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ENGLISH ONLY

HUMAN RIGHTS COUNCIL

10th Session, Full-day meeting on the Rights of the Child

Joint written statement submitted by Defence for Children International (DCI), a non-governmental organisation in special consultative status and the World Organisation against Torture (OMCT), a non-governmental organisation in special consultative status.

Title:

Children's Rights in Juvenile Justice: Time to Bridge the Gap between Rights and Reality

Text:

On the 20th anniversary of the Convention on the Rights of the Child (CRC), we wish to reflect on the progress of children's rights in juvenile justice and explore the gaps in implementation that continue to threaten children's full enjoyment of their rights. It is thus important to examine which provisions of the CRC have been the most challenging for States Parties to implement and what can be done to address them.

While an increasing number of States have developed specific legislation on juvenile justice in line with the CRC and other international standards, the implementation of these provisions in practice is still a work in progress. A review of the concluding observations of the Committee on the Rights of the Child reveals that upholding the rights of children in juvenile justice systems is a task which poses significant challenges for States Parties regardless of their geographic location or scale of economic development.

Despite the existence of a comprehensive set of international standards to ensure their rights (including the CRC, the Beijing Rules, the Havana Guidelines, General Comment No.10¹), children in conflict with the law are marginalised, exposed to violence and regularly denied their rights in many places throughout the world. At the root of this reality, is that children in juvenile justice systems are often dismissed as threatening and worthless – and as such, needing to earn or win their rights instead of being recognised as unconditional rights-holders.

Reoccurring recommendations from the Committee on the Rights of the Child:

Over the past two years, the most common three recommendations made by the Committee on the Rights of the Child in its concluding observations have been the following: the need to use detention as a last resort, the need to select an appropriate minimum age of criminal responsibility, and the need to develop special courts for children.

¹ Committee on the Rights of the Child's General Comment 10 - Children's Rights in Juvenile Justice (2007): <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

What is particularly striking however, is that these recommendations have been directed to States in both the North and South, and to countries with widely varying GDPs, populations and levels of economic development. As an example, the United Kingdom is right alongside Malawi in its need to address the minimum age of criminal responsibility, and Bulgaria is right alongside the Dominican Republic in being asked to develop special courts for children.

Detention as a last resort:

The central tenet of international standards in juvenile justice is that detention must be used as a last resort and for the shortest period of time (article 37 b). Too often however, this principle fails to be applied in practice and children are deprived of their liberty before other sanctions or alternatives are proposed. This is deeply troubling because we know that depriving children of their liberty does not address the root causes of their behaviour and often threatens their future opportunities for reintegration.

Whilst many States have begun to develop diversionary measures and alternatives to detention, this problem is no less serious now than it was years ago. To illustrate, since 2007, the Committee on the Rights of the Child's most common concluding observation and recommendation continued to be for States Parties to ensure that detention was only used as a last resort and for the shortest possible period of time. This was an observation echoed for countries from every region of the world and with every level of development.

Enforcing the principle of last resort is essential in closing some of the greatest gaps in the fulfilment of children's rights. While this concept is reiterated in every piece of international legislation on juvenile justice, and agreed upon in principle by each of the 192 States Parties to the Convention on the Rights of the Child, the Council's very first omnibus resolution on the rights of the child (2008) failed to distinguish it as a core right to children in juvenile justice.

We recommend that the Council provide stronger wording and recommendations on juvenile justice in future resolutions, bringing it in line with international standards. We also stress the need for States to collect and record disaggregated data (by age, gender etc.) on the number of children deprived of their liberty, the number of children diverted from the criminal justice system and the number of children offered alternatives to the deprivation of liberty. This is an important method for States to examine their use of detention and revise and improve their strategies.

Reservations to articles 37 and 40 of the CRC:

On the 20th anniversary of the CRC, we call on States to evaluate the rationale behind their reservations to the Convention and make a commitment to withdrawing them entirely.

A number of States have entered reservations on juvenile justice. Most surprisingly perhaps, is that several States, particularly those in the North, still have a reservation to article 37 c) regarding the child's right to be detained separately from adults unless it is in his/her best interest not to be. The rationale seems to be that States will do their best to separate children from adults where possible and convenient, but are not obliged to do so. DCI urges States to reconsider this reservation and supports the comments of one member of the Committee on the Rights of the Child, who stated during the recent review of the Netherlands – “we think

you should remove this reservation because you are in a position to guarantee this right to children”.

Resources and budget allocation:

The Committee on the Rights of the Child, in its recent Day of General Discussion on the “Resources for the Rights of the Child – Responsibilities of States”, concluded that children’s rights and welfare should be a long term, fixed national budget item to which sufficient funds are allocated. With this in mind, we urge States to ensure that generous funds are earmarked for the establishment of community diversion panels, alternative measures and rehabilitation programmes, and not only for the construction of prisons. This, in addition of course, to the budget allotted for education, childhood, support to families and other means of prevention.

Moreover, we suggest that funds allocated to the juvenile justice system should be used to improve some of the most easily rectifiable barriers to children’s rights. For example, in many countries of the South, the child’s right to a fair trial is infringed when the State has not allocated resources to transport children from the remand home to the court. The allocation of small amounts of resources to these measures would equal great gains in guaranteeing the child’s right to a fair trial.

The right to participate:

There are a number of rights which can be ensured by the State through political will rather than financial resources – for example, the child’s right to be heard requires above all a commitment to allowing children to participate in matters affecting them. In order to truly participate, children must be given access to information and receive adequate support from adults – for example, by being ensured the right to a lawyer trained to hear and defend children in the justice system.

Children in conflict with the law are subject to all of the same rights enshrined under the Convention on the Rights of the Child, yet they are rarely consulted in the development of juvenile justice policies, legislation or programmes for integration and rehabilitation. In this regard, we urge States Parties to legislate children’s meaningful participation and to seek the advice of civil society in engaging children within the development of policies and practices in the juvenile justice system.

Capacity Building and Training:

Since 2007 alone, the Committee on the Rights of the Child has made recommendations to 12 States to improve and increase the number of judges, lawyers and other professionals trained in children’s rights in juvenile justice. The training of professionals is key to ensuring that the rights set forth in the Convention are translated into practice.

However, building the capacities of professionals to protect children’s rights does not only involve training and awareness-raising. All professionals who work with young people – whether they are teachers, social workers or police officers – need to be treated as invaluable members of society contributing to the most fundamental task of shaping the lives of children.

In this regard, DCI calls on States to recognise the need to raise the social and economic status of professions related to child care and to develop training and capacity-building for all

those involved in the implementation process of the CRC – government officials, parliamentarians and members of the judiciary, and for all those working with and for children

We also recognise the importance of offering support and assistance to States Parties themselves. With this in mind, we urge States to seek the support of the Interagency Panel on Juvenile Justice² – a coordination panel set up to provide technical assistance to governments and other actors in implementing international standards on juvenile justice. DCI sees the role of the panel as central in supporting States to ensure that their legal obligations and commitments are translated into effective practices on the ground.

Conclusions and Recommendations:

We recommend the Human Rights Council:

1. To urge States to use detention as last resort and for the shortest period of time, ensuring that by law, children can only be deprived of their liberty in very serious cases and after having considered many alternatives; and to reflect this commitment in the language of its next Resolution on the Rights of the Child to be adopted in March 2010
2. To urge States to review and withdraw their reservations to the Convention on the Rights of the Child, particularly articles 37, 39 and 40.
3. To urge States to allocate ample resources to creating a fair and equitable justice system for children which privileges their rehabilitation and reintegration
4. To urge States to build the capacities of professionals responsible for upholding children's rights and recognise the importance of these professions to the development of children as active citizens through training, attractive compensation and opportunities for career development
5. To urge States to consistently collect and record disaggregated data on the number of children deprived of their liberty, the number of children diverted from the criminal justice system and the number offered alternatives to the deprivation of liberty
6. To urge States to use the Committee on the Rights of the Child's "General Comment 10 on children's rights in juvenile justice" as an overarching guideline and framework which summarises some of the most central rights of children in juvenile justice.
7. To urge all States to seek technical assistance and support from the Interagency Panel on Juvenile Justice in addressing the juvenile justice challenges facing their country

² The Interagency Panel on Juvenile Justice (IPJJ) (formerly known as the Inter-Agency Coordination Panel on Juvenile Justice) was established by [Economic and Social Council \(ECOSOC\) Resolution 1997/30](#) to act as a "coordination panel on technical advice and assistance in juvenile justice." The work of the Panel is guided by the [Convention on the Rights of the Child](#), international standards and norms on juvenile justice and other relevant instruments. The Panel currently has 14 members including: The Committee on the Rights of the Child; Office of the United Nations High Commissioner for Human Rights (OHCHR); United Nations Children's Fund (UNICEF), United Nations Department of Peacekeeping Operations (DPKO); United Nations Development Programme (UNDP); United Nations Interregional Crime and Justice Research Institute (UNICRI); United Nations Office on Drugs and Crime (UNODC); Defence for Children International (DCI); International Association of Youth and Family Judges and Magistrates (IAYFJM); International Juvenile Justice Observatory (IJJO); Penal Reform International (PRI); Save the Children UK; Terre des hommes - aide à l'enfance (Tdh); and World Organisation Against Torture (OMCT).