



**Defence for
Children International**
the worldwide movement for children's rights

Children Deprived of Liberty, A Global Perspective

Brief Report



Side Event to the 28th Session of the Human Rights Council

Organiser: Defence for Children International (DCI)

Sponsors: Permanent Missions of Norway, Qatar, Switzerland and Uruguay



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Mission permanente de la Suisse auprès
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organisations internationales à Genève



**NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS**



On the occasion of **The Human Rights Council -28th Session (HRC-28)**,
the Permanent Missions of Norway, Qatar, Switzerland, and Uruguay cordially
invite you to the side-event:

CHILDREN DEPRIVED OF LIBERTY, A GLOBAL PERSPECTIVE

**15:30-17:00, TUESDAY 10 March 2015
PALAIS DES NATIONS, Room VII**

Sharing information on the situation of children in detention worldwide in light of
the Global Study on Children Deprived of Liberty (A/RES/69/157)

Panelists

JUAN MÉNDEZ, UN Special Rapporteur on Torture and other Cruel, Inhuman or
Degrading Treatment or Punishment

LEILA ZERROUGUI, UN Special Representative of the Secretary-General for
Children and Armed Conflict

MARTA SANTOS PAIS, UN Special Representative of the Secretary-General on
Violence against Children

CAROLINA BARBARA, World Organization Against Torture (OMCT)

BENOIT VAN KEIRSBILCK, Defence for Children International (DCI)

Moderator

JO BECKER, Human Rights Watch (HRW)

Featuring a live webcast



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Global Study on
Children Deprived of Liberty

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Contents	Page
1. INTRODUCTION	04
2. BACKGROUND	05
3. OVERVIEW	05
4. TIMELINE	06
4.1 Mr. Juan Méndez, United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	06
4.2 Ms. Leila Zerrougui, United Nations Special Representative of the Secretary-General for Children and Armed Conflict	08
4.3 Ms. Marta Santos Pais, United Nations Special Representative of the Secretary-General on Violence against Children	09
4.4 Ms. Carolina Barbara, World Organization against Torture (OMCT)	11
4.4 Mr. Benoit Van Keirsbilck, Defence for Children International (DCI)	11
5. OPEN DEBATE	11

1. INTRODUCTION

During the 28th Session of the United Nations Human Rights Council (UNHRC), a side event was held on “Children Deprived of Liberty, a Global Perspective”, organized by Defence for Children International (DCI). Key panel speakers participating in the event, included: Mr. Juan Méndez, UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Ms. Leila Zerrougui, UN Special Representative of the Secretary-General for Children and Armed Conflict; Ms. Marta Santos Pais, UN Special Representative of the Secretary-General on Violence against Children; Ms. Carolina Barbara, World Organisation Against Torture (OMCT); Mr. Benoit Van Keirsbilck, Defence for Children International (DCI). The event was moderated by Ms. Jo Becker, Human Rights Watch (HRW). The main objective of the event was to identify and share experiences on the situation of children in detention worldwide, in light of the Global Study on Children Deprived of Liberty (RES/69/157) and the human rights of children worldwide.

Detention often occurs in squalid conditions, without adequate oversight and regulation, negatively impacting children’s mental and physical development. While detained, children are all too often deprived of education, health care, food and exposed to violence against them. All this contributes to make children’s future lives outside bars even harder to imagine. Despite evidence that deprivation of liberty is both costly and harmful, there is an acute lack of data and qualitative research on child detention. As a consequence, we cannot even know exactly the real number of children deprived of their liberty worldwide. States are the principal responsible for the protection of their population (children included) and the respect of people’s human rights; they should be very committed in avoiding, if not strictly needed, the application of depriving measures, but many times they are left without a clear indication of the scope of the problem or adequate information on alternatives ways to detention, measures these last that may be more advantageous to both children and society.

The Global Study on Children Deprived of Liberty, which was formally requested through the child rights resolution of the United Nations General Assembly (A/RES/69/157) in December 2014, will collect sorely needed qualitative and quantitative data on children in detention, while also studying good practices that can shape more effective and respectful policies, dealing with this issue. Previous in-depth United Nations Global Studies have revealed crucial in providing and objective point for serious issues such as children affected by armed conflict (Machel Study, 1996) and violence against children (Pinheiro Study, 2006). A Global Study of this range on

children deprived of their liberty could add to the information base, raise the issue on political agendas, increase coordination and it will be able to realize and improve States' national policies and practices, while serving the best interests of both the child and society at large.

The Global Study on Children deprived of Liberty will 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, children under occupation, immigration detention, and children detained for their protection or for national security reasons. It will take a collaborative approach with the involvement of a range of actors, including States, UN agencies, civil society organisations, academia and children. It is crucial that an independent expert be appointed to carry out this Study, as it will best ensure a comprehensive approach and broker clear cooperation and contributions by all relevant stakeholders.

2. BACKGROUND

Defence for Children International

Defence for Children International (DCI) is an independent non-governmental organisation that has been promoting and protecting children's human rights on a global, regional, national and local level since its establishment in 1979 (International Year of the Child). The DCI Movement is represented in forty-seven countries worldwide through its national sections and associated members, working on different child rights issue, particularly: justice for children, child labour, child trafficking, violence against children and child participation. DCI's work is directed by the guiding principles enshrined in the United Nations Convention on the Rights of the Child (UN CRC), to which DCI was at the forefront in the drafting process and international lobbying efforts for its adoption and ratification.

3. OVERVIEW

Children's human rights were formally recognized by the international community through the adoption of the United Nations Convention on the Rights of the Child (UNCRC) in 1989. The UNCRC contains a comprehensive set of economic, social and cultural rights, as well as civil and political rights, which are considered to be universal, indivisible and interdependent. Four general principles underpin the Convention: non-discrimination; the best interest of the child; the right to life, survival and development; and the right for children to have their voices heard

and given due weight in all decisions affecting them, including legal proceedings related to the matter of detention and confinement.

Child deprivation of liberty is not merely a legal issue (of international obligations not being fulfilled by States), but also a social issue: there is strong evidence that detention worsens recidivism rates and while detained children are deprived education and exposed to increased violence. Even the shortest periods of confinement create a situation of extreme vulnerability for the child and an opportunity for practices of torture and ill treatment, causing need for accountability, rehabilitation and reparation. Detention of children also increases public expenditure. All in all generating negative short- and long-term impact, not only on the child deprived of liberty but also on society as a whole.

While the existing standards are clear and concise, the picture continues to be very grim when it comes to their application. The human rights of millions of children around the world continue to be violated in numerous and brutal ways in the detention facilities in which they are held. Time has come to change this sad image. We now need to know the real situation, collecting both qualitative and quantitative data in order to put into practice effective strategies and policies to protect our children.

4. TIMELINE

4.1 Mr. Juan Méndez, United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, based on his latest report to the Human Rights Council on the torture and ill-treatment of children deprived of liberty (A/HRC/28/68), stressed the unique vulnerability of children and the international obligation of States. An obligation which is strictly connected to the determination of the minimum age of criminal responsibility (MACR), age at which a person becomes subject to the penalties provided by national criminal law. This age varies depending on the country, but may already start as early as eight or ten years old. International laws and standards have consistently required the MACR to be set at an age when a child has the adequate mental capacity and moral competence to be sentenced judicially for crimes committed. The Special Rapporteur, quoting the Committee on the Rights of the Child, deemed that States must be encouraged to increase their MACR at least to the age of twelve years as an absolute minimum, and to continue to increase it to a higher age level (UNCRC General Comment No.10, children's rights in juvenile justice).



The recognized feebleness of children affects the standards for torture and ill-treatment, detailed the Special Rapporteur, requiring higher standards and broader safeguards to be established to protect this special category of people. Moreover, the UNCRC, clearly proclaims that “*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection*”. Although commonly used in human rights rhetoric, there is unfortunately not a clear and agreed definition of the concept of “vulnerability”. Its ordinary meaning connects to the notion of risk, and of course children are the most exposed to it. Children experience pain and suffering differently than adults, due to their development and specific needs, and this requires States to pay more attention to the respect of one of the key-principles of the UNCRC: the best interests of the child (UNCRC article 3; General Comment No.14).

In his annual report to the Human Rights Council on torture and ill-treatment of children deprived of their liberty, the Special Rapporteur stated that the imposition of the death penalty upon children is forbidden under international law and although it has been universally accepted, many States have not yet achieved complete abolition, but only introduced a moratorium. The Rapporteur stated that the imposition of the death penalty for crimes committed by persons under the age of eighteen is inherently cruel, amounting to a violation of the prohibition of torture and other ill-treatment. Similarly, life sentences without the possibility of release for children are expressly prohibited by international law. Life imprisonment and de facto life sentences for children, including sentences of extreme length, are grossly disproportionate and therefore considered cruel, inhuman or degrading when imposed on a child. Children have a lower culpability than adult offenders and greater prospects for rehabilitation, and life sentences or sentences of extreme length have an exaggerated impact causing hard physical and psychological harm that can amount to torture.

The Rapporteur also referred to the detention of migrant children: many child migrants witness or suffer physical abuse while detained. Reports indicate that children in migration detention have been kept in solitary confinement and exposed to sexual violence. In addition, many children suffer appalling and inhuman conditions while detained. This includes overcrowding, lack of adequate medical attention, educational and recreational programs, and irregular access to sanitary facilities and hygiene products, lack of appropriate accommodations and other basic necessities. This should not be the case: places that grant accommodation for migrant children should have all necessary material and conditions to provide a comprehensive protection favorable for a child’s holistic development.



In conclusion, the Special Rapporteur on Torture reaffirmed his strong support to the Global Study on Children Deprived of Liberty, and underlined the need for empirical data on children in detention. The Rapporteur, in his annual report to the Human Rights Council (A/HRC/28/68), recommended the appointment of an independent expert to carry out this Study, as it will best ensure a comprehensive and participatory process involving all relevant stakeholders, including children.

4.2 Ms. Zerrougui, the United Nations Special Representative of the Secretary-General for Children and Armed Conflict (SRSG/CAAC), reported that detention of children without criminal charge or on national security charges constitutes a growing challenge and a grave concern. Detention of children in conflict areas compromise our future, she stated, as it creates more problems that will be complicated to address. Having spent seven years in the United Nations Working Group on Arbitrary Detention, she highlighted the new “Principles and Guidelines on the right to court review of detention”, which this group has developed and DCI contributed, and which are to be adopted later this year.

Ms. Zerrougui’s mandate covers all human rights violations that affect children in conflict areas. On many occasions, she witnessed that, in conflicts, children are detained either because they are perceived or expected to be associated with armed groups or insurgent entities. As there are places where children are held and all the abuses happen to them, her priority is to ensure States release children speedily, especially when there is no ‘checks and balances’ or no capacity to ensure basic child protection. She also recalled that sometimes children are detained to punish their parents because either the authorities or the armed group seek to arrest another member of the family. In such cases, arresting, detaining and abusing a child is a means of pressure put on the parents. Finally, Ms. Zerrougui identified that in countries affected by conflict, when children are prosecuted and detained for alleged security issues, they generally face a military court that does not apply fundamental procedural rights. In the same context, the detention centers are held by militaries or security forces who never received a proper training.

The Special Representative stressed that it must be ensured that what governments sign on to is then effectively implemented. Governments holding children for their presumed or actual association with radical armed groups, for being suspiciously spies, for being used as informers, for punishing their families, no longer view children primarily as victims but often consider them as security threats. Many counter-terrorism strategies typically comprise the long-term deprivation of liberty and solitary confinement of individuals involved in or perceived of

participating in terrorist activities, which not only violates their human right to a fair trial, but also has a devastating psychological impact on these children. The impact of treating recruited children and those used by armed groups as security threats, affirmed Ms. Zerrougui, compounds the challenge of addressing reintegration.

In presenting her report to the Human Rights Council (A/HRC/28/54), the Special Representative called for the use of all available tools to promote alternatives to the prosecution and detention of children for their alleged association with armed groups, stressing that detention is to be the last resort and used only for the shortest period of time, and all the basic necessities, services, conditions, etc. are to be guaranteed. Detention is not the best way to counter terrorism, States will have success in their fight against violence and extremist terrorism by not imprisoning children, but taking care of them.

4.3 Ms. Santos Pais, the United Nations Special Representative of the Secretary-General on Violence against Children (SRSG/VAC), confirmed the Global Study on Children Deprived of Liberty (GSCDL) will help to bring much greater evidence and make visible situations that have been so deeply neglected. She underlined the need for prevention of deprivation of liberty, which would also prove effective in reducing the costs which such action entails. She offered the example of Indonesia, where restorative justice is implemented, and the capacity building of professionals at the community level takes place. In terms of progress, she highlighted how Indonesia works to develop a separate juvenile justice. One of the objectives of the law in this country is to raise the minimum age of criminal responsibility (MACR) from eight to twelve years. Indonesian authorities decided to invest in capacity-building to make sure local communities are informed about the law. And indeed these efforts have proved successful, as there has been a reduction of 30% of children deprived of liberty. This success story shows change is possible and Ms. Santos Pais underlined her confidence that the GSCDL will amplify this trend.

Ms. Santos Pais, however, raised concern that many children are placed in detention for their alleged protection. There are endless cases where children are waiting to know why they are detained. Moreover, there is also an increasing number of children around the world that have been deprived of liberty simply because they are children affected by migration. Ms. Santos Pais provided evidence about cases of gang violence, extortion and femicide in Central America that are also referenced by United Nations High Commissioner for Refugees (UNHCR) in a new study on violence pressing children out of their countries of origin.

The Special Representative expressed her support to the Global Study on Children Deprived of Liberty, and noted that change is indeed possible through this instrument. The Study does in fact aim to formulate recommendations for action to effectively realize the human rights of the child, provide a strategic opportunity to prevent children's deprivation of liberty, promote long-lasting recovery and reintegration, making the current somber situation visible.

The Special Representative further raised her concern related to violence and deprivation of liberty of girls: while adolescent boys may be at risk of physical aggression owing to their participation in street fighting, gang membership, possession of arms and/or drugs and manipulation by organized crime networks, girls are more likely to endure sexual violence, which is often associated with shame and fear. According to the Special Representative, there is a growing number of girls deprived of liberty while in most of cases they have not committed any offense. As the international community reviews progress in the implementation of the Beijing Declaration and Platform for Action (1995), including the protection of girls from discrimination and violence, it is crucial to prevent and address the challenges they face when involved with the criminal justice system, as victims and witnesses of violence, and when deprived of liberty. This is a concern which the Special Representative highlighted in her annual report to the Human Rights Council (A/HRC/28/55), and will continue to pursue.

Ms. Santos Pais also raised the issue of children deprived of their liberty in healthcare institutions. Special attention is to be paid to these children who are detained in healthcare settings, primarily for suffering from mental disabilities or drug dependence issues. Moreover, many of these children are being given more medication to be better controlled. As highlighted by the United Nations Special Rapporteur on Torture in his annual report (A/HRC/28/68), children are often confined due to a presumed incapacity, which is seen as a means to limit their ability to decide where to live and what treatment to receive, and may be taken as the basis for the substitution of determination and decision-making power. Furthermore, almost all States, Ms. Santos Pais noted, are tempted to detain children with psychiatric health problems yet any child deprived of liberty will certainly have mental health problems because of frustration, separation from its family, detention conditions, confinement and no access to educational or recreational activities.

Lastly, the Special Representative recounted the lack of accountability and effective services dedicated to receive the complaints of children. Unqualified and inadequately trained staff dealing with children, as well as poor conditions, inevitably lead to violations of children's

human rights. There is need to have functioning tools aimed at guaranteeing better child protection systems and a better understanding around the vulnerabilities of children. Ms. Santos Pais informed that the United Nations General Assembly adopted a set of new standards, the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, a document which provides guidance to States in using the existing standards for implementation.

4.4 Ms. Carolina Barbara, World Organization against Torture (OMCT), bridged the child rights framework with the torture framework, explaining that their complementarity is often forbidden. In a special program centered on children, OMCT noticed that the way violence against children is perceived, varies from the way we perceive violence against adults. Ms. Barbara stressed that when violence is applied against children it often makes reference to an educational aim or a fair punishment. In fact, OMCT witnessed an important discriminatory factor in deprivation of liberty. Thereupon, Ms. Barbara expressed concern that children can be deprived of liberty for violations that would not be applicable to adults. Finally, she also reiterated the need of reaction to the lack of accountability and services dedicated to the protection of children.

4.5 Mr. Benoit Van Keirsbilck, Defence for Children International (DCI), underlined the importance for the Global Study on Children Deprived of Liberty to be guided by a designated independent expert, able to collect both quantitative and qualitative data in order to provide a clear picture of the reality of the situation of children being detained worldwide. He emphasized that a Study will provide a solid basis on which the international community, States, UN agencies, civil society organizations and all the other stakeholders can gather their efforts in order to better ensure the concrete realization and protection of children's human rights. "What we need today is not another report, or desk review", he stated, "but rather an instrument that can make a real difference, providing all actors committed to protect children an instrument to achieve improvements in implementing existing standards and guidelines".

5. OPEN DEBATE

➤ How to address the issue of private detention centers? (Human Rights Advocates)

Mr. Méndez said he tried to include private detention centers in his considerations because any form of deprivation of liberty remains a responsibility of the State. States are responsible to



monitor and ensure these centers comply with domestic and international law. He gave the example of the United States of America that is often using private detention centers for migrants. He finally stressed that the Global Study on Children Deprived of Liberty offers the opportunity to come up with accurate data on the number of children detained and the conditions of detention.

Ms. Santos Pais talked about three dimensions that need to be considered. First, she said States accountability cannot be exempted or ignored. It is crucial to think about the safeguards offered and regulation operated by the States in the case of private detention. Secondly, the necessity to make the training of prison staff systematic, especially when there are young people detained. Thirdly, independent institutions should have the possibility to visit detention centers to evaluate the situation and regulation in place in an open and transparent way.

Ms. Zerrougui chose to illustrate her points with concrete cases of private detention in South America. According to her, the major risk is that these private entities may influence the decisions of detention. Indeed, she noted unacceptable cases where private firms directing detention centers seek to make more profit by locking more people up. In order to avoid any interference in the judicial system, she stressed the importance to have a clear separation between the decision process to detain and the private entities operating the centers.

➤ **How can States implement alternatives to detention? Do you know any good practices?** (International Detention Coalition - IDC)

For **Mr. Méndez**, the matter is not alternative places of detention but alternative solutions to detention. He said detention is often a means used to discourage immigration and enforce deportation. According to him, the solution is to make the State present evidence that it has tried all other alternatives before detention. Concerning good practices, Mr. Méndez is in favor of community-based places where children stay but are free to come and go. These alternative solutions are to be equipped with trained staff able to give classes or organize recreational activities.

Ms. Santos Pais recalled that detention, which always creates fear and pressure, cannot be the solution. She expressed worry about the massive situation of deportation where children, who fled their countries because of violence, risk suffering more reprisals and abuses if they are sent back. She raised the benefits of finding alternative solutions, and making States aware that it

costs more money to have a child deprived of liberty than a child who can enjoy his/her human rights.

Ms. Zerrougui said it is essential to identify situations where detention is used as a deterrent system from situations where there is a real judicial problem. In order to find alternatives to detention, she mentioned that we have to think about what a government considers as a priority when it tries to address specifically this issue.

- **How will the Global Study on Children Deprived of Liberty be different from previous reports?** (Office of the High Commissioner for Human Rights - OHCHR)

Mr. Benoit Van Keirsbilck said the idea to have a Global Study would aim at gathering scientific and primary information on the reality of the situation of children deprived of liberty worldwide. No one really knows the reality on the ground. The Global Study will focus on finding accurate data and on providing applicable recommendations to States on legislation and services which are to be put in place to better implement the human rights of the child and state obligations. The overall goal of the Study is to make sure that States consider all possible ways to avoid the use of detention, and ensure it is indeed a measure of last resort.

For further information, please visit the official website for the campaign for a Global Study on Children Deprived of Liberty: www.childrendeprivedofliberty.info