

Children deprived of liberty: Challenges, Standards and Practical Measures

Outline

- International standards for children in the justice system
- Minimum standards in detention
- How to monitor compliance with the international standards

1. International Standards

- **United Nations Convention on the Rights of the Child and Optional Protocols**

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990)
- Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) (1997)

- ILO Convention 182 concerning the Elimination and immediate prohibition of the Worst Forms of Child Labour (Convention 182) (1999)
 - UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990)
 - UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2000)
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- UN Standard Minimum Rules for the Treatment of Prisoners (1955; 2015)
 - Convention against Torture (CAT) (1984; 1987) and Optional Protocol (OPCAT, 2006)
 - UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (2010)

CRC Provisions related children in detention

- **Guiding principles**

- **Non discrimination (art.2)**
- **Best interest of the child (art. 3)**
- **Right to life and integrity (art. 6)**
- **Right to participation (art. 12)**

- **Article 19**

Prohibition and protection of children from any forms of violence

- **Article 37**

- (a) Prohibition of torture or other cruel, inhuman or degrading treatment or punishment; neither capital punishment nor life imprisonment
- (b) Detention only as a measure of last resort and for the shortest appropriate period of time
- (c) Separated from adults, maintain contact with family
- (d) Prompt access to legal and other appropriate assistance

• Article 40

- (a) Prohibition of retroactive criminalisation of a conduct
- (b) Presumption of innocence throughout the process
- (c) Right to be informed
- (d) Competent, independent and impartial authority
- (e) Right to an interpreter
- (f) Right to privacy
- (g) Minimum age of criminal responsibility
- (h) Alternative measures to detention

2. Minimum standards in detention

1. Rehabilitation and Reintegration

- The primary purpose of detention must be the rehabilitation and reintegration of child rather than retribution or the protection of society
- Children must receive “care, protection and all necessary individual assistance that they may require in view of their age, sex and personality” in order to benefit from rehabilitation and successfully reintegrate into society. (Beijing Rules 13.5)
- States should review sentences on a regular basis and determine whether further detention is necessary
(Beijing Rules 28)

2. Separation from Adults and Opposite Sex

- Specifically designed for persons of their respective age unless it is not in their best interest (CRC 37(c))
- Male and female juveniles to be detained separately (Beijing Rule 26.4, Bangkok Rules 36-39)

3. Living Conditions



4. Contact with the Outside World

- Right to maintain contact with his/her family through correspondence and visits (CRC 37(c))
- An integral part of the right to fair and human treatment and is essential to the preparation of juveniles for their return to society (Havana Rules 59)
- Encourage States to decentralise and have open institutions (Havana Rules 30)

5. Healthcare Services



6. Education, Vocational Training, Labour Opportunities

- Right to education for all children, including those deprived of their liberty (CRC 28)
- Children in detention facilities receive the same standard of education as their counterparts in the community (Havana Rules 38)
- Right to receive vocational training to prepare for future employment (Havana Rules 42)
- Opportunity to perform remunerated labour (Havana Rules 18(b))

7. Exercise and Recreational Activities

- Right to a suitable amount of time for daily free exercise (Havana Rules 47)
- Provide adequate space, installations and equipment for recreational, physical and leisure activities (Havana Rules 47)
- Should not be limited to sporting activities (Havana Rules 47)

8. Religion and Culture

- Right to the child of freedom of thought, conscience and religion (CRC 14)
- Should be allowed to satisfy the needs of his or her religious and spiritual life, attending the services, conducting his/her own services, possession of the necessary books or item of religious observance
(Havana

9. Admission, Registration , and Records

- Where children are detained, a complete and secure record of the following information should be kept:
 - (a) Information on the identity of the child;
 - (b) the fact of and reasons for commitment and the authority therefore;
 - (c) the day and hour of admission, transfer and release;
 - (d) details of the notifications to parents and guardians on every admission, transfer or release of the child;
 - (e) information about rights and rules upon admission
 - (f) details of known physical and mental health problems, including drug and alcohol abuse
- (Havana Rules 21)

10. Disciplinary Measures

- No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment (CRC 37(a))
- Punishment that may comprise the physical or mental health of children to be abolished (Havana Rules 67-68)
- Reduction of the diet and restriction or denial of contact with the family should be prohibited for any purpose
- Labour should always be seen as an educational tool
- Restrict the use of restraints and the use of force against children in all forms of detention (Havana Rules Sec K)
- Carrying of weapons in any facility where child is detained should also be prohibited (Havana Rules 65)

11. Request and Complain Mechanism

- Right to make requests or complaints to the director of the detention facility and to his/her authorised representative (Havana Rules 75)
- Efforts should be made to establish an independent office to receive and investigate complaints made by children deprived of liberty (Havana Rules 77)

12. Detention Facility Staff

- Staff should be professionally trained in order to carry out their responsibilities effectively; in particular, staff should receive training in child psychology, child welfare and international standards of human rights and the rights of the child (Havana Rules Sec V)

The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(Mandela Rules, 74.2)

Defence for Children International (DCI): Monitoring and Reporting Practical Guide

- Monitoring methodology
- Complaint mechanisms available to children deprived of liberty

<https://defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>

Monitoring methodology

- Developing a monitoring strategy
- Preparation to the visit
- Implementation of the visit
- Follow-up monitoring visits/Actions to enforce

Complaint mechanisms for children deprived of liberty: basic principles

- ✓ **Accessibility:** children should be **informed both orally and in writing** about the existence of internal and external, formal and informal, individual and collective, complaints mechanisms **upon arrival** at the police station and/or place of deprivation of liberty.
- ✓ **Child-sensitivity:** the process for making a request and/or complaint should be explained clearly to a child in a child friendly and comprehensive form and in a language of their understanding
- ✓ **Safety:** Children should have the right to confidentiality when filing a request and/or complaint and in the course of the complaint procedure
- ✓ **Effectiveness:** any request or complaint should be dealt without delay and the children should be aware of the timeframe