

February 15, 2015
European Final Conference - Children's Rights Behind Bars
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

I would like to thank Defence for Children International for inviting me to participate in this important conference. The timely topic of the human rights of children deprived of liberty is one that my Rapporteurship has taken a keen interest in. Less than one year ago, I presented my thematic report on the topic of children deprived of their liberty to the United Nations Human Rights Council in Geneva. The report explores the international legal framework and standards protecting children deprived of their liberty from being subjected to torture and other ill-treatment. It covers a range of issues and practices both within and beyond classic criminal or juvenile justice systems (including private custodial settings), and identifies specific practices and situations that require attention and modified standards from the perspective of the prevention of torture and ill-treatment.

For the rest of this presentation, I will comment on the need for higher standards and broader safeguards to protect children from human rights violations, outline some of my report's main findings, and take a moment to welcome the important development of the **Practical Guide on Monitoring Places of Deprivation of Liberty for Children**.

Children's unique vulnerability requires higher standards and broader safeguards to protect children deprived of liberty from being subjected to torture or other ill-treatment, or from experiencing developmentally harmful and torturous conditions of confinement. Due to their unique physiological and psychological needs, children in detention are at a heightened risk of violence and abuse and more vulnerable than adults to be subjected to torture and ill-treatment. In addition, they experience pain and suffering differently than adults, due to their physical and emotional development and their specific needs, and long-term damaging effects of ill-treatment cause even greater or irreversible damage than for adults. In this context, it is clear that the detention of children – whether within the criminal justice system, institutionalization, or administrative immigration detention – is inextricably linked – in fact if not in law – with ill-treatment of children, due to their unique vulnerability. Indeed, even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development.

Accordingly, higher standards and broader safeguards must be applied to children, so as to ensure that they are protected from torture and ill-treatment, and States have a heightened “due diligence obligation” to take additional measures to ensure children's human rights of life, health, dignity, and physical and mental integrity. There is need for an additional focus on the physical and mental effects on the age of the victim in determining the seriousness of acts that may constitute torture and ill-treatment, beyond what international law affords adults.

In my report, I conclude that the deprivation of liberty of children is meant to be an *ultima ratio* measure, to be used only for the shortest possible period of time, only if it is in the best interest of the child, and limited to exceptional cases. Significantly, the “best interests of the child” is not to be defined in accordance to the convenience of the State.

Regarding children in conflict with the law, I conclude that life without parole sentences, life imprisonment, and lengthy sentences such as consecutive sentencing are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on children. In addition, if circumstances change and the reclusion of children is no longer required, States are obligated to release them, even when they have not completed their sentences. Furthermore, the imposition of solitary confinement, the death penalty, or any sort of corporal punishment on children are strictly prohibited under international law, and contrary to the prohibition of torture or other ill-treatment.

Abuses suffered by children outside the criminal justice settings – for instance by children in healthcare or social care institutions, such as orphanages – are often the result of acts of omission rather than commission, such as emotional disengagement or unsanitary or unsafe conditions, and result from poor policies rather than from an intention to inflict suffering. In this context, it is important to recall that purely negligent conduct may constitute ill-treatment if it leads to pain and suffering of some severity and when the State is, or should be, aware of the suffering, including when no appropriate treatment was offered, and when the State failed to take all reasonable steps to protect children’s physical and mental integrity. Furthermore, States’ obligation to prevent torture applies not only to public officials, but also to medical doctors, health-care professionals and social workers, including those working in private hospitals, child-care institutions and detention centers.

States also frequently detain children who are refugees, asylum seekers, and irregular migrants for a number of reasons, such as health and security screening, to verify their identities, or to facilitate their removal from the territory. Immigration detention practices across the globe, whether *de jure* or *de facto*, put children at risk of cruel, inhuman or degrading treatment or punishment. I find that the deprivation of liberty of children based on their or their parents’ migration status is never in the best interest of the child, exceeds the requirement of necessity, becomes grossly disproportionate and constitutes cruel, inhuman or degrading treatment of migrant children. This is because such a measure is not absolutely essential in order to ensure the appearance of children at immigration proceedings or to implement an eventual deportation order, and accordingly can never be understood as a measure that complies with the child’s best interests. In addition, I find that when the child’s best interest requires keeping the family together, the imperative requirement not to deprive the child of liberty extends to her or his parents and obliges the authorities to choose alternative measures to detention for the entire family.

An essential safeguard against torture and other ill-treatment is the availability of multi-disciplinary and qualified staff working in children's institutions, who are adequately trained to deal with children. In addition, children deprived of their liberty, as well as their parents or legal representatives, should have avenues of complaint open to them within the establishments' administrative system and should be entitled to address complaints – on a confidential basis – to an independent authority. The lack of vocational, educational and recreational activities for children deprived of their liberty can also create situations of risk of abuse and ill-treatment. Children in detention should be provided throughout the day with a full program of education, sport, vocational training, recreation and other purposeful out-of-cell activities.

It is further important to realize that regular and independent monitoring of places where children are deprived of their liberty is essential, and should be done by an independent body with authority to receive and act on complaints and to assess whether establishments are operating in accordance with the requirements of national and international standards. In this context, I welcome the publication of the **Practical Guide on Monitoring Places of Deprivation of Liberty for Children**. The development of a specific set of guidelines to be used in the preparation and implementation of – and follow-up on – monitoring visits to places where children are deprived of liberty constitutes a contribution of utmost significance, and is bound to serve as an essential practical and methodological tool for monitoring bodies and professionals everywhere. I am confident that the adoption of a multidisciplinary children's rights approach and of child-specific indicators by relevant local, regional, and international monitoring mechanisms, as advocated by the Guide, will help improve the human rights of children deprived of liberty and prevent the commission of torture and other ill-treatment. I particularly welcome the broad definition of places of deprivation of liberty adopted by the Guide, which includes “any kind of establishment – penal, correctional, educational, protective, social, therapeutic, medical, administrative – public or private – from which a child is not allowed to leave at will;” as well as the comprehensive scope of the Guide to cover the gamut of issues relevant to the welfare of children deprived of liberty, whether as regards material conditions and the nature of the regime of detention that is imposed; access to health-care, educational, vocational, leisure, and recreating activities; standards for the recruitment, qualifications, and training of staff; access to protective measures and complaint mechanisms; and access to justice, among others.

Finally, I would like to take this opportunity to reiterate my support for the Global Study on Children Deprived of Liberty, to be carried out in accordance with the UN General Assembly Resolution of December 2014. It is my hope that the Global Study will contribute to the important goals of collecting data and statistics from around the world on the situation of children in detention, highlight good practices, and formulate recommendations for preventing human rights violations against children and reducing the number of children deprived of their liberty worldwide.