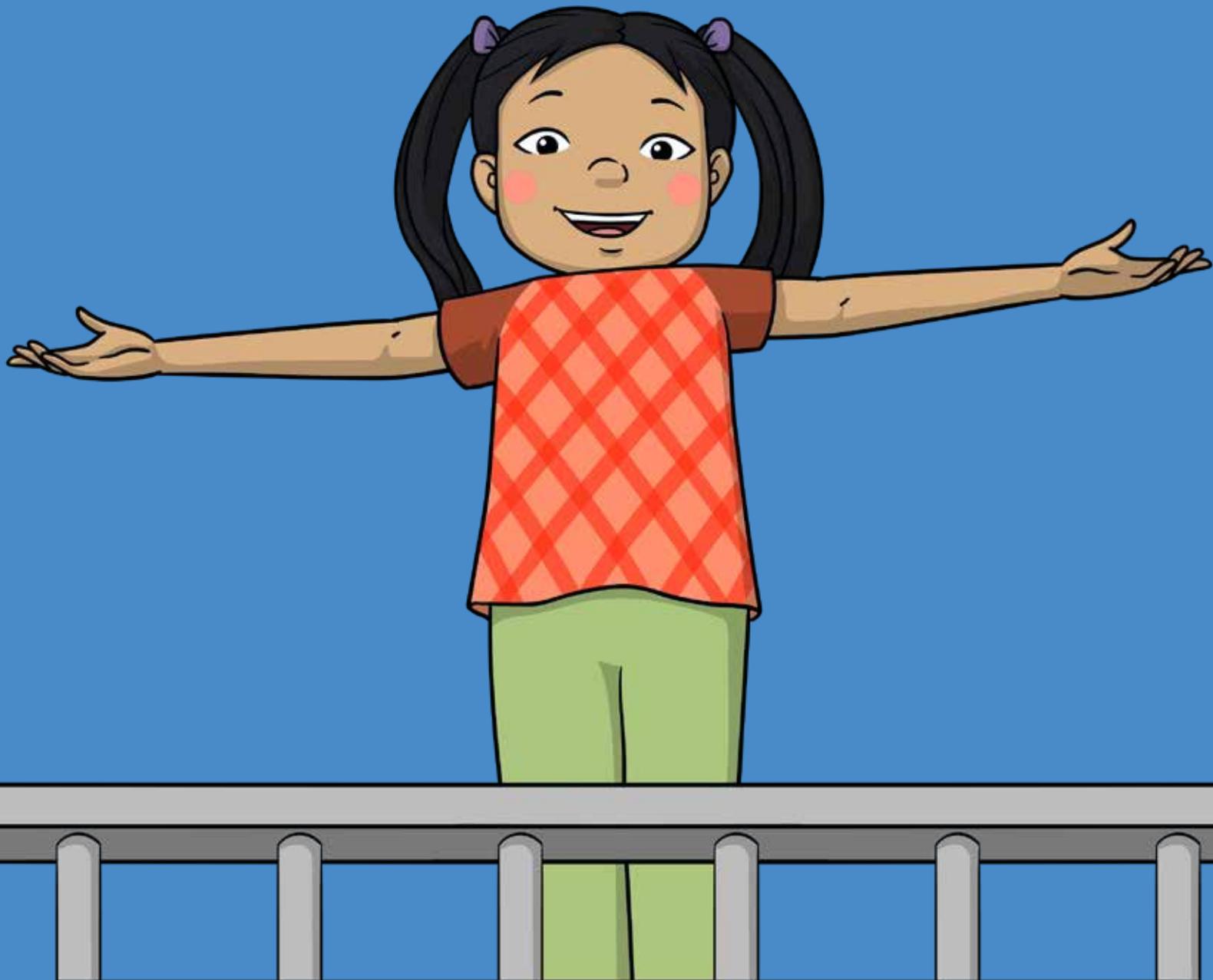




Children speak about the impact of deprivation of liberty: the case of Latin America



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OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON

VIOLENCE AGAINST CHILDREN



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Editor

Emily Booker



1. Introduction

“ *My mother has been imprisoned since I was eight years old. She committed a robbery, she has been there for six years and it has affected me in everything because I was sent to an institution and it is scary.* ”

Uruguay, girl between 13 to 17 years old

The risk of violence faced by children affected by deprivation of liberty has been a priority for the Special Representative of the Secretary-General on Violence against Children since the outset of her mandate in 2009. The breadth and depth of her examination of the issue is presented in four thematic reports: *Prevention of and responses to violence against children within the juvenile justice system (2012)*, *Promoting restorative justice for children (2013)*, *Safeguarding the rights of girls in the criminal justice system (2015)* and *Protecting children affected by armed violence in the community (2016)*. Furthermore the Special Representative played a leading role in developing the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of Crime Prevention and Criminal Justice which was adopted in 2014 by the UN General Assembly. The issue has also been addressed within the framework of extensive country visits, in the Special Representative’s annual reports to the General Assembly and to the Human Rights Council and at high-level global, regional and national dialogues. The Special Representative currently heads the United Nations Task Force on Children Deprived of Liberty.

In an effort to shed further light on the impact of deprivation of liberty on the enjoyment of children’s rights, the Special Representative partnered with UNICEF, the Governments of Paraguay and Uruguay and the Latin American and Caribbean Regional Platform for Children with a Parent deprived of Liberty (NNAPeS Platform) to document the views and experiences of children affected by the deprivation of liberty. A total of 504 children deprived of liberty and those who have parents and caregivers in detention were consulted between mid-2017 and early 2018. This included 265 children, both girls and boys, deprived of liberty in Uruguay and 31 boys in Paraguay. The number of young people interviewed

in Uruguay included 88 between the ages of 18 and 22 and eight others who did not know or did not indicate their age. In addition, 208 children of incarcerated parents, girls and boys between the ages of 6 and 17 living in Argentina, Brazil, Chile, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Dominican Republic, and Uruguay, were also consulted. It is the voices of these young people that directly inform this report and give it a critical and irreplaceable insight into what must be done to protect children from the heartbreaking violence that threatens those affected by deprivation of liberty.

Children deprived of liberty, or with parents who are incarcerated, are among the most marginalized in the world, their lives are marked by violence and fear and their rights routinely trampled. Common for both groups of children is that their lives are framed by a lack of adequate parental support, and by violence, fear, insecurity and social exclusion. Deprivation of liberty is hence intrinsically associated with the cycle of violence. The use of violence is present in their personal stories, in their families and at the moment of arrest and throughout detention. Children who are deprived of liberty experience a pattern of normalization of violence, where violence becomes a way of survival. And for children of incarcerated parents, violence is a constant threat; they face higher exposure to violence at home, in school, in care institutions, in the community and when they visit their relatives in prisons.

The UN Study on Violence Against Children¹ recognized that children in custody of the police or in criminal justice institutions are at a high risk of violence, including as a result of the public perception of them as being anti-social or criminals and because of the prevalence of physically and psychologically punitive approaches. The UN Study also addressed the individual and relationship factors which affect the likelihood that a child could become a victim or perpetrator of violence. Individual factors include the personal history of both the child and his or her family members and relationship factors refer to the way that parents, caregivers and children interact. Deprivation of liberty, either of the child or of his or her parent or caregiver, has a significant impact on every aspect of the child's life and on the way that the child and parents interact.

The UN Study urges States to prohibit, prevent and respond to all forms of violence against children in all settings, including in the family, the justice system and in the community. Specifically in regard to the justice system, States are encouraged to refrain from the detention of young people as much as possible and to only use it for child offenders who are assessed as posing a real danger to others, as a last resort, and for the shortest appropriate period of time.

The UN Study made clear that States must invest in prevention, in evidence-based policies and in programmes to address factors that - like the deprivation of liberty - expose children to higher risks of violence. The UN Study highlighted the primary responsibility of States to support families' capacity to provide children with care and protection. This includes support to all kinds of families in all circumstances. Deprivation of liberty poses very challenging circumstances for families and children and requires specialized governmental action to mitigate its damaging effects.

Both the UN Study and the 2030 Agenda for Sustainable Development strongly emphasize the need to invest in children, to end all forms of violence against them and to build an inclusive, tolerant, just and sustainable world. The 2030 Agenda envisages "a world which invests in its children and in which every child grows up free from violence and exploitation."²

1 United Nations Secretary-General's Study on Violence Against Children (2006). New York: United Nations. <http://www.unviolence-study.org/>

2 UN Resolution, A/RES/70/1, para 9

Guided by the UN Study, the 2030 Agenda and the UN Convention on the Rights of the Child, this current report describes the impact of deprivation of liberty on children, both when they are deprived of liberty themselves and when they are affected by the deprivation of liberty of a parent or a caregiver. This report identifies deprivation of liberty as a significant cause of violence against children. It also emphasizes that children's rights to protection against violence obliges States to ensure they have access to a specialized justice system when they are in contact with the law and that children who have imprisoned parents or caregivers require special protection. The children themselves strongly urge States to ensure that children's rights and their best interests are always a primary consideration in their care and treatment when affected by their own incarceration or that of their parents.

1.1 Background and objectives

The report of the Special Representative, Prevention of and responses to violence against children within the juvenile justice system, found that there is a worrying trend for children to be placed in institutions, rather than minimizing the risk of violence against children by ensuring effective prevention. The report also found that violence at home and within the community, and poverty and risky survival activities, propel children into the juvenile justice system, and that detention in the criminal justice system is often used as a substitute for referral to child care and protection institutions. These findings are supported by the findings of this current report.

In its 2014 resolution, the United Nations General Assembly invited the Secretary-General to commission an "in-depth global study" on children deprived of liberty, and to include "good practices" and "recommendations for action" to effectively realize "all relevant rights of the child"³, including supporting the implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice⁴. The resolution recommended that the UN Global Study on Children Deprived of Liberty should capture the views and recommendations of children.

This report pursues the following objectives:

- a) To document the experiences and voices of children affected by deprivation of liberty
- b) To help strengthen national child protection systems and the justice system, as well as law enforcement and prisons systems, in order to prevent and address the impact of the deprivation of liberty on children and to ensure their protection from violence

³ Resolution A/69/157, para 52 (d)

⁴ UNODC, *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, (2015), United Nations, NY

1.2 Methodology

This report builds upon the Convention on the Rights of the Child, the 2006 UN Study on Violence against Children, existing international human rights standards and the extensive work of the Special Representative developed through research, advocacy, consultations and on-site visits, including through the four thematic reports mentioned above.⁵

For the purpose of this report, a methodology for consultations, individual interviews and focus group discussions was developed based on previous work on child participation by the Special Representative of the Secretary General on Violence against Children. Strict ethical principles and child protection safeguards were ensured at all times, including that interviews were entirely confidential.

Information gathered included both qualitative and quantitative data on the impact of deprivation of liberty on the affected children. With regard to children deprived of liberty, the process specifically assessed the drivers of deprivation of liberty, the type of offences, the conditions of deprivation of liberty, the exposure to violence, the existence of protective and supportive environments, access to education, recreational activities and child-friendly facilities, staff attitudes and skills, access to health services and to legal defence, the understanding and availability of alternatives to detention and reintegration opportunities.

Child-friendly questionnaires were developed with the support of UNICEF, the Faculty of Psychology at the University of the Republic, Uruguay, the Department of Child Participation of the National Secretariat of Children and Adolescents in Paraguay and the Regional Platform for Children with an Adult deprived of Liberty (NNAPeS Platform).

⁵ See <https://violenceagainstchildren.un.org/> for all publications under consolidating evidence tab



2. Overview of relevant international standards

There are several international standards that relate to children who are in contact with the national justice system, either as potential offenders, victims, witnesses or as a result of the incarceration of a parent or caregiver. These standards set up principles and obligations that should guide States in safeguarding the rights of children affected by deprivation of liberty.

The main international standard for children is the Convention on the Rights of the Child (CRC). It recognizes children's right to a special protection because of the special conditions of the child as a rights' holder due to the child's vulnerability and his or her dependence on adults in order to exercise certain rights, his or her maturity, progressive growth and development and in many circumstances the lack of awareness of his or her human rights and of the means to protect their rights. For these reasons, the situation of children cannot be likened to that of adults. The CRC concludes that juvenile justice systems should be guided by the desirability of promoting the child's reintegration into society⁶ and states explicitly that detention of children should only be used as a measure of last resort and for the shortest appropriate period of time.⁷ It also confirms that general fair trial principles such as the presumption of innocence, the right to information and the right to legal counsel are valid also for children.⁸

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985) includes provisions for children regarding diversion, i.e. the measures to deal with juvenile offenders without resorting to a formal trial. The purpose of keeping young people away from the formal justice system is to hinder the negative effects of subsequent proceedings within the juvenile justice administration. Diversion often includes redirection to community support services. Moreover, the principle of detention as a last resort is confirmed and emphasized in the case of pre-trial detention. Several alternatives to detention are listed such as close supervision, intensive care or placement with a family

6 Article 40. 1.

7 Article 37 (b).

8 Article 40.

or in an educational setting or home.⁹ Other non-custodial options for sentencing can be found in the United Nations Standard Minimum Rules for Non-Custodial Measures (“The Tokyo Rules”, 1990).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”, 1990) establishes clear guidance on the management of deprivation of liberty, reintegration and disciplinary measures. The United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”, 1990) sets up detailed guidance on how States should prevent the involvement of children with the justice system and how States should support families, provide quality education, and work with the community and the mass media to ensure effective prevention.

The United Nations Guidelines for Action on Children in the Criminal Justice System (“The Vienna Guidelines”, 1997) highlights the urgency of ensuring that juvenile justice systems are designed and established as part of the national child protection system, and the importance of establishing independent monitoring mechanisms to oversee the conditions of detention. And the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of Crime Prevention and Criminal Justice adopted in 2014 has set up a platform for cooperation aiming at reforming criminal justice systems to safeguard children’s rights and address children’s concerns at all levels.

Some other generally applicable instruments that, whilst they do not pertain specifically to children in the juvenile justice system, are relevant due to their protection of persons deprived of their liberty.

- The United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009);
- The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) that requires States to make restorative justice programmes available at all stages of the criminal justice process;
- The Standard Minimum Rules for the Treatment of Prisoners (revised version of 2015) that compels States to separate young prisoners from adults and requires States to minimize any differences between prison life and life at liberty;
- The United Nations Convention Against Torture (“UNCAT”, 1984)
- The Optional Protocol (“OPCAT”, 2002) prohibit the use of torture and inhuman and degrading treatment; and
- The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“The Bangkok Rules”, 2010).

The UN Committee on the Rights of the Child has interpreted the CRC Art 40 (3) to impose an obligation on States to establish a minimum age of criminal responsibility in national law and has recommended that the minimum age should be set at 14 years of higher.¹⁰

All States’ apparatus that are in contact with children should integrate a child rights’ approach into their systems and should coordinate closely with child rights’ authorities, including prisons that incarcerate parents or other caregivers. Effective integration of a child rights’ approach into the justice system includes policies, regulation, budgetary allocations and data

⁹ Article 40. 4.

¹⁰ CRC/C/GC/24 <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

systems, as well as strengthening institutional capacity and establishing child-sensitive procedures.¹¹ By implementing these measures, States can mitigate the negative impact of deprivation of liberty on children, both for those children who are deprived of liberty themselves and for those children whose parents have been incarcerated.

In 2009, the United Nations General Assembly adopted resolution 63/241¹² calling on States “to give priority consideration to non-custodial measures when sentencing or deciding on pretrial measures for a child’s sole or primary caretaker, subject to the need to protect the public and the child, and bearing in mind the gravity of the offence”. In 2010, the Salvador Declaration of the 12th UN Crime Congress highlighted the fundamental importance of addressing the safeguard of the rights of children of incarcerated parents.¹³ In 2011, the Committee on the Rights of the Child dedicated its Annual Day of Debate to “Children of incarcerated parents”¹⁴ and formulated concrete recommendations to safeguard the rights of such children.

The Bangkok Rules (For the Treatment of Women Prisoners and Non Custodial Measures) also include specific provisions on the protection of children of prisoners including provisions to ensure that non-custodial measures are prioritized for women who are the sole primary caregivers of children.

At the regional level, article 30 of the African Charter on the Rights and Welfare of the Child makes an explicit reference to the protection of children of incarcerated parents and caregivers:

States should provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of breaking the law.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has established that article 30 also covers children affected by the deprivation of the liberty of their parents and primary caregivers (including grandparents and foster parents). The African Committee has also recognized that parental incarceration has a negative impact on the protection of children’s rights and some of the repercussions can be compared to those resulting from death or divorce. The European Parliament has also emphasized the negative impact of the deprivation of liberty of parents and caregivers on children.¹⁵

In the Inter-American Human Rights System, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas¹⁶ recognizes that the family dimension of the deprivation of liberty needs to be addressed by States to protect the rights of persons deprived of liberty. In doing so, the Principles indicate that when States decide on deprivation of liberty this “shall have as an essential aim the reform, social readaptation and personal rehabilitation of those convicted; the reintegration into society and family life”. The family dimension of the detainee whether a juvenile who is a parent himself or herself, or of an adult responsible for children, has to be given special consideration in trial.

11 See Economic and Social Council resolution 2009/26, entitled ‘Supporting national and international efforts for child justice reform, in particular through improved co-ordination and technical assistance’, adopted on 30 July 2009.

12 UNGA Resolution A/63/241 <https://undocs.org/A/RES/63/241>

13 Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, para 26 https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf

14 Committee on the Rights of the Child Report and recommendations of the Day of General Discussion, Children of incarcerated parents (2011) <https://ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

15 The European Parliament resolution of 27 November 2014, 2014/2919(RSP), para 13

16 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of 2008, <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf>

Principle 2 refers to the registration of persons deprived of liberty and it compels States to register the most complete personal data of those deprived of liberty, including information about family members. This is an important measure to help States to collect data about children deprived of liberty, and who have incarcerated parents and caregivers, so States are well equipped to inform their specific public policies in safeguarding the rights of children in such situations.

Principle 4 also recognizes that the family is an element that has to be taken into consideration when deciding alternative or substitute measures for deprivation of liberty. In doing so, States should promote “the participation of the family in such a way as to complement the intervention by the State”. This is an important provision that reinforces the right of children to be heard in trials when their rights are affected by deprivation of liberty.

2.1 National legislation

In its report, *Juvenile Justice and Human Rights in the Americas*¹⁷, the Inter-American Commission on Human Rights (IACHR) assessed States’ compliance with international human rights’ law in the area of juvenile justice and recognized that important measures have been implemented in Latin America to develop a special legal framework in the area of juvenile justice and to bring practices, institutions and facilities into line with international standards. For example, in countries like Paraguay and Uruguay, the minimum age of criminal responsibility has been set at 14.

Nevertheless, as the IACHR noted, there is a significant gap between the legal framework and the reality for children in contact with the justice system. Over the years this has been a constant concern for the Special Representative and has been addressed through field visits, steady engagement with Member States and continuous technical cooperation.

Overall, as illustrated by the IAHRRC report, alternatives to detention are rarely used in most of the States in the region, staff in the judicial system lack adequate skills and training, and most judicial systems in the Americas resort to deprivation of liberty both before trial and after conviction.

In countries like Uruguay, the legal framework establishes that the judge is entitled to decide not to pursue court proceedings at any point in the process and in any type of proceedings. Uruguay’s legislation allows clear alternatives to detention. However, as highlighted by the IACHR, these alternatives are used in less than 1% of cases. Uruguayan legislation requires that the maximum period a children can be held in a police facility is 12 hours, and that gives the police a maximum of two hours to inform the court of the detention.

In 2014, Paraguay launched its national plan for adolescents in conflict with the law, which includes a restorative approach towards young people involved.¹⁸ The national legislation provides that deprivation of liberty be the measure of last resort and provides a set of alternatives to detention. It also states that the maximum length of deprivation of liberty in cases of severe offences should be eight years¹⁹.

As highlighted by international human rights supervisory bodies, including the mandate of the Special Representative, most countries in the region still have to translate their international obligations into reality in the daily lives of children affected by deprivation of liberty. The findings of this report support this conclusion.

17 IACHR OEA/Ser.L/V/II. Doc. 78 (2011) <http://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf>

18 Paraguay Ministry of Justice, <http://www.ministeriodejusticia.gov.py/areas-tematicas/justicia-juvenil-restaurativa>

19 Paraguay Code of Children and Adolescents, articles 200, 207



3.

Key findings

Juvenile justice processes operate according to the premise that young people are fundamentally different from adults in terms of their level of responsibility and in their potential for rehabilitation. Under article 40.1 of the Convention on the Rights of the Child the juvenile justice system should ensure that “every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”. The primary goal of the juvenile justice system is to support the offender in skill development, and in rehabilitation and treatment, with the end goal being their successful reintegration into the community. Unfortunately, it appears that the reality for most juvenile offenders is still far from this ideal. Currently, there is a lack of adequate policies, regulations and mechanisms designed to mitigate the impact of deprivation of liberty on children. Restorative programmes and diversion are still rare and in many cases judiciary decisions concerning adults who are parents do not consider the impact that incarceration has on the best interests of their children.

The Special Representative, in her thematic report *Promoting restorative justice for children*,²⁰ has supported a shift in the way governments perceive and respond to an offence by a juvenile, from a punitive approach towards one that addresses causes and consequences. This requires a system where juvenile offenders are diverted from the formal justice system and instead makes use of a restorative justice approach. The report shows extensively how restorative justice programmes provide significant benefits for the children involved, for the victims, and for society in general.

Restorative justice provides an alternative to children’s deprivation of liberty and, in turn, safeguards children’s freedom from violence, abuse and exploitation. Research also shows that parents who have assisted their child through a restorative justice process show less inclination to resort to violence as a way of disciplining their child. Children who participate

20 Office of the Special Representative of the Secretary General on Violence against Children, *Promoting restorative justice for children*, (2016) https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/publications/7._promoting_restorative_justice.pdf

in restorative programmes show fewer tendencies towards anti-social behaviour in the community and at home. They are more likely to stay away from gang life and, consequently, they are less likely to become victims of armed or gang-related violence. In many countries this is a matter of life or death. They also demonstrate significantly lower rates of recidivism compared to other groups. Where punitive responses fail in reforming children's attitudes toward offending, the participatory dimension of restorative justice provides children with the opportunity to fully grasp the extent of the harm done and to take responsibility in a constructive manner. Despite this, none of the children consulted for this study made any reference to restorative justice programmes offered by the system.

This report confirms the findings of previous reports, that violence, fear and insecurity plague the lives of children affected by deprivation of liberty. Although the impact on children deprived of liberty and on children of incarcerated parents has different nuances, the consequences of deprivation of liberty are always negative and have long-lasting consequences in the lives of children.

3.1 Socio-economic factors

3.1.1 Poverty and lack of access to social services

A common trait for the children interviewed for this report is a tendency to come from families in situations of poverty and social exclusion, and from environments where they are surrounded by violence in various forms. The situation for these already vulnerable children is further aggravated by being deprived of liberty or having one or both parents incarcerated.

These children usually live in impoverished neighborhoods. The table below shows that a majority of children deprived of liberty in Montevideo, the capital of Uruguay, comes from municipalities A and D which have the highest number of persons living below the poverty line in the country.

“ *The lives of these children are marked by violence in the home, at school and in the community. Many children tell stories of either being victims of violence themselves or witnessing severe violence against others.*

In my family my father yelled at my mother, my mother was always about to cry and my family was a disaster. That's why my mom put my dad in jail, so he would not bother her again. ”

And how do you feel now?

“ *Happy to be with my mother who is happy because my father is the worst. ”*

Nicaragua, girl between 6 to 9 years old

And you, what do you like about her?

“ *That my sister-in-law does not mistreat me.* ”

Dominican Republic, girl between 10 to 13 years old

Number of children deprived of liberty by municipality of residence in Montevideo, Uruguay

Municipality	Girls	Boys	Total
A	1	48	49
B	0	4	4
C	0	4	4
CH	0	0	0
D	0	35	35
E	1	12	13
F	1	17	18
G	0	16	16
S/D	0	4	4
Total	3	140	143

Source: UNICEF Report on the consultation with adolescents deprived of liberty in Uruguay, June 2018

Another common denominator is the lack of a nurturing environment. Many children are raised in homes without affection or protection and with limited access to the basic necessities of life. Parents who are under pressure to find adequate food and shelter for their children, with scarce support from the State, have little time to show them love and affection. In many cases, children belong to families where there are numerous siblings living with extended family members such as grandparents, uncles and cousins and where domestic violence is a common occurrence. Corporal punishment too is part of their lives. According to UNICEF, in Latin America and the Caribbean two out of three children between 2 and 4 years old suffer some kind of violent discipline in their home and one out of ten adults believe that physical and humiliating punishment is necessary to educate a child.

incarcerated parents end up living in care institutions and although there is no exact data on how many children of incarcerated parents are in such institutions, UNICEF’s data indicates that 240,000 children in the region live in institutional care centres and that the majority are there as a result of violence and poverty. Some children deprived of liberty mentioned that:

Some children stated that they live without their parents, or they live and/or work on the streets. Many children of

There are some children who do not have families anymore; they have no one outside the centre. If you leave the centre, no-one wants to welcome you in their home because you were here.

Children also tell of limited access for them and their families to social services, health, education, housing, sanitation and protection. One child from the Dominican Republic declared:

“ *I like to move because sometimes houses are unsafe. Homeless people are sometimes bad. The houses get flooded. Now we moved to another house that does not get flooded.* ”

Dominican Republic, girl between 6 to 9 years old

In some cases, criminal behaviour is passed on directly from the parents to the children. One incarcerated child explained:

“ *My mother was in prison. My father was locked up in Chile for murder and then he moved to Uruguay and was detained for scamming. My father taught me that we should not steal from people on the street, instead, we should rob stores and businesses because they have money.* ”

3.1.2 Drugs and alcohol

The presence of drugs and alcohol is common in the lives of these children. In many cases, adults and children are deprived of liberty as a result of their involvement in the drug trade, most often as low-ranking dealers. In other cases, children experience violence as a result of the consumption of drugs and alcohol. Children grow up witnessing drug trafficking as a way of getting an income and get caught up in harmful consumption as a way of escaping the harsh realities of their lives. The story of one child participant with a mother who tried to leave the alcoholic father illustrates this well:

“ *My father yelled at my mum and I felt guilty...he was drunk...my father tried to kill my mother...my father threatened my mother and he asked her to meet him in a little park or he would kill us. Then my mother would always agree to see him again.* ”

Uruguay, child between 10 to 12 years old

A 2015 study of drug policies and juvenile justice in Latin America revealed the extent to which drugs are the reason for young people’s incarceration.²¹ In Brazil, where most criminal cases overall relate to drugs or property crime, nearly 27% of adolescents in detention were locked up for drug trafficking. In Colombia, 25-30% of adolescent prisoners have been convicted of producing, carrying or trafficking drugs. In Paraguay, 85% of adolescents detained in the juvenile justice system are there for using crack cocaine, even though using (as opposed to selling) drugs is not officially a crime.²²

The penalties for offences related to drugs are disproportionately high in some countries – as high as the sentences for homicide. In fact, a 2012 study of drug-sentencing in seven Latin American countries found that three – Bolivia, Ecuador and Mexico – had maximum penalties for drug trafficking exceeding the maximum for homicide.²³ In Bolivia, Ecuador and Peru, the minimum sentence for drug trafficking was also higher than the minimum for homicide. A few grams can be the legal difference between the offence of possession for personal use and the offence of trafficking.

21 Defensa de Niñas y Niños internacional (DNI) y Red de Coaliciones Sur (2015): “Justicia Penal Juvenil, Políticas de Drogas y Seguridad Ciudadana”, Red de Coaliciones Sur, Defence for Children International and Observatorio Regional de Justicia Penal Juvenil.

22 Ibid p. 10

23 Uprimny Yepes, R, Guzmán, DE & Parra Norato, J (2012). La Adicción Punitiva: La desproporción de leyes de drogas en América Latina, Bogota: Centro de Estudios de Derecho, Justicia y Sociedad and Dejusticia.

The Organization of American States (OAS) Report on Drug Use in the Americas 2019²⁴ indicates that children as young as year 8 are engaging in drug use. The OAS Report also shows that there is a systematic decrease in the use of tobacco while cannabis use is increasing in most countries that have trend data, and half the countries in the Americas show increases in cocaine use. The OAS Report also points out that women in some countries are now using certain drugs either at the same or at higher rates than men.

Globally there is a higher proportion of women than men in prison for drug-related offences. The OAS report, *The Drug Problem in the Americas*, found that women in prison in the region on non-violent micro-trafficking charges totaled almost 70 percent of all women deprived of liberty. Most of them were caring for children when they committed the offence, many were heads of single-parent households, and while incarcerated, these women leave their children in the care of another relative or in care institutions.²⁵ This indicates the need to consider the impact of deprivation of liberty on childhood when assessing the impact of drug regulations and policies on children. Punitive approaches to drug control have shown to have a negative impact on children, with the separation of families as one particularly harmful consequence.

Hence, the impact of deprivation of liberty on children is closely connected with the responses of States to dealing with drugs and alcohol. States therefore need to carefully consider their obligations to safeguard the rights of children when they implement laws and policies related to drugs and alcohol. There is a growing body of opinion that promotes the idea of regulating drugs instead of prohibiting them, with the idea that this would reduce the sums of money and consequently the levels of violence involved in illegal drug trafficking as this violence significantly affects women, children and young people.²⁶ For example, Alicia Barcena, Executive Secretary of the United Nations Economic Commission for Latin America and the Caribbean, has stressed that it is high time for Latin America to have a serious debate about the legalization of drugs in the region.²⁷

3.1.3 Small arms and light weapons

Access to small arms and light weapons are closely connected to the deprivation of liberty. The availability of firearms fuels violence and organized crime. It is estimated that around 75% of the world's guns are in the hands of civilians.²⁸ According to the NGO, Small Arms Survey, in 2016 firearms were used to kill about 210,000 people—38% of all victims of lethal violence. In 2016, Latin America and the Caribbean recorded high proportions of firearm deaths with up to 50% of the lethal violence committed with a firearm in some countries, as opposed to about 12% in countries with the lowest rates.²⁹ In this regard, the Inter-American Commission on Human Rights outlined that:

in some countries, a pervasive lack of security and violence have meant that numerous children have lost one of their parents and for many one of the parents is in prison. The participation of the family, or of one or more of its members, in illegal activities also constitutes a risk factor for the child because it learns to regard such a situation as natural and routine.³⁰

24 Organization of American States (OAS). Report on Drug Use in the Americas (2019). http://www.cicad.oas.org/Main/ssMain/E-report_ENG_2019/mobile/index.html

25 Organization of American States (OAS) *The Drug Problem in the Americas*. http://www.oas.org/documents/eng/press/Introduction_and_Analytical_Report.pdf

26 Werb, D, Rowell, G, Kerr, T, Guyatt, G, Montaner, J & Wood, E (2010). *Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review*. Vancouver: International Centre for Science in Drug Policy

27 See <http://cronica.gt/cepal-a-latinoamerica-le-convendria-legalizar-las-drogas/>

28 Small Arms Survey, <http://www.smallarmssurvey.org/nc/salw/about/background/pointer/3.html>

29 Small Arms Survey, *Global Violent Deaths (2017)*, Executive Summary, http://www.smallarmssurvey.org/fileadmin/docs/M-files/Armed_violence/Global-Violent-Deaths-2017-ExSum.pdf

30 Inter-American Commission on Human Rights, *Thematic Report Violence, Children and Organized Crime*, (2015), para 209 <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>

This clearly illustrates the connection between accessibility to arms, violence and the number of children left without parental care as a result of the deprivation of liberty.

3.2 Children deprived of liberty

3.2.1 Detention as last resort

Even though international standards make clear that juvenile offenders should only be detained as a measure of last resort and should be dealt with through means other than judicial proceedings to the greatest degree possible, many juvenile justice systems still resort to deprivation of liberty as the main response to offenders. Moreover, a large proportion of children are detained for minor offences and are first-time offenders who should not, according to international standards, be placed in justice institutions at all. In a particularly stark example, an adolescent from Paraguay who spoke out about family problems at home was incarcerated when his relatives filed a complaint against him:

“ *My father took me to the police station and from there I came here (to the institution).* ”

Pre-trial detention, in particular, should be limited to exceptional circumstances³¹, however it continues to be the first measure of response to infringements by young people in many countries. In Paraguay, 83% of incarcerated children are in pre-trial detention. In Uruguay, 20% of adolescents deprived of liberty are in pre-trial detention for a maximum period of 150 days. Moreover, arrests are often made in a violent manner and children are placed in police facilities together with adults and without being informed of the reasons for their apprehension.

3.2.2 Conditions of detention

In general, cells are overcrowded, with little light or ventilation, and inmates have no access to warm water and sleep on beds and mattresses that are falling apart. In many cases children had to defecate in their own cells and did not have access to water. Some children eat in their own cells which contributes to their isolation from their peers. Often children sleep on mattresses on the floor and families have to do the laundry outside the centre. Some children mentioned that the detention facility did not offer adequate conditions to safeguard their right to privacy. There were examples of children who were compelled to stay in their cells for 22 and 23 hours daily. In some cases, conditions are so deplorable that it can be characterized as a process of dehumanization for the children.

Does your cell have?

	No	Yes
Shower	192	73
Sink	106	159
Toilet	95	170

Source: UNICEF Report on the consultation with adolescents deprived of liberty in Uruguay, June 2018

31 Convention on the Rights of the Child article 37 b Committee on the Rights of the Children General Comment 10 Children's Rights in juvenile justice CRC/C/GC/10, 25 April 2007, paras 78 - 81

Physical, mental and sexual violence are prevalent in the places where children are detained to a degree that violence has been normalized as a way of survival. Violence amongst peers and between adults and children is accepted and tolerated as a form of discipline, as a form of self-defence and as form of survival. Children live with a feeling of being defenceless and also become indifferent to violence. Trust does not exist:

“ *I have no friends here, I only have companions here.* ”

Adolescent from Uruguay

When asked about how they are treated by public officials responsible for their protection and care, the general response was that public officials and staff employed in institutions lack appropriate skills to even establish a minimum level of rapport with children and young people. Often, public officials and staff use violence as a form of discipline or communication. Adolescents deprived of liberty stressed that staff need adequate skills to promote dialogue with children and to treat them well.

3.2.3 Lack of access to quality education and vocational training

Access to education, recreation and health care are key components for the successful reintegration of juvenile offenders but such access is restricted in many places of detention. Many of the adolescents deprived of liberty have a history of learning difficulties, absenteeism and school drop-out and they are therefore behind in their education in comparison with adolescents of the same age. As a result, they need extra support for their education but instead only receive three hours of classes four days per week in many cases. The adolescents who were interviewed were very vocal about their interest in going to school. One adolescent declared that he was illiterate and mentioned that he had a teacher that had supported him for 15 days but then never came back. He said:

“ *I keep asking the Director of the Centre when the teacher is coming back, he says she will come back, but she never comes.* ”

Many of the interviewed children who were deprived of liberty in Paraguay speak Guarani or Jopara as their mother tongue and there was one adolescent deprived of liberty from the indigenous community, Toba Qom, who could not access education while in detention because he did not speak Spanish. These findings reveal the need to ensure that services are fully coordinated within the juvenile justice system and accessible for all children, taking into account their ethnicity and language.

A number of adolescents also indicated that most of the vocational programmes offered by juvenile institutions were inadequate because activities were limited to those such as cooking, gardening and carpentry. Instead, they wished to have access to a wider range of activities including sports, mechanics, grammar, nursing, training on legal issues and other similar programmes that could help them develop skills to build their futures.

3.2.4 Lack of access to health services, with specific focus on mental health services

Mental health problems are prevalent among young people deprived of liberty. There is also a lack of comprehensive and adequate responses to such issues. Treatment is often limited to psychiatric medication and random therapy.³² When the adolescents described the negative impact that incarceration has on them, they mentioned depression, sleeping disorders and other emotional and mental health problems. They also talked about self-harm and even suicide attempts.

“ *He had many scars and scratches on his arm. He said he felt so bad in the centre. He could not sleep at night.* ”

He tried to commit suicide by hanging himself. He was unconscious. He was depressed. ”

“ *He had scars and scratches all over his body. He said that when he is depressed he hurts his body with glass.* ”

A 2008 UNICEF study conducted in Uruguay showed that 63.9% of adolescents deprived of liberty were taking sleeping pills.³³ In this current study the number was only slightly lower; 56% of adolescents said that they were taking psychiatric medication and two out of three said that they take this medication to sleep.

Most children had access to nurses but sometimes there were no medicines. In some cases, there were no medicines available in the juvenile institution while at other times access to health care was withheld as a form of punishment. An adolescent from Paraguay stated that:

“ *sometimes if you misbehave, and you are in pain, they don't allow you to go the nurse to punish you.* ”

The findings also show that many adolescents have limited access to information and services on sexual and reproductive rights. When asked about sexual and reproductive rights, a general reply was “What is that?” (adolescent from Paraguay), “never, no-one has come to talk about it” (adolescent from Paraguay). In Uruguay, only 10% of adolescents received information about sexual and reproductive rights but all girls declared they had seen the gynecologist at least once during incarceration.

32 For more information on the use of psychiatric medication see: The Committee against Torture (CAT/C/URY/CO/3), the Special Rapporteur on Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (see A/HRC/13/39/Add.2) and Committee on the Rights of the Child, Concluding observations, CRC/C/URY/CO/3-5.

33 UNICEF and National Movement Gustavo Volpe Privados de libertad. La Voz de los Adolescentes (Deprived of Liberty. The voice of adolescents), (2008), p 60

3.2.5 Limited access to legal counsel

In many cases, children do not have regular contact with their legal defenders or with representatives from independent human rights mechanisms. In Uruguay, only half of the adolescents interviewed had been informed of the charges against them. In Paraguay, only those who had been sentenced were in regular contact with judges, ombudspersons or representatives of other national organizations such the national mechanism for the prevention of torture. In Uruguay, only 27% of the interviewed adolescents knew who their public defender was. Among those who were in contact with their public defender, seven out of ten felt that they did not have enough time with this person.

Do you have contact with your legal defender?

“ *Never. The last time I saw him was in the Palace of Justice.*

No, I do not know my legal defender. I have not met him/her.

No, I know nothing, I do not know how long I will be here...I want to know when I will have a hearing to be able to keep up hope ”

When the adolescents were asked about contact with independent national human rights mechanisms, one of them replied:

“ *I do not want to talk to them...because they only come to listen if you are beaten, and I do not want to tell them.* ”

3.2.6 Particularly vulnerable groups

Overall, the impact of deprivation of liberty is aggravated by the gender, sexual orientation, ethnicity or disability of the young offender.

Due to the relatively low numbers of girls deprived of liberty, many countries do not make special arrangements or provide separate facilities for girls.³⁴ For example, in Uruguay, among 265 children deprived of liberty in twelve justice facilities for children 257 (97%) were boys while eight (3%) were girls. International standards prescribe separation between adults and children as well as between boys and girls. It is evident that boys and girls are affected by deprivation of liberty in different ways and there is a need to ensure gender and child-sensitive approaches to address the impact of deprivation of liberty on all children. This was also apparent in the countries studied in this report.

³⁴ Office of the Special Representative of the Secretary General on Violence against Children, Safeguarding the rights of girls in the criminal justice system, (2015) https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/safeguarding_the_rights_of_girls_in_the_criminal_justice_system_1.pdf

Lesbian, gay, transsexual, bisexual and intersex (LGTBI) children in detention are particularly exposed to severe forms of discrimination and sexual violence by peers and by adults. One child who was interviewed described how one LGBTI child was separated for his own protection because “everybody caught him and raped him”. At times, when LGBTI children are given the opportunity to be involved in educational activities in the centre, they are mistreated. In one of the centres a transgender adolescent was helping in the coordination of fourth grade but she stopped doing it because of the lack of respect from her peers. She declared:

“ *... but I cannot stand it. I want to quit the coordination of fourth grade....I would help the teacher to organize...but I cannot stand this anymore, because my classmates do not respect me and there is a very difficult group this year.* ”

3.3 Children with an incarcerated parent or caregiver

When a family member is incarcerated it has negative effects on the already vulnerable family environment, the family economy and care of the children.

“ *My family did change a lot when my stepfather was taken to jail. My mother no longer ate, she stopped doing things...and was going out to sell and all that, and did not come back until one or two in the morning...Nobody took care of my youngest brother, he was left alone.* ”

Mexico, girl between 12 to 16 years old

Children feel abandoned by their parents and invisible to the State.

“ *No, poh, when your parents are in prison, but who is going to help you?* ”

Chile, child between 13 to 17 years old

“ *You are a person but it is like you don't exist for the society.* ”

Uruguay, child between 13 to 17 years old

The deprivation of liberty of a parent or caregiver also exposes children to the risks of child labour, institutionalization and life on the street, as well as to situations of violence, abuse and exploitation.

“ *My grandmother did not have money to buy me uniforms or a backpack and I had to go to the market to sell with my grandmother during all that time.* ”

Nicaragua, girl between 6 to 9 years old

“ *I went out to chop wood in order to help my mother and then sold it together with a partner.* ”

Uruguay, boy between 13 to 17 years old

It is of course even more difficult for children from single-parent families. They are often uprooted, emotionally neglected, abandoned and, especially when the mother is deprived of liberty, at increased risk of institutionalization.

“ *My mother has been imprisoned since I was eight years old. She committed a robbery, she has been there for six years and it has affected me in everything because I was sent to an institution and it is scary.* ”

Uruguay, girl between 13 to 17 years old

Furthermore, when mothers are imprisoned it is usually the eldest daughter who must take full responsibility for her siblings at home.

“ *I take care of my baby brother, I come to the youth centre and then I start cleaning.* ”

Uruguay, girl between 13 to 17 years old

The need to work and earn an income, the lack of routine and authority in the home, and the lack of capacity of the educational system to accommodate these children contribute toward increasing learning difficulties, absenteeism and school drop-out rates.

“ *I didn't go to school until my dad and my mom came out of jail.* ”

Nicaragua, child between 6 to 8 years old

A parent's incarceration also limits children's recreation opportunities and their participation in play and in educational and social activities.

“ *I don't go out on the street because I help my mom in the fry-up that she has from Monday to Sunday – which is every day.* ”

Nicaragua, girl between 13 to 16 years old

Children's right to health is also affected. Children describe feelings of sadness, loneliness, pain, fear, shame, hatred and anger which can cause situations of severe stress that impact on brain development.

“ *The entire family feels sad and depressed because they feel lonely.* ”

Argentina, boy between 6 to 9 years old

Overall, children between 6 to 12 years old express feelings of sadness because of the absence of a family member, while adolescents express mostly feelings of anger, in some cases as a consequence of the violence used by the relative who is in prison.

However, in cases when the incarcerated parent was the source of domestic violence, children can also feel liberated.

“ *In my family my father yelled at my mother, my mother was always about to cry and my family was a disaster that's why my mom put my dad in jail, so he would not bother her again.* ”

And how do you feel now?

“ *Happy because being with my mother I'm happy because my father is the worst.* ”

Nicaragua, girl between 6 to 9 years old

The right to education is also compromised.

“ *I didn't go to school until my dad and my mom came out of jail.* ”

Nicaragua, between 6 to 8 years old

“ *In my neighbourhood, people tell me that my dad should stay in prison forever and he should never be released. A girl tells me that my father should die in prison.* ”

Dominican Republic, child between 6 to 9 years old

“ *This is like to keep holding something, without talking. Only your family knows what you experience, you do not tell it because of fear of being discriminated against.* ”

Argentina, child between 13 to 17 years old

Children also experience violence as witnesses or as direct victims at the moment of apprehension or arrest of their relative.

“ *I was sleeping without a T-shirt and they kicked me out on the street like that and they beat me.* ”

Uruguay, child between 13 to 17 years old

“ *I was 7 years old and they searched my body. There were three of us, my two brothers and me, they searched everybody, they threw everything out of the house, they did not find anything. It is not nice that – law enforcements officials - do that. We were sleeping.* ”

Uruguay, child between 10 to 12 years old

“ *When they arrested my father, I was at home, my mother was at work. They entered the house and started shouting, they caught my brother...I was crying a lot and after that they caught my brother and took him with them.* ”

Panama, child between 6 to 9 years old

“ *I don't feel any resentment against people who arrested my uncle, they did not identify themselves, they did not show any respect for any order of arrest.* ”

Mexico, child between 14 to 17 years old

“ *They should not point a gun at children, when they do arrest people. They should at least ask children to look to the wall.))*

Uruguay, child between 13 to 17 years old

Children of incarcerated parents or caregivers also experience violence when they visit their relatives in prison. In most cases the experience of being in contact with law enforcement officials is negative and it is marked with violence and disrespect. When they visit their parents or caregivers in prison, the experience is described by children as traumatic.

“ *They are all arrogant, they treat us like trash. That’s why I do not go, they treated me like garbage, they don’t have principles and are not educated, they are thieves with nametags on their chests. They treat us as if we were prisoners too.))*

Nicaragua, child between 13 to 17 years old

Children describe the way that inspections are conducted in prisons as violations of their rights. Specifically they feel that their rights to personal integrity, to intimacy and to be in contact with their families are compromised when they visit prisons.

“ *They searched everything, when there is no scanner they make you completely undress...they make you bend over, and with women it is worse because they put fingers inside to see what they have.))*

Uruguay a child between 13 to 17 years old

“ *It is a horrible place where they are locked up. They search the food we bring, our private parts.))*

Nicaragua, child between 6 to 9 years old

“ *Horrible, unbearable...you have to undress, to bend forward, to show your hair, your feet. Horrible, humiliating.))*

Brazil, child between 10 to 12 years old

“ *They touch our body everywhere...* ”

Dominican Republic, child between 10 to 13 years old

“ *They should not inspect your body that way, poh... They should not look at your private parts...this should be eliminated.* ”

Chile, child between 13 to 17 years old

Another way children experience inhuman or degrading treatment in prisons is because law enforcement officials and prison staff often damage the objects and food children bring to their relatives. Children feel anger and frustration at these actions. They feel the behaviour is unnecessary and that they should be compensated for the damage.

“ *And the food that we bringthey search everything, they mess it up and they give it back ...sometimes we take the food back home or sometimes – the prison staff - they take our food or clothes for themselves.* ”

Panama, child between 13 to 17 years old

“ *I remember once - on his birthday - we brought two lovely cakes... and police officers put their fingers in them, they spoiled them. We lost our appetite to eat them.* ”

Nicaragua, child between 13 to 17 years old

Often children have to travel long distances to visit their relatives in prison, and wait in long lines early in the morning.

“ *At 5am you arrive at the prison. You have to depart at midnight to travel overnight. When you arrive you have to form a long line, wait until 8am when they open and go through the degrading inspections. Horrible.* ”

Argentina, child between 13 to 18 years old

Generally, the infrastructure in prisons is inadequate and not child-friendly at all. Places assigned for family visits are filthy with garbage and rats which children perceive as a form a mistreatment to their relatives and to them.

“ *That place is horrible because it is very hot, there is garbage everywhere.* ”

Nicaragua, child between 6 to 9 years old

“ *Everything is dirty, everywhere is smelly, there are wires in bad conditions hanging around...and full of garbage and that attracts viruses. It's a room with cells up and down.* ”

Dominican Republic, child between 10 to 13 years old

“ *It is not like being at home...there were mice. It is uncomfortable, filthy.* ”

Chile, child between 13 to 17 years old

Overall, children emphasize that although their relative is guilty they should be treated with dignity. Children express anger and frustration against the system that fails to protect their rights and their relatives' rights. Children perceive prisons as places where their relatives' feelings of violence and anger increase. Some children mentioned that their relatives left prison behaving more violently and to remedy this, prisoners should receive therapy while in prison.

“ *You go like you go to see an animal, not a person, you go to take care of a friend, a relative, someone who deserves an opportunity or who made a mistake ... they don't give you a second chance.* ”

Argentina, child between 13 to 18 years old

Corruption is perceived as the rule throughout the penitentiary system. Often children and their relatives are asked for bribes in order to be allowed to bring objects to the prison or to get certain benefits for their relatives in the prison.

Did you have to offer a bribe to bring food to prison?

“ *Yes...* ”

Mexico, child between 14 to 17 years old

What happens when the visit ends? How do you feel on the way home?

“ I cry. ”

Panama, child between 13 to 17 years old

How is the experience of visiting a prison?

“ It is uncomfortable, they make you get undressed, but if you go to see your mom.... ahhh... ”

So it means that it is worth going there?

“ Yes obviously! ”

Chile, child between 13 to 17 years old

3.4 Conclusions

Deprivation of liberty always has a negative and long-lasting impact on the lives of children. As described by children consulted for this report, the deprivation of liberty of children themselves or the incarceration of a parent or caregiver can severely impact children’s development and wellbeing and is linked to feelings of abandonment, stress, fear, loneliness, isolation, anxiety and the lack of access to basic needs and protection. Deprivation of liberty exposes children to a higher risk of violence. Children affected by deprivation of liberty feel invisible in States’ policies and feel condemned by the society.

Relatives of incarcerated children who are also deprived of liberty in Uruguay

Father or mother	46
Mother’s partner	3
Father’s partner	1
Siblings	48
Partner	0
Children	0
Other relatives (grandparents, uncles, aunts, cousins, etc)	103

Source: UNICEF Report on the consultation with adolescents deprived of liberty in Uruguay, June 2018

Many children who are deprived of liberty also have a parent or a relative who are incarcerated and in some cases children who are deprived of liberty are already parents themselves. In Uruguay, 67% of children deprived of liberty indicated that they have a relative who was incarcerated in the past and 42% mentioned they have a relative incarcerated at the moment of the interview. This is evidence of the negative cycle that involvement with the justice system can have on childhood and is one of the compelling reasons behind the urgency for prevention and the principle of diversion for juvenile offenders.

Among the incarcerated adolescents that were interviewed for this study some were already parents themselves. They

had limited or no contact with their own children and they were not receiving support from the government to develop their parenting skills. In Uruguay, 28 (11%) adolescents deprived of liberty had children. A majority of them had only one child, although one adolescent had two children. Eleven out of 29 children of adolescents deprived of liberty were born while their parents were incarcerated. The adolescents who had contact with their children kept up the contact within the framework of regular visits in non child-friendly spaces. None of the institutions included in this research indicated that they had playgrounds or other child-friendly spaces in the detention facility. The children of adolescents deprived of liberty usually live with the mother, or with their grandparents, or in a residential institution. States should take measures to ensure that juveniles who are parents can be present during childbirth, have the support for birth registration and can visit their children, especially when children are living with their imprisoned mothers.

Children deprived of liberty tend to have a pessimistic view of their future. There is a strong perception of a society that is full of prejudices against them and that is not prepared, or willing, to reintegrate and include them. In the words of one incarcerated adolescent:

Society - the only thing that they think about us who are detained here in the Itagua Educational Center, is that we will not change, we are drug addicts, we will always be the same.

In many cases adolescents perceive very limited employment opportunities. Most of them wish to live with their families and friends, to find employment and to continue studying.

Children with incarcerated parents tend to have a brighter outlook on the future. In particular younger children, between 6 to 12 years of age, indicate that they feel positive about their own future, emphasizing in particular that they do not want to repeat the mistakes of their parents. Adolescents tend to feel more negative about their own future, and they also perceive that the infringement of the law could become a possibility in their own lives.

Urgent steps need to be taken to end the negative impact on children of the deprivation of liberty and its connections with the cycle of violence. Incarceration of children should always be a measure of last resort. Alternative measures to deprivation of liberty should be the rule, not the exception. And prevention of violence and of deprivation of liberty should be addressed in a comprehensive and coordinated manner. At the same time, recognizing the severe impact of incarceration on children and in light of the best interests of the child, the incarceration of parents and caregivers should always be reviewed carefully to ensure that it is also a measure of last resort. These measures should be accompanied by a strengthening of the legal protection of children from the negative impact of deprivation of liberty and from all forms of violence.



4. Recommendations

- **Prevent children from becoming involved with the criminal justice system**

There is an urgent need to strengthen national child protection systems to effectively safeguard the rights of the child, instead of perpetuating the criminalization and stigmatization of children who are affected by deprivation of liberty. This includes building safe and nurturing environments for children, supporting families and caregivers in their child-rearing capacities and supporting the child's mental and emotional life. Support should also be tailored to the specific situation of families affected by deprivation of liberty, in particular those with incarcerated parents. In line with the UN Guidelines for the Alternative Care of Children, States should provide adequate alternative care for children separated from their parents and caregivers.

- **Protect children from all forms of violence within the juvenile justice system and within the criminal justice system integrating this dimension into the national policy agenda**

Laws, policies and procedures should be reviewed and revised to ensure compliance with international standards for the protection of children within the juvenile justice system and within the criminal justice system and the penitentiary system. The process of juvenile justice reform needs to be framed by a child- and gender-sensitive approach in order to promote a system that is fair, effective and efficient, and that becomes a core part of the national child protection system.

Any arrest or apprehension in which a child is present should engage child rights personnel and should be conducted in coordination with the national child protection system. Protocols should be developed for law enforcement personnel and prison service professionals to follow when a child is present at the time of the arrest of their parent, for informing children who are not present at the time of their parent's arrest and for child-friendly family visits. Prohibition of family contact should never be used as a disciplinary measure for any person deprived of liberty.

- **Ensure the use of diversion and alternative non-custodial measures as priorities within the juvenile justice system**

It is imperative to promote a paradigm shift from punitive to restorative justice approaches that respect and protect the rights of the child. States are urged to develop and use effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, such as restorative justice, mediation, and community-based programmes, including treatment programmes for children with substance abuse problems. Promotion of restorative justice programmes for children and for parents and caregivers charged with offences should be available and accessible in all settings where children are involved. States should guarantee that all officials in the juvenile justice system, including law enforcement officials, prosecutors and judges, as well as community-based justice providers, including religious and traditional leaders, are trained in the implementation of children's rights as they relate to juvenile justice and restorative justice for children.

- **Establish safe and effective child-sensitive complaints and counselling mechanisms**

States are urged to review relevant legislation and policies to establish safe, effective, child-sensitive counselling, reporting and complaints' mechanisms to address incidents of violence. Children deprived of their liberty and children of incarcerated parents should be informed of their rights and the mechanisms that exist to protect them and to ensure that their voices are heard. These mechanisms should integrate a gender, cultural and disability dimension and be provided in child-friendly language. Counselling mechanisms including psychological treatment and social support should be in place for children deprived of liberty and children of incarcerated parents. Ombudspersons or independent national human rights institutions or children's rights commissions play a critical role in the consideration of violence-related complaints.

- **Establish autonomous and independent oversight, inspection and monitoring mechanisms**

States should review their laws, policies and procedures to ensure that institutions in which children are deprived of their liberty are regularly inspected by autonomous and independent monitoring mechanisms to prevent and address any incident of violence, such as national human rights institutions, ombudspersons or inspecting judges. Visits must be carried out in accordance with the principle of confidentiality to protect children from harassment or reprisals and also include an option for unannounced visits.

- **Establish and strengthen accountability mechanisms**

States are urged to revise their laws, policies and procedures to ensure accountability for incidents of violence against children within the juvenile justice system and in the adult prison system. States should undertake public investigations into all serious reports of violence against children at any stage of the juvenile justice system, and these should be carried out by persons of integrity, adequately funded and completed without undue delay. States should also ensure accountability for violations of children's rights linked to visits to their parents and caregivers in prisons.

- **Provide for qualified and trained personnel**

In order to establish effective juvenile justice and penitentiary systems, States should develop a sound system of selection, recruitment and development of personnel, ensure the appointment and retention of competent and well-trained professionals and provide adequate remuneration. It is also crucial to carry out background checks on all personnel working in direct contact with children in the juvenile justice system and also on those who get in contact with children when they visit parents and caregivers in prison. States should encourage professional associations to develop enforceable standards of conduct that promote justice and prevent violence against children in the juvenile justice system.

- **Promote data collection, analysis and dissemination, and develop research and reporting schemes to assess, prevent and respond to incidents of violence against children within the juvenile justice system and those who get in contact with their incarcerated parents and caregivers**

States should develop data gathering, analysis and reporting schemes to monitor youth crime prevention and measure the performance of the juvenile justice system. It also needs to collect reliable data on children of incarcerated parents. Juvenile justice indicators should be developed and applied regularly to measure the performance of the juvenile justice system. A system for establishing statistics, comprised of disaggregated data related to juveniles and to children with parents and caregivers in prisons, should be developed in order to assess, prevent and respond to violations of their human rights, giving particular attention to incidents of violence against children. Data collection should include children's views and experiences, as well as information on incidents of violence against children deprived of liberty in justice institutions and in their contact with the prison system when their parents are incarcerated.

- **Develop effective coordination mechanisms and cooperation between the services in charge of law enforcement, justice, the penitentiary system, education, health and social welfare**

States are urged to review law, policy and practical measures to ensure effective coordination and cooperation between the national child protection system, the justice systems, the penitentiary and law enforcement systems and the social welfare and education sectors. It is important to clearly delineate the responsibilities of the different actors and institutions, to develop mechanisms for formal cooperation between stakeholders, and properly allocate resources.

- **Engage local actors and civil society**

Local actors such as mayors, religious and community leaders and civil society organizations play a key role in ensuring tolerant, peaceful, safe and inclusive communities and neighborhoods for children. Mayors have a key responsibility to secure child-friendly urban development that provides adequate and safe recreational facilities and activities for children through sports, arts and other recreational programmes. Civil society should support public awareness and social mobilization to change stereotypes and end stigmatization, thus protecting children affected by deprivation of liberty.

- **Engage the corporate sector**

The corporate sector has a key role in creating peaceful, tolerant, safe and sustainable societies. As stated by the UN Study on Violence against Children children's protection from violence is everybody's responsibility. The corporate sector can play a critical role in preventing deprivation of liberty of children and ending violence against children. Framed by the Children's Rights and Business Principles, the corporate sector can adopt a holistic child rights-based approach and create enabling and supportive environments for families and children. They can support positive parenting, implement zero tolerance policies toward violence in the family and within the chain of production, influence policy and law reform and promote cultural transformation of attitudes that tolerate and condone violence.

Media and information and communication technology companies can play a leading role in raising awareness, transforming the attitudes that stigmatized and condemn children affected by deprivation of liberty and preventing harm to children. Companies in all sectors can also provide employment to young people from disadvantaged communities who might otherwise be drawn into criminal activity or collaborate in the implementation of restorative and reintegration programs for adolescents and for their imprisoned parents and caregivers. In a complementary manner, under the framework of the UN Human Rights and Business Framework, States should ensure the companies comply with their responsibilities towards the rights of the child.

- **Invest in children and adolescents**

As highlighted by the 2030 Agenda, investment in children is a cornerstone of sustainable development. Such investment should give priority attention to early childhood and to adolescence and should ensure that families are equipped with adequate skills and tools to build loving, safe and protective environments for all children. Children affected by deprivation of liberty should be perceived as valuable members of the society, not as problems, and should be given equal opportunities to enjoy a life with dignity. This includes ensuring their access to quality education, recreation and vocational training and giving them every opportunity to be fully reintegrated into society and to become agents for change within their own communities and countries.



Annexes

Annex 1: Guidance for the focus groups with children deprived of liberty

Focus groups sought to create spaces where adolescents felt comfortable speaking about different aspects of justice and detention. It included a time to share their individual views and for reflection in groups. The focus groups also served to identify adolescents available for individual interviews. Photographs were used to illustrate the different topics addressed under question number 2. The following guiding questions were used:

1. **Who goes to prison in the country?**
 - a. Is justice fair?

2. **Do you think the educational centre is helpful?**
 - a. What do you think of the services offered by the educational centre?
 - i. Staff
 - ii. Accommodation
 - iii. Meals
 - iv. Education
 - v. Recreation
 - b. What are the main problems in the centre?

3. **If you could imagine the ideal detention facility, how it would be?**

Annex 2: Declaration of children of incarcerated parents

Declaration of children and adolescents who have a mother, father or caregiver deprived of liberty

Dominican Republic, August 8, 2017

We propose the following suggestions to improve the situation of children and adolescents of incarcerated parents and caregivers:

1. All national and international organizations should integrate or create organizations to support children of incarcerated parents and caregivers who do not have access to NGOs.
2. Organize national and regional events to provide spaces for people to share their stories to better address the situation of children of incarcerated parents
3. Judges and prosecutors should investigate the situation of the family of the defendant prior to taking a decision on deprivation of liberty
4. Work with children of incarcerated parents in poor neighbourhoods including giving particular attention to education and awareness-raising. Talk with adults, engaging community actors to educate them to stop the stigmatization of children of incarcerated parents and instead to support children's wellbeing.
5. The Ministry of Education should conduct capacity-building to equip teachers with necessary skills to support children of incarcerated parents, instead of underestimating them; the school enrollment form should include information to register whether a student has a relative deprived of liberty
6. The justice system should delete the criminal record of parents of children if they have a record of good behaviour while in prison
7. Law enforcement officials should include a team of social workers during arrest
8. Staff in prisons should ensure that family visits are conducted in an orderly manner, including ensuring order in lines to enter prisons, and ensuring that conjugal visits do not take place when there are children present or instead are scheduled on different days to family visits. Do not search visitors to prisons, instead search the prisoner once the visit is over. Use metal detectors and X-ray machines to avoid physical searches of visitors, unless something wrong has been detected.
9. National children's rights authorities and ministries of social development should have programmes to support detainees and their families and specific physiological and financial support should be provided to children
10. The Ministry of Labor should create programmes to support the employment of persons deprived of liberty

Annex 3: List of organizations involved that provided support to the consultations with children of incarcerated parents

Country	Organization	Staff
Argentina	Asociación de Familiares de Detenidos (ACIFAD) Church World Service (CWS - Oficina Regional para América Latina y el Caribe). Cooperativa Esperanza Aula Vereda	Coordinators: Andrea Casamento Luciano Cadoni Martin Coria Assistants: Agostina Suraniti Gonzalo Jatar Belén García Rapisarda Marisa Montes Mauro Vivas Belén Gutiérrez Walter Tavarovsky Jimena Garri Julio Colantoni Vanessa Duarte
Brazil	MENINOS E MENINAS DA RUA	Sidneia Bueno Juliana Fagundes Elis Regina do Carmo
Chile	ONG EN MARCHA	Víctor Gallardo Joan Navarro Javiera Roa Francisca Hidalgo
Mexico	Centro Interdisciplinario para el Desarrollo Social I.A.P. (CIDES IAP) REDIM EDNICA REINTEGRA	Coordinators: Alicia Vargas Ayala. Guadalupe Anayeli Barrón Becerril. Assistants: Érica López Lara Karen Concepción Barrón Becerril Nisaly Brito Ramírez Juan Martín Pérez Gabriel Rojas Arenaza Mtra. Jimena Cándado

Country	Organization	Staff
Nicaragua	INPRHU	Psic. Celina Obando Laguna T. Social Martha Cecilia Prieto T. Social Heydi Carolina Montiel Echaverry Prof. Sandra Rivero González
Panama	REDNANIAP MORADA DE RESTAURACION COORDINADORA DE MUJERES INDIGENAS DE PANAMÁ (CONAMUIP)	José M. Ovalle Colona Heidi J. Guevara de López Melvis Gernado Henríquez Alina Torrero
Dominican Republic	CAMINANTE PROYECTO EDUCATIVO	Yocasta Veras González Olga Yan Pardo Javiela Brito
Uruguay	ONG GURISES UNIDOS ONG RESCATANDO SONRISAS	Gonzalo Salles Lía Fernández Verónica Rey Zelmar Lucas



OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON
VIOLENCE AGAINST CHILDREN

The Special Representative of the Secretary-General on Violence against Children is an independent global advocate in favour of the prevention and elimination of all forms of violence against children, mobilizing action and political support to achieve progress the world over. The mandate of SRSG is anchored in the Convention on the Rights of the Child and other international human rights instruments and framed by the UN Study on Violence against Children.