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Violence against children in juvenile justice system

I. Preliminary remarks

OMCT welcomes the current reflection of the Committee on the Rights of the Child (hereinafter the Committee) on juvenile justice in the context of a General Comment and would like to thank the members of the Committee for sharing the draft of the General Comment on juvenile justice and giving the opportunity for NGOs to provide inputs.

Administration of juvenile justice is one of the issues where children may bear the worst forms of violence. Since the creation of its Children Rights Programme in 1991, OMCT has dealt with the issue of juvenile justice and denounced cases and situations of violence both in alternative reports to the CRC and other UN Committees such as the Human Rights Committee and the Committee Against Torture and in urgent interventions.

The international rules and guidelines dealing with juvenile justice¹ are not only aimed at ensuring fair trials to children in conflict with the law, but also constitute important safeguards against torture or other forms of cruel, inhuman or degrading treatment or punishment.

The purpose of the present paper is to highlight some realities, which, far from being exceptional, can help to further emphasise the particular exposure of children in conflict with the law to torture and other forms of cruel, inhuman and degrading treatment or punishment.

Therefore, OMCT would like to submit the present contribution and share its views on the issue of violence occurring against children involved in the juvenile justice system and particularly the interpretation of article 37 par. a) first sentence, in parallel with par. c) first sentence, article 40 (1) and article 19 (1) of the Convention on the Rights of the Child (hereinafter the Convention).

¹ Most of these rules are embodied in article 37 and 40 of the Convention on the Rights of the Child. The UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") also provide detailed recommendations which complement these two articles.

“Reports from many countries in all regions show that institutionalised children are often subjected to violence from staff and officials responsible for their well-being. This can include torture, beatings, isolation, restraints, rape, harassment, and humiliation. In addition, the stigmatisation, isolation and often de-socialisation that results from these institutionalised responses place boys and girls at much greater risk of being exposed to further violence and in some cases becoming perpetrators of it.”

Paulo Sérgio Pinheiro, World Report on Violence Against Children, 2006, p. 175.

II. Introduction

The majority of children involved in the penal system only have committed petty offences or even do not have infringed the law. Indeed, many of them are actually *de facto* deprived of their liberty and considered as offenders. This is often the case of homeless, refugees and other children subjected to situations of violence, who could be put in so-called “safe custody”² or in institutions receiving both children having infringed the penal law and those in need of protection because of a lack of adequate care and protection systems.

Moreover, deprivation of liberty of children is generally overused and this phenomenon increases the occurrence of violence against children in premises where brutality is already familiar.

“The majority of children in the custody of police, or in detention because of actual or perceived offences should not be there. In many countries, this group typically includes children simply in need of care and protection but who have been placed in correctional facilities under charges such as vagrancy, and have thereby been criminalised for nothing more than homelessness and poverty.”

“The vast majority of boys and girls in detention are charged with minor or petty crimes, and are first-time offenders. Very few have committed violent offences. Many have committed no offence at all, but have been rounded up for vagrancy, homelessness, or simply being in need of care and protection.³ In many countries, the majority of children in detention have not been convicted of a crime, but are simply awaiting trial.”

Paulo Sérgio Pinheiro, World Report on Violence Against Children, 2006, pp. 175, 191.

In many countries the administration of juvenile justice does not comply with relevant international standards contained in the Convention, the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN for the Protection of Juveniles Deprived of their Liberty. This is true both for the legislation and its implementation.

² Radhika Coomaraswamy, Report of the Special Rapporteur on Violence against Women, its causes and consequences, to the Commission on Human Rights (53rd session), E/CN.4/1997/47, 12 February 1997, section IV, B.

³ Victims of Police Violence in Brazil Tend to be Afro-Brazilian Males Between 15 and 19, Says Asma Jahangir, 21 April 2004. Available at: www.coav.org.br. Cited in: Dowdney LT (2005). Neither War Nor Peace. Rio de Janeiro, Viva Rio / ISER, 7 Letras.

Especially, although the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment is usually stated as a general principle in the legislation, its implementation is far from being satisfying since it is reported that various forms of violence are used against children involved in the penal justice system in many States parties to the Convention.

As for OMCT, the question of violence against children in the juvenile justice system remains essential. Considering the link of juvenile justice and deprivation of liberty with the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment revealed by the practice and, in absence of a specific General Comment on article 37 a) of the Convention, OMCT recommends the Committee to consider violence against children in the juvenile justice with particular attention and to grant a whole specific section on that question in the General Comment.

OMCT would also like to remind the Committee that the protection of children from violence, including torture, in the juvenile justice system is not only a negative duty as prohibition of committing violence against children by state agents but also covers a positive duty of child victims' protection. This obligation of due diligence means that states parties must prevent, stop, investigate and punish any act of violence, as well as provide adequate compensation and promote recovery and reintegration of the victim.

III. Torture and other cruel, inhuman or degrading treatment or punishment: interpretation of the notion of torture within the framework of the juvenile justice⁴

As already suggested by the Committee during the Day of General Discussion on State Violence Against Children on 22nd September 2000, there is a "need to review the application of the existing definition of torture in order to take into account more adequately the special characteristics of children". "There remains a clear and compelling necessity to make a separate comment on the issue [...] This necessity derives from the consideration that children are necessarily more vulnerable to the effects of torture and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly treated adults."⁵ Therefore, OMCT considers that the Committee on the Rights of the Child should interpret the notion of torture contained in article 37 a) of the Convention taking into account the vulnerability of children compared with adults, particularly when they are involved in the juvenile justice system. The definition of torture in case where the victim is a child should not only include the general definition as for adults but also a specific interpretation according first to the status of the child and second to his/her particular vulnerable situation when s/he is involved in the justice system.

⁴ The present paper is widely inspired by the publication by OMCT Children, Torture and other forms of Violence. Facing the Fact, Forging the Future, 2001, Tampere, Finland. It includes all categories of children, notably girls, asylum seekers and refugees, socio-economically vulnerable children, etc.

⁵ Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/1996/35, 9 January 1996, par. 10.

“Although, since the 1960s, the international community has created instruments clarifying the notion of torture and the obligations of States in this area, consensus on the interpretation of these texts is far from universal. Without going as far as qualifying any serious violations as torture, we feel that the UN Committee on the Rights of the Child should develop –perhaps in the context of a general comment- an interpretation of torture that is specific to children.”

Extract from Opening speech by Eric Sottas, Director of OMCT in Children, Torture and other forms of Violence – Facing the Facts, Forging the Future, International Conference organised by OMCT, 27 November-2 December 2001, Tampere, Finland, p. 8.

1. General considerations about the prohibition of torture and its definition applicable to children

a) The International Bill of Human Rights

The absolute nature of states' obligations to provide protection has been emphasised in successive General Comments from the Human Rights Committee on interpretation of article 7 of the International Covenant prohibiting torture.⁶

The Human Rights Committee states:

“The aim of the provisions of article 7 [...] is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary, against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. [...] The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency (...) no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority”.

b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This Convention, unlike the Universal Declaration, International Covenant and the Convention on the Rights of the Child, limits for its particular purposes the definition of torture by specifying that the act(s) must involve:

- “severe pain or suffering, whether physical or mental”,
- intentionally inflicted for various broadly defined purposes, and
- be “perpetrated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

This Convention emphasises in relation to its definition of torture in article 1 and its extension to cover other ill-treatment in article 16 that it is “without prejudice to any international

⁶ Human Rights Committee, General Comment 7, 1982, HRI/GEN/1/Rev.4, p. 86; updated in 1992 by General Comment 20, HRI/GEN/1/Rev.4, p. 108

instrument or national legislation which does or may contain provisions of wider application.⁷ In particular, these limited definitions must not be used to restrict the application of art. 37 (a) of the Convention on the Rights of the Child.

Moreover, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is not only aimed at punishing the perpetrators of acts of torture, but also at protecting the victims, including child victims. Within the scope of its limited definition, the value of the Convention is in the detailed obligations it places on States to prevent and to respond to torture and other ill treatment effectively.

c) The Convention on the Rights of the Child

The Committee on the Rights of the Child has not as yet drafted a General Comment on article 37. But in various statements and in its concluding observations on States Parties' reports, it has emphasised, in line with the Human Rights Committee's interpretation of the similar provision in the International Covenant, that the obligations implied by article 37 are absolute and require protection of all children, wherever they are and whoever is the perpetrator.

In light of all the provisions of the Convention, including the articles identified as general principles, the Committee has emphasised that legislation should prohibit all forms of violence to children. So for example in recommendations adopted following its first day of General Discussion on State Violence Against Children (2000) it stated: "The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures) for punishment or disciplining within the child justice system, or in any other context (...)"⁸.

2. Specific interpretation of torture according to the vulnerable status of children involved in the justice system

a) Specificity due to the status of the child

Severe pain and suffering

In the case of a child, the threshold of pain and suffering amounting to torture varies with the age, sex, health and maturity of the victim. In some cases, such as death penalty, long term prison sentences, overcrowded conditions of detention, solitary confinement, among others, this threshold is likely to be lower than that of an adult. Furthermore, children cannot be treated as a single homogenous group.⁹

According to the UN Human Rights Committee, this threshold also depends on the nature, purpose and severity of the treatment applied.¹⁰ Similarly, in *Aydin v. Turkey*, the European Court of Human Rights deemed that the level of pain and suffering imposed on a 17 year-old

⁷ Article 1(2); see also article 16(2) of the CAT.

⁸ Committee on the Rights of the Child, Day of General Discussion on State Violence Against Children, 22 September 2000, Part. II par. 8.

⁹ See Nathalie MAN, *Children, Torture and Power*, London, Save the Children, 2000, p. 13.

¹⁰ Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 4.

girl by Turkish security forces had to be evaluated “having regard to her sex and youth and the circumstances under which she was held”.¹¹ With this respect, the Inter-American Court of Human Rights also considers that “in order to establish if torture has been inflicted and its scope, all the circumstances of the case should be taken into consideration, such as the nature and context of the respective aggressions, how they were inflicted, during what period of time, the physical and mental effects and, in some case, the sex, age and state of health of the victims”.¹²

Therefore, in order to evaluate the pain inflicted on children, both objective and subjective criteria must be taken into account. Moreover, not only immediate physical and psychological damages, but also secondary consequences have to be examined. Indeed, violence against children may have negative impacts on their capacity to develop in a holistic manner.

In order to be helpful, the interpretation of torture against children should be aimed at presenting a child-oriented meaning of the expression “severe pain or suffering, whether physical or mental”, which is at the heart of the international notion of torture. Such an interpretation should be aimed at presenting some situations where children are at risk of suffering torture and the level of pain would then be determined according to the circumstances of each case.

Purpose

As far as children are concerned, requiring purpose as a component of torture is far too restrictive. Because of their particular vulnerability, children require higher standards of protection than adults and specific positive measures. In particular, according to OMCT, a higher degree of responsibility of the State must be adopted in cases of torture or cruel, inhuman or degrading treatment or punishment perpetrated against children.

First, it must be recognized that States have an absolute responsibility for acts of torture and other forms of cruel, inhuman or degrading treatment or punishment perpetrated by their agents against children. This means that they must be held responsible, even though these acts are perpetrated without any specific purpose in the meaning of the Convention against Torture. In this case, the severity of the suffering imposed and the official capacity of the perpetrator are the only requirements.

Second, it must be admitted that States have a positive obligation of due diligence. Under article 2(1) of the Convention, States Parties must not only respect, but also ensure the rights set forth in the Convention. Therefore, the State must be held responsible not only for intentional acts, but also for negligence,¹³ including, as stated in this article and article 19, the failure to take all appropriate measures to protect the child. As we will see below, this may include responsibility for acts whose direct perpetrators are private actors.

This point of view was clearly adopted by the Inter-American Court of Human Rights when it stated:

¹¹ European Court of Human Rights, *Aydin v. Turkey* (57/1996/676/866), Judgment, September 25 1997, par. 84.

¹² Inter-American Court of Human Rights, *Villagran Morales et al.*, Judgment, Serie C no 63, November 19 1999, par. 74.

¹³ Eric SOTTAS, “A Non-Governmental Organization Perspective of the United Nations’ Approach to Children and Torture”, *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment*, G. Van Bueren (ed.), Dartmouth Publishing Company Ltd, 1998, p. 145.

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention”.¹⁴

Official capacity

Within the framework of the rights of the child, the scope of State legal responsibility for torture or cruel, inhuman or degrading treatment or punishment goes beyond a strict interpretation of articles 1 and 16 of the Convention against Torture. Due to the fact that most cases of violence against children are committed within private spheres, such as the family, the workplace, schools and other institutions, State responsibility cannot be strictly confined to acts directly perpetrated by State officials. The obligation of due diligence also requires the State to adopt preventive, protective and reparative measures against abuses perpetrated by private actors. If the State does not fulfil this obligation, it must be held responsible, because it may be considered that the abuses were committed “with the consent or acquiescence of a public official”, as stated in article 1 of the Convention against Torture.

In other words, within the framework of the rights of the child, States must be held responsible not only for torture or cruel, inhuman or degrading treatment or punishment directly imputable to their officials, but also for failing to address violence perpetrated by private actors.

This interpretation clearly appears in article 19 of the Convention on the Rights of Child which requires States Parties “to protect the child from all forms of physical or mental violence (...), while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. Moreover, the UN Committee on the Rights of the Child has already pointed out that the official capacity of the perpetrator of acts of torture is not a requirement under the Convention. In its concluding observations regarding the situation in the Democratic Republic of Congo, for example, the Committee expressed its deep concern “that children are regularly the victims of cruel, inhuman or degrading treatment and sometimes constituting torture committed by, *inter alia*, (...) teachers and in the family, and that these acts are violations of children's rights”.¹⁵

Similarly, the UN Human Rights Committee has already stressed that States have a duty to protect everyone against torture or cruel, inhuman or degrading treatment or punishment “whether inflicted by people acting in their official capacity, outside their official capacity or *in a private capacity*” (emphasis added).¹⁶ The Committee has also specified that this protection applied to “children, pupils and patient in teaching and medical institutions”.¹⁷

In this regard, the European Court of Human Rights has also considered that the prohibition of torture or inhuman or degrading treatment or punishment included “such ill-treatment *administered by private individuals*” (emphasis added).¹⁸ Invoking in particular art. 19 and 37

¹⁴ Inter-American Court of Human Rights, Velasquez-Rodriguez, Ser. C no 4, Judgment, July 29 1988, par. 172

¹⁵ Committee on the Rights of the Child, Concluding observations: Democratic Republic of Congo, CRC/C/15/Add.153, 8 June 2001, par. 32.

¹⁶ Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 2.

¹⁷ Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 5.

¹⁸ European Court of Human Rights, A. v. UK (100/1997/884/1096), Judgment, September 23 1998, par. 22. In another case, the Court also stated that “the obligation on High Contracting Parties under Article 1 of the

of the Convention on the Rights of the Child, it has added that “children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity”.¹⁹

In the case *A v. UK* (1998), the Court held that the repeated beating of a young English boy by his stepfather amounted to a breach of article 3 of the European Convention on Human Rights and that the UK Government was responsible because the domestic law allowing “reasonable chastisement” failed to provide sufficient protection including “effective deterrence”. When the stepfather was prosecuted in an English court, the burden of proof was on the prosecution to establish that the assault went beyond the limits of lawful punishment (“reasonable chastisement”), and not on the defendant to prove it did not. The stepfather was acquitted.²⁰ In other words, the State, responsible for the framework of domestic law, was found to be responsible for the breach of the child’s human rights, although the punishment was administered by a private individual in the child’s home. In the present case, the decision of the Court was about inhuman or degrading punishment. However, it may be argued that the same statement may be applied to cases of torture.

b) Specificity due to the involvement in the justice system

The link between the various phases of the penal procedure from arrest to detention and cruel, inhuman or degrading treatment or punishment and even torture should be clear. The excessive duration of such practices, especially because their victims, the children, are at a critical stage of their development, may amount to cruel, inhuman or degrading treatment. Moreover, the frequent recourse to violence (for example during interrogations), but also the deprivation of basic social services such as health or education is common.

Age of criminal responsibility

Above the age of criminal responsibility, sanctions could be foreseen, but clear restrictions should be outlined with respect to sanctions which must never be applied to children.

Article 37(a) of the Convention on the Rights of the Child already contains such measures forbidding capital punishment and life imprisonment without possibility of release. This is, however, unsatisfactory. In one sense, because it does not forbid life imprisonment as such, but only in the case where there is no possibility of release.

Further work needs to be done to clarify what type of sanctions can and cannot be imposed on a child and, more particularly, those which should not be applied to children, and which

Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals”; *Z v. UK*, Judgment, May 10 2001, par. 73. These two cases both concerned child victims.

¹⁹ European Court of Human Rights, *A. v. UK* (100/1997/884/1096), Judgment, September 23 1998, par. 22. In *Z v. UK*, the Court specified that States’ measures “should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge”. Judgment, May 10 2001, par. 73. See also Ugür Erdal and Hasan Bakirci, Article 3 of the European Convention on Human Rights. A Practitioner’s Handbook, World Organisation Against Torture (ed.), 2006, p. 226.

²⁰ European Court of Human Rights, *A. v. UK* (100/1997/884/1096), Judgment, September 23 1998, par. 23 and 24.

should be considered as torture.

Moreover, too low an age of criminal responsibility could imply that children could be investigated and interrogated by police officers not familiar with dealing with children, and their judicial proceedings could be handled without taking into account the special standards applicable to judicial proceedings involving children. Although the Convention gives States discretion in establishing at what age a child can be held criminal responsible for his/her acts, too low an age should be considered as incompatible with the Convention, because it would restrict or eliminate rights established in that Convention.

Arrest and detention

In the case of children deprived of their liberty, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") set forth clear recommendations regarding the treatment of children, in particular the conditions of detention. As recalled by the Committee on the Rights of the Child, these instruments provide relevant detailed standards for the implementation of article 37 of the CRC.²¹ As such, they constitute a set of positive obligations which develop the contents of the States' obligation of due diligence to protect detained children against torture and other cruel, inhuman or degrading treatment or punishment.

According to the UN Special Rapporteur on torture, "by far the most frequently expressed concerns with respect to children that have been conveyed to (him) are those relating to conditions of detention".²²

The Special Rapporteur has specified that he "has received information indicating that some children have been subjected to lengthy periods of pre-trial confinement in police lock-ups and other places of detention. (...) Another problem, reported to be widespread in many regions of the world, is that of overcrowding of children's cells, both in places of pre-trial detention and in prisons. (...) The lack of adequate space and facilities has in some situations resulted in children being held together with adult detainees or prisoners, a circumstance which leaves them vulnerable to violent attacks, as well as harmful influence. Even in situations where children are held separately, prison personnel may often lack the training to deal with the special requirements of juvenile detention.

Children are reportedly often detained in unsanitary conditions, leaving them exposed to the risk of disease and other health problems. In some cases, the provision of food is inadequate, resulting in instances of malnutrition and, in extreme cases, starvation. (...) Many prisons and other detention centres where children are kept are also bereft of any or adequate medical facilities. Moreover, the absence of recreational and educational facilities may adversely effect the mental and emotional well-being and development of detained children".

Report to the UN Commission on Human Rights, E/CN.4/1996/35, Follow-up to paragraph 5 of Commission resolution 1994/37 B. par. 11 and 12.

²¹ See for example Report on the 10th session, October - November 1995, CRC/C/46, par. 214. Or see Report on the ninth session, May - June 1995, CRC/C/43, Annex VIII, p. 64.

²² Report to the UN Commission on Human Rights, E/CN.4/1996/35, Follow-up to paragraph 5 of Commission resolution 1994/37 B. par. 11.

“Children deprived of their liberty and placed in detention are at extreme risk of violence. As in residential care, violence against children in detention often comes from staff or peers. In addition, children may be subject to violence from adult detainees, from police or security forces while in their custody, or may receive violent sentences as a judgment from the courts.”

“Children in detention are frequently subjected to violence by the staff, as a form of control or punishment, and often for minor infractions.”

“It is well documented that some police forces routinely use violence, including torture, to extract information and confessions from children.”

Paulo Sérgio Pinheiro, World Report on Violence Against Children, 2006, pp. 196 and 197.

Arrest and pre-trial detention are used for example as a threat, a disciplinary measure or even to replace sentences.

One might also consider larger contextual issues, such as systematic violence against the child's ethnic/religious/national/gender/other group, which would add to the fear, based on systematic and common practice, at the time of arrest and exacerbate the effects of the treatment.

With reference to purpose, abuse and violence might take place either to obtain a confession from a child deprived of his/her liberty, to punish him/her for an act s/he or another person has committed or simply to induce fear or as a form of harassment. Furthermore, in the case of the targeting of particular groups, such as political prisoners, within the prison system, it may be argued that at the heart of the harassment is an attempt to punish the child prisoner for the actions of his/her larger group of people.

The manner of arrest itself can constitute ill-treatment in certain situations, for instance, when masked soldiers and other security services forcibly remove the child from its home in the middle of the night and inform neither the child nor the family where he/she is being taken to.

Children deprived of their liberty, whether lawfully or unlawfully, are frequently subjected to various forms of violence, such as physical and psychological abuse and harsh conditions of detention, that amount to torture. Typical scenarios of ill-treatment include physical beating by prison guards and interrogators: those could be sexual assault; psychological abuse, such as threats of further beatings, sexual assault, and/or no release, and witnessing acts of extreme violence perpetrated against other detainees; placement in isolation cells; incommunicado detention; being tied to beds; position abuse; physical abuse (beatings, knifings, etc.); and sexual assault (or the threat thereof) by other inmates. Placing children in adult settings or mixing only-charged children with convicted child inmates for instance, obviously imply much higher risks of torture and cruel, inhuman and degrading treatment.

The pattern of abuse in terms of possible links between physical and psychological ill-treatment should also be considered; whereby the former is applied in order to physically exhaust the child, which subsequently affects the psychological state of the child, thus exacerbating the effects of both types of ill-treatment.

The wide ranging effects and extent of physical and psychological abuse on children cannot be underestimated and must be at the forefront of all interpretations of torture. Frequently, such forms of abuse are applied jointly and while one manner of treatment alone may not constitute torture, taken as a whole, it does.

It is also important to examine the specific point in time at which the abuse is carried out within the arrest-interrogation-incarceration process. Physical and psychological abuse applied during the period of arrest and interrogation is more likely to cause pain and suffering of a severe nature (thus constituting torture) than if such abuse is applied during the period of incarceration. This is due to the fact that in the former period, the child is in an unfamiliar situation and has no clear idea of what is taking place and for how long he/she will be subjected to this treatment. The exception to this would be cases of administrative detention whereby children are detained for an unspecified period of time, and physical and psychological abuse is more likely to have severe and adverse effects on the child's future mental and physical development.

The ill-treatment during the arrest, the interrogation and the detention can come from a variety of actors, both civil and military. For example, the child may be tortured by soldiers upon arrest, by military/intelligence/police officials during interrogation, and by prison guards/police during incarceration. The child may also be subjected to torture by other inmates (be they adults or children) during imprisonment.

In all cases, should such treatment occur, the State bears responsibility, either because the act was directly perpetrated by public officials or because these officials did not take the necessary measures to protect the child from other inmates.

Other issues to be examined regarding State responsibility include the patterns of violence imposed on children deprived of their liberty. If it is well documented that abuse and harsh conditions of detention are inflicted on children while in State prisons and detention centres over a significant period of time (thus, establishing a systematic practice), then the acquiescence of the State, and thus its responsibility, is clear from its failure to take the necessary measures to rectify the situation and provide adequate protection from such abuse.

Long term consequences

A confrontation with law enforcement and juvenile justice may imply, for children, life long suffering caused for example by:

- stigmatisation (it may be very difficult to get rid of the label of young criminal, especially for children from minority or marginalized groups in society),
- interruption of education, vocational training, or employment, temporarily or even permanently.

c) Corporal punishment

The Committee on the Rights of the Child has recently defined “ ‘corporal’ or ‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in

uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."²³

Previously, the Human Rights Committee had also considered that "the prohibition [of torture and other cruel, inhuman or degrading treatment or punishment in article 7 of the ICCPR] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions."²⁴

Corporal punishment has also been condemned by regional human rights mechanisms. The European Court of Human Rights, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home.²⁵

"Corporal punishment as a sentence for children convicted of offences has been prohibited in 177 States and territories, and a series of human rights judgments have condemned the practice. However, some 31 States and territories still permit corporal punishment as a court sentence against children."

"Although universally condemned and prohibited by international law (ICCPR, article 6, CRC, article 37a), some States still demand capital punishment for crimes committed by children."

Paulo Sérgio Pinheiro, World Report on Violence Against Children, 2006, pp. 198.

Face to the persisting legality of corporal punishment in many States [...] in penal systems for children in conflict with the law, the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children is urgent.

A majority of countries have legally prohibited corporal punishment against children as a sentence for crime and as a disciplinary measure in the penal institutions.²⁶ However, in practice, corporal punishment and other cruel or degrading forms of punishment of children

²³ Committee on the Rights of the Child, General Comment n°8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, par. 2; and 37), 2006, CRC/C/GC/8, par. 11.

²⁴ Human Rights Committee, General Comment 20, 1992, par.5. Already in 1982, the Human Rights Committee considered corporal punishment as part of the prohibition of article 7 of the ICCPR and including "excessive chastisement as an educational or disciplinary measure"; Human Rights Committee, General Comment 7, 1982, par. 2.

²⁵ Corporal punishment was condemned in a series of decisions of the European Commission on Human Rights and judgements of the European Court of Human Rights; see in particular *Tyrer v. UK*, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998. European Court judgements are available at <http://www.echr.coe.int/echr>.

²⁶ Global Initiative to End All Corporal Punishment of Children, Ending legalised Violence against Children. Global report 2006, see table on legal status of corporal punishment of children, p. 39-47

take place in many countries and in many settings, including [...] justice systems - both as a sentence of the courts and as a punishment within penal and other institutions.



The World Organisation Against Torture (OMCT) is the world's largest coalition of non-governmental organisations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. Its global network comprises nearly 300 local, national and regional organisations, which share the common goal of eradicating such practices and enabling the respect of human rights for all.

See our website: www.omct.org

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