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LIVING IT

CHILDREN, YOUNG PEOPLE AND JUSTICE

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INTERNATIONAL HUMAN RIGHTS LAW, and in particular the United Nations Convention on the Rights of the Child (UNCRC), establishes a clear obligation for states to use detention as a last resort, for the shortest period of time and to apply measures that are in the best interests of the child that aim at rehabilitation (UNCRC, article 40, 1989). These obligations are violated in countries around the world. It is estimated that over 1 million children are in criminal detention worldwide (UNICEF, 2009a). This number does not however include the other forms of detention, beyond criminal, or the many cases that remain unreported. Deprivation of liberty is indeed quite a broad concept and would include “any form of detention or imprisonment or the placement of a person under the age of 18 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” (UN Havana Rules, 1990). Children are, for instance, also detained in the context of immigration based on their or their parents’ migration status. Immigration detention of children *always* constitutes a child rights violation. Children may also be confined for reasons relating to physical and mental health.

In the case of criminal detention, the majority of children detained in criminal justice systems are in pre-trial detention (UNICEF 2009a), which contravenes the right to due process. In cases where children have been sentenced by judicial decision, it is generally for petty offences (OSRSG, 2012).

In all cases, children deprived of liberty are exposed to increased risks of violence and abuse by police, adult prisoners, prison officials and other detained children. Their civil, political, economic, social and cultural rights are denied. Deprivation of liberty should not mean deprivation of liberties; detainees should continue to enjoy their human rights (UN1990), with the ultimate aim of reinsertion into society.

A challenge yet to be overcome

In the 25 years since the adoption of the UNCRC the issue of child detention has never been adequately addressed and continues to lag behind compared to the other areas. Detention of children is an extremely serious issue, not only violating basic international obligations (*sensu lato*), but exposing each and every child who is detained, for whatever reason, to further human rights violations (*sensu stricto*). With immigration detention on the rise, there is more regression than improvement in the situation. The fundamental obligations of States under the UNCRC have clearly not been understood, accepted or acted upon. Another indicator is the number of times States have been urged by international human rights mechanisms to end inhumane practices that constitute violations of human rights law per se, such as use of the death penalty, torture, and so on. The underlying concern, compared to other situations (for example, child labour, trafficking), is that children in detention are in the ‘care’ of the State, so whatever happens behind bars is actually a conscious political choice. Out of sight, out of mind?

The issue of children in detention is not high on the social agenda either. What has failed to be understood is that this is not merely a legal issue of international obligations not being fulfilled, but it is also a social concern: there is strong evidence that detention may actually worsen recidivism rates (UNICEF,

CALLING FOR A GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY

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2009b). While detained, children are exposed to increased violence and deprived education, making their future lives outside even harder. Furthermore, it has been found that detention of children increases public expenditure. Deprivation of liberty of children has short and long-term impact on the child and society at large.

The way forward

States must seriously commit to concretely and effectively implementing the rights and measures codified in international human rights instruments, primarily the UNCRC. States are required to only use deprivation of liberty in conformity with the law, as a measure of last resort and for the shortest appropriate period of time (UNCRC, 1989). Furthermore, measures such as diversion, which do not involve judicial proceedings, must be promoted. Diversion avoids stigmatisation and has good outcomes for children and public safety, as well as being cost-effective. In cases where judicial proceedings are necessary, social and educational measures are to be the primary option, as the “need to safeguard the well-being and best-interests of the child and promote reintegration must outweigh other considerations” (UNICEF, 2009b).

To turn rights into reality we first need to analyse and understand the depth the situation on the ground. It has in fact been officially recognised that there is a serious lack of data relating to the situation of children in detention (UNSG, 2005, pg.191; OSRSG, 2012) and as mentioned, the general number of reference (1 million) is not comprehensive or certain.

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For this reason, Defence for Children International (DCI), an international non-governmental organisation with over 45 national sections worldwide, working on child rights and in particular justice for children, decided to launch a campaign to call upon the members of the United Nations General Assembly to request that the United Nations Secretary-General (UNSG) undertake a Global Study on Children Deprived of Liberty.

The Study would take into account deprivation of liberty in all its forms, including; children in conflict with the law; children confined due to physical or mental health or drug use; children living in detention with their parents; immigration detention; children detained for their protection; national security and so on. In order to ensure that deprivation of liberty is clearly understood and thus used as a measure of last resort, there is also critical need to improve the clarity around key concepts which are related to children’s rights and deprivation of liberty such as last resort, shortest possible time, best interests of the child; access to justice; pre-trial detention; diversion; restorative justice; formal and informal justice systems; alternative measures; protective measures; age of criminal responsibility; rehabilitation and reintegration; and administration detention amongst others.

In March 2014, after various meetings with the UNCRC Committee, numerous non-governmental organisations, academics and other UN entities, the campaign, having obtained eager and strong support, was officially launched at the office of the United Nations in Geneva. In June 2014, an expert consultation was also held in Geneva to discuss the Study, the strategy to have it formally requested by the United Nations General Assembly and the potential methodology to be followed when conducting the Study. Many experts took part and provided their insight on how to proceed. A mission to New York was then carried out to lobby state representatives at the UNGA in light of the drafting of the UNGA child rights resolution to hopefully formally request the Study. The momentum continues to grow and hopefully the Study will be put into action. So far, over fifty civil society organisations have signed on to support the call for such Study and the UNCRC Committee has recommended the UNGA to request the implementation of such in-depth Study. States are also supporting this initiative.

To undertake a Study of such calibre and extent, which would comprehensively and scientifically analyse the status of the situation of children in detention worldwide and consider the good practices worth following, will take time, close coordination with States and other actors, and of course financial and human resources. The Study does not intend to be an end in itself, but rather a starting point: to get the ball rolling on this stagnant and even regressive issue, by getting all actors involved and thus placing it on the political and social agenda of countries worldwide, in the hope to see an improvement in the overall situation. Through the Study, governments will be able to realise and improve their national policies and practices, while serving the best interests of both the child and society at large. Please sign on to support and be part of this important initiative. For more information, please visit our official website: <http://www.childrendeprivedofliberty.info/>

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Office of the Special Representative of the Secretary General (OSRSG) on violence against children, the Office of the High Commissioner for Human Rights (OHCHR), United Nations Office for Drugs and Crime (UNODC) (2012) *Prevention of and responses to violence against children within the juvenile justice system*

United Nations (1990) *Basic Principles for the Treatment of Prisoners, Principle 05*

United Nations (1990) *Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*

United Nations Convention on the Rights of the Child (1989)

UNICEF (2009a) *Progress for Children, A report Card on Child Protection, Number 8*

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UK Justice Policy Review:

Volume 2

6 May 2011 to 5 May 2012

UK Justice Policy Review:

Volume 3

6 May 2012 to 5 May 2013

By Richard Garside, Arianna Silvestri
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