

# THE UNITED NATIONS GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY

## Executive Summary



2020

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the UN Global Study on  
Children Deprived of Liberty*

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## Executive Summary

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# Message from the United Nations Task Force on the Global Study on Children Deprived of Liberty

Five years ago, the General Assembly, following a recommendation by the Committee on the Rights of the Child in accordance with Article 45(c) of the United Nations Convention on the Rights of the Child, invited the Secretary-General to commission an in-depth Global Study on Children Deprived of Liberty. We welcome this Study by the Independent Expert, containing research findings and recommendations for future actions.

We want to thank the Independent Expert, Professor Manfred Nowak, who with the support of the United Nations system, Member States, academia, civil society and children themselves conducted and completed the Global Study.

This year marks the 30th anniversary of the Convention on the Rights of the Child, yet countless children continue to suffer severe violations of their human rights.

Legally, we have a very strong international framework. The Convention on the Rights of the Child, its Optional Protocols, and other international standards provide fundamental guidance to all aspects of deprivation of liberty and even when new issues or concerns emerge, they cannot contradict these protections and guarantees for children. Based on the fundamental principle of the best interests of the child, States are required to absolutely minimise the detention of children, and in some cases prohibit it altogether by developing and applying appropriate non-custodial solutions.

It is our strong hope that this Study will mark a turning point in ending the invisibility and overcoming the vulnerability, stigmatisation and social exclusion of children deprived of liberty. As the research confirms, these children are often neglected by policies and data in countries around the world. Indeed, some of the key findings and recommendations of the Study relate to unavailability of comprehensive data, which is vital to understand the scope of the deprivation of liberty of children globally, as well as to assess the progress made as a result of policy changes. Sadly, the saying that “the ones who are not counted do not count” reflects well the harsh reality of children deprived of liberty.

This situation is very far from the promise “to leave no one behind” in the 2030 Agenda for Sustainable Development. For this reason, we call on all of us to put these children first.

For children deprived of liberty achieving the Sustainable Development Goals are essential: Goal 1 on poverty eradication, which is a significant risk factor for deprivation of liberty; Goal 3 on health; Goal 4 on education; and very importantly, Goal 16 on access to justice, prevention and protection of children from violence and legal identity. Investing in these areas will decrease the number of children deprived of liberty while improving the conditions for those who still are.

Recognising that this issue cuts across the Sustainable Development Agenda, a UN Inter-Agency Task Force on the Global Study was established as a platform to provide UN system-wide support to the development of the Study. The Task Force consisted of the Special Representative of the Secretary-General on Violence Against Children (Chair), the Special Representative of the Secretary-General for Children and Armed Conflict, the Committee on the Rights of the Child, the Office of the High Commissioner for Human Rights, the Office of the High Commissioner for Refugees, the United Nations Office on Drugs and Crime, the International Organization for Migration, the World Health Organization and the United Nations Children’s Fund.

The Study provides an overview of the situation of children deprived of liberty worldwide. It includes valuable examples from States of policy options related to restorative justice, diversion, alternatives to migration detention and de-institutionalisation of children.

The deprivation of liberty of children can and should be prevented. It is not only the responsibility of Member States, but of the wider society. The United Nations supports these efforts wholeheartedly. Children of the world deserve this, and much more.



**Najat Maalla M'jid**

Special Representative of the UN Secretary-General on Violence against Children on behalf of the UN Task Force



## Message from the Independent Expert

Worldwide, more than seven million children are deprived of liberty per year. They are detained in settings such as prisons, pre-trial detention centres, police custody, migration detention centres and institutions of all kinds, including institutions for children with disabilities. Still a conservative estimate, this figure stands in direct contrast to the requirement of the Convention on the Rights of the Child, which clearly states that the detention of children shall be used only as a measure of last resort. This means that children shall be deprived of liberty only in exceptional circumstances on a case by case basis if non-custodial solutions are really not available or appropriate. Although some progress has already been achieved in recent years, it is evident that much more needs to be done in terms of deinstitutionalisation, diversion, ending migration-related detention and other measures. This is crucial since children under all circumstances have to be protected from the traumatic experiences detention settings inevitably create. It is our responsibility to give children in detention back their childhood. Children have a right to grow up safe and surrounded by love – if not in their own family, then in a family-type setting. States have a corresponding obligation to support the family, which is the natural and fundamental group unit of society responsible for the upbringing, care and education of children. Where children are unable to remain with their families, States must invest in effective child welfare systems that provide non-custodial alternatives to the deprivation of liberty in numerous settings including institutions, migration detention or in the context of the administration of justice. Children deprived of liberty are invisible to the large majority of society and their fate constitutes the most overlooked violation of the Convention.

The Global Study on Children Deprived of Liberty was submitted to the United Nations in November 2019. This comprehensive book (of more than 750 pages) is the result of a highly participatory process involving many different stakeholders, including States, UN agencies, regional organisations, NGOs, academia and children.

I am deeply grateful to hundreds of individuals who contributed to this Global Study, usually on a pro bono basis. Crucially, I want to thank all the children who participated in our consultations all over the world and whose invaluable views informed and enriched this Global Study.

This Executive Summary, which will be translated also into the other five UN languages, provides a tool to get quickly acquainted with the main findings, challenges, promising practices, conclusions and recommendations of the Global Study. I wish to express my sincere gratitude to the Right Livelihood Foundation, which by means of a partnership agreement with the Global Campus of Human Rights provides the funds and enables us to carry out a broad variety of children's rights projects and dissemination activities related to the Global Study, including this Executive Summary. It was compiled by an editorial team at the Global Campus of Human Rights comprised of Elisa Klein Diaz, Manu Krishan and Imke Steimann, under the professional leadership of Georges Younes.

We hope that this Global Study, which needs a comprehensive follow-up by States, the United Nations and other stakeholders under the lead of the UN Special Representative of the Secretary General on Violence against Children, will constitute a turning point in the lives of millions of children, make the invisible visible and start a process of liberating children from detention. In achieving this goal, it will foster the aims of the 'Agenda 2030', which strives to end violence against children and to leave no one behind, and in particular no child behind bars.



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# DEPRIVATION OF LIBERTY IS DEPRIVATION OF CHILDHOOD



© Matej Divizna / Getty Images News, detention centre for migrants in Bela pod Bezdazem, Czech Republic

The Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty and provides that, in all actions concerning children, the best interests of the child shall be a primary consideration. In particular, deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time. Children deprived of liberty are invisible to the large majority of society and their fate constitutes the most overlooked violation of the CRC.

Childhood is when children develop their personality, their emotional relationships with others, their social and educational skills and their talents. Depriving children of liberty is depriving them of their childhood. Many children may also find themselves in a vicious cycle of different situations of deprivation of liberty throughout their childhood, which might start in an 'orphanage', followed by various institutions for educational supervision and drug rehabilitation until culminating in imprisonment and reoffending. Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love.



## Background

The Global Study is **only a first step** to draw the attention of States and the international community to a phenomenon that has largely been ignored in the past: that millions of children of all ages are suffering in many different types of detention in violation of international law, and that **we are depriving these children of their childhood and of their future**. Depriving children of liberty means to expose them to a **form of structural violence**, while States have committed themselves in the Agenda 2030 to end all forms of violence against children. This Global Study will hopefully contribute to the ultimate goal of the Agenda 2030 to leave no one behind and, in particular, to leave no child behind bars.

This Study is meant to be a follow-up to the **Global Study on Violence against Children**, published in 2006 under the guidance of Paulo Sérgio Pinheiro. As Pinheiro's Study illustrates, violence against children occurs in various settings, including in the family, in schools, in workplaces and in the community. It is worst, however, in care and justice institutions where children are deprived of liberty. Places of detention constitute settings of structural violence. At the same time, the conditions in places of detention are very little known to the outside world. Prison walls serve two distinct functions: to lock people away from society, and to keep society out. Only very few members of our societies have been inside prisons, police jails, migration detention centres, psychiatric hospitals, orphanages, children's homes, drug rehabilitation centres, institutions for children with disabilities or any other places of detention, and most people have no desire

to know what the reality of life behind bars looks like. There is very little interest, let alone empathy, for prisoners and detainees, including children behind bars. Many global statistics cover all aspects of life, but nobody knows how many children are in fact deprived of liberty worldwide or what the conditions of their detention look like.

The Global Study shows that the vast majority of children detained around the world today have been deprived of liberty in violation of international law and in specific of the **Convention on the Rights of the Child (CRC)**. In almost all cases, there would have been non-custodial solutions available, which should have been applied in order to meet the high legal standard of detention as a **measure of last resort (Article 37(b) CRC)**.

The **best interests principle (Article 3 CRC)** serves as the **guiding principle** for the entire child rights-based analysis, reviewing both context and justification for deprivation of liberty (content) and decision-making processes in relation to such interference (procedure). The other guiding principles of the Convention on the Rights of the Child, namely **non-discrimination (Article 2 CRC)**, the **right to survival and development (Article 6 CRC)** as well as **participation of children (Article 12 CRC)** are mainstreamed in the analysis across the entire Global Study. Additionally, the Study particularly seeks to identify non-custodial solutions and their impact on reducing the number of children deprived of liberty.

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## Scope of the Right to Personal Liberty

The right to personal liberty is one of the oldest human rights. The term **'personal liberty'** is often confused with 'liberty' or 'freedom' in a much broader sense, including freedom of movement, expression, religion or the liberal freedom to do whatever one likes as long as one does not interfere with the freedom of others. The concept

of 'personal liberty', however, actually relates to a very specific aspect of human freedom, namely the freedom of bodily movement in the narrowest sense. An interference with personal liberty results only from the forceful detention of a person at a certain, narrowly bounded location, such as a prison or any other detention facility. A

person is deprived of personal liberty if he or she is confined to such a narrowly bounded location, which he or she cannot leave at will. Less grievous restrictions on freedom of bodily movement, such as limitations on domicile or residency, confinement to a certain region of a country, banishment to an island, exile or expulsion do not fall within the scope of the right to personal liberty, but instead interfere with the broader right to freedom of movement. It follows that the distinction between deprivation of liberty and limitation of movement is merely one of degree or intensity, and not one of nature or substance. Criteria which play a role in distinguishing whether a certain restriction of freedom of movement reaches the level of interfering also with the right to personal liberty include the type and place where a person is held, the degree of supervision, the extent of isolation and the availability of social contacts.

The **right to personal liberty is not an absolute right**. On the contrary, all societies use deprivation of liberty as a punishment for serious crimes or as a measure to maintain public order, morals, health or security. With the gradual displacement of other traditional forms of punishment, such as corporal or capital punishment, hard labour, banishment, shame sanctions or depriving perpetrators of certain

civil and political rights, imprisonment has even gained significance in the administration of criminal justice over the last centuries. Article 5 of the **European Convention on Human Rights (ECHR)** of 1950 contains an exhaustive list of lawful forms of deprivation of personal liberty, such as imprisonment after conviction by a competent court, pre-trial detention, the detention of a minor for the purpose of educational supervision, the detention of persons for the prevention of the spreading of infectious diseases, the detention of persons of 'unsound mind', of alcoholics, drug addicts, vagrants or irregular migrants. Article 9 of the **International Covenant on Civil and Political Rights (ICCPR)** of 1966 does not, however, contain a similar list of lawful forms of deprivation of liberty, but prohibits arbitrary and unlawful arrest and detention, thereby leaving States with a fairly broad discretionary power to define in their laws cases in which persons may be deprived of their right to personal liberty. In General Comment 8/16 of 1982, the UN Human Rights Committee had made it clear from the outset that Article 9 ICCPR "is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc."

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## Concept of Deprivation of Liberty

Despite certain ambiguities during the drafting of Article 9 ICCPR, a careful interpretation in light of the object and purpose of the Covenant leads to the conclusion that this provision does not recognise any other form of deprivation of liberty beyond the two terms 'arrest' and 'detention'. The term 'arrest' refers to the act of depriving personal liberty and generally covers the period up to the point where the person is brought before the competent authority. The word 'detention' refers to the state of deprivation of liberty, regardless of whether this follows from an arrest (police custody, pre-trial detention), a conviction (imprisonment), kidnapping or some other act. That the term 'detention' covers all forms of deprivation of

liberty, both in the context of the administration of criminal justice and beyond, is also confirmed by the use of this term in Article 5 ECHR for the holding of minors, vagrants, drug addicts, migrants or persons in medical quarantine or by the definition of the mandate of the UN Working Group on Arbitrary Detention.

The **Optional Protocol to the UN Convention against Torture (OPCAT)** of 2002 establishes a system of regular visits undertaken by independent international and national bodies, namely the UN Subcommittee for the Prevention of Torture (SPT) and National Preventive Mechanisms (NPMs), to places where people are deprived of liberty.



## International and Regional Legal Instruments Protecting the Right to Personal Liberty

YEAR OF ADOPTION	LEGAL INSTRUMENTS	PARTIES TO THE TREATY
1950	EUROPEAN CONVENTION ON HUMAN RIGHTS	47
1966	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	173
1969	AMERICAN CONVENTION ON HUMAN RIGHTS	25
1981	AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS	54
1985	UN STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE ('BEIJING RULES')	
1988	BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT	
1989	CONVENTION ON THE RIGHTS OF THE CHILD	196
1990	AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD	49
1990	UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF LIBERTY ('HAVANA RULES')	
1990	UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY ('RIYADH GUIDELINES')	
1991	UN STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES ('TOKYO RULES')	
1997	GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM ('VIENNA GUIDELINES')	
2002	OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE	90
2004	ARAB CHARTER ON HUMAN RIGHTS	14
2006	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	182
2009	UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN	
2015	UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS ('NELSON MANDELA RULES')	

SOFT LAW

HARD LAW

Article 4 OPCAT requires every State party to allow visits “to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention)”. This provision as well as the practice of the SPT and NPMs confirm that the term ‘places of detention’ covers all places where a person may be deprived of liberty, such as prisons, police lock-ups, pre-trial detention centres, military prisons, social care institutions, foster homes, institutions for persons with disabilities or for persons addicted to drugs or alcohol, orphanages, children’s homes, institutions for the educational supervision of children, care homes, old people’s homes, institutions for palliative care, psychiatric hospitals, mental health centres, migration detention centres, etc. The Global Study on Children Deprived of Liberty follows this broad definition of the term ‘detention’, which covers all forms of deprivation of liberty. This is also in line with Article 11(b) of the **Rules for the Protection of Juveniles Deprived of their Liberty (‘Havana Rules’)**, which defines the term ‘deprivation of liberty’ as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority”.

Article 37 of the **Convention on the Rights of the Child (CRC)** combines aspects of the right to life, the right to personal integrity and dignity and the right to personal liberty in one provision. Article 37(a) prohibits torture and other forms of ill-treatment, capital punishment and life imprisonment without possibility of release. Article 37(b) prohibits unlawful or arbitrary deprivation of

personal liberty of children. Article 37(c) defines minimum conditions of detention in line with the right to humanity and respect for the inherent dignity of the human person, and Article 37(d) provides every child deprived of liberty with the right to legal assistance in order to challenge the legality of the deprivation of liberty. In the ICCPR, these rights are covered in different provisions, namely Articles 6, 7, 9 and 10.

While Article 9 ICCPR only prohibits unlawful and arbitrary arrest and detention, Article 37(b) CRC goes an important step further: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. While the term ‘arrest’ means the act of depriving a child of personal liberty, and ‘imprisonment’ means detention after trial and conviction, it is clear that the term ‘detention’ covers all forms of deprivation of liberty, including migration-related detention and placement in institutions. Finally, the term ‘child’ means every human being below the age of eighteen years, as defined in Article 1 CRC.

For the purpose of the **Global Study on Children Deprived of Liberty**, the UN Task Force and the NGO Panel decided from the outset to structure the Study according to settings of deprivation of liberty for which the State bears direct or indirect responsibility. If children are, for example, deprived by their parents of liberty in private homes or by criminal gangs in the context of trafficking of children, these situations will not be covered by the Global Study. If parents place their children, however, in any form of institution, whether State-owned or private, this falls under the term ‘deprivation of liberty’, as also private institutions must be under some control of State authority.

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## Ensuring Deprivation of Liberty as a Measure of Last Resort and for the Shortest Appropriate Period of Time

As with all human rights, restrictions of their enjoyment are only permissible if provided for in an explicit provision of domestic law (principle of legality or **lawfulness**) and as an exceptional measure in accordance with the principles of proportionality and non-discrimination (principle of **non-arbitrariness**). The prohibition of **arbitrary deprivation** of liberty means that any arrest and detention of human beings must not be manifestly non-proportional, unjust or unpredictable, and the specific manner in which an arrest is made must not be discriminatory.

Article 37(b) CRC clearly goes beyond these general limitations on the right to personal liberty by prescribing that arrest, detention or imprisonment of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time”. This means that children should in principle not be deprived of liberty, and if really necessary in light of the specific circumstances of the case only for a short period of time, and that States are required to apply **non-custodial measures** when dealing with children. In the context of the **administration of justice**, Article 40(4) CRC provides that a “variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”. With this comprehensive list of non-custodial measures, the CRC clearly indicates that children in conflict with the law should, in principle, be dealt with outside the criminal justice system by means of transferral to the child welfare system or similar non-custodial alternatives. For those exceptional cases when the detention of children is truly unavoidable, the Committee on the Rights of the Child, in its General Comment 24 of 2019, has defined strict limits, such as no detention of children below

the age of 16, no police custody of more than 24 hours and no pre-trial detention of more than 30 days. The rule that children in principle shall not be deprived of liberty goes beyond the context of child justice and applies to all situations in which children are at risk of being detained, including in the field of migration control, the child welfare system and when children are placed in institutions.

In the context of **immigration control**, the UN Committees on the Rights of the Child and on the Rights of Migrant Workers and their Families, the UN Working Group on Arbitrary Detention, the Secretary General, the UN International Children’s Emergency Fund (UNICEF), UN High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM) and various other UN bodies and regional organisations have come to the conclusion that deprivation of liberty for purely migration-related reasons can never be considered as a **measure of last resort** in the sense of Article 37(b) CRC, as there should always be non-custodial solutions available to deal with migrant and refugee children. In addition, migration detention of children is never in the best interest of the child, as required by Article 3 CRC.

Difficult legal questions arise when indigenous children, orphans, children living in the streets, children with disabilities, behavioural difficulties, addictions, for ‘anti-social behaviour’, for educational supervision or for any other reasons are placed in **institutions**. The Global Study defines the term ‘institutions’ by certain characteristics, such as isolation, lack of control over one’s life and decisions affecting it, blanket rules with little flexibility related to individual needs, lack of autonomy, separation from families and the wider community, and lack of bonding and affectionate relationships. Taking these characteristics of institutions into account, the Global Study applies the strict standard of the UN Human Rights Committee, which

stated in General Comment 35 of 2014 that “the placement of a child in institutional care amounts to deprivation of liberty” within the meaning of Article 9 ICCPR. With respect to children with disabilities, Article 14(1)(b) of the **Convention on the Rights of Persons with Disabilities (CRPD)** of 2006 provides that “the existence of a disability shall in no case justify a deprivation of liberty”. In the case of children with disabilities, who are often placed in special institutions, this strict prohibition of any disability-based detention needs to be interpreted together with the principle of the best interests of the child in Article 3(1) CRC and the principle of last resort in Article 37(b) CRC. The **UN Guidelines for the Alternative Care of Children** of 2009 call for an “overall deinstitutionalization strategy” and emphasise the family as the “natural environment for the growth, well-being and protection of children”. This approach finds support in Article 20 CRC. As a consequence, the UN Guidelines conclude that “efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents and, when appropriate, other close family members. The State should ensure that families have access to forms of support in the caregiving role”.

Pregnant women or mothers with infants should, in principle, not be sentenced to imprisonment so that they can take care of their young children outside of a prison. In this respect Article 30(a) of the **African Charter on the Rights and Welfare of the Child** of 1990 requires States parties to ensure that a non-custodial sentence will always be first considered when sentencing such mothers. However, Article 30(d) goes even a step further and

imposes an obligation on States parties to “ensure that a mother shall not be imprisoned with her child”. This raises again highly difficult questions of interpretation. A more careful balancing of different interests of the mother (or other primary caregivers) and the child need to be taken into account. If the **imprisonment of the primary caregiver** is unavoidable, children shall only be permitted to stay with their incarcerated mother (or other caregivers) if there are no alternatives and if this is in the best interest of the child as stipulated in Article 3 CRC.

In other words, children shall only be detained if all other non-custodial measures have failed or are expected to fail. The test of whether deprivation of liberty as an absolutely exceptional measure is permissible under Articles 3 and 37(b) CRC must be applied on a case-by-case basis and might lead to different results with respect to the different situations of deprivation of liberty outlined above. While detention of migrant or refugee children is never permissible and children should, in principle, not be detained in institutions, there might be cases in the context of **armed conflict**, the **administration of justice** or in the context of **national security** where no suitable alternative measures are available. Nevertheless, even in such truly exceptional cases, detention must be restricted to the shortest appropriate period of time. The different chapters of the Global Study provide a detailed legal analysis of the principles of ‘measure of last resort’ and ‘shortest appropriate period of time’ in their respective contexts.

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## Conditions of Detention in line with the Right to Human Dignity

Deprivation of liberty does not mean deprivation of liberties. In other words: When deprived of their right to personal liberty, human beings shall, in principle, keep all other human rights and shall be enabled by State authorities, as far as possible, to exercise these rights in detention. This doctrine of minimal limitations applies in even stronger terms to children who are still in their formative stage. When State authorities decide, as a measure

of last resort, to detain children, they have the positive obligation to ensure that these children can in fact enjoy all other human and children’s rights enshrined in the CRC, including the rights to privacy, education, health care and protection from any form of violence, neglect and exploitation. Most importantly, Article 37(a) CRC provides, in accordance with other provisions of international law, that no child shall be subjected to torture or



other cruel, inhuman or degrading treatment or punishment, which includes corporal and capital punishment as well as life imprisonment and other excessive prison sentences that go beyond the ‘shortest appropriate period of time’, as stipulated in Article 37(b) CRC.

Article 10(1) ICCPR provides that all persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This general right of detainees applies to all forms of deprivation of liberty. In the context of the administration of criminal justice, Article 10(2) adds that accused persons shall, in principle, be separated from convicted persons and that accused children shall be separated from adults and brought as speedily as possible for adjudication. Finally, Article 10(3) contains the important principle of **rehabilitation of offenders** (as opposed to retributive justice) by providing that the penitentiary system shall aim at the reformation and social rehabilitation of prisoners rather than simply punishing them. Child offenders shall be segregated from adults and be accorded treatment appropriate to their

age and legal status. These remarkable principles of rehabilitation and of a humane and dignified treatment of convicted prisoners were reaffirmed in Article 37(c) CRC for children deprived of liberty in all situations of detention. The principle of separation of children from adults was relativised by introducing the principle of the best interest of the child in accordance with Article 3 CRC. There might be instances, for example in the case of children migrating with their parents or the detention of primary caregivers, where it is in the best interest of children to be kept together with their parents. Article 37(c) also adds the right of detained children to maintain contact with their families through correspondence and visits, which is in line with the obligation of States under Article 9 CRC to ensure that a child shall not be separated from his or her parents against their will, and with the principle that parents have the primary responsibility for the upbringing and development of the child, as provided for in Article 18 CRC. These principles must also be taken into consideration when **parents of very young children are imprisoned**.

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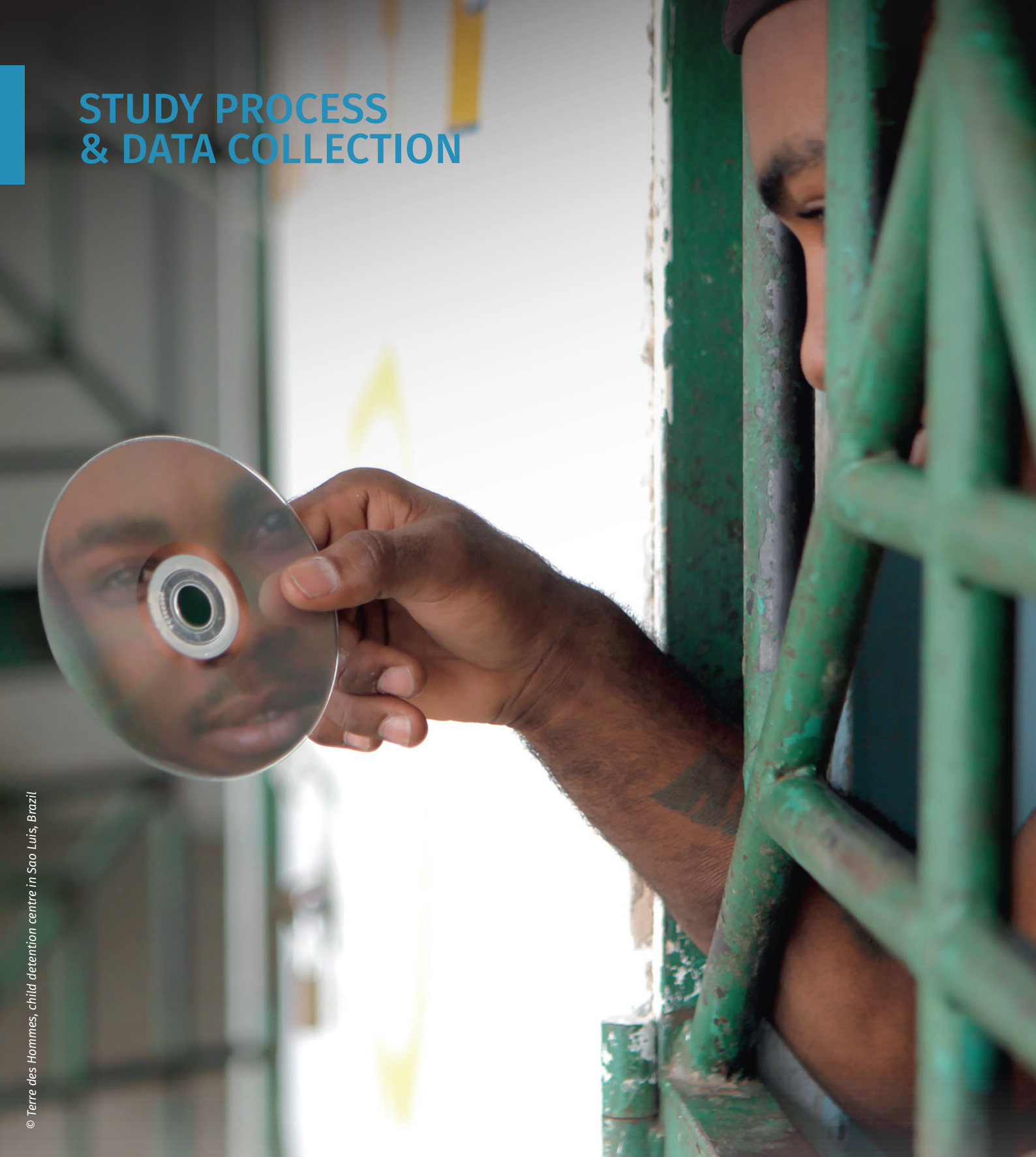
## Legal Safeguards

Article 37(d) provides that every child deprived of liberty, for whatever reason, shall have the right to prompt access to legal and other appropriate assistance, as well as 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. This right to *habeas corpus* proceedings, which follows from the general provision of Article 9(4) ICCPR and applies to every form of deprivation of liberty, is particularly important for children. If States, as an exceptional measure of last resort, decide to arrest or detain a child, they must immediately provide the child with appropriate legal assistance to challenge the legality of such decision. In its **General Comment 24 of 2019**, the CRC-Committee reaffirmed that the child should be brought before a competent authority within 24 hours. With respect to the *habeas corpus* proceedings, the Committee also stressed that the “right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks

after the challenge is made”. One might further argue that the requirement of the ‘shortest appropriate period of time’ in Article 37(b) calls for periodic judicial review of every deprivation of liberty of children.

The rights to personal liberty, personal integrity and human dignity provide high international legal standards to prevent deprivation of liberty of children. They also create a framework designed to reduce detention of children to an absolute minimum, and in those exceptional cases in which detention is justified as a measure of last resort, they ensure that children have the right to challenge the legality of their detention. While children are detained for the shortest appropriate period of time, these rights additionally ensure that children are treated with humanity, dignity and respect for all other human rights. Unfortunately, as will be described in detail in the various situations covered by the Global Study, the reality across the world looks totally different.

## STUDY PROCESS & DATA COLLECTION



© Terre des Hommes, child detention centre in Sao Luis, Brazil

The Global Study was a true joint effort between Governments, United Nations agencies and bodies, other international and regional organisations, civil society organisations, the academic community and children with the aim to address the information gap and justifications by States to detain children, be it in principle and in practice, as well as to identify non-custodial solutions preventing deprivation of liberty and protecting children.

Children deprived of liberty have diverse backgrounds and identities but also face similar situations and experiences. In order to better understand the commonalities and differences throughout all situations of deprivation of children, the Global Study was informed not only through desk-based research but also through primary data collection, thematic, national and regional consultations, expert meetings and direct consultations with children across all world regions.

## Research Process

Following a dedicated campaign by various stakeholders ranging from UN Member States and UN entities to NGOs, the United Nations General Assembly adopted a resolution on 18 December 2014 inviting the Secretary-General to commission an in-depth Global Study on Children Deprived of Liberty. On 17 December 2015, the General Assembly passed another resolution reminding the UN Member States to support the elaboration of the Global Study. After an inter-agency UN Task Force was established, Manfred Nowak was appointed in October 2016 as Independent Expert leading the Global Study on Children Deprived of Liberty.

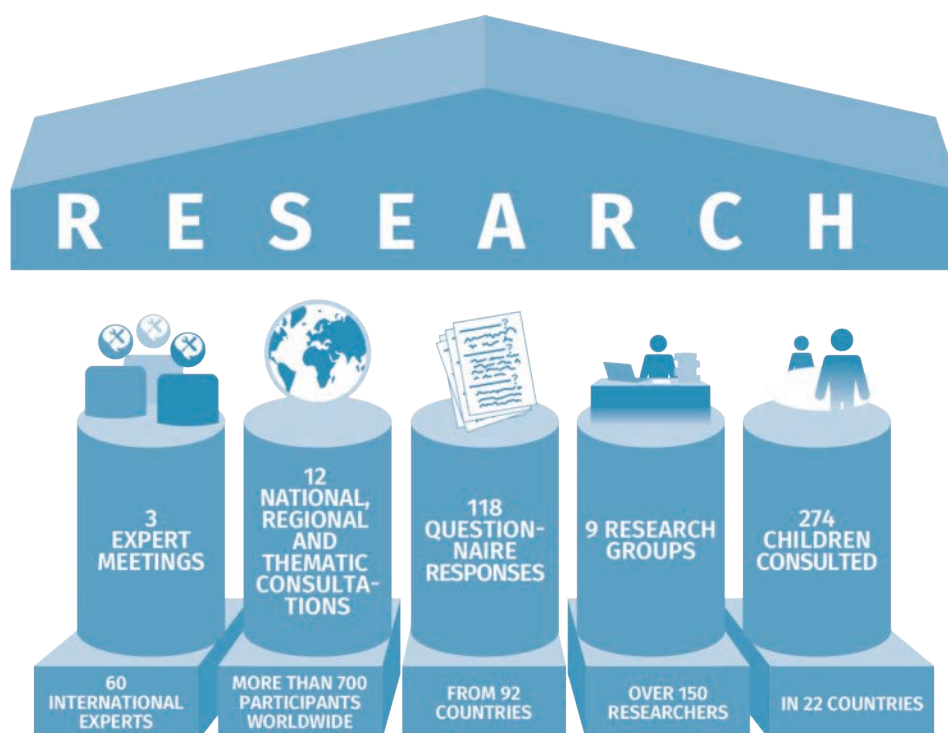
The Study's implementation phase was severely delayed due to lack of funding, which had to rely on **voluntary contributions** from Member States. In the end, our intense fundraising efforts were answered by financial contributions from **Austria, Germany, Liechtenstein, Malta, Qatar, Switzerland, the European Union and UNICEF**. I wish to express my sincere gratitude to these 'Friends of the Study' as without their financial contributions it would have been impossible to conduct such a comprehensive research project.

Working on only 15% of the originally foreseen budget and despite these minimal resources, activities were maximised, uniting many different stakeholders, including States, UN Agencies, NGOs, National Human Rights Institutions

(NHRIs), National Preventive Mechanisms (NPMs), academic institutions and children. With the first year spent primarily on securing the minimum funding to commence the research endeavour, the presentation of the report to the General Assembly was extended to October 2019.

Towards the end of the research process, it became clear that this limited budget was not sufficient to finalise, edit, print, present and disseminate the Global Study. This final and decisive work could only be accomplished with the help of two private research institutions, the **Ludwig Boltzmann Institute of Human Rights** and the **Global Campus of Human Rights**, assisted by the generous financial support of two private foundations, including the Right Livelihood Foundation, which together more than doubled the funds available for the Study.

After 3 years of hard and dedicated work of close to 150 researchers worldwide, most of whom worked on a pro-bono basis, 3 expert meetings, 12 international thematic consultations, 274 interviews with children and countless fundraising talks, a summary Report was presented on 8 October 2019 to the General Assembly in New York, followed by a launch of the Global Study itself, at the occasion of the 30th anniversary of the Convention on the Rights of the Child, on 19 November 2019 in Geneva.





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## Global Study Actors

The Study is supervised by the **UN Inter-Agency Task Force** under the chair of the **Special Representative of the Secretary General on Violence against Children (SRSG VAC)**. Other members include the SRSG for Children and Armed Conflict (SRSG CAAC), the Committee on the Rights of the Child, UNICEF, the UN Office on Drugs and Crime (UNODC), the Office of the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the World Health Organization (WHO) and the Office of the UN High Commissioner for Human Rights (OHCHR). As a platform to provide UN system-wide support to the Study development, the **Task Force** was responsible for **defining the scope** of the Study, while also developing an initial budget and fundraising strategy. Serving as the Study's secretariat, the **OHCHR** provided invaluable support in coordinating activities with Member States. Countless other international and regional organisations made noteworthy contributions to the Study, for which I am deeply grateful.

The **Advisory Board** to the Study is comprised of 22 highly renowned experts in the fields of children's rights and the right to personal

liberty. Its involvement was vital in informing the research process.

The **NGO Panel** for the Study, led by **Defence for Children International** and **Human Rights Watch**, consists of 170 NGOs working directly or indirectly on children's deprivation of liberty. Collaborating closely with these organisations was key in the conceptualisation, realisation and implementation of the Study.

**Research groups** for the Study were chaired by distinguished experts and their institutions from all around the world. Many of these academic institutions are members of the **Global Campus of Human Rights**, a worldwide network of 100 universities. One of these members is the **Ludwig Boltzmann Institute of Human Rights at the University of Vienna**, which coordinated key efforts and components of the Global Study, including the international research activities.

**Children** from all around the world with experiences of deprivation of liberty were consulted to inform the research of the Global Study. Each and every one of their stories, views and perspectives has truly enriched the Global Study with the hope that they will make a difference in the eyes of the States and society as a whole.

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## Data Collection

In March 2018, a detailed questionnaire was distributed to all UN Member States, UN agencies and other stakeholders. Overall, **118 questionnaire replies from 92 countries** have been received, including 41 responses from Europe, 27 from Africa, 20 from Asia, 19 from North and South America and 11 from Oceania. As many as **67 responses have been officially submitted by States** (Governments). Information reported in the responses to the questionnaire has been verified and, if necessary, requests for explanation and/or correction have been sent to the selected stakeholders. In 50 States data collection efforts have been coordinated by **national focal points** established specifically for the purpose of the Global Study. As replies could have been

submitted in any of the six official languages of the UN, they have been carefully translated into English to facilitate analysis by all research groups.

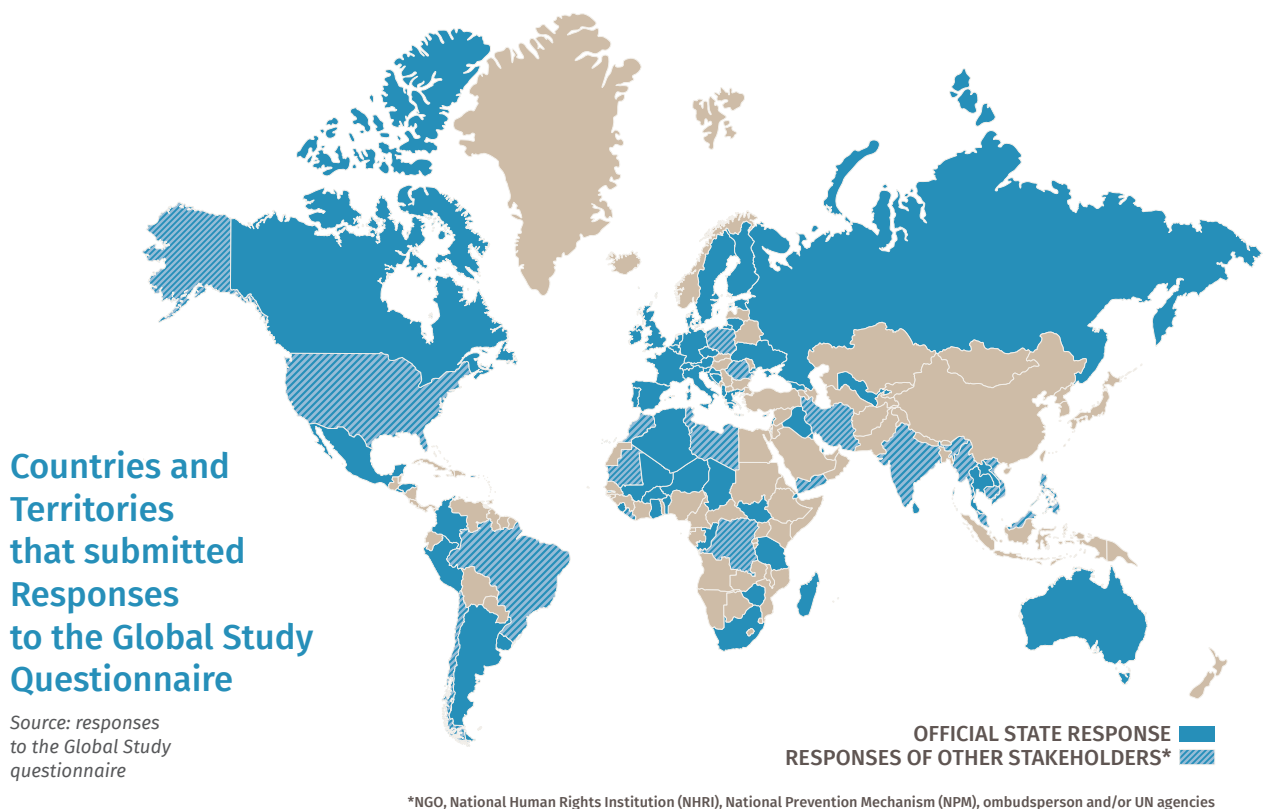
The variety of thematic areas covered by the Global Study required gathering country-level data on the number of children deprived of liberty from numerous sources. Although the priority has been always given to the data submitted under the Global Study questionnaire and extracted from the official registries (e.g. police records), the existing data gap was partially filled with information reported by international organisations, most notably UN agencies. These data sources were especially important for estimates in the areas of national security and armed conflict (where States were unable to provide data). If there



were still many data missing after the inclusion of these sources, then the next step involved extraction of relevant data from peer-reviewed literature. This has been done for the chapters on **migration-related detention and children in institutions**. Priority has been given to the data provided by public authorities and the conflicting outlying values have been excluded. In case of discrepancies between equally credible and timely information, the most conservative data were

chosen. Thus, the **figures presented in the Global Study shall be treated as minimum estimates**.

Accuracy of the built models diverged between the areas due to limitations in the data availability or accessibility. Nevertheless, the information collected allowed for the designing of a dataset that is not only the most comprehensive of the attempts made so far in the area of deprivation of liberty, but above all, tailored to the unique needs of this Global Study.



## National, Regional and Thematic Consultations

Besides desk research and data collection, the Global Study also engaged in further in-depth analysis on certain issues through **twelve thematic, national and regional consultations** with a broad range of stakeholders, including State authorities, UN agencies, NGOs, NHRIs, NPMs, academia and civil society, as well as children in order to cover deeper ground and to widen our research network and international sources. The overall purpose of these processes was to:

- raise awareness of the Global Study process and encourage further engagement of stakeholders in the Study process, in particular, to support submission of responses to the Study questionnaire;
- collect additional data on progress and challenges in relation to specific Study areas, regional contexts and developments;
- collect promising practices, in particular on non-custodial solutions;
- receive input and feedback on the Global Study research process, challenges and findings.

# VIEWS AND PERSPECTIVES OF CHILDREN DEPRIVED OF LIBERTY



© Terre des Hommes, Engaging with Children, Juvenile Justice Centre, Guinea

Article 12 of the CRC provides that children shall have the right to express their views freely in all matters affecting them and that their views shall be given due weight. The Global Study identified this importance and included children's testimonies speaking about their lived experiences. These testimonies were facilitated by an international group of child rights experts from different organisations and institutions. Together, they carried out face to face interviews with 274 children from 22 countries in different world regions living in different detention settings.

These children articulated clearly that children should not be deprived of liberty where possible and talked about the many other viable alternatives to detention that involved community-based care. These children demonstrated an acute awareness of the social and emotional 'gaps' that they experienced when being away from their families and their communities. This was expressed in feelings of loneliness, isolation, and longing for family whilst also sharing their feelings of confusion and disempowerment, especially when confronted with systems that they did not understand.

## Consultation Methodology

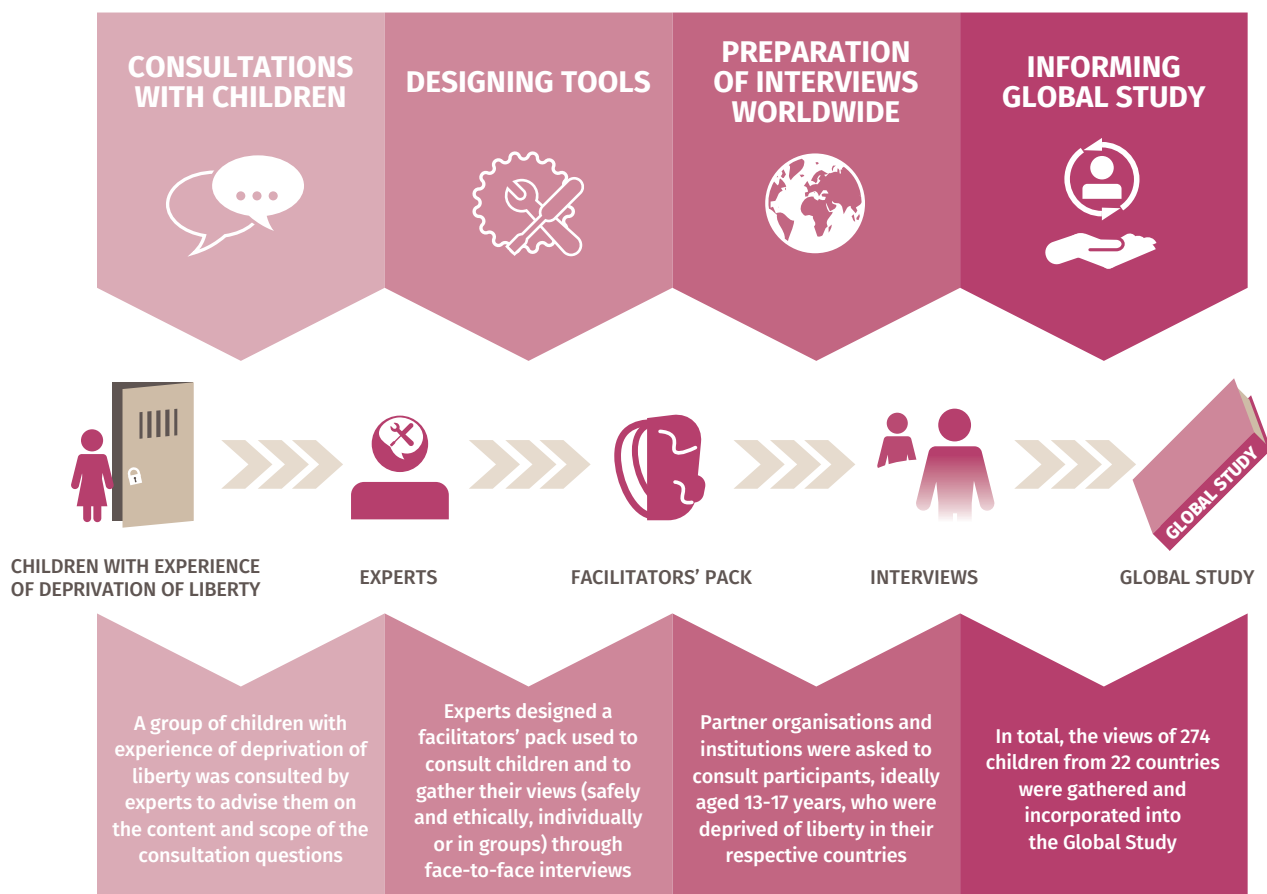
The child participation element of the Global Study entailed two phases. The first phase was a literature review of the studies documenting children's views on their rights in detention. The second phase was based on a consultation process designed specifically for the Global Study endeavour and coordinated by the research group in charge, as can be seen in the graphic below.

For the consultation process, researchers started by working with a **group of children** from Ireland with experience of deprivation of liberty who advised them on the content and scope of the consultation questions. As a next step, a **Facilitators' Pack** was developed setting out the approaches to be used to identify children and to **gather their views safely and ethically, individually or in groups, through face-to-face interviews**. As a third step, regional Terre des Hommes teams and a number of other

partner organisations and institutions, who work with children in detention settings, carried out the interviews. They were asked to consult participants, ideally aged 13-17 years, who were or had been deprived of liberty.

In total, **274 children's views from 22 countries** were gathered and incorporated into the Global Study. The partners, where necessary, translated the children's comments into English, and the facilitators summarised the main points made under each of the questions, providing verbatim quotations from the children as much as possible. Despite having undertaken the consultations with children in a relatively short time and with limited resources, they represent an important, novel and deliberate effort to include in the Global Study the views and perspectives of a range of children with varied experiences of detention around the world.

### Designing a Research Methodology for Consultations with Children





## Main Findings

During the consultation process, children reported that their **rights were not protected**, including being detained in **poor conditions**, with **poor health care** and some reported **inadequate access to education and leisure**. A significant number of children described overcrowding and poor food quality, as well as unhygienic living conditions. Most of these children were living in justice institutions or in immigration detention, but this was also confirmed by those detained in police stations. Children further reported **struggling to be heard** in decisions made about them or having not been taken seriously. An adult person having experienced deprivation of liberty in an Eastern European institution as a child stated that:

The findings further show how children deprived of their liberty experienced **isolation, loneliness and fear**. This was most evident in early stages of detention, above all in police custody and pre-trial detention, especially when being detained with adults and receiving little information about the length of stay.

Children also reported **being subjected to violence or ill-treatment**. In many conflicts, children are arrested and detained by government forces for suspected association with armed groups or groups termed violent extremist and primarily to extract confessions. The UN conducted random interviews with 85 conflict-related child detainees in detention facilities in a Central Asian country. Many of the children interviewed gave credible accounts of torture while in the custody of security forces, such as this boy:

The vast majority of children **felt unsafe**. Violence and other punishments were regularly experienced, which not only involved other children but also the police and security staff. Moreover, a significant number of children described being **placed with adults** who were detained for criminal activities, such as drug dealers, thieves or people who had committed murder, such as this child in an African prison shared with us:

"Medical care was not very good. If I told the staff of the orphanage that I was ill, they said I was playing the fool."

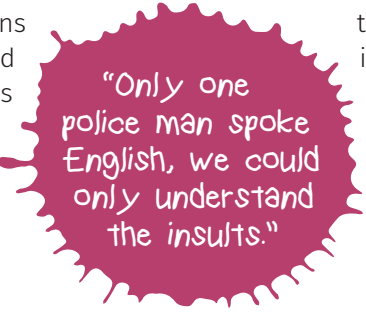
"I was detained with adults, who are older than me, feeling insecure most of the time, and I was severely beaten by the police and adult detainees."

"They were very angry and upon my arrival, they started punching and kicking me and were frequently telling me that I was not telling the truth. On the first night an (...) officer came to my cell and took me to another cell and told me that 'if you don't confess, then I will sleep with you and you know what can I do with you.' I was really scared and they started beating me with sticks, punches and kicks."



In addition to **physical and emotional harm** children reported feeling **discrimination and stigma** connected to different factors including ethnicity, economic status, (dis)ability, sex or sexual orientation.

Some children were denied access to **information**, or were informed in a way that they could not understand. This was evident in all settings in relation to length of stay and next steps in the process. However, it was particularly relevant for those children detained due to reasons of national security and immigration, such as this 17 year old boy in an immigration detention centre in Western Europe shared:



"Only one police man spoke English, we could only understand the insults."

Regarding **family contact**, children had very mixed experiences. Many experienced barriers, such as receiving visits only if they behaved well or having their visits limited to 8-10 minutes. For others difficulties arose because of their families living too far away from the detention settings and not having the resources to visit their children.

Many children identified the struggle to access support for **reintegration** and prepare them for **release**. Some were not having any training in their institutions, and the majority of children identified the need for support from parents and family as important to enable them to re-integrate back into society.

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## Aspirations of Children for a Future Beyond Detention

Many children had **positive aspirations** for a future beyond detention, where they would reunite with their families and friends and enjoy a life as independent human beings contributing to their communities.

They saw **education and skills development** as integral to their reintegration and to achieving a better life once they would be released. Almost all children in justice institutions confirmed that they had access to some form of **education or training programme**, with **courses ranging from literacy to social development programmes or vocational trainings** (e.g. plumbing, computing, hairdressing). The fact of not mentioning in their **certificates** that they graduated in correctional services was also raised as very important. In addition to the education programmes, children overall spoke favourably about having opportunities for **sports and leisure**, and remarked how good this is for them.

Positive experiences relating to **family contact** ranged from institutions organising **home visits** for the children to being flexible about **visiting times** when family members came from far away.

Children also shared **experiences of resilience and hope** and highlighted the importance of friendships with peers and adults whom they could trust, such as social workers, and who were working in their best interests.

Irrespective of the setting, children almost always focused on the need for **community or family-based care** as an alternative to detention. Some suggestions included having house arrest or being hosted in a shelter with support services. Some justified the value of avoiding detention because of its negative effects and because they become more likely to commit further crimes.

# IMPACTS ON HEALTH OF CHILDREN DEPRIVED OF LIBERTY



© Terre des Hommes, Juvenile Justice Centre, Brazil

Overwhelming evidence suggests that children deprived of liberty often have significant and complex health problems. Detaining a child can have negative impacts on their health, such as a delay in physical growth, the increased risk of infectious diseases, chronic illnesses, stress-related health problems, the increase of psychiatric symptoms, emotional and behavioural problems as well as the impairment of their cognitive development.

The findings of this chapter are based on an extensive global review of literature and studies addressing the impact of detention on the health of children, which often compounds to trauma.



## Main Findings

Deprivation of liberty may negatively impact children's health for two key reasons:

- Deprivation of liberty is an inherently **distressing**, potentially **traumatic experience** and, as such, may have adverse impacts on mental health.
- The particular **circumstances** in which children are deprived of liberty may be **harmful to their health**, including exposure to unsanitary conditions increasing the risk of infection, a concentration of people with infectious diseases (e.g. tuberculosis and HIV), restrictions on movement and physical activity adversely impacting physical development and increasing the risk of obesity, and inadequate diet, like a child in an African prison shares:

In the **administration of justice**, detained children constitute a large, marginalised, medically vulnerable population that is largely hidden from public view. **Complex and often co-occurring health conditions** include mental disorder, depression, cognitive dysfunction and learning difficulties, sexually-transmitted and blood-borne viral infections, self-harm and suicidal behaviour, oral disease, and chronic conditions such as asthma. Further, **health-compromising behaviours** such as substance use, sexual experiences and violence contribute to a poorer health profile. For children in justice-related detention, previous under-utilising of preventive care in the community means that imprisonment often represents the first real opportunity to identify health needs and initiate coordinated care. However, health services in detention facilities are often inadequate, as one child in an Eastern European prison describes:

"I had pneumonia because I catch colds very easy and my immune system is easily affected and the doctor did not give me any treatment."

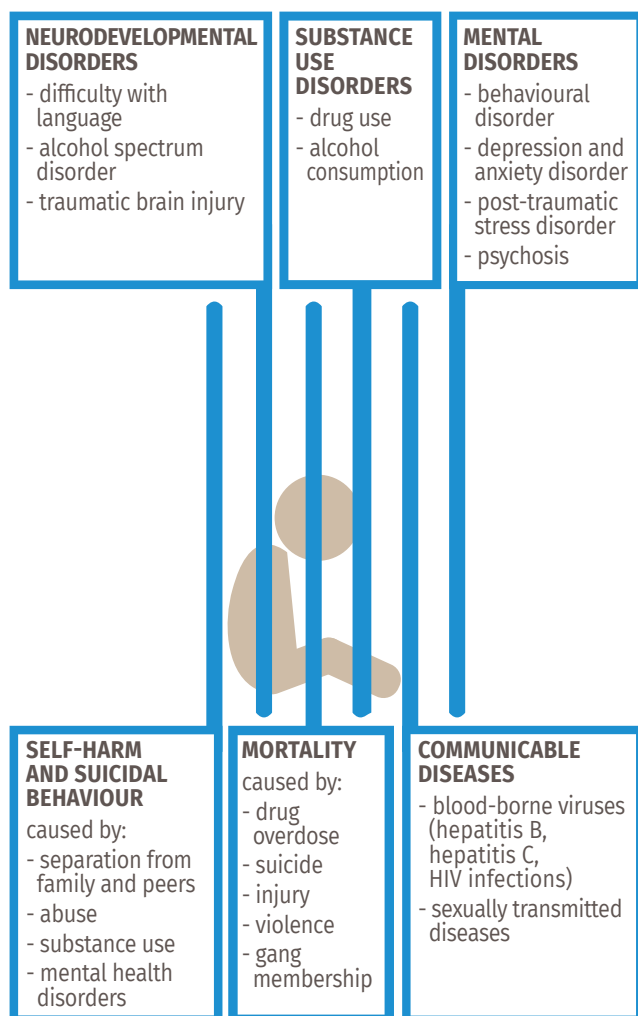
"Physical condition is week. Food is not available. There is no cleanliness. There is no healthcare at all."

Children in **immigration detention** often come from settings characterised by civil and political unrest or war, and may experience inadequate nutrition, limited access to appropriate healthcare, or exposure to environmental risk factors. Mental health problems may arise from experiences of trauma in the home country or during the arduous journey to immigration detention. A range of factors have been posited as contributing to psychological problems in children in immigration detention, including torture and trauma prior to arrival, the breakdown of families within detention, the length of detention and uncertainties about outcomes, and witnessing trauma within detention. Specific mental health problems include development delays, depression, anxiety, Posttraumatic Stress Disorder (PTSD) and self-harm among children, according to research on immigration detention in the region of Oceania.

In the context of **armed conflict** or **national security**, children may have similarly experienced significant trauma, been injured in conflict, and suffered from disruption to healthcare and other services. Important factors relating to the presence, severity and duration of mental health and disability outcomes are the dosage and chronicity of traumatic events, degradation of support systems (including loss of family), and humiliation induced by conflict and war-like situations. Case studies in Central America and Southeast Asia indicate that **torture** of children detained in the context of armed conflict or national security may result in long-term problems in cognition, disrupted sleep, apathy, helplessness, behavioural changes including aggression, and on-going pain. Overall, the health and psychological effects of war and conflict can be **very long lasting**.

In cases where children's **primary caregivers** are incarcerated, strong evidence suggests that children are at increased risk of a range of poor health outcomes, including poorer oral and mental health, exposure to communicable diseases, malnutrition, behavioural problems, as well as below average cognitive and language development. However, allowing babies and small children to

## Most Common Health Problems of Children Deprived of Liberty in the Justice System



remain with their incarcerated mother permits breastfeeding and promotes secure attachment between mother and child, which is thought to be mutually beneficial. The health impact on a child living with their primary caregiver in prison generally highly depends on contextual factors and detention conditions.

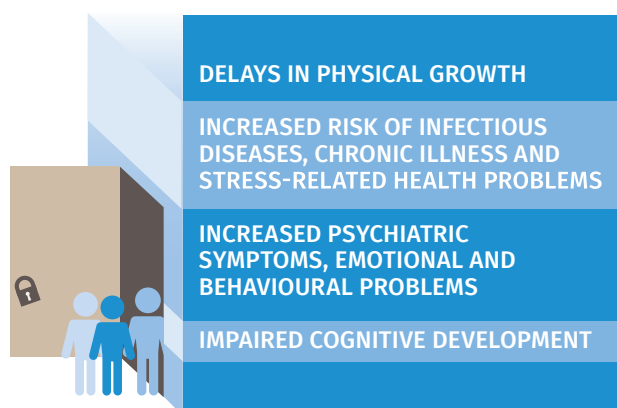
**Institutionalisation** of children – particularly during critical developmental periods – is associated with adverse impacts on physical health and development, mental health, and cognitive development. As concerns physical health, studies have found institutionalised children to show significant delays in physical growth in high-income countries, and an increased risk of infectious diseases. A greater prevalence of psychiatric symptoms including hyperactivity and inattention, internalising and externalising disorders, substance

misuse, depression, and suicidality, have been associated with early institutionalisation. In addition, children in residential or foster care are at increased risk of child maltreatment and abuse, potentially contributing to long-standing emotional, behavioural, and learning difficulties. Delays in cognitive development and specific learning difficulties have further been associated with severe institutional neglect. However, the quality of care is of primary importance, rather than the fact of institutionalisation *per se*.

In some settings, deprivation of liberty might be associated with **improvements in some aspects of health**, at least for some children. Such situations include deprivation of liberty of children for **therapeutic reasons** where appropriate psychiatric treatment in a least restrictive environment can be beneficial. This may include cases of acute mental illness or suicidal behaviour, though evidence suggests that therapeutic institutions can also have negative health consequences, such as anxiety and depression.

In cases of **extreme poverty** and **homelessness**, children in institutional care may benefit from safe shelter, improved nutrition, and access to appropriate healthcare. Even where children are in **justice-related detention**, potentially positive health outcomes, contingent on the quality of care, include the delivery of overdue vaccinations, diagnosis and treatment of communicable diseases, and addressing social determinants of health through education and linkage to housing services on release. These positive impacts on children in the context of detention, however, are 'regrettable' public health opportunities at best.

## The Observed Negative Impact of Institutional Care on the Health of Children





# CHILDREN WITH DISABILITIES DEPRIVED OF LIBERTY



© Hoang Dinh Nam via Getty Images; Child with a Mental Disability tied to a Bed in an Orphanage, Vietnam

It is estimated that there are around 150 million children with disabilities in the world, though the true figure is likely to be much higher. These children experience significant discrimination and disadvantages in all aspects of their lives, including the full realisation of their right to personal liberty. These disadvantages arise not from the child's impairment, but from the cumulative effect of entrenched social barriers that serve to exclude and discriminate.

Children with disabilities are overrepresented in mainstream settings of deprivation of liberty and their fate remains invisible. They experience disability-specific forms of deprivation of liberty, including institutionalisation on the basis of their disability, involuntary commitment to mental health regimes, compulsory referral from criminal justice systems to mental health facilities and deprivation of liberty within home settings. While deprived of their liberty, children with disabilities are more likely to be subject to exploitation, violence, abuse, torture and other forms of ill-treatment.



## Main Findings

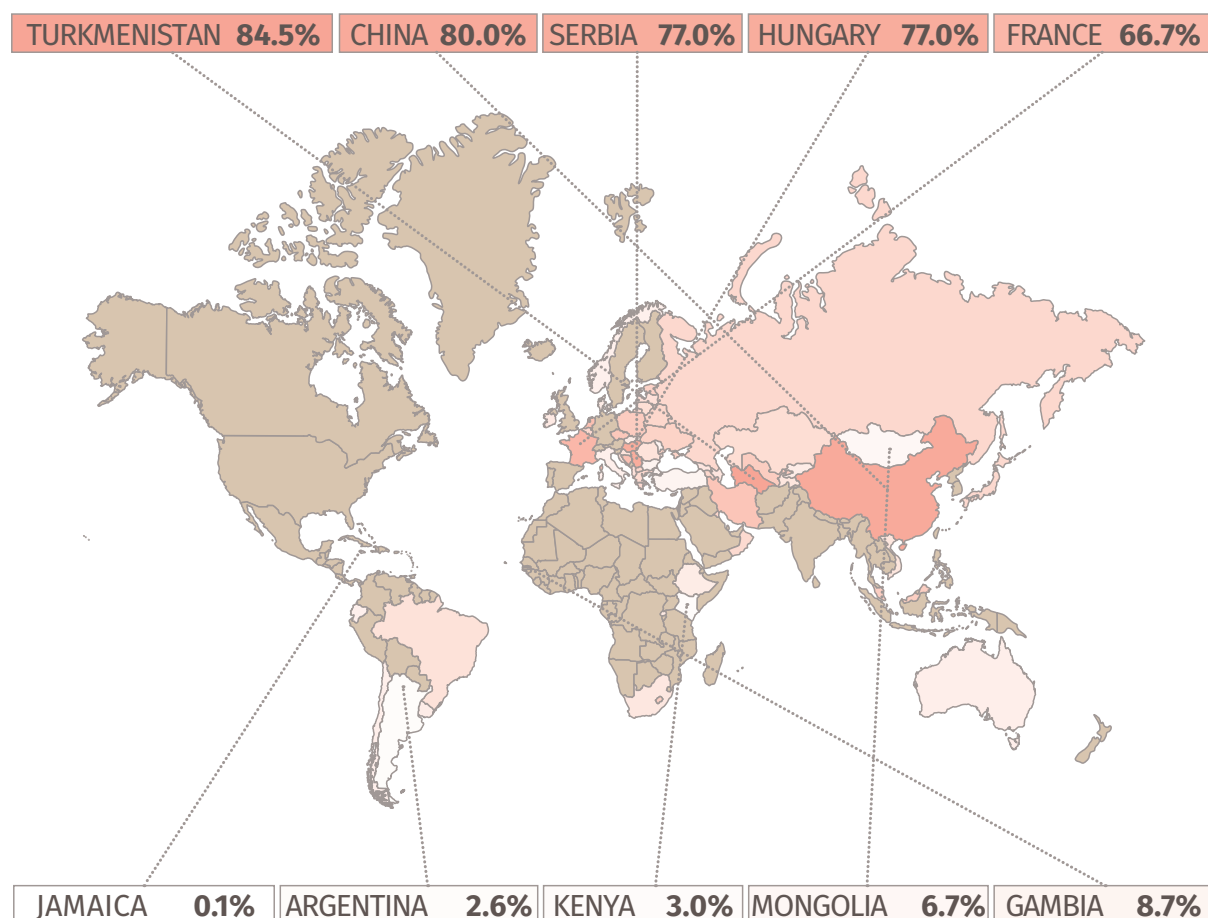
**Stigma and misconceptions** often lie at the root of the problem. Children with disabilities are deprived of liberty in order to provide them with access to services that should be delivered in the community, such as education, health care or rehabilitation.

In addition, these children experience unique, **disability-specific forms of deprivation of liberty**. On the basis of the existence or the presumption of having an impairment, these children are systematically placed in institutions, involuntarily committed to mental health facilities, detained in forensic facilities or detained at home and other community settings, where they are confined in a particular space or room often in deplorable

conditions. These practices occur across a range of States that differ in economic and social status or legal tradition. However, they share common characteristics, rationales and justifications that stem from the medical model of disability.

As a consequence of this situation, children with disabilities are significantly **overrepresented** in mainstream settings of deprivation of liberty. It is currently estimated that one out of three children in institutions is a child with disability, with Turkmenistan (84,5%) and China (80%) being the countries with most children with disabilities living in institutions in contrast to Jamaica (0,1%) or Argentina (2,6%). Further data is provided in the graphic below.

### Share of Children with Disabilities Living in Institutions in Selected Countries



Source: data for individual countries extracted from CRC State-party reports (2010-2019), CRPD State-party reports (2017-2019), UNICEF/TransMonEE database, UNICEF, administrative data, Opening Doors project, Global Study questionnaire, Human Rights Watch, Lumos.

The entry into force of the **Convention on the Rights of Persons with Disabilities (CRPD)** in 2008 hailed a new approach to addressing this unacceptable reality. Nevertheless, States cumulatively fail to ensure children with disabilities their rights in accordance with the human rights model of disability, expressed in this Convention. Institutionalisation on the basis of disability keeps being a discriminatory and widespread practice to which children with disabilities are particularly vulnerable.

As referred by the Global Study on Violence against Children (2006), the **living conditions** of these children are often deplorable as institutions are overcrowded, unsanitary, poorly resourced, not heated and lack appropriately trained staff. Under these circumstances, children with disabilities often experience profound neglect, malnutrition, and poor hygiene. Furthermore, children complained about differential treatment on the basis of their disability. In a focus group amongst orphaned children living in a closed institution in an Eastern European country, one young person stated that:

Not only the lack of trained staff was noted as a problem in some institutions, but also the missing resources for educational activities

or entertainment. Children with disabilities who were or had been in orphanages noted that access to activities varied. Some undertook a range of activities while others appeared to be offered none. One of the interviewees who lived in an institution in an Eastern European country commented that:

"We had different activities, but not for everyone. Many did not have wheelchairs. Some laid in bed all the time. They couldn't go anywhere."

Based on the Global Study on Violence against Children from 2006, children with disabilities are at a heightened **risk of violence, abuse and exploitation**, which may amount to torture or other forms of ill-treatment. This includes being restrained, shackled, secluded and beaten by staff as a form of control or punishment. Girls with disabilities face an increased risk of violence, abuse and exploitation, particularly of a sexual and gender-based nature, including trafficking for forced labour or the sex industry, forced sterilisation, forced interventions and denial of sexual and reproductive rights.

"We had a special school inside the orphanage. Our teachers treated us not like the other children, from outside the orphanage. They did not think we could learn something. I wanted to learn to read. I felt inferior."

## State Obligations Towards Ending the Deprivation of Liberty of Children with Disabilities





## GENDER DIMENSION



© Terre des Hommes, Girls and Boys in Conflict with the Law in Afghanistan

The enormous gender gap in the incarceration rate of boys as compared to girls has been consistently overlooked and is in need of more thorough research. Within the justice system, boys face harsher treatments and sentences. In a justice system designed for men, girls often suffer gender-based discrimination in detention, whilst in the context of institutions, violations of their rights often go unreported. This warrants serious attention in order to equally protect boys and girls in vulnerable situations detrimental to their development and physical wellbeing.

Deprivation of liberty as a punishment for children belonging to the lesbian, gay, bisexual, transgender, intersex (LGBTI) community needs to be addressed with urgency by the international community as it remains a reality and leads to further discrimination, violence and abuse and can never meet the high standard of a measure of last resort.



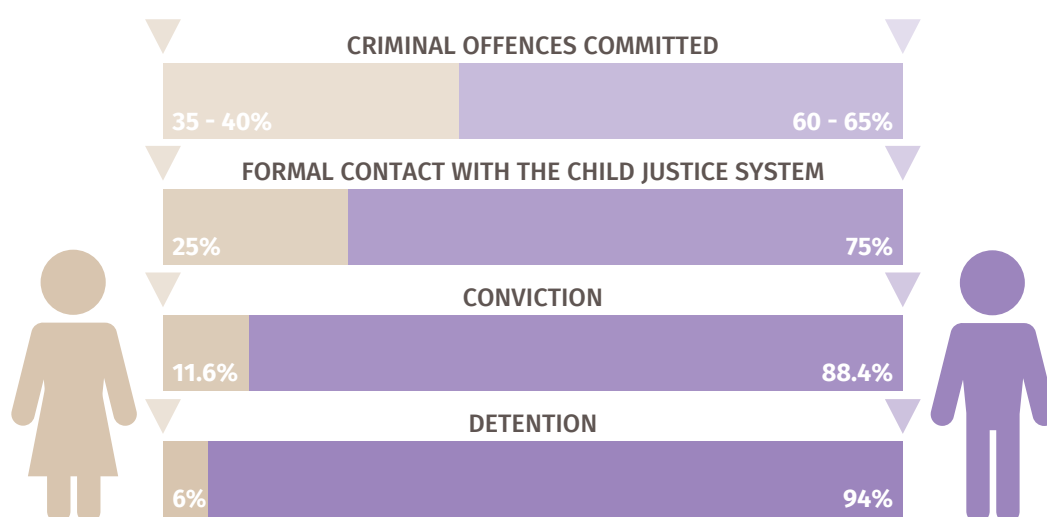
## Main Findings

The penal system is arguably the **most gendered space in society**. Altogether, there are far more boys deprived of liberty than girls. In the **administration of justice** and the contexts of armed conflicts and national security, **94% of all detained children are boys**. In migration detention, about two thirds of detained children are boys. Yet, the numbers of boys and girls deprived of liberty in institutions or living with their primary caregiver in prison are equal.

There is little research as to why the overwhelming majority of detained children are boys. Compared with the overall crime rate for children, the Global Study shows that the child justice system tends to be more inclined to apply **diversion measures** to girls than boys. While approximately one third of all criminal offences worldwide committed by

children are attributed to girls, one fourth get in formal contact with the criminal justice system, one fifth are convicted and only 6% receive a prison sentence. There may be various reasons for this phenomenon. Most importantly, girls usually commit less violent offences and are more often accused of status offences. Girls are generally first-time offenders and more receptive to the deterrent effect of incarceration. Another explanation is the 'chivalrous and paternalistic' attitude of many male judges and prosecutors in the child justice systems, who assume, according to traditional gender stereotypes, that girls are more in need of protection than boys. In addition, girls in patriarchal societies are often prevented from committing criminal offences by strict societal norms and increased parental control.

### Share of Boys and Girls at Different Stages of the Child Justice System



Source: responses to the Global Study questionnaire, TransMonEE/UNICEF database, official statistics, literature review

While boys are highly overrepresented in detention, **girls often suffer gender-based discrimination** as well. Since girls interact less with the criminal justice system, their special needs tend to be overlooked during policy making processes.

- Girls are more likely to be arrested for status offences or for behaviour rather than actual criminal activity, including sexual activity, truancy and running away from home.
- Girls living on the streets are often arrested for prostitution.
- If States criminalise abortion, girls risk incarceration for their decision to terminate a pregnancy, even where the pregnancy is a result of rape.
- Girls from poor families run a higher risk of institutionalisation and incarceration, as they lack access to supportive systems.

In detention, girls are particularly exposed to sexual harassment, amongst other forms of violence and abuse, as a young girl in prison in an African State shared with us:

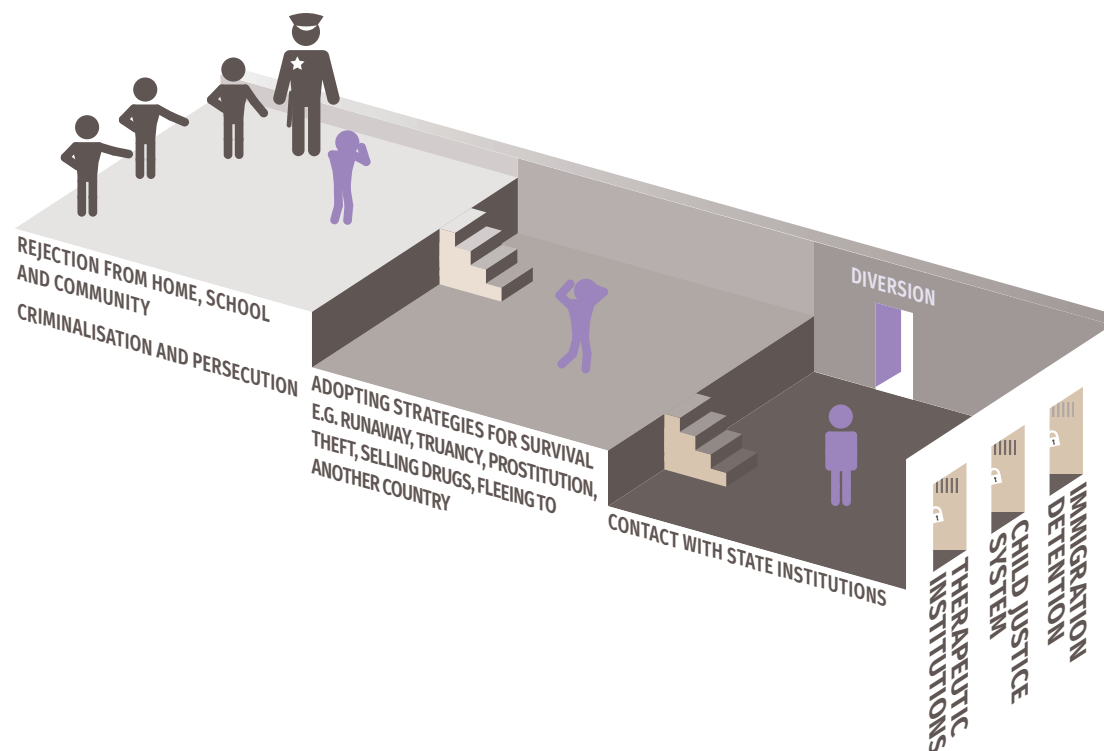
"I was searched in a way that violated my privacy when I was searched by a (male) police officer."

With regard to **release and rehabilitation**, especially in the context of armed conflict, the needs of former boy child soldiers are often prioritised. In this context, release rates from armed groups are often comparatively higher for boys than for girls.

Gender stereotyping also influences detained **primary caregivers**. Most States allow convicted mothers to **co-reside with their young children in prison**, while fathers are rarely permitted so. Even when possible, there are (almost) no appropriate **'father-child units'** in the prisons.

Almost half the world population lives in the 70 States in which conducts on the basis of **sexual orientation** are criminalised by law. **Penalties can be very harsh**, including seven countries still imposing the death penalty for consensual same-sex sexual activities. Children belonging to the LGBTI community are also more likely to be detained for **status offences**, in particular for sexual activity or expression of sexual orientation and gender identity. As a result, **LGBTI children are overrepresented** in child justice facilities and health-related institutions, where next to discrimination, they are at high risk of suffering abuse and violence.

## Contexts leading LGBTI Children into Detention





# CHILDREN DEPRIVED OF LIBERTY IN THE ADMINISTRATION OF JUSTICE



© Richard Ross, juvenile-in-justice.com, Juvenile Detention Facility in the United States

Worldwide, roughly 1.4 million children are deprived of liberty per year in police custody, pre-trial detention and prisons. This is due to 'tough on crime' policies, a low minimum age of criminal responsibility in many countries, the lack of specialised child justice systems, insufficient support to families and the lack of a functional child welfare system that could deal with children in conflict with the law. While there might be situations where children commit violent crimes and create particular safety risks, most children in conflict with the law shall benefit from diversion at all stages of the criminal process and shall be transferred to the child welfare system in accordance with international standards of criminal justice and children's rights.

So-called 'status offences' specifically target conduct of young people and contribute to their criminalisation, while children from ethnic or racial minorities as well as from disadvantaged socio-economic groups are disproportionately represented in detention. From the moment of arrest, the human rights of children are violated as they face a high risk of violence as well as poor treatment and unsatisfactory conditions while in detention. This has a negative impact on the health and personal development of children and fundamentally undermines the aims of a child justice system of ensuring reintegration and supporting children to reassume a constructive role in society.

## Juan's Story

**"That's what they do with guys who do not have other possibilities, because they did not give them another chance,"** Juan believes. The State simply places young people in detention without trying to help them change their lives.

Juan lived in institutions and on the streets in Colombia since the age of 6. "People are ugly", he concluded early on. "If you are not dressed well, people simply close the door on you. So, you understand, there is no other option than to steal." It is a reality that drives many children towards crime. "Tell me who cares about a 9 year old boy who lives on the street and does not own anything? Nobody!"

Juan was eventually arrested for drug dealing and subsequently sentenced to four years in a young offender institution. It makes children "victims of an impressive suffering, of an impressive resentment." According to Juan, detention makes children victims of emotions and realities they simply do not understand.

He felt completely abandoned in detention and rarely had enough to eat. He did not go to school for 6 years and each day was immersed in an atmosphere of violence. Life in detention, Juan notes, is marked by noises – a cacophony of "knocks of doors, chains, screams."

Juan recalls however that on 25 May his life was directed onto a more constructive path. A piano teacher visited the centre and introduced him to the arts. "I fell in love with music." Through music and the guidance of the piano teacher, Juan realised that he can put things behind him – that he can change his life around. Practicing music became "a tool, a great chance."

Today, Juan raps. "The basis of rap is to create, not only music, but also I could say everything I had in my heart. Today I am very grateful for the people who made me go forward [...] We all deserve another chance."

*For data protection and confidentiality reasons, the names were altered.*

## Main Findings

There is a strong legal and political commitment by the international community to limit and prevent the deprivation of liberty of children in the administration of justice. Research findings show that most countries have indeed introduced child justice legislation. However, in reality there is a huge gap between the provisions of law and their implementation. Data collected for the Global Study reveal that **at least 410,000 children are deprived of liberty in pre-trial detention facilities and prisons per year.** In addition, roughly **1 million children are estimated to be held in police custody every year.** Despite a certain decrease over the last years, these numbers indicate that detention in the context of the administration of justice is still widely overused and can in most cases not be justified as a measure of last resort, as required by the Convention on the Rights of the Child.

Although the Committee on the Rights of the Child urges States to raise the **minimum age of criminal responsibility** to at least **14 years**, the majority of States do not comply with this age limit and often convict children as young as seven years of crimes punished by prison sentences.

Research conducted for the Global Study shows that **capital punishment** for children still persists in 12 countries, despite its strict prohibition under international law. Similarly, **life sentences** remain legal in 68 States, specifically in Africa, Asia, the Caribbean and Oceania. In 110 States and territories which have no life sentence for children, the maximum sentence ranges from 3 to 50 years. Such excessive sentences clearly violate Article 37(b) of the CRC, which stipulates that imprisonment of a child shall be used only for the shortest appropriate period of time. Although **corporal punishment** constitutes cruel, inhuman or degrading punishment in violation of international law, it has not been fully prohibited as a disciplinary measure in penal institutions of 58 countries, and 33 States still inflict corporal punishment even as a criminal sentence.

In many countries, the imprisonment of children is based on a **punitive approach** and is not primarily aimed at the rehabilitation and reintegration of children into society, as required by international law. While every child deprived of liberty has a right to 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, the research conducted for the Global Study found that **conditions in detention** are **unacceptably poor** in the great majority of countries, including: overcrowding; lack of separation between children and adults, girls and boys; systemic invasion of privacy; lack of psychological support for the child, including contact with his/her family and the outside world; and insufficient access to education, healthcare, recreational and cultural activities.

Many **children consulted for the Global Study** expressed concerns about the lack of child-sensitive procedures, lack of access to information, poor detention conditions and insufficient contact with their families and the outside world. An adolescent from a Latin American country also confirmed this:

OHCHR, UNODC and the Special Representative of the Secretary General on Violence Against Children reported in 2012 widespread **neglect and violence** including endemic bullying, humiliation and ill-treatment, racism and other forms of discrimination of children in detention. Key risk factors for **violence in detention** can result from inadequately qualified, trained and remunerated staff, as well as overworked staff. Several children interviewed for the Global Study mentioned suffering physical and verbal abuse during arrest and detention, such as this girl from a country from the Asia Pacific region:

"It is a cold place and where it is difficult to fall asleep."

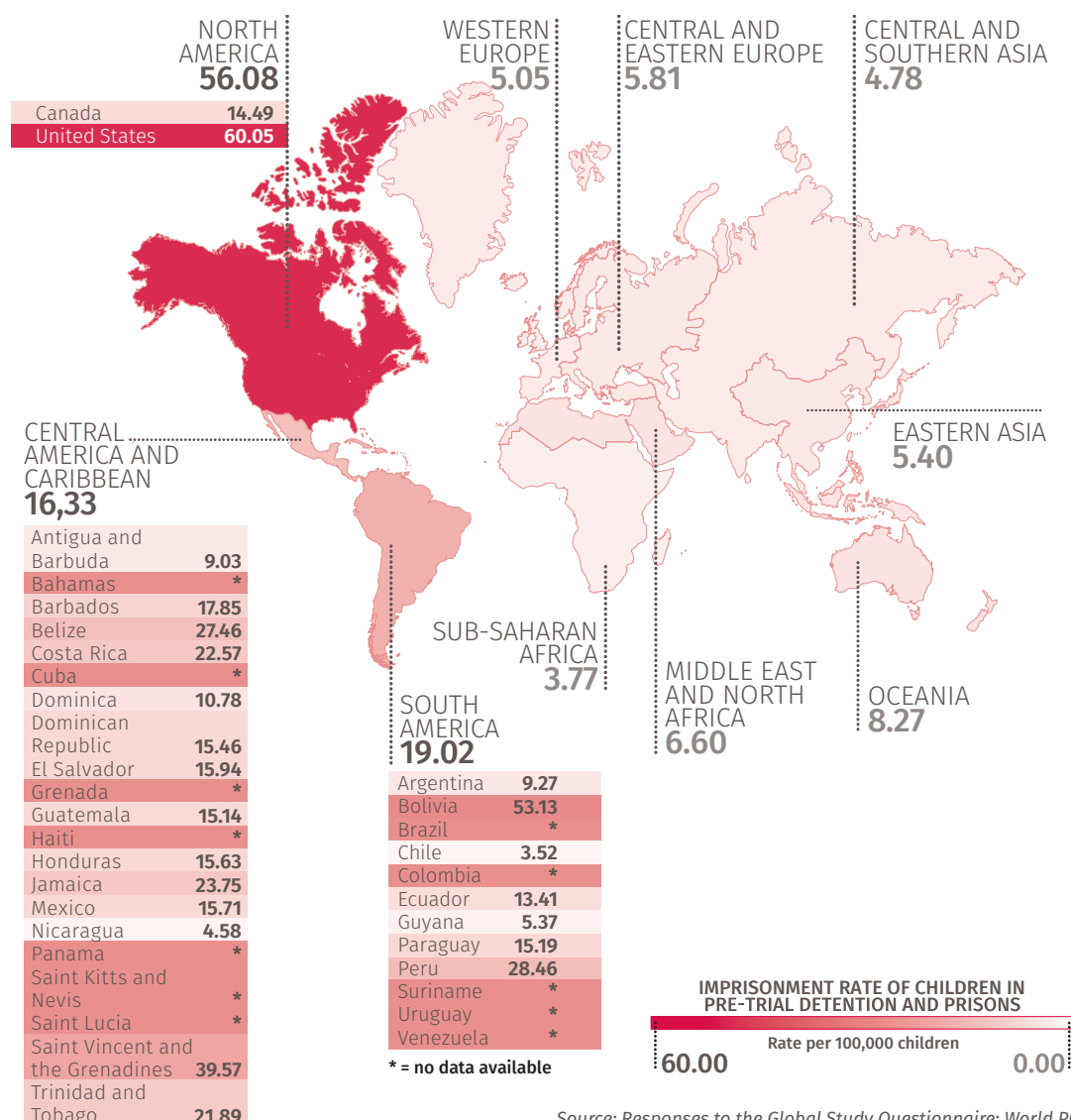
"They asked me why I ran away from home. When I didn't answer, why did he slap me?"

Placing a child in detention as a measure of crime prevention, crime reduction and/or community safety is largely **ineffective, cost-inefficient and even counterproductive**. The conditions and violence have **negative impacts on the wellbeing of children**, and have been described as inherently distressing, potentially traumatic and having adverse impacts on mental health. Many fact-finding reports of the UN Special Rapporteur on Torture confirmed that conditions of detention often amount to inhuman or degrading treatment in violation of international law. Despite these negative effects, policies and practice often still tend to focus on **retribution and punishment** for children in conflict with the law rather than prevention, empowerment and rehabilitation – which is clearly contrary to international and child rights law.

Corruption and the lack of adequate human and financial resources in the administration of justice lead in many countries to an **excessive length of criminal proceedings** and deprivation of liberty of children. Research for the Global Study shows that the length of police detention varies from several days, to weeks or even months, despite the recommended **24-hour limit** to police custody. Respect for legal **safeguards and procedural rights** are of particular importance during arrest and in police custody, but often not effectively guaranteed. Many countries lack clear legal standards, such as the presence of a lawyer from the earliest stage and during police interrogations, and police officers often fail to provide children with information about their rights. A well-functioning and **State-funded legal aid system** aimed at assisting children in the preparation and presentation of their defence is completely absent in 42 States, which disproportionately affects children who cannot afford to hire a lawyer.



## Regional Imprisonment Rate of Children



Source: Responses to the Global Study Questionnaire; World Prison Brief

## Legal Background

Under Article 9 ICCPR, everyone has the **right to personal liberty and security**. No one shall be subjected to arbitrary arrest or detention. Article 37(b) CRC reiterates this right for all children, but requires as an important further restriction that the arrest, detention or imprisonment of a child must be used only as a **measure of last resort** and for the **shortest appropriate period of time**. This means that every decision leading to the detention of a child shall be considered as an exceptional measure which is only permissible if diversion is not possible and non-custodial solutions are not available or appropriate in the specific circumstances of an individual case.

In all decisions concerning children, including whether to deprive them of their personal liberty, the **best interests of the child** shall be a primary consideration, as required by Article 3 CRC. That means children should be supported, not punished, in order to assume a “constructive role in society”. **Diversion** and the transfer of children from the criminal justice to the **child welfare system** shall be considered and applied, as far as possible, at every stage of the criminal proceedings. In this respect, Article 40(4) CRC provides that a “variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational

training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

There are different phases from the arrest, to police custody, pre-trial detention and imprisonment after trial, and specific considerations must be taken in each of these stages. The **arrest and police custody** of a child must be used only for the shortest appropriate time, not lasting longer than 24 hours, as recommended by the Committee on the Rights of the Child. At this stage, children must have **access to legal review** by a court to examine the legality of the deprivation of liberty. Furthermore, **pre-trial detention of children** can only be justified on the basis of limited and narrowly defined grounds with a clear basis in domestic law, e.g. the serious risk that the child suspect reoffends or fails to appear in court, and should only be taken when all other available non-custodial solutions have been assessed as inappropriate. The Committee on the Rights of the Child strongly recommends that no child shall be held longer than 30 days without formal charges being laid, and a final decision on the charges shall be made within six months from the initial date of detention, failing which the child shall be released.

Regarding **imprisonment after trial**, the UN Minimum Standards and Norms on Juvenile Justice, also known as Beijing Rules, establish that deprivation of liberty shall not be imposed unless the child “is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response”. Furthermore, **life imprisonment**

without the possibility of release or parole is explicitly prohibited by the CRC, and since imprisonment of a child shall be used only for the **shortest appropriate period of time**, a strict proportionality test is required for any prison sentence of a child, which shall prevent any excessive prison sentences.

When detention or imprisonment really cannot be avoided, then States shall ensure treatment with humanity and respect for the inherent dignity of children by maintaining **prison conditions** and circumstances that **protect children against all forms of violence**, above all torture or other forms of ill-treatment. Children need to be provided with protection, care and all necessary assistance - on the individual, social, educational, vocational, psychological, medical and physical levels. They shall be separated from adults and shall have the right to maintain contacts with their families through correspondence and visits. The guiding principle of any imprisonment must be to ensure rehabilitation and social reintegration of the child into his or her community as soon as possible. Article 40(1) CRC stresses in this respect the desirability of promoting the “child’s assuming a constructive role in society”.

Children have a right to **effective procedural safeguards** throughout all the stages of criminal proceedings. States should establish **specialised child-friendly justice systems**, where the child’s right to an individualised response with the aim of diversion is guaranteed. Effective complaints procedures shall be ensured and made accessible to every child deprived of liberty, and every complaint shall be investigated promptly and impartially. Additionally, regular **monitoring** of detention facilities should be carried out by trained and independent personnel.

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## Pathways to Deprivation of Liberty

The reasons why so many children are deprived of their liberty are manifold, ranging from **repressive and punitive measures** instead of protection and rehabilitation, excessive criminalisation, low age of criminal responsibility, discrimination and corruption within the administration of justice, to a lack of non-custodial solutions and weak child welfare systems.

Negative attitudes in society towards children in conflict with the law and a **punitive approach**

called for by the media, politicians and policy-makers to tackling child offending are often the main reason for the introduction of repressive legislation and **excessive criminalisation**. This usually does not have the desired deterrent effect but leads instead to a vicious circle of increasing violence on the part of law enforcement officials as well as youth gangs. Reducing the number of children deprived of liberty in the administration of justice can only

be achieved by addressing the root causes and stopping this vicious circle.

The **minimum age of criminal responsibility** (MACR) is an important indicator for the attitude of societies towards child offending. While Article 40(3) CRC leaves States a wide margin of discretion in this respect, the Committee on the Rights of the Child recommends a MACR of not less than 14 years. This means that the **parents**, rather than law enforcement officials, bear the main responsibility for the education of their children towards law abiding citizens. If the families fail to live up to this responsibility, they need to be supported by the State. In addition, well-functioning and well-resourced **child protection systems** shall ensure that the behaviour of children can be dealt with outside the criminal justice system and by avoiding deprivation of liberty in institutions. Reducing the MACR below 14 years in order to deal with child offending is counter-productive as it leads to more criminalisation and fuels the vicious circle of increasing violence. Research conducted for the Global Study shows that many States still maintain a MACR that is far below 14 years, often even as low as 7 years.

Other examples of excessive criminalisation are so-called '**status offences**' such as: truancy, running away from home, disobedience, underage drinking, curfew violations, consensual sexual activity between teenagers, 'disruptive' behaviours and practices against traditions and morality. By applying 'status offences', States criminalise conduct that only applies to young people, not to adults. If the application of 'status offences' leads to detention and imprisonment of children, this cannot be considered as a measure of last resort and, therefore, violates the CRC. Again, such behaviour of children can be more effectively and comprehensively addressed by parents and through child protection measures.

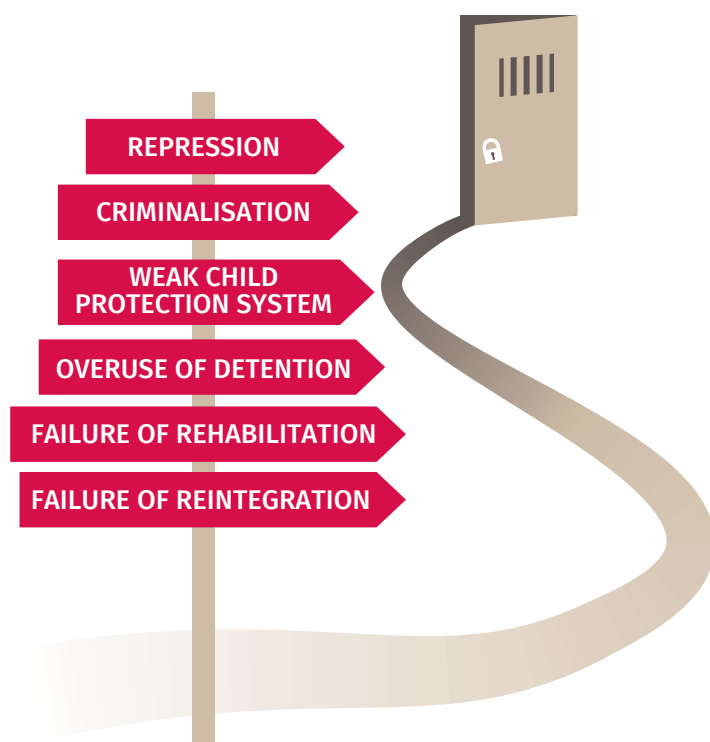
**Discrimination in the justice system** is widespread and leads to a large overrepresentation of some children in detention settings and throughout judicial proceedings. Among such we find children living or working on the street, children from poor and socio-economically disadvantaged backgrounds, from migrant and indigenous communities, ethnic and religious minorities and the LGBTI community, as well as children with disabilities and, above all, boys.

Another root cause for deprivation of liberty of children is the **lack of a well-functioning child protection system** in the community.

Law enforcement agencies, the judiciary, local authorities, health, education and social services, child welfare agencies and other State institutions are expected to function together to create and maintain a protective and enabling environment for children and to ensure support for their families. The lack of efficient coordination and cooperation between these different actors results in conflicting goals and undermines the overall functioning of the child justice process.

The **lack of a specialised child justice system, with special children's courts, legal aid and adequate resources** within the administration of justice, leads to an over-reliance on arrest and detention, instead of offering adequate responses to children in need of care. This phenomenon is further exacerbated by lack of public awareness-raising, education and training of professionals on non-custodial, diversionary measures. In many States, police officers, judges, prosecutors and prison guards lack specialised child-sensitive training and are also frequently not able to handle cases in a way that avoids the formal justice system.

The lack of investment in prevention and over-reliance on child detention are exacerbated by negative attitudes towards children in the justice system that call for more retributive and tougher responses to children who commit crimes. Without offering **appropriate protection systems, rehabilitation and reintegration programmes**, these children are also more likely to be stuck in the vicious circle of re-offending leading them back to detention.





## Promising Practices

Positive tendencies are found in many countries worldwide in regard to the **child justice system**. For instance, 40% of countries around the world reported having **specialised children's courts**. Where specialised courts are not accessible to all children, **mobile courts** have been used, particularly across francophone Africa (e.g. Benin, Burundi, Cameroon, Gabon). **Free legal assistance**, which is offered by law firms, legal clinics, charities or other organisations, is increasingly becoming common worldwide (e.g. Ethiopia, Eswatini and the Bahamas).

In some African and Asian countries child-specific qualifications within the police are organised in **special child units or sub-sections** (e.g. Chad, Madagascar, Cambodia, Philippines, India). In several African countries, **police trainings** on how to appropriately deal with street-connected children are leading to a better treatment of children and reducing children's time in detention, e.g. Sierra Leone or Democratic Republic of the Congo (DRC).

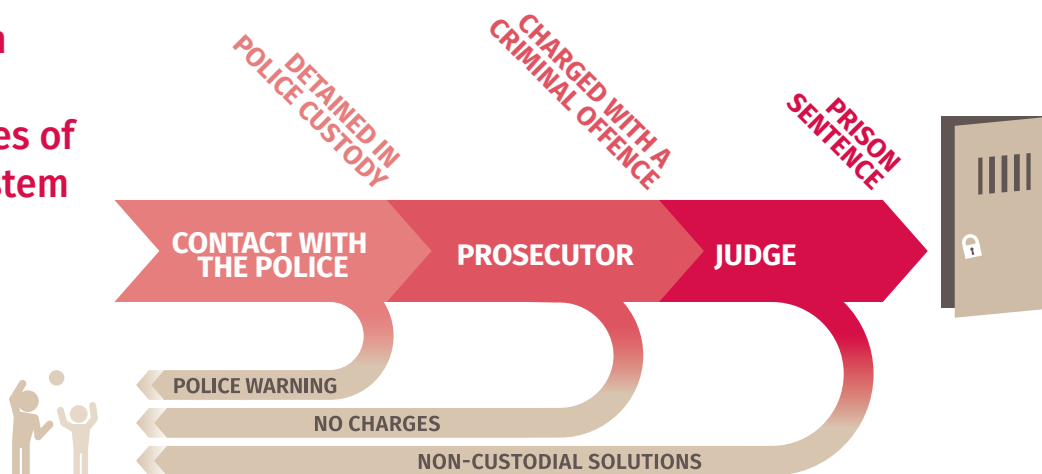
**Diversionary measures are essential** in contributing to a decrease of young people being arrested and also have been proven to have more positive effects on preventing reoffending. Such measures can range from community service, counselling, treatment for substance abuse, training and vocational courses to informal warnings by the police. Informal warnings are common in Europe and in the Asia Pacific region. In Papua New Guinea, police warning and unconditional diversion is applied for minor offences, and sometimes accompanied

by an apology to the victim. **Restorative justice** approaches based on traditional values, customs and practices are commonly used as a measure of diversion, for example in Asian, African, Oceanic and South American countries.

When diversion is not deemed appropriate, some countries have developed **non-custodial measures** at the pre-trial phase. As such we find bail release programmes (e.g. Northern Ireland), cautioning, foster care (e.g. England and Wales), community supervision, curfew and electronic monitoring. The family environment appears to play an important role in Asia, as well as in African countries where pre- and post-trial practices hold the option to either release a child into foster care and family placement or to their parents or another trustworthy person.

Where deprivation of liberty of children is unavoidable, **monitoring mechanisms** are set in place in many countries, where independent national preventive mechanisms, national human rights institutions and safe reporting mechanisms are being created and implemented. Many Arab countries are implementing national child helplines where violence against children can be reported. When the rights of a detained child have been violated, NGOs often play a crucial role in **reporting these violations**. About half of the surveyed countries permit child focused NGOs to bring cases before the court on behalf of victims. Certain English-speaking countries in Africa have established particularly powerful mechanisms enabling support by civil society organisations.

### Diversion from Detention at Different Stages of the Justice System



## Recommendations

States are requested to adopt comprehensive **National Strategies** aimed at drastically reducing the number of children detained in the administration of justice, based upon broad consultations with experts, civil society and children themselves. In particular, States shall:

1. **Decriminalise the behavior of children** by various means, such as abolishing '**status offences**' and other crimes of children which do not involve violence; raising the **minimum age of criminal responsibility** to at least 14 years; abolishing, where applicable, capital punishment, life sentences and other **excessive prison sentences** for child offenders; and ensuring that all prison sentences for child offenders comply with the legal requirement of the shortest appropriate period of time.
2. Establish **specialised child justice systems** with special children's courts, judges, prosecutors, police officers and other law enforcement personnel undergoing **special training** on the rights and needs of children.
3. Apply **diversion** at every stage of the criminal justice proceedings and empower police officers, prosecutors, judges and prison personnel to involve the families and transfer children to their families or family-type settings within the child protection system. Diversion shall be as comprehensive as possible, inspired by **restorative justice** approaches, and include measures such as warnings by the police; care, guidance and supervision orders; counselling; probation; education and vocational training programmes; medical and psychological treatment; community service and other non-custodial solutions.
4. Tackle the root causes of crimes committed by children by strengthening **parental support**, providing assistance to dysfunctional families, establishing well-functioning and well-resourced **child protection systems**, and ensuring effective **inter-agency cooperation** between child protection systems, social services and the justice sector.
5. Ensure strict **time limits** for detention of children at the stages of **police custody** (never longer than 24 hours), **pre-trial detention** (never longer than 30 days until formal charges are laid) and **detention pending trial** (with a maximum of six months between the initial date of detention and the final decision on the charges).
6. Ensure that children at all stages of the criminal justice process have access to **effective procedural safeguards and complaints mechanisms**, are properly informed, have access to their families, lawyers, doctors and interpreters, are provided with free legal aid and assistance, are brought promptly after their arrest before an independent judge, and are guaranteed their right to be heard in all decisions concerning them so that their views are given due weight.
7. Develop an effective system of independent and unannounced **monitoring of all places of detention of children** in the criminal justice system, including through National Preventive Mechanisms with special expertise on children's rights, and children's ombudspersons, and ensure that the results of monitoring visits are made public.
8. Ensure that children deprived of liberty in the criminal justice system are treated with **humanity** and respect for their inherent **dignity**, receive appropriate care and treatment in relation to their needs, maintain regular contact with their families and friends, and enjoy all other **human rights**, including to privacy, the highest attainable standard of health, quality education and vocational training.
9. Prohibit and punish all forms of **torture**, cruel, inhuman or degrading treatment or punishment, including **corporal punishment**, the use of physical or psychological **violence** or **solitary confinement** as means of discipline, restrict the use of restraints and establish special protection measures for children exposed to particular risks of violence in detention, such as children with physical or mental **disabilities**, **LGBTI** children and children belonging to **minorities**.
10. Make widely available measures such as **early release** and **post-release programmes**, including mentoring programmes, community service work and group/family conferencing.

# CHILDREN LIVING IN PRISONS WITH THEIR PRIMARY CAREGIVERS



© Anne-Christine Poujoulat/AFP via Getty Images, an incarcerated mother and her child, who lives in prison since birth, in Marseille, France

Children who live with a detained or imprisoned primary caregiver, usually the mother, are *de facto* deprived of their liberty, albeit indirectly. These 19,000 children worldwide constitute one of society's most vulnerable and marginalised groups of children, requiring protection against exclusion, violence and discrimination.

The possibility for children to stay in prison with their detained or imprisoned mother, and the restrictions placed on this practice in most jurisdictions, is a complex issue with profound implications for the wellbeing and development of the child, as both the exposure of the child to deprivation of liberty and the separation of the child from a primary caregiver have adverse consequences. The following considerations are put on a scale: do you separate a baby or a young child from her/his mother or have it grow up in prison? When sentencing a primary caregiver, courts shall recognise children as rights holders, take their best interests into consideration and avoid, as much as possible, prison sentences.



## Lolita and Diego's Story

**"Lolita remembers all the little moments that happen [...] She understands and learns everything. She will not forget. If Lolita stays here longer, she will forget nothing",** says her mother Jasmina.

**Lolita (2.5 years)** and her brother **Diego (under 1 year)** live with their 20 year old mother Jasmina in a **women's prison in Italy**. Jasmina requested to be placed under house arrest, since she was still awaiting trial for a crime she committed 4 years ago. She wanted to make sure that her children do not grow up in prison. All three of them are living together in a prison cell on a special ward of the prison.

Observing her children grow up, Jasmina has noticed that living in prison clearly has an impact on them. Every night at the same time, a female prison guard will do her rounds – locking all the doors to the cells. For the rest of the night, the children are locked up without any possibility to go out. The longer they are in prison, the more Diego cries. They simply do not have enough recreational opportunities and moments of freedom. Sometimes, when they are locked up, Diego hands her his jacket. "He is giving me his jacket. He wants me to put on his jacket. He is letting me know that he wants to go out." But of course, that is not possible.

There is nothing more she wants for her children than their freedom. "When Lolita leaves it will hurt me, but I will also be happy."

*Les Enfants en Prison, Directed by Rossella Schillaci, France, De Films en Aiguilles, Indyca, Arte France, 2016.*

## Main Findings

Based on the available data from the questionnaire replies to the Global Study and other sources it is estimated that approximately **19,000 children were living with their primary caregivers in prison** in 2017. While it is easier to track down numbers from some regions (South America and Europe, for example), the lack of data is evident in most other regions.

Throughout the Study research, it was found that there is a general **lack of adequate prison facilities**, such as those with specific mother-child units or other special accommodation for prenatal, perinatal and postnatal care and treatment. Prisons can expose children to **adverse consequences**, ranging from: ill-suited living conditions, inadequate hygiene, a lack of stimuli, and a subset of repetitive sensorial experiences linked to the prison world (e.g. doors slamming, keys jangling and industrial smells). Stress caused by physical, psychological or sensorial violence or by deprivation, separation, malnutrition or isolation, needs to be minimised, as it can adversely impact the cognitive and emotional development of infants. The need for devoting greater attention to this has been addressed already by different UN bodies, such as the CRC Committee, the General Assembly or the Human Rights Council.

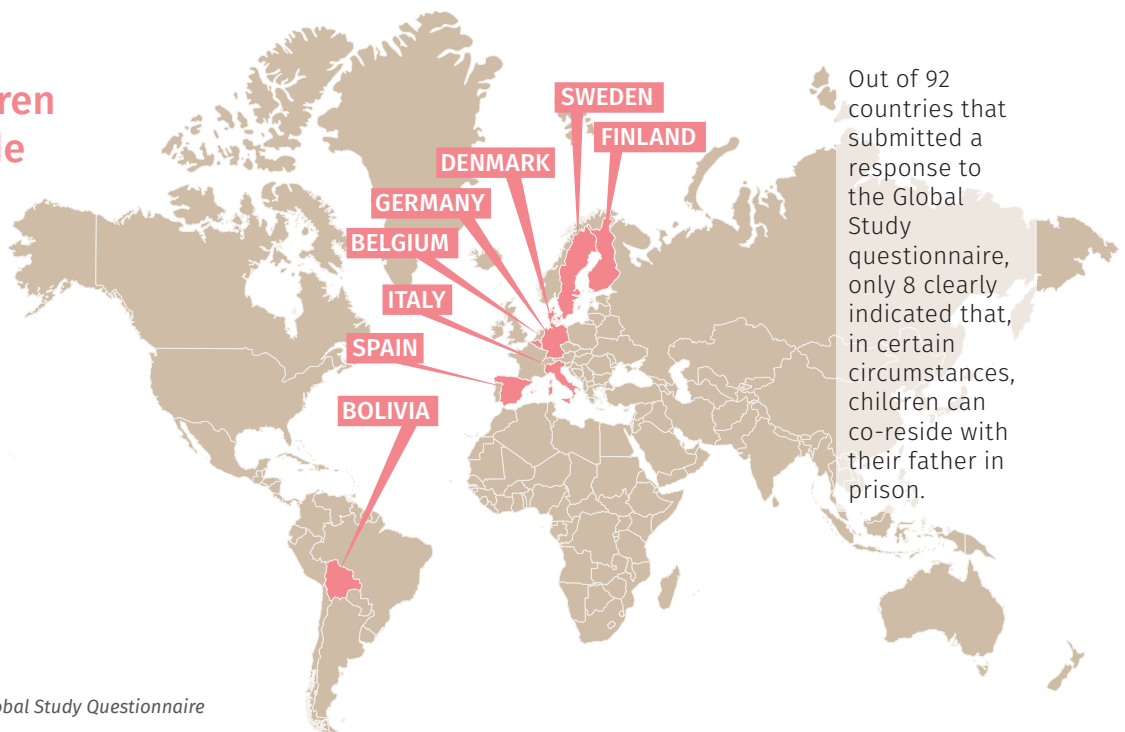
Although **no universal standards** determine whether children should be detained with a primary caregiver and under what conditions, some **tendencies** can be shown from State responses to the Global Study questionnaire. To start with, most of the surveyed States **allow children to stay in prison** with one of their primary caregivers. In some countries this decision rests with the holders of parental authority, in others only upon request of the mother and its authorisation. Other States use further indicators for making such determinations, such as: breastfeeding needs, lack of alternative childcare solutions, suitability of prison accommodation for the child's development, health of the child, protection of the child's safety, full parental responsibility and ability to exercise parenthood, length of the sentence, and the caregiver-child relationship before entering the prison.

Research for the Global Study shows that the possibility to keep children in prison is often set up only for mothers. Only a few countries allow **imprisonment with the father**, as shown in the map below. Even though in theory there are States allowing children to be with their fathers, this is difficult due to special building and staffing requirements in male institutions.

In most national laws, there are **specific age limits** for a child's admission into a place of detention. In most countries where the practice is permitted, the applicable age limit falls between one and

three years of age. Furthermore, States usually place restrictions on the **length of permissible stay**, but give also the possibility to extend this stay if there are no alternatives. If and when the time comes for the **separation of child and caregiver**, this requires careful **preparation**, well in advance of the child's departure, and the possibility for continued contact, as separation can be a very traumatic experience for the child, as well as for the caregiver. Even though some countries do not have explicit policies, they develop a plan for the child's transfer out of prison.

### States that Allow Children to Co-Reside in Prison with their Fathers



Source: Responses to Global Study Questionnaire

## Legal Background

Alternatives to imprisonment should, wherever possible, be issued when imposing sentences on primary caregivers of infants and young children. However, this is not always the case. The **question of whether and how long children should be allowed to stay in prison** with one of their parents is a complex issue with profound implications for the well-being and development of the child. Therefore, decisions throughout the criminal justice procedure must be determined on a **case-by-case basis**, considering: the alternative care possibilities, the availability of non-custodial

measures, the suitability of existing prison facilities, the possibility of enabling safe co-residence and assessing how the separation from the primary caregiver is likely to affect the child. The criminal justice procedure is based on following phases: (1) pre-trial decision-making and sentencing; (2) admission/entry into prison; (3) imprisonment; (4) release and separation/reintegration into the community. The request for a child to co-reside with its mother in prison comes, in most cases, from the mother herself. This in turn sets a chain of decisions in motion.

There are different **legal frameworks** addressing the situation of children living in places of detention with their primary caregivers and the rules, norms and standards have also evolved over the last decades. On the international level, the landmark and legally binding instrument is the CRC, which contains several relevant principles which apply to all stages of the criminal justice process and are of particular significance for babies and children whose parents are deprived of liberty. These principles include: taking always into account the **best interest of the child** (Article 3(1) CRC), using **non-discrimination** guiding principles (Article 2(2) CRC), safeguarding children's **survival and development** allowing children to grow up in a healthy and protected manner (Article 6 CRC), ensuring **child participation** (Article 12 CRC) and

ensuring the child's right to a **family environment** (Article 9(1) CRC).

Some of the principles and rights enshrined in the CRC are reinforced by **regional instruments** such as the European Convention of Human Rights (Article 8), the Charter of Fundamental Rights of the European Union (Article 24), the Inter-American Convention of Human Rights (Article 19), and the San Salvador Protocol (Article 15). At a regional level the **African Charter on the Rights and Welfare of the Child (ACRWC)** of 1990, containing a provision dealing with "Children of Imprisoned Mothers", is the most advanced regional binding instrument. Among others it requires States parties to ensure that non-custodial sentences are first considered when sentencing a mother (Article 30(a)).

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## Pathways to Deprivation of Liberty

Children co-residing in prisons with their primary caregiver are not deprived of their liberty as a consequence of their behaviour, nor because the State authority has chosen to deprive them of their liberty as a deterrent or means of controlling their behaviour or actions. The deprivation of these children's liberty is the result of decisions and actions by others, chiefly: the actions of their primary caregivers; the policy choices made by governments; criminal justice and policing policies; and the sentencing options of judges.

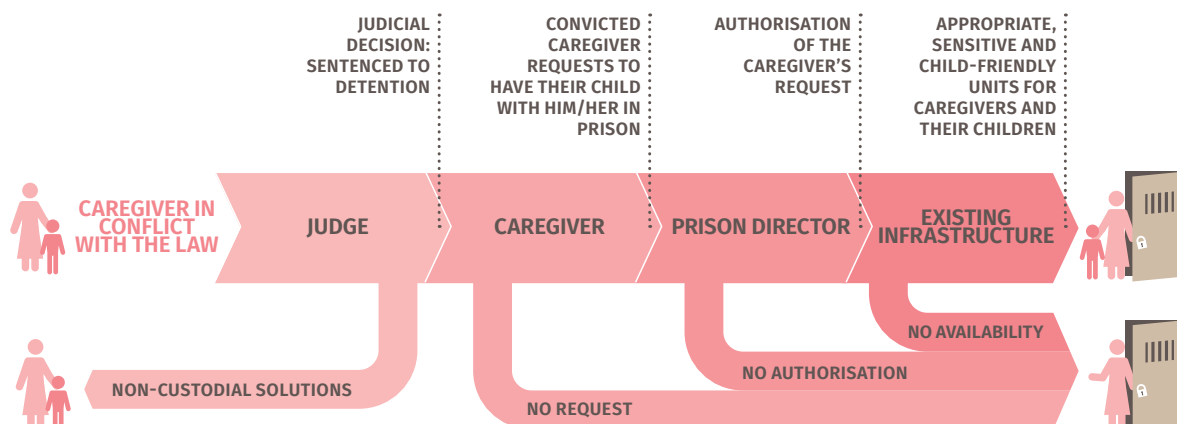
As mentioned before, it is overwhelmingly women with whom the children are detained. In order to assess and disrupt the pathways to children's deprivation of liberty with their mothers, it is useful to take a close look at the **criminalisation of women**. Many of them are charged with low level and non-violent offences, with petty offences, with so-called moral crimes, or simply because they are poor and not able to pay fines. Also women from **minority groups** are disproportionately represented in the criminal justice system. This is relevant in order to understand which children are more likely to be deprived of their liberty with a parent, and foremost in order to recognise

the States' responsibility for ensuring that no child is deprived of liberty as a consequence of a discrimination against a parent in law and practice.

Further notice needs to be given to the States' responsibility. Despite the **prohibited behaviour of parents**, for which they are imprisoned, the **State is also responsible** for the range of policies and practices that result in the deprivation of liberty of these children. In most cases this could be avoided whilst still sanctioning the parent for criminal activity. Also **criminal justice and policing policies** play a significant role, as these decide what activity is criminalised and its consequences. Finally, **judicial decisions** can also be a pathway leading to deprivation of liberty of children. It is in the courts' hands to decide how to apply the law and decide upon non-custodial sentences, if these are options in the country. However, there is little evidence that **impact assessments** on the rights of the child or the best interests of the child are routinely taken into consideration when sentencing a parent, even in cases where they are the sole or primary caregiver.



## Chain of Decisions leading to the Child co-residing with its Primary Caregiver in Prison



## Promising Practices

Questionnaire responses show that the interests and concerns of children whose primary caregiver comes into conflict with the criminal justice system are being accorded significant attention in national laws and practice. To start with, relevant **non-custodial measures** or **alternative punitive options** have been identified in African countries, such as Tunisia, where a woman who is a primary caregiver is eligible for **home detention**. Other alternative measures are the **deferral or suspension of an imprisonment** sentence, which can be found, only for females, in some countries of the South-East Asia region (e.g. Vietnam, Laos) and the West Asia sub-region (e.g. Iran, Yemen). These measures are implemented in specific cases, such as during pregnancy, after child birth or during the breast-feeding period. Further non-custodial options found across different countries include house arrest, bail, community service or probation.

**Judicial practice** considering the circumstances and situation of convicted persons and their family at the sentencing stage is particularly developed in South Africa and Malawi, but also in Latin America (e.g. Brazil), Oceania (e.g. Australia and Fiji) or countries such as England and Wales. Many

Latin American countries have also incorporated a **gender perspective**, giving special protection to pregnant women and mothers through the use of non-custodial measures (e.g. Colombia or Mexico). Promising practices concerning the **regulation on co-residence programmes** of children with their primary caregivers in prison are found in different European countries (e.g. Belgium or Germany). Through these programmes the best interests of the child must be examined and **assessments** on appropriateness are carried out regularly. Also in Palestine, for instance, regular **monitoring** is conducted and a report is handed to the competent authorities.

Furthermore, there is a sample of promising practice cases that are essential to minimise harm on children whose caregivers are deprived of liberty. The first one is the existence of **supportive prison nursery units**, serving the best interests of the child. These are found across some African and Middle Eastern countries, as well as in Asian or European countries. Here infrastructures are adapted providing pavilions or separate buildings for mothers with children, where medical, nutritional, educational and recreational services can be provided. The second practice relates

## HOW TO MINIMISE HARM OF CHILDREN WHOSE CAREGIVERS ARE DEPRIVED OF LIBERTY



to partnerships with specialised **child-parent institutions**. These provide **support services** to prisoners and are mainly found across European countries, but also in some Asian and Latin American countries. For instance in Croatia, this assistance consists in taking and bringing back children to the kindergarten. A third step in order to minimise harm of children whose caregivers are deprived of liberty involves their **protection from violence and trauma** by implementing, among others, appropriate laws and policies or monitoring mechanisms. Also initiatives **preparing for separation** are essential. Some of these initiatives involve hiring a psychologist or social worker who assesses the effect of such separation on the child or allowing mothers to leave the prison for a period of time in order to place their children with relatives or guardians. This is found in European countries (e.g. Croatia), in North America (e.g. Canada) as well as in Latin America (e.g. Colombia).

## Recommendations

1. When sentencing a primary caregiver, courts shall recognise **children as rights holders**, take their best interests into consideration and avoid, as much as possible, prison sentences.
2. Governments are encouraged to recognise both the **detrimental impact of family separation due to parental incarceration** and the **detrimental impact of deprivation of liberty with a parent**. All possible measures should be taken to **reduce the number of children deprived of liberty** with a parent in the criminal justice system without increasing the separation of children from a parent due to the parent's incarceration. **A presumption against a custodial measure or sentence for primary caregivers should apply.**
3. States shall incorporate **assessments** of the best interests of the child into **decision-making processes at all points at which the detention of a parent in the criminal justice system could result in the deprivation of liberty of a child**. This includes pre-trial detention decisions, sentencing decisions, and decisions regarding whether and for how long a child shall live with a primary caregiver in prison. This may require different assessments at each decision-making point due to the development of the child and other changing circumstances.
4. If imprisonment is unavoidable, an **individualised assessment of the best interests of the child** must inform any decision about whether and when a child should accompany a primary caregiver into prison or be separated from such carer. States should **avoid strict age limits**. This applies to children born prior to the criminal justice proceedings as well as to those children born to an incarcerated mother.
5. If imprisonment is unavoidable, **adequate provisions** must be made for the **care of the children** entering prison with their parent and age-appropriate facilities (such as nurseries, kindergartens, mother-child units, children's care home) and services must be supplied to safeguard and promote the safety, dignity and development of any child living with a parent in prison. The child must be scrupulously **protected from violence, trauma and harmful situations**.
6. When the child is leaving the place of detention, the **primary caregivers should ideally be released together with the child**.
7. The **separation** of an infant or young child from the imprisoned primary caregiver is likely to be a traumatic experience for both and, if this is going to occur, **preparation** for it ideally needs to begin at the outset of the sentence, taking into consideration: **individual assessments, support and empowerment for caregivers, psychological, emotional and practical support** for caregiver and child.



# CHILDREN DEPRIVED OF LIBERTY FOR MIGRATION-RELATED REASONS



© John Moore via Getty Images, Boy from Honduras watches movie at U.S. Border Patrol detention facility in Texas, United States

Worldwide, there are approximately 30 million migrant children. They migrate for a variety of reasons. Some seek better lives and opportunities, like accessing education or health care, others want to reunite with their families. Some migrate to escape conflict, persecution, discrimination or because of food insecurity, natural disasters, environmental degradation or a combination of these factors.

At least 330,000 children are deprived of liberty in immigration detention per year because they have entered a country irregularly, their residence status has expired, their asylum application was denied, or for securing their deportation. Most children are unaccompanied or separated from their families, others are detained with their parents. The Global Study shows that migration-related detention of children always violates the CRC, because such detention never meets the high legal standard of a measure of last resort. This practice in at least 24 countries shows that migrant children can be taken care of by child welfare authorities providing non-custodial solutions.



## Jamil's Story

**"I was treated as a terrorist and thought I would stay there all my life",** recalls Jamil of his experiences of **migration detention** as an unaccompanied minor from North Africa. At the age of 17, Jamil migrated across the Balkans and ended up in detention twice – once in Albania and once in Greece.

He was first arrested in 2015 in a village in Albania along with a few other migrants. They were immediately handcuffed and even hooded – with their faces completely covered. After first being taken to a police station, Jamil eventually found himself in a Tirana prison. Throughout this period, Jamil was not given any information as to where he is going and how long he would be detained.

Jamil reports that adults and children were detained together. The memory of this time still fills him with fear. "I would hear people screaming." One of his fellow child detainees was placed in isolation as a punishment for trying to escape, while Jamil himself was once beaten so severe that "I couldn't move the next day." He described how all personal items were removed, that food was scarce and that communication amongst detainees was deliberately limited. Any contact with the outside world was strictly prohibited during his entire stay in prison.

"One night (after a month) they came in and said to us to get our stuff, we leave for Greece". Once he arrived, Jamil was first detained for 19 days and then another 5 days in Ioannina. He was quickly given a lawyer, which eventually led to his release from detention. In the end, Jamil had experienced detention as an unaccompanied child for 54 days.

Reflecting on his experiences, Jamil thinks that children should be hosted in a shelter with support. "Police stations or prisons are not a suitable place for minors".

*For data protection and confidentiality reasons, the names have been altered.*

## Main Findings

The data collected by the Global Study in 2018 indicates that **at least 330,000 children are detained for migration-related purposes per year around the world**. At least **80 States** are known to still detain children for such reasons, while at least **24 States** do not, or claim not to do so.

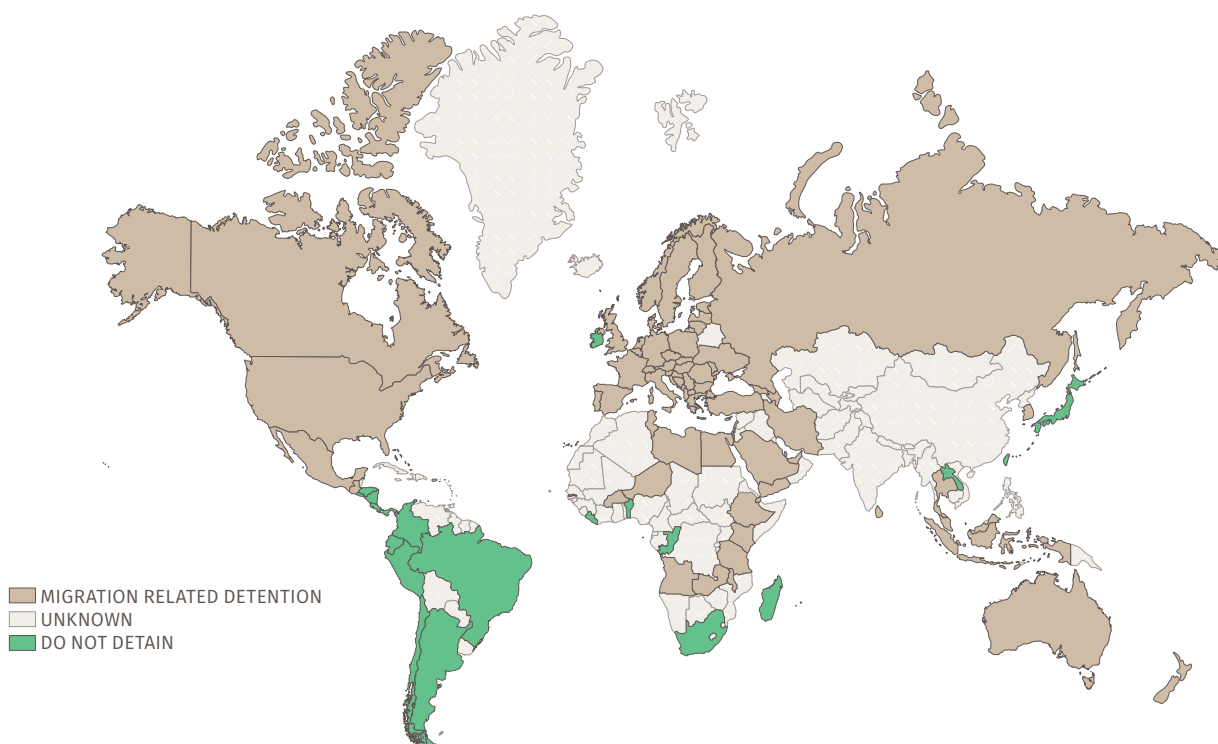
Some countries routinely detain children for migration-related reasons. In others, immigration detention of children is rarely or never employed. According to a publication from 2017 prepared by the UN Department of Economic and Social Affairs 9% of migrants in 'more developed' countries and 21% in 'less developed countries' are children. In 2017 among the Rohingya fleeing Myanmar, for example, 55% were noted by UNHCR to be children. In Turkey at the end of 2017 there were 3.8 million refugees and asylum seekers, of whom 1.6 million were children, as confirmed by UNICEF.

In the majority of States immigration detention is managed by border authorities, national police authorities, or other security forces. In some cases, specialised authorities are responsible for immigration detention of children, such as child protection and family welfare offices (e.g. Gambia or some cantons in Switzerland).

States detaining children on the basis of their migration status offer **multiple justifications**, including health and security screening, identity verification, age assessment, illegal entry or the facilitation of deportation. Children are detained in special migration detention centres, prisons, closed reception centres, offshore locations, transit shelters and institutional settings. Immigration detention of children and families is often decided under a procedure that does not respect basic **procedural rights**, and the conditions of detention are often appalling.

Under the mandate of the UN Special Rapporteur on Torture it was found and documented in the report from 2015 that immigration detention frequently subjected children to **deplorable conditions** due to "overcrowding, inappropriate food, insufficient access to drinking water, unsanitary conditions, lack of adequate medical attention, and irregular access to washing and sanitary facilities and to hygiene products, lack of appropriate accommodation and other basic necessities."

## The Use of Migration-related Detention for Children



COUNTRY	CHILDREN DETAINED	YEAR
UNITED STATES	103,140 / 69,550*	2015 / FY 2019
MEXICO	18,066	2017
MAYOTTE (FRA)	2,493	2017
HUNGARY	1,254	2017
INDONESIA	982	2017

\*includes only unaccompanied children

### 24 COUNTRIES THAT DO NOT DETAIN:

ANGUILLA\*, ARGENTINA, BENIN, BRAZIL, CHILE, COLOMBIA, CONGO, COSTA RICA, ECUADOR, EL SALVADOR, HONDURAS, IRELAND, JAPAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LIBERIA, MADAGASCAR, MAURITIUS, NICARAGUA, PANAMA, PERU, QATAR, SAO TOME AND PRINCIPE, SOUTH AFRICA, TAIWAN\*

Source: Global Study questionnaire supplemented with data extracted from official statistics, data from international organizations and peer-reviewed literature.

Similarly the European Court of Human Rights found violations on account of children's age, the duration of their detention, and conditions inherent to their detention.

Lack of resources are often mentioned by children and were also confirmed by a 19 year old boy who had experienced migration detention in Western Europe as a child:

Regardless of the conditions of detention, the available evidence shows that **immigration detention is harmful to a child's physical and mental health**. Reports have found that detention aggravates

"There were fights all day, every day. It was too hard. They were fighting with others from day to night, for the bed, for the food, for the toilet."

existing health conditions and causes new ones to arise, including anxiety, depression, suicidal ideation and post-traumatic stress disorder. Some of the stresses causing mental harm are related to the context of detention (such as locked gates and constant supervision by detention officers), or they are related to the uncertainty of waiting for visa decisions and having pre-existing cases of trauma. It furthermore exposes the child to the risk of sexual abuse and exploitation.

As shown in the table above, the highest number of children deprived of liberty in migration-related detention is in the United States. A 2017 US policy forcibly separated children from their parents after apprehension, which meant that thousands of children, including toddlers

and newborns, were treated as unaccompanied and held in immigration detention. In most of these cases, this forced separation led to immense suffering by the children and their parents and, therefore, amounted to cruel, inhuman or degrading treatment. This stands in clear violation of international law applicable to the United States. The Government announced an end to the policy in July 2018 in the face of legal challenges and public outcry, but US immigration officials

separated at least 200 children from their parents between July 2018 and February 2019, and children continued to report instances of separation from parents or other adult caregivers in mid-2019. The US Government sought authority to hold families in immigration detention indefinitely and to relax standards for the detention of unaccompanied children, in spite of the known harms to children and families of immigration detention.

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## Immigration Detention of Children Violates International Law

Article 37(b) of the CRC clearly emphasises that the arrest, detention or imprisonment of a child shall be used only as a **measure of last resort**, meaning that it can only be applied if non-custodial solutions, which could serve the same purpose and are proportional, are not available.

There might be cases in the context of armed conflict, national security or in the administration of justice where no suitable non-custodial solutions are available. This refers, for example, to particularly dangerous children who committed a serious and violent crime, where detention might not be avoidable in order to protect the life of others or to bring such children before the competent authorities. Migrant children, on the other hand, are usually not dangerous and have not committed crimes. The main **reasons for detaining them are to facilitate their deportation and to prevent their absconding**. However, such reasons, similar to the various other justifications put forward by governments, cannot meet the high standards of international law with regard to the detention of children, above all the rule that deprivation of liberty is only allowed as an exceptional **measure of last resort**. Under the rule of proportionality, detaining children for such reasons would not be permitted under

Article 37(b) CRC. Furthermore, the practice in at least 24 countries shows that **States are in fact able to apply migration policies and laws without having to resort to the detention of children**, making it difficult for other States to argue that detention is a necessary measure of last resort.

The Global Study, along with other UN bodies and agencies, such as the UN Secretary-General, the CRC Committee, the Working Group on Arbitrary Detention, UNHCR, IOM or UNICEF, reconfirms that there are **always non-custodial solutions available**, which States must resort to in order to avoid the detention of children. This applies equally to unaccompanied and separated children as well as to children who migrate with their parents. Migration-related detention of children, therefore, always violates Article 37(b) CRC. In addition, it is difficult to reconcile with the principle of the **best interests of the child** in Article 3 CRC. Therefore, States have a legal obligation to prohibit migration-related detention of children and to make proper non-custodial alternatives available to migrant children. If children migrate with their families, such non-custodial facilities must also be made available to their families in order to avoid the separation of such children from their families, contrary to Article 9 CRC.

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## Promising Practices

States refraining from placing children in migration detention prove that it is possible to regulate migration through policy responses applying **non-custodial solutions**. Some of these

measures include small group homes, foster care, open and child-friendly accommodation within child protection systems, foster families, and other arrangements which prioritise the



best interests of the child. In Central and South America, where immigration detention of children is less prevalent than elsewhere in the world, children and families are hosted in **open shelters or child protection facilities**.

Positive tendencies are also found in Oceania, where the scale of immigration detention of children has been declining in recent years. This is mainly due to the Australian Government significantly increasing **community-based** non-custodial measures. Whereas in 2013 there were

3,784 children in detention in Australia, by 2017 this had fallen to 145.

These community-based non-custodial measures also include the **support of case managers or other child rights experts**. In Germany, children and their families are supported by **social workers** who try to find **long-term accommodations** within a short period of time. In other cases children are supported by **specialised police units** working with children or other expert organisations, such as **UNHCR** in Ecuador.

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## Recommendations

1. Since **migration-related detention of children** cannot be considered as a measure of last resort and is never in the best interests of the child, it always **violates Article 3 and Article 37(b) of the CRC** and should, therefore, be **explicitly prohibited and abolished by domestic law**.
2. States should refrain from criminalising irregular entry or stay and **eradicate any form of immigration detention**. Whenever children are found to be deprived of liberty for reasons related to their or their parents' migration status, **State authorities should promptly identify them and immediately release these children, together with their family members**.
3. States should **assess on a case-by-case basis** what non-custodial, community-based solutions are most appropriate for the protection and care of migrant children, taking into account each child's individual needs and on an equal basis with children who are nationals of the host country.
4. **Unaccompanied and separated children** should be referred to the regular domestic child protection system for appropriate attention, protection, and care. They should be provided with non-custodial, community-based solutions, including alternative care and accommodation, in line with the UN Guidelines for the Alternative Care of Children.
5. **Children with family members** should be allowed to remain with their families in non-custodial contexts while their immigration status is resolved and the children's best interests are assessed. The need to keep the family together is not a valid basis for deprivation of liberty of the child; instead, the State should provide non-custodial solutions for the entire family.
6. Non-custodial measures should ensure **access to information** about the process, legal assistance, health, housing, access to education and other services, as well as appropriate **case management**, regular check-ins by social workers and social support.
7. States should **only use age assessment procedures where there are grounds for serious doubt** about an individual's age. Documents that are available should be considered genuine unless there is proof to the contrary, and statements by children and their parents or relatives must be considered. Age assessment should include the child's physical and psychological development and be carried out by independent experts in a prompt, child-friendly, gender-sensitive and culturally appropriate manner, respecting the child's dignity and using a language the child understands. These assessments should include interviews with children and, as appropriate, accompanying adults. In cases of doubt, the authorities should **treat the person as a child**. Persons claiming to be children should not be placed in detention while any assessment is completed.
8. States should only return children to their countries of origin or last residence, or transfer children to a third country, based on a **determination that such return is in the individual child's best interests** undertaken by a child protection or child welfare authority.
9. Authorities should take steps to ensure children and families have **access to justice and effective remedies**, including through administrative sanctions and prosecution as warranted, when their rights to liberty and family life are violated.
10. States should **ensure regular access by legal representatives**, national and international monitoring bodies, and civil society organisations **to all places of immigration detention**.

# CHILDREN DEPRIVED OF LIBERTY IN INSTITUTIONS



© Bernard Bisson/Sygma via Getty Images, Children in a Classroom in an Orphanage in Bucharest, Romania

5.4 million children live in institutions worldwide. This fate can easily be avoided as these children could very well be reunited with their parents, primary caregivers or live in a family-based setting given the right support. These children are separated from their families and deprived of their liberty in institutions for various reasons. Contrary to popular belief, 80% of children in orphanages have at least one living parent.

Effects of child separation and institutionalisation are grave and may last a lifetime. Being largely invisible, such children are particularly vulnerable to violence, neglect and abuse. The removal of a child from his or her family should only occur where the child cannot be allowed to remain there on the basis of a best interests determination. Despite international provisions, the majority of States are failing to provide preventive, protective and supportive mechanisms to reduce the number of children living in institutions.

## Irene's Story

**"I did not like anything in that shelter. We were confined inside the premises with no open spaces."** This is what Irene recalls of her time at a shelter in India specialising in repatriating girls who were trafficked into prostitution from Bangladesh.

At the shelter she was promised that she will soon be able to go back home. Three years on, however, Irene is still there. The shelter does not offer any activities or opportunities to do sports or simply play. She was not even given any new clothes.

Irene feels overlooked and unheard. Since she was first trafficked at the age of 12 years, Irene has survived forced prostitution, physical violence and countless emotional threats in the various brothels she worked in. Constantly hearing that her date of repatriation has been delayed or deferred led her to harm herself. "I have slashed my wrists and neck many times" says Irene and once she was even hospitalised for a month.

Yet, she still says "I felt no one listened to my wish of returning home". All Irene wants is to go back home to her native village to live with her mother, but she remains in the same shelter that nearly broke her, with nowhere to go and nothing to do.

*For data protection and confidentiality reasons, the names have been altered.*

Care within institutions is also typified by a **lack of affectionate relationships**, because the size and nature of institutions and the role of staff do not allow any emotional bonding between the staff and children. An adolescent child in an orphanage in the Caribbean region shared:

## Main Findings

Since there is no globally agreed upon **definition of institutions, characteristics-based approaches** refer to aspects such as isolation, lack of control over one's life and decisions affecting it, and the requirements of the organisation prevailing over individual needs. Deprivation of liberty is occurring within a wide range of such institutions: children being confined and cut off from communities, having limited or no contact with their families, often placed far away from where they live. The use of physical restraints, isolation and solitary confinement occur in some institutions, which are particularly egregious examples of deprivation of liberty, in some instances amounting to torture or ill-treatment. In addition, unregistered, privately run institutions often receive children through informal referrals and in some cases result in exploitation through commodifying care or trafficking of children.

Moreover, **violence** within institutions has been identified in countries across the globe. Occurrences range from physical and psychological abuse in the guise of 'corrective actions', to sexual violence against girls with disabilities and inappropriate use of psychotropic medication. In some cases, children experience serious **neglect**, including denial of healthcare and adequate nutrition.

Sometimes, the **lack of State funding** results in fundraising strategies severely harming children, such as keeping children in a state of poverty or malnourished to attract more donations, or trafficking children for sexual exploitation.

"If you live in a family, your foster parents or otherwise, they would tuck you to bed in the evening. They will calm you down. They will kiss you. They will tell you nice things like, 'Everything will be okay. Don't worry if you're worried for something.' They will make sure you feel relaxed and peaceful in the evening. While, if you're in institutions, the attitude that you will get, 'Go to bed. Shut the light. Go to sleep,' and that's it, so it is a huge difference."



Children are often unable to maintain regular **contact with their families** and are placed in facilities far from home, despite having a right to maintain family relationships. Their stay in institutions is often characterised by **a lack of autonomy** and choice in relation to everyday activities, and blanket rules with little flexibility related to individual needs. One child even describes the impossibility to complain about the situation and its consequences:

While every child should have an individualised care plan with interventions tailored to the child's needs, plans and programmes to support development, educate, rehabilitate and address trauma are often lacking.

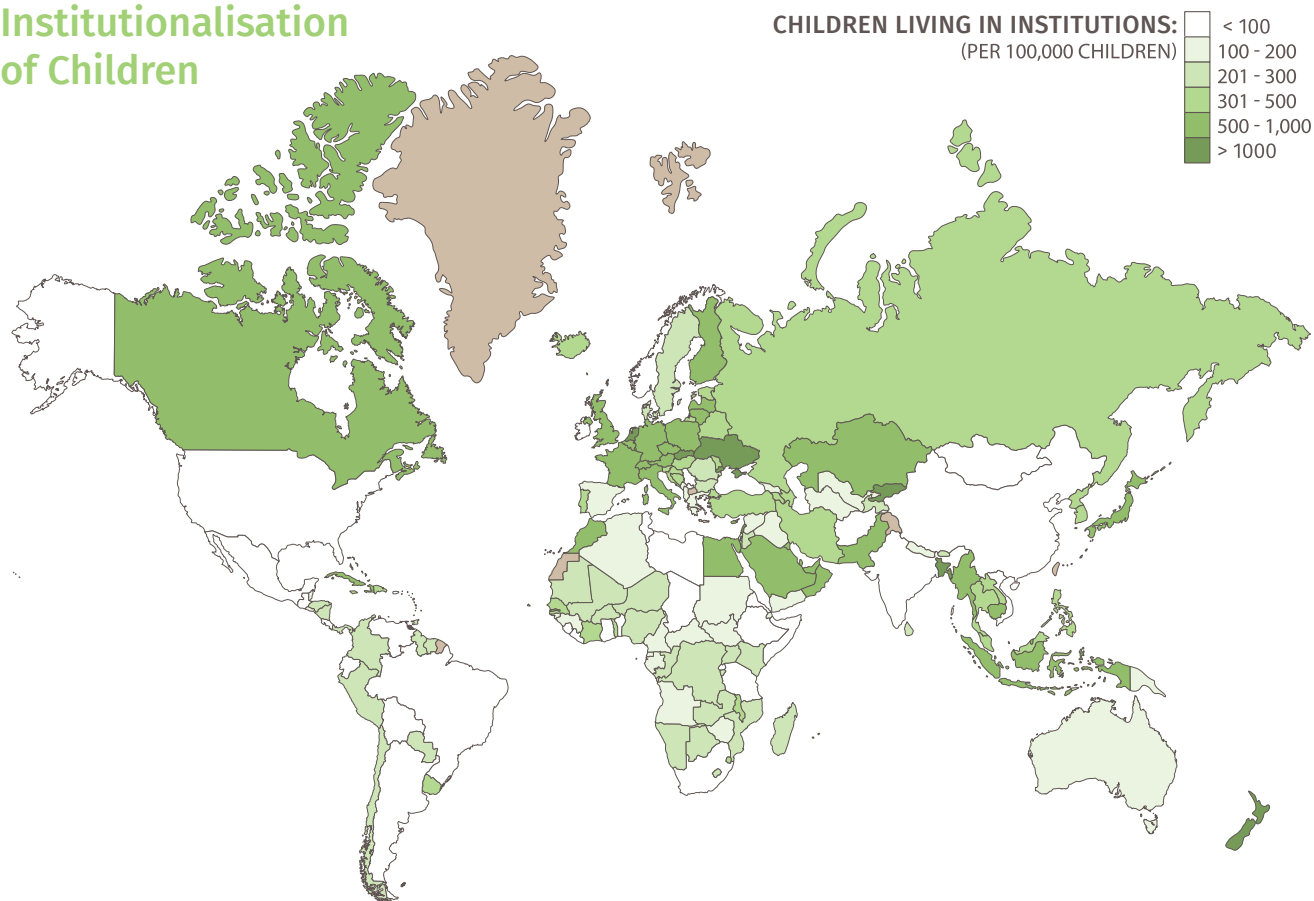
Based on these general characteristics of institutions and on the findings of research conducted for the Global Study, including expert testimony, it is reasonable to conclude that **institutions**, by their very nature, are **unable to operate without depriving children of their liberty**. This conclusion correlates with a recent General Comment of the **UN Human Rights**

"If you complained, you were punished. They could lock you or not give you food."

**Committee**, which affirms that "the placement of a child in institutional care amounts to deprivation of liberty within the meaning of Art. 9" (ICCPR). According to a recent study, the total number of children living in institutional care globally amounts to 5.4 million, which represents a certain decrease as compared to earlier studies. Applying the strict legal standard of the Human Rights Committee, the Global Study, therefore, estimates that globally **5.4 million children are deprived of liberty in institutions per year**.

The clear majority of these children have not been formally deprived of their liberty by a decision of a court or administrative authority. Usually, children are placed in institutions by their parents or other caregivers, often on the advice or insistence of governmental authorities or at least with their knowledge and acquiescence. There are, however, also cases in which children, including children with disabilities, are placed in private institutions without the knowledge or acquiescence of governmental authorities.

## Global Rates of Institutionalisation of Children



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## Legal Framework

The **family** is the natural and fundamental group unit of society, and should receive the widest possible protection and assistance, in particular for the care and education of children. The CRC emphasises in its preamble that a child “should grow up in a family environment, in an atmosphere of happiness, love and understanding”. Thus, States must ensure that no children are separated from their parents against their will, except where such separation is necessary to safeguard the **best interests of the child**. Importantly, in line with Article 23 CRPD, children should never be separated from their parents on the basis of their disability or the disability of their parents.

For children who are unable to live with their parents or cannot remain in that environment due to risks, States are obliged under Article 20 CRC to ensure **suitable alternative care options** (i.e. specifically appropriate, necessary and constructive for the child’s best interests), such as foster placement, Kafalah under Islamic Law, or adoption. Placing children in institutions for the purpose of delivering support or services is disproportionate and will hardly ever meet the high standards of a **measure of last resort** in Article 37(b) CRC. The decision to effect the removal of children from their family environment must be made by competent authorities, in accordance with domestic law

(which must be in line with international law) and must be subject to review. Preventive measures and **family and community-based support services** must be explored in advance, including social and financial assistance, counselling services, or day-care facilities.

Once in alternative care, in accordance with Article 6 CRC, States should provide children with the emotional support, education and programmes needed for a **healthy development**, including established standards relating to safety, education, healthcare, nutrition, privacy, leisure activities, contact with family, staffing and competent supervision, and giving a voice to the children themselves. In addition, a process of **regular reviews** of the child’s situation and constant contact with the family needs to be established in order to ensure the child is institutionalised no longer than absolutely necessary. In this context, children themselves must have access to and know about **effective and impartial complaint mechanisms** regarding their treatment and the conditions of placement.

Further **international standards** can be found in the Rules for the Protection of Juveniles Deprived of their Liberty (‘Havana Rules’) adopted by the UN General Assembly in 1990, and the Guidelines for the Alternative Care of Children, adopted by the UN General Assembly in 2009.

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## Pathways to Detention

Children are separated from their families and placed in institutional care based on various grounds:

- **Poverty:** Poor economic conditions are one of the root causes leading to institutionalisation of children, with some States being more likely to place children in institutions than to provide family support. Poverty, and neglect based on poverty, is an inadequate justification to separate children from their family and deprive them of their liberty.

- **Disability:** Children with disabilities tend to be over-represented in care institutions. Stigmatisation, lack of State support for parents, lack of caregiving capacity of families, misdiagnosis, and an exclusive focus on the medical model of disability lead to the overuse of institutionalisation.

- **Belonging to an ethnic minority:** Indigenous children and children belonging to ethnic minorities are also significantly over-represented in care and justice systems, such as Roma children in Central and Eastern Europe.

**. Violence in the home:** Experiencing violence in the family, including neglect and psychological, physical and sexual violence, is often a primary cause for children to be placed in institutions.

Situations of natural disasters or armed conflict also contribute to the institutionalisation of children, as well as pandemics such as HIV/AIDS.

In addition to these causes leading to the institutionalisation of children, States often contribute further causes through their lack of effective policy measures. Where there is no access to social services, families are increasingly vulnerable and find it more difficult to keep children at home. Thus, family and community-based solutions are essential in preventing deprivation of liberty in institutions, including day care, respite care, community-based health workers, child and youth care workers, and social workers, inclusive community schools, therapeutic services, financial aid, and community or foster care.

All over the globe, children are living in **unregistered institutions**, such as orphanages. This increases the risk of unlawful or arbitrary placement of children. A range of private actors, including NGOs and faith-based organisations, run such institutions. While this is often done with good intentions and to meet underspending

of States, acting outside of State oversight and monitoring, caregivers are often unqualified (including high levels of ‘voluntourism’ at orphanages), and children are sometimes actively recruited where facilities are understood as lucrative business models.



## Promising Practices

Many examples of **deinstitutionalisation** are found in former Soviet States in **Central and Eastern Europe and Central Asia**, which proved successful when an individualised and flexible childcare system that follows the best interests of the child was established. Reform of the childcare system required changes in legislation and administrative structures, new funding mechanisms and upscaling of social welfare and family-based care services, the involvement of communities and families, and monitoring tools. This led to a significant decrease of children in (large) institutions.

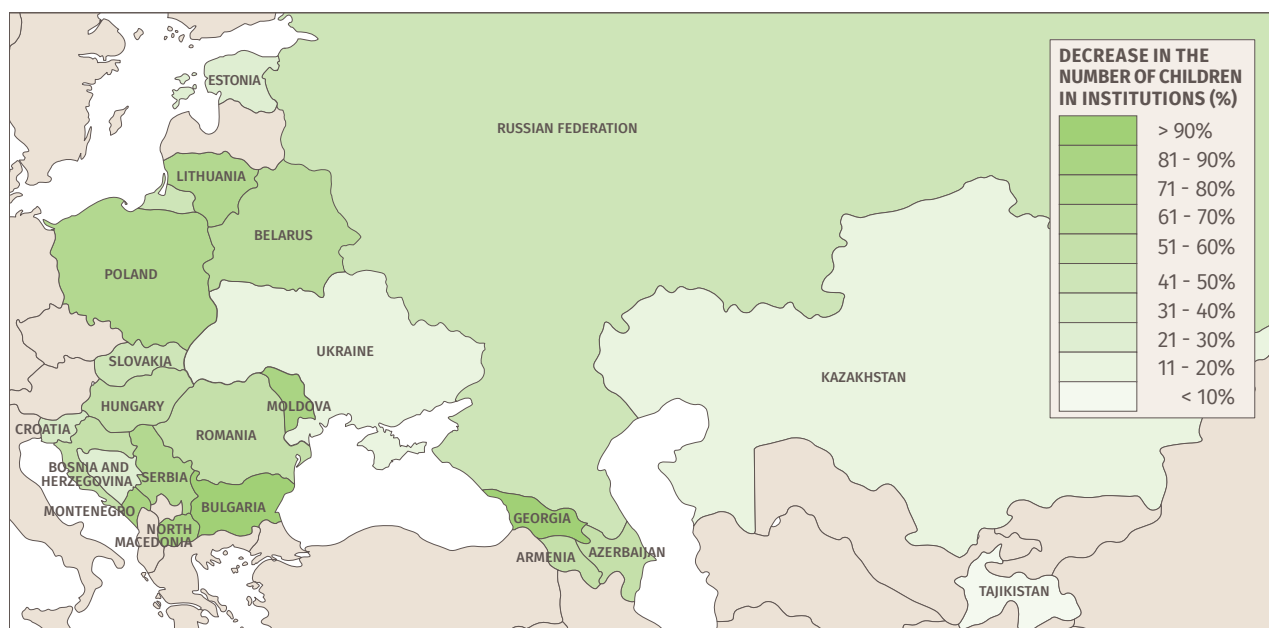
A number of governments in **Western European and North American States** have initiated

**investigation procedures** into the situation of children in institutions. The recommendations resulting from the investigation are then used as a basis for systemic change and reform.

**Social assistance programmes** are initiated by a wide range of **States across the globe** in order to address causes of institutionalisation. These include microcredits and cash transfers to mitigate the impacts of poverty, free health care for mothers and young children, family strengthening interventions, school-based interventions, preparation for and after-care support for children leaving alternative care to lead independent lives, awareness raising for non-violent methods of parenting, and many more.



## Good Practices of Deinstitutionalisation



Source: CRC State party reports, UNICEF/TransMonEE Database, UNICEF, responses to the Global Study questionnaire, official State statistics

## Recommendations

1. States are urged to consciously and **actively target the identified causes of children being separated from their families**, and to provide the necessary measures to prevent this through **support for families** and strengthened child protection and social support systems. States should invest in a well-planned, and trained social service workforce as well as integrated case management systems, which are fundamental for effective needs assessment, monitoring of child wellbeing, gatekeeping, care planning, referral/access to services, and preventing family separation.
2. **States are urged to develop and implement a strategy for progressive deinstitutionalisation** that includes significant investments in family and community-based support and services, which shall be put in place alongside the plan to deinstitutionalise. States should **prioritise the closure of large-scale institutions** and those where children are formally deprived of liberty.
3. States should prioritise a process to assess children presently in institutions and make all efforts to return them safely to their immediate family, extended family, or into other families through foster care, Kafalah or adoption. States have an obligation to ensure that **every decision is based on the best interests of each individual child, that children and their families are involved in any decisions that affect them, and that the views and preferences of children are fully considered**.
4. While prevention and deinstitutionalisation are being carried out, States should ensure that all **alternative care options** respect the rights of all children and implement measures that **guarantee the full participation of all children**, including children with **disabilities**. States should provide effective support for safe and well-prepared transitioning out of care into independent living, after care services, and reintegration of children back to their families and communities.
5. States are also urged to map all institutions within the country, whether private or public, whether presently registered or not, and, regardless of how children arrived there, **conduct an independent review of each institution**. States should operationalise a system of registration, licensing, regulation and inspection.
6. States should take immediate measures to **stop exploitation of children** through orphan tourism, and using children as a commodity to run institutions as a business. States should encourage faith-based organisations and donors to reinvest their efforts towards prevention of separation of children from families, family-based or other community-integrated models of quality care and towards safe, planned deinstitutionalisation.
7. States are further encouraged to ensure that children being placed in hospitals, psychiatric facilities and rehabilitation (including substance abuse) centres are properly counted and are included in **systemic transformation** and **deinstitutionalisation** efforts.

# CHILDREN DEPRIVED OF LIBERTY IN THE CONTEXT OF ARMED CONFLICT

© Terre des Hommes. Former child soldier, who has been reunited with his family, is going back to school with the wish of becoming a doctor to help his community in Labrah, South Sudan

More than 1 in 6 children worldwide live in a conflict zone. In many of these conflict areas, armed forces and armed groups recruit children to serve as combatants, guards, spies, messengers, cooks, and for other roles, including sexual exploitation. Where such recruitment takes place, children face a heightened risk of detention for suspected involvement with fighting forces. 35,000 children are detained in the context of armed conflict, often being held for weeks, months, or even years without charge.

This phenomenon runs counter to international law, which treats children recruited in the context of armed conflict primarily as victims who are entitled to rehabilitation and reintegration. Particularly in conflicts with so-called 'terrorist' or violent extremist groups, governments are more likely to detain – and often prosecute – children than to provide them with rehabilitation.

## Sani's Story

**"We could bathe once a week, but we had no soap",** Sani recalls of a detention centre he was sent to in **northeast Nigeria**. Prior to his arrest, Sani survived an attack on his village by Boko Haram, an armed group termed violent extremist. The 15 year old boy was forced to flee for his life – running into the bush with only the clothes on his back. "They killed people in front of children. I saw people killed", he said. "They slaughtered so many, I couldn't count."

Managing to stay alive in the bush for weeks by consuming fruit and dirty water, Sani and a few other people from his village eventually decided to return home. They were however arrested by government soldiers on suspicion of belonging to the same armed group that attacked their village. As a result, Sani was taken to a military detention centre. "There wasn't enough food, no education, no activities."

The conditions at the detention centre were horrific. "The hardest part was the smell of the toilet. When the smell was very bad, it made me want to faint. We used our clothes to cover our nose and mouth, but our clothes were very dirty, so it didn't help much." They were constantly told by the guards that they would never get out of prison without confessing to belonging to the armed group.

Sani never confessed – nor was he ever taken to court. After a year in detention, he was finally released, never having been formally charged with a crime. Today, Sani looks to the future, hoping to go back to school in order to become a doctor. But he cannot afford the registration fees. He still believes however that the Government can help children affected by conflict. "I want the Government to return all the children to school."

*For data protection and confidentiality reasons, the names have been altered.*

## Main Findings

Data collected for the Global Study indicates that over 35,000 children are deprived of liberty in at least 16 countries in the context of armed conflict. That figure includes an estimated 29,000 **foreign children related to the Islamic State ('ISIS')** detained in 2019 in camps in **Iraq and Syria**. The true number is likely to be considerably higher, taking into account undocumented cases in internally displaced people (IDP) camps, military and intelligence facilities, and makeshift detention centres. Those countries with conflict situations with the highest numbers of detained children are Syria, Nigeria, Iraq, Israel, the Democratic Republic of Congo, and Somalia. In addition, detention rates of children in situations of armed conflict have increased alarmingly in the past years, witnessing a fivefold increase between 2012 and 2017. One central reason is the implementation of **counter-terrorism measures**, as States are more likely to arrest and prosecute children allegedly associated with armed groups designated 'terrorist' or violent extremist.

Children detained in the context of armed conflict often find themselves **doubly victimised** and caught in a cycle of violence. First, armed groups illegally recruit them, usually through coercion or deception. In result, children may suffer from exposure to **extreme violence, trauma** and **deprivation**. Second, State authorities or opposing armed actors detain them for their association with those very groups, often in inhuman and appalling conditions, and in many cases subjecting them to **torture or ill-treatment** in order to extract confessions, gather intelligence, or as punishment. Overall **detention conditions** are often extremely poor, with severe overcrowding and grossly inadequate sanitation, food, and health care. In several countries, children have died in custody owing to poor conditions or ill-treatment. Once released, children may face **alienation or rejection from their communities**, and find it difficult to resume education or find employment, making them susceptible to re-recruitment, such as for this 17 year old boy, detained in the Middle East and North African (MENA) region for alleged ISIS affiliation:

"I was a student before ISIS came, but then the schools closed and I just stayed home. I miss school, but now I am too old to go back. I don't know what will happen to my future."



## Pathways to Detention

Children are detained for a variety of reasons. Many children are deprived of liberty because of their involvement with non-State armed groups. Some Middle Eastern, West and East African States **criminalise mere association with non-State armed groups**, even if no other crime has been committed. Some children who have been recruited across borders by non-State armed groups have been detained and prosecuted upon return to their home countries. Other reasons include alleged involvement of family members with such groups, because they appear to be of fighting age, belong to a certain religion or ethnicity, or come from a region where armed groups are active.



They are captured during hostilities and military operations, or during security sweeps, including house raids and checkpoint searches.

Although most children are detained by government forces, armed groups also detain children as punishment, for recruitment purposes, to extract ransom, for sexual exploitation or as bargaining chips for prisoner exchanges.

The overwhelming majority of children detained for association with armed forces are **boys**, while **girls** are at a heightened risk of detention for sexual violence or activities of their family members. Accounts from medical personnel indicate that girls who returned had been subjected to **rape** and **other sexual abuse** while in the custody of the security forces, such as this 14 year old girl from East Africa recalls:

"They were about 20 men (...). They stayed with us eight days. They mistreated me . . . they were sleeping with us (raping us). They beat us if we refused to sleep with them. They beat me with a stick on the head and the back. All over the body."

## Legal Framework

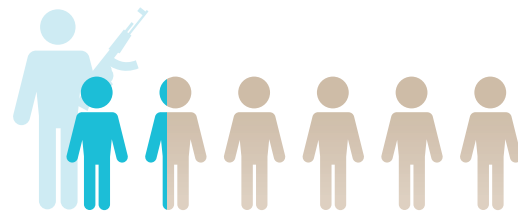
International law prohibits the use of children in direct hostilities, and any recruitment of children by non-State armed groups. International child justice standards recognise children involved in armed conflict **primarily as victims** of grave violations of their human rights, not as perpetrators. This entails that rehabilitation and reintegration of former child soldiers should be prioritised, and that states should take all appropriate measures to promote the **physical**

**and psychological recovery** of child victims in an environment which fosters the health, self-respect and dignity of the child. Detention should be prevented, save in exceptional cases where children may have committed serious offences or pose a serious threat to a State's security, and only under the application of due process and international child justice standards. In particular, children should not be detained solely for membership in an armed group.

## Promising Practices

In order to prevent detention of children in armed conflict, several States have taken steps towards ensuring the release, rehabilitation and reintegration of such children. One important tool is the adoption of **handover protocols**, which regulate the handover of children from government custody to national or international child protection agencies. Such protocols are often signed with UN agencies in line with UN Security Council Resolution 2427 (2018) and international child protection standards. Several East and West African States, such as Chad, Mali, Nigeria and Somalia, have adopted handover protocols in recent years. Some other States, such as the Philippines and the DRC, have adopted **special laws** or directives aimed at child protection in an attempt to prevent recruitment and secure the release of children. However, implementation of handover protocols and further standard operating procedures, as well as child protection laws is inconsistent.

Government agencies, UNICEF and international and local NGOs run a variety of **rehabilitation and reintegration programmes**, providing health services, psychosocial support and family reunification. Education may also play an important role, increasing future employment opportunities of former child soldiers, and instilling a sense of normalcy and safety. **Community-based reintegration** can also be essential by addressing potential stigma and reprisals against released children and encourage recovery of the entire community.



**MORE THAN 1 OUT OF 6 CHILDREN LIVED IN A CONFLICT ZONE IN 2017.**

## Recommendations

1. In line with UN Security Council Resolution 2427 (2018), States should recognise that children who were detained for association with armed groups are **first and foremost victims of grave abuses of human rights** and international humanitarian law, and prioritise their recovery and reintegration.
2. In line with the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, States should **not detain, prosecute, or punish children** who have been associated with armed forces or armed groups solely for their membership in such forces or groups.
3. In line with UN Security Council Resolution 2427 (2018), States should adopt and implement standard operating procedures for the **immediate and direct handover of children** from military custody to appropriate child protection agencies.
4. States should ensure that children formerly associated with armed forces and armed groups are provided with **appropriate rehabilitation and reintegration assistance**, and where possible and in the best interests of the child, **family reunification**. Such assistance should take into account the specific situation and needs of girls associated with armed
5. States and other parties to armed conflict must **not detain children illegally** or **arbitrarily**, including for preventive purposes; alleged offences by family members; intelligence-gathering; purposes of ransom, prisoner swaps, as leverage in negotiations; or for sexual exploitation.
6. States should ensure that any arrest or detention of a child should be based on specific and credible evidence of criminal activity and **prioritise diversion from the criminal justice system**.
7. States should **take responsibility for children abroad who are their citizens and who may be detained on security related offences** or for association with armed groups, including children born to their nationals. Based on the child's best interests, they should facilitate the return of such children to their country of origin for rehabilitation, reintegration, and/or prosecution, as appropriate, in full compliance with international law. This requires compliance, specifically, with the rules governing family separation as well as the principle of non-refoulement.

# CHILDREN DEPRIVED OF LIBERTY ON NATIONAL SECURITY GROUNDS

© Armend Nimani/AFP via Getty Images, Child repatriated with its mother, who had joined ISIS, is now held in a foreign detention centre in Vranidoll, Kosovo



Armed groups designated as terrorist or armed groups termed violent extremist have recruited thousands of children in non-conflict countries. Some are recruited through force, coercion or deception, while others are influenced by family and peer networks, poverty, physical insecurity, social exclusion, financial incentives, or a search for identity or status. The growth of the Internet has provided such groups with new avenues to recruit children, who are often particularly susceptible to propaganda and online exploitation due to their age and relative immaturity.

Counter-terrorism laws often fail to distinguish between adults and children, include overly broad definitions of terrorism, provide fewer procedural guarantees, and impose harsher penalties, which lead to 1,500 children detained on national security grounds in non-conflict countries. Some States even criminalise mere association with non-State armed groups designated as terrorist or armed groups termed violent extremist and have extended the period of time that individuals can be detained without charge or before trial, lowered the age of detention for certain offences, and required children charged with national security offences to be tried in adult courts or before military tribunals.



## Aser's Story

"It seems that you want to go back to the electric shocks again", the prosecutor told Aser the moment he denied the charge of 'membership in a terrorist group'.

In Egypt, it is a crime to belong to the banned Muslim Brotherhood. Aser's charge however went beyond mere membership. It also included actively participating in an apparent attack on a hotel in Cairo involving the use of force, possession of firearms and assaulting police officers.

Aser's ordeal, however, began three years earlier when armed police and members of the National Security Agency raided his family home in Cairo in January 2016. Despite failing to produce an arrest or search warrant, the officers insisted that they will only take **14 year old Aser** for a brief period of questioning. All his family could do was to look on helplessly as their child was led away.

The officers ended up **holding Aser incommunicado for 34 days**. A family member recalls how they frantically tried to locate him at several police stations. They all denied that Aser was in their custody. Little did the family know that while they were searching, Aser was suspended in a room by his limbs and tortured with electric shocks. In the end, he gave in and confessed to participating in the attack. Despite this confession though, Aser was later deliberately warned by the prosecutor that if he tried to retract the confession, he would be sent back to the NSA for further torture.

By August 2019, Aser had been detained without trial for more than three years. If convicted, he could face 15 years imprisonment.

*For data protection and confidentiality reasons, the names were altered.*



## Main Findings

In **31 countries** children have been detained in the context of national security. As reported in the previous chapter on armed conflict, at least 35,000 children are deprived of liberty in situations of armed conflict, while **at least 1,500 children** are detained in the context of national security in countries without conflicts on their own territories. Both numbers are conservative estimates.

There has been a significant increase in the number of **terrorist attacks** globally since 2001, driven largely by violent extremist groups such as the Islamic State (ISIS), Boko Haram, the Taliban, and Al-Shabab, hitting countries such as Afghanistan, Iraq, India, Pakistan and Nigeria hardest, but more recently also emerging in European cities including Paris, Brussels, and Berlin. In response to this increase in terrorist activity worldwide, the vast majority of States have adopted new counter-terrorism legislation or expanded the scope of existing laws in ways that negatively affect children. Although the recruitment of children into non-State armed groups, including those designated terrorist or violent extremist, is unlawful, **counter-terrorism legislation** often treats children as perpetrators rather than victims, and places them at heightened risk of detention for alleged national security offences. Such laws frequently fail to differentiate between adults and children, provide **fewer procedural guarantees**, and impose **harsher penalties**.

The previous chapter on armed conflict reveals a number of 29,000 **foreign children who travelled to Iraq and Syria to join ISIS**, either



alone (often following online recruitment) or with their families. Many children or youth who joined ISIS when underage are now detained in *de facto* prison camps in Iraq and Syria and awaiting repatriation while their home countries generally refuse to accept them back. In single instances where children have been repatriated,

most notably to Russia, Kazakhstan, Indonesia and Egypt, this often entailed separation of the children from their family. After 'successful returns' to their home countries, these children and youth may face deprivation of liberty, as in the case of France, where children have been prosecuted and detained upon repatriation.

## Pathways to Detention

Children are detained for **mere alleged association with non-State armed groups designated as terrorist or violent extremist**, a worrisome development as the Internet has provided such groups with new avenues to recruit children, who are often particularly susceptible to **propaganda and online exploitation**.

In addition to detention for alleged association with a non-State armed group, children are deprived of liberty for a broad range of activities. Children have been detained or even convicted of terrorism-related offences, not for violent activity, but simply for **posting content on online platforms** such as Facebook or Twitter that is perceived as supporting non-State armed groups designated as terrorist. **'Apology for' or 'glorification of' terrorism** is criminalised in several Western European States including Germany, France, Spain and Italy, and has led to the detention of young children, despite calls of the UN Secretary General to criminalise by law only direct incitement to terrorism.

New legislation based on overly broad definitions of terrorism is also used to **detain children for**

**a wide range of activities outside of national security concerns**, such as participation in peaceful protests, involvement in banned political groups or alleged gang activity.

Following their arrest, children have been detained without charge or trial for years and, when convicted, often by **adult**

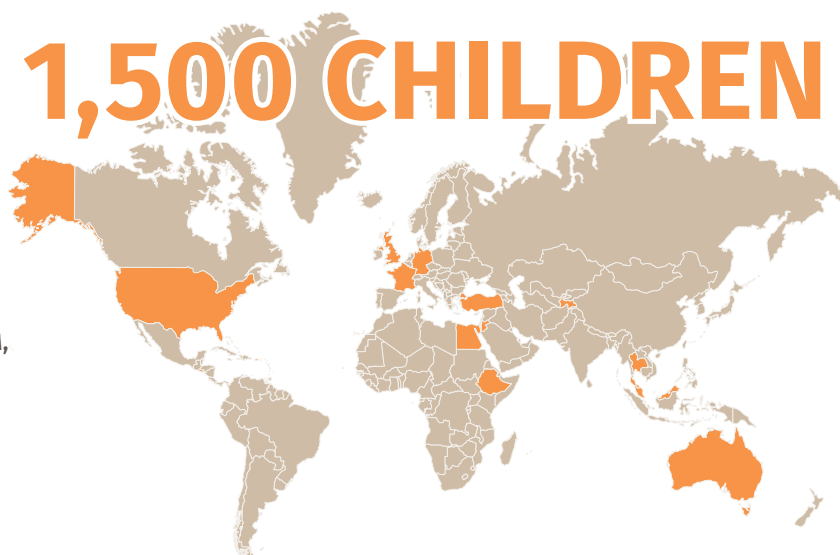
**or military courts**, have sometimes received harsh sentences, including the death penalty.

**Torture and ill-treatment** of detained children has been reported in many cases to extract confessions. One boy from the Asia Pacific region describes his experiences:

"Diversion or non-custodial solutions are often unavailable. In addition, some States have lowered the minimum age of criminal responsibility, or the minimum age allowing for investigative detention, in exceptional cases based on the type or severity of the offence."

## Countries Known to Detain Children on Grounds of National Security

AUSTRALIA, EGYPT, EL SALVADOR, ETHIOPIA, FRANCE, GERMANY, JORDAN, MALAYSIA, TAJIKISTAN, THAILAND, TURKEY, UNITED KINGDOM, UNITED STATES



Source: Literature review conducted for the Global Study.

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## Promising Practices

In order to facilitate rehabilitation in the context of national security and terrorism-related offending, a **case-by-case assessment** of the situation of each child is essential, taking into account the best interests of the child in all actions and decisions concerning him or her. This could take the form of a **probation system** supported by social workers facilitating the child's social reintegration process, including education and vocational training.

Some States have also incorporated **child protection clauses** in their counter-terrorism legislation, emphasising the competence of the national child justice systems or precluding certain sentences in counter-terrorism cases involving children. In this context, The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context provides specific guidance regarding the treatment of children allegedly involved in terrorism activities.

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## Recommendations

1. In line with UN Security Council Resolution 2427 (2018), States should recognise that children recruited by non-State armed groups designated as terrorist or armed groups termed violent extremist are **first and foremost victims of grave abuses of human rights**. As a priority, States should facilitate their **recovery** and **reintegration** and hold those who recruit and use them to account.
2. States should explicitly exclude children from national counter-terrorism and security legislation, and ensure that children suspected of national security offences are treated **exclusively within child justice systems**, with full child justice guarantees, including access to counsel, the right to challenge their confinement, protection of privacy, and contact with their families.
3. States should ensure that counter-terrorism legislation with penal sanctions is never used against **children peacefully exercising their rights** to freedom of expression, freedom of religion or belief, or freedom of association and assembly.
4. States should **end all administrative or preventive detention of children** and extended pre-trial detention for the purposes of counter-terrorism. States should develop **alternatives to deprivation of liberty** at all stages of the criminal justice system for children accused or convicted of national security offences, including diversion programmes, care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, and other non-custodial measures.
5. States should ensure that any sentence for national security offences is **appropriate to the child's age** and aimed at their rehabilitation and reintegration into society. States should **never** use the gravity of the offence, even when it is linked to national security, as a justification to **lower the minimum age of criminal responsibility**.
6. States should take all necessary measures to ensure that **rehabilitation programmes are neither punitive nor discriminatory** and do not amount to arbitrary detention. States should develop and **apply a tailored and individual case management approach** to children associated with non-State armed groups designated as terrorist or armed groups termed violent extremist, including specialised services for health-related assistance, educational and vocational measures and economic and social support. Priority must be given to the best interests of the child.
7. States should **take responsibility for children abroad who are their citizens and who may be detained on security related offences** or for association to armed groups, including children born to their nationals. Based on the child's best interests, they should facilitate the return of such children to their country of origin for rehabilitation, reintegration, and/or prosecution, as appropriate, in full compliance with international law. This requires compliance, specifically, with the rules governing family separation as well as the principle of non-refoulement.
8. States should **not use counter-terrorism powers to prosecute foreign children for unlawful presence or illegal entry into a State**, particularly when they have travelled to the country with their families or have been born in the country.



## OVERARCHING FINDINGS

© Terre des Hommes, Space where children can play with their friends, sing, create artworks or just relax in a child friendly environment in a refugee camp in Bangladesh



The data, primary research as well as the numerous consultations with children contained in this Global Study indeed confirm that deprivation of liberty is not only one of the most harmful situations children can find themselves in, but it sadly remains one of the most overlooked violations of the Convention on the Rights of the Child.

The overarching findings summarised herewith seek to give clarity and some urgency to the reasons why States, as well as the international community, must strengthen all efforts to drastically reduce the number of children in detention worldwide since depriving children of their liberty leaves a lasting mark on their lives and on society as a whole.



# Facts and Figures

Worldwide, roughly 7.2 million children are deprived of liberty per year in all situations of detention covered by the Global Study. Although the data collected for the Global Study are far from satisfactory, this figure is based on scientific evidence, represents a conservative estimate and is nevertheless significantly higher than earlier estimates.

As shown in the table below, most children are deprived of liberty in institutions, followed by those in the administration of justice, in immigration detention, in armed conflict situations, in prison with their primary caregivers and deprived of liberty for national security reasons. Administrative records are particularly limited in the context of migration, institutions, national security and armed conflicts.

Situation	Institutions	Administration of justice	Immigration detention	Armed conflict	National security	Children living in detention with their parents	Total
Children deprived of liberty	5.4 million	1.41 million	330,000	35,000	1,500	19,000	7.2 million

In the administration of justice and in relation to migration and national security grounds, children are deprived of liberty on the basis of a decision by a court or administrative agency. In the context of armed conflict, children are also included in this figure, who are deprived of liberty by *de facto* authorities, such as the Kurdish authorities in the North of Syria. If children live with their mothers in prison, this is usually not the result of a governmental decision depriving them of liberty, but on the request of their mother. Similarly, many children deprived of liberty in institutions, including children with disabilities, were placed there by their parents, families or other primary caregivers because of a widely held belief that public or private institutions are better equipped than families to take care of children from poor or dysfunctional families, children with a minority or migration background, or children with disabilities, drug or alcohol addictions, ‘anti-social behaviour’ or educational problems. Nevertheless, in all these cases States are responsible, at least by

acquiescence, for the deprivation of liberty, as institutions and other facilities, where children may be deprived of liberty, shall be licensed by the State. On the other hand, if children are detained by their parents or by criminal gangs, such as traffickers, such situations are neither covered by these statistics nor by the Global Study in general.

Data collected and research conducted for the Global Study reveal significant **gender disparities** in most situations of detention. In the administration of justice as well as in the context of armed conflicts and national security, of all children deprived of liberty **94% are boys**, and only **6% are girls**. In immigration detention, two thirds of all children are boys. These gender disparities can partly be explained by stereotype decision-making in the administration of justice. Children with disabilities are also overrepresented in detention, as are children from poor families, with a minority or migration background and children belonging to the LGBTI community.

Percentage of	In the Administration of Justice	In Armed Conflict and National Security	In Immigration Detention	In Institutions
Boys	94	94	67	56
Girls	6	6	33	44

Source: responses to the Global Study questionnaire, TransMonEE/UNICEF database, official statistics, literature review

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## Deprivation of Liberty of Children shall only be an Exception

According to Article 37(b) of the CRC, the arrest, detention or imprisonment of a child shall be used only as a “**measure of last resort** and for the **shortest appropriate period of time**”. This means that deprivation of liberty shall only be permissible in exceptional cases, when non-custodial measures are really not available or, in the particular circumstances of a case, not appropriate. This high legal standard stands in stark contrast to the sober reality on the ground, as the over 7 million children deprived of liberty worldwide illustrate.

In order to address this enormous implementation gap, States are required to significantly reduce or abolish the detention of children by developing and applying appropriate **non-custodial solutions**. For instance, in the **administration of justice**, States are required to develop specific child justice systems with the aim of diversion and ensure an effective inter-agency cooperation between child justice, health, education and child welfare institutions. States should also refrain from **institutionalising**

children if a family is unable to care for a child. Instead, they should undertake the effort to provide alternative care within the wider family or in family-type settings in the context of well-functioning and well-resourced child welfare systems. In the case of **migration**, deprivation of liberty of children is never in conformity with the CRC and shall therefore be abolished. Migrant children should instead be taken care of by child welfare authorities. Children deprived of liberty with their **primary caregivers** should only be permitted to be kept in prison with them if no other solution can be found which satisfies the best interests of the child. Ideally, mothers who are the only primary caregivers for small children, shall not be sentenced to a prison term but to a non-custodial punishment. In the case of children being associated with **armed groups** or perceived as a threat to **national security**, States should take necessary steps to recognise them as victims, rather than perpetrators, and support them with appropriate rehabilitation and reintegration programmes.

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## Lack of Family Support and 'Tough on Crime' Policies

The most important reason for the large number of children in these different types of detention settings is the **lack of adequate support** for families and caregivers. Such support and effective cooperation between parents, child welfare, social protection, education, health, law enforcement and the justice system would prevent children from being placed in institutions and coming into conflict with the law.

Furthermore, **'tough-on-crime' policies**, including the criminalisation of status offences, drug

offences, petty crimes and low minimum ages of criminal responsibility, as well as widespread discrimination and corruption, contribute to a large number of children being deprived of liberty in the administration of justice. Similar reasons are behind restrictive migration and asylum policies, extensive counter-terrorism practices and the large-scale institutionalisation of 'difficult' children.



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## Detention of Children is a Form of Structural Violence

Taking into consideration the results from the research conducted for the Global Study, the views of children interviewed for the Global Study and the rich evidence from many fact-finding missions by the UN Special Rapporteur on Torture, the UN Sub-Committee for the Prevention of Torture or other monitoring bodies, **conditions of detention** are in most States highly deplorable and do not meet international standards. Children are often not separated from adults. Many detention facilities are characterised by a high degree of abuse, neglect and violence as well as overcrowding and a lack of hygiene standards, air, sunlight and adequate health care. The lack of privacy, recreational and

educational opportunities and gender-sensitive facilities is another major problem in many detention centres. Research for the Global Study shows that the deprivation of liberty of children as such as well as harsh conditions of detention have a major negative impact on the physical and mental health and development of children. Detention of children, therefore, constitutes a form of structural violence and deprives children of their childhood.

The **absence of independent monitoring bodies** with the mandate of carrying out unannounced visits to all places of detention contributes to the continuation of such conditions, which often amount to inhuman and degrading treatment.

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## Promising Practices

In the **administration of justice**, many States have introduced child justice legislation and established corresponding specialised procedures, including courts for children and diversion. These developments seem to have contributed to a decrease in the total number of children detained in remand centres and prisons.

With respect to **children living in prisons with their primary caregivers**, there is a trend showing that States try to ensure, as far as possible, that mothers with small children are not sentenced to prison terms and that non-custodial solutions are prioritised. Governments apply a more individualised, informed and qualitative approach.

With respect to **migration-related detention of children**, research for the Global Study and questionnaire responses reveal that at least 24 States, above all in Latin America, do not, or claim not to, deprive children of their liberty for migration-related purposes.

Far-reaching **deinstitutionalisation measures** have been adopted, for example, in Central and Eastern Europe, as well as in Central Asia

in accordance with the UN Guidelines for the Alternative Care of Children. Many large institutions have been closed, and many children, including children with disabilities, have now been reunited with their families or placed in family-type settings in the community and under the supervision of child welfare systems.

In the context of **armed conflict**, some African States are transferring children associated with armed forces and armed groups to child welfare centres with the aim of ensuring their rehabilitation and reintegration into society. This usually happens on the basis of handover protocols adopted upon the recommendation of the UN Security Council.

With respect to **national security**, several States have opted for children associated with non-State armed groups designated as terrorist to be tried in special courts for children. Other States, including in Europe, have adopted return plans with clear responsibilities for State authorities regarding the safety, reintegration and rehabilitation of such children.



## OVERARCHING RECOMMENDATIONS

© Terre des Hommes, Child having experienced poverty and ethnic-based conflict, now living with a foster family as an alternative to institutional care, Vietnam



The overarching recommendations of the Global Study follow directly from its findings and conclusions as well as from the analysis of promising practices. They are inspired by the high legal standards of the CRC regarding the rights to personal liberty, personal integrity and dignity of children. These recommendations aim at reducing the huge implementation gap between these standards and the reality of children deprived of liberty worldwide in all six focus areas covered by the Global Study.



# Overarching Recommendations of the Global Study on Children Deprived of Liberty

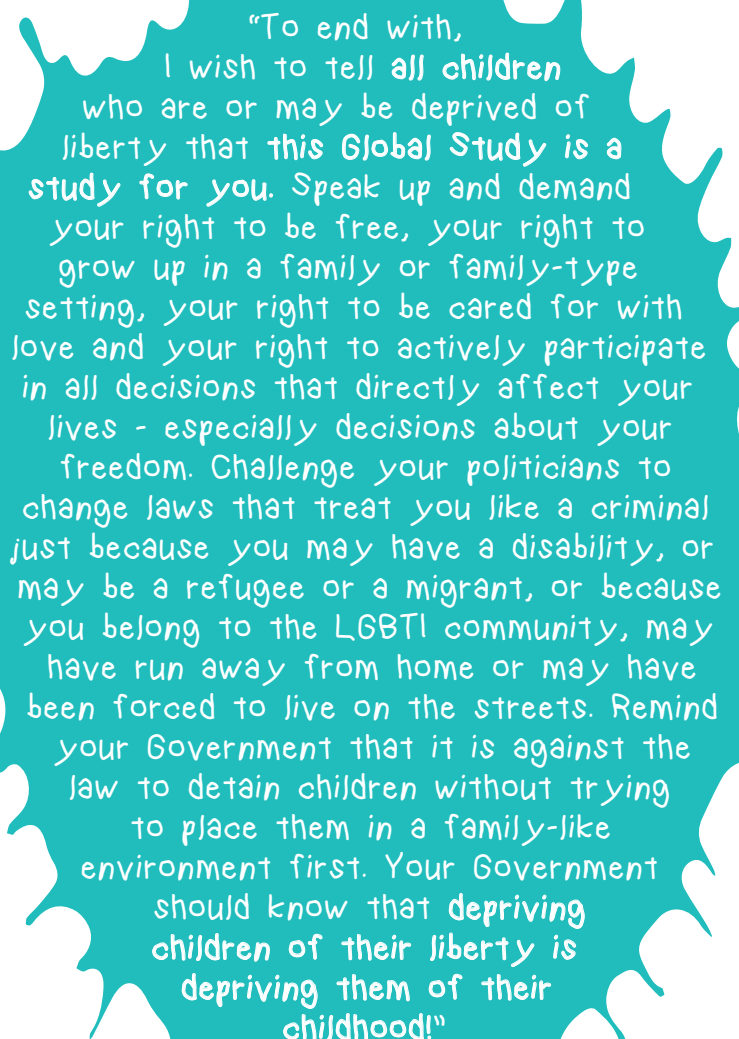
1. The most important overarching recommendation is to significantly **reduce the number of children held in places of detention**, to apply **non-custodial solutions** and to make all efforts in addressing the **root causes** as well as to invest resources to reduce inequalities and **support families**. Furthermore, it is essential to address the **pathways** leading to the deprivation of liberty in a systemic and holistic manner. States are urged to invest and empower families to foster the physical, mental, spiritual, moral and social development of their children, including **children with disabilities**. They shall repeal all laws and policies that permit the deprivation of liberty of children on the basis of an actual, or perceived, impairment or on the basis of their sexual orientation and/or gender identity.
2. States should ensure a close **inter-agency cooperation** between the child welfare, social protection, education, health and justice systems, the law enforcement as well as the administration of migration and refugee policies. In this way, States are urged to build comprehensive **child protection systems** and early intervention policies aimed at preventing detention of children. It is strongly encouraged that States invest in awareness-raising, 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 wellbeing while in detention. This applies to the police, judges, prosecutors, prison guards, medical personnel, psychiatrists, psychologists, educators, social workers, probation officers, child protection and welfare officers, asylum and migration personnel and any other individuals in contact with children at risk of deprivation, or deprived, of liberty. States should also invest significant resources in the child welfare system.
3. In all decisions that may lead to the detention of children, States shall most rigorously apply the requirement of Article 37(b) CRC that **deprivation of liberty** shall be applied only as a **measure of last resort**. Furthermore, Article 3(1) CRC provides that the **best interests of the child** shall be a primary consideration in all actions concerning children. Since deprivation of liberty constitutes one of the strongest interferences with children's rights, which has a profound negative impact on the health, development and most other rights of the child, the best interests principle underlines that deprivation of liberty is only lawful in **truly exceptional cases**.
4. According to Article 14(1)(b) CRPD, the existence of a **disability shall in no case justify a deprivation of liberty**. This prohibition of any detention on the basis of an actual or perceived impairment applies not only to mental health facilities and special institutions for children with disabilities, but also to mainstream institutions and places of detention in the criminal justice system, where children with disabilities are usually over-represented.
5. If detention is unavoidable under the particular circumstances of a case, it shall be applied only for the **shortest appropriate period of time**. States have an obligation to apply child-friendly and gender-sensitive **conditions of detention**, without any discrimination. Children are not to be exposed to neglect, violence, sexual abuse or exploitation, ill-treatment, **torture** and inhuman conditions of detention. States should ensure that children have access to essential services aimed at their rehabilitation and reintegration into society, including education, vocational training, family contacts, sports and recreation, adequate nutrition, housing and health care. **Health services** in detention should be of a standard equivalent to that available in the community at large.
6. Article 12 CRC provides that children have the **right to be heard** and actively **participate** in all matters directly affecting their lives. Therefore, children should be **empowered** to influence decisions leading to their deprivation of liberty and relating to their treatment during detention. They have the right to **effective remedies**, as well as to lodge **complaints** to an independent and impartial authority against any decision depriving them of liberty and on any grievances and human rights violations during detention.
7. States are strongly encouraged to **ratify the Optional Protocol to the Convention against Torture (OPCAT)** and to establish independent and effective National Preventive Mechanisms with a particular expertise to conduct visits to places where children are, or may be, deprived of liberty. States are strongly encouraged to **ratify the third Optional Protocol to the CRC on a communications procedure**, enabling children to further seek redress for violations of their rights.
8. States should establish an appropriate system of **data collection** at the national level, involving all relevant ministries and other State agencies, coordinated by a focal point. States should further ensure the development and maintenance of an **international**



**database** containing all relevant data on children's deprivation of liberty. In developing such a database, a common methodology needs to be applied in order to enhance comparative research. States should regularly collect data, disaggregated by age, gender and nationality, on the number of children deprived of liberty in all situations covered by the Global Study per year and on a 'snapshot' date. As deprivation of liberty constitutes a form of **structural violence against children**, it is further recommended that the detention rate of children in all situations covered by the Global Study be considered in the implementation of target 16.2 of the **Sustainable Development Goals**. In order to achieve all these goals, States are urged to develop **national action plans** with clear targets and benchmarks indicating how to reduce progressively and significantly the number of children in the various situations of deprivation of liberty and how to replace detention of children by non-custodial solutions.

9. For the six situations of deprivation of liberty covered by the Global Study, the key recommendations are to **stop all forms of immigration detention** of children, whether unaccompanied or migrating with their families, and replace it by appropriate non-custodial solutions. States should adopt a comprehensive **deinstitutionalisation policy** by developing appropriate family-type settings, since children, including children with disabilities, should not grow up in institutions which are characterised by strict discipline, neglect, abuse and lack of love. Additionally, it is recommended to further improve and to establish special **child justice systems**, apply **diversion** at all stages of the criminal justice process and transfer children from the justice to the **child welfare system**. Diversion measures should be equally applied to **boys** and girls and be appropriate to their age, level of maturity, as well as the situation in the community. States should **avoid the imprisonment of mothers as primary caregivers** of young children. Furthermore, States should increase the **minimum age of criminal responsibility** to at least 14 years, shorten the length of detention and **decriminalise** perceived 'immoral' or 'disruptive' behaviour of children, consensual sexual activities between teenagers as well as behaviour typical of children (**status offences**). In regard to children deprived of liberty in **armed conflicts** and on **national security** grounds, States should treat children recruited by armed forces or groups designated as terrorist as **victims** rather than as perpetrators.

10. The **UN General Assembly** and all relevant **UN agencies** and monitoring bodies are requested to keep the Global Study on Children Deprived of Liberty on their agenda and to play an active role in the implementation of its recommendations. They shall consider appropriate and effective **follow-up mechanisms** that involve all relevant stakeholders, including civil society and the academic community, aimed at disseminating the Study findings and promoting its recommendations at the international, regional and national levels. In this respect, the UN Inter-Agency Task Force led by the **Special Representative of the Secretary General on Violence against Children**, the **NGO-Panel** of 170 NGOs led by Defence for Children International and Human Rights Watch, and the **Global Campus of Human Rights**, a network of roughly 100 universities in all world regions, could play a leading role.



"To end with,  
I wish to tell all children  
who are or may be deprived of  
liberty that this Global Study is a  
study for you. Speak up and demand  
your right to be free, your right to  
grow up in a family or family-type  
setting, your right to be cared for with  
love and your right to actively participate  
in all decisions that directly affect your  
lives - especially decisions about your  
freedom. Challenge your politicians to  
change laws that treat you like a criminal  
just because you may have a disability, or  
may be a refugee or a migrant, or because  
you belong to the LGBTI community, may  
have run away from home or may have  
been forced to live on the streets. Remind  
your Government that it is against the  
law to detain children without trying  
to place them in a family-like  
environment first. Your Government  
should know that depriving  
children of their liberty is  
depriving them of their  
childhood!"



**More than 7 million children are suffering in various types of child-specific institutions, immigration detention centres, police custody, prisons and other places of detention.**

It is a reality that stands in direct contrast to the requirement of the **Convention on the Rights of the Child**, which clearly states that the **detention of children** must only be used as a **measure of last resort**. This means that children should in principle not be detained and States should always look first for non-custodial solutions. While some progress has indeed been made in recent years, the Study highlights a dire need to do much more in terms of **deinstitutionalisation, diversion, ending migration-related detention** and other measures in order to comply with the Convention.

It is evident from the views expressed by children in the Study that for them **deprivation of liberty essentially means deprivation of their childhood**. From this perspective, the Global Study argues that depriving children of their liberty is a form of structural violence, which States actually committed to eliminate under **SDG 16.2**. Since every child has the right to grow up in a family environment surrounded by love and care, it is the responsibility of States to invest more resources to **support families and child welfare systems**.

Ultimately, children deprived of liberty are invisible to the large majority of society and their fate constitutes the **most overlooked violation of the Convention**. As an initial step, this Global Study thus aims to help ensure that no child is left behind, and in particular, that **no child is left behind bars**.

*Download the Executive Summary  
as well as the entire Global Study  
in PDF or consult the interactive  
versions on omnibook*

<https://omnibook.com/Global-Study-2019>

