



APT note to the United Nations Special Rapporteur on Torture

Expert consultation on torture and ill-treatment of juveniles deprived of liberty (Washington D.C., 10-11 November 2014)

6 November 2014

1. Introduction

The Association for the Prevention of Torture (APT) welcomes the initiative of the United Nations Special Rapporteur on Torture to further clarify and develop standards related to children deprived of their liberty from the perspective of the prohibition of torture and other cruel, inhuman, and degrading treatment or punishment in international law.

In view of the Expert consultation set to take place in Washington D.C. on 10-11 November 2014, the APT respectfully submits this note to the Special Rapporteur for his consideration in the preparation of his new thematic report on the use of torture and other cruel, inhuman or degrading treatment or punishment in the context of children deprived of their liberty, to be presented to the UN Human Rights Council in March 2015.

The purpose of this note is to highlight some types and situations of risk for children when they are deprived of their liberty and the role of National Preventive Mechanisms (NPMs) established under the Optional Protocol to the UN Convention against Torture (OPCAT) in the protection of children deprived of liberty from torture and other forms of ill-treatment, where APT has a specific expertise.

In this regard, in June 2014 the APT organised the Jean-Jacques Gautier NPM Symposium, *Addressing children's vulnerabilities in detention*, which gathered representatives of 14 NPMs from all regions, state authorities and other human rights actors with a specific expertise on the protection of the rights of children deprived of liberty.¹

¹ The Jean-Jacques Gautier NPM Symposium, *Addressing children's vulnerabilities in detention*, was held in Geneva on 26-27 June 2014 with the objective of strengthening the capacities of NPMs to address the vulnerabilities and risks faced by children deprived of their liberty. Participants included: representatives of NPMs from Croatia, Czech Republic, France,

2. Torture and ill-treatment of children deprived of their liberty: risk factors and situations

Children are one of the most vulnerable groups in detention, because of their age and stage of maturity, and because of the long-term damaging effects of detention on their physical and mental health, well-being and development. Detention rarely responds to children's individual characteristics and specific needs. Contrarily, it often intensifies children's vulnerability to discrimination, abuse and violence. The majority of children deprived of their liberty are held in pre-trial detention, often for prolonged periods, and for minor offences², in breach of international standards establishing that detention should be used as a measure of last resort, for the shortest appropriate period of time and only for child offenders who are considered as posing a real danger to others.³

Children are deprived of their liberty for a variety of reasons and in a variety of settings, including prisons, pre-trial detention centres, police cells, centres for juveniles, vehicles, social care facilities, immigration facilities, health and psychiatric facilities. They are often deprived of liberty for being suspected or accused of having committed a crime, but also for other reasons: for accompanying a parent seeking asylum in another country; due to physical and mental disabilities; or for status offences which are not criminalised if committed by adults, such as living in the streets, begging, violating curfew regulations or for substance abuse problems. Such behaviours are often the result of disadvantaged socio-economic status or psychological problems and *"should be dealt with through the implementation of child protective measures, including effective support for parents and/or caregivers and measures which address the root causes of this behaviour"*.⁴

Children deprived of their liberty are not a homogenous group. Their needs and the risks which they are exposed to vary according to a number of factors, such as age, stage of development, gender, physical or mental disability, substance abuse, prior experience of violence and exploitation, level of education. Therefore, it is vital that the specific characteristics of children deprived of liberty are assessed and that they receive individual care and treatment according to their needs.

Children deprived of their liberty are at greater risk of experiencing human rights violations and abuses by both staff and fellow detainees. When deprived of their liberty, they are also at greater risk of self-harm or even suicide. Several types and situations of risk for children deprived of their liberty have been documented, including those related

Honduras, New Zealand, Rio de Janeiro (Brazil), Río Negro (Argentina), Senegal, Spain, the Maldives, the United Kingdom, Togo, Ukraine and Uruguay; UN Subcommittee on Prevention of Torture; Committee on the Rights of the Child; European Committee for the Prevention of Torture; UNICEF, NGOs such as Terre des Hommes, Penal Reform International, Defence for Children International and the Quaker United Nations Office. Further information available at: <http://www.apr.ch/en/2014-children-s-vulnerabilities-in-detention/>

² Human Rights Council, Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, UN Doc. A/HRC/21/25, 27 June 2012, § 8.

³ Convention on the Rights of the Child, Art. 37 (b); Havana Rules 1,2.

⁴ Committee on the Rights of the Child, General Comment No. 10, UN Doc. CRC/C/GC/10, 25 April 2007, § 9.

to arrest and police custody; pre-trial detention; material conditions; separation of categories of persons deprived of liberty; use of means of restraint and solitary confinement; contact with the outside world; non-specialised and adequately trained staff; external oversight and complaints mechanisms; education and recreation; and health.

In several countries, children's behaviours which do not conform to the conventional ones are stigmatised by both authorities and the society at large. Such stigmatisation often leads to arbitrary arrest of children, and exposes them to abusive and discriminatory practice by the police. In many circumstances, at the moment of arrest, children are not provided with information on their rights and the allegations against them in a manner that they can understand. Following the arrest, children may not have prompt access to their parents or caregivers and to legal assistance, which put them at greater risks of physical, verbal and psychological violence, especially during interrogations.

The Ukrainian NPM (Parliament Commissioner for Human Rights) has reported a number of violations of children's rights in police custody, including police violence, unsuitable premises, children held in police vehicles for hours without medical assistance, at below-zero outside temperature and with no access to water and sanitation, as well as lack of prompt access to legal aid and lack of notification of children's detention to families.⁵

Although international standards provide that children deprived of their liberty should be separated from adults "*unless it is considered in the child's best interest not to do so*"⁶, many countries fail to abide by this rule. As a result, children are often deprived of their liberty with adults during transportation, in police stations and in detention centres, exposing them to abuse and compromising their future ability to remain free of crime and to reintegrate into society.

Children are at risk of abuse, bullying and violation of their rights also when those awaiting trial are held alongside with convicted children, when boys are detained with girls, when younger children are detained with older ones and when the placement of children in a detention facility does not take into account the specific requirements of the most vulnerable children, e.g. children with physical and mental disabilities.

In France, the NPM (Controller General of Places of Deprivation of Liberty) reported persistent violent practices among children deprived of liberty, occurred in the exercise yard of the young offenders' wing of a remand prison, posing serious threat to the physical safety of those children. The NPM also reported the lack of effective measures to prevent those incidents and the inadequate response by the authorities in charge of the wing.⁷

⁵ Ukrainian Parliament Commissioner for Human Rights, *Monitoring of custodial settings in Ukraine: status of implementation of the national preventive mechanism*, 2014, pp. 33-50. Available at: http://www.ombudsman.gov.ua/en/images/stories/10102014/ukrainian_npm_annual%20report_2013.pdf

⁶ Convention on the Rights of the Child, Art. 37 (c).

⁷ French Controller General of Places of Deprivation of Liberty and APT, *Opinions and Recommendations of the French "Contrôleur général des lieux de privation de liberté" 2008-2014*, pp. 201-208. Available at: http://www.apl.ch/content/files/res/avis-et-recommandations-cglpl_en-for-web.pdf

In several countries, children are held in overcrowded facilities. In others, due to the low number of children in custody, they are placed in adult facilities or in youth facilities which are located far away from children's homes and families, in spite of their particular need to maintain family and community ties. Also, because of the small number of girls in detention, they are often placed in women's facilities.⁸

In some instances, children deprived of their liberty are subject to unlawful and disproportionate security and disciplinary measures, including means of restraint, solitary confinement, excessive use of force and humiliating searches of children and their family members.⁹ In Sweden, the Ombudsman for Children has documented an increased use of solitary confinement for children pending trial, both in remand prisons and police cells, since 2012.¹⁰

Finally, deprivation of liberty rarely responds to children's specific needs for appropriate education, sport, recreation and vocational activities. The denial or inadequacy of those services has a negative impact on children's development and rehabilitation. In addition, the lack of activities may also create situations of risk of abuse and ill-treatment, because children spend most of their time confined in their cells, and may experience lack of motivation and even depression which, in turn, can result in the occurrence of incidents of abuse and violence between children as well as with staff personnel.

The NPM of Uruguay (National Human Rights Institution), in its reports of the visits conducted to juvenile detention centres, highlighted the lack of adequate educational and vocational services for children, as well as recreational activities. As a result, children spent most of their time in their cells without any activity.¹¹

3. Role of NPMs in protecting children deprived of liberty from torture and ill-treatment

In order to prevent violations of the rights of children deprived of their liberty and ensure that conditions and treatment of children in detention respect their dignity and minimize the risk of abuse, it is extremely important that places where children are deprived of their liberty are regularly monitored by independent bodies. The APT believes that NPMs established and in compliance with the requirements under the OPCAT play a very important role in preventing abuse and ill-treatment of children deprived of their liberty.

⁸ See Office of the Ombudsman of New Zealand (part of the NPM), Annual report 2013/2014, pp. 44-45. Available at: http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/871/original/annual_report_2013-2014.pdf?1413323386

⁹ See UK NPM, Annual Report 2010-2011, pp. 32-36, and Annual Report 2011-2012, pp. 20-22. Available at: <https://www.justiceinspectorates.gov.uk/hmiprison/national-preventative-mechanism/annual-reports-of-the-uk-npm/#.VForCGdOVaR>

¹⁰ See Swedish Ombudsman for Children, *From inside: children and young people on life in police cells and remand prisons*, 2013. Available at: <http://www.barnombudsmannen.se/Global/Publikationer/From%20the%20inside.pdf>

¹¹ See NPM of Uruguay, Annual report 2013-2014. Available at: <http://inddhh.gub.uy/wp-content/uploads/2014/04/13-Informe-presentado-en-Comisi%C3%B3n-de-Poblaci%C3%B3n-y-Desarrollo-Social.pdf>

3.1 Monitoring implementation of standards for children deprived of liberty

NPMs are based in the country and are able to carry out unannounced and regular visits to all places where persons are or may be deprived of their liberty in order to monitor the implementation of international and domestic standards related to the treatment of persons deprived of liberty and conditions of detention.

They can visit all places where children are deprived of their liberty, including – but not limited to – police cells, pre-trial detention centres, prisons, centres for juveniles, immigration centres, health and psychiatric facilities and social care institutions. This broad mandate allows NPMs to have a better understanding of the overall system of deprivation of liberty and therefore address existing gaps through their recommendations. As part of their monitoring function, NPMs have the power to examine the treatment of children and the conditions of detention, conduct confidential interviews with children deprived of liberty, as well as with staff, and check all relevant information and records. NPMs can also play an important role in contributing to positive culture change in places of detention. Because of their access to those places, staff and children deprived of liberty, they are well placed to identify shared attitudes and values, as well as informal structures and systems within the places, which would be difficult for outsiders to understand.

In Paraguay, for example, following the NPM's visit and recommendations, a residential care institution for children was closed by the authorities due to violations of children's rights. Not only the shelter was closed, but children were also transferred to more suitable institutions. In addition, as a result of the NPM's recommendation, the Supreme Court of Justice adopted a resolution establishing a formal procedure to prioritise the deinstitutionalisation of children, by strengthening family ties and ensuring the temporality of children in residential care.¹²

3.2 Beyond visits to places where children are deprived of liberty

Their preventive mandate also goes beyond the facts found in places of detention. NPMs identify root causes of torture and other forms of ill-treatment and gaps in law and practices, make recommendations to the authorities and establish dialogue and cooperation with them on the implementation of their recommendations.

They can play a crucial role in advocating for children's rights by building a dialogue with all relevant authorities; raising awareness on the situation of children deprived of their liberty and the need for a separate and specialised juvenile justice system; contributing to change public perception of children deprived of liberty, especially those suspected or accused of having committed a crime; promoting changes in policies and legislation with a view of strengthening the protection of children deprived of liberty from torture and other forms of ill-treatment; advocating for children to be deprived of their liberty only as a

¹² See NPM of Paraguay, Annual Report 2013, pp. 56-57, available at: <http://www.mnp.gov.py/documentos/informe2013.pdf>; Visit report to the children's residential care institution of *La Compasión*, available at: <http://www.mnp.gov.py/documentos/LaCompasion.pdf>; Supreme Court of Justice of Paraguay, Resolution 834/2013, available at: <http://www.pj.gov.py/images/contenido/acordadas/acordada834.pdf>

measure of last resort and for the shortest appropriate period of time, and for alternatives to detention.

In the United Kingdom, for example, the NPM, which established a subgroup focusing specifically on children and young people, submitted a response to the Ministry of Justice consultation on the government proposal to transform the youth custodial system, focusing on the principles that should underpin best practice for children who are deprived of their liberty in a criminal justice context.¹³

The NPM of Uruguay submitted an observation regarding the need for adolescents deprived of liberty to have access to free legal assistance when interrogated by administrative authorities in relation to investigations of complaints.¹⁴

In France, the NPM has issued a number of recommendations and opinions regarding children deprived of their liberty in a variety of settings. As an example, in 2013, following its visits to places of detention, the NPM issued a thematic opinion on young children in prison with their mothers, proposing amendments to applicable legislative and regulatory provisions.¹⁵

3.3 NPMs' effectiveness

In order for NPMs to effectively monitor places where children are deprived of their liberty, conduct interviews with children, and make recommendations on laws, policies and practices related to children, they need to cooperate with a range of stakeholders and have a multidisciplinary approach.

They need to draw on professional knowledge in a number of fields, including social work, child rights, child psychology and psychiatry, in order to address the multiple vulnerabilities of children deprived of liberty and understand the specific normative framework and the overall system of child protection. Therefore, States should ensure that NPMs are independent, have all the powers established by the OPCAT and are granted the necessary human and financial resources.

¹³ See National Preventive Mechanism of the United Kingdom, *Response to the Ministry of Justice Consultation "Transforming Youth Custody"*, April 2013. Available at: <http://www.justiceinspectores.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/npm-response-transforming-youth-custody.pdf>

¹⁴ See NPM of Uruguay, *La necesidad de la asistencia legal a los adolescentes privados de libertad en las actas administrativas de ratificación de denuncias*, 8 September 2014. Available at: <http://inddhh.gub.uy/wp-content/uploads/2014/09/Observaci%C3%B3n-sobre-la-necesidad-de-la-asistencia-legal-a-los-adolescentes-privados-de-libertad-en-las-actas-administrativas-de-ratificaci%C3%B3n-de-denuncia.pdf>

¹⁵ French NPM and APT, *Opinions and Recommendations of the French "Contrôle général des lieux de privation de liberté" 2008-2014*, pp. 167-179. Available at: http://www.apr.ch/content/files_res/avis-et-recommandations-cglpl_en-for-web.pdf

4. Conclusion

Children deprived of their liberty are particularly vulnerable and at risk of torture and other forms of ill-treatment. Different aspects related to torture and ill-treatment of children deprived of liberty have been previously addressed and standards have been developed by international and regional human rights mechanisms, contributing to improve the situation of children deprived of their liberty worldwide. International and regional standards are also regularly referred to by domestic bodies, including NPMs, in order to ensure the protection of the rights of children deprived of their liberty.

In conclusion, the initiative of the United Nations Special Rapporteur on Torture to focus on torture and ill-treatment of children deprived of liberty not only will contribute to the development of higher standards and broader safeguards to protect their rights, but it will also provide NPMs with additional tools to effectively prevent torture and ill-treatment of children deprived of their liberty.