

EIGHTH SESSION OF THE FORUM ON MINORITY ISSUES ON "MINORITIES IN THE CRIMINAL JUSTICE SYSTEM"

With regard to children's involvement in the criminal justice system, international human rights law and in particular the United Nations Convention on the Rights of the Child (UNCRC) establish the clear obligation for member states to use detention as a last resort, for the shortest period of time and to apply measures that are in the best interests of the child that aim at rehabilitation.¹ These obligations, however, are continuously disregarded and best exemplified by the estimated 1,000,000 children in criminal detention worldwide.²

Beyond the general and major issue of children deprived of liberty, empirical studies indicate that minorities are overrepresented in the criminal justice systems. In particular, it is reported that children of minority and lower income groups are overrepresented in juvenile justice systems.³ In several European countries the number of children from minority groups in prison is disproportionate.⁴ In fact, the United Nations Special Rapporteur on minority issues, Rita Izsák, within her comprehensive study of the human rights situation of Roma worldwide, found that Roma are overrepresented in the criminal justice systems across Europe, with research indicating that they are often detained arbitrarily on account of their Roma identity.⁵ Beyond the clear unlawfulness of their detention, the long-term consequences are also to be considered: the contact of these children of minorities with the justice system pushes them deeper into poverty and exclusion instead of extending a supportive hand.

To this end, DCI – Belgium is running a European project, “Children's Rights Behind Bars”, with the aim of putting together a practical guide to be used by professionals when visiting detention facilities (the official launch of the guide will take place in January 2016). The involvement of children belonging to minorities in the criminal justice system may entail similar difficulties to the ones faced by foreign children who try to effectively exercise their human rights throughout the course of criminal proceedings. In fact such similarities are anticipated to be revealed in the project launched by Terre des Hommes' Regional Office for Central and South Eastern Europe together with DCI - Belgium and DCI – The Netherlands, among others. The project looks at foreign children suspected or accused in criminal proceedings and the procedural guarantees they are entitled to as per different EU directives and standards (2010/64, 2012/13, 2013/48).

At the international level, DCI launched a campaign calling for a Global Study on Children Deprived of Liberty (GSCDL) in March 2014, which has successfully culminated with a formal request through the child rights resolution of the United Nations General Assembly in December 2014.⁶ The Study will collect sorely needed qualitative and quantitative data on children in detention, while also studying good practices that can shape more effective policies and practices. The Study will add to the information base, raise the issue on political agendas, increase coordination, and provide guidance on the best ways forward to protect children's rights.

Defence for Children International & Terre des Hommes, therefore, propose the following recommendations:

- ✓ Research and ascertain whether socially excluded and children from minority communities are incarcerated at a disproportionately high rate than their representation in the overall population; and identify the reasons and propose effective solutions to address it.
- ✓ Fulfil international juvenile justice standards and obligations, without discrimination, and ensure deprivation of liberty is used as a measure of last resort and that non-custodial rehabilitative measures are a primary consideration.
- ✓ Discontinue, without discrimination, the application of the life sentence without parole to individuals less than 18 years of age at the time the offence was committed and review the situation of those already serving such sentences.

¹ United Nations Convention on the Rights of the Child, Article 40), Riyadh Guidelines, 1990; Beijing Rules, 1985; Tokyo Rules, 1990;

² UNICEF, Progress for Children, A report Card on Child Protection, Number 8, 2009

³ UNICEF, Juvenile Justice in the CEE/CIS region: progress, challenges, obstacles and opportunities, 2013

⁴ Children and juvenile justice: proposals for improvements', Thomas Hammarberg, Commissioner for Human Rights, Council of Europe

⁵ A/HRC/29/24

⁶ A/RES/69/157, §51.d