



**Speech of Mr. Gerald Staberock, Secretary General of the World Organisation
Against Torture, during the World Congress on Juvenile Justice**

Introduction

Thank you very much for the opportunity to address this Congress that I believe has an important role to play in reinvigorating momentum on juvenile justice reforms and stimulating efforts for the eradication of torture and other serious human rights violations of children.

This Congress comes at a time when the call for tougher laws to tackle child delinquency is gaining ground in many parts of the world and at a time when we see some of the baseline consensus on the values of human dignity being questioned. I hope that it can be a part of resetting the agenda for a progressive human rights discourse.

I will address you from the perspective of the OMCT as a global SOS torture network based on the belief that we can only achieve the eradication of torture if we support local actors and in particular local civil society who act for change. But I am also addressing you at this particular Congress because the OMCT, as the first anti-torture organisation, has made the issue of children and torture a distinct and separate program priority for more than 20 years.

It reflects that children are victims of various forms of violence and serious human rights violations. This is a reality that is often not fully understood or not always fully understood to include violations of the absolute prohibition of torture, cruel and inhuman or degrading treatment.

Back twenty years ago the OMCT at the Tampere Summit brought the issue of violence against children on the international agenda, resulting amongst others in the establishment of special protection mandates of children from violence. Back then violence against children was rarely seen as major problem and certainly not seen from the angle of torture prevention. Luckily, since then a lot has been achieved in the development of standards and key foundational notions such as the duty to protect by state for violations in the private sector have been recognized even under the Convention Against Torture.

Today the UN Committee Against Torture regularly addresses issues in relation to children and the Committee on the Rights of the Child occasionally issues clearly termed as torture. Yet torture remains a frequent practice and impunity is the rule. This Congress is a perfect moment to take stock of what has been achieved and which areas require our further attention.

Key challenges to be addressed

Challenge 1: We have made progress on the standard setting side but this has only partially translated into the real live protection of children in conflict with the law on torture, cruel, inhuman or degrading treatment

On the standard side we have seen significant steps forward over the years both in relation to children and anti-torture standards:

- The Convention Against Torture with its absolute prohibition of torture and other forms of cruel, inhuman or degrading treatment and a Committee Against Torture that includes a child rights perspective;
- The Convention on the Rights of Child ratified by almost all states in record speed;
- With delay an individual complaint mechanism, the Optional Protocol to the Convention on the Rights of the Child;
- The Optional Protocol to the Convention Against Torture (OPCAT) providing mandatory international and national visiting mechanisms;
- A set of highly authoritative guidelines, such as Beijing, Bangkok, and Havana rules which to a large extent are authoritative interpretations of existing norms;
- And of course we now have independent monitoring mandates and special Rapporteur with a specific protection task for children subject to serious human rights violations;

Without any doubt this means we have instruments at our disposal that can and do provide vital guidance for states that want to develop an effective protection framework for children from violence and torture. An important point I would like to flag here is the complementarity between the international child rights and anti-torture framework. The anti-torture framework in particular provides child rights activists with a distinct tool often under-utilized because we all - even in the HR community - tend to stay in compartments – child rights – anti-torture activists.

This progress being recognized there is a glaring gap of implementation. We witness daily in our work, including in monitoring places of child detention, documenting and reporting on torture of children and working towards their effective remedies, the difference between standard and reality. The term implementation gap prescribes generally the challenge of bringing good standards and laws home and is not unique to children. Yet I think there are specific challenges to children that should be looked at. What we are talking about are is very serious:

- We are talking about physical and mental abuse through torture, cruel, inhuman or degrading treatment or punishment targeted at children and juveniles;
- We are talking about extra legal measures (such as killings) for example of street children. While somehow less acute than during the 90ies this remains a frightening reality in a number of countries around the world typically with full impunity;
- We are talking about legal systems that whatever is on the statute books is often 'unwilling or incapable' to protect children from violence in the private sphere;

- We are talking about arbitrary arrests (often ‘just because’ you are a street child), or prolonged detention when it should not be the exception, and we are talking about unfair trials (increasingly also in the context of national security laws);
- And we are talking about cruel and inhuman treatment in terms of detention conditions and treatment in many places, including the use of drugs to calm children, or conditions that qualify as cruel, inhuman or degrading treatment;

But the most disturbing and in fact the reason why these violations persist: violations go with endorsement, indifference but certainly with full impunity.

So despite all the advances over the years my recommendation to the drafters of the final statement of this congress is to put the fight against torture and other serious human rights violations as a key objective of any enlightened juvenile justice reform agenda and to see anti-torture activists as core allies in this fight.

Challenge 2: we need to recognize that violence and torture affects children in different ways than adults requiring a systematic change of perception

I am often confronted with the perception that torture is primarily political and that by definition the instances in which it targets juveniles are more limited than adult life.

True, some of the systematic state torture that we know, such as for example in the pre-revolution Tunisia where anybody dissident had to fear torture in the basement of the Ministry of Interior, targeted this group. But we do know that torture is striking not only political prisoners or opponents or defenders, it is in the large majority imposed on ordinary criminal suspects that are not spoken about and publicized. And it is also imposed on children in conflict with the law where the public may be accepting a ‘roughening up’.

We witness beatings and other forms of violence in police stations, prison facilities but also foster homes by officials but also the lack of protection from violence by other inmates. An important point in this regard is that there is an enormous grey zone as to the true dimension of torture towards children. One of the implications is that there ought to be more evidence-based research on this issue, for example within the context of the global study on juvenile justice.

But the most important point when speaking about torture and children is that the violence against children itself is often not seen in its real dimension. Violence against children is tolerated inside families and so it is inside detention centers or police station and also other institutions such as orphanages. If we beat an adult on the streets that is a crime, but if a child is beaten it is for her “own good”. We have met parents who expressively requested to have their child beaten by the police or arrested for a couple of months to “learn a lesson”. The same often holds for police or prison staff as it is a common experience within law enforcement, police or prison authorities as absolutely normal to ‘teach a lesson’ and ‘to scare’ by using force in police custody.

So, the challenge here is not only to use the international framework to protect children but how can we start changing the mentality that violence in general is accepted when

applied towards children. And in relation to this, we have another big problem is that when children do denounce what has happened they are often not believed, there is no expedite investigations and no reparation. I will come back to this but both are obviously negatively mutually reinforcing issues.

Of course we do know that perception changes are always difficult but elements to address this could include: *a recognition of the problem, more research and evidence based studies, clear guidance and directives for those dealing with children in detention, and of course also accountability which makes clear where the red lines are.*

Challenge 3: if you want to change perception we cannot accept grey lines and maintaining some form of corporal punishment creates such an unacceptable line

We have come a long way in the recognition of state responsibility in the private sphere and although some 30 countries maintain some form of corporal judicial punishment on the books there are few that formally practice it. But corporal punishment in schools are still existing and we have seen the potential for abuse.

For me it is evident that if we want a see change in the perception of state violence we cannot at the same accept some level of lawful violence in educational institutions or elsewhere. The Committee Against Torture does on a regular basis address this issue and we should seek guidance on those evaluations.

Challenge 4: detention has to be the exception and not the rule and arbitrary detention of children has to be addressed effectively

One of the overriding concerns that we witness in our work across the world is the overuse of detention against children and juveniles. This has many problematic features that need to be looked at beyond 'conditions of detention' addressed in session 15 a:

Cases of arbitrary detention:

- We see in particular that children are in a number of countries detained on pre-textual charges because they are homeless or street children resulting in arbitrary detention;
- We also see that pre-trial detention, which generally under human rights law should be an exception – and then even more so for children and juveniles – is applied in many cases as the rule. In one of the countries we work in which we have seen much progress and openness, we continue to see that most children detained are not judged. And as is the case in most other countries the children belong to poor or marginalized strands of society.
- Globally, there is need to reinforce the idea of an enlightened specialized juvenile justice system incorporating the Convention of the Rights of Child rather than the use of the ordinary criminal justice system. While we have seen much progress that was also reported in this Congress there are two disturbing regressive tendencies.

The call to be tough on crime, the talk of a failure of a liberal juvenile justice agenda in many societies has led to a retrogressive trend in lowering the age of criminal responsibility. We have to develop strategies to counter this trend.

Second, in some instances we have seen over the last decade national security and counter-terrorism laws establishing special schemes with much lower guarantees and safeguards also applied to children – sometimes directly running counter – legislation in these areas.

Challenge 5: making facilities child adequate and ensuring a system of detention (where needed) that reflects rights of children in conflict with the law

I understand that there is an overlap with working group 15a on conditions of detention. I will therefore be short but say a few points that we should also consider for our session:

- *Child adequate facilities* – in many ways facilities are built from a security perspective that is not adequate for children and the purpose of their detention. Of course there exists also many good models but in our practice in the Philippines, Benin or even Uruguay we often despair about the conditions

To illustrate I have been recently to Kenya in follow-up to the CAT recommendations and the prison facilities for children and adults – while in separate blocks – were essentially identical following the same conception, structure and infrastructure. The same is literally everywhere. A child rights colony in Central Asia will not look fundamentally different from an adult facility. We have also seen in the Philippines – a country generally on a good reform path on torture prevention – conditions with lacking hygiene, lighting and others that clearly constitute cruel and inhuman treatment – and often this was also due to the limitations of the facility;

- *Access to the outside world* – this is a key factor especially family – in which the ordinary standards on prisoners cannot apply the same way. The purpose of child detention is oriented at development and isolation is hence a far more problematic approach. An example is that of a child who gave testimony to our child rights coordinator during prison visits in Philippines and who said much worse than physical abuse for her was the sense of isolation, not knowing whether the parents knew. Isolation plays on children much stronger and this has to be factored in.
- *Disciplinary scheme and solitary confinement* – a particular neuralgic point remain the use of punishment cells, solitary confinement of children and juveniles. The UN Special Rapporteur has taken an extremely restrictive stand on solitary confinement as a form of cruel and inhuman form of punishment. In our view this should apply in particular when children are concerned.
- *Inter-prisoner violence* - sadly in many places being imprisoned means not the re-introduction into the world of law and order, but into the world of violence. The frequent reason is that we entrust other children, typically the elder or even an adult prisoner, to ensure discipline. This model is already problematic in adult prisons but particular difficult in juvenile detention.

Overall we have to ask ourselves a basic question or confront a contradiction: we send people to prison to teach them the law – but almost in all countries prisoners, including children, learn the law of the lawless and arbitrary. The scheme mentioned above is an important part of this.

- *Forced medication* – we have witnessed in monitoring juvenile detention places in a Latin American country to involuntary use of drugs on a large scale to calm down juvenile justice facilities;

There is in turn also good news. I think there are good examples where these issues have been redressed and where substantial prison reforms have humanized and demilitarized prison systems. In these situations they have not only changed the situation of juveniles in prison but reforms on juvenile detention have paved the way for much broader prison reforms.

This has been one of the experiences in the early 90ies with much of the penitentiary reforms in Central and Eastern Europe. Juvenile reform can be an engine for much broader reform if we look at it strategically. I believe we should look at those examples to really start capitalizing on reforms on child detention for broader prison populations.

Challenge 6: torture can be prevented and has to do with policy and lacking safeguards and monitoring mechanisms

- *Ordinary safeguards*, notably judicial control, habeas remedies and most important access from the moment of arrest to lawyer, counsel, family member and presence of child care ombudsman or alike;
- *Monitoring safeguards* – we know that there are in many countries important institutions with access to places of foster homes and/or detention facilities.

Many of these specialized institutions or national preventive mechanisms have had a very positive impact but there are some important challenges to be addressed:

General visiting mechanisms often lack the necessary resources, expertise and interest to address the specific needs of children. They may also face lack of independence and resources to operate effectively. It will thus be important that there is a specific child rights competence and mandate to ensure that the work of NPMs and alike does benefit children;

We believe that the CPT or SPT as international monitoring bodies, too, play an important role both in terms of their own visiting to places of detention and reports but also in terms of the thematic learning and guidance they give to national visiting schemes. We are encouraged by the SPT who has established for this reason a specialized working group to look at the needs of children deprived of liberty and the role monitoring can play. But there is more to this. It is vitally important that reports of these bodies are made public if we want to change perception and attitudes

- *Civil society monitoring* – More broadly, we need to ensure far broader access to places in which juveniles are held and this includes effective civil society monitoring. In recent years we have also reached out in terms of monitoring – civil society monitoring of juvenile detention is a key tool to be maintained and to be propagated as best practice.

It is important that we keep in this regard the different roles clear and often it is fluid. We need monitoring by civil society and a critical dialogue based on standing invitation schemes as we have seen it successfully in a number of countries.

At the same time child rights organisations do provide educational or other services that are often the only or one of the only activities in this area.

- *Juvenile justice reform as engine* - Finally, in this regard a lesson I have learned working on prison reform in Eastern Europe. It is not only about physical condition, change is often about institutional changes. We have seen a whole process of changes of perception in prisons in Eastern Europe co-relating to the transfer over holding centres from security ministries to the ministry of justice. This is a good model to change the way detention is perceived and treated and much speaks to the fact that juvenile facilities should be under the authority of an educational ministry rather than law enforcement one.

Challenge 7: real success is only possible with accountability and the respect for the right to a remedy and reparation of victims (even those who have violated the law)

In the anti-torture world we have gone a long way to learn that law making and institutional building are important aspects to prevent torture. They are, however, typically insufficient to achieve culture change.

I believe this is so for two reasons: we need to use those reforms more effectively to take the public with us and second because of the neglect of accountability.

It is basic: nothing shows the red line and prevents ill-treatment more than if the state imposes this line through disciplinary and criminal sanctions where abuse happens. Sadly this basic truth holds even more so when we deal with violence and ill-treatment towards children in conflict with the law. In our work we witness regularly encompassing impunity for violence against children. In a number of cases states took action for physical abuse but although many statute books have clear definitions of torture the best to hope for is normally an accusation for ‘abuse of authority’.

I believe we have to identify the question of accountability as primary task for the future when we deal with children subjected to violence and torture. The reason for this is that children face double challenges to pursue the quest for justice, reparation and accountability.

- Aspects: we speak so much about child interest and child friendly procedures. Of course we do often know what this means or we may find examples. But child friendly procedures to complain are really in need of exploration. What type of

system and procedures do we need to put in place to make it possible for a child to complain? This must be real and not only formal.

- Aspects: children will generally be less believed about the treatment or violence they suffered, state institutions tend to ignore and not to react and children may not be in a position to fully judge how to address the abuse, the risks involved, etc.;
- Aspects: children are also in a more difficult situation to assess whether a remedy can be pursued. When we asked during one of the visits of a holding centre in Asia what do you do when a prisoner is transferred from the police and you think there has been abuse. The standard answer is: they can complain, or we transfer them to a doctor. But they are never transferred automatically to the prosecutors or an Ombudsman. Yet it is a positive obligation of the state to launch an investigation ex officio – and not to wait for complaint. It is even less to be expected that children will be able proprio moto to pursue remedies.

Hence we have a situation where we pretend to have the rule of law with remedies but in real life they are for many reasons factually infectious especially when children are concerned. We must translate these rules into a child reality. This can never mean placing the burden of accountability on a juvenile victim. It is a state obligation to investigate. There needs to be a support structure to make accountability a realistic option.

This can include: a systematic review of what makes complaint procedures realistic and child friendly to have a real life meaning, working with prosecutors to see it as their prime responsibility to tackle crime (even more so if committed in the name of the state), the creation of specialized prosecutors and juvenile judges, support structures such as free legal aid, access to lawyers, clear procedures and guidelines that protect against the very real fear of reprisals, including withdrawing officers from contact with the child who has complained, a proactive role of Ombudsman and other institutions in bringing cases to the attention of prosecutors, pursuing them directly or adjudicating them, and a system that support civil society organisation supporting accountability, including through schemes of public interest litigation;

I think this should really be the focus of our attention. We need to do more research as part or separate of the Global Study on Juvenile Justice how child friendly complaint mechanism can look like and what other forms of accountability mechanism we have to build to tackle impunity for torture or other forms of cruel, inhuman or degrading treatment of children.

In this regard we should also not forget the important role of international remedies that are often the only realistic avail and important to be strengthened. The Optional Protocol to the CRC; the CAT Communication procedure can play an important role in many situations because of the traditional reluctance to adjudicate torture cases domestically. Ratification of those individual complaint mechanisms is thus fundamental. Beyond this we should not forget the possibility to use and to build progressive jurisprudence with mainstream treaty bodies such as the ICCPR, ICESCR and CEDAW or regional systems.

- Final aspect: Accountability goes with the right to the right to remedy and reparation, including the right to access rehabilitation, something that should get far more attention.

Challenge 8: a less compartmentalized approach with a broader constituency for change:

Reform needs constituencies for reform. International treaties such as the Convention on the Rights of the Child have – according to studies – had an important role in providing a platform for activists to unite on legal and policy reform agendas.

Yet, I believe there is need to invest into a broader mobilization especially as the public discourse in many countries gets increasingly hostile to juvenile justice ideas. So while much of the topics discussed may be technical in nature we have to think of broader outreach programs and dialogue with journalists and other groups. This can be difficult because those in conflict with the law may not be popular, but we should recall that it is a core foundation of the absolute prohibition of torture that there is no distinction between good, bad, innocent or guilty victims. We have to make this message understood.

In addition there is another points:

- Anti-torture organisations have to be more mobilized on child rights issues – often a side issue in broader problem;
- Child rights organisations are not sufficiently twined in anti-torture cause though the torture framework allows using mechanism not existing under CRC;
- We have to bridge. OMCT program for many years. Shadow reporting through broader coalitions as we do in CAT reporting – mainstreaming issue into CAT. But also the other way around – we have to mainstream anti-torture expertise into child rights world.

Conclusion: the standards have to translate into domestic change:

The standards, procedures and protocols are quite advanced even though some language can be out-dated (such as in the UN minimum rules) but the main question how to make this impressive framework real in the practice of those applying the law. Some points can help:

Coherent internalization: making both torture and child rights framework directly applicable, really review all procedures for child rights friendliness; use the soft law standard as authoritative guidelines;

Effective use of CAT and CRC for child rights cause.

Follow-up: systematic follow-up missions, national consultations on the implementation of those recommendations, and a better follow-up to the missions, reports and findings of the Special Rapporteur on Torture who is just addressing this March a thematic report on torture and children;

But above all we need to carry the debate back home, mobilize civil society and state institutions for a domestic reform agenda that has to recognize the eradication of torture and ill-treatment as key component, including;

Recognizes need to tackle torture of children because it is perceived differently;

Tackles arbitrary forms of detention and ensures the use of detention as last resort;

Ensures child adequate facilities and adequate treatment in detention;

Allows international and domestic visiting mechanisms to visit and to be equipped for the special needs of children;

Addresses the special challenge of accountability when children are involved ;

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