The UN Global Study on Children Deprived of Liberty: The Role of Academia in ‘Making the Invisible and Forgotten Visible’

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Abstract This chapter summarises the detailed findings of the United Nations Global Study on Children Deprived of Liberty and exemplifies the significant leading role of academia in ‘making the invisible and forgotten visible’ throughout the world. The main objectives of the study were to assess, based on scientific data, the magnitude of the global number of children deprived of liberty in six different situations, including in institutions, for migration related reasons and in the context of the administration of criminal justice. Another goal was to comprehend the root causes and pathways leading to deprivation of liberty as well as to gather best practices of states that have applied non-custodial solutions. The Study also addressed the conditions of detention by considering the personal views and experiences of children and it assessed justifications for and limits of deprivation of liberty of children in light of all relevant provisions of international law, above all the Convention on the Rights of the Child (CRC). Although the Global Study was prepared through a concerted effort of states, non-governmental organisations, professional bodies, UN agencies, treaty bodies, special procedures and children, each research group was led by a research institute and close collaboration with academia. The study exemplified how the close cooperation between the United Nations, civil society and academia is needed more than ever and it confirmed the spirit of the famous opening words of the UN Charter, namely that “the Peoples of the United Nations”, which founded the world organisation 75 years ago.

Keywords Children · Deprived · Liberty · Detention · Institutions · Migration · Juvenile · Justice · Security · Conflict · Non-custodial
1 Background

The emergent recognition of the injustices of children’s situation, prompted by greater knowledge and understanding of the developmental needs of children, led to a pathway in the twentieth century realising the need to establish and recognise the rights of the child within international law. In 1924, the League of Nations adopted the Geneva Declaration on the Rights of the Child. The Declaration articulates that all people owe children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that instils social consciousness and duty. In 1946, the United Nations established the International Children’s Emergency Fund, UNICEF, with an emphasis of improving the lives of millions of children around the world. This followed by the adoption of the Declaration of the Rights of the Child in 1959 (A/RES/1386(XIV)), which recognises, among other rights, children’s right to play, education, a supportive environment and healthcare. In 1966, with the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, Member States promise to uphold equal rights—including education and protection—for all children (ICCPR and ICESCR). In 1989, the Convention on the Rights of the Child was adopted by the United Nations General Assembly and widely acclaimed as a landmark achievement for human rights, recognising the roles of children as social, economic, political, civil and cultural actors. Children are no longer viewed primarily as vulnerable individuals in need of protection, but as independent rights-holders. In particular, they have the right not to be discriminated against and to participate in all matters directly affecting them (CRC, Art. 2, Art. 12). In all actions concerning children, Article 3 requires that “the best interests of the child shall be a primary consideration”. The Convention recognises that children “should grow up in a family environment, in an atmosphere of happiness, love and understanding”, and that children shall only in exceptional circumstances be separated from their parents against their will (CRC, preamble, Art. 9). In principle, children shall enjoy the same rights as adults, but in certain contexts, the Convention provides higher standards for children. This applies, in particular, to the administration of criminal justice in Article 40 and to the rights to personal liberty and dignity in Article 37.

In 2000, the United Nations General Assembly adopted two Optional Protocols to the Convention (A/RES/54/263 and A/RES/54/263), obligating State Parties to take key actions to prevent children from partaking in hostilities during armed conflict and to end the sale, sexual exploitation and abuse of children. A third Optional Protocol on a communications procedure where the Committee on the Rights of the Child can receive complaints of child rights violations and undertake investigations was adopted in 2011 (A/HRC/RES/17/18). In 2019, the Convention celebrated its 30th anniversary as the most widely ratified international instrument with 196 States Parties. It is evident that international standards on child rights have advanced dramatically over the past century and despite the improvements that have occurred,
states and the international community still have to do a great deal more to meet and ensure these ideals.

One of the most overlooked violations of children’s rights which leads to enormous injustices and suffering of children throughout the world concerns their deprivation of liberty (OPCAT, Art. 4(2) and Res 45/113, Art. 11(b)). Children deprived of liberty remain an invisible and forgotten group in society notwithstanding the increasing evidence of these children being in fact victims of many further human rights violations. Childhood is when children develop their personality, their emotional relationships with others, their social and educational skills and their talents. The personal cost to these children is immeasurable in terms of the destructive impact on their physical and mental development, and on their ability to lead healthy and constructive lives in society. Many children may 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. Depriving children of their liberty is depriving them of their childhood.

More than seven million children worldwide are in fact deprived of liberty per year (Nowak 2019). 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 and is difficult to reconcile with the Convention on the Rights of the Child (CRC). Article 37(b) of the Convention clearly states that deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time. Although there has been progress, it is evident that much more needs to be done in terms of deinstitutionalisation, diversion, ending migration-related detention and other measures to comply with the Convention. Deprivation of liberty of children is a form of structural violence in violation of Goal 16.2 of the Sustainable Development Goals (SDGs) (A/RES/70/1). The Global Study on Children Deprived of Liberty has been preceded by two earlier UN global studies related to the rights of children. In 1996, Graca Machel published the UN Report on the Impact of Armed Conflict on Children (A/51/306), which led to the appointment of a Special Representative of the Secretary-General on Children in Armed Conflict. In 2006, Paulo Sérgio Pinheiro published the UN Study on Violence against Children (A/61/299), which led to the appointment of a Special Representative of the Secretary-General on Violence against Children. Both these studies had a considerable impact on the lives of millions of children around the globe. Shortly after the publication of the Global Study on Violence against Children, NGOs started to campaign for another Global Study on Children Deprived of Liberty, which was also considered as a follow-up to the Pinheiro Study. In May 2014, the Committee on the Rights of the Child sent a formal letter to the UN Secretary-General supporting this initiative, and in December 2014, the UN General Assembly invited the Secretary-General to commission an in-depth Global Study on Children Deprived of Liberty. In 2015, a UN Inter-Agency Task Force, composed of
the most relevant UN agencies and offices, was established under the chair of the UN Special Representative on Violence against Children which selected Manfred Nowak as Independent Expert to lead this complex process.

The main objectives of the Global Study on Children Deprived of Liberty were to assess the magnitude of this phenomenon, including the total number of children deprived of liberty (disaggregated by age and gender), as well as the reasons, the root causes, the length and types of deprivation of liberty and conditions. The General Assembly also requested to document good practices of states who managed to reduce the number of children deprived of liberty as well as the views and experiences of children. Like earlier studies, this Global Study also aims at raising awareness and promoting a change in the stigmatising attitudes and behaviour towards children at risk of arrest or detention. Finally, it should provide recommendations for law, policy and practice to safeguard the rights of children concerned, prevent the detention of children through effective non-custodial solutions guided by the best interests of the child. The ultimate aim of the Global Study was not so much to document conditions of detention with the aim of improving such conditions, but to address the root causes with the aim of significantly reducing the number of children deprived of liberty and preventing their arrest and detention.

The Global Study covers the following six situations:

- Children deprived of liberty within the administration of justice;
- Children living in prisons with their primary caregivers, usually mothers;
- Children deprived of liberty for migration-related reasons;
- Children deprived of liberty in institutions;
- Children deprived of liberty in the context of armed conflict;
- Children deprived of liberty on national security grounds.

For each of these situations research groups were established led by a research institute and supported by Advisory Board members, respective UN agencies and NGOs. During the process of preparing the Global Study, further research groups were set up for four cross-cutting themes with the aim of contextualising children’s deprivation of liberty:

- Views and perspectives of children deprived of liberty;
- Impacts on health of children deprived of liberty;
- Children with disabilities deprived of liberty;
- Gender dimension.

The United Nations Global Study on Children Deprived of Liberty provides an interesting example of how the United Nations system can benefit from a close cooperation with academic institutions to achieve its aims and objectives. From the very beginning, the process of drafting the Global Study benefitted from the input of its Advisory Board, which consists of 22 of the most well-known international experts in the fields of children’s rights and deprivation of liberty. In addition, the Independent Expert could draw on the expertise of two academic institutions to which he has very close ties.
The Ludwig Boltzmann Institute of Human Rights (BIM) at Vienna University is one of the leading academic institutions specialised in applied human rights. Founded by the Independent Expert in 1992, this institute played a major role in the coordination of the input of more than 1500 NGOs to the Vienna World Conference of Human Rights in 1993. During his expert UN functions relating to enforced disappearances, in tracing missing persons in the former Yugoslavia during the 1990s and as Special Rapporteur on Torture between 2004 and 2010, the Independent Expert was actively supported in various ways by the Ludwig Boltzmann Institute of Human Rights. With respect to the Global Study on Children Deprived of Liberty, the support of this institute became even more essential, as the Global Study suffered from the very beginning from a severe lack of funds and thus also from a lack of institutional support by the Office of the UN High Commissioner for Human Rights (OHCHR). In addition to taking the lead in preparing the chapter on the administration of justice, the Boltzmann Institute was forced to assume the final responsibility of coordinating all research groups and academic inputs, of hosting the data base, compiling and assessing the statistical data gathered from various sources, and of editing the Global Study.

The second academic institution which played and still plays a decisive role in the preparation and dissemination of the Global Study is the Global Campus of Human Rights (GC). With roughly 100 member universities, which jointly organise seven master programmes in human rights and democratisation in all world regions, the Global Campus is the largest network of universities dedicated to human rights. As the successor of the European Inter-University Centre for Human Rights and Democratization (EIUC), its Headquarters are based in Venice, with regional hubs in Buenos Aires, Pretoria, Bangkok, Beirut, Sarajevo and Yerevan. In his function as Secretary-General of the Global Campus, the Independent Expert had the privilege of actively involving many member universities, individual scholars and Master students in the preparation of the Global Study. The University of Pretoria, e.g. took the lead in preparing the chapter on institutions, and the research team in Venice was responsible for the drafting of the chapter on children living with their primary caregivers in prison. In addition, two expert workshops involving UN agencies, NGOs, the Advisory Board and other stakeholders were organised in Venice in 2017 and 2019. Thanks to a long-term cooperation with and funding by the Right Livelihood Foundation (RLF), the Global Campus also assumed the primary responsibility for the dissemination of the Global Study and for initiating a follow-up process until the United Nations will be in a position to assume this responsibility.

2 Key Findings of the United Nations Global Study on Children Deprived of Liberty

For all the situations of deprivation of liberty, there was a need to collect reliable empirical data from a variety of sources. Most importantly, a detailed questionnaire was designed and distributed in all UN languages to all UN Member States, National
Human Rights Institutions (NHRIs), National Preventive Mechanisms (NPMs), ombudspersons, UN agencies as well as NGOs. One hundred eighteen (118) replies were received in relation to 92 countries in various languages covering quantitative as well as qualitative areas. With respect to quantitative data, annual data was requested on the number of children deprived of liberty in the six situations, disaggregated by age and gender, for the last 10 years as well as snapshot data on the number of children deprived of liberty at one specific date, namely 26 June 2018.

While the responses to the questionnaire constitute the core of data stored in our database, these responses only covered less than half of UN Member States and were often incomplete. Therefore, there was a need to supplement these original data by a multitude of other reliable data from official government statistics, UN documents and statistics, state reports to the CRC Committee, regional, national and thematic consultations, commissioned studies as well as extraction of relevant data from peer-reviewed literature and other desk research. It must, however, be noted that the data is far from complete, that the findings and conclusions are based on very conservative estimates and extrapolations, and that the figures presented in the Global Study should only be treated as minimum estimates.

3 Children Deprived of Liberty in Institutions

Research for the study and the Independent Expert’s first-hand experience, as a former Special Rapporteur on torture, clearly show that children should not be institutionalised to receive care, protection, education, rehabilitation or treatment, as it cannot substitute for the benefits of growing up in a family or in a family-type setting within the community. This need for deinstitutionalisation has already been expressed by states, when adopting the Guidelines for the Alternative Care of Children. In 2009 the Guidelines seem to have had a positive impact on the de-institutionalisation practices of states (A/RES/64/142). While in the Global Study on Violence against Children of 2006, the total number of children living in institutions was estimated as eight million, research conducted for the current Global Study indicates that this number may have dropped to 5.4 million.

The separation of children from their family environment should occur only where children cannot be allowed to remain there based on the best interest’s determination, and any separation should be for the shortest possible duration. However, large numbers of children are separated from their families, and the majority of states are failing in their obligation to provide equal access to preventive, protective and supportive mechanisms to families. Due to this, many children in institutions, in particular in privately run institutions which are not state-regulated, ‘drop off the radar’. The pathways that unnecessarily lead children to be separated from families include socioeconomic conditions, discrimination, family violence and lack of access to essential services (e.g. health, education, rehabilitation, treatment). Some children end up in institutions owing to the incorrect application of the best interests principle. Many states lack gatekeeping systems and institutions are
sometimes characterised by profit motives or commodification of the care of children. The phenomenon of ‘voluntourism’ still exists in many states (Nowak 2019, p. 526).

The vast majority of children deprived of liberty live in institutions of all kinds which are characterised by a common “institutional culture”: Children are isolated from the broader community, are compelled to live together, and do not have sufficient control over their lives and decisions which affect them. The requirements of institutions tend to take precedence over the children’s individual needs, lead to fixed routines and are enforced by strict discipline, often amounting to solitary confinement, physical restraints and corporal punishment. In general, institutions can be characterised by de-personalisation, lack of individual care and love, instability of caregiver relationships and lack of caregiver responsiveness. As many recent inquiries into abuse of children show, institutions are often characterised by a high level of violence, sexual abuse and neglect, which amounts to inhuman or degrading treatment in violation of international law. Although much has been achieved in recent years by means of de-institutionalisation, much more remains to be done to ensure that all children, including children with physical and mental disabilities, can enjoy their right to grow up in a family environment and in community based non-custodial settings.

4 Children Deprived of Liberty in the Administration of Justice

A wide-ranging and comprehensive set of international human rights standards is testimony to a strong commitment by the international community to prevent deprivation of liberty of children in the administration of justice. Many states have introduced child justice legislation and established corresponding specialised procedures, including special courts for children, which have led to the effective diversion from the criminal justice system (Nowak 2019, pp. 302–309). These developments seem to have contributed to a certain decrease in the number of children detained in prisons and pre-trial detention centres. While UNICEF in 2007 has estimated the total number worldwide as over one million children, research for the Global Study indicates that this number may have dropped to less than half. There are still at least 410,000 children held in detention every year in remand centres and prisons.

If one counts an estimated number of one million children in police custody, more than 1.4 million children are currently detained per year in the context of the administration of criminal justice, i.e. in police custody, pre-trial detention facilities and prisons. Detaining children in conflict with the law is not per se a violation of the CRC. However, the principle of a “measure of last resort” in Article 37(b) CRC requires all law enforcement agencies, including the police, prosecutors, judges and prison administrators, to examine in each individual case whether proper
non-custodial solutions are available and should in fact be applied. Article 40 (4) CRC provides in this respect: “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.” This means that diversion measures shall be applied at every stage of the criminal procedure: as alternatives to the arrest by the police; to a court decision leading to pre-trial detention; to a decision of a prosecutor to charge a child for a criminal offence; to a court judgment finding a child guilty of a criminal offence and a judgment sentencing a child to imprisonment; and finally to a decision of the prison administration when enforcing such judgments. At each of these stages, the competent authorities shall consider to transfer children from the criminal justice system to the child welfare system. This requires sophisticated instruments for structured inter-agency cooperation between the child welfare system, social protection, education and health systems on the one hand and law enforcement and justice systems on the other hand. The goal of such inter-agency cooperation is to build comprehensive child protection systems and implement prevention and early intervention policies. Above all, there is a strong need to support families, communities, schools and child welfare systems to deal with children in conflict with the law.

There are a number of root causes and pathways leading to such a large number of children deprived of liberty in the context of the administration of justice (Nowak 2019, p. 274). First, many states retain an excessively low age of minimum criminal responsibility. While the Committee on the Rights of the Child advocates that this age shall be raised to at least 14 years of age (CRC/C/GC/24*, para. 22), more than 120 states maintain the minimum age at below 14 (Nowak 2019, p. 280). Second, instead of prevention, states often rely on repressive and punitive policies that lead to excessive criminalisation of children. Behaviours that are typical for children are criminalised as so-called “status offences”: children are charged and detained for truancy, running away from home, disobedience, underage drinking, consensual sexual activity between teenagers, “disruptive” behaviours and practices against tradition and morality. Despite the fact that Article 37(b) CRC allows deprivation of liberty of children only for the “shortest appropriate period of time”, life sentences for children remain legal in 67 states, specifically in Africa, Asia, Oceania, the Caribbean and North America (Nowak 2019, p. 291). Third, many states still lack a functional child justice system with special child courts and specially trained police officers, prosecutors and judges, as required by Article 40(3) CRC.

Discrimination is another important reason for the large number of children deprived of liberty in the administration of justice. Children from poor and socio-economically disadvantaged backgrounds, migrant and indigenous communities, ethnic and religious minorities, the LGBTI community and children with disabilities are largely overrepresented in detention and throughout the judicial proceedings. While boys are committing roughly two-thirds of all criminal offences of children, they account for 94% of all children detained in prisons and pre-trial detention centres (Nowak 2019, p. 225). This significant gender gap can be explained in part
by the fact that girls often receive more lenient and non-custodial sentences and benefit much more than boys from diversion and non-custodial solutions during the different phases of the criminal justice system.

The Global Study also revealed significant regional disparities in the detention rate of children in prisons and pre-trial detention centres. While Sub-Saharan Africa has the lowest detention rate (less than 4 children detained out of 100,000 children), the American hemisphere scores highest. With a detention rate of 60, the United States is the country with the largest number of children in detention, followed by South America (19), Central America and Caribbean (16) and Oceania (8). Western Europe (5) as well as Central and Eastern Europe (5.8) show a comparably low detention rate.

In the 110 countries/territories for which data could be obtained and that do not have life imprisonment for children, the maximum sentence for children ranges from 3 to 50 years. The average maximum sentence is 13.3 years. The median average maximum in turn lies at 12 years (Nowak 2019, p. 290). In its recently adopted General Comment No. 24 relating to the administration of child justice, the CRC-Committee has specified certain time limits. For instance, it recommends to States Parties that police custody should never be longer than 24 h and pre-trial detention should not last longer than 30 days. However, the Committee has not yet specified a maximum duration of imprisonment of children after conviction by a criminal court (Nowak 2019, p. 72).

Children consulted for the Study expressed concerns about the lack of access to information, lack of child-sensitive procedures, insufficient contact with family and the outside world and poor detention conditions. This confirmed the Independent Expert’s own fact-finding experiences, as a former Special Rapporteur on Torture that conditions of detention often amount to inhuman or degrading treatment in violation of international law.

5 Children Deprived of Liberty in Migration Related Detention

Research for the Global Study finds that at a minimum, 330,000 children are currently detained worldwide for migration-related reasons. This is likely to be a significant under-estimation of the true figure, due to limitations regarding the quality, consistency and coverage of data available (Nowak 2019, p. 465). This figure covers unaccompanied and separated children as well as children migrating with their parents or other family members. Both from a legal and policy oriented point of view, migration-related detention of children raises a number of highly controversial issues. Responses to the Global Study questionnaire indicate that 24 countries, above all in Latin America and Southern Africa, do no longer detain children (Nowak 2019, p. 463). On the other hand, at least 80 states around the world are known to detain children for migration related reasons (Nowak 2019, p. 455).
From a legal point of view, migration-related detention can never meet the high threshold of a “measure of last resort” in Article 37(b) CRC and is never in the best interests of the child, as required by Article 3 CRC. In other words, the Global Study confirms the legal interpretation of the CRC-Committee, the UN Working Group on Arbitrary Detention, the Special Rapporteur on the Human Rights of Migrants, the UN Secretary-General and various other UN bodies and agencies, such as the International Organization for Migration (IOM), the United Nations Children’s Fund (UNICEF) and the United Nations High Commissioner for Refugees (UNHCR) as well as regional bodies: Every single case of a child in migration-related detention constitutes a violation of the CRC. This applies to unaccompanied and separated children, as well as to children with their families. Detaining children for their “protection”, or to “keep families together” where alternative non-custodial solutions are lacking, can never be a justification.

States that do detain children based on their migration status offer multiple justifications, such as illegal entry, identity verification, age assessment, health and security screening or the facilitation of deportation. Children are detained in various facilities, including 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. Research conducted for the Study indicated that immigration detention is particularly harmful to a child’s mental and physical health and exposes the child to the risk of sexual abuse and exploitation. Furthermore, it both aggravates existing health conditions and causes new ones to arise (Nowak 2019, pp. 146–152).

6 Children Living with Their Primary Caregivers in Prison

Research for the Global Study shows that approximately 19,000 infants and young children live with their primary caregivers, usually their mothers, in prison. Although they are not legally deprived of liberty, they are so de facto. The possibility for children to live in prison with an imprisoned caregiver, which is allowed in most jurisdictions until a certain age, is tense with difficult considerations, beginning with the question of whether to permit the practice at all. This question can only be decided on a case-by-case basis by adopting a child-rights based approach and considering the best interest of the child, as both the exposure of the child to detention and the separation of the child from a primary caregiver/mother have adverse consequences for the child.

The Global Study follows the approach of the African Charter and the South African Constitutional Court insofar as a situation in which children live with their imprisoned mothers should be avoided as far as possible. This means that every court, when sentencing a mother who is a primary caregiver of dependent children, has the responsibility to assess the possible impact of her imprisonment on child development, taking the best interests of the children as a separate
consideration into account. In such cases, alternatives to imprisonment, including house arrest, and non-custodial sentences should always be considered first, when the children cannot stay with the father or another close family member. If neither solution is possible, states have an obligation to establish special alternative institutions for holding such mothers. In the absence of such special institutions, mothers may be allowed to take their children into prison, under the condition that states establish child-friendly “Mother-Child Units” (Nowak 2019, p. 427).

State responses to the questionnaire show that most national laws establish specific age limits for a child’s admission into a place of detention (typically between two and six years of age) and place restrictions on the length of permissible stay. In many states, caregivers need to make a specific request and obtain, either separately or jointly, authorisation by judicial, social and/or prison authorities to allow the child to live in prison with them. Some states refer to further indicators such as: breastfeeding needs; lack of alternative child-care 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.

7 Children Deprived of Liberty in Armed Conflict

Children detained in the context of armed conflict often find themselves in a cycle of violence. First, armed groups illegally recruit them, usually through force, coercion or deception. Second, government authorities then detain them for suspected association with those very groups, often subjecting them to torture and other forms of ill-treatment, most often for intelligence gathering purposes or confessions of involvement with armed groups. Many children are detained simply because they appear to be of fighting age or come from communities perceived to be sympathetic to opposition forces, or because their family members are suspected of involvement with such forces. International law prohibits the use of children in direct hostilities, and any recruitment of children by non-state armed groups. States parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration. Yet in at least 16 countries where conflict pertains, children are detained by the government or by non-state armed groups.

Research for the Global Study found that, at a minimum, 35,000 children are currently deprived of liberty in the context of armed conflict. That figure includes an estimated 29,000 foreign children related to alleged ISIS fighters detained in 2019 in camps in Iraq and the north-east of the Syrian Arab Republic. In conflicts involving non-state armed groups designated as terrorist, governments are more likely to detain children than to provide rehabilitation and reintegration, as required under international law. In Nigeria, roughly 1900 children have been detained on suspected Boko Haram affiliation. Hundreds of detained children have also been reported from
Israel, the Democratic Republic of Congo, Somalia and Afghanistan (Nowak 2019, p. 581).

Children are often subjected to torture and ill-treatment, most often for intelligence gathering purposes or confessions of involvement with armed groups. Conditions are often extremely poor, with severe overcrowding and grossly inadequate sanitation, food, and health care. Children are commonly detained with adults and have no access to education, recreation or rehabilitation programmes, and are often tried in military or adult courts without adequate procedural rights. The UN Security Council in 2018 called on all parties to such conflicts to cease unlawful or arbitrary detention of children and encouraged states to establish “standard operating procedures for the rapid handover of the children concerned to relevant civilian child protection actors” (S/RES/2427, paras 19–21). This has already had a positive impact on state practice, as some African states, including Chad, Mali, Niger and Somalia, have signed such handover protocols with the United Nations, transferring children associated with armed groups to child welfare centres, with the aim of ensuring their rehabilitation and reintegration into society (Nowak 2019, p. 607).

8 Children Deprived of Liberty Due to National Security

The Global Study only covers a number of countries where relevant data are available and estimates that at least 1500 children are detained in these countries on national security grounds. Research conducted for the Global Study identified at least 31 conflict and non-conflict countries where children have been detained in the context of national security grounds. The vast majority of these children are detained in conflict countries, such as Syria, Iraq and Afghanistan, as was described above. In countries without an armed conflict on their territories, the number of children detained for reasons of national security is difficult to assess, as many states do not provide relevant data.

In recent years, armed groups designated as terrorist or armed groups termed violent extremist have recruited thousands of children, in some cases across borders, to carry out suicide and other attacks, and for various support roles. Some are recruited through force, coercion or deception, while others are influenced by family members and peer networks, poverty, physical insecurity, social exclusion, financial incentives, or a search for identity and status. The Internet has also 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.

Thousands of children from more than 80 countries travelled to Iraq or Syria, either alone or with their families, to join ISIS both before and after the declaration of the caliphate” in June 2014. Many of these children originated from either Western or Eastern Europe (Nowak 2019, p. 591). Over 1000 children associated with ISIS are believed to have returned to their home countries, while others were killed in Iraq or Syria or are detained there. A small number of children have been detained and prosecuted after their return home. A number of European countries have passed
legislation to revoke citizenship for individuals who travelled abroad to join non-state armed groups designated as terrorist to prevent them from returning.

In response to heightened concerns about threats to their national security and counter-terrorism resolutions adopted by the UN Security Council, the majority of states have adopted new counter-terrorism legislation or amended existing national laws since 2001, often expanding the scope thereof in ways that negatively affect children. Such measures place children at heightened risk of detention for alleged national security offences. These laws often fail to distinguish between adults and children, include overly broad definitions of terrorism, provide fewer procedural guarantees, and impose harsher penalties. Some states criminalise mere association with non-state armed groups designated as terrorist, thereby increasing the number of children detained and prosecuted for association with such groups (Nowak 2019, p. 647). Such laws are also used to detain children for a broad range of activities outside of national security concerns, such as posting political opinions online, participating in peaceful protests, involvement in banned political groups or alleged gang activity.

9 Key Recommendations of the Global Study on Children Deprived of Liberty

For every situation of children’s deprivation of liberty and the respective cross-cutting issues such as the views of children, the impact on health, children with disabilities and the gender dimension, there are multiple findings and recommendations which are conveyed in the comprehensive Global Study on Children Deprived of Liberty. The overarching recommendations of the Global Study follow directly from its findings and conclusions as well as from the analysis of best practices. They are inspired by the high legal standards of the CRC regarding the rights to personal liberty, personal integrity and dignity of children and 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.

10 The Overarching Recommendations

Significantly reduce the number of children held in places of detention and 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. Invest and empower families to foster the physical, mental, spiritual, moral and social development of their children, including children with disabilities. Repeal all laws and policies that permit the deprivation of liberty of
children based on an actual, or perceived, impairment or based on their sexual orientation and/or gender identity.

In all decisions that may lead to the detention of children, states should **most rigorously apply the requirement of Article 37(b) of the Convention on the Rights of the Child** that deprivation of liberty shall be applied only as a measure of last resort. This means that children may only be detained in truly exceptional cases. 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, without any discrimination**. Children shall not 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 shall be of a standard equivalent to that available in the community at large.

Article 12 of the Convention on the Rights of the Child provides that children have the **right to be heard and actively participate** in all matters directly affecting their lives. Therefore, they should be empowered to influence decisions relating to their treatment and enjoyment of such essential services and have the **right to effective remedies**, as well as to **lodge complaints to an independent and impartial authority** on any grievances and human rights violations during detention. 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 Convention on the Rights of the Child on a communications procedure**, enabling children to further seek redress for violations of their rights.

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 well-being 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**. They 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.

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, based on the Global Study, needs to be applied 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.

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 and how to replace detention of children by non-custodial solutions. With respect to the follow-up of the United Nations Global Study on Children Deprived of Liberty, the Independent Expert strongly recommended that deprivation of liberty, as one of the most neglected violations of the CRC, remains on the agenda of the General Assembly, the Security Council and the Human Rights Council.

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.
- Adopt a comprehensive deinstitutionalisation policy by developing appropriate family-type settings, since children should not grow up in institutions, which are characterised by strict discipline, neglect, abuse and lack of love.
- 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. 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).
- Avoid the imprisonment of mothers as primary caregivers of young children
- Treat children recruited by armed forces or groups designated as terrorist as victims rather than as perpetrators.
11 Follow-Up Initiation and Dissemination of the Global Study

While all UN agencies and mechanisms should play an active role in monitoring and facilitating the implementation of these recommendations, the Independent Expert called upon the General Assembly to consider, as soon as possible, a specific and effective follow-up mechanism and process aimed at disseminating the Study findings, at promoting its recommendations, monitoring progress and ensuring the development and maintenance of an international database, containing all relevant data on children’s deprivation of liberty in all UN Member States.

Following the presentation of the report on the Global Study on Children Deprived of Liberty to the UN General Assembly in New York on 8 October 2019, and the presentation of the comprehensive version of the Global Study to the UN in Geneva on 19 November 2019, an expectation was created to widely disseminate the findings and recommendations of the Study and to start a well-coordinated follow-up process. The Independent Expert was invited by several states, national human rights institutions, academic institutions, international and non-governmental organisations to present the Global Study and to advise governments in designing a national action plan aimed at implementing the Study’s recommendations. Between October 2019 and the outbreak of the Covid-19 pandemic in late February 2020, the Independent Expert presented and discussed the Study with many representatives of governments and other stakeholders in Australia, Japan, Austria, South Africa, Scotland, Thailand and the European Union. Further launches in Switzerland, Belgium, the Netherlands, the European Parliament, Morocco, Argentina and Uruguay had to be cancelled or postponed.

The UN General Assembly Resolution on the rights of the child of 18 December 2019, however, only took note of the Global Study without deciding on any follow-up (A/RES/74/133, preamble and para. 39). As with earlier global studies on children’s rights, it is expected that the General Assembly will take stronger action in December 2020 leading to a more active involvement of the United Nations in follow-up activities as from 2021.

In the meantime, the Global Campus of Human Rights consisting of 100 universities worldwide has taken the main initiative to keep the Global Study on the international agenda and support its dissemination activities. The cooperation between the Global Campus of Human Rights (GC) and the Right Livelihood Foundation (RLF) has taken a pivotal role in supporting the process of the Study to be presented in the different regions of the world. These efforts have been supported by the NGO Panel of 170 NGOs and other stakeholders. For the time being, the further involvement of the Global Campus is essential for the overall success of the Global Study. In the long run, a closer cooperation on the follow-up between the United Nations, the NGO Panel, the Global Campus of Human Rights and regional organisations would create a positive synergy by bringing international organisations, civil society and academia together in facilitating the domestic implementation of the Global Study recommendations.
12 The Objectives and Activities of the Follow-Up Initiation and Dissemination Are to:

- First, to present the Global Study findings, recommendations and to develop the most effective short, mid and long-term follow-up strategies with international, regional and national key-stakeholders by means of trainings, workshops and consultations. In this regard, a number of regional and national launches have taken place throughout the world to raise awareness and create action plans to implement the recommendations as well as use this momentum to support the initiation of a follow-up process to the Study.
- Second, to coordinate and support the development and facilitation of further Global Study related research and advocacy activities and outputs such as the creation of thematic toolkits, an executive summary and its translations into all UN languages, an animated child friendly version, multiple e-learning massive open online courses (MOOCs) and further projects related to the implementation of the recommendations through the Global Campus network and its universities.
- Third, to maintain and strengthen the Global Study network consisting of research institutes and universities, Advisory Board members and other experts, the NGO Panel of 170 NGOs, UN agencies and other international as well as regional organisations, National Human Rights Institutions, National Preventive Mechanisms and Children’s Ombudspersons. This is to be done by a variety of communication channels, by creating a website and a database as well as by a regular newsletter and other advocacy and communication tools.

13 Conclusions

The UN Global Study on Children Deprived of Liberty provided an important occasion to draw the attention of the international community to one of the most overlooked violations of children’s rights. In contrast to the clear legal requirement of the CRC, namely that the detention of children shall be used only as a measure of last resort and for the shortest appropriate period of time, the Global Study found that more than seven million children are in fact deprived of liberty in a broad variety of institutions, police lock-ups, prisons, immigration and other detention centres in all world regions. The research conducted for the Global Study also shows the enormous suffering of children who are exposed to inhuman conditions of detention, and the particular harmful effects of deprivation of liberty on the health and development of children. As a form of structural violence, it deprives children of their childhood. The Global Study calls on all states to take urgent action to drastically reduce the number of children deprived of liberty and requests the United Nations to put this gross and systematic violation of children’s rights high on its agenda.

Owing to a severe lack of funds made available exclusively through voluntary contributions, the Independent Expert leading the Global Study could only to a
limited extent rely on the services of the OHCHR and other UN agencies in the preparation and dissemination of the Global Study. At the same time, he was most actively supported by an NGO Panel of 170 NGOs, led by Human Rights Watch and Defence for Children International, by an Advisory Board of 22 highly renowned experts on children’s rights, and by the academic community. The Ludwig Boltzmann Institute of Human Rights at Vienna University assumed the function of coordinating the academic research and editing the Global Study, while the Global Campus of Human Rights took up the function of disseminating the Global Study and of initiating an urgently needed follow-up process. Both academic institutions are financially supported by two private foundations, which together contributed more funds to the UN Global Study than Member States and international organisations.

In our opinion, this close cooperation between the United Nations, civil society and academia confirms the spirit of the famous opening words of the UN Charter, namely that the Peoples of the United Nations, which founded the world organisation 75 years ago, go beyond states and governments. At a time of multiple crises, when the United Nations and multilateralism are increasingly challenged by nationalist and populist movements, it is essential that the global civil society and global academic networks take up their responsibility as part of the Peoples of the United Nations” to ensure that the main aims and objectives of the world organisation, namely human security, human development and human rights, are not abandoned but further strengthened. In line with the spirit of the CRC, children are increasingly assuming their own responsibility for addressing the global challenges of the twenty-first century, such as urging governments in global Fridays for Future strikes to save our planet from the current climate crisis. We have a particular responsibility to empower children and to protect the rights of children and future generations. In the Agenda 2030, states solemnly promised to leave no one behind. By urging states to leave no child behind bars, a broad range of civil society representatives, who jointly prepared this Global Study, wish to make a small, but distinctive, contribution to this overarching goal for the next decade.

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