (Swedish Save the Children), Dhaka, 1995.
- ROHFRITSCH, A., *A critical review of judicial institutions in relation to the rights of the child*.
- Romania's Orphans : A Legacy of Repression*, Human Rights Watch/Helsinki, New York, 1990.
- Romania—A summary of human rights concerns*, Amnesty International, London, 1998.
- ROUGET, D., *International and Regional Mechanisms to Combat Torture*, Association for the Prevention of Torture (APT), Geneva, 2000.
- ROUMAJON, Y., *Enfants perdus. Enfants punis. Histoire de la jeunesse délinquante en France : huit siècles de controverses*, Editions Robert Laffont, Paris, 1989.
- ROWAN, J.R., "Let's treat juveniles as good as adult offenders. Injustices in the Juvenile Justice system", *Corrections Compendium*, 1992, pp. 7-8.
- RUFIN, M., *Protection de la jeunesse et délinquance juvénile*, Paris, 1996.
- SACE, J. and VAN DER VORST, P. (Eds), *Justice et jeunes délinquants*, Bruylant, Brussels, 1989.
- Safe to let out? The current and future use of secure accommodation for children and young people*, National Children's Bureau, London, 1995.
- SCHULER-SPRINGORUM, H., "Introductory statement" in *Children in Trouble*, United Nations Expert Group Meeting, Austrian Federal Ministry for Youth and Family, Vienna, 1995, pp. 30-38.
- SCHULER-SPRINGORUM, H., *The United Nations Instruments concerning Juvenile Delinquency*. s.l., s.d.
- SHAKARISHVILI, A., *STD/HIV and Related Risk Behaviour in Juvenile Detainees in Moscow : The Young and the Risky*, Centers for Disease Control and Prevention (CDC), Atlanta, GA, USA, 2001.

BIBLIOGRAPHIE

- SHULYAKOVSKAYA, N., "Teenage prisoners", *The Moscow Times*, 4 July 1998, p. 7.
- Slipping Through the Cracks : Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service*, Human Rights Watch Children's Rights Project, New York, 1997.
- SLOTH-NIELSEN, J., "Pre-trial detention of children revisited : amending s.29 of the Correctional Services Act", *South African Criminal Justice Journal*, No. 9, 1996, pp. 60-72.
- SOTTAS, E., "Children in conflict with the law", *SOSTorture*, No. 55, World Organisation Against Torture (OMCT), 1995, p. 1821.
- South Asia Action for Children : Appeal cases*, Amnesty International, London, 1998.
- Standard Operating Procedures of International Mechanisms Carrying Out Visits to Places of Detention*, Association for the Prevention of Torture (APT), Geneva, 1997.
- STANFIELD, R., *Pathways to Juvenile Detention Reform : The JDAI Story, building a better juvenile detention system*, A Project of the Annie E. Casey Foundation, Baltimore.
- Sudan : In the Name of God. Repression Continues in Northern Sudan*, Human Rights Watch/Africa, New York, 1994.
- The best interest of the child : Human rights and the juvenile justice system*, Amnesty International, London, 1998.
- The Hidden Crimes, Children : Torture, Summary Executions, Disappearances 1995-1998*, World Organisation Against Torture (OMCT), Geneva.
- TOMASEVSKI, K., "Les enfants placés en institution. Protection ou répression?", *La Tribune de l'Enfance*, No. 197, 1987, pp. 5-7.
- TOMASEVSKI, K. *Children in Adult Prisons*, Defence for Children International, Frances Printer, London, 1986.
- TOMKIEWICZ, S. and VIVET, P., *Aimer mal, châtier bien. Enquêtes sur les violences dans les institutions pour enfants et adolescents*, Seuil, Paris, 1991.
- TREMINTIN, J., "De la maltraitance à la "bienveillance" des jeunes en institution", *Journal du Droit des Jeunes*, No. 174, 1998, pp. 24-25.
- TULKENS, F., "Les impasses du discours de la responsabilité dans la repénalisation de la protection de la jeunesse" in *La Criminologie au Prétoire*, Story Scientia, Gent, 1985, pp. 13- 30.
- TUTT, N. (ed.), *Alternative strategies for coping with crime*, Basil Blackwell, Oxford, 1978.
- UNICEF Innocenti Research Centre, "Age, Responsibility, and Children's Rights : A Study on the Age of Criminal Responsibility and Related Juvenile Justice Measures Around the World", Working Draft 24 August 2001 (on file with the author).
- Unicef, the Convention on the Rights of the Child and Juvenile Justice*, UNICEF, New York, 1997, unedited paper.
- United States of America—A macabre assembly line of death : Death penalty developments in 1997*, Amnesty International, London, 1998.
- United States : A World Leader in Executing Juveniles*, Human Rights Watch Children's Rights Project, New York, 1995.

BIBLIOGRAPHIE

- VAN BUEREN, G., "Child-oriented justice : An international challenge for Europe", *International Journal of Law and the Family*, No. 6, 1992, pp. 381-399.
- VAN BUEREN, G., *International Law on the Rights of the Child*, Martinus Nijhoff Publishers, Deventer, 1994.
- VAN DE KERCHOVE, M., *Le droit sans peines. Aspects de la dépenalisation en Belgique et aux Etas-Unis*, Publications des Facultés Universitaires Saint-Louis, Brussels, 1987.
- VAN KALMTHOUT, A.M. and TAK, P.J.P., *Sanctions-systems in the Member-States of the Council of Europe. Deprivation of Liberty, Community service and other substitutes*, Gouda Quint, Deventer, 1988.
- VAN SLOUN, T., *De schuldvraag in het kinderstrafrecht*, Kluwer, Deventer, 1988.
- Venezuela. The silent cry : gross human rights violations against children*, Amnesty International, London, 1997.
- Violations of Palestinian Children's Rights Stemming from the Israeli Occupation*, DCI/PS Fact Sheet, March 2002.
- Violence against minors in police detention*, Israeli Information Center for Human Rights in the Occupied Territories, Jerusalem, 1990.
- Violence against children and UN mechanism : A new procedure to address children's rights? OMCT study on the need for a UN Special Rapporteur on Violence against Children*, World Organisation Against Torture (OMCT), Geneva, 2002.
- WALGRAVE, L., "Restorative Juvenile Justice. A way to Restore Justice in Western European Systems?" in *Children and Young People in Conflict with the Law*, Jessica Kingsley Publishers Ltd, London, 1996.
- WOODS, B. and BLEWETT, K., "Kids Behind Bars", *Just Right*, August 2001, p. 6.
- YOUNG, M., *The progress and implications of the Draft Convention on the Rights of the Child : Paper for a Human Rights and Equal Opportunity Commission seminar*, Canberra, 1988.
- Youth in detention : Issues and challenges. A nationwide survey*, Research Committee of the Philippine Action for Youth Offenders (PAYO), Manila, 1996.

CHILDREN DEPRIVED OF LIBERTY