Deprivation of Liberty as a Last Resort

On 2 February 2007, the Committee on the Rights of the Child issued General Comment No.10 – Children’s Rights in Juvenile Justice (GC 10), providing their interpretation of the Convention on the Rights of the Child’s (CRC) provisions for children in conflict with the law. This is one of a series of seven explanatory Fact Sheets highlighting key themes in the GC 10 with the aim of ensuring that it becomes widely known, understood and used by States Parties.

WHAT IS THE DEPRIVATION OF LIBERTY?

The deprivation of liberty refers to “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”¹.

Children deprived of their liberty may be placed in residential homes, police lock-ups, training schools, treatment centres, reform schools, remand homes, re-education centres and juvenile or adult correctional facilities.

WHY SHOULD DEPRIVATION OF LIBERTY BE A LAST RESORT? WHAT ARE THE ALTERNATIVES?

Current estimates suggest that there are more than 1 million children deprived of their liberty worldwide², often in conditions which constitute inhumane and degrading treatment. While detention or institutionalisation is often the ‘easiest’ solution for States, measures which deprive children of their liberty do not facilitate, but rather hamper, the child’s future social reintegration and rehabilitation. The use of pre-trial detention as punishment is particularly troubling as it violates the presumption of innocence.

Children who are deprived of their liberty face a number of violations to their rights: they are often denied contact with their families, access to education, and face increased exposure to physical and sexual violence³. Moreover, many States lack the appropriate facilities to house children deprived of their liberty, often resulting in the child being detained with adults or living in squalor due to lack of resources - consequences which are all in direct violation of the rights of the child.

GC 10 encourages States to look for alternatives to the deprivation of liberty. These may include open-custody sentences, community service, counselling, mediation with and/or reparation to the victim. These alternatives take a rehabilitative rather than a punitive approach: they are designed to hold the child accountable for his or her actions, while facilitating a positive reinsertion into society.

WHAT DOES GC 10 RECOMMEND?

- The arrest, detention or imprisonment of a child must be in conformity with the law; no child can be deprived of his/her liberty unlawfully or arbitrarily;

- The deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period of time;

- States Parties must ensure that children are not held in pre-trial detention for months or years. If necessary, they should be released conditionally and the law should state the conditions under which children can be placed in pre-trial detention;

- Alternatives to detention should be used wherever possible. These may include community service or restorative justice;

---

¹ UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); ii;11b
² http://www.unicef.org/protection/index_juveniljustice.html
³ For more information, please see DCI’s 2003 report “No Kids Behind Bars - A Study of Children in Conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards”
Fact Sheet #7

Deprivation of Liberty as a Last Resort

(WHAT DOES GC 10 RECOMMEND -- CONTINUED)

- The time period from arrest to sentencing should not last more than 6 months and should be reviewed by independent and qualified inspectors

EXAMPLES OF ALTERNATIVES TO THE DEPRIVATION OF LIBERTY

- Police or Crown warning
- Referral to social services
- Community service
- Note to parents
- Probation
- Reparation to victims
- Mediation

CHILDREN WHO ARE DEPRIVED OF THEIR LIBERTY HAVE THE RIGHT:

- To be treated with dignity and respect
- To prompt access to legal assistance
- To challenge the legality of the deprivation of liberty before a court
- To be held separately from adults
- To a physical environment in accordance with the aim of rehabilitation
- To not be restrained (unless the child poses a danger to him/herself)
- To not be treated with force or restraint as a punishment
- To a regular review of pre-trial detention
- To educational/vocational training designed to prepare his/her reintegration to society
- To have his/her privacy respected at all stages
- To maintain contact with his/her family
- To adequate medical care
- To make requests or complaints to an independent authority

This is one in a series of 7 Fact Sheets on the GC 10 which includes:

1) General Comment No 10: Children’s Rights in Juvenile Justice
2) Preventing Juvenile Delinquency
3) Promoting Diversion
4) Ensuring Appropriate Age Limits of Criminal Responsibility
5) Guaranteeing a Fair Trial
6) Prohibiting the Death Penalty and Life Imprisonment
7) Deprivation of Liberty as a Last Resort

www.dci-is.org
www.kidsbehindbars.org
www.juvenilejusticepanel.org
http://www2.ohchr.org/english/bodies/crc/index.htm