



**BEST  
PRACTICES  
TO PROTECT  
CHILDREN  
AGAINST  
TORTURE  
IN DETENTION**

“It was like a refrigerator,  
and I was handcuffed.  
I thought I was going to die;  
I still dream about it.”

Child in the Philippines, referring  
to his time in a secret detention cell (2016)

**GLOBAL GUIDE  
FOR PREVENTION  
AND PROTECTION  
OF CHILDREN  
AGAINST TORTURE**

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# 1. FOREWORD

In detention, children become invisible, and their vulnerability puts them at high risk of being subjected to torture, whether by the authorities or their peers. For several decades, the OMCT and its partners have witnessed the dark reality of torture of children in detention. Together, we have documented hundreds of cases of torture and extrajudicial killings of children. We have seen threats to families, legal and policy reforms that have lowered standards, with impunity prevailing in many instances. However, our work is also marked by a number of success stories and positive responses to our efforts.

The present Guide is a collection of best practices from our own work, the work of our partners, and of other organisations. They have been chosen from different contexts and have all made positive differences in many lives. They reflect a variety of original methods that have led to a decrease in cases of torture of children during deprivation of liberty and include both efforts to promote safeguards preventing the use of torture and efforts to actually reduce the number of children who are detained in the first place.

We view this Global Guide as a practical tool that can be used by civil society or other relevant actors worldwide to improve the implementation of international legal frameworks, standards and principles. We hope that this expertise can be replicated to protect even larger numbers of children from torture.

During our three decade-long unique programme focusing on protecting children in detention from torture, we have developed a specific expertise in conducting monitoring visits of prisons where children are detained. This has proven to be a cornerstone in the protection of children from torture. With this Guide, we would like to encourage civil society organisations to monitor places where children are detained, and to use these visits and the information collected to advocate more widely for the elimination of torture and other ill-treatment of children.

Our experience has also shown us that the torture of children can fall between the cracks separating children's rights from anti-torture work. Bridging this gap is essential. This Guide is therefore also a call for anti-torture and children's rights actors to join forces towards better protecting children from torture.

The practices collected in the Guide do not aim to be exhaustive, but rather to share some of the efforts that have led to concrete progress. We look forward to your feedback for our next edition.

**Gerald Staberock**

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## 2. INTRODUCTION

### 2.1. PUTTING THE TORTURE OF CHILDREN INTO CONTEXT

The realities of torture and other cruel, inhuman or degrading treatment of children remain largely under-documented, unacknowledged and hidden, as very few States admit to torturing children<sup>1</sup>. Yet, the torture of children is still a dreadful reality, one that has even increased in recent years, according to the United Nations<sup>2</sup>.

Torture of children occurs in different contexts, including during police operations seen as a threat to public order or security, during armed conflicts, when children are targeted as a way to intimidate communities or their parents, or when they are deprived of their liberty.

Methods of torture range from the most brutally traditional to complex, sophisticated modern methods, often mixing physical and psychological torture (labelled as “white torture”). Some do not cause perceptible physical injuries, and some are intended to cause psychological harm<sup>3</sup>.

Children deprived of liberty find themselves in a particularly vulnerable position. The United Nations Global Study on Children Deprived of Liberty, launched in 2019, estimates that there are currently 1.5 million children deprived of liberty per year<sup>4</sup>, who are at heightened risk of being exposed and subjected to torture and other forms of ill-treatment<sup>5</sup>. Out of those, a minimum of 410,000 are deprived of liberty per year in the context of the administration of justice. This shockingly high number reflects the priority given by States to repressive and punitive approaches to juvenile justice and the very little consideration given to the issue of detention of children itself, and/or to States national rehabilitation policies and the reintegration of children.

Deprivation of liberty contributes to the invisibility of the torture of children. Detained in closed facilities and away from any external eye, children are under the authority and sometimes at the mercy of State authorities, with little if any possibility to report or complain. In some cases, torture and ill-treatment of children is seen but accepted. The acceptance of violence against children and corporal punishment as a form of discipline, including in custodial settings and prisons, can also contribute to the tolerance of treatments that would be regarded as unacceptable if inflicted on an adult<sup>6</sup>, despite children’s greater vulnerability to violence.

In addition, torture of children is also a violation that has not been addressed in depth through the international human rights mechanisms, as the issue of the torture of children itself falls into different mandates of human rights actors: while anti-torture mechanisms and actors tend to predominantly focus on the torture of adults, the issue of torture of children has not either been systematically at the centre of priorities of the child rights movement. This contributes to the invisibility of the issue, and the lack of implementation of the standards that protect children from torture. More generally, the issue of children deprived of liberty itself is, to a large extent, a low priority for States at all levels. This is reinforced by the hidden and secretive nature of torture and explains why the documentation of the torture of children is scarce. This lack of acknowledgment, transparency, and accountability contributes to the persistence of torture, particularly in the case of children.

In addition to these major issues, the Covid-19 pandemic and related health restrictions have added a layer of difficulties in the access to health, family links and visits to children, as well as in the capacity to conducting monitoring visits to places of detention for civil society organisations (CSOs) and other oversight institutions. The disconnection from family for children in particular can be considered cruel and inhuman treatment, and can have life-long effects.

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1. Man, “Children, Torture, and Power”.

2. Drysdale, “Worrying trend shows increased number of child torture victims”.

3. O’Donnell et Liwski, “Child Victims of Torture and Cruel, Inhuman or Degrading Treatment”.

4. Nowak, “UN Global Study on Children Deprived of Liberty”.

5. Mendez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez”. Para. 16

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6. Man, “Children, Torture, and Power”.

## 2.1.1. SPECIFIC VULNERABILITY OF CHILDREN TO TORTURE

Detention is considered to be inextricably linked to ill-treatment in the case of children. Even short periods of time spent in detention can undermine a child's physical and psychological well-being and affect cognitive development<sup>7</sup>, because of children's unique vulnerability, both physical and psychological. It has been demonstrated that children experience pain and suffering differently than adults, owing to their physical and emotional development and their specific needs. For children, ill-treatment may cause even greater or irreversible damage than for adults<sup>8</sup>. Long-term physical effects of torture can include scars, headaches, musculoskeletal pain, foot pain, hearing loss, dental pain, visual problems, abdominal pain, cardiovascular or respiratory problems, sexual difficulties, and neurological damage. Many children also suffer from post-traumatic stress disorder, anger, sleep problems, difficulties to focus, and symptoms of anxiety following experiences of torture<sup>9</sup>.

The threshold of pain and suffering of children is lower than that of an adult, and it varies according to the age and maturity of the child. Decisions that may not amount to ill-treatment for an adult, such as the denying of contact with the family for a specified period of time, may amount to ill-treatment for a young child.

This is why children require higher standards and broader safeguards to protect them in detention and why States have higher obligations to ensure that children are protected from torture or other ill-treatment and from the harmful effects that detention can have on them.

## 2.1.1. INTERNATIONAL FRAMEWORK AND IMPLEMENTATION GAPS

Among these States' obligations, the absolute and non-derogable prohibition of torture and cruel, inhuman and degrading treatment of children is central and mandated by both international human rights law and international humanitarian law. The Convention on the Rights of the Child recalls this

prohibition. A strong international legal framework governing juvenile justice reinforces the protection of children deprived of liberty and the safeguards against torture and other ill-treatment.

The recently published UN Global Study on Children Deprived of Liberty is a key step towards gathering data and recognizing the serious violations of human rights of children deprived of liberty, and the implementation of its recommendations by States would contribute to reducing torture and other ill-treatment of children. The issue of torture of children itself is now embedded as a clear target of the Sustainable Development Goals (also called "2030 Agenda"), with the clear objective included in target 16.2 to "*end abuse, exploitation, trafficking and all forms of violence against and torture of children*" by 2030. Protecting children from torture and other ill-treatment must now be at the top of States' priorities.

However, despite a robust international normative framework and State renewed commitment through the 2030 Agenda, important gaps in its implementation lead to widespread occurrences of torture and other ill-treatment of children deprived of liberty. Civil society child rights and anti-torture organisations must step in to try to fill this gap in their countries as soon as possible - to protect children first, and to increase pressure on States to comply sooner than later.

## TORTURE AND CHILDREN

### Legal definition of torture (article 1 UN Convention Against Torture)

- > It is committed by an agent of the State or someone acting with the encouragement or acquiescence of the State.
- > It is committed for the purpose *-inter alia-* of obtaining information or a confession; to intimidate, coerce or punish the immediate victim or a third person; or as part of discrimination.
- > It must cause severe pain or suffering.
- > It must comprise an intent (*mens rea* element)

**Because of the specific vulnerability of children, a lower threshold of pain for children must be considered as far as the legal definition of torture is concerned.**

7. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 16

8. Lake et Chan, "Putting Science into Practice for Early Child Development." and Mendez. Para. 33

9. Alayarian, "Children, Torture and Psychological Consequences".



## 2.2. OBJECTIVES

Despite these alarming observations, OMCT's work for the past 30 years, through a dedicated programme focusing on protecting children deprived of liberty from torture and other ill-treatment, shows that progress can be made.

The OMCT has been working locally and globally to develop a multi-tiered strategy to ensure that children are protected against torture and other ill-treatment. During its long field experience, it has documented hundreds of cases of torture and extrajudicial killings of children; it has seen threats to families, legal and policy reforms that have lowered standards, with impunity prevailing in many instances. On the other hand, the OMCT has also seen the closure of prisons; legal and policy reforms that have strengthened legal protections, the adoption of accountability measures, the granting of reparation and redress; the reform of justice systems. Our work is marked by the dark reality of the torture of children, but also by a number of success stories when its efforts have led to positive responses.

Although the primary duty to protect children from torture falls under States' obligations, we have seen that civil society can play a crucial role in advancing the protection of children from torture by authorities.

Through sharing the knowledge, methodologies and best practices that have worked in specific contexts, this Guide aims in particular at mobilising civil society and other actors, such as institutions or professionals, to engage on the torture and ill-treatment of children, and thus contribute to enhancing their protection.

It is also our hope that this Guide will contribute to highlighting an issue that too often remains invisible, not only to State authorities, but also to juvenile justice professionals and human rights actors, and thus contribute to the global movement against torture by raising attention to the specific issue of children.

This Guide should contribute to framing abuse against children deprived of liberty as torture and ill-treatment, as well as to outlining concrete actions and solutions that have played a role in protecting children in these contexts.

The Guide is structured around the main international standards whose full implementation should protect children against torture and other ill-treatment. It discusses and sheds light on key structural and practical challenges to the realization of this goal.

## 2.3. SCOPE

### 2.3.1. CHILDREN DETAINED IN THE ADMINISTRATION OF JUSTICE

Children can be deprived of liberty in different contexts, including in the context of migration, in institutions, during armed conflicts, in the name of national security, or live with their parents in detention, and be exposed or subjected to torture and ill-treatment in all of these situations<sup>10</sup>. The present Guide will exclusively focus on the deprivation of liberty of children in conflict with the law, in the context of the administration of justice. This focus reflects the particular experience and expertise developed by the OMCT together with its partners.

### 2.3.2. TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

States' obligations to prevent torture have been recognised by the UN Committee against torture<sup>11</sup> as indivisible, interrelated and interdependent from the obligation to prevent cruel, inhuman or degrading treatment or punishment (ill-treatment), as conditions that allow ill-treatment are frequently conducive of torture. The present Guide focuses on the protection of children from torture and other forms of ill-treatment, whose prohibition has been extended to children deprived of liberty by the UN Convention on the Rights of the Child and the Havana Rules.

10. Nowak, "UN Global Study on Children Deprived of Liberty".

11. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 5

## 2.4. METHODOLOGY

This Guide is based on the identification and analysis of promising practices that have proved their efficiency, paving the way for structural changes. While it is largely based on the OMCT and its partners' work in Latin America, Africa and Asia, particularly in Benin, Brazil, India, the Philippines, Togo and Uruguay, broad consultations and desk research have allowed the analysis to go beyond this geographical focus to collect examples of best practices from a range of different countries and in different contexts.

We used a multi-level methodology for the collection of these best practices. We conducted a review of OMCT's key documents regarding programs, projects, and activities focused on the prevention of torture and the protection of children. Three regional meetings took place in Asia, Africa, and Latin America (OMCT's focus in terms of child protection), bringing together more than 30 field actors, to broaden the scope of the research and collect best practices from a wide range of countries, to identify new best practices and to discuss potential regional trends with a view to local-to-local experience sharing. Finally, a high-level expert meeting gathering both children's rights and anti-torture international experts was held to discuss conclusions, recommendations and promising systemic approaches, from a multi-disciplinary perspective.

This Global Guide does not aim to be exhaustive, but rather to shed light on and share tools and practices that have proved efficient in practice and deemed illustrative and replicable to enhance the protection of children against torture, while taking into consideration the political and economic contexts of different societies.

## 3. NORMATIVE DEVELOPMENT AND LEGAL FRAMEWORK

Freedom from torture and ill-treatment is an absolute, non-derogable right, applicable at all times, including in situations of emergency or armed conflict. The specific prohibition of torture and other forms of cruel, inhuman or degrading treatment is legally enshrined in treaties, guidelines, guiding principles and minimum standards, both at the international and regional levels.

While the Universal Declaration of Human Rights (UDHR, 1948, art. 5) and the International Covenant on Civil and Political Rights (ICCPR, art. 7, art. 9 and art. 10) both contain a general prohibition of torture, the United Nations Convention on the Rights of the Child (UN CRC, 1989) remains the *lex specialis*, i.e. the core human rights instrument applicable to the situation of children deprived of their liberty, insofar as it specifically prohibits torture and other cruel, inhuman or degrading treatment of children, in its article 37, and recognizes, *inter alia*, the impact of deprivation of liberty on children's lives, as well as the need for a child-specific approach. These provisions can also be found in regional treaties in Africa, the Americas and in Europe<sup>12</sup>.

The UN CRC prescribes that deprivation of children's liberty must be used only as a measure of last resort and for the shortest period of time (art. 37[b]) and children have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority (art. 37[d]). In addition, article 37 (c) provides that children deprived of their liberty must be treated with humanity and respect for their inherent dignity, and in a manner that takes into account their needs as children. As a result, this convention is going beyond the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984), as it takes into consideration the heightened vulnerability of children when it comes to the definition of torture and ill treatment.

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12. Those regional treaties are the European Convention on Human Rights., the American Convention on Human Rights., art. 19, And the African Charter on the Rights and Welfare of the Child., art. 17.

Article 40 of the UN CRC also requires States to put in place a specific juvenile justice system, aimed at the child's reintegration into society, and asks States to provide for specific safeguards for children in the context of juvenile justice. In addition to these specific provisions, the UN CRC as a whole applies to children deprived of liberty who enjoy all the rights recognized to children. In particular, the four guiding principles of the UN CRC, the best interest of the child (article 3), the right of children to non-discrimination (article 2), the child's right to life and development (article 6), and the child's right to have one's views taken into due consideration (article 12) should guide the interpretation of all dimensions of the rights of children deprived of liberty. The Committee on the Rights of the Child, which is charged with reviewing the compliance of each State party to the CRC with its obligations, has also developed General Comments (*ad hoc* analysis) on the issue of juvenile justice<sup>13</sup>.

The UN Convention of the rights of persons with disabilities (2006) also provides for the protection of children with disabilities, including from torture (art. 7 and art. 15).

The protection of children deprived of their liberty from torture can also be found in non-binding instruments. Among them, there are sets of minimum standards, in particular the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the "Beijing Rules", 1985), the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the "Havana Rules" 1990), the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (the "Riyadh Guidelines", 1990) and the *United Nations Guidelines on the Administration of Juvenile Justice* (the "Vienna Guidelines", 1997).

A series of other general principles and minimum standards are also applicable to children in custody or in detention, such as, *inter alia*, the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988), the *UN Standard Minimum Rules for the Treatment of Prisoners* (updated in 2015, known as the "Nelson Mandela Rules") and the *UN Rules for the Treatment of Women*

*Prisoners and Non-Custodial Measures for Women Offenders* (the "Bangkok Rules", 2010). Minimum standards in terms of protection of persons deprived of liberty could be found on a regional level, such as the *Robben Island Guidelines (RIG) for the Prohibition and Prevention of Torture in Africa* (2002) for the African countries.

Regarding implementation, international and regional human rights law foresees mechanisms to review the compliance of the States with their legal obligations related to the protection of detained children against torture. Those oversight mechanisms can take the form of a National Prevention Mechanism (NPM), provided that States have signed and ratified the *Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment* (OPCAT, 2002). The task to visit and assess the conditions of detention and treatment of persons in custody or in detention, including children, could also fall into the mandate of the National Human Rights Institutions (NHRIs) or Ombudsmen/Public Defenders. At the international level, the Subcommittee on the Prevention of Torture (SPT) has the mandate to undertake visits to OPCAT State parties and in particular visit places of detention, as well as an advisory role to States in the establishment of NPMs at national level. In addition, internal oversight mechanisms may also be provided for by domestic laws, such as committees, or members of the judiciary to visit and assess the conditions of detention and the treatment of children deprived of liberty in order to formulate recommendations for improvement. Those mechanisms, either internal or external, at the national or international level, are unevenly implemented in practice, for a variety of reasons such as lack of political will, lack of resources, prevailing miscarriage of justice, or absence of a culture of accountability.

A child rights-based approach integrates norms, standards and principles of international human rights system into policies, strategies and programs aiming at the development of the child.

13. Committee on the Rights of the Child, Convention on the Rights of the Child. General comments. Among them, it is worth mentioning: GC n° 10 on the children's rights in juvenile justice (2007), GC n° 12 on the right of the child to be heard (2009, § 57-64), GC n° 13 on the right of the child to freedom from all forms of violence (2011), GC n° 14 on the right of the child to have his or her best interests taken as a primary consideration (2013), and GC n° 24 (2019) on children's rights in child justice systems.

## 4. EFFECTIVE TOOLS, INSTRUMENTS AND STRATEGIES TO PROTECT CHILDREN FROM TORTURE

The OMCT's 30 years' experience working on the prevention and the protection of children against torture has demonstrated that there are a series of actions that civil society can conduct to effectively improve the detention conditions and treatment of children, both on an individual level for those in detention, and on the level of the juvenile justice system as a whole. Some actions are aimed at producing systemic changes directly, such as the ratification of a treaty or the training of judges in charge of the instruction of children's legal files. Other actions have more specific objectives, such as the condemnation of a prison official for torture against a child or the closure of a prison because of its inhuman conditions, but they are equally important as they serve as precedent to create structural changes.

Two additional principles of action have proved to be of particular relevance to advance on the prevention and protection of children. First, cooperating with a range of different actors, from the civil society and/or the public administration and institutions that have complementary actions, in order to tackle the issue holistically. Second, listening directly to children deprived of liberty or who have been detained, on their needs and priorities. Both principles are transversal to all tools used to prevent and protect children against torture.

Within its Child Protection against Torture Programme, the OMCT, together with its partners working at the national level, conducts different types of activities to prevent and protect children deprived of liberty against torture. The following findings are based on the expertise developed by the OMCT over the years. They do not pretend to be exhaustive, but rather an attempt to share knowledge and knowhow that have proved useful and effective in conducting the detention visits with the goal of protecting children from torture and other ill-treatment<sup>14</sup>.

### 4.1. DATA AND EVIDENCE COLLECTION, DOCUMENTATION AND PRODUCTION OF STATISTICS

Documenting and collecting concrete evidence of acts of torture or other ill-treatment against children should be the first step prior to any concrete action aimed at a change, whether individual or structural. It is already an action in itself as it allows to fully comprehend the scope and acuteness of the phenomenon, to identify the challenges before suggesting solutions and recommendations, to ensure credibility when denouncing a situation and to provide a base for complaints and trainings. Many recommendations addressed to States during the State review process of the UN Committee against Torture include requirements regarding the production of quantitative and qualitative statistical data (notably disaggregated data) on torture. Nevertheless, it is not an objective per se but rather a basis for further action.

#### DOCUMENTATION AND RESEARCH // INDIA A LANDMARK RESEARCH ON INDIA'S JUVENILE JUSTICE SYSTEM

In order to fill in a huge documentation gap in India with regards to the situation of children in conflict with the law, the Delhi based organisation HAQ: Centre for Child Rights decided to conduct a comprehensive research on issues of children deprived of liberty in the Indian context, highlighting the legal challenges of the domestic law as well as the conditions of detention and treatment of children in India. In October 2019, HAQ submitted this study to the Office of the United Nations High Commissioner for Human Rights (OHCHR) as a contribution to the United Nations Global Study on the Protection of Children deprived of Liberty.



14. Grandfils, *Child Detention*.

Collecting information and evidence on a sensitive, usually unacknowledged, and most often hidden issue may be particularly cumbersome. The collection of information and evidence can be performed through desk reviews, compilation of legislations, and direct interviews with the stakeholders involved, including children. Documenting occurrences of torture can be, depending on the context, extremely sensitive, and could expose to threats or reprisals. It is additionally challenging when civil society operate outside of the country<sup>15</sup>. One of the most efficient ways to document the torture and ill-treatment of children in detention is by conducting monitoring visits to places of detention.

#### **4.2. MONITORING VISITS TO PLACES OF DETENTION: A CORNERSTONE FOR PROTECTING CHILDREN FROM TORTURE**

Although international law prescribes that detention of children should be a last resort and alternatives to detention prioritised<sup>16</sup>, more than one million children are still deprived of liberty around the world. These children retain all their human rights, in particular as recognized by the UN CRC. However, the conditions of detention and treatment of children often constitute or lead to ill-treatment or even torture. In this context, regular and independent monitoring visits to places where children are deprived of liberty is a key factor in preventing torture and other forms of ill-treatment<sup>17</sup> but also to protect the rights of children deprived of liberty.

In addition to internal oversight mechanisms that can exist within judicial systems, external and independent monitoring of places of detention otherwise closed to the public eye are a way to increase transparency the situation of children detained, and to show prison authorities that the children's situation is an issue of concern and will be monitored closely. This, in itself, can contribute to preventing occurrences of torture and other forms of ill-treatment. The Covid-19 pandemic has unfortunately demonstrated the usefulness of prison monitoring; in some countries, civil society organisations

that had been prohibited from entering prisons and detention centres because of sanitary restrictions have witnessed at their return a massive increase in violence, torture or other ill-treatment against children, that had taken place in the absence of any external oversight.

Monitoring visits are also a crucial tool to identify violations of children's rights and document individual cases of torture or other ill-treatment, as well as to gather invaluable information on the conditions of detention and treatment of children deprived of liberty as an entry point for a range of further actions aimed at addressing these violations, both at an individual or a more structural level. On the basis of the information gathered, civil society organisations can indeed provide assistance to child victims, including medical or legal assistance; alert and discuss with authorities, judges, and other professionals about the violations; use the information to initiate a dialogue with the authorities, including through reports, conduct international advocacy to put pressure on the authorities, or make the violations visible through the media. All these actions, separately or combined, can lead to individual or structural changes in the situation of children deprived of liberty.

Establishing a dialogue with the authorities is another key aspect of the monitoring visits and allows to initiate and sustain a discussion on the children's rights and condition.

#### **KEY PRINCIPLES TO MONITOR PLACES OF DETENTION FOR CHILDREN**

##### **Getting access**

Prisons are places closed to the external eye, where detainees can become invisible to the rest of the society. This is even more the case for children, who are less listened to. Because of what prisons represent for the authorities, both politically and in terms of security, accessing prisons for CSOs or other institutions can be challenging. In some countries, prison authorities can grant civil society organisations authorisations to conduct monitoring visits, either on a regular or a punctual basis. In others, CSOs visit the prisons together with other institutions, such as the national preventive mechanism (NPM).

15. OMCT, *Fighting torture in close environment and in exile, A guide for the SOS-Torture Network on investigating and documenting torture remotely*.

16. United Nations, UN Convention on the Rights of the Child. Arts. 37 b) and 40

17. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 14



Other countries prohibit entirely visits to places of detention. In such cases, getting knowledge of the situation of children behind bars is a lot more challenging, especially if the country has not put in place an NPM with the mandate to visit places where children are detained or if State authorities do not grant National Human Rights Institutions (NHRI) the right to visit places of detention<sup>18</sup>. Coordinating with lawyers or legal aid services, as well as with the judges in charge of the children's cases, can be another way to get information about the situation.

Collecting information on the situation of children detained and potential violations of their rights can also take place on the side or combined with other activities conducted in prison, such as providing humanitarian assistance or legal assistance, conducting educational or leisure activities with children, leading sessions to inform children about their rights, etc.

Accessing places of detention proved to be even more difficult for CSOs across the globe with the outbreak of the Covid-19 pandemic and subsequent measures taken to restrict the possibilities of visits. The conditions of detention and treatment of children were thus left without external monitoring and surveillance for several months, maybe years, putting children at greater risk of torture and other ill-treatment.

### Dialogue with prison authorities

The OMCT and its partners have found very useful to establish a dialogue with prison authorities during visits, in order to promote improvements and point out challenges. Whenever possible, it has proved effective for CSOs to start the visit with a meeting with the prison management, in order to introduce their action and objectives, as well as at the end of the visit, to present their findings, alert to specific situations, and present further steps.

It is also key to exchange separately with other prison staff and especially doctors and nurses, educators and psychologists that interact with children, but also prison guards that have contact with children. Among key aspects of these discussions, reminding them of children's rights, introducing

concerns but also asking about their concerns and working conditions, has often proved essential to progress in the protection of children detained.

### Collecting evidence systematically

It is crucial to be able to have a good overview of the situation of the children in the prison. To collect information on all relevant aspects of their lives, the OMCT and its partners have created questionnaires to guide the visit. The forms cover the most important elements to be monitored during the visit.

The visit should include, among others:

- 1) Looking thoroughly at all the facilities used by children, including sanitary facilities, infirmaries, dorms, educational facilities when they exist; it is important to make sure that there are no hidden or separate buildings or cells, where children under disciplinary measures could be placed, and where the treatment received would be different; looking at the quantity, quality and manner in which food is provided to the children, any educational facility, places where visits of families take place, etc. Having access to all facilities used by children is one of the pre-conditions for the OMCT and its partners to visit the places of detention.
- 2) Collecting information on the situation of children themselves, including the daily schedule, interactions with wardens, the nutrition, possibilities of accessing healthcare, the visits and the exit permits, the potential socio-educational activities organised, the interactions with the prison staff, the resort to body searches, to corporal punishment, to disciplinary measures, etc.
- 3) To detect occurrences of torture and other ill-treatment, listening to children's allegations, paying particular attention to the behaviour and physical appearance of the children, general behaviour of the prison staff, accessing the incidents' register, the register of disciplinary or sanction measures, the complaint register, and the medical records, among others.
- 4) Verifying the existence of a complaint mechanism, allowing children to formulate demands or complaints regarding their treatment in detention, detention conditions, or any other violations of their rights.

18. Many National Human Rights Institutions (NHRI) could have the mandate to visit places of detention. This is of particular importance for countries that did not ratify the OPCAT, i.e., in instances where no NPM is place.

## Interviewing children – voluntary and confidential

Every monitoring visit of detention centre should include interviews with the children detained, in order to assess the situation from their point of view, take into account their needs and opinions, to document allegations of occurrences of violence, torture, or other ill-treatment, or to gather any valuable information regarding their situation. It is important to ask the children if they have met with a lawyer, a judge, and if they are informed and aware of the judicial process concerning their case. Being able to interview children without the presence and out of the hearing range of prison authorities is of the utmost importance (and is a pre-condition for the OMCT and its partners to conduct visits). However, interviewing children, and especially children deprived of liberty, requires a specific training, experience, sensitivity, and good preparation, so that children can feel safe and listened to.

From this perspective, it is key that children, before being interviewed, give their explicit consent, based on an informed decision about the objectives of the discussion. No child should be compelled to participate to the discussion, and it is crucial for civil society to make this clear both to the children and to the prison staff, who sometimes could encourage or push children to participate.

Children should also be informed about the strict confidentiality of the interview, in order to ensure maximum protection for the child and prevent any retaliation, as well as the confidentiality of the manner by which the information provided will be managed.

The “**Do no harm**” principle aims at avoiding exposing people to additional risks through our action. As a result, it entails taking a step back from an intervention to look at the broader context and mitigate potential negative effects on the social fabric, the economy and the environment. It is a key principle when interacting with victims including children, and in particular, children deprived of liberty, who are particularly vulnerable to potential reprisals after being interviewed by monitoring mechanisms.

## MONITORING VISITS TO PLACES OF DETENTION // URUGUAY MONITORING PRISONS: A KEY ACTIVITY TO PROTECT CHILDREN FROM TORTURE

Although Uruguay has signed all the international treaties that allow to prevent and protect children deprived of liberty against torture and although its National Prevention Mechanism is fully functioning, the detention conditions of children remain a concerning issue. Abuses, the excessive use of psychotropic drugs, and solitary confinement of children for hours are some of the usual practices. There are limited educational and recreational activities available to detained children and the infrastructure in the centres is worn out. Furthermore, non-custodial sentences are rarely pronounced.

The Uruguayan NGO SERPAJ (*Servicio Paz y Justicia*) has been carrying out for years a systematic, independent and periodical monitoring of centres of detention for children. Monitoring prisons is a way to verify to which extent the law – both domestic law and international standards – is being applied, and to have a specific overview of the detention conditions and treatment of children. In Uruguay, national authorities allow the monitoring visits by CSOs, which usually take place jointly with other CSOs gathered in a committee of the rights of the child.

In 2019-2020 only, SERPAJ visited 13 prisons where children are detained, conducting 25 visits. Through these visits, SERPAJ observes and analyses the practices within the system, as institutional violence is often hidden. Three principles guide these encounters. First, listening to children. The discussions occur in a familiar place for the child individually or in small group conversations (two to three children), and without the presence of any prison staff. Establishing an atmosphere conducive to trust and dialogue for a genuine exchange is crucial when interviewing children. Second, confidentiality. What children say is collected anonymously with the objective of denouncing systemic practices and protecting the victim. Finally, clarity and transparency. SERPAJ makes sure to explain the limitations of its work so as not to raise children’s expectations for their individual cases. For SERPAJ, the voice of the children is the most important aspect of these visits.

Monitoring is the entry point of SERPAJ’s action, as the reports produced after the visits lead to launch public reports and campaigns, conduct legal actions or a dialogue with the authorities.



## The importance of the regularity of visits

The conduct of monitoring visits to places of detention on a regular basis is an important aspect of their role in the prevention of torture and other ill-treatment, as it allows to regularly check on the treatment of the children, to measure the evolution (positive as well as negative) of detention conditions and to repeatedly promote their improvement. It also helps to develop a better relationship with the children as well as with the prison staff and the penitentiary authorities. Punctual visits by regional or international mechanisms still have an important value in bringing international attention to the detention facility, and to observe and document the detention conditions at a given time.

## Reports, recommendations, and follow-up

After the visit, an essential and integral step of the process is to prepare a visit report describing in detail the situation observed during the visit. The report should address every aspect identified, including, among others, information on the children (number, age, status – pre-trial detention or incarceration, etc.), detention conditions, allegations of torture or other ill-treatment, etc. In case there are specific and serious aspects to highlight, an additional report focusing on a specific issue can also be prepared and shared with the authorities. This could be the case, for instance, if the detention conditions are found to be particularly inhuman, or if the visiting organisation observes a pattern of serious abuse. All reports sent to the authorities should contain clear recommendations deriving from the observations made and shared with the authorities in charge of each aspect of the issue. Reports can also be shared with the media, or other authorities, to alert on the seriousness of the situation.

Regular and systematic follow-up is important to assess the status of implementation of the recommendations addressed to the relevant authorities. This can be done through follow-up monitoring visits of places of detention, to evaluate the general conditions of detention and treatment; or through meetings with authorities, to better understand their specific constraints, and eventually help find a concrete solution through a constructive dialogue.

## 4.3. COMBINING NATIONAL AND INTERNATIONAL ADVOCACY, TOGETHER WITH VISIBILITY

Advocacy targeting decision makers and authorities is a crucial instrument to lead to concrete changes, whether legislative or policy changes, or concrete improvements to protect children from torture and other ill-treatment. Governments are usually reluctant to admit the existence of torture and other ill-treatment, even more so when it is inflicted on children. Added to the fact that torture and other ill-treatment is often an under-reported and hidden issue, authorities may not want to address it as a priority.

In that context, advocacy and awareness-raising efforts, at the national but also at the international level, can be effective to bring the attention of decision-makers to the issue and put it on the authorities' agenda. Civil society can be in a uniquely specific position to advocate both for structural changes through legislative or policy changes, as well as for concrete improvements of detention conditions and treatment of children. Advocacy should therefore, depending on the issue at stake, target those who have the power to produce a change (first-circle advocacy targets) or people who can influence those who have this power (second-circle advocacy targets), at different levels: the government and the administration in charge of the juvenile penitentiary system; ministries, such as the ministry of justice, and Presidencies when needed; members of Congresses and Parliaments, for legislative changes,

### ADVOCACY / URUGUAY CONSTRUCTIVE DIALOGUE BETWEEN CIVIL SOCIETY AND STATE LEAD TO SETTING UP A BODY SPECIALIZED IN JUVENILE JUSTICE

In Uruguay, the *Consejo Honorario Consultativo* is an interinstitutional coordination council between the State and the CSOs created by the Childhood Code (*Código de la niñez*) to discuss the children's rights issues. The Uruguayan non-governmental organisation IELSUR regularly participated in the meetings of this council to denounce the torture cases of children deprived of liberty and thus managed to convince the State to create a body to follow up the issues of juvenile justice. This body took public positions on the matter.



as well as the judiciary. National human rights institutions are also key actors who can cooperate in protecting children from torture and other ill-treatment. Raising the awareness of the public opinion can also have an effective impact on decision-makers and lead to change.

Evidence-based advocacy, supported by reports and publications analysing the situation of children deprived of liberty and their exposure to torture, together with the gathering of compelling data, is a key aspect for an efficient advocacy, both at the national and international levels. Direct discussions with State authorities, open letters to decision-makers, or technical analyses (comments on draft legislative bills, etc.) and, when relevant, a media communication strategy, are components of a global advocacy strategy, which should also integrate relevant specific, measurable, achievable, realistic and timely objectives.

Combining national efforts with international advocacy towards international human rights institutions has proved to have real impact on State authorities to take measures for the protection of children against torture. Information collected at national level on the occurrences or patterns of torture and other ill-treatment of children in detention should feed into the reviews of States by treaty bodies, such as the UN Committee against Torture or the UN Committee on the Rights of the Child, through the submission of alternative reports or direct advocacy. This can lead to international recommendations that can, in turn, be used to advocate with national authorities for concrete changes and improvements. Using regional mechanisms such as the Inter-American Commission on Human Rights or the African Committee of Experts on the Rights and Welfare of the Child can also be an efficient way to put pressure on the authorities and spur them into action.

## LOBBYING // BENIN TOWARDS THE NATIONAL IMPLEMENTATION OF RECOMMENDATIONS ADDRESSED TO THE UN COMMITTEE AGAINST TORTURE

Since 2009, the OMCT and ESAM (*Enfants Solidaires d'Afrique et du Monde*, a member of OMCT's SOS-Torture Network) have worked together to fight the torture of children deprived of liberty in Benin through the implementation of a wide range of activities, including monitoring of civil prisons, trainings, and advocacy for a better legal framework in line with international human rights law.

Following an intense advocacy work with the authorities, the OMCT and ESAM managed to contribute to the advancement of the legal framework, namely by the adoption of a new *Code of Criminal Procedure* (2013), as well as the adoption of a *Children Act* (2015) favouring a better protection of detained children from torture by the provision of additional legal safeguards, such as the reduction of the length of preventive detention for children, the appointment of specific judges in charge of juvenile justice, and the mention in the law that children should be detained only as a last resort.

Linking national and international advocacy for more compliance between national and international legal frameworks for the protection of children, the OMCT and ESAM jointly prepared and submitted to the UN Committee against Torture (CAT) an alternative report for Benin's review by the CAT in Geneva in April-May 2019. It is noteworthy that 18 recommendations proposed by the joint OMCT/ESAM report were included in the CAT's Concluding Observations. A national consultation gathering various key State authorities in charge of the issue, as well as other human rights CSOs in Benin, was organised as a follow-up to the process and led to a plan of action focused on the implementation of the CAT's Concluding Observations.



## PUBLIC COMMUNICATION, AWARENESS RAISING AND WORK WITH THE MEDIA

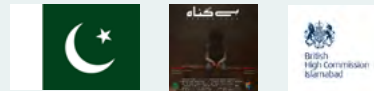
Because torture and other ill-treatment inflicted on children is often unacknowledged or not taken fully in earnest, making the phenomenon visible is key to fighting against it. Visibility is about increasing the awareness of decision-makers and public opinion about the realities of torture being inflicted on children, its contexts and root causes of torture against children, and trigger authorities to act. Several activities, complementary to each other, can be conducted to increase the visibility of a specific topic, and put additional pressure on State authorities to act.

A wide range of tools, that can be combined, are available to foster a positive impact on public opinion: from traditional news conferences and news releases to tactical activity on social media; from protests and rallies to cultural events and stunts. When strategically articulated with advocacy, they give shape to campaigning activities that can have a clear impact on concrete change. In all cases, it is of utmost importance to choose the best *momentum* to communicate, setting clear targets and timelines, as well as defining a clear message understood by all.

## VISIBILITY // PAKISTAN ARTIVISM: MINI-WEB SERIES LEADING TO THE ESTABLISHMENT OF CHILD COURTS

Based on the concept of *artivism* (resorting to arts to raise awareness on human rights issues), the NGO Group Development Pakistan (GDP), specialising in child rights and children in conflict/contact with the law, worked with a group of young arts students in Pakistan and with children through a child-participatory approach. They aimed at shedding light on constraints faced by children and juveniles in conflict with the law and the need for more accountability for all stakeholders involved. Thanks to its advocacy with other key partners, GDP's work has been instrumental in the establishment of child courts in Pakistan, a key element of a specialised juvenile justice system.

The results of this cooperation have materialized in a mini-web series of three episodes entitled *Be Gunah*, and produced by Slugline Films, with the cooperation of the Federal Ministry of Law and Justice. *Be Gunah* elaborates on the need of access to justice for children and highlights the importance of establishing child courts, as part of a specialized justice system adapted to children. The first child court was established in Lahore (Punjab) in the course of 2017; as of April 2021, at least 13 pilot child courts have been established in the country. The mini-web series also emphasizes the importance of access to counsel for children and juveniles through the character of a dedicated child rights lawyer in the show. It also touches upon the main provisions of the 2018 Juvenile Justice System Act, a historical landmark for children and juveniles in conflict with the law in the country. For further details: <https://www.youtube.com/watch?v=HOZILQDxtDQ>



## ADVOCACY AND VISIBILITY // BENIN NATIONAL MEDIA SHEDDING LIGHT ON THE NEED FOR PROTECTION OF CHILDREN IN DETENTION

Following advocacy conducted both at the national and international levels, including submitting information to inform the review of Benin by the CAT, OMCT and ESAM organised a national consultation with national authorities and other relevant stakeholders to discuss the implementation of the recommendations issued by the Committee.

The organisation of a news conference at the end of the national consultation led several national media outlets to shed light on these activities, giving more visibility on the plight of children deprived of their freedom and to the civil society organisations (CSOs) fighting for their rights. In addition, an unexpected outcome of the news conference was an informal discussion with a few journalists and the OMCT representatives about the issue of violence against children, with journalists indicating that they had never thought of the impact of physical violence on children. Raising the awareness of journalists on torture and other ill-treatment of children is another key approach that can have a major impact on conveying the importance of the issue to the public opinion.





## BRAZIL // VISITS TO PRISONS, ADVOCACY AND VISIBILITY EVIDENCE-BASED CAMPAIGNING

In Brazil, the practice of torture and other ill-treatment of children deprived of their liberty is widespread. In the state of Pernambuco alone, in the past six years, approximately at least 50 children have died while serving a sentence.

Brazilian human rights group GAJOP has a comprehensive action programme aimed at preventing and protecting children from torture and other ill-treatment, through monitoring places of detention, advocating for change, and supporting children deprived of their liberty who have been victims of torture. Between June 2019 and March 2020, the NGO visited 12 centers of detention in Pernambuco. GAJOP meet the management, the heads of security, the technical staff and experts, as well as the children. Discussing with children allows to listen to their views, get their opinion, and to compare the information that they give with what has been communicated by the prison staff. In most of the cases, the information provided by the staff and the children about their treatment conditions, level of care, education, access to healthcare, or other matters, does not match. Following each visit, GAJOP drafts a report that includes photos, the information reported by all stakeholders, and recommendations in line with the Brazilian legislation. The report is immediately shared with the authorities, the protection system, the National Mechanism to Prevent and Combat Torture, the state Mechanisms to Prevent and Combat Torture, the judicial system, the public prosecutor, and civil society organisations.

These reports are sometimes also shared with the media. Having direct contact with journalists is essential to promote public awareness of the situation of children in those centers. In some cases, news conferences are also held after the visit, in front of the detention center, which maximizes impact. GAJOP also created a video shedding light on the realities of the torture and ill-treatment of children, their suffering in detention, and explaining the key role of the torture prevention mechanisms (NPMs) in preventing torture and other ill-treatment, in particular through their mandate of conducting the monitoring functions they have been created for. The video had at least 23 000 views on Facebook.

The combination of the formal presentation of the reports to the authorities and the public dissemination of their content has led to key achievements, such as the closure of detention centers that did not respect the minimum standards of treatment for children deprived of liberty, the dismissal of public servants at the prisons, as well as the success of judicial complaints filed before the main judicial bodies in Brazil and international human rights bodies.



## RESEARCH AND VISIBILITY // INTERNATIONAL COMMUNITY JUSTICE FOR CHILDREN AWARDS

With the support of the Loterie Romande, Defence for Children International (DCI) and the OMCT launched *Justice for Children Awards*, an initiative to further engage young academics on the issue of the protection of children deprived of liberty. The aim was also to shed light on the challenges faced by juvenile justice systems worldwide and their consequences in terms of the realisation of children's rights, beyond academic circles. Both editions of the competition, in 2015/2016 and 2017/2018, were designed as an opportunity to raise further awareness within the academic fora. The first award ceremony was held in June 2016 at the Cinémas du Grütli (Geneva, Switzerland) during a public event that included the screening of the award-winning film *La Tête Haute (Head held high)*, followed by a debate on juvenile justice. Beyond a monetary prize, the winner of the competition had the opportunity to see her article published and to attend a UN Treaty Body session.

The second installment of the competition (2017-2018) aimed at enabling young scholars to contribute to the improvement of the situation of girls involved in the justice system, with a particular focus on the various forms of violence (including torture and ill-treatment) they are exposed to. The award ceremony took place at the European Union Delegation to the United Nations in Geneva, Switzerland, in October 2018, followed by a high-level panel discussion on violence against girls in the justice system.



#### 4.4. CAPACITY BUILDING OF PROFESSIONALS IN JUVENILE JUSTICE SYSTEMS

Building the capacities of actors of the juvenile justice and penitentiary system on the specific vulnerabilities of children to torture, applicable international standards, and the specific role they can play to protect children from torture, have proved instrumental in decreasing occurrences of torture of children in detention.

According to the UN Global Study on Children Deprived of Liberty, States should enhance the capacity, by means of investing in human resources, awareness-raising and systematic education and training, of all professionals who work with and for children in decisions leading to their deprivation of liberty, and those who are responsible for their well-being while in detention. It is indeed one of the most effective ways to prevent torture and other ill-treatment from being inflicted on children. This applies to a wide range of professionals (police, judges, prosecutors, prison guards, psychiatrists, medical personnel, psychologists, educators, probation officers, social workers, child protection and welfare officers, lawyers and any other individuals in contact with children at risk of deprivation, or deprived, of liberty). Anti-torture organisations and child rights NGOs can be relevant actors to conduct such trainings, provided that they are fully equipped with training and instructional skills. In some countries, building the capacities and the understanding of professionals has led to a concrete reduction of occurrences of torture and other ill-treatment of children.

To ensure genuine efficiency, trainings should be designed according to the specificities of the context - in particular the situations in which torture or other ill-treatment is inflicted on children, after identifying the professionals concerned and what the gaps are - and should respond to the specific needs of the participants. Trainings can address international and regional human rights mechanisms and procedures, the legal basis defining torture, specificities regarding the torture of children, rehabilitation and reintegration after imprisonment, the documentation of torture, the methodology for monitoring prisons through visits, follow up, etc.

In addition, these trainings need to be delivered by people with instructional

#### CAPACITY BUILDING // INDIA CREATING A NETWORK OF TRAINED LAWYERS

In India, where visiting prisons is not allowed for civil society, HAQ: Centre for Child Rights has worked towards making the constitutional guarantee of free legal aid a reality for children in contact with the law. HAQ organized a large training program for lawyers across the country that aims at bringing them the specific knowledge and orientation of children's rights, as well as the specificities of securing rights of children in the juvenile justice system and building an understanding of the issues of children subjected to torture, illegal detention and other forms of violence, and the role that lawyers can play to contribute to the protection of children in detention. This led to the creation of network of lawyers specialized on children's rights, that can intervene in the defense of children deprived of liberty.



#### BRAZIL // CAPACITY BUILDING/NPMS TRAINING NPMS TO VISIT DETENTION CENTRES FOR CHILDREN

The role of National Preventive Mechanisms (NPMs), which should be established in all State parties to the Optional Protocol to the Convention Against Torture, is absolutely key in preventing torture and other ill-treatment. However, very few NPMs around the world have the capacity, time, resources or knowledge of the specificities of children's rights or a mandate to visit children's prisons. Detention centres for children are therefore very often forgotten by NPMs, and children deprived of liberty do not benefit from their actions to prevent torture in detention. In Brazil, where the torture of children in detention is widespread, the NGO GAJOP, together with the OMCT, organised a two-day training gathering members of the existing national and local (state-level) preventive mechanism, to raise awareness about the widespread practices of torture in "socio-educative centres" (as prisons for children are called); to discuss international standards applicable to children deprived of liberty, and to provide training on the specific methodology to visit prisons for children. After the training, members of the preventive mechanisms indicated that they had a clearer picture of the serious violations of the human rights of children and that they would start visiting, or visiting more regularly, prisons where children are detained.

GAJOP also conducts visits of prisons for children together with members of the local NPM in the state of Pernambuco.



skills. The OMCT for example works with international, regional and national experts depending on the context. Ideally, trainees should be able to implement or pass on the new capacities (training of trainers, or ToT, methodology). It is useful to use concrete examples of the situation of the detention centres in the country concerned, so that participants can become aware of the extent of the issue. These trainings could also be coupled with coaching activities (as a follow-up to trainings) can be used to exchange best practices in order to build stronger expertise for the participants.

## ADVOCACY // TOGO RAISING AWARENESS ON THE TORTURE OF CHILDREN AMONG JUVENILE JUSTICE PROFESSIONALS

After documenting cases of torture and other ill-treatment of children in detention, and in particular in police custody in Togo, the CACIT, together with the OMCT, organised a training delivered to the different actors of the juvenile justice system (juvenile justice judges, police officers, prison staff, lawyers, social workers, court clerks, civil society organisations, members of the National Human Rights Commission and the Ministry of Human Rights) on the protection of children in conflict with the law and the best strategies to fight impunity. The training allowed to raise awareness about the absolute prohibition of torture and other ill-treatment of children, discuss the specificities of torture when inflicted on children, and the need for better protection against all forms of ill-treatment, including torture. The discussion also allowed to explore potential solutions, through the study of concrete examples of cases of children victims of torture and other ill-treatment.

Following this intensive training, coupled with continuous advocacy with the authorities, the CACIT has observed a major reduction of occurrences of violence, ill-treatment and torture of children placed in detention.



## CAPACITY BUILDING AND VISIBILITY // PAKISTAN INTERNATIONAL COOPERATION FOR THE PRODUCTION OF A MANUAL FOR JUDGES, PROSECUTORS AND INVESTIGATORS FOR BETTER ACCOUNTABILITY OF THE JUDICIAL SYSTEM

According to the Law and Justice Commission of Pakistan, there were 1,199 juvenile offenders and accused in prisons across Pakistan in 2018, of which 1,081 juveniles incarcerated awaiting or under trial and 118 convicted juvenile offenders. In almost all prisons, juvenile offenders were incarcerated with adult prisoners, exposing them to physical and psychological violence and intimidation, sexual abuse, rape, and other extreme forms of abuse.

Following the adoption of the *Juvenile Justice System Act* (2018) in Pakistan, several national and international stakeholders decided to produce a unique manual titled *Criminal justice matters involving children. Training Manual for judges, prosecutors and investigators*. This thorough manual is the basis of a three-fold instructional program specifically designed for judges, prosecutors and investigators, with three major components: international legal framework, domestic legal framework, and Standard Operational Procedures (SOPs) for pre-trial/trial/post-trial level.

Each thematic tackled (*inter alia*, age determination protocol, burden of proof, basic judicial guarantees, etc.) comprises activities and case studies from the Pakistani context. It also contains very useful check lists, including recommended techniques for interviewing children victims of abuse or in conflict with the law, in order to avoid secondary victimization of children in conflict with the law throughout the judicial process and foster a better child-sensitive approach within the judicial process.



## 4.5. STRATEGIC LITIGATION

By strategic litigation (or impact litigation), we mean the act of bringing a specific case to justice with the objective of significant changes in the law or practice, by carefully selecting cases, courts or jurisdictions. Strategic litigation aims therefore not only at the result of the specific case brought to court, but also at the broader and more structural changes that a decision on that case could bring. Strategically bringing a case of torture or other ill-treatment of children to justice may not only benefit these victims but may have a larger impact for other children at risk of being subjected to torture or other ill-treatment.

It is therefore important to carefully select the circumstances of the case and analyse its potential broader consequences on the issue of torture or other ill-treatment of children in detention, as well as its chances of success.

### STRATEGIC LITIGATION // URUGUAY STRATEGIC LITIGATION LEADS TO LANDMARK PROSECUTION OF PERPETRATORS OF TORTURE INFLECTED ON CHILDREN

After having documented and lodged complaints through the families of children deprived of liberty for numerous cases of torture, IELSUR made a note to the attorney general denouncing the delay of the justice system in processing the complaints and recalling the main principles and jurisprudence about protecting children deprived of liberty against torture.

The attorney general and the court of justice issued resolutions to never delay human rights cases in the courts. This conducted to the indictment of eight civil servants for abuse of authority against the children who had lodged the complaints.

Later on, a video recorded by the security system showing how public servants repressed children deprived of liberty was transferred to the media and broadcasted by some of the public servants who were also trade unionists. As a consequence, 26 civil servants were indicted for torture. It was the first time that the crime of torture was acknowledged in this context, as so far only authority abuse had been proved.



### SPAIN // STRATEGIC LITIGATION ILL-TREATMENT OF A MIGRANT CHILD IN SPAIN: A CASE LITIGATION LEADING TO A LANDMARK LEGAL DECISION ON ARTICLE 37 OF THE CRC FROM THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD\*

The case D.D. vs Spain is the first case concluding at the violation of article 37 of the UN CRC prohibiting torture and other ill-treatment of children. It was brought to the UN Committee on the Child by a group of NGOs and could have a broader impact on the treatment of unaccompanied minors in Spain and other States parties to the UN CRC.

D.D., a child citizen of Mali, was deported from Melilla to Morocco as an unaccompanied child in December 2014. Trying to cross the border to Spain, he was apprehended on Spanish territory by the Spanish military forces “Guardia Civil”, handcuffed, and immediately returned to Morocco, without any opportunity to object to his deportation or to claim protection as an unaccompanied minor. In addition, Spanish authorities neither asked about his age nor offered any legal assistance or contact with an interpreter or social worker.

D.D.’s case was brought by a group of NGOs before the UN Committee on the Rights of the Child through its new Individual Communications procedure in November 2015.

The CRC Committee concluded at the violations by Spain of articles 3, 20 and 37 of the UN Convention on the Rights of the Child, including for the lack of identification and evaluation of the child’s situation before deportation, failure to provide special protection to an unaccompanied minor, lack of initial assessment of the child’s best interest prior to the deportation. The overall circumstances of the child’s deportation, including him being detained and handcuffed without any legal and interpretative assistance, constituted treatment prohibited by Article 37 of the UN CRC. This communication constitutes the first individual case against the practice of “pushbacks”. i.e. the practice of coastguards and/or border control agents of immediately and forcibly removing people to another country at their entry on the territory without being able to exercise their rights and in particular their right to asylum.

This landmark decision should be the starting point for Spain and other States parties to the UN CRC to adopt the necessary legislative and administrative measures in compliance with international human rights standards, in order to protect the rights of migrant children crossing borders.

\* United Nations Committee on the Rights of the Child, D.D. v. Spain, CRC/C/80/D/4/2016. Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 4/2016.



As strategic litigation can be a very long process, especially if cases are brought to the regional or international levels – a step that is even more problematic when victims are children for whom long delays have a more harmful impact<sup>19</sup> - it can be important to use it together with other means of action. Necessary attention must also be paid to the full understanding of consequences for the victims and their families especially to manage expectations prior to considering any official submission of a complaint.

#### **4.6. DIRECT ASSISTANCE TO CHILDREN DEPRIVED OF LIBERTY**

Direct assistance, including legal, medical and/or psychological assistance, including intervention, risk reduction and preventing services, is one of the most efficient way to protect children from torture. These services take place at all stages of pre-detention and detention as they are delivered according to the individual situation of each child.

This can include prevention measures, such as legal assistance aimed at the release of the child from detention, resulting in avoiding exposing the child to the risk of torture and other ill-treatment for long periods of time, or when regular medical assistance helps prevent occurrences of torture. It can also aim at providing support for victims of torture and ill-treatment.

> Legal assistance consists of supporting with legal advice or directly representing in court children deprived of liberty. Most of the children detained or in conflict with the law come from low-income families, or do not have relatives around, and thus cannot afford a lawyer. Although free legal assistance should be provided by the State to ensure the basic judicial guarantees to a child in conflict with the law, when this is not the case, civil society organisations have been providing, in many countries, free legal assistance to children. In some cases, the CSOs can formally represent the children during hearings and act as his/her lawyer. In other cases, the legal services of the CSO get in touch with judicial authorities and advocate on individual situations of children. This can lead to decisions to use alternatives

to detention or diversion measures that channel children in conflict with the law away from formal judicial proceedings. This can also result in transfers of children to more appropriate facilities, as well as to their release. The children and their families can also receive general legal orientation from the CSO, enabling them to then take the necessary steps to defend themselves.

> Medical and psychosocial assistance is key to ensure access to medical care for children deprived of liberty as required in Article 24 of the CRC, especially when children have been subjected to physical torture or other forms of ill-treatment, to help them heal, and to avoid long-term consequences. This should also include psychological services, fundamental in the recovery of a child victim of torture, which causes long-lasting mental pain. Recovering from complex post-traumatic stress disorder, depression, anxiety and other problems caused by being subjected to torture, physical or psychological, requires a long-term investment from professionals. Psychological therapy, counselling, therapeutical activities and community mental health activities are some of the services that can help victims of torture and their families to heal. Individual or collective measures to support children and their families in the process of healing from the trauma of torture should continue after release.

### **DIRECT ASSISTANCE // THE PHILIPPINES PROVIDING COMPREHENSIVE SUPPORT TO CHILDREN DEPRIVED OF LIBERTY AND CHILDREN VICTIMS OF TORTURE**

The Children's Legal Rights and Development Center (CLRDC, Philippines) accompanies children deprived of liberty and their families during and after detention. They receive direct or indirect legal assistance to denounce abuses and torture, including representation in court and legal advice, including in cases of imprisonment without charge, expired sentences, detention for committing petty crimes, and recently, for alleged violations of anti-Covid 19 measures, etc. Visits to families of the children detained are also organised, while children who were victims of torture in detention and have been freed receive an orientation for a psychological evaluation.



19. The UN Committee on the Rights of the Child recommends that "the time between the commission of the offence and the conclusion of proceedings should be as short as possible", Committee on the Rights of the Child, Convention on the Rights of the Child. General comments. General Comment 24, CRC/C/GC/24, para 54.



## FAMILY MEDIATION // LAOS VILLAGE CHILD MEDIATION UNITS HELP DIVERT FROM DETENTION

The Children's Village Mediation Unit in Laos represents a good example in a rural context of diversion at the earliest possible stage and away from judicial proceedings, through a community-based intervention, ensuring that children are not "uprooted" to a justice system that is located far away.

Mediation practices, which are embedded within the traditions and cultures of Lao People's Democratic Republic (PDR), have been used in the country for centuries. In 1997, the Ministry of Justice of Lao PDR formalised these practices by establishing Village Mediation Units, backed up by the Ministry of Justice's Child Mediation Guidelines that outline specific steps for mediation involving children. By way of example, there is a requirement that children and their parents/guardians are present, that children have an opportunity to speak during the session and that the Village Child Mediation Units need to educate the child as well as mediate the dispute. Several potential outcomes for children in conflict with the law may arise at the end of the mediation process, including apologies, compensation and re-education by parents/guardians or social organisations.

Of the total number of children coming to the attention of the criminal justice system and Children's Village Mediation Units in the eight provinces where the project was implemented in 2002 and 2003, 90 per cent were diverted from coming to court, of whom the majority were diverted by the police using cautions and re-education.



### 4.7. FACILITATION OF DIALOGUE, FAMILY EXCHANGES AND MEDIATION

A child absolutely needs to keep in touch with family members, tutors or relatives to ensure his/her well-being and growth. Legally speaking, the right to keep contact with the family for children deprived of liberty is therefore enshrined in the United Nations Convention on the Rights of the Child (article 37). There are several activities that can support children reconnect and reinforce the relationship with their families while in prison.

One strategic avenue for establishing or maintaining contact with the family could be developed by facilitating the tracing, the contact and the visits to prison. In some instances, children in conflict with the law are also in conflict with their own families. As a result, it can be useful calling upon an association that plays a mediator role to re-establish communication between the family and the children during pre-detention, detention and/or after

release in order to work on rehabilitation, reintegration and potential redress. Likewise, supporting the organisation of family group conferences gives the opportunity for everyone, family and children alike, to be listened to. These are voluntary decision-making meetings to help families find their own solutions to empower the children and make a safe plan for them after release by drawing on the strengths and resources from the children themselves, their families, and their own networks.

### 4.8. TRANSVERSAL PRINCIPLES: DIALOGUE AMONG ACTORS AND PARTICIPATION OF CHILDREN

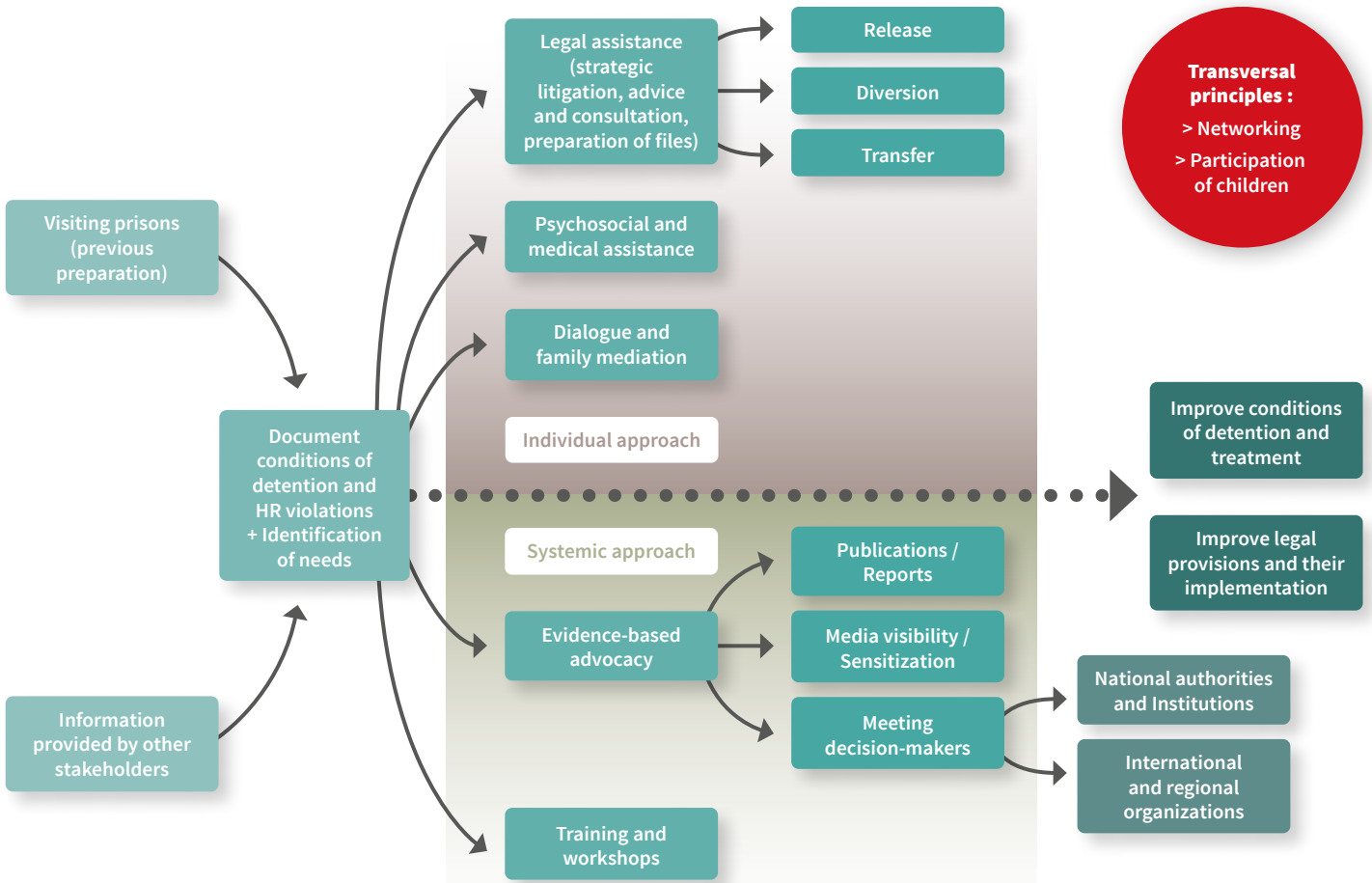
Another useful approach contributing to the prevention and protection of children from torture and other ill-treatment is to **facilitate the dialogue** between the different stakeholders of the juvenile justice system, and between them and civil society actors. Very often, the different professions of the juvenile justice system do not communicate enough among them. In other cases, decision-makers are too far from the concrete realities of children in detention. Organising spaces for dialogue allows the different participants to identify together the obstacles to the protection of children from torture, and to envisage jointly the structural changes needed to increase this protection.

The participation of children is also an important aspect which should be integrated, whenever possible, to working towards their protection against torture and ill-treatment. Direct interviews with children deprived of liberty are one of its most important illustrations. However, as indicated in the section above, interviews with children are very sensitive, should be approached through a specific methodology, always ensuring the respect of the "do no harm" principle, and always on a voluntary basis. The participation of children can also be organised after their release, when they are reintegrated in their families and communities, and they may feel safer. It is also crucial to listen to the children when providing them with legal assistance, including through explanations of the procedure.

All the presented tools and the transversal principles, when combined, lead to a holistic scheme of intervention for the prevention of torture of children in detention facilities.

# PREVENTION OF TORTURE OF CHILDREN IN DETENTION FACILITIES

Diagram of intervention



## 5. PROTECTING CHILDREN FROM TORTURE IN DETENTION

Protecting children from torture and other forms of ill-treatment in detention is the responsibility of States, including through the implementation and respect of the applicable international legal framework. However, the experience of the OMCT and its partners has demonstrated that actions developed by civil society organisations can contribute to the implementation by States of this legal framework, thus protecting children from torture. We will showcase here illustrations of good practices put in place by civil society organisations that have contributed to this protection, contributing to four main objectives: the need for States to establish a clear legal framework on the prohibition of torture; diminishing the number of children in detention; the protection and respect of children's rights in detention; and the fight against impunity for children victims of torture.

### 5.1. BUILDING AN EFFECTIVE LEGAL FRAMEWORK FOR THE PROHIBITION OF TORTURE AND THE PROMOTION OF CHILDREN'S RIGHTS

A national legal framework prohibiting torture and recognizing children's rights in compliance with international standards is key to ensure that every child is, at least legally, protected from torture and other forms of ill-treatment. It is therefore a fundamental pre-requisite to protect children from torture and other forms of ill-treatment in practice.

States that have ratified or acceded to the international treaties protecting children from torture have the legal obligation to respect and implement those provisions systematically and without any discrimination and should ensure that their national legal framework aligns with these international obligations. In particular, States should align their national definition of torture with international human rights law. Integrating key elements of international children's rights and juvenile justice standards, such as the legal definition of a child and, attached to that, of the minimum age

of criminal responsibility (MACR)<sup>20</sup> can lead to achieving a good administration of justice, whereby sentences are proportional to the alleged crime, in conjunction with basic principles of juvenile justice (i.e., using detention for children as a last resort, for the shortest time possible, and the possibility to challenge the legality of detention).

20. In the *General Comment n° 24 on the children's rights in juvenile justice* (2019, §30), the UN Committee on the rights of the child concluded that a minimum age of criminal responsibility (MACR) above the age of 14 years is considered to be internationally acceptable.

## ADVOCACY // BENIN COMBINING INTERNATIONAL AND NATIONAL FRAMEWORKS TO REACH COMPLIANCE WITH INTERNATIONAL STANDARDS

The situation of children deprived of liberty in Benin remains a challenging issue, in particular the fact that the quasi-totality of children in prison are in pre-trial detention for extended and excessive periods of time, sometimes for years. The pandemic triggered additional difficulties for NGOs and families to access places of detention, with detrimental psychological effects on children deprived of their liberty.

Following an intense advocacy work with the authorities, the OMCT and its partner ESAM contributed to the advancement of the legal framework, by advocating for the adoption of a new *Code of Criminal Procedure* (2013), as well as for the adoption of a *Children Act* (2015), including by submitting proposals for specific provisions. These laws provide a better protection of the detained children from torture by the inclusion of additional legal safeguards. Among those additional safeguards, the reduction of the length of preventive detention for children, the appointment of specific judges in charge of juvenile justice, and the mention in the law of the principle that children should be detained only as a last resort.

Linking national and international advocacy for more compliance between national and international legal frameworks for the protection of children, the OMCT and ESAM submitted to the UN Committee against Torture an alternative report ahead of Benin's review by the CAT in Geneva in April-May 2019. Thanks to this report and the participation of ESAM to the meeting between the CAT and NGOs, a large majority of the recommendations proposed by the joint OMCT/ESAM report were taken into consideration and included in the CAT's recommendations to the State.

To build on the encouraging results of its advocacy and to ensure the effective implementation of the recommendations made by the CAT, ESAM and the OMCT organised a national consultation gathering various key State authorities who work on the issue, as well as other human rights NGOs in Benin. Alongside these national consultations, advocacy meetings were organised with key institutional stakeholders.

Additionally, following the review of Benin by the CAT and its recommendations, combined with the advocacy efforts at national level, the minors' quarter of Cotonou prison was rehabilitated in the course of summer 2019, with the construction of additional latrines, to ensure an effective access to the right to water and sanitation in prison for children deprived of liberty. One more proof that legal provisions aligned with international standards are key for the prevention and the protection against torture.



## ADVOCACY // UN INSTITUTIONS

### TORTURE OF CHILDREN IN DETENTION: A CROSS-CUTTING ISSUE WITHIN THE UN SYSTEM OF HUMAN RIGHTS PROTECTION

In order to increase of the situation faced by children in detention facilities with regards to torture and ill-treatment, the OMCT decided to develop a specific advocacy strategy to ensure that the members of the United Nations Committee against Torture (CAT) to adopt a transversal approach regarding the protection of children deprived of liberty from torture. Thus, the regular submission by civil society and in particular the OMCT and its partners of alternative reports to the CAT on the issue of torture and other ill-treatment of children in detention encouraged the Committee to improve and deepen its understanding of the torture of children throughout the years. This was key in getting a prominent international body to pay increased consideration to the particularities of the torture of children.

To capitalize on this evolution, the OMCT organised a thematic briefing to CAT members in 2018 (session 63, April/May 2018), together with members of the Committee on the rights of the child focused on the issue of torture and other ill-treatment of children. The briefing aimed at paving the way for further cooperation between both UN committees, overcoming existing “silos” within the UN human rights mechanisms, and further engaging the CAT to scrutinize this under-documented phenomenon of children as victims of torture in detention settings. The debate was an opportunity to brief the Committee members on different aspects of the vulnerability of children to torture and inhuman and degrading treatment and to jointly explore key elements for an effective protection framework.



This compliance between domestic and international law is pivotal in terms of the protection of children deprived of their liberty against torture, as an avenue to foster political, legal and social environments more conducive to the effective respect of children from torture, in order to reduce the gap between principles and practices.

Civil society has a pivotal role in advocating for the ratification of international treaties, and in particular of the UN Convention against Torture, yet to be ratified by a number of States, but also for their integration into domestic law. As the UN Convention on the Rights of the Child, ratified by all States around the world but one<sup>21</sup>, contains a specific prohibition of torture and other cruel, inhuman, and degrading treatment or punishment against children, civil society from States that are not party to the UN CAT should use the UN CRC to hold their authorities accountable for the implementation of this obligation, in law and in practice.

21. As of 2021, the United States of America is the only UN State party not to have ratified the UN Convention on the Rights of the Child.

However, international legal standards protecting children from torture are yet to be known by a large majority of institutional stakeholders, especially law enforcement agencies, the judiciary and, more broadly, professionals in charge of the administration of justice, institutions such as national human rights institutions, national preventive mechanisms, ombudsmen, as well as civil society organisations, beyond anti-torture and child protection NGOs.

Additionally, and despite a strong international legal framework protecting children from torture, even international human rights mechanisms sometimes lack a specific focus on the issue: children's rights mechanisms and institutions, which deal with a wide range of rights, sometimes lack the specific knowledge related to the fight against torture; similarly, anti-torture mechanisms often lack a child-rights perspective, and may not consider the specific realities of torture of children, leading to a lack of recommendations focused on the prohibition of torture of children. From this perspective, raising awareness of the realities and the legal and practical specificities of torture and other ill-treatment of children at the international level is one of the strategic paths to enhance better implementation of fundamental rights of children at the national level and foster more accountability.

#### 5.2. RADICALLY REDUCING THE NUMBER OF CHILDREN DEPRIVED OF LIBERTY IN THE ADMINISTRATION OF JUSTICE

The detention of children has been considered to be inextricably linked – in fact if not in law – with their ill-treatment<sup>22</sup>. Children in detention are at heightened risk of being subjected to torture or other ill-treatment; in addition, the deprivation of liberty in itself may entail or constitute a form of violence, ill-treatment or torture. This is why it is crucial for States to ensure that children are only deprived of liberty as a last resort, as prescribed by international law<sup>23</sup> and to follow the recommendation of the United Nations Global Study to

22. Mendez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez”. Para. 69

23. United Nations, UN Convention on the Rights of the Child. Art. 37

radically reduce the number of children deprived of liberty in the administration of justice. By implementing several provisions, measures and pathways prescribed by international standards, the detention of children can be reduced to maintain the number of those detained to a minimum<sup>24</sup>. This will prevent children from being exposed and subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment.

### 5.2.1. PROTECTING VS OVER-CRIMINALISING CHILDREN

While international laws prohibits discrimination targeting children, regardless of their situation<sup>25</sup>, as well as the use of status offences<sup>26</sup> (working on the street, begging, using the public spaces for sleeping or truancy, including absence from school, vagrancy, homelessness, rubbish collection or gambling...), in practice, tough-on-crimes policies, including for children, lead to the implementation of punitive and retributive approaches, where criminalisation takes precedence over the rehabilitative and protective approach that should define a juvenile justice system. This leads to an increased number of children being detained, sometimes for petty crimes or for status offences, which disproportionately stigmatizes, victimizes, and criminalizes children and juveniles. Detention for status offences is less likely to be recorded and children experience higher risks of being denied their rights and becoming victims of torture or other ill-treatment.

The overwhelming majority of children targeted by these policies originate from low-income families or are street children. Children from socially and economically disadvantaged backgrounds often cumulate sets of vulnerabilities that could, in many instances, trigger discriminatory practices leading to the criminalization of poverty, and are overrepresented in detention.

24. Nowak, "UN Global Study on Children Deprived of Liberty". Page 250

25. "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." United Nations, UN Convention on the Rights of the Child. Art. 2

26. "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person." United Nations, A/RES/45/112. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). Art. 56

These policies are also accompanied by a widespread negative public opinion about children who commit a crime. They are only perceived as a danger instead of also being viewed as potential victims of a judicial system that is, most often, not a child-sensitive one.

This increased criminalization of children should be replaced by the reinforcement of child protection and welfare systems<sup>27</sup>, and by establishing juvenile justice systems and laws adapted to the specific status of children.

### LEGAL ADVICE AND ADVOCACY // NEPAL LEGAL ADVICE TO THE POLICE LEADS TO THE RELEASE OF CHILDREN ACCUSED OF PETTY CRIMES

Legal assistance can be an effective tool to reduce the detention of children arrested and detained for minor crimes. In Nepal, the organisation Advocacy Forum Nepal provides legal assistance to children arrested for petty crimes, as well as legal advice to the police, which leads to the release of children arrested for petty crimes in the custody of their parents.

Advocacy Forum Nepal has developed a constructive relationship with some police stations, which sometimes request legal advice on the children's cases from the lawyers of the NGO, as well as legal books to better handle cases.



### 5.2.2. ESTABLISHING A SPECIALISED JUVENILE JUSTICE SYSTEM

In the context of the administration of justice, children are fundamentally different from adults, both in terms of their level of responsibility and potential for rehabilitation and reintegration into society. They should never be treated as adults. Therefore, **in international human rights law**, article 40 of the UN CRC prescribes that States should seek to establish laws, procedures, authorities and institutions specifically applicable to children, and that they have as a primary goal, in addition to maintaining public safety, the reintegration of children into the community.

27. Nowak, "UN Global Study on Children Deprived of Liberty". Chapter 14 - Children deprived of liberty on national security grounds



States should therefore establish child-appropriate legal proceedings, specific juvenile courts with specialised judges; structures and mechanisms offering free legal aid to all children regardless of age and family income; clear guidelines as to age determination; effective procedural safeguards; and adequate, accessible and high-quality diversion and non-custodial solutions at all stages of the proceedings towards their rehabilitation, reintegration and aftercare.

Not every country has done so, and juvenile justice systems are rather the exception<sup>28</sup>.

Judging children through adult criminal justice systems that lack the procedural safeguards required for children exposes them to a range of sentences and disciplinary punishments aimed specifically at adults, without any rehabilitative component<sup>29</sup>.

28. Nowak. Chapter 9, Children deprived of Liberty in the administration of justice, chapter 4. Pathways to deprivation of Liberty.

29. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 8

## DOCUMENTATION // PAKISTAN APPLIED RESEARCH WORK AND INFOGRAPHICS ON CHILD COURTS

Following an agreement between the National Judicial Policy Making Committee and GDP (Group Development Pakistan), the latter decided to proceed to the collection of data and the documentation of evidence in order to shed light on the best practices as well as on some areas of improvement with regards to the performance of child courts and juvenile justice system in Pakistan. This applied research is resorting to infographics in order to better highlight the issues documented.

This work proved to be incremental for the Pakistani judiciary insofar as the data and the evidence collected strengthened the judiciary's efforts to mobilize additional human resources for child courts and to scale up the establishment of additional child courts in the provinces. It also widened the scope of access to information regarding legal reforms related to children and juveniles. Furthermore, it aims at developing the practice of accountability towards the general public as far as child justice is concerned.



## RESEARCH AND CAPACITY BUILDING // GLOBAL A TRAINING MANUAL ON "JUSTICE FOR CHILDREN"

UK Aid and Penal Reform International published in 2013 "*Protecting Children's Rights in Criminal Justice Systems: A training manual and reference point for professionals and policymakers*", which is based on the concept of "justice for children".

This manual on protecting children in criminal justice systems covers the first two tenets of the justice for children concept: children in conflict with the law and child victims and witnesses. It comprises a variety of topics and issues, including child protection, crime prevention, law enforcement, trial procedures, sentencing and rehabilitation. These are key areas of social policy, dealing with a growing number of vulnerable children who are often marginalized from society. The training module is intended for those professionals and stakeholders who have a training component to their jobs, using experience-based training methodology.

Based on international and regional standards, this Manual provides a practical approach to addressing issues that arise for children in criminal justice systems, which is illustrated by examples of good practice from other countries. It has ten chapters and a training module, comprising the following topics: principles of justice for children, children at risk, arrest, diversion, victims and witnesses, trial and sentencing, detention, independent monitoring mechanisms and reintegration.



## RESEARCH // GLOBAL SETTING MINIMUM AGES

In order to encourage the adoption of a more progressive approach to the minimum age of criminal responsibility (MACR) in international standards, i.e. going beyond the minimum age of 12 years old that the UN Committee on the Rights of the Child used to recommend, the Child Rights International Network (CRIN) produced a comprehensive policy paper on the issue of criminal age determination, drawing out some general principles and criteria to ensure consistent and adequate respect for children's rights in setting such ages. This discussion paper, which acknowledges the complexities involved in determining issues of capacity, is based on the analysis of relevant positive developments in State laws and policies, as well as case law and case studies.

A joint and long-term advocacy from the children's right community led to tangible progress both at international and national level: 1. the development and improvement of international standards, and in particular the new General Comment of the UN Committee on the Rights of the Child adopted in September 2019 encouraging States to set their minimum age of criminal responsibility at 14 years old. 2. At national level, around 20 States raised their minimum ages of criminal responsibility since 2010; 3. The development of joint campaigns gathering international and national civil society to push back on lowering minimum ages.



CRIN  
CHILD RIGHTS  
INTERNATIONAL  
NETWORK

## ADVOCACY//THE PHILIPPINES SUCCESSFUL PUSH BACK AGAINST THE LOWERING OF THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

In the Philippines, impunity following acts of torture prevails, despite the adoption of the *Anti-Torture Act*, 2009 (R.A. 9745). Persons deprived of their freedom, including children and juveniles, do not enjoy all the fundamental legal safeguards from the very outset of their deprivation of liberty, in particular after arrest by police, and registers are not kept at all stages of detention. Arbitrary arrests without warrants, including of children, as well as arbitrary detentions are widespread. Long periods of pre-trial detention negatively impact the harsh conditions of detention and treatment and are a strong trigger for overcrowding.

Several attempts to lower the Minimum Age of Criminal Responsibility from 15 to 12 or even 9-year-old have taken place over the past years. The Children Legal Rights and Development Center (CLRDC) has been carrying on a continuous advocacy work to prevent the adoption of the Bills calling for lowering the minimum age below 15. They published policy papers explaining the consequences that lowering the MAACR would have on children, including exposing them to an increased risk of torture, but also demonstrating why detaining children from a younger age does not contribute to decreasing the commission of offences. They also sent letters to all members of the Parliament and the Senate, calling them to keep the MACR at 15 years old and met and discussed with MPs opposed to the change. The issue was also included in the joint alternative report the OMCT and the CLRDC submitted to the UN CAT to alert the Committee on these attempts and the risks they carried. Finally, the CLRDC published press notes and took public positions with other children's rights NGOs. Thanks to this work, the CLRDC and its partners have already managed to repeatedly stop the adoption of similar bills in the Congress.

Various levels of national and international advocacy and campaigning can thus prove efficient to ensure that legislation in line with international standards is adopted, and to prevent the adoption of provisions going against these standards.



OMCT  
Réseau SOS-Torture

## 5.2.3. SETTING A MINIMUM AGE OF CRIMINAL RESPONSIBILITY (MACR) IN LINE WITH INTERNATIONAL STANDARDS

**International standards**, and in particular article 40 of the CRC, require States to establish a minimum age of criminal responsibility to take into account the child's specific mental capacity and maturity. Based on the latest scientific findings, the Committee on the Rights of the Child encourages States parties to increase their minimum age accordingly, to at least 14 years of age<sup>30</sup>.

**In practice**, States resort to a wide range of minimum ages of criminal responsibility, from a very low 7 or 8 years to 14 or 16 years. Quite a few States parties use two different minimum ages of criminal responsibility, with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated<sup>31</sup>. Some others automatically process individuals of any age through the adult criminal justice system for serious offenses. In such cases, the specific needs of children, deriving from their physical and emotional development, are not taken into account when reaching a decision on sentences<sup>32</sup>.

The Committee on the Rights of the Child also explicitly indicates that, in the absence of the proof of the age of the child and the impossibility to know if she/he has reached the minimum age of criminal responsibility, the child should be considered criminally irresponsible. In this context, the importance of child registration (Article 7, CRC) should be underlined, including for children from minorities and indigenous groups, who are particularly vulnerable to non-registration and face specific barriers to registration<sup>33</sup>.

30. Committee on the Rights of the Child, Convention on the Rights of the Child. General comments. CRC/C/CG/24, General Comment n°24 (2019) on children's rights in the justice system. Para. 22

31. Committee on the Rights of the Child. Ibid, para. 25

32. Some countries retain the use of *doli incapax*, where it must be proved that children within a certain age bracket above the minimum age of criminal responsibility have the required maturity to be deemed criminal responsible. Given widespread misuse of the legal principle of *doli incapax*, States should revoke this principle in favor of a fixed minimum age of criminal responsibility no lower than 14, according to GC 24 (2019) on juvenile justice.

33. Contribution of Minority Rights Group International (MRG) to the OHCHR report on best practices on birth registration, particularly for those children most at risk, October 2017

Encouraging States, through different avenues, including direct advocacy, to dialogue with ministries or lawmakers, has proved efficient to establish minimum ages of criminal responsibility in line with international standards.

#### 5.2.4. ENDING ARBITRARY DETENTION

Arresting and depriving of liberty a child outside of the confines of international standards is considered arbitrary detention and is prohibited under article 37 b) of the UN CRC. Article 37d) also prescribes that children have 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.

Every detention of a child without legal grounds, every delay in the delivery of a detained child to the proper judicial authorities, every delay on the release of a child, or detention without trial, is detrimental to the physical and psychological well-being of a child and exposes children to a high risk of torture and other ill-treatment. There should also always be a systematic record in logbooks of children entering in pre-detention or detention facilities.

In practice, tough-on-crime and anti-terrorist policies lead to a significant raise in the number of children arbitrarily deprived of liberty. In some countries, children are detained without trial.

#### VISIBILITY // MALAYSIA THE IMPACT OF MAKING A'S CASE VIRAL

In Malaysia, detention without trial has a long history. If the *Internal Security Act 1960* and the *Emergency (Public Order and Crime Prevention) Ordinance 1969* were abolished, more recent but equally draconian laws such as the *Security Offences (Special Measures) Act 2012*, the *Prevention of Terrorism Act 2015*, and the *National Security Council Act 2015* allow to easily conduct arrest without trial, including of children. It is common for law enforcement agencies, such as the Royal Malaysian Police, to resort to detention without trial.

A. had been arrested without charge and handled by the police under the national security law. Because police failed to get evidence to keep the child in jail, they released him and ordered a different policeman to arrest him again. Both policemen tortured him to obtain confessions.

The NGO Suaram Rakyat Malaysia made public A's case, which is actually similar to those of many Malaysian children from low-income families, although the government does not provide statistical data on the detention of children without trial. It became a widely known issue. The viral character of A's case led to a question in Parliament to provide statistical data and to make the public commitment that there would be no more juveniles enduring this type of situation. A massive release took place, the numbers decreased to 12 cases and the government established a new home arrest system.



#### LISTENING TO CHILDREN. ADVOCACY // THE PHILIPPINES DISCOVERY OF SECRET DETENTION PLACES

Listening to children should be at the heart of any civil society action aimed at improving their protection against torture and other ill-treatment. In addition, children are the only ones that know their daily life realities and can share with civil society information on their treatment and conditions.

In the Philippines, during interviews with children during monitoring visits, civil society learnt that children detained had first been held incommunicado and tortured during interrogation. One child interviewed in 2016 described his cell as “totally dark, the size of a refrigerator, and heavily locked with steel bars”.

In 2016, the OMCT and the CLRDC submitted an alternative report to the Committee against Torture denouncing, among others, the use of secret detention for children and subjecting them to torture. As a result, the Committee against Torture called on the authorities to immediately close all secret places of detention and to ensure the application of the Anti-Torture Act that prohibits “secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity” (CAT/C/PHL/CO/3).



### 5.2.5. PROMOTING DIVERSION AND NON-CUSTODIAL MEASURES

Because children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment, and that even very short periods of detention can undermine a child's psychological and physical well-being and compromise their cognitive development<sup>34</sup>, children should be detained only as a last resort, and States should put in place processes diverting the case outside the judicial system (diversion), as well as a range of non-custodial measures to avoid sentencing children to incarceration<sup>35</sup>.

In practice, processing cases through the justice system and resorting to detention are still the main answers to children coming in contact with the law.

Diversion consists in channeling children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue, like youth courts or mental health courts<sup>36</sup>. Sometimes diversion also includes intervention programmes addressing issues that led to the commission of the offence, such as prevention programmes and mentoring. The objectives are learning about the circumstances surrounding the offense and preventing future criminal behavior.

When children admit offences and freely volunteer to participate in a diversion process, taking them away from the formal criminal justice system can entail many benefits, such as reduced rates of re-offending, avoiding the labelling of children or encouraging reparation to communities<sup>37</sup>. Diversion processes are also often much cheaper than court proceedings and detention<sup>38</sup>. Diversion should not be confined to first time offenders or to minor offences but should be widely used with children. The police, as well as the judiciary, should have the power to divert children immediately after the first contact and up to the first court hearing. Diversion measures

34. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 4

35. United Nations, UN Convention on the Rights of the Child. Art. 40

36. UNICEF East Asia and the Pacific Regional Office (EAPRO), "Diversion Not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific".

37. UNICEF East Asia and the Pacific Regional Office (EAPRO).

38. Zarkin et al., "Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders From State Prison".

### STRATEGIC LITIGATION // ARGENTINA WHEN JUDGES ENGAGE IN IMPLEMENTING ALTERNATIVES TO PRISON

In 2013, following a violent conflict between children deprived of liberty in Mendoza and the prison wardens in charge of them, security measures were hardened. The NGO Xumek collected information from the children, the families and other organisations to lead a collective litigation. This took the form of an habeas corpus, that is a recourse in law through which they reported the worsening of the detention conditions. The Supreme Court of Mendoza took concrete measures to improve the facilities and train the prison officials, but the litigation also led to structural changes.

Among these changes, the Supreme Court of Mendoza ordered the training of a team specialized in non-custodial measures and set up a Unit for Alternative Measures in the administration of justice. Ever since, a specialized team for admissions cooperates with the judges to apply detention only as a measure of last resort. They rather apply alternative measures to imprisonment, such as practicing a sport, psychological support, treatment for drug consumption, or house arrest. As a result, the number of children in detention has lowered from 600 to 75 a year on average.



### DIRECT ASSISTANCE // THE PHILIPPINES LITIGATION LEADING TO DIVERSION MEASURES

The Children's Legal Rights and Development Center (CLRDC) assists children deprived of liberty with legal advice. Thanks to their intervention, children can benefit from diversion measures, alternatives to detention, or be released. In 2020, 35 children who had been detained for allegedly not respecting the curfew in the context of the Covid-19 pandemic were released.

Through the provision of legal assistance and representation of children before the court, the CLRDC developed a constructive relationship with the judiciary, demonstrating the added value of diversion or alternatives to sentences for many of the children represented. Judges then started to refer the children sentenced to alternatives to detention to NGO-run rehabilitation centres.

This combination of legal assistance and the building of a constructive dialogue with the authorities can be very efficient to ensure that children benefit from an appropriate judicial process and receive sentences that are adapted to their age and situation.



should be community-based; where appropriate, make use of restorative processes; and be gender-sensitive.

Restorative justice is a powerful way for children to avoid the formal justice system and protect them from the possibility of being tortured once they are in custodial places or prisons. It aims at repairing the harm through the discussion between both parties in view of transforming people, relationships and communities. Restorative justice interventions may include real or financial restitutions, written or in-person apologies, peacemaking circles, conferencing, former prison assistance and involvement, etc.

Finally, non-custodial solutions will consist of alternatives to imprisonment, such as community service, fines, probation, warnings and reprimands, conditional discharge, etc., and considerably reduce the risk for children to be exposed and subjected to torture or other ill-treatment compared to incarceration. Research also shows<sup>39</sup> that non-custodial sentences are more effective at preventing re-offending than short prison terms and much less costly than prison sentences.

39. UNICEF East Asia and the Pacific Regional Office (EAPRO), "Diversion Not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific".

## UNITED STATES // RESEARCH - USEFUL RESOURCE VERA'S STATUS OFFENSE REFORM CENTER (SORC)

Since the early 2000's, Vera's Status Offense Reform Center (SORC) has been an important resource for policymakers and practitioners across the United States to rethink their policies, practices, and programmes for children and young people and offer family-focused, community-based support outside of the juvenile justice system. SORC's work could be a useful resource for NGOs and stakeholders working on diversion and non-custodial measures.

SORC aims at supporting jurisdictions in the elimination of the use of justice-based responses to status offenses and at repositioning families, communities, and other child-serving systems to further provide young people with the additional guidance and support they need in the United States. SORC's support was developed in particular in Colorado, Georgia, Hawaii, Louisiana, New York, Washington State, and Wisconsin.

SORC offers three primary types of support: 1/Resources and tools, with the development of a narrative explaining why punitive responses to these types of behaviors are not effective and sharing knowledge about promising practices and research to support further community-based approaches; 2/On-the-ground assistance, especially through supports to children and families, and 3/ Research and analytic support.



STATUS REFORM  
OFFENSE CENTER



## 5.2.6. PROHIBITING INHUMAN SENTENCING

The standards of responsibility applied to children must be different from those used for adults. This is specifically true regarding inhuman sentences, which can never be imposed on children. International human rights law, and in particular the UN CRC in its article 37, prohibits both the imposition of the death penalty on a child under 18 years old at the moment of the commission of the crime and their sentencing to life imprisonment without any opportunity for release.

Imposing the death penalty on children has been consistently denounced by UN human rights mechanisms, and in particular UN Treaty Bodies and Special Procedures, as well as by regional human rights mechanisms, as a violation of human rights. It is also considered to amount to a violation of the prohibition of torture and other ill-treatment<sup>40</sup>. However, in practice, some States still impose the capital punishment on children<sup>41</sup>.

The Special Rapporteur on torture and other cruel, inhuman et degrading treatment or punishment states that the imposition of life sentences without the possibility of release or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment<sup>42</sup>.

The Committee on the Rights of the Child and the Human Rights Committee confirmed that life imprisonment without the possibility of release is never an appropriate punishment for an offence committed by a juvenile offender<sup>43</sup>. The vast majority of States have taken note of the international human rights requirements regarding the life imprisonment of children

40. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 15

41. According to the Child Rights Information Network, children can be sentenced to death in 12 countries around the world: Brunei Darussalam, Iran, Malaysia, Maldives, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, the United Arab Emirates, and Yemen. Minority Rights Group International, "OHCHR report on best practices on birth registration, particularly for those children most at risk Contribution of Minority Rights Group International (MRG)".

42. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 15

43. Human Rights Committee, CCPR/C/112/D/1968/2010 - International Covenant on Civil and Political Rights. Paras. 7.7 and 7.11, and Inter-American Commission on Human Rights, "Juvenile Justice and Human Rights in the Americas: Rapporteurship on the Rights of the Child". Para. 364

## CRIN RESEARCH // GLOBAL CHILD RIGHTS INTERNATIONAL NETWORK: CAMPAIGN AGAINST INHUMAN SENTENCING

Despite international condemnation, children can be sentenced to death, life imprisonment, and corporal punishment in countries around the world. Children can be sentenced to death in a dozen of countries by lethal injection, hanging, shooting or stoning. In some countries, children as young as seven can be sentenced to life imprisonment. In more than 30 States, "justice" systems allow for corporal punishment of children including whipping, flogging, caning or amputation.

Together with partners, CRIN campaigns to end these human rights violations. One key element of the campaign is "naming and shaming" States that continue to subject children to inhuman sentencing. CRIN has developed detailed country reports on these States. The NGO also submits evidence to the UN about countries that continue such practices and offers advice to others who wish to end them, while supporting national campaigns. In addition to country reports, CRIN issues regional reports that analyse inhuman sentencing laws and practices across countries and legal systems, as well as reports about specific types of inhuman sentences. CRIN has used this research in support of legal challenges against the legality of inhuman sentencing of children in several jurisdictions, made complaints through UN Special Procedures in individual cases and built a case law database addressing the issue of inhuman sentencing of children that lawyers, children's rights activists and others can use as a free resource, including details of court cases.



CRIN CHILD RIGHTS INTERNATIONAL NETWORK

without the possibility of release. However, life sentences, with remain legal in 68 States in Africa, Asia, the Caribbean, and Oceania. In the 110 States and territories which have no life sentence for children, the maximum sentence ranges from 3 to 50 years<sup>44</sup>.

Beyond the death penalty and the imposition of life imprisonment, mandatory sentences have also been considered as incompatible with States' obligations regarding the prohibition of cruel, inhuman and degrading treatment, as they may result in disproportionate punishment, and do not comply with the rehabilitative objective of juvenile justice sentences<sup>45</sup>.

44. Nowak, "UN Global Study on Children Deprived of Liberty". Page 290

45. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 16

## 5.2.7. DETAINING CHILDREN FOR THE SHORTEST PERIOD OF TIME

As prescribed by article 37 of the UN CRC, the imprisonment of children should be a last resort measure. However, if under the particular circumstances of a case, detention is unavoidable, the principle of detention for the shortest appropriate period of time should apply. Compared to adults, “*children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems*”. Even very short periods of detention can undermine a child’s psychological and physical well-being and compromise cognitive development<sup>46</sup>.

However, in practice, in many countries, children continue to spend extensive periods of time in detention, especially in pre-trial detention. Measures to ensure the reduction of pre-trial detention and detention to the minimum duration necessary are therefore compelling, and should include: Minimal use of pre-trial detention in police custody. Those are instances where children are most at risk of being subjected to torture and other ill-treatment, including during interrogation, to extract confessions or as disciplinary measures. The legal requirement ensuring that the child be brought to court before the expiry of 24 hours<sup>47</sup> should be strictly applied, so that the legality of the detention can be confirmed and options for release or diversion be considered. The notification of the family and access to a lawyer and a health professional at the early stages of the custody can help reduce the risk of being subjected to torture. Limit to 30 days the duration for a child to be held without formal charges being laid and make sure that a final decision on the charges is made within six months from the initial date of detention, failing which the child should be released<sup>48</sup>. Limit the duration of pre-trial detention pursuant to what is described by law and organise a regular review of the pre-trial detention<sup>49</sup>. Make early-release programmes widely available.

46. Mendez. Para. 4

47. Committee on the Rights of the Child, Convention on the Rights of the Child. General comments. Comment 24. Para. 90

48. Committee on the Rights of the Child. Ibid

49. Committee on the Rights of the Child. Para. 14 and 15.

### RESEARCH AND ADVOCACY // MEXICO THE IMPLEMENTATION OF A CHILD-SENSITIVE PRE-TRIAL UNIT IN MEXICO CITY

In 2013, on a daily basis, there were roughly 250 children and teens in the pretrial Mexico City juvenile detention centre, designed for 160 children. That same year, to mitigate the problem, the NGO Juvenile Justice Advocates presented a study recommending that authorities set up a “Pretrial Services Unit”, following a working session with the Superior Court of Justice in Mexico City. This child-sensitive Pre-trial Unit became operational in the course of 2016 and was backed by the adoption of a new law providing that juveniles no longer have to wait up to a month for a bail hearing but are guaranteed this hearing within two days following arrest. As a result, hundreds of children will never spend a single day in detention and hundreds more will be released at their bail hearing. These children will thus avoid detention and have a chance of a better future.



### ADVOCACY // TOGO EARLY RELEASE FOLLOWING THE COVID-19 PANDEMIC

Owing to the human consequences of the Covid-19 pandemic on prisoners, including on children in conflict with the law, the Togolese NGO CACIT led from March 2020 onwards a series of regular meetings with the Togolese authorities, in particular with the Ministry of Justice, the Directorate of the Penitentiary Administration and Reintegration, and the Directorate for Criminal Affairs and Pardon. The objective of these advocacy meetings was to discuss the situation of prisoners that were particularly affected by the pandemic on various issues, such as the detention conditions, access to health and food, access to legal counsel, maintaining family links, and the severe physical and psychological consequences of the pandemic, in particular for children detained. As a result of CACIT’s intense advocacy work, 17 children were released in May 2020.



The Covid-19 pandemic has led some countries to arbitrarily extend the deprivation of liberty of children by imposing quarantines before sending them to prison<sup>50</sup>. Worse still, during that time, in some countries, neither families nor lawyers were/are allowed to visit the children. In the course of 2020, roughly 20 countries were known to have released children from detention facilities in efforts to limit the impact of Covid-19. A global survey found that, by comparison, adult detainees were released in at least 79 countries in response to the pandemic<sup>51</sup>.

### 5.3. PREVENTING ALL FORMS OF ILL-TREATMENT OF CHILDREN IN DETENTION

Although deprivation of liberty should be a last resort, the UN Global Study on Children Deprived of Liberty estimates that around 410 000 children at a minimum are deprived of liberty in the context of the administration of justice, where they are at heightened risk of being subjected to torture and other ill-treatment. In situations where detention is unavoidable, children should be granted specific protection from all forms of torture and all other ill-treatment. This includes the protection from any forms of violence and corporal punishment, but also all other aspects of detention that can lead to or amount to torture or other ill-treatment. Article 37 of the CRC explicitly prescribes that “*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*”. Appropriate standards of protection against any form of torture or other ill-treatment, without discrimination, must therefore be applied. This section provides illustrations of good practices that civil society groups have put in place, leading States to respect their obligations to children in detention.

### 5.3.1. ENDING ALL VIOLENCE AND CORPORAL PUNISHMENT AT ALL STAGES OF DETENTION

In law, Article 37 of the UN CRC, article 7 of ICCPR, and the UN CAT, among other international standards, strictly prohibit torture and other cruel, inhuman or degrading treatment or punishment of children. Article 19 of the CRC also prohibits all forms of violence and abuse, physical or mental, inflicted on children. Children deprived of liberty are thus entitled to protection from all forms of violence including torture and other forms of ill-treatment during all stages of their detention, at the stage of arrest, in custody, in pre-trial detention, and during incarceration. Specific measures of protection, adapted to the vulnerability of children, therefore apply.

#### BRAZIL // VISITS TO PRISONS, ADVOCACY AND VISIBILITY DENOUNCING CASES OF TORTURE LEADS TO INVESTIGATIONS BY AUTHORITIES

In Brazil, the practice of torture and other ill-treatment against children deprived of their liberty is widespread. In the past six years, at least 50 children were killed while serving a sentence only in the State of Pernambuco.

To prevent and protect children in detention from suffering torture and other ill-treatment, GAJOP regularly conducts prison monitoring visits in the State of Pernambuco. During a visit in December 2020, GAJOP observed several cases of torture inflicted on children. In particular, GAJOP discovered a pattern by guardians inflicting physical abuse on children, including those who had recently arrived or who were threatening to speak about the abuse. It has also been demonstrated that these acts are carried out not only with the knowledge but with the encouragement of the leadership of the “socio-educational center”. In December 2020, as a result of this abuse, several children had to be brought to hospital. A report documenting all the information collected, analyzing the pattern, and denouncing the abuse was sent to several state authorities, including the Public Prosecutor, the judicial authorities, the national preventive mechanisms, or the childhood and adolescents state council. The report was also shared with the media and was the subject of several news articles. As a result of GAJOP’s efforts, the Public Prosecutor started an investigation into the center concerned.



50. UNODC Technical Assistance Services, “Protecting Children Deprived of Liberty During the Covid-19 Outbreak”.

51. Human Rights Watch, “Detained Children Left Out of Covid-19 Response”.

For instance, the recourse to force or use of restraints should be prohibited, except in exceptional instances, when the child poses an imminent threat of injury to himself/herself or others, for a limited period of time and only when all other means of control have been exhausted<sup>52</sup>. Restraints should never serve as punishment or discipline.

However, in practice, at the moment of arrest, and regardless of the context (arrest in the street on the basis of the alleged commission of status offenses, arrest due to the participation in demonstrations, etc...), children are very often the target of excessive use of force. Moreover, children are more vulnerable to torture and coercion while being in custody, in particular during interrogation sessions, including to extract a confession, or by way of disciplinary measures. Torture and other ill-treatment are also made easier when children do not benefit from legal representation and when the interrogation takes place without the presence of a lawyer or of a family member. This is why parents should be notified of the arrest of their child and why children should have access to a lawyer as well as to a medical doctor at the stage of custody.

During pre-trial detention or incarceration, children can also be submitted to torture and ill-treatment in various ways, such as physical coercion, forced sexual intercourse with adults, harsh conditions of detention most often including overcrowding, peer violence due to lack of supervision from prison staff, among others. During arrest or transfer, many custodial settings and penitentiary systems apply restraints to children, for various periods of time, for them to “learn a lesson”<sup>53</sup>.

Advocacy with national authorities and capacity building of prison staff have proved key in raising awareness about the prohibition of torture and other ill-treatment of children, their damaging effects, and ultimately in decreasing occurrences of violence.

## CAPACITY BUILDING // BENIN FOSTERING COLLABORATION BETWEEN JUDGES AND LAW ENFORCEMENT

In the framework of a partnership between the OMCT and ESAM-Benin, and with the objective of raising awareness and reducing cases of ill-treatment of children in detention, a two-day workshop was organised in the city of Ouidah (Benin) in December 2016, gathering stakeholders from various professions involved in juvenile justice or in contact with children in conflict with the law. This included magistrates specifically dealing with children and juveniles in conflict with the law, police officers and other law enforcement agencies (*gendarmerie*). The general aim of the workshop was to foster a better environment for constructive exchanges between magistrates and police officers on their own constraints in addressing the situation of children in custodial or detention settings, which was a first. This workshop focused on strengthening the knowledge of all participants on international norms applicable to the protection of children in detention (child-rights based approach). Exchanges of best practices and challenges allowed an inter-disciplinary discussion, clarifying the role and duties of the participants in relation to the reduction of pre-trial detention of children. The excessive resort to restraints (especially of shackles) was one of the topics thoroughly discussed. This workshop also paved the way for further collaboration among the participants to better tackle the issue of protection of children detained from torture and ill-treatment, based on the recommendations made by the United Nations Sub-Committee against Torture.

This pivotal workshop was followed by other types of training organised with other stakeholders in other cities (Natitingou and Parakou) during 2017. Besides representatives of the judiciary, these trainings brought together law enforcement agencies, prison officers, journalists, and religious representatives, as well as municipalities. The participation of municipalities in the trainings led to an improvement in budgeting for child protection. Progressively, during the implementation of the project, OMCT and ESAM noticed a decrease in the resort to violence against children in detention.



52. United Nations, The United Nations Standard Minimum Rules for the Treatment of Prisoners - The Nelson Mandela Rules. Rules 43, 47 to 49

53. Committee on the Rights of the Child, CRC/C/BRA/CO/2-4. Concluding observations on the combined second to fourth periodic reports of Brazil.



### 5.3.2. NO SOLITARY CONFINEMENT

Solitary confinement corresponds to situations where persons deprived of liberty kept alone in a cell for over 22 hours a day<sup>54</sup>. Because a child has an increased vulnerability to situations where contact with the outside world is cut, solitary confinement of any duration has harmful effects on his/her physical and mental health and can amount to cruel, inhuman or degrading treatment, or even torture<sup>55</sup>. International standards therefore strictly prohibit the use of solitary confinement for children, including as a disciplinary measure, as indicated by article 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty prescribing that *“disciplinary measures that amount to torture, cruel, inhuman or degrading treatment or punishment, must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child”*<sup>56</sup>.

**In practice** however, many States still impose solitary confinement on children as a disciplinary or “protective” measure. National legislation often contains provisions allowing children to be placed in solitary confinement. The permitted time frame and practices vary between days, weeks and even months<sup>57</sup>.

54. There is no universal definition for solitary confinement since the degree of social isolation varies with different practices, but former United Nations Special Rapporteur on torture or cruel, inhuman and degrading treatment or punishment defined it as any regime where an inmate is held in isolation from others for a minimum of 22 hours a day.

55. Mendez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez”. Para. 44

56. United Nations Rules for the Protection of Juveniles Deprived of their Liberty - Havana Rules. Para. 67

57. Mendez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez”. Para. 44

### RESEARCH, VISITING PRISONS AND ADVOCACY // AUSTRALIA STRIVING TO CLOSE DOWN A PRISON WHERE ISOLATION WAS A COMMON PRACTICE

Pursuant to its mandate to investigate the treatment conditions of children in detention centres, the Australian Royal Commission into the Protection and Detention of Children in the Northern Territory delivered a report to the Commonwealth and Northern Territory Governments in November 2017, alerting to alarming conditions of detention for children. It especially indicated that youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people, that the children were subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets. Isolation of children was used punitively, in violation of the Youth Justice Act (NT), which has caused suffering to many children and young people and, very likely in some cases, lasting psychological damage. The Commission into the Protection and Detention of Children in the Northern Territory requested the closing of the Don Dale Youth Detention Centre and the High Security Unit, the establishment of a network of Family Support Centres to provide place-based services to families across the Northern Territory, while advocating for an increased engagement and involvement of Aboriginal organisations in child protection, youth justice and detention.

The report was based on visits, inquiries, complaints, analysis, and interviews, including public community meetings in communities across the territory, in particular Aboriginal communities, and gathered more than 400 submissions (reflections views and ideas) from the public, service providers, non-governmental organisations, academics, health professionals, and researchers. The views of children detained were also reflected in this report through interviews, youth forums, witness statements and evidence gathering.



### 5.3.3. RESPECTING FAIR TRIAL GUARANTEES TOWARDS CHILDREN'S PROTECTION FROM TORTURE

**In law**, with the independence of justice and of the judiciary, guarantees of fair trial are the backbone of a good administration of justice, access to rights, redress, and remedy. Respect of these guarantees is enshrined in international human rights law<sup>58</sup>. Article 40 (2) of CRC lists rights and guarantees that are all meant to ensure that every child accused of having infringed the penal law receives fair treatment and trial, but they are also important safeguards against torture and other forms of ill-treatment inflicted on children.

58. Human Rights Committee, CCPR/C/112/D/1968/2010 - International Covenant on Civil and Political Rights. Art. 14, United Nations, UN Convention on the Rights of the Child., United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. And United Nations, Convention on the Rights of Persons with Disabilities.



Among those, access to legal assistance is paramount. The presence of lawyers during custody, in particular during interrogation, plays a deterrence role for potential abuse by law enforcement officers, preventing occurrences of torture. The prohibition to consider a confession obtained through torture during judicial proceedings is also a fundamental safeguard against using torture or other forms of ill-treatment against children to extract a confession<sup>59</sup>.

59. United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Art. 15

### Fair trial guarantees: what do we concretely mean?

Basic judicial guarantees comprise a series of legal safeguards that could be summarized as follows:

(a) to be informed promptly and in detail in a language which the person understands of the nature and cause of the charge against him/her;

(b) to have adequate time and facilities for the preparation of the defense and to communicate with the counsel of their own choosing;

(c) to be tried without undue delay;

(d) to be tried in his/her presence, and to defend himself/herself in person or through legal assistance of his/her own choosing; to be informed, if the child does not have legal assistance, of this right; and to have legal assistance assigned to the child and without payment by him/her in any such case if he/she does not have sufficient means to pay for it;

(e) to examine, or have examined, the witnesses against the child and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;

(f) to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court, including for children with speech impairment or other disabilities;

(g) not to be compelled to testify against himself/herself or to confess guilt; and

(h) the right to appeal and to remedy.

Other rights recognised by the UN Convention on the Rights of the Child in its article 40 as well as by the UN Convention against Torture also provide additional protection to children against torture, including the protection against compulsory self-incrimination, as well as the right of the child to the assistance of an interpreter and to be informed promptly about the charges in a language that the child understands.

**In practice**, the respect of procedural and fair trial guarantees is an everyday challenge. Needless to say, this is particularly the case for children, who are rarely prepared to face the justice system. Most children in conflict with

## PUBLIC AWARENESS AND CAPACITY BUILDING // PALESTINE BEING INFORMED OF YOUR RIGHTS CAN PROTECT YOU FROM TORTURE

When Palestinian children from the West Bank are arrested by Israeli security officers, the military legal system is applied to them. This contravenes international rules and principles regarding children's rights and subjects them to frequent torture and ill-treatment. While fighting against this violation of international law, the Palestinian section of Defense for Children International has found that raising awareness among Palestinian children about their rights when arrested by the Israeli forces can contribute to preventing torture. This is why they conduct awareness campaigns in schools and provide legal counselling to arrested children before they are interrogated. The NGO explains them their rights within the Israeli system and how to behave during the interrogation sessions.



the law do not have access to counsel, especially when legal systems do not provide for free legal aid. The use of confessions obtained under coercion, usually during custody, is frequent. Those detrimental shortcomings pave the way for further use of torture and other ill-treatment, owing to the lack of respect of basic safeguards that leave children in detention without effective protection. They also show to what extent awareness raising, on the job-training, as well as reminder of duties are an imperative for all stakeholders, including law enforcement, prison staff, legal counsels and the judiciary.

### 5.3.4. SEPARATING CHILDREN FROM ADULTS

Children should never be detained with adults (article 10, ICCPR, article 37, UN CRC), as this increases the children's risk of being subjected to torture, sexual abuse or violence from adults, as well as increased trauma and self-harm. The requirement to separate children from adults in detention is explicitly stated in the UN CRC (article 37 c), indicating that *“Every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so”*. The Special Rapporteur against torture, cruel, inhuman or degrading treatment or punishment also indicates that *“detaining children and adults together will inevitably result in negative consequences for the children, who are five times as likely to be subjected to a substantiated incident of sexual violence and are also much more likely to witness or experience other forms of violence, including physical harm by facility staff members”*<sup>60</sup>.

Because of lack of resources, or the limited number of prisons for children, the obligation to keep children separated from adults is not always respected. It is notably the case for girls, who are often kept with women detainees, as State authorities sometimes do not arrange for separate facilities for them if there is a low number of girls sentenced to detention. In other cases, children are separated from adults within the same detention centre or prison but have contacts with adults during the day.

60. United Nations. Para 21

## CAPACITY BUILDING // INDIA ENGAGING INDIAN LAWYERS TO ACT AS WATCHDOGS OF CHILDREN'S RIGHTS IN DETENTION

In India, prisons and detention centres remain underfunded, understaffed, and suffer from infrastructure that is quite often dilapidated. Legal counsels are often the only avenue for external oversight. They contribute to children's access to basic rights and the respect of guarantees of fair trial, including access to legal aid. India is not a party to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984).

The HAQ Centre for Child Rights initiated, in cooperation with the OMCT, the development of an innovative strategy focused on trainings specifically designed for lawyers specialized in the respect of children's rights, including the prohibition of torture and other ill-treatment. The objective of these trainings was to create a network of lawyers with robust knowledge of child rights, in order to reinforce the defence of children in conflict with the law, and to play a role of protection, as the only external professionals able to have access to children in detention. Three trainings were organised between 2019 and 2021, giving the opportunity to selected lawyers and various key speakers, as well as experts including former and sitting judges, senior advocates and academic researchers, to exchange on the legislation and practice of child rights, as well as on the unique role of lawyers for children, including in the prevention and protection against torture and other ill-treatment. These events paved the way to the set-up of a national network of lawyers delivering free legal aid to children deprived of liberty. More broadly, lawyers were also trained to become vectors of a narrative change, moving from a protection-based approach to the issue of torture to a child-rights based approach.



## VISITS OF PRISONS AND ADVOCACY // BENIN CONSTRUCTIVE DISCUSSIONS WITH AUTHORITIES LEAD TO THE SEPARATION OF CHILDREN FROM ADULTS

In Benin, the NGO ESAM, together with the OMCT, initiated and sustained a constructive approach with the authorities on the situation of children deprived of liberty. Direct meetings with penitentiary authorities were organised, including one joint visit of a place of detention conducted together with the Director of the Penitentiary services, paving the way for a constructive collaboration and dialogue between the OMCT, ESAM and the penitentiary services. Meetings were also organised with magistrates following the cases of children deprived of liberty. This led to the transfer of minors detained at Abomey Calavi prison to the minors' quarter in Cotonou prison, to prevent children from enduring ill-treatment and torture inflicted by adults in Abomey Calavi and reduce overcrowding. Additionally, these discussions and advocacy led to the release of a number of children, thus reducing the excessive length of pre-trial detention for children. Finally, the discussions with specialised magistrates allowed a reduction in the number of children deprived of liberty in the country. In May 2020, there was no minor detained at Ouidah Prison, a first.



## MONITORING VISITS // TOGO CHILDREN HELD WITH ADULTS IN SOLITARY CONFINEMENT DISCOVERED DURING MONITORING VISITS

Detaining children with adults is particularly harmful as it exposes them to a severe risk of abuse, including sexual abuse and ill-treatment. This phenomenon can take place in various forms, and thorough visits of places of detention are crucial to ensure that the situation does not exist. In Togo, an exhaustive monitoring visit led the NGO CACIT to discover that an adult detainee had been placed in the children's quarter of the prison for the last three months, where one child was also detained. According to the penitentiary authorities, this adult detainee had been separated from other adults because of his violent behaviour. Explanations and awareness raising about the risks and consequences of this situation for the child led to the separation of the adult from the child.



### 5.3.5. REDUCING OCCURRENCES OF OVERCROWDING

Far too often, and all over the world, prisons hold a number of detainees exceeding their theoretical capacity, and this does not spare children's prisons<sup>61</sup>. In some countries, the level of overcrowding is so acute that children have to take turns to sleep. Overcrowding is a form of ill-treatment and has to be denounced as such.

Children are particularly adversely affected by prison overcrowding as it impedes the realization of their basic

61. Penal Reform International, "Global Prison Trends 2021". Pages 3, 4, 9 and 10

human needs. The lack of physical space itself has a severe impact on the sanitary conditions of detention, increases the risk of transmission of infectious diseases, causes or exacerbates mental health problems, increases rates of violence, self-harm and suicide, and affects children's rights to privacy. Beyond this, overcrowding is also an obstacle to sufficient quantities of food, access to sanitation and healthcare, or access to recreational activities, when budgets do not take into account the higher number of detainees.

All the measures which aim at reducing the number of children deprived of liberty in the administration of justice are also a way to address prison overcrowding and mitigate its harmful consequences.

### 5.3.6. GUARANTEEING CHILD- APPROPRIATE FACILITIES

Lack of adequate sleeping space and conditions, including ventilation, proper nutrition in quality and quantity, hygiene, access to sanitary facilities including at night, as well as access to health care, to natural light, out-of-cell time, or information services can amount to forms of cruel, inhuman and degrading treatment. Children's right to an adequate standard of living, asserted by the Convention on the rights of the child (article 27), provides that every child has the right to a standard of living that is adequate to his/her development – physical, mental, spiritual, moral and social.

## STRATEGIC LITIGATION // ARGENTINA HOME ARREST DURING COVID-19 IN MENDOZA: A MEASURE THAT CAME TO STAY

When Covid-19 pandemic led to mobility restrictions, the NGO Xumek saw a threat but also an opportunity for its work in the overcrowded prisons in Mendoza. A legal action was carried out in favor of all persons deprived of their liberty in Mendoza, including children, to denounce the greater risk of contamination and of circulation of the virus among them. A juvenile judge, arguing the high risk that this situation represented for the children incarcerated, amended the sentence to home arrest for all those under her supervision. Home arrest became a definitive solution for many of the children who were in conflict with the law and a new approach to the question has been adopted.



## VISITS OF PLACES OF DETENTION AND ADVOCACY // BENIN MONITORING PRISONS TO GATHER INFORMATION AND OBTAIN CONCRETE RESULTS

In the course of 2019 and 2020, the OMCT and its partner ESAM organised a series of 12 visits to places of detention located in various parts of the country (Cotonou, Natitingou, Parakou, et Ouidah). These visits were instrumental in getting a clearer picture of the conditions of detention and the treatment of imprisoned children in the country, as well as in garnering first-hand data in relation to the number of detained children. The combination of national and international advocacy, including alerting the UN Committee against Torture to the detention conditions of children, among others, and the targeted recommendations issued by the Committee subsequently, led to concrete progress with regards to improving the response to the basic needs of children. Particularly, latrines were installed in children's dorms, allowing them to use proper sanitary facilities during the night.



Being authorised to leave the cell and spend at least two hours a day outdoors is also absolutely necessary for the physical and mental well-being of the children, as reiterated by international human rights law<sup>62</sup>. Additionally, this requirement has to be carried out under certain conditions of adequate facilities – spaces large enough to exercise and recreation or shelter in case of rain – and security, like preventing situations of risk, tension and corruption during this time in the open air<sup>63</sup>.

62. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para. 79

63. Association for the Prevention of Torture, "Outdoor exercise".

## MONITORING VISITS AND ADVOCACY // THE PHILIPPINES CLOSURE OF PRISON WITH INHUMAN DETENTION CONDITIONS THROUGH SUSTAINED ADVOCACY AT NATIONAL AND INTERNATIONAL LEVEL

Conducting monitoring visits to a prison where children were detained, the CLRDC observed inhuman and degrading conditions of detention for children, including a total lack of windows in the facilities, severe overcrowding in a very reduced space (only two cells of five square meters each, one for the boys and one for the girls), absence of restroom for the girls, and severe physical ill-treatment. Following the visits, the organisation seized both the national Commission on Human Rights and, at the international level, the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading treatment. Contacted by the Special Rapporteur, the Chair of the Commission on Human Rights contacted the CLRDC for more information, then conducted an unannounced visit to the centre and raised strong concerns over the detention conditions. Shortly thereafter, the city closed down the facility. Another centre was built, with improved infrastructure and material conditions. However, torture and other ill-treatment of children are still commonplace in all prisons in the Philippines.



## ADVOCACY // ARGENTINA PREVENTING CHILDREN FROM BEING DETAINED IN A REMOTE AREA

When a new maximum-security prison for children was built in the Mendoza province in 2015, far away from the city center, in a difficult of access spot in the mountains, the NGO Xumek decided to take preventive judicial action and to conduct advocacy activities to denounce the fact that the prison was not adapted to children deprived of liberty. Family visits for instance would be much more difficult in such a remote place. Several visits from the judiciary confirmed that the facility did not comply with international standards and the prison was never opened for children sentenced to detention.



### 5.3.7. RESTORING AND MAINTAINING CONTACT WITH FAMILY MEMBERS

Maintaining regular contact with the family is an important safeguard against torture and other forms of ill-treatment, through visits as well as correspondence. In addition, while children have an inherently specific need to maintain contact with their family, critical for their development and well-being, detention deprives them of the daily social, emotional and intellectual stimulation provided by a family. The impact of such an absence may be devastating and can last a lifetime. For this reason, the Convention on the Rights of the Child clearly states at article 37(c) that “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”.

However, and particularly in the context of the Covid-19 pandemic, many prison authorities have drastically reduced or even banned family visits to children detained. Maintaining contacts, at least through phone calls or correspondence, is crucial, and in person visits should be resumed with proper and safe health procedures in place.

It is also fundamental to notify the family at the stage of arrest and custody. A family member should be allowed to be present during interrogation. Notification to the family also prevents the risk of arbitrary, secret, or incommunicado detention.

### 5.3.8. ENSURING ACCESS TO MEDICAL CARE

The Convention on the Rights of the Child recognizes in its article 24 “the right of the child to the enjoyment of the highest attainable standard of health” (Article 24 CRC) while the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*<sup>64</sup> state that “all children should receive “adequate medical care, both preventative and remedial, including dental, ophthalmological and mental health care”. It is mandatory for each child to undergo an assessment of his/her health care needs upon arrival to prison. The onus is on prison authorities to ensure that children benefit from the same access to healthcare services available to other children with similar needs

64. United Nations Rules for the Protection of Juveniles Deprived of their Liberty - Havana Rules.

## FAMILY MEDIATION // TOGO A HELPING HAND TO FIND FAMILIES AND RECONNECT WITH THEM

In Togo, some of the children imprisoned do not have ties with their families or have totally lost contact with them. Families may live far away from the place of detention, may not have a telephone and in some cases, may not even be aware of the arrest of their child. In some cases, parents may not want to visit their children in prison or do not have the financial means to do so. One of CACIT’s activities is therefore to look for parents or relatives of these children when they enter custody or prison, inform them of the arrest of their children and organise family mediation for children to reconnect with their families and consolidate family links. This also enables CACIT to prepare a good family reintegration after the children’s release.

This work continues after the release of the children by accompanying them in reintegrating into their communities as well as prepare their professional reintegration. Listening to the families and involving the children in the discussions are key for the success of these mediations. A regular follow-up of the children after reintegration is also conducted by the CACIT in the families or placement centers, to assess the evolution of the children’s situation.

In the course of 2019, CACIT was able to reconnect 52 children with their families and to prepare with them their rehabilitation. In 2020, CACIT contributed to the reintegration of 17 children released in the context of the Covid-19 pandemic.



## DIRECT PSYCHOLOGICAL ASSISTANCE // BOLIVIA THERAPEUTIC DRAWINGS AND CREATIVE WRITING

The ITIE (*Instituto de Terapia e Investigacion sobre las Secuelas de la Tortura y la Violencia de Estado*) is an organisation specialised in assisting children who have been victims of torture in Bolivia to overcome the sequels of torture. This assistance includes medical, psychological and psychosocial assistance. Its multidisciplinary team works, among others, with children at the Social Rehabilitation Center Qalauma. This team carries out a project to prevent inter-prison violence with children, administrative staff and security staff, addressing questions related to the perception of torture and its consequences.

At Qalauma, ITIE staff conducted a workshop on creative writing for children in conflict with the law. The children themselves decided to publish a magazine with their texts and drawings that reflected their anti-torture positions. Although the publication was therapeutic for the children, the authorities didn’t welcome it, as it put the spotlight on the torture and ill-treatment practices endured by the children in detention.

The ITIE provides free psychological assistance to children in prisons, filling the gaps of the public system as there are not enough medical and psychological staff in each centre to provide individualized care to every child.





in the country<sup>65</sup>. The right to health is especially crucial for children deprived of liberty, who often have pre-existing psychosocial, physical or mental health issues<sup>66</sup>. In detention, children are also exposed to transmissible and infectious diseases. The Covid-19 pandemic, which spread easily in overcrowded prisons lacking proper hygiene facilities and access to medical care and to medicines, has clearly demonstrated the higher damage to health that detention could have on detainees. Furthermore, there is a clear overrepresentation in detention of children with mental health issues<sup>67</sup>. Psychological support must therefore be provided to ensure the well-being of the children. Imprisonment should never be the solution for a child affected by a mental illness.

### 5.3.9. PROVIDING HEIGHTENED AND ADAPTED PROTECTION FOR CHILDREN WITH VULNERABILITIES

Being deprived of liberty increases children's vulnerability, including because of their complete dependency upon the institution, the imbalance of power with prison staff, and weakened social ties and contacts, which also put them at high risk of torture and other ill-treatment. Among them, some children have an even higher vulnerability. Although situations can fluctuate depending on context, culture and time, we can identify a series of risk factors (personal, environmental, political and socio-cultural) that make some groups of children most vulnerable worldwide<sup>68</sup>. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment recommends to *'respond to the specific needs of groups of children that are even more vulnerable to ill-treatment or torture, such as girls, lesbian, gay, bisexual, transgender and intersex children, and children with disabilities'*<sup>69</sup>. Each of these groups deserves specific measures and treatment that are not discriminatory, precisely

65. United Nations, The United Nations Standard Minimum Rules for the Treatment of Prisoners - The Nelson Mandela Rules. Rules Rules 24 to 29 and 30 to 34

66. the Alliance for Child Protection in Humanitarian Action, "Technical Note: Protection of Children during the Coronavirus Pandemic". Page 1

67. Nowak, "UN Global Study on Children Deprived of Liberty". Page 270

68. Association for the Prevention of Torture, "Groups in Situations of Vulnerability".

69. Mendez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez". Para 21

because of the particular situations that makes them more vulnerable to torture and other forms of ill-treatment.

While boys are overrepresented in detention, detained girls often suffer gender-based discrimination<sup>70</sup>, and are particularly vulnerable to abuse, torture and other forms of ill-treatment. Because of the lower numbers of girls deprived of liberty compared to boys, the facilities and procedures are often not adapted to them. Worldwide, girls are rarely kept separately from women in pretrial and post-conviction settings, which puts them at higher risk of torture and other ill-treatment. Girls in prison are more at risk of suffering violence, particularly sexual violence, from prison staff and adult women, or fellow detainees. An overwhelming majority of girls have experienced abuse before their first offence. After prison, the social stigma might be higher and lead to family rejection and more difficult reintegration in the society.

70. Association for the Prevention of Torture, "Groups in Situations of Vulnerability".

## RESEARCH AND ADVOCACY // UK KEEPING GIRLS OUT OF THE PENAL SYSTEM

Turning advocacy activities towards members of national Parliaments to raise their awareness and enable them to advocate for the protection of children deprived of liberty can be an efficient path to change, both legal and practical. Civil society should therefore establish a constructive dialogue with parliamentarians who, in turn, can be powerful change-makers.

In the UK, the Howard League for Penal Reform works with parliaments and sponsored in 2021 the report of the UK All Party Parliamentary Group on Women in the Penal System, published after a year-long inquiry on girls. The inquiry demonstrated that there is often an over-punitive and disproportionate response to girls offending, while the majority of girls in the penal system has only committed misdemeanors. The inquiry also observed a lack of appropriate gender services for girls.

Parliamentarians made strong recommendations to ministers, local authorities and the police forces, advocating for adopting a restorative approach rather than resorting to arrest and police detention and for keeping children out of the penal system. They insisted on the specific needs of girls and the importance of single-gender services for girls. To the police, the report advised to encourage policies aimed at keeping girls away from the penal system.

The possibility for Parliaments to issue specific recommendations and have a strong influence on other institutions can lead to concrete change, Parliamentarians are a key actor for civil society to engage with in their work to protect children deprived of liberty from torture and other ill-treatment.



**Howard League  
for Penal Reform**

Girls deprived of liberty should be detained in facilities dedicated to them, separated from adults, including women, and be supervised by female prison staff<sup>71</sup>. They should have access to specific medical care and should be provided with specific medical and psychological support.

Because of their specific vulnerability, **children with disabilities** in detention are more prone to be subjected to torture or other ill-treatment. **In the law**, the Convention on the Rights of Persons with Disabilities (2006) specifically mentions the fact that States ‘shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment’. The best interest of the child and the right to express their views also prevail<sup>72</sup>.

**However, in practice**, there is a high proportion of children living with disabilities in detention facilities<sup>73</sup>. This is due to an educational gap between children with and without disabilities and to the fact that, for the same behavior, children living with disabilities are treated more punitively than children without disabilities<sup>74</sup>. The vulnerability of children living with disabilities deprived of liberty is magnified, including because they are particularly dependent on adults<sup>75</sup> and have less capacities to defend themselves. Their resilience skills in detention may be limited by features or barriers related to their impairment. Disability should never be a valid reason to put a child in prison, or a default solution for these children, even if the relevant institutions and policies that should take care of them are lacking. Furthermore, prisons are not the best place for children with disabilities in conflict with the law. Non-custodial measures, particularly restorative justice measures, incorporating the role of families, communities as well as social workers, are highly recommended. If detained, children with disabilities need appropriate procedural accommodations, including

71. United Nations, The United Nations Standard Minimum Rules for the Treatment of Prisoners - The Nelson Mandela Rules. Rule 81, and United Nations, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

72. United Nations, Convention on the Rights of Persons with Disabilities. Arts. 7 and 15

73. Nowak, “UN Global Study on Children Deprived of Liberty”. Chapter 7, Children with disabilities deprived of liberty.

74. Nowak. Chapter 7, Children with disabilities deprived of liberty.

75. DuPre et Sites, *Child Abuse Investigation Field Guide*.

physical access but also accessibility of medical treatment if needed, access to information, and support.

In several countries, lesbian, gay, bisexual, transgender and intersex **(LGBTI+) young people** are more likely to be arrested and detained for petty offences and they are at heightened risk of being subjected to arbitrary arrest<sup>76</sup>. In some countries, capital punishment for LGBTI+ persons, including children, is still prevalent. **In the law**, the Yogyakarta Principles (2006, principle 7) provides that ‘no one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary.’ Principle 9 states that ‘everyone deprived of liberty

76. Nowak, “UN Global Study on Children Deprived of Liberty”. Chapter 8, Gender dimension, Section 5. Sexual orientation and gender identity in the context of deprivation of liberty.

## DIRECT LEGAL AND PSYCHOSOCIAL ASSISTANCE // CHILE PROTECTING MAPUCHE CHILDREN FROM MILITARY POLICE ABUSE

Despite the acknowledgement by the United Nations of the Mapuche community, the State of Chile takes a monocultural approach that prevents the recognition of the rights of this indigenous community. The protests and demonstrations for land and political rights by the members of the Mapuche community often turn into violent confrontations with the militarized police. Mapuche children are arrested by the militarized police and judged by military courts that, until its abolition in 2010 following a long hunger strike, applied an anti-terrorist law usually used for exceptional circumstances and disapproved by the UN. In order to protect these Mapuche children of being “polluted” by other detainees who have committed thefts or other common law crimes, they are often imprisoned isolated. In practice, this amounts to a solitary confinement, because they can only talk and play with their custodians, and to a discriminatory treatment, as the conditions of detention don’t respond to the cultural needs of the Mapuche communities. Their complaints for torture and ill-treatment are almost systematically dismissed by the Chilean judiciary.

At CID-SUR (Centro de Investigación y Defensa Sur), an interdisciplinary and self-managed group, the staff provides Mapuche children with legal and psychosocial assistance. Working from a perspective of historical trauma and stigmatization, the staff organises meetings to explain to the children what their rights are and what legal and psychosocial aid the staff can provide. The CID-SUR also supports families’ legal complaints for torture and ill-treatment. Because the normal legal actions rarely result in the conviction of a police officer, the NGO prioritizes constitutional or international legal actions. Constitutional appeals for protection have led to quick resolutions such as finding the family of an unprotected child rather than interning him, or accepting the demand of a girl – who carried out a hunger strike together with Mapuche prisoners in all detention centers – not to be charged with the anti-terrorist law. At the international level, the Interamerican Court of Human Rights has already accepted cases and condemned the State of Chile for killing or torturing Mapuche children – such as the well-known case of Alex Lemun – but these actions can take more than 20 years to achieve results.



*shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity'.* Once in prison, LGBTI+ children are among those at highest risk for daily humiliation, sexual abuse and harassment<sup>77</sup>. Transgender girls are almost always held in boys' facilities and are especially vulnerable.

Housing LGBTI+ children at risk in areas where they will be safest, providing staff with specific training on respectful language and professional behavior when working with LGBTI+ prisoners, and capacity building to dismantle sexist, homophobic and transphobic attitudes are some of the practices leading towards a specific LGBTI+ policy in prisons<sup>78</sup>. Furthermore, because LGBTI+ children often suffer from parental and social reject, family mediation or working on a new life after imprisonment is even more crucial for them. According to the principle of non-discrimination (article 2 of the UN CRC), **children belonging to minority groups or indigenous communities** should benefit from the same legal safeguards as other children for the protection of their physical and mental dignity in detention.

**In practice**, children from ethnic, religious or ethnic minorities are often excessively criminalized and disproportionately represented in criminal detention settings as well as during pre-trial detention<sup>79</sup>, and overrepresented in justice systems. Many of them also belong to poor families and are particularly targeted during arrests and detention. Many of them may have already experienced violence and trauma before coming into conflict with the law. It is of crucial importance to provide effective access to interpretation and intercultural mediation to these children so that they feel less alienated, and to assist them to better navigate the child justice system. In addition, juvenile justice professionals, including judges or prison staff, lack awareness about the specific situation of children belonging to minority groups in detention. When applying the best interest principle to indigenous children, specific cultural rights need to be respected

77. National Center for Transgender Equality, "LGBT people behind bars. A guide to understand the issues facing transgender prisoners and their legal rights".

78. Marksamer et Tobin, "Standing With LGBT Prisoners: An Advocate's Guide to Ending Abuse and Combating Imprisonment".

79. Nowak, "UN Global Study on Children Deprived of Liberty". Chapter 9, *Children deprived of liberty in the administration of justice*, Section 4. *Pathways to deprivation of liberty*.

as well. It is therefore of the utmost importance to also involve indigenous communities when reaching decisions on children's deprivation of liberty.

#### **5.4. FIGHTING IMPUNITY AND PROMOTING ACCOUNTABILITY**

The lack of accountability for acts of torture and other ill-treatment remains one of the main obstacles to any significant progress in the prevention and eradication of entrenched practices of torture and ill-treatment, including of children.<sup>80</sup> Acts of torture and other cruel, inhuman or degrading treatment or punishment are more widespread than it appears, owing to the greater vulnerability of children and their lack of capacity to articulate complaints and seek redress<sup>81</sup>.

In order to make authorities accountable for acts of torture and other ill-treatment, every child in detention should have the right and possibility to lodge complaints<sup>82</sup> to the administration, the judicial authority or other proper independent authority, and to be informed of the response without delay, as well as to access remedy. Children need to know about and have easy access to these mechanisms where they can report, among others, torture or other ill-treatment to which they have been subjected. Lodging a complaint should be possible not only at the national level, but also at the regional or international level, with States encouraged to ratify the third Optional Protocol to the Convention on the Rights of the Child on a communications' procedure, enabling children to further seek redress for violations of their rights.

80. Accountability is defined by the process of using power responsibly, taking account of, giving account to and being held accountable by, different stakeholders, and primarily those who are affected by the exercise of such power.

81. United Nations High Commissioner et for Human Rights, "A/HRC/25/35. Access to justice for children". Paras. 13-17

82. United Nations Rules for the Protection of Juveniles Deprived of their Liberty - Havana Rules. According to Rule 24, information should be provided on ways by which children can lodge complaints and where they can seek legal assistance. In case the child is illiterate or cannot understand the information in written form, another form of conveying the information should be sought. Rule 25 provides that juveniles have the right to make complaints and that they should be assisted in understanding this right. Furthermore, children deprived of liberty should be able to make requests or complaints to the director of the facility (rule 75) and to a higher authority (rule 76), an independent office or ombudsman should be established to investigate complaints (rule 77). Children have the right to request assistance in order to file a complaint (rule 78).

In practical terms, making States accountable for torture or other ill-treatment of children is extremely challenging: lack of reporting or complaint mechanisms in prison; limited or no access to information about the prohibition of inflicting torture or other ill-treatment, their right to report torture or ill-treatment inflicted on them, and to access legal representation, or about the existence of potential legal aid services. Because they are children, the fear or impossibility to report to any adult authorities make torture or ill-treatment invisible to the outside world.

In addition, in many countries, filing a complaint against the police or other State agents can lead to serious reprisals. Judges can also not be inclined to hear and believe a child instead of a State authority. Many judges do not report torture or delay crucial forensic physical exams, even when there is clear evidence of violence, a matter in complete contradiction with the *United Nations Basic Principles on the Independence of the Judiciary* (1985) and the Bangalore principles<sup>83</sup>. In some countries, those who have committed the violation may also be charged with investigating the very same crime, undermining the whole judicial process. In others<sup>84</sup>, key law enforcement agencies are protected by law from prosecution or investigation related to alleged torture. Overall, when formal justice processes are already malfunctioning in ordinary cases, they will lack the child-friendly approach that would be required for them to work.

Promoting accountability measures is surely a robust way to fight impunity. The respect of basic judicial guarantees<sup>85</sup> could lead to fight impunity. Accountability entails the recognition by law of both internal and external oversight mechanisms and the implementation of their mandate without obstacles; and can operate with administrative, financial and political independence, for example through unannounced visits to places of detention. It also requires an independent judiciary, where judges do not fear repercussions for their decisions.

Proper accountability mechanisms constitute a deterrent for potential perpetrators of torture. Accountability also entails a change of narrative, through which children detained who endured torture or ill-treatment are not only victims, but also full rights-holders that have the opportunities to report these crimes.

## LITIGATION, ADVOCACY AND VISIBILITY // URUGUAY SUPPORTING MOTHERS OF CHILDREN VICTIMS OF TORTURE THROUGHOUT THE PATH TO REPARATION

Since 2003, the OMCT and the Uruguayan non-governmental organisation IELSUR worked together to fight against impunity for the torture of children in detention in Uruguay. In this case, an effective way to collect information about torture practices inflicted on children was through their mothers, who could visit them and to whom children confided in. Children detained were beaten and regularly subjected to ill-treatment, but also received death threats if they informed the authorities or denounced the facts. IELSUR and the OMCT supported a group of mothers to lodge judicial complaints for the torture and ill-treatment of their children. Furthermore, these mothers sent a letter to the wife of the then President of the country to expose the situation and the absolute necessity to end all institutional violence against the children detained.

Some civil servants working in the prisons also started to denounce the acts of torture and violence. However, they were threatened and persecuted by the prisons staff's trade union. The public authorities denied the torture, accused publicly the mothers and the civil servants of lying and questioned the work of the recently created National Preventive Mechanism.

In reaction to this public defamation and attacks on the human rights mechanisms, IELSUR used the media to publish pictures and testimonies to expose the facts, which led to a public uproar. In the meantime, the NGO also continued lodging individual judicial complaints.

Under the next government, a new director of prisons took the complaints seriously. Another positive development were trials respecting due process: out of ten complaints, families scored six victories. Families also started receiving reparations.

In 2013, IELSUR and the OMCT took the issue to the regional and international level. They presented information on torture and other ill-treatment of children in Uruguay during a thematic audience at the Inter-American Commission on Human Rights, where CSOs jointly presented information on children deprived of liberty collected in Chile, Brazil, Paraguay, Argentina, and Uruguay. Two children were also auditioned. At the international level, the OMCT and IELSUR presented a report to the Committee against Torture, which had significant impact on reducing the structural practice of torture of children in the country.



83. Judicial Group on Strengthening Judicial Integrity, "The Bangalore Draft Code of Judicial Conduct".

84. OMCT and Odhikar, "Cycle of Fear Combating Impunity for Torture and Strengthening the Rule of Law in Bangladesh".

85. Committee on the Rights of the Child, Convention on the Rights of the Child. General comments. Art. 40



## 5.5. FOCUSING ON RELEASE, REDRESS, AND REINTEGRATION

Deprivation of liberty causes more harm than good to children themselves and to society at large. In custody, pre-trial detention, and incarceration, children are at risk of being exposed to torture and other forms of ill-treatment, which can lead to long-term trauma.

The UN Convention against Torture sets the obligation for States to ensure for the victims of torture a right to compensation, including measures for rehabilitation. This is especially important for children, as indicated by the Committee on the Rights of the Child, who recommends that “*States guarantee that all children victims of cruel, inhuman, and degrading treatment have access to comprehensive reparation measures, including measures for physical and psychological recovery and social reintegration*”<sup>86</sup>.

In practice, not only are perpetrators of acts of torture of children rarely held accountable, but children are often unlikely to be recognised as victims and to benefit from measures of physical recovery and reintegration. The long-term trauma caused by torture or other ill-treatment also makes the reintegration of children into their communities more difficult.

The recognition of children as victims of torture or other ill-treatment, coupled with the provision of care during and after detention, is key to enable them to recover from physical and psychological trauma, in addition to working on their reintegration into society, as is the case for other children formerly in conflict with the law.

The preparation of release and reintegration should start at the beginning of the detention itself, by providing detention conditions and activities aiming at rehabilitation and reintegration into society, in full respect of the principles underpinning the juvenile justice system.

### DIRECT ASSISTANCE // THE PHILIPPINES SUPPORT GROUPS PROVIDE PSYCHOLOGICAL RECOVERY FROM TORTURE

The Children’s Legal Rights and Development Center (CLRDC) has developed an original programme allowing former children deprived of liberty to meet in informal circles of discussion., where they can share their respective experiences in detention and help each other recover from the trauma of torture and other ill-treatment. Children that have been released from detention for a longer period of time help and mentor the newly released ones. Through the exchanges and discussions, former detained children can start to understand and process what they went through and progressively recover a sense of dignity.



### DIRECT ASSISTANCE // CAMEROON FLOUR, EGGS AND FRYING OIL

The Diocesan Justice and Peace Commission provides children deprived of liberty in the prison of Yaoundé with the ingredients to bake donuts. The children either eat the sweets, thus complementing the deficient food served at the prison, or sell them to other prisoners. The money allows the children to buy medicines and to make some savings to be used after their release.

This type of concrete activities are combined with regular prison visits, dialogue with the authorities, advocacy with the judiciary, psychosocial interventions, vocational training and family mediation in order to improve the conditions of detention and the juvenile justice system in Cameroon.



86. Washington College of Law, Centre for Human Rights and Humanitarian Law – Anti-torture Initiative, “Protecting Children Against Torture in Detention: Global Solutions for a Global Problem”. Page 117



# CONCLUSION, RECOMMENDATIONS AND WAYS FORWARD

The torture of children deprived of liberty is a widespread but hidden phenomenon that takes place all over the world.

The OMCT and its partners have been working for several years on different strategies that can mitigate the risks for children to be tortured and ill-treated, create the conditions to protect them, or obtain reparation for them and their families. This long-lasting experience has built up a solid knowledge and methodology to increase the protection from torture or other ill-treatment. The present Guide is an attempt to share this experience and mobilise other human rights organisations and institutions, including children's rights and anti-torture stakeholders, to address more robustly the situation of torture or other ill-treatment inflicted on children.

This Guide and the good practices that it contains show that, in different countries and regions, in various political or economic contexts, with different legal systems or levels of development, it is possible to improve the protection of children from torture or ill-treatment, including by the closure of prisons, the release of children, the reduction of pre-trial detention periods, the decrease of the use of physical violence by prison staff and police officers, or the improvement of detention conditions. It shows the unique role that civil society and other stakeholders can have in improving the overall protection from torture of children deprived of liberty, by exposing the realities of torture, representing children in court, advocating for legal reform, filing cases to hold perpetrators responsible, alerting international human rights mechanisms on violations of the prohibition of torture of children, monitoring detention centres and giving detained children a voice about their detention conditions and the trauma of detention. Aside from the different activities, tools and instruments that civil society can use to protect children from torture, this Guide shows that these activities can be classified on a spectrum from denunciation to cooperation with the stakeholders of the system, through putting pressure on State authorities, and that a solid assessment of the context is key to build the most efficient strategy. This demonstrates that it is possible in some contexts to develop a constructive collaboration with

authorities, while reserving the option of public pressure and denunciation, and maintaining access to detention centers. The existing international legal framework that prevents and protects children from torture and other forms of cruel, inhuman or degrading treatment should provide States with the tools to create the legal conditions for children deprived of liberty to be protected against torture. Its implementation should allow States to fulfil their obligations to afford specific protections to children and prevent all forms of torture and other ill-treatment. However, some States have not yet accepted all international obligations with regard to the protection of children against torture, and in particular the UN Convention against Torture. In other cases, States' international obligations are far from being respected and implemented in practice. Civil society has a pivotal role in advocating for the ratification of international treaties, and in particular the UN Convention against Torture, but also for the national incorporation of the prohibition of torture of children into national law, and its effective implementation in practice.

The international legal framework takes into account the specific status and vulnerability of children that require heightened safeguards compared to adults to protect them from torture and other ill-treatment. Among others, the absolute prohibition of torture and other ill-treatment, the prohibition of solitary confinement, the principle of deprivation of liberty for the shortest period of time, the need to maintain contact with the family, or the implementation of safeguards during interrogation, such as the presence of a lawyer and family member, are some of the elements that should be enforced because of the immeasurable impact that torture can have on children's physical and mental development. However, this specific vulnerability to torture and other ill-treatment is far too often ignored by authorities in charge of children deprived of liberty, but also, in some instances, by international human rights mechanisms, and is therefore one aspect that should drive civil society's activities.

Reducing the number of children in detention and the duration of detention are certainly key factors in preventing children from being

exposed to the risk of and subjected to torture and other ill-treatment. Although diversion from the justice system and alternatives to detention should be prioritized in order to prevent children from being incarcerated, and even more for children committing petty crimes, they are still usually the exception. The OMCT emphasises the need for States to further develop and use existing diversion measures, as well as restorative justice measures.

This change of focus implies a change of narrative in the way communities and societies view and respond to social or community-perceived wrongdoing by juveniles. A rights-based approach that shifts the perception of children from authors to victims, but also and beyond this, as full rights-holders, cannot be achieved without awareness raising and campaigns. In addition, efforts to eliminate the tolerance to violence against children, including as a form of discipline, is also a condition to move away from an environment conducive to torture and other ill-treatment of children.

Considering the importance of discrimination and the higher risk that some categories of children, such as children from poor social or economic backgrounds or children from minority groups, are subjected to torture or other ill-treatment is fundamental to address the problem appropriately. In this perspective, working toward the decriminalisation of status offences, which disproportionately affect children from poor backgrounds, would be a further factor to keep children out of jail and exposure to torture. Shifting the focus from criminalisation to the protection of children, but also mainstreaming anti-discrimination practices, should be transversal actions to anti-torture activities.

Regardless of the crime committed, children should never be detained in conditions amounting to cruel, inhuman, or degrading treatment. Nevertheless, in a majority of countries, the facilities and conditions of detention for children do not respond to the minimum adequate standards of living. Making the reduction of overcrowding a top priority can greatly contribute to ensuring the dignity of children deprived of liberty.

Regular and independent oversight of places of detention is a fundamental safeguard against occurrences of torture and ill-treatment. This Guide

clearly demonstrates the key role that civil society organisations can have in preventing and protecting children from torture through monitoring visits. The OMCT would like to encourage civil society organisations to specifically monitor places where children are detained, to increase transparency on the children's detention conditions and to use these visits and information collected to advocate more widely for the elimination of torture and other ill-treatment of children. National Preventive Mechanisms have a fundamental role to play, but they too often prioritise adult places of detention. NPMs should have the specific mandate, training and human and financial resource to visit places where children are deprived of liberty. This is also the case for National Human Rights Institutions. Other ad hoc visits, by parliamentarians or international institutions, also have a key role to play in understanding the realities of deprivation of liberty for children and fostering change.

Best practices identified in this Guide also show the importance to ensure that institutions in charge of the conditions of detention of children are held accountable, to fight impunity and bring perpetrators to justice, as a way of bringing about structural change and foster better transparency. Last but not least, not enough attention is given to the long-term consequences of torture and other ill-treatment inflicted on children. Redress, rehabilitation and reintegration activities focusing on recovering from the traumatic experience of torture are crucial for the children to reintegrate communities as full members of the society.

## RECOMMENDATIONS

Some of the best practices presented in this Guide have proved to be particularly efficient to prevent and protect children against torture. The most relevant are synthesized below and should be a priority for anti-torture/children's rights organisations or other relevant stakeholders.

### 1. MONITORING PLACES OF DETENTION

Visiting detention centres (through internal or external oversight) has proved to be instrumental to prevent and protect children from torture, including documenting cases of torture and ill-treatment or monitoring and increasing transparency on the conditions of detention. Visits are the cornerstone of wider actions to protect children from torture.

- > Conduct monitoring visits regularly and follow a robust methodology is crucial. This includes, among others, conducting thorough visits of the facilities, interviewing children while respecting their safety and protection, or establishing an ongoing and constructive dialogue with the authorities, while understanding their constraints.
- > Interview children, individually or as a group, depending on what children are comfortable with. Always ensure that children consent to being interviewed and do not feel obligated to talk to you. Always interview children out of sight and sound of prison authorities. Always ensure that you can respect the "do no harm principle" and that children do not risk reprisals.
- > Repeat visits to the prisons to check on the children's situation regularly, assess potential improvements, develop a constructive relationship with prison authorities, and overall indicate to the authorities the continuing concern for and oversight of the situation of the children detained.
- > Monitor the situation of children in prison in every region of the country.
- > Systematically prepare reports after the visits in order to use the collected information for advocacy, communication and legal purposes. Make specific recommendations to State authorities, in particular penitentiary authorities.
- > Use the collected information as evidence to conduct litigation, campaigns for change and public awareness.

### 2. MAKING THE INFORMATION PUBLIC

No authority wants to be accused of torturing children. Alerting to alarming situations and raising the understanding of torture of children can have a strong impact and lead decision-makers to make concrete change.

- > Combine the use of traditional and social media raise awareness.
- > Always take into consideration security aspects, ethics and the best interest of the child when broadcasting information about children, in particular the risk of reprisals.
- > Design proper communication strategies that include goals, objectives, audiences, messaging, activities, resources, timeline, risk and mitigation, and evaluation.

### 3. ADVOCATING FOR LEGAL REFORMS AND POLICY CHANGES:

direct national advocacy with policy makers, combined with international or regional advocacy with institutions can lead to concrete change and improved protection of children from torture.

- > Call on your State to ratify the UN Convention Against Torture as well as the third Optional Protocol to the UN CRC on Individual Communications.
- > Raise awareness of international and regional institutions and mechanisms on the realities of torture and other cruel, inhuman or degrading treatment or punishment inflicted on children to foster policy development and concrete recommendations.
- > Use international or regional advocacy and recommendations to reinforce efforts at the national level.
- > Call on States to align their national definition of torture with the UN CAT, to criminalise the act of torture and prescribe specific sentences for its use.
- > Conduct regular advocacy with relevant ministries at the national level to alert on practices of torture and other ill-treatment against children, inhuman conditions of detention, and violations of children's rights in detention in order to put and keep the issue on the national agenda as a priority.
- > Call on States to implement the Sustainable Development Goals and in particular its target 16.2 calling to end torture of children; encourage States to implement the recommendations of the UN Global Study on Children Deprived of Liberty on the protection of children from torture.

### 4. FIGHTING IMPUNITY. USING LITIGATION STRATEGICALLY

Holding perpetrators of violence against children accountable through effective and transparent complaints, monitoring, investigation and redress mechanisms is essential to put an end to impunity and is deemed to have a real deterrent effect in the field of torture prevention. In addition, strategic litigation can help multiply the impact of a decision, and have a wide and structural influence on the protection of children from torture.

- > Ensure that filing a judicial complaint does not put the child or the family at risk of reprisals. Explain the proceedings and potential outcomes to the child and its family.
- > When needed, ensure the support of the child and its family throughout the case with social assistance and expert psycho-social support where necessary.
- > To use strategic litigation, take time and when relevant, coordinate with other organisations, to select the cases that will have the most impact. Proper articulation between legal actions at the national, regional and international levels will ensure increased impact.
- > Strategic litigation will not provide immediate results for the child and its family. Make sure to manage expectations and facilitate the understanding of the proceedings. Always ensure that the child and/or legal guardian give consent.
- > Use exemplary cases to build up communications and awareness raising campaigns in order to maximise impact.

## 5. TARGETED TRAINING

Raising awareness and training professionals on the specific vulnerabilities of children to torture, applicable international standards, and the specific role they can play to protect children from torture, have proved instrumental in decreasing occurrences of torture of children in detention.

- > Ensure that the training responds to the real needs and roles of the recipients as well as to their objectives or expectations.
- > Use concrete examples of the situation in the country to raise awareness about the realities of torture and other ill-treatment inflicted on children.
- > Make sure that participants take an active part in the discussion and feel that they have a role to play in decreasing torture and other ill-treatment of children.
- > Plan evaluation tools and specific indicators to ensure the efficiency of the trainings, and plan for a middle and a long-term impact.

## 6. PROVIDING DIRECT ASSISTANCE TO CHILDREN DEPRIVED OF LIBERTY

Although States have the primary responsibility to provide free legal aid and medical services (physical and mental) to children in detention, direct assistance to children from civil society has proved to be one of the most effective tools to bring concrete and sometimes immediate results to remove children from being exposed to the risk of being subjected to torture.

- > Ensure that children have legal representation in court, including through legal aid services.
- > Assist, accompany or represent children in court, advocating for use of diversion proceedings, alternatives to detention, or release.
- > Follow-up with the judiciary for a swift review of children's cases to avoid excessive pre-trial detention.

## 7. COMBINATION OF ACTIONS

The present Guide shows that, if conducting isolated activities can lead to change, combining them and using their complementarity can maximise impact. In particular

- > Monitoring of detention places should be the starting point of a multi-tiered strategy, as a steppingstone for evidence-based reporting, advocacy and visibility, but also direct assistance and litigation.
- > Consider the most efficient actions according to your national context, and the wide range of actions that can have an impact on the authorities, from public denunciation, litigation, use of media and public advocacy, to training of professionals and facilitation of dialogue with key stakeholders.

## 8. LISTENING TO CHILDREN

Children deprived of liberty are among the most vulnerable and invisible children in society. Listening to them and taking into account their needs, concerns and challenges should be the primary objective of our action. Children are the ones that know best what the situation is behind closed doors and could point civil society to the most crucial aspects to address. In doing so, ensuring their complete safety, including from reprisals, should be civil society's primary concern, and no action that would put the child at additional risk should be undertaken. Involving children after their release, when they want to, can also be a way to inform advocacy actions with the concrete experience, concerns and challenges faced by children behind bars.



## 9. NETWORKS AND PARTNERSHIPS

Strategically collaborating with partner organisations or institutions, at the local, national, regional or international level, can leverage the impact of civil society's action.

- > Bring local voices to the international level through coalitions and networks.
- > Ensure grassroots implementation through local partners.
- > Find spaces and mechanisms to share practices and foster sub-regional, regional or international action.

## 10. FOLLOWING CHILDREN AFTER RELEASE

If children should be provided with developmental activities during detention – such as education, vocational training, leisure and cultural activities – to prepare their release and empower them to reintegrate society, ensuring that children recover from the trauma caused by torture or other ill-treatment will be key to help them recover and build their future life.

- > Set up projects and programmes focusing on the psychological support for children released from detention and aimed at recovering from the trauma of torture.
- > Ensure children's reintegration in their communities and families through family mediation or dialogue facilitation.

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