



DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI
DEFENSE DES ENFANTS INTERNATIONAL DEI
DEFENCE FOR CHILDREN INTERNATIONAL DCI

Defence for Children in Conflict with the Law to Combat State Violence

A contribution by Defence for Children International
to the UN Secretary General Study on Violence against Children

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1. Introduction

Children alleged, accused or convicted of having committed a criminal offence oppose the State at its strongest and come into direct contact with its officials: police officers, prosecutors, guards, judges. In many cases, these juveniles are deprived of their liberty. Children in conflict with the law are highly vulnerable. They are entirely dependent upon adults for the defence and protection of their rights. State officials in several countries have been reported to abuse their position of power. Different forms of violence are used against these children, with impunity and without proper inspections and complaints mechanisms in place. This report describes the main concerns and action-oriented recommendations of Defence for Children International,¹ and is based on information gathered in 2000-2005.

2. Good practice: Social Legal Defence Centres

Facts Bolivia: From 2002 to 2004, DCI Albania managed 2.332 individual cases, of which 1.838 for ill-treatment, 407 for sexual abuse and 87 for labour exploitation. Furthermore, 53 collective cases were reported for the same reasons, involving 3.096 boys, girls and adolescents.

Facts Sri Lanka: From 2002 to 2004, DCI Sri Lanka provided legal counselling to 140 children and legal assistance to 96 juvenile offenders.

Many of the abuses occur because of impunity and a lack of tools with which the child can defend his/her rights. The perpetrators of violence take advantage of the child's high vulnerability and suffer no consequences for it. The State does not invest in decent facilities and cases are left untried for lengthy periods. Children in conflict with the law are forgotten and out of sight. As DCI stated in its 2001 report: "Juvenile Justice is the unwanted child of state responsibilities."² **In order to prevent and address violence against children in conflict with the law, it is necessary to 'arm' them with tools so that they can safeguard their rights. One of these tools is to ensure that each child receives proper and free legal assistance.** Since this is not provided for in many countries, DCI sections have taken up this task already since the 1980s. One of the lessons learned is that children who are in need of legal assistance often manifest other needs as well, such as family therapy and social services. Therefore, DCI sections offer interdisciplinary services to these children and their families, in so-called 'Social Legal Defence Centres' (SLDCs).

Where? SLDCs are maintained by DCI sections in Albania, Argentina, Belgium, Bolivia, Colombia, Ghana, Israel, Macedonia, Sri Lanka, Togo and Uganda. Legal assistance is also provided by DCI Benin and DCI Palestine.

Target groups: Children in conflict with the law, as well as other vulnerable and marginalised children.

¹ See also annex 1 'Bethlehem Declaration: No Kids Behind Bars' and annex 2 'NO KIDS BEHIND BARS Global Campaign'

² International Network on Juvenile Justice, *Juvenile Justice 'The Unwanted Child' of State Responsibilities*. Geneva 2001: Defence for Children International

Characteristics:

- Individual work for children;
- A rights-based approach;
- Methodology: interdisciplinary services (social and legal);
- Independence from the government.

Objectives:

- To provide for free legal advice and representation of children;
- To provide for social services needed by children involved in legal representation by the centre;
- To empower the children by providing information and education on their legal rights;
- To raise awareness of parents and the community regarding the legal rights of the children;
- To train young professionals, including paralegals, lawyers, social workers and psychologists, in the field of juvenile justice.

Activities:

- Legal and social assistance (including referral when necessary);
- Monitoring of police stations and closed institutions;
- Awareness raising and lobbying: seminars, production and distribution of materials (leaflets, brochures, website, documentaries, stickers, t-shirts), meetings with officials, dissemination of guidelines for police, forums, workshops, visits to schools, proposals for law reform;
- Training: involvement in policy making, seminars, workshops;
- Participation: 'child rights clubs' in Ghana, 'children's parliament radio programme' in Uganda;
- Data collection, research.

Case Ghana: S.A, A.A. and S.S., aged 15 and 16 years, all truck pushers at Kumasi Central Market were arrested for stealing. They were brought to the Juvenile Remand Home early July 2004, without being attended to by prosecutor. They were left to the mercy of the remand home. The case was given to a lawyer by DCI to represent them to ensure speedy trial, and the defence of their rights. The children have since been released on bail. The relatives of the children were consulted by DCI to teach them a trade for a better future. The relatives agreed and assured DCI that they would do so. S.A and S.S. (who is from the northern part of Ghana) have since then been taken back home to learn a trade.³

3. Main Concerns**- Torture, abuse and brutality**

Facts: Torture of children by police or prison staff was reported by DCI in: Albania, Argentina, Brazil, Burundi, Chile, Colombia, Indonesia, Kenya, Kyrgyz Republic, Palestine, Pakistan, Paraguay, the Philippines, Romania, Uruguay and Tanzania.

Torture of children in order to obtain a confession, to get information or to punish children suspected of having committed a crime has been reported in all regions and can be considered widespread and severe. It happens both at the police level and during detention and includes isolation, being beaten, corporal punishment, intimidation and threats to the family, attacks by dogs, burning, electric shocks, being made to sit or stand for prolonged periods in excruciatingly painful positions, deprivation of food, sleep and access to the toilet, being exposed to extreme temperatures.

Torture at police level is also considered to be an underreported and underrecognised form of violence against children. One of the causes for torture is impunity of the actors. Torture has a profound impact on the long-term physical and psychological well-being of the child. Children are especially vulnerable for the effects of torture because they find themselves in a critical stage of their development. Therefore, the consequences of torture are felt long after the children are released. Their future life chances and choices, social relationships as well as their education can be seriously disrupted.⁴

³ DCI International Secretariat, *Consolidated final report of activities. Project of the Socio-Legal Defence Centers*, Geneva 2005: DCI International Secretariat, Report by Ghana

⁴ C. Cook, A. Haneih, A. Kay, *Stolen Youth*, Chapter 9 :Psychological and social impacts of prison and torture, London 2005: Pluto Press & DCI-Palestine, p.125

Other forms of violence that amount to cruel, inhuman or degrading treatment, such as abuse and brutality against children in conflict with the law, were also reported across regions by DCI. Police and prison staff are the perpetrators of these violent acts, which include: beating, punching, shouting, kicking, beating with sticks or other weapons, bullying, maltreatment. This form of violence is widespread and severe. Cruel, inhuman or degrading treatment police can be considered underreported and underrecognised. Often the perpetrators are not prosecuted and can act in impunity.

Case Colombia: A child answered to the question 'What did the police do when they apprehended you?': *"They gave me a beating (...), they hit me with the revolver, took out a big stick and told me: 'With which one do you want me to give it to you?', I said: 'with none'. Then he told his colleague: 'Go and get me a none and a bigger stick'. They put me in a small alley, they put a bag in my face so that I would tell them where they other friend was who had escaped. I told him: 'I don't know, I didn't see and that's it'. They continued giving me blow after blow until they put me in a cell, because a lieutenant arrived who was evangelical and she frowned because they were beating me. Then they left me alone and put me in the cell. After three days they brought me here."*⁵

Facts: Cruel, inhuman or degrading treatment of children in conflict with the law, by police or prison staff, has been reported by DCI in: Albania, Argentina, Brazil, Burundi, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Indonesia, Kenya, Kyrgyz Republic, Nicaragua, Panama, Palestine, Pakistan, Paraguay, the Philippines, Romania, Uruguay, United States of America and Tanzania.

- (Failure to protect children from) Sexual abuse and rape

Facts: DCI reported sexual abuse and rape of children by police or prison staff in, Kenya, Palestine and Pakistan. Several DCI reports mention 'abuse' in general, which may include sexual abuse, for instance in Argentina, Brazil, Burundi, Costa Rica, Guatemala, Honduras, Kyrgyz Republic, Nicaragua, Panama, Pakistan, Romania, el Salvador and Uruguay. Furthermore, DCI Colombia and Pakistan report sexual abuse in prison without specifying the perpetrators. DCI reported sexual abuse by other (adult) detainees in: Albania Bolivia, Kenya, Tanzania. It is difficult to get an exact picture of the extent of sexual abuse of children in conflict with the law, since it is an underreported form of violence.

Sexual abuse and rape of children in conflict with the law have been reported by DCI across regions and can be considered widespread and severe. This form of violence is highly underreported and underrecognised, which is illustrated by the lack of data on this form of violence against children. Children are not only sexually abused by police or prison staff, but also by their fellow detainees. Lack of action against perpetrators has been reported worldwide.

Case Albania: A. SH and G.M were 17 years old when both became victims of sexual abuse in the pre-trial detention centre of Saranda. A. SH told the Team that he was raped continuously during a 3-4 months period; meanwhile G.M denied the fact that he was sexually abused. However, the abuse was also confirmed by F.S, who was sharing the same cell during the time of the abuse. F.S told this story to the CRCA Team: *"I have never been sexually harassed or abused during my six months stay in pre-trial. However two other guys A.SH and G.M were raped in my presence. I remember that we had these two new guys in the cell, one 20 and the other 27. We were nine people in the cell. One night they got both boys, took their clothes off and had sex with them. Although both of them were crying no one came to their help. The older guys asked me whether I wanted to have sex with them, but I never did. All the other guys (6 adults) in the cell had sex with them. This story continued for some two or three months. The police officers new about this, but they did nothing. Only when a new Head of Police Station came here, the police changed the cells for A. SH and G.M"* Meanwhile A.SH told to us: *"There were these two guys one 20 and the other one 27. One night, maybe around one or two o'clock in the morning they obliged me to have sex with them. I told them to stop, but none of them did. They will see what happens to them when I go out of here... I never made a complaint to the police, because that would have been shameful for me."*⁶

⁵ DCI Proyecto Regional de la Justicia Juvenile Para America Latina, *Contribución al informe de DNI sobre violencia contra adolescents en conflicto con la ley penal*, Cochabamba, Bolivia 2005: DCI Bolivia, p. 28.

⁶A. Hazizaj, S. Thornton Barkley, *No one to care. A report on the situation of children in Police Stations and Pre-trial Detention Centres in Albania, 2002-2004*, Tirana 2004: Children's Human Rights Centre of Albania (CRCA).

Not separating children from adults while in detention highly increases the risk of sexual violence towards children. The lack of separation of adults and children can be seen as a widespread phenomenon increasing the risk of sexual violence and occurs in all regions of the world. States fail to protect children against this form of violence.

Fact: DCI reported the lack of protection against adult detainees by not separating children from them in: Albania, Argentina, Armenia, Bolivia, Burundi, Colombia, Ghana, Grenada, India, Indonesia, Kenya, Kyrgyz Republic, Liberia, Macedonia, Nicaragua, Palestine, Pakistan, the Philippines, Sierra Leone, South Africa, Sri Lanka, Tanzania and the United States of America.

- The use of (pre-trial) detention not as a measure of last resort

Fact: DCI reported over-reliance on (pre-trial) detention in: Albania, Bolivia, Brazil, Burundi, Colombia, Costa Rica, Ghana, Indonesia, Kenya, Kyrgyz Republic, Mauritius, Palestine, Pakistan, Philippines, Uganda and Uruguay.

Not using deprivation of liberty as a measure of last resort for children constitutes violence against them. This includes sentencing children to detention while instead alternatives could be offered. It also includes over-reliance on pre-trial detention and indefinite deprivation of liberty without a trial, which can be considered widespread and severe forms of violence. Most children deprived of their liberty find themselves in pre-trial detention. Staying in pre-trial detention for periods as long as six months, one year or even several years, forms a serious violation of the international standard that 'the use of deprivation of liberty as a measure of last resort, and for the shortest possible period of time' (article 37(b) Convention on the Rights of the Child). It is one of the causes of overcrowding in prisons and opens the road to arbitrary detention. Most children are released as soon as they have had a trial, while statistics suggest that only 10% of all children in conflict with the law commit serious offences.⁷ Long pre-trial detention hampers the development of the child, puts the child in a situation of lawlessness where rights and legal safeguards are not taken into account, and puts the child at an increased risk of becoming the victim of abuse (physical, psychological or sexual) and torture.

- Poor conditions

Facts: DCI reported poor conditions for children deprived of their liberty in: Albania, Argentina, Bolivia, Brazil, Burundi, Colombia, Ghana, Indonesia, Kenya, Liberia, Macedonia, Palestine, Pakistan, Paraguay, Romania, Tanzania, Uganda, Uruguay and Ukraine.

When children in conflict with the law are deprived of their liberty they often stay in places unsuitable for them, such as police stations, overcrowded cells or centres with poor material conditions and hygiene. Unsuitable conditions for children deprived of their liberty is widespread and can be considered an underreported and underrecognised form of violence against children. Extremely poor conditions for children may even constitute inhumane treatment.

Case Kenya: The juvenile remand home at Kabete was designed for 80 persons, but houses 360 children. The home has no running water or sanitation and no programmes for the children.⁸

Case Romania: 300 minors are held in the Gaesti re-education centre. Boys and girls are held separately. Approximately 8 to 28 minors share a cell. Toilets are outside the dormitory and minors must be accompanied by a guard to get there. The detainees are allowed to take a bath once per week.

Case Pakistan: The Borstal Institution Bahawalpur is located in southeaster Punjab. It houses more than 450 children, housed in dormitories. Twenty-five to 50 children stay in 6 dormitory-style barracks with a size of 20 by 40 feet on average. There is a toilet in each dormitory. There is no central heating or air conditioning. Hygiene standards are generally very poor. The water supply does not work efficiently, there is a lack of hot water, soap, toilet paper and cleaning products. These products must be purchased by the detainees. The minors are not often allowed to take a bath.⁹

⁷ S. Meuwese (ed.), *Kids Behind Bars*, Amsterdam 2005: Stenco, DCI-Netherlands.

⁸ J. Gechuki, G. Kopyo, *Faceless children*, Presentation made at the International conference Kids Behind Bars – a child rights perspective', Bethlehem, June 2005: DCI Kenya.

⁹ S. Meuwese (ed.), *Kids Behind Bars*, Amsterdam 2005: Stenco, DCI Netherlands

Case Uganda: The Naguru Remand Home in Kampala was built for 45 inmates but currently houses approximately 140. The conditions are poor, there is a lack of mattresses and there are constant leakages. Children suspected of serious crimes such as murder are not separated from petty thieves.¹⁰

4. The Right of Children in Conflict with the Law to be protected against Violence

The legal framework relevant to this report consists of various international instruments that specifically concern the rights of the child:

- UN Convention on the Rights of the Child:
 - All articles are applicable for children in conflict with the law. Specifically important are:
 - General principles: non-discrimination (article 2), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right of children to participate in all matters affecting them (article 12).
 - Article 37: Prohibition of torture and guarantees for children deprived of their liberty
 - Article 40: Specific provisions concerning juvenile justice.
 - Article 27: Adequate living standard
 - Article 19: Protection against violence. Children in conflict with the law find themselves in the care of the state, who has to ensure protection against violence in this case.
- UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);

Relevant rights that apply to both adults and children are included in the:

- International Covenant on Civil and Political Rights
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Basic Principles on the Treatment of Prisoners;
- Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

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¹⁰ DCI Uganda, *Juvenile Justice in Uganda. Children in Conflict with the Law need special attention, care and protection*, Videotape, Kampala 2003: DCI Uganda

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Bethlehem Declaration: No Kids Behind Bars

1. *A statement by the International Executive Council of Defence for Children International based upon the presentations and discussions of the international conference "Kids Behind Bars – A Child Rights Perspective" of DCI, gathered in Bethlehem, Occupied Palestinian Territory on 30 June – 2 July 2005.*

2. Children do not belong behind bars. Children should go to school. They should be playing with their friends. They should be together with their families.

3. Different studies have estimated that over one million boys and girls are behind bars worldwide, too often in horrific, degrading, overcrowded and violent conditions. Detention should be considered as an option only for the very small number of children who have committed violent and serious offences.

4. The majority of children currently behind bars do not belong there. Many have committed only petty crimes and are still awaiting trial. Many have committed no crime at all such as street children, political prisoners, refugee and asylum seekers, children with mental disabilities and others detained without judicial process.

5. One hundred and ninety-two governments have already committed to the general principles outlined in this document by ratifying the United Nations Convention on the Rights of the Child (CRC). Nevertheless children in prison and detention remain abused and forgotten.

6. At the same time, repressive policies and actions have been promoted and implemented by the governments of many countries. These have significantly increased the number of children behind bars.

6. Putting boys and girls behind bars and separating them from their families and communities seriously damages their physical, mental and social development. Many do not receive adequate food, health care or education. Children are exposed to physical, psychological and sexual abuse and may become infected with HIV. Detention leads to lifelong stigmatization which hampers reintegration of children into communities.

7. During this international conference we have learnt that thousands of Palestinian children have been arrested and detained by the Israeli Occupation Forces since September 2000 for political reasons, as a deliberate policy designed to strengthen and maintain the Israeli occupation.

8. For us, this situation is unacceptable. Thousands of Palestinian children have been detained during mass, arbitrary arrest campaigns over the last four years and are often used as political hostages to the negotiation process. These children should not be used as bargaining chips.

Call for Government Action

9. Stop putting kids behind bars

- Stop the arrest and detention of girls and boys who are not suspected of an offence;
- Stop detaining children who have committed petty offences;
- Stop putting children behind bars in need of care and protection;
- Immediately decriminalize survival behaviours such as begging and vagrancy, and status offences such as truancy, and children who are victims of sexual or other forms of exploitation;
- Put an end to harsh, repressive, "tough on crime" policies that carry an excessive economic and social cost;
- Immediately release all child political prisoners and end the practice of political arrest;
- End discriminatory laws, policies and practices that put kids behind bars based on race, nationality, ethnicity, socio-economic and other status;
- Bring those responsible for arbitrary and illegal arrest and other human rights violations such as torture to justice.

10. Invest in a positive future for children:

- Prioritize and invest in programmes such as: social spaces; community youth centres; sports and cultural programs; mentoring; programs to help boys and girls stay in school;
- Implement programs to reduce violence and to promote positive child-rearing in families and communities, and to strengthen social support systems;
- Strengthen opportunities for participation of children in decisions that affect them and their communities and foster their roles as positive social actors;
- Increase opportunities for children to develop sustainable economic livelihoods and life skills;
- Strengthen and maintain care and protection systems, including alternative family-based care for children deprived of a family environment and other social welfare services.

11. Develop community based and restorative alternatives

- Provide a range of local, community-supported diversion and individualized options for children in conflict with the law that will address the root causes of their offending in a way that is restorative to the victim and community e.g. victim/offender mediation, family group conferencing, community service;
- Focus on community-based support to reduce stigma to ensure that children avoid repeat conflict with the law and to empower children to work towards positive futures.

12. Improve conditions for the exceptional cases of children who need to be detained

- Ensure that detention as a last resort is used only for those exceptional cases where children need to be detained for the seriousness of their offence or because they pose a danger to themselves or others;
- Provide child-oriented, child-sensitive systems that are separate from adult criminal justice systems. Children must not be tried as adults;
- Make sure children are processed as quickly as possible by limiting detention in police custody to a maximum of 24 hours and ensuring that detention before conviction is court-ordered and regularly reviewed;
- Comply with international standards for physical, psychological protection, well-being and development of children while behind bars;
- Ensure the total separation of children from adults in detention and separation on the basis of sex and convicted status;
- Ensure that children are informed of their rights and the functioning of the juvenile justice system while they are in detention.

13. Establish national plans to reduce the numbers of children behind bars

- Develop mechanisms to effectively measure, monitor and report on the number of girls and boys behind bars;
- Develop a plan of action to reduce the number of kids behind bars which includes establishing a baseline and means to reduce that number by 50% within 10 years;
- Provide compulsory and quality training on standards and sensitization of law enforcement and juvenile justice personnel;
- Develop effective independent complaints and investigation procedures, independent monitoring and NGO access;
- At a local level, governments must monitor the situation in places where kids are behind bars and develop local action plans.

Call for Action to Other Partners

14. UN and other international bodies must:

(e.g. UNICEF, WHO, UNDP, UN Committee on the Rights of the Child, UN Commission on Human Rights, UN Office on Drugs and Crime, UNIFEM and Habitat)

- Assist governments to collect and analyze national data;
- Provide technical assistance for the implementation and monitoring of national plans of action including training;
- Publish annual statistics on children in detention and in conflict with the law;
- Organize regular international meetings on children behind bars.

15. NGOs and civil society:

- *International NGOs* must lobby to place the topic on the international agenda, organize for a world congress and stimulate plans of action;
- *National NGOs* must establish national campaigns on No Kids Behind Bars, monitor government actions and conditions in detention, and collaborate on a regional level;
- *Community organizations* must work closely with youth at risk, participate in local action plans and support children in closed institutions.

16. Media and educators must:

(e.g. TV, radio, newspapers, Internet, film and other cultural outlets, schools and academic institutions)

- Inform the public about the problem of boys and girls behind bars based upon accurate and balanced information that does not sensationalize, victimize and exaggerate incidents that increase fear of crime;
- Support and publicize the No Kids Behind Bars campaign;
- Develop programs about kids behind bars for school curricula and community groups that encourage critical thinking and their participation in the No Kids Behind Bars campaign.

NO KIDS BEHIND BARS! Global Campaign

www.kidsbehindbars.org

The main objective of DCI's No Kids Behind Bars! global campaign is to promote the implementation by States of the international standard that the arrest, detention or imprisonment of a child must be in conformity with the law, and must be used only as a measure of last resort and for the shortest appropriate period of time

Our message is that, for the full realisation of this right, States must also pay attention to the implementation of other related United Nations standards and norms concerning children in conflict with the law, as recognised in the United Nations Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines and the Havana Rules.

1. We want all governments to pay special attention to juvenile justice.
2. We want all governments to undertake measures to ensure that the treatment of children in conflict with the law, particularly those deprived of their liberty, is in conformity with the applicable United Nations standards and norms, and taking into account their age, gender, social circumstances and developmental needs.
3. With 2007 as our target date, we want all governments to develop and implement national action plans on juvenile justice that are aimed at:
 - a. Reducing the number of children deprived of their liberty; and
 - b. Improving the conditions of arrested, detained or imprisoned children.
4. To this end, national action plans should focus on legal safeguards to ensure that the arrest, detention or imprisonment of a child is in conformity with the law, and is used only as a measure of last resort and for the shortest appropriate period of time. Furthermore, they should concentrate on measures to promote the:
 - a. Collection and analysis of national data on children in conflict with the law, particularly those under arrest, in (pre-trial) detention or imprisonment;
 - b. Prevention of juvenile delinquency;
 - c. Use of diversion;
 - d. Use of alternatives to imprisonment and restorative justice; and
 - e. Improvement of the conditions of children deprived of their liberty.