



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture



Briefing note for participants

Addressing children's vulnerabilities in detention

La Pastorale, Geneva 26-27 June 2014

The *Jean-Jacques Gautier NPM Symposium Series*, organised by the Association for the Prevention of Torture (APT), with the financial support of the Swiss Federal Department of Foreign Affairs, is a series of annual meetings, initially over a three-year period, aimed at enabling National Preventing Mechanisms (NPMs) from around the world and other experts to exchange knowledge and practices on the issue of vulnerabilities in detention.

The first meeting of the Jean-Jacques Gautier NPM Symposium Series, titled *Addressing children's vulnerabilities in detention*, will be held in Geneva on 26-27 June 2014. To make the best use of time and have in-depth discussions, the meeting will address specific issues related to children deprived of liberty within the criminal justice system.

This paper is designed to provide participants with background information about the June meeting, its objectives and methodology. Attached to this document you will find the list of participants and the annotated agenda, which includes the specific objectives and proposed discussion questions for each session.

BACKGROUND INFORMATION

The 2014 Symposium will consist of a two-day meeting with the overall objective of strengthening the NPMs' capacities to address the vulnerabilities and risks faced by children deprived of their liberty as part of their preventive mandate. It will bring together NPM representatives from 14 different countries and representatives from the Committee on the Rights of the Child, NGOs working to promote and protect the rights of the child, national authorities, and international and regional human rights bodies working to prevent torture.

The first day will bring together representatives of NPMs and other relevant institutions, with the aim of examining the specific vulnerabilities and risk factors which contribute to the abuse and ill-treatment of children deprived of their liberty, and identifying strategies for NPMs to effectively address these issues when carrying out their work. The meeting will be also an opportunity for NPMs and other actors to meet and get familiar with each other's work, as well as to establish or strengthen their cooperation.

The second day will gather only NPM representatives to openly discuss the challenges faced on a daily basis in carrying out their preventive mandate in relation to the issues addressed on the first day of the Symposium. The meeting will be also an opportunity to exchange practices and working methods between NPMs.

The meeting will focus on specific issues related to children in detention, which were identified through a questionnaire carried out with all participants during a pre-symposium preparatory phase.

The two-day meeting has been thought as a platform for discussions rather than a panel with a series of presentations, in order to enable maximum exchanges between participants. Each session will start with two short presentations to introduce the issues, which will be followed by moderated discussions among all participants. Simultaneous interpretation will be available into English, French and Spanish.

CHILDREN DEPRIVED OF LIBERTY: KEY ISSUES

Introduction

Every person deprived of his or her liberty is vulnerable because of the unbalance of power created by the detention itself. But some persons find themselves in situations of specific vulnerability. Children are one of the most vulnerable groups in detention, because of their age and stage of maturity, and the long term damaging effects of detention on their well-being and development.

Deprivation of liberty for children should be used only as a measure of last resort and a variety of alternative measures to deprivation of liberty should be available for children, to ensure their well-being. When detention is absolutely necessary, it should be used for the shortest appropriate period of time and should aim at rehabilitating and reintegrating children into society. International standards clearly establish that every child in conflict

with the law must be treated in accordance with the rules of juvenile justice and that children can be arrested only if they have reached the minimum age of criminal responsibility, which should not be lower than 12 years.

However, the reality around the world shows a growing trend for children to be placed in detention as a result of punitive approach. More than one million children are deprived of their liberty by law enforcement officials worldwide, a figure that is probably underestimated due to the difficulties in gathering official data.¹ They are detained also for status offences which are not criminalised if committed by adults, such as living in the streets, begging, violating curfew regulations or for substance abuse problems. Such behaviours are often the result of disadvantaged socio-economic status or psychological problems and "should be dealt with through the implementation of child protective measures, including effective support for parents and/or caregivers and measures which address the root causes of this behaviour".²

Risk factors and situations contributing to the abuse and ill-treatment

The majority of children deprived of their liberty are held in pre-trial detention, often for prolonged periods, and for minor offences³, in breach with international standards. Children deprived of their liberty are at greater risk of experiencing discrimination and abuse by both staff and fellow detainees, from the first moment of contact with the criminal justice system. When deprived of their liberty, they are also at risk of self-harm or even suicide.

In several countries, children's behaviours which do not conform to the conventional ones are stigmatised by both authorities and the society at large. Such stigmatisation often leads to arbitrary arrest of children, and exposes them to abusive and discriminatory practice by the police. In many circumstances, at the moment of arrest children are not provided with information on their rights and the allegations against them in a manner that they can understand. Following the arrest children may not have prompt access to their parents or caregivers and to legal assistance, which put them at greater risk of physical, verbal and psychological violence, especially during interrogations.

The risk of abuse and ill-treatment by both staff and other detainees is also present in pre-trial detention and when executing a sentence. Although international standards provide that children deprived of their liberty should be separated from adults "unless it is considered in the child's best interest not to do so"⁴, many countries fail to abide by this rule. As a result, children are often deprived of their liberty with adults during transportation, in police stations and in detention centres, exposing them to abuse and compromising their future ability to remain free of crime and to reintegrate into society. Children are at risk of abuse, bullying and violation of their rights also when those

¹ UNICEF, Progress for Children: A Report Card on Child Protection, Number 8, September 2009, p. 20.

² Committee on the Rights of the Child, General Comment No. 10 on Children's rights in juvenile justice, UN Doc. CRC/C/GC/10, 25 April 2007, § 9.

³ Human Rights Council, Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, UN Doc. A/HRC/21/25, 27 June 2012, § 8.

⁴ Convention on the Rights of the Child, Art. 37 (c).

awaiting trial are held alongside with convicted children, when boys are detained with girls, when younger children are detained with older ones and when the placement of children in a detention facility does not take into account the specific requirements of the most vulnerable children, e.g. children with physical and mental disabilities.

In many instances, children deprived of their liberty are subject to violent and unlawful disciplinary measures. States have the duty to ensure that disciplinary measures and means of restraint are used only for the maintenance of safety. Those measures which constitute cruel, inhuman or degrading treatment or may compromise the well-being of the child should be strictly prohibited, including denial of contact with family, corporal punishment and solitary confinement. In order to prevent abuse and ill-treatment of children in detention, States should also ensure that staff working with children is specialised and that children in detention have access to child-friendly complaints mechanisms.

Detention rarely responds to children's individual characteristics and specific needs, including the need for appropriate education, contact with family and the wider community, sport and recreation. Girls deprived of their liberty are in a situation of particular vulnerability in detention, due to their age, gender and small numbers, and specific measures should be taken to meet their needs.⁵

Role of NPMs in addressing children's vulnerabilities in detention

In order to prevent violations of the rights of children deprived of their liberty and ensure that conditions and treatment of children in detention respect their dignity and minimize the risk of abuse, it is extremely important that places where children are deprived of their liberty are regularly monitored by independent bodies, as it has been recently recalled by the OHCHR, the UNODC and the Special Representative of the Secretary-General on Violence against Children.⁶

As part of their mandate, NPMs established under the Optional Protocol to the UN Convention against Torture (OPCAT) carry out regular visits also to places where children are or may be deprived of their liberty, examine the treatment of children and the conditions of detention, conduct confidential interviews with children deprived of liberty and check all relevant information and records. But their mandate goes beyond the facts found in places of detention. NPMs identify root causes of torture and other forms of ill-treatment and gaps in law and practices, make recommendations to the authorities and submit observations on laws and policies with a view of strengthening the protection of children deprived of liberty from torture and other forms of ill-treatment. Therefore, through their preventive work, NPMs can play a very important role in preventing abuse and ill-treatment of children deprived of their liberty.

⁵ *Neglected needs: Girls in the criminal justice system*, Penal Reform International (PRI) and Interagency Panel on Juvenile Justice (IPJJ), 2014.

⁶ UN Doc. A/HRC/21/25, 27 June 2012, § 89.

Further readings

International standards:

- Convention on the Rights of the Child (<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (<http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (<http://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf>)
- UN Standard Minimum Rules for the Treatment of Prisoners (<http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>)
- UN Standard Minimum Rules for the Administration of Juvenile Justice: "Beijing Rules" (http://www.ipjj.org/fileadmin/data/documents/UN_documents/UN_BeijingRules_1985_EN.pdf)
- UN Guidelines for the Prevention of Juvenile Delinquency: "Riyadh Guidelines" (http://www.ipjj.org/fileadmin/data/documents/UN_documents/UN_RiyadhGuidelines_1990_EN.pdf)
- UN Rules for the Protection of Juveniles Deprived of their Liberty: "Havana Rules" (http://www.ipjj.org/fileadmin/data/documents/UN_documents/UN_HavanaRulesProtectionJuvenilesDeprivedLiberty_1990_EN.pdf)
- UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders: "Bangkok Rules" (http://www.penalreform.org/wp-content/uploads/2013/06/United_Nations_Rules_for_the_Treatment_of_Women_Prisoners_and_Non-custodial_Measures_for_Women_Offenders_the_Bangkok_Rules.pdf)
- Committee on the Rights of the Child, General Comment No. 10 on children's rights in juvenile justice, 2007 (http://www.ipjj.org/fileadmin/data/documents/treaty_bodies/CRC_GeneralComment10_JuvenileJustice_2007_EN.pdf)

Other useful resources:

- Human Rights Council, *Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system*, UN Doc. A/HRC/21/25, 27 June 2012 (http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-21_25_EN.pdf)
- Inter-American Commission on Human Rights, *Juvenile Justice and Human Rights in the Americas*, 2011 (<http://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf>)
- Penal Reform International (PRI), *Protecting children's rights in criminal justice systems*, 2013 (<http://www.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final-HR1.pdf>)
- PRI and Interagency Panel on Juvenile Justice (IPJJ), *Neglected needs: Girls in the criminal justice system*, 2014 (<http://www.penalreform.org/wp-content/uploads/2014/02/girls-crim-just-v4.pdf>)