

UITNODIGING VOOR EEN PERSONTBIJT



PUBLICATIE VAN

DE WERELDSTUDIE VAN DE VERENIGDE NATIES OVER KINDEREN DIE VAN VRIJHEID ZIJN BEROOFD

De derde wereldwijde studie over kinderen en hun rechten na "kinderen in gewapende conflicten" (1996) en "geweld tegen kinderen (2006)".

 Global Study on
Children Deprived of Liberty

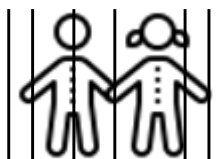
**Vrijdag 27 september
2019**

8u30 tot 9u30
Press Club Brussels Europe
Froissartstraat 95, 1040 Brussel

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WERELDWIJDE STUDIE OVER KINDEREN VAN WIE DE VRIJHEID IS ONTNOMEN

1

2013

- Oproep voor een wereldwijd onderzoek door Defence for Children International over kinderen die van hun vrijheid zijn beroofd
- Oprichting van een NGO-panel om deze oproep te ondersteunen (tot nu toe hebben 170 NGO's de oproep ondertekend)

2

2014

- Oprichting van een task force met agentschappen van de Verenigde Naties die zich bezighouden met kinderen die van hun vrijheid zijn beroofd (UNICEF, UNODC, OHCHR, UNHCR, Comité voor de Rechten van het Kind,...)
- Maart : officiële lancering van de campagne voor de realisatie van de studie tijdens de zitting van de Raad voor de Mensenrechten
- December: goedkeuring van een Resolutie door de Algemene Vergadering waarin de Secretaris-Generaal wordt verzocht een Onafhankelijke Deskundige aan te stellen om deze studie uit te voeren

3

2015

- Vergaderingen voor de voorbereiding van de studie

4

2016

- Benoeming van professor Manfred Nowak als Onafhankelijk Deskundige voor het uitvoeren van de studie
- Eerste regionale en thematische bijeenkomsten

5

2017

- Talloze regionale bijeenkomsten, seminars van deskundigen, thematische discussies om gegevens en informatie te verzamelen over kinderen die van hun vrijheid zijn beroofd
- Opstelling van een vragenlijst en onderzoeksmethodologie op nationaal niveau

6

2018

- Vragenlijst en onderzoeksmethode verzenden naar alle Staten van de wereld
- 26 juni: telling van het aantal kinderen dat van hun vrijheid is beroofd op alle plaatsen van vrijheidsberoving over de hele wereld

7

2019

- Opstellen van het verslag dat moet worden voorgelegd aan de Algemene Vergadering
- Laatste vergadering van deskundigen voor de validatie van de wereldwijde studie
- 8 oktober: presentatie van het verslag op de Algemene Vergadering van de Verenigde Naties in New York
- 18 november: start van de studie in Genève als onderdeel van de 30e verjaardag van het Internationaal Verdrag inzake de Rechten van het Kind
- Bespreking van de jaarlijkse Resolutie over de Rechten van het Kind en de follow-up van de wereldwijde studie

8

2020

- Follow-up van de wereldwijde studie op nationaal en internationaal niveau

2024

- Vijf jaar na het wereldwijde onderzoek: vooruitgangsrapport

Globale Context van Studie

Vrijheidsbeneming



Betekent elke vorm van detentie of gevangenschap of de plaatsing van een kind in een openbare of particuliere bewakingsinstelling van waaruit hij of zij niet naar believen mag vertrekken op bevel van een overheidsinstantie of op eigen initiatief of met uitdrukkelijke of stilzwijgende toestemming

De detentiecentra waar het kind wordt vastgehouden zijn niet beperkt tot gevangenissen en door de Staat **gerunde instellingen**, maar omvatten ook particuliere bewakingsinstellingen, zoals

- gevangenissen,
- onderwijscentra,
- psychiatrische ziekenhuizen
- en soortgelijke instellingen, wanneer ze zijn goedgekeurd door of onder contract staan met de Staat en / of de vrijheidsbeneming is bevolen door een overheidsinstantie

6

Zes sectoren waarop het onderzoek betrekking heeft



Kinderen die van hun vrijheid zijn beroofd in het kader van de **jeugdstrafrecht**

Kinderen die van hun vrijheid zijn beroofd om redenen die verband houden met **migratie**



Kinderen die met hun **ouders in detentiecentra wonen**

Kinderen die van hun vrijheid zijn beroofd in **instellingen**



Kinderen die van hun vrijheid zijn beroofd in de context van een **gewapend conflict**

Kinderen die van hun vrijheid zijn beroofd in de context van **nationale veiligheid**



Sectoroverschrijdende kwesties



Inbreng van kinderen: de studie zorgde ervoor dat de ervaring van kinderen die van hun vrijheid waren beroofd werd gehoord om hiermee rekening te houden in de studie



Gezondheid: de studie analyseerde de effecten van vrijheidsberoving op de gezondheid van kinderen



Kinderen met een handicap: hun specifieke situatie is met grote zorg geanalyseerd



De studie hield rekening met de specifieke situatie van **meisjes** en **LGBT + personen** die van hun vrijheid zijn beroofd

Doelstellingen

Beoordelen van de **omvang** van het fenomeen, van het aantal van hun vrijheid beroofde kinderen, van de redenen, van het type en de duur van de detentie en de plaatsen

Verandering onder de aandacht brengen en bevorderen door te wijzen op attitudes en gedragingen ten opzichte van kinderen die kunnen leiden tot vrijheidsberoving

Identificeren van **interessante praktijken en ervaringen** en rekening houden met de opvattingen van kinderen over deze praktijken

Aanbevelingen doen voor wijzigingen in wetgeving, beleid en praktijken om de rechten van kinderen die van hun vrijheid zijn beroofd te waarborgen,

Werkwijze



Vragenlijst gestuurd naar alle Staten om kwantitatieve en kwalitatief gegevens te verzamelen, statistieken over het aantal kinderen dat van hun vrijheid is beroofd



Nationaal en regionaal overleg en thematisch **overleg**



Documentair **onderzoek**



Nationale en regionale **studies**

In België: de gegevensverzameling en het schrijven van rapporten werd gecoördineerd door de **Nationale Commissie voor de Rechten van het Kind**, die als het brandpunt van deze studie diende

Het Belgische rapport werd gepubliceerd en in september 2018 verzonden naar het **Bureau van de Hoge Commissaris voor de Mensenrechten van de Verenigde Naties**

DCI-België heeft in december 2018 samen met andere actoren uit het maatschappelijk middenveld een commentaar gepubliceerd dat bepaalde informatie aanvult en bepaalde uitspraken aan de kaak stelt.



Belangrijkste aanbevelingen

De Onafhankelijke Deskundige beveelt de Staten aan om:

- Alles in het werk stellen om het aantal kinderen dat van hun vrijheid is beroofd in alle detentiecentra aanzienlijk te verminderen en om het gebruik van vrijheidsberoving te voorkomen, onder meer door te reageren op de grondoorzaken van het gebruik van dit soort maatregelen
- Aanzienlijke middelen in te zetten om ongelijkheden te verminderen, gezinnen te helpen om de ontwikkeling van hun kind te ondersteunen, inclusief kinderen met een handicap
- Artikel 37 van het IVRK nauwgezet na te leven (laatste redmiddel, voor de kortst mogelijke tijd, alleen in uitzonderlijke gevallen van toepassing, en rekening houdend met het standpunt van het kind)
- Alle wetten en beleidsmaatregelen af te schaffen of te wijzigen die een kind de vrijheid ontnemen op basis van een handicap
- Adequate detentievoorwaarden toe te passen, zonder discriminatie, wanneer vrijheidsberoving onvermijdelijk is, in zeer speciale gevallen
- Kinderen niet bloot te stellen aan onmenselijke of vernederende behandelingen, geweld, seksueel misbruik, marteling of onmenselijke omstandigheden van detentie
- Er voor te zorgen dat alle kinderen toegang hebben tot re-integratiediensten in de samenleving, inclusief toegang tot onderwijs, sport en recreatie, voldoende voedsel en gezondheidszorg
- Toegankelijke en effectieve klachtenmechanismen en beroepsmogelijkheden te voorzien
- Controlemechanismen te creëren die onafhankelijk zijn van plaatsen waar de vrijheid is ontnomen
- Te zorgen voor menselijke hulpbronnen en opleiding van alle professionals
- Een adequaat, gecentraliseerd en permanent systeem voor gegevensverzameling creëren
- De detentie van kinderen in migratiesituaties moet volledig verboden zijn, of het nu gaat om niet-begeleide of om kinderen met hun familie.



Belangrijkste bevindingen en aanbevelingen



Belangrijkste bevindingen

Volgens een lage schatting zijn er momenteel tussen de 1,3 en 1,5 miljoen kinderen in de wereld die elk jaar van hun vrijheid worden beroofd.

Deze cijfers omvatten niet de ongeveer een miljoen kinderen die worden gearresteerd en vastgehouden in politiebureaus en de miljoenen kinderen die hun vrijheid in instellingen zijn ontnomen.

- Tussen 430.000 en 680.000 in instellingen (weeshuizen, psychiatrische instellingen, homes, beschermingscentra, ...)
- Minstens 410.000 in penitentiaire inrichtingen: gevangenissen, gevangenissen voor minderjarigen, rehabilitatiecentra, detentiecentra, ...);
- Er is een minimum van 330.000 kinderen die van hun vrijheid zijn beroofd om een reden die verband houdt met migratie (in doorvoercentra, opvangcentra, gesloten centra, ...).
- Er zijn ook minstens 35.000 kinderen vastgehouden in situaties van gewapend conflict, 1500 in een nationale veiligheidscontext
- 19.000 kinderen die in de gevangenis leven met een gedetineerde ouder



Juridische context

Artikel 37 van het Internationaal Verdrag inzake de Rechten van het Kind bepaalt dat

- Geen enkel kind wordt onderworpen aan foltering of aan een andere wrede, onmenselijke of ontorende behandeling of bestraffing
- Doodstraf noch levenslange gevangenisstraf mag worden opgelegd
- De aanhouding, in hechtenisneming of gevangenneming van een kind geschiedt overeenkomstig de wet (geen willekeur)
- De detentie van kinderen moet een laatste maatregel zijn, voor de kortst mogelijke duur
- Ieder kind dat van zijn vrijheid is beroofd, wordt behandeld met menselijkheid en met eerbied voor de waardigheid inherent aan de menselijke persoon
- Ieder kind dat van zijn vrijheid is beroofd wordt gescheiden van volwassenen tenzij het in het belang van het kind wordt geacht dit niet te doen
- Ieder kind dat van zijn vrijheid beroofd is heeft het recht contact met zijn familie te onderhouden. Het van zijn vrijheid beroofde kind heeft recht op rechtsbijstand, om de rechtmatigheid van zijn detentie aan te vechten voor een bevoegde overheid



Gevolgen van de juridische context

- Staten moeten ernaar streven de vrijheidsbeneming van kinderen tot een absoluut minimum te beperken en prioriteit geven aan niet tot vrijheidsbeneming strekkende maatregelen
- Staten moeten een specifiek jeugdrechtstelsel opzetten en de voorkeur geven aan niet tot vrijheidsbeneming strekkende maatregelen
- Te lange gevangenisstraffen zijn verboden
- De voorlopige hechtenis mag niet langer duren dan 30 dagen en moet uitzonderlijk zijn
- Detentie om redenen die verband houden met migratie is nooit in overeenstemming met het Verdrag inzake de Rechten van het Kind, aangezien er altijd een manier is om alternatieven voor detentie te implementeren
- Kinderen die zorg en bescherming nodig hebben, mogen niet in instellingen worden vastgehouden; Staten moeten voorkomen dat deze kinderen worden geïnstitutionaliseerd



Redenen voor vrijheidsberoving

- De belangrijkste reden voor het groot aantal kinderen dat van hun vrijheid is beroofd is het gebrek aan voldoende ondersteuning voor gezinnen en gemeenschappen
- Het repressieve beleid van veel Staten leidt ook tot detentie in plaats van niet tot vrijheidsbeneming strekkende maatregelen
- Het restrictief migratiebeleid is ook de reden voor het aantal migrantenkinderen dat van hun vrijheid is beroofd
- Hetzelfde geldt voor het terrorismebestrijdingsbeleid



Omstandigheden van de detentie op internationale niveau

In de meeste gevallen zijn de detentieomstandigheden betreurenswaardig en voldoen aan internationale normen niet !

Kinderen zijn niet gescheiden van volwassenen, instellingen / gevangenissen / detentiecentra zijn overvol. Ze worden gekenmerkt door een hoge mate van geweld, verwaarlozing, misbruik, gebrek aan zorg en hygiëne, gebrek aan toegang tot onderwijs en gebrek aan genderbewustzijn.

Er is te weinig extern toezicht op de detentie van kinderen die worden vastgehouden om misbruik en onmenselijke en vernederende behandeling te voorkomen.



Follow-up van de Wereldwijde Studie in België en op wereldniveau

Onderhoud en regelmatige bijwerking van een internationale database met alle belangrijke gegevens over kinderen die van hun vrijheid zijn beroofd, op basis van de Wereldwijde Studie, om vergelijkend onderzoek mogelijk te maken.

Staten worden aangemoedigd om contactpunten vast te stellen voor de regelmatige verzameling van gegevens over kinderen die van hun vrijheid zijn beroofd, per jaar en op een specifieke datum elk jaar.

Staten worden aangemoedigd om nationale actieplannen te ontwikkelen om het aantal kinderen dat van hun vrijheid is beroofd aanzienlijk te verminderen

Aangezien de Onafhankelijke Deskundige voor deze Studie van mening is dat vrijheidsbeneming structureel geweld is, wordt van Staten gevraagd deze Studie te volgen in relatie tot doelstelling 12.2 van de Duurzame Ontwikkelingsdoelstellingen van de Verenigde Naties. (doelstelling om alle vormen van geweld tegen kinderen te bestrijden).

Het fenomeen van vrijheidsberoving van kinderen moet hoog op de agenda blijven staan van de Algemene Vergadering, de Veiligheidsraad en de Mensenrechtenraad. Alle VN agentschappen, -mandaten en speciale mechanismen worden verzocht een rol te spelen bij het volgen en uitvoeren van de Studie en het bevorderen van de aanbevelingen op nationaal, regionaal en internationaal niveau.





De wereldwijde studie over kinderen die van hun vrijheid zijn beroofd in België: uitgebreide verzameling van kwantitatieve en kwalitatieve gegevens

In september 2018 heeft de Belgische Staat haar antwoord ingediend op de vragenlijst die tijdens het onderzoek is opgesteld. Deze door België ingevulde vragenlijst bevat daarom kwantitatieve gegevens over de vrijheidsberoving van kinderen in België (aantal kinderen dat hun vrijheid is ontnomen volgens de 6 geïdentificeerde categorieën, gegevens uitgesplitst naar geslacht, leeftijd) en kwalitatieve gegevens (wettelijk kader, beschrijving van de praktijk).

Het verslag van de Belgische Staat kan worden gedownload op de website van de Nationale Commissie voor de Rechten van het Kind, in de rubriek projecten> wereldwijde studie over kinderen beroofd van hun vrijheid:

<https://ncrk-cnde.be/nl/projecten/>



Nadat België haar verslag had ingediend, voerde DCI België een overlegproces uit met actoren van het maatschappelijk middenveld en onderzoekscentra. Op basis van dit overleg heeft DCI België commentaar geleverd op het rapport dat door de Belgische Staat is ingediend om het door te geven aan de deskundigen die verantwoordelijk zijn voor de studie. Dit document heeft tot doel inzichten uit het maatschappelijk middenveld te verschaffen over de antwoorden op de vragenlijst van België, enkele van de gegeven antwoorden te bevragen en de bronnen te vermenigvuldigen zodat de studie de situatie echt weerspiegelt.

De opmerkingen gecoördineerd door DCI-België kunnen worden gedownload op de website van DCI-België onder Projecten> Lopend> De wereldwijde studie over kinderen beroofd van hun vrijheid:

<https://www.dei-belgique.be/index.php/projets/en-cours/l-etude-mondiale-sur-les-enfants-privés-de-liberte.html>



CONCLUSIES

Deze wereldwijde studie is een uiterst belangrijke gebeurtenis voor de wereld van de kinderrechten.

Dit is de derde internationale studie over de rechten van het kind na de studie over kinderen in gewapende conflicten (1996) en geweld tegen kinderen (2006); deze twee eerdere studies hebben een belangrijke impact gehad op het beleid, de programma's, de begrotingen en de bewustwording van deze twee kwesties. Het is een oefening van een dusdanige grootte dat het menselijkerwijs mogelijk is om het slechts om de 10 of 15 jaar uit te voeren.

Voor een vereniging als Defence for Children International is het een project dat al bijna zes jaar wordt uitgevoerd; en een trots om onszelf te kunnen zeggen dat we een dergelijk belangrijk project hebben kunnen realiseren door zoveel actoren rond hetzelfde doel samen te brengen: organisaties van de Verenigde Naties, staten, deskundigen en de academische wereld, groepen van kinderen en meer dan 170 internationale ngo's.

We weten dat de vrijheidsberoving van kinderen zeer belangrijke gevolgen heeft voor hun gezondheid, ontwikkeling en toekomst. Een kind dat, zelfs voor een korte periode, wordt vastgehouden, zal zijn of haar ontwikkeling in gevaar brengen. Dit geldt des te meer als de duur van de detentie lang is, als deze plaatsvindt onder moeilijke, onmenselijke of vernederende omstandigheden of als de redenen voor de detentie twijfelachtig zijn of het gevolg zijn van een onrechtvaardigheid.

Maar deze vraag is over het algemeen verborgen gebleven, omdat de staten niet erg geneigd zijn erover te praten of deze praktijk te erkennen. Tot nu toe is er weinig bekend over wat er achter de tralies gebeurt, op geïsoleerde, over het algemeen ontoegankelijke plaatsen, ook door verenigingen die een rol spelen bij het toezicht op de rechten van het kind.

Enmaal achter de tralies is een kind zeer kwetsbaar, in een risicovolle situatie, met zeer ingewikkelde toegang tot rechtsbijstand en met zeer weinig contact met de buitenwereld.



Het feit dat de Verenigde Naties op het hoogste niveau opdracht heeft gegeven tot deze studie, een onafhankelijke deskundige heeft aangesteld en via de verschillende relevante agentschappen en organen heeft geholpen, toont aan dat de situatie aan het veranderen is en dat veel actoren zich realiseren dat het niet langer mogelijk is om op deze manier door te gaan. De internationale context maakt deze kwestie nog actueler, of het nu gaat om migratie, nationale veiligheid, terrorismebestrijding, kinderen in instellingen of gewapende conflicten.

Ook in België is de kwestie zeer actueel: uiteraard met betrekking tot de detentie van kinderen om migratieredenen, de situatie van kinderen die bij een ouder in de gevangenis worden vastgehouden of die in het kader van de jeugdbescherming worden vastgehouden, voor kinderen die verdacht worden van het plegen van een misdrijf, of omdat ze in moeilijkheden of in gevaar zijn. Laten we ook denken aan deze jongeren die werden uithandgegeven en die voor zeer lange tijd in de gevangenis vastzitten.

Uiteraard staat de situatie in België niet in vergelijking met wat er in andere landen gebeurt. De omstandigheden van de detentie, de duur, het toezicht, de perspectieven voor reïntegratie zijn veel beter dan wat er elders gebeurt. Dat mag ons er echter niet van weerhouden de situatie te beoordelen, na te denken over wat er verbeterd kan worden en een nog proactiever beleid te ontwikkelen om van vrijheidsberoving de ultieme remedie te maken, die alleen wordt toegepast als er echt geen andere oplossing mogelijk is.

En het beleid moet voortdurend worden geëvalueerd en gecontroleerd, vandaar de noodzaak om regelmatig gegevens te verzamelen. En om in gedachten te houden dat het principe vrijheid is.



General Assembly

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Item 68 (a) of the preliminary list*

Promotion and protection of the rights of children: promotion and protection of the rights of children

Global study on children deprived of liberty

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert leading the global study on children deprived of liberty, Manfred Nowak, submitted pursuant to General Assembly resolution [72/245](#).

* [A/74/50](#).



Report of the Independent Expert leading the United Nations global study on children deprived of liberty

Summary

In its resolution [69/157](#) of 18 December 2014, the General Assembly invited the Secretary-General to commission an in-depth study on children deprived of liberty. In October 2016, Manfred Nowak (Austria) was appointed as Independent Expert leading the study, which is the first scientific attempt, on the basis of global data, to comprehend the magnitude of the situation of children deprived of liberty, its possible justifications and root causes, as well as conditions of detention and their harmful impact on the health and development of children. The study also identifies best practices in non-custodial solutions applied by States in relation to the following six situations: (a) detention of children in the administration of justice; (b) children living in prisons with their primary caregivers; (c) migration-related detention; (d) deprivation of liberty in institutions; (e) detention in the context of armed conflict; and (f) on national security grounds. The study proposes recommendations to support States and the United Nations in dealing with this phenomenon.

The present report summarizes the detailed findings of the global study on children deprived of liberty, which will be available in printed, electronic and child-friendly versions. It was prepared through a participatory process, which included regional, subregional, national and thematic consultations, as well as expert meetings. Many Governments, United Nations agencies and other stakeholders provided comprehensive responses to a questionnaire transmitted to them in February 2018.

The Independent Expert is grateful for the support provided by Governments, United Nations agencies and bodies, other international and regional organizations, civil society organizations, the academic community and, in particular, children.

Contents

	<i>Page</i>
I. Deprivation of liberty is deprivation of childhood	4
II. Mandate and scope of the study	4
III. Study process	5
IV. Contextualizing children's deprivation of liberty	6
A. Right to personal liberty	6
B. Views of children	7
C. Impact on health	8
D. Children with disabilities	8
E. Gender dimension	9
V. Situations of children deprived of liberty	10
A. Administration of justice	10
B. Children living in prisons with their primary caregivers	11
C. Migration-related detention	12
D. Institutions	13
E. Armed conflict	14
F. National security	14
VI. Progress achieved	15
VII. Conclusions	16
A. Magnitude of the phenomenon	16
B. Legal framework	17
C. Reasons for deprivation of liberty	18
D. Conditions of detention	18
VIII. Recommendations	18
A. General recommendations	18
B. Situation-specific recommendations	20
C. Follow-up	23

I. Deprivation of liberty is deprivation of childhood

1. The Convention on the Rights of the Child, the most widely ratified human rights treaty, celebrating its thirtieth anniversary in 2019, provides that, in all actions concerning children, the best interests of the child shall be a primary consideration (art. 3). In particular, deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)).

2. Childhood, the time between birth and reaching the age of 18 years, is when children develop their personality, their emotional relationships with others, their social and educational skills and their talents. International law recognizes the family as the natural and fundamental group unit of society. Children should grow up in a family environment where they experience love, protection and security. If children, for whatever reason, cannot grow up in a family, States shall ensure that they are cared for in a family-type environment. Placing children in institutions and other facilities where they are, or may be, deprived of liberty is difficult to reconcile with the guiding principles of the Convention on the Rights of the Child.

3. Many children may find themselves in a vicious cycle of different situations of deprivation of liberty throughout their childhood, which might start in an “orphanage”, followed by various institutions for educational supervision and drug rehabilitation until culminating in imprisonment and reoffending. Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood.

II. Mandate and scope of the study

4. In December 2014 the General Assembly, in its resolution [69/157](#), invited the Secretary-General to commission an in-depth global study on children deprived of liberty. In October 2016, Manfred Nowak was appointed as Independent Expert leading the global study on children deprived of liberty.

5. The study builds on two earlier United Nations global studies, namely, on the impact of armed conflict on children, prepared by Graça Machel ([A/51/306](#)), and on violence against children, prepared by Paulo Sérgio Pinheiro ([A/61/299](#)). The Pinheiro study showed that the risk of physical, sexual and psychological violence is greatest when children are deprived of liberty. In target 16.2 of the Sustainable Development Goals of the 2030 Agenda all States are called upon to “promote peaceful and inclusive societies by ending abuse, exploitation, trafficking and all forms of violence against and torture of children”.

6. For the purpose of the study, “child” means every human being below the age of 18 years, as defined in article 1 of the Convention on the Rights of the Child. The term “deprivation of liberty” signifies any form of detention or imprisonment or the placement of a child in a public or private custodial setting which that child is not permitted to leave at will, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence, as defined in article 4 (2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution [57/199](#)) and article 11 (b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (General Assembly resolution [45/113](#)).

III. Study process

7. The study's implementation phase was severely delayed owing to lack of funding, which was to rely on "voluntary contributions". In response to the Independent Expert's fundraising efforts, financial contributions were received from Austria, Germany, Liechtenstein, Malta, Switzerland, Qatar, the European Union, the United Nations Children's Fund (UNICEF), the Right Livelihood Award Foundation and another private foundation. He wishes to express his sincere gratitude to those "friends of the study" as, without their financial contributions, it would have been impossible to conduct such a comprehensive research project.

8. Despite the minimal resources, activities were maximized, uniting many different stakeholders, including States, United Nations agencies, non-governmental organizations, national human rights institutions, national preventive mechanisms, academic institutions and children.

9. The study is supported by a United Nations inter-agency task force, chaired by the Special Representative of the Secretary-General on Violence against Children. Other members include the Special Representative of the Secretary-General for Children and Armed Conflict, the Committee on the Rights of the Child, UNICEF, the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration, the World Health Organization and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The task force, as a platform to provide United Nations system-wide support to the study development, was responsible for defining the scope of the study, in addition to developing an initial budget and fundraising strategy. In serving as the study's secretariat, OHCHR provides assistance and supports the Independent Expert in coordinating activities with Member States. Many other international and regional organizations made noteworthy contributions to the study.

10. The advisory board to the study comprises 22 highly renowned experts in the field of children's rights and the right to personal liberty. Its involvement was vital in informing the research process.

11. The non-governmental organization panel for the study, led by Defence for Children International and Human Rights Watch, consists of 170 non-governmental organizations working directly or indirectly on children's deprivation of liberty and is key in the conceptualization and facilitation of the study.

12. Research groups for the study are chaired by distinguished experts and their institutions from all around the world. Many of the institutions are members of the Global Campus of Human Rights, a worldwide network of universities based in Venice. One member is the Ludwig Boltzmann Institute of Human Rights in Vienna, which supports the coordination of the international research activities.

13. In February 2018, in order to collect qualitative and quantitative data to inform the study, a detailed questionnaire was circulated to Governments, United Nations agencies, national human rights institutions, national preventive mechanisms and non-governmental organizations. In total, 118 replies were received, including 67 from States. The preparation of the questionnaire responses created an internal process of data gathering and coordination between the relevant government agencies. The process also raised awareness of the importance of, as well as the lack of, available data on the situation of children deprived of liberty. Information was collected from every region of the world: 41 replies from Europe; 27 from Africa; 20 from Asia, 19 from North and South America; and 11 from Oceania.

14. When assessing the magnitude of the phenomenon, priority was given to the data submitted in questionnaire responses. To supplement and verify the study data

set, a wide range of official sources were used: administrative records from State agencies; figures and indicators provided by United Nations agencies and other international organizations; and information from peer-reviewed literature. For all types of deprivation of liberty, the data set is based on a sample gathered from 69 to 137 States, except in the context of armed conflict (16 States) and national security (31 States). As the study estimations are based on sound regression models, various types of sociodemographic data and legal sources, they should be interpreted as a reliable minimum. A full description of the methodology and extensive references to all sources are included in the global study.

15. Twelve geographic and/or thematic consultations were held to further inform the study, in Prague, Warsaw and Brussels (2017) and Bangkok, Paris, Addis Ababa, Pretoria, Belgrade, New York, Montevideo, Tunis and Montego Bay, Jamaica (2018). Consultations brought together government officials, representatives of regional and international organizations, United Nations entities, non-governmental organizations, national human rights institutions, national preventive mechanisms, academia and children. Unfortunately, owing to financial constraints, it was not possible to invite children to all consultations. Nevertheless, under the leadership of renowned child participation experts and non-governmental organizations, the views and experiences of 274 children and adolescents (204 male; 70 female) from the ages of 10 to 24 from 22 different States were gathered in order to inform the study.

16. The Independent Expert wishes to thank all individuals who actively participated in the joint endeavour of preparing the study, most often on a pro bono basis. Their dedication and professionalism were indispensable for the successful completion of the study.

IV. Contextualizing children’s deprivation of liberty

A. Right to personal liberty

17. The right to personal liberty is one of the oldest and most important human rights. It protects the freedom of bodily movement in a very narrow sense and needs to be distinguished from the broader right to freedom of movement.

18. In preparing the study, the Independent Expert decided to follow the broad definition of deprivation of liberty and places of detention as set out in article 11 (b) of the Havana Rules of 1990 and article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 2002. Hence, the term “places of detention” covers all places where children may be deprived of liberty, such as prisons, police lock-ups, pretrial detention centres, military camps, social care facilities, institutions for persons with disabilities or for persons addicted to drugs or alcohol, “orphanages”, children’s homes, institutions for the educational supervision of children, psychiatric hospitals, mental health centres or migration detention centres. The study does not, however, cover deprivation of liberty within the family and by private criminal actors, such as trafficking or sale of children.

19. While adults may be lawfully detained for a variety of reasons and even for extensive periods of time, article 37 (b) of the Convention on the Rights of the Child provides much stricter limits for children. In addition to the general norm that “no child shall be deprived of his or her liberty unlawfully or arbitrarily”, the provision continues as follows: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. “Measure of last resort” means that depriving children of liberty should be the last option only, and in principle be avoided. If

deprivation of liberty, as an exception to that rule, is unavoidable and strictly necessary in the light of the specific circumstances of the case, then it may be applied only for the shortest appropriate period of time.

20. Since children are in their formative years, when deprivation of liberty may have highly detrimental effects on their physical and mental health, their further development and their life, States are required to apply non-custodial solutions when dealing with children. Even with respect to children who have committed crimes, article 40 (4) of the Convention on the Rights of the Child provides that a “variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”. With that comprehensive list of non-custodial solutions, the Convention on the Rights of the Child clearly indicates that detention of children shall be avoided as much as possible. If children are being referred from the criminal justice system to the welfare system, the principle of “measure of last resort” equally applies to protect children from deprivation of liberty in all types of institutions, including for children with disabilities. States shall make every effort to place children in the wider family, and failing that, in the community in a family-type environment. Since there are always other options available to States, detention of children for purely migration-related reasons can never be considered a measure of last resort or in the best interests of the child and shall, therefore, always be prohibited.

21. Where deprivation of liberty of children can be exceptionally justified as necessary, they must be treated with humanity and respect for their inherent dignity, in a manner that takes into account their age and specific needs. They have the right to prompt legal and other assistance to challenge the legality of their detention.

22. The global study analyses the right to personal liberty of children in the context of six different situations of deprivation of liberty, for which the State bears direct or indirect responsibility, according to the specific requirements of the Convention on the Rights of the Child (e.g., guiding principles, measure of last resort, shortest appropriate period of time, procedural rights, child-appropriate conditions of detention).

B. Views of children

23. Article 12 of the Convention on the Rights of the Child provides that children shall have the right to express their views freely in all matters affecting them and that their views shall be given due weight. During his fact-finding missions in all world regions, as a former United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Independent Expert spoke to many children and witnessed their immense suffering in all situations of deprivation of liberty. The study is also informed by the testimonies of children during regional consultations and by the findings of a cross-national consultation, facilitated by an international group of child rights experts which, in partnership with non-governmental organizations, carried out face to face interviews with 274 children.

24. The consultation process identified the importance of hearing directly from children about their lived experiences. They reported that their rights were not protected, including being detained in poor conditions, being denied access to information, with poor health care and inadequate access to education and leisure. Many children also experienced barriers to contact with their families and struggled to access support for reintegration. They reported struggling to be heard in decisions

made about them. The findings show how children deprived of their liberty experience fear, isolation, trauma and harm in addition to discrimination, stigma and disempowerment.

25. Children also shared experiences of resilience and hope and highlighted the importance of friendships with peers and adults whom they could trust and who were working in their best interests. Many children had positive aspirations for a future beyond detention, where they would reunite with their families and friends and enjoy a life as independent human beings contributing to their communities. They saw education and skills development as integral to their achieving a better life.

C. Impact on health

26. All children have the right to the enjoyment of the highest attainable standard of health and States shall strive to ensure that no child is deprived of his or her right of access to health care services (Convention on the Rights of the Child, art. 24). In research conducted for the study, a group of distinguished health professionals and academics attempted to analyse the impact which deprivation of liberty of children has on their physical and mental health. The research, informed by over 7,000 scientific articles, reveals that the particular circumstances of detention are directly harmful to the mental and physical health of children across all situations of deprivation of liberty.

27. Although there is a great deal of evidence that children who experience deprivation of liberty have poor health, research shows that there is little scientific evidence that detention is the primary factor for causing health problems, since those children often belong to the most disadvantaged and discriminated groups, with pre-existing or co-occurring health problems.

28. Research shows that exposure to unsanitary conditions of detention increases the risk of infections. Overcrowded places of detention in which people with communicable diseases and sexually transmitted infections are held promote the spread of such diseases. Unnecessary restrictions on movement and physical activity negatively impact the physical development of a child.

29. Many children deprived of liberty experience post-traumatic stress disorders, in particular when in solitary confinement. Abuse or neglect while in detention often produce or compound mental and cognitive health problems, such as anxiety, depression, developmental delays and even regression of language. In some cases, the state of psychiatric disorders of children during detention as compared with the mental health of the same children prior to detention increases tenfold. There is a correlation between deprivation of liberty and higher rates of early death of children in that situation compared with their community peers, most often due to drug overdose, suicide, injury and violence.

D. Children with disabilities

30. The deprivation of liberty of children with disabilities results from the cumulative effect of the State failure to ensure their rights in accordance with the human rights model of disability as expressed in the Convention on the Rights of Persons with Disabilities of 2006.

31. Children with disabilities are significantly overrepresented in detention in the context of administration of justice and institutions. It is estimated that one out of three children in institutions is a child with disabilities.

32. Stigma and misconceptions often lie at the root of the problem. Children with disabilities are deprived of liberty in order for them to access services that should be delivered in the community, such as education, health care or rehabilitation. Families often lack the social and financial support to provide the care needed for their child, or to empower them to cope with providing round-the-clock support.

33. In addition, these children experience unique, disability-specific forms of deprivation of liberty. On the basis of the existence or the presumption of having an impairment, these children are systematically placed in institutions, involuntarily committed to mental health facilities, detained in forensic facilities and/or detained at home and other community settings, often in deplorable conditions. These practices occur across a range of States that differ in economic and social status or legal tradition. However, they share common characteristics, rationales and justifications that stem from the medical model of disability.

34. Children with disabilities deprived of liberty are at a heightened risk of violence, abuse and exploitation, which may amount to torture or other forms of ill-treatment, including being restrained, shackled, secluded and/or beaten by staff as a form of control and/or punishment.

E. Gender dimension

35. The data collected for the study indicate significant gender disparities in the situation of children deprived of liberty. Altogether, there are far more boys deprived of liberty worldwide than girls. In the administration of justice and in the contexts of armed conflicts and national security, 94 per cent of all detained children are boys; in migration detention the figure is 67 per cent and in institutions it is 56 per cent. The number of boys and girls who live with their primary caregiver (almost exclusively mothers) in prison is similar.

36. Compared with the overall crime rate for children, the data gathered for the study show a tendency of the child justice system to be more inclined to apply diversion measures to girls than boys. While approximately one third of all criminal offences worldwide committed by children are attributed to girls, only 6 per cent receive a prison sentence. There may be various reasons for this phenomenon. Most importantly, girls usually commit less violent offences and are more often accused of status offences. Girls are generally first-time offenders and more receptive to the deterrent effect of incarceration. Another explanation is the “chivalrous and paternalistic” attitude of many male judges and prosecutors in the child justice systems, who assume, according to traditional gender stereotypes, that girls are more in need of protection than boys.

37. Although most States allow convicted mothers to co-reside with their young children in prison, only eight States explicitly permit fathers to do so. Even in places where fathers as primary caregivers are allowed to co-reside with their children, there are (almost) no appropriate “father and child units” in the prisons, which means that there are practically no children co-residing in prison with their fathers.

38. While boys are overrepresented in detention, girls often suffer gender-based discrimination. Research conducted for the study shows that girls are more likely to be arrested for status offences, for behaviour rather than actual criminal activity, including sexual activity, truancy and running away from home. Girls living on the streets are particularly vulnerable, as they are often arrested for prostitution. If States criminalize abortion, girls risk incarceration, even where the pregnancy is a result of rape. Girls from poor families run a higher risk of institutionalization and incarceration, as they lack access to supportive systems. In detention, girls are particularly vulnerable to sexual and other forms of violence.

39. Almost half the world population lives in the 70 States in which existing laws criminalize conducts on the basis of sexual orientation. Children belonging to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community are more likely to be arrested and detained for status offences, in particular for sexual activity and expressions of sexual orientations and gender identities. LGBTI children are overrepresented in child justice facilities and health-related institutions. They are usually placed in gender-inappropriate detention facilities and are particularly vulnerable to sexual and other forms of violence.

V. Situations of children deprived of liberty

A. Administration of justice

40. A comprehensive set of international human rights standards is testimony to a strong legal and political commitment by the international community to prevent deprivation of liberty of children in the administration of justice. That legal framework has already contributed to the establishment of specialized child justice systems, the adoption of non-custodial solutions and a decrease in the number of children deprived of liberty. Nevertheless, there are still at least 410,000 children held in detention every year in remand centres and prisons. This does not include an estimated 1 million children held every year in police custody. On the basis of the State responses to the questionnaire, it is not possible to provide an evidence-based figure for the number of children held in police custody on any given day. Nevertheless, research for the study proves that detention remains the sad reality of an estimated 160,000–250,000 children in remand centres and prisons worldwide on any given day.

41. These data suggest that detention in the context of the administration of justice is still widely overused. There are a number of reasons for this phenomenon, starting before and going beyond the criminal justice system (e.g., lack of effective child welfare systems; lack of support for family environments; excessive criminalization; low minimum age of criminal responsibility; harsh sentencing; discrimination; socioeconomic reasons; lack of resources in the administration of justice).

42. In times of globalization and complex changes in societies, there is an increased need to support families, communities, schools and child welfare systems. Instruments for structured inter-agency cooperation between the child welfare, social protection, education and health systems, law enforcement and the justice system, to build comprehensive child protection systems and implement prevention and early intervention policies, remain underdeveloped or ineffective.

43. Instead of prevention, States often rely on repressive and punitive policies that lead to excessive criminalization. Behaviours that are typical for children are criminalized as so-called “status offences”: children are charged and detained for truancy, running away from home, disobedience, underage drinking, consensual sexual activity between teenagers, “disruptive” behaviours and practices against traditions and morality. Despite encouragement by the Committee on the Rights of the Child to States to increase the minimum age of criminal responsibility to at least 14 years, over 120 States maintain the minimum age at below 14.

44. Legislation and practice allowing life imprisonment without possibility of release and capital and corporal punishment, still persist, despite their absolute prohibition under article 37 (a) of the Convention on the Rights of the Child. Life sentences remain legal in 68 States, specifically in Africa, Asia, the Caribbean and Oceania. In the 110 States and territories which have no life sentence for children, the maximum sentence ranges from 3 to 50 years. In some cases, children have been

sentenced to imprisonment for up to 25 years. The Independent Expert considers such lengthy prison sentences to violate the legal requirement of the “shortest appropriate period of time” under article 37 (b) of the Convention.

45. Children from poor and socioeconomically disadvantaged backgrounds, migrant and indigenous communities, ethnic and religious minorities and the LGBTI community, as well as children with disabilities and, above all, boys, are largely overrepresented in detention and throughout judicial proceedings.

46. Overreliance on arrest and detention is also caused by a lack of resources within the administration of justice. In many States, police officers, judges, prosecutors and prison guards lack specialized child-sensitive training, are underpaid and may be susceptible to corruption. Although children are guaranteed legal or other appropriate assistance in the preparation and presentation of their defence (Convention on the Rights of the Child, art. 40 (2) (b) (ii)), functioning State-funded legal aid systems are completely absent in 42 States.

47. Violence continues to be endemic at all stages of deprivation of liberty in the administration of justice. The resort to corporal punishment and other violent means of control and discipline, as well as the excessive use of restraint measures and solitary confinement, persist in many States.

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

B. Children living in prisons with their primary caregivers

49. In most jurisdictions, provisions are made for infants and young children to accompany a primary caregiver, usually their mother, in prison. These children are deprived of their liberty *de facto*, albeit indirectly. The estimated number, from the questionnaire responses and other official statistics, is approximately 19,000 children per year.

50. The possibility for children to live in prison with a detained caregiver, is fraught with difficult considerations, beginning with the question of whether to permit the practice at all, as both the exposure of the child to detention and the separation of the child from a primary caregiver have adverse consequences.

51. Article 30 of the African Charter on the Rights and Welfare of the Child of 1990 requires States to ensure that “a mother shall not be imprisoned with her child” and to “promote measures alternative to institutional confinement for the treatment of such mothers”. Similarly, and more gender-neutrally, the Committee on the Rights of the Child, in its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration states that, “in cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impact of different sentences on the best interests of the affected child or children”. It follows that the children affected shall be treated as right holders and not merely circumstantial victims of their caregiver’s encounter with the criminal justice system; that the detention of primary caregivers should be avoided as much as possible; and that the balancing of interests be decided on a case-by-case basis.

52. State responses to the questionnaire show that most national laws establish specific age limits for a child’s admission into a place of detention (typically between two and six years of age) and place restrictions on the length of permissible stay. In

many States, caregivers need to make a specific request and obtain, either separately or jointly, authorization by judicial, social and/or prison authorities to allow the child to live in prison with them. Some States also explicitly refer to further indicators such as: breastfeeding needs; lack of alternative child-care solutions; suitability of prison accommodation for the child's development; health of the child; protection of the child's safety; full parental responsibility and ability to exercise parenthood; length of the sentence; and the caregiver-child relationship before entering the prison.

53. The study research shows that there is a general lack of adequate prison facilities, such as those with specific mother-child units or other special accommodation for prenatal, perinatal and postnatal care and treatment.

54. If and when the time comes for separation of child and caregiver owing to age limits imposed on co-habitation in prison, this requires careful preparation, well in advance of the child's departure, and the possibility for continued contact. Questionnaire responses show that such policies are not always in place or implemented in practice. In addition, the child's best interests are not consistently considered, and a review of the alternative care options is not always undertaken.

55. In some States, support to both caregiver and child, including psychological counselling and enrolment in social programmes, is provided in cooperation with social welfare institutions, educators, child protection authorities and non-governmental organizations, and often depends on the resources available.

C. Migration-related detention

56. Research for the study recognizes that migration-related detention of children cannot be considered as a measure of last resort and is never in the best interests of the child and, therefore, should always be prohibited. This applies to unaccompanied and separated children, as well as to children with their families. Detaining children to "keep families together" or for their "protection", where alternative care is lacking, can never be a justification.

57. Nevertheless, the data collected by the study indicate that, around the world, at least 330,000 children are detained for migration-related purposes per year. At least 77 States are known to still detain children for such reasons, while at least 21 States do not, or claim not to do so.

58. The practice of those States which refrain from placing children in migration detention illustrates that legitimate State interests of regulating migration can be met through policy responses applying non-custodial solutions. These include: open and child-friendly accommodation within child protection systems that are disconnected from migration policies and authorities; periodic reporting; foster families; and other arrangements which prioritize the best interests of the child.

59. States that do detain children on the basis of their migration status offer multiple justifications and employ a range of legal systems and physical locations for doing so, including prisons, closed reception centres, offshore locations, transit shelters and institutional settings. However, immigration detention of children and families is often decided under a procedure that does not respect basic procedural rights, and the conditions of detention are often appalling.

60. Regardless of the conditions of detention, the available evidence shows that immigration detention is harmful to a child's physical and mental health and exposes the child to the risk of sexual abuse and exploitation. Reports have found that it both aggravates existing health conditions and causes new ones to arise, including anxiety, depression, suicidal ideation and post-traumatic stress disorder.

D. Institutions

61. International law is clear that the removal of children from their family environment should occur only where children cannot be allowed to remain there on the basis of a best interests determination, and any separation should be for the shortest possible duration. However, large numbers of children are separated from their families, and the majority of States are failing in their obligation to provide equal access to preventive, protective and supportive mechanisms to families. In many States, children simply “drop off the radar” of those States once they are in institutions, in particular, private institutions, which are often not State-regulated.

62. Latest estimates informed by study research indicate that, in 2018, the total number of children placed in institutions amounted to between 3.5 and 5.5 million. Since institutions are usually places where children cannot simply leave of their own free will, one could argue that most of those children, including children with disabilities, are in fact deprived of liberty. However, in the study, the estimated number is based only on those children who are deprived of liberty by order of a judicial or administrative authority (*de jure*). Data gathered indicate that at least 430,000 to 680,000 children living in institutions are deprived of liberty *de jure*. If children deprived of liberty *de facto* are also taken into account, the total figure is much higher.

63. The pathways that unnecessarily lead children to be separated from families include socioeconomic conditions, discrimination, family violence and lack of access to essential services (e.g., health, education, rehabilitation, treatment). Some children end up in institutions owing to the incorrect application of the best interests principle. Systems favouring institutions are sometimes characterized by profit motives or commodification of the care of children. Many States lack gatekeeping systems, which are necessary to prevent the placement of a child in care outside of the immediate family and to ensure that any such placement is suitable to meet the child’s needs and preferences.

64. Evidence shows that institutions are often characterized by living arrangements that are inherently harmful to children. The characteristics include but are not limited to: separation and isolation from families and the wider community; forced co-habitation; depersonalization; lack of individual care and love; instability of caregiver relationships; lack of caregiver responsiveness; lack of self-determination; and fixed routines not tailored to the child’s needs and preferences. The most egregious and direct forms of deprivation of liberty include solitary confinement, physical restraints and forced medication. Conditions in institutions are often characterized by violence, sexual abuse and neglect, amounting to inhuman and degrading treatment. Failure to register institutions and inadequate monitoring and complaints mechanisms raise the risk of human rights violations for the children involved.

65. Research for the study and the Independent Expert’s first-hand experience, as a former Special Rapporteur on torture, clearly indicate that children should not be institutionalized to receive care, protection, education, rehabilitation or treatment, as it cannot substitute for the benefits of growing up in a family or in a family-type setting within the community. This need for deinstitutionalization has already been expressed by States, when adopting the Guidelines for the Alternative Care of Children (General Assembly resolution [64/142](#)) in 2009.

E. Armed conflict

66. International law prohibits the use of children in direct hostilities, and any recruitment of children by non-State armed groups. States parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration. Yet in at least 16 countries where conflict pertains, Governments or armed groups detain children.

67. Children detained in the context of armed conflict often find themselves in a cycle of violence. First, armed groups illegally recruit them, usually through force, coercion or deception. Second, government authorities then detain them for suspected association with those very groups, often subjecting them to ill-treatment, which can make them susceptible to re-recruitment.

68. The study research is based on countries included in the Secretary-General's annual reports to the Security Council on children and armed conflict. Data collected for the study indicate that, at a minimum, 35,000 children are deprived of liberty in the context of armed conflict. That figure includes an estimated 29,000 foreign children of alleged ISIS fighters detained in 2019 in camps in Iraq and the north-east of the Syrian Arab Republic. In particular in conflicts involving non-State armed groups designated as terrorist, Governments are more likely to detain children than to provide rehabilitation and reintegration, as required under international law.

69. Many children are detained simply because they appear to be of fighting age or come from communities perceived to be sympathetic to opposition forces, or because their family members are suspected of involvement with such forces. Although most children are detained by government forces, armed groups also detain children as punishment, for recruitment purposes, to extract ransom, for sexual exploitation or as bargaining chips for prisoner swaps.

70. The majority of children deprived of liberty in the context of armed conflict see their procedural rights violated, sometimes in contravention of explicit protocols mandating the handover of children associated with armed forces or groups to civilian authorities for rehabilitation.

71. Authorities often subject detained children to torture and ill-treatment, most often for intelligence gathering purposes or confessions of involvement with armed groups. Conditions are often extremely poor, with severe overcrowding and grossly inadequate sanitation, food, and health care. Children are frequently detained with adults and have no access to education, recreation or rehabilitation programmes. In several countries, children have died in custody owing to poor conditions or ill-treatment.

F. National security

72. In 2018, at least 1,500 children were detained in the context of national security in countries without conflicts on their territories.

73. During recent years, non-State armed groups designated as terrorist have recruited thousands of children, in some cases across borders, to carry out suicide and other attacks, and for various support roles. The Internet has also provided such groups with new avenues to recruit children, who are often particularly susceptible to propaganda and online exploitation. Although the recruitment of children into such groups is unlawful, and sometimes constitutes trafficking, the children are often treated as perpetrators rather than victims, contrary to Security Council resolution [2427 \(2018\)](#).

74. The vast majority of States have adopted new counter-terrorism legislation or amended existing national laws, often expanding the scope thereof in ways that negatively affect children. Such measures place children at heightened risk of detention for alleged national security offences.

75. Counter-terrorism legislation often fails to distinguish between adults and children, includes overly broad definitions of terrorism, provides fewer procedural guarantees and imposes harsher penalties. Some States criminalize mere association with non-State armed groups designated as terrorist, thereby increasing the number of children detained and prosecuted for association with such groups. Such laws are also used to detain children for a broad range of activities outside of national security concerns, such as posting political opinions online, participating in peaceful protests, involvement in banned political groups or alleged gang activity.

76. Following their recruitment via the Internet, some children have been detained and tried for terrorism-related offences, despite being far from the theatre of large-scale hostilities, often acting on the instructions of individuals that they have never met. Children have also been detained or even convicted, not for violent activity, but simply for posting content on Facebook, Twitter or other online platforms that is perceived as supporting non-State armed groups designated as terrorist.

77. Some children who have been recruited across borders by such groups have been detained and prosecuted upon their return to their home countries in Europe and other regions.

78. Children charged with national security offences may be more likely to be detained without charge or trial for long periods and prosecuted in adult or military courts that have no child justice safeguards. Children have been detained without charge or trial for years and, when convicted, have sometimes received harsh sentences, including life imprisonment. Diversion or non-custodial solutions are often unavailable.

VI. Progress achieved

79. There are a considerable number of positive practices, which are documented in detail in the global study. The current report highlights some general trends that have led to an improvement in the rights of children deprived of liberty or at risk thereof.

80. In the administration of justice, most States have introduced child justice legislation and established corresponding specialized procedures, including courts for children, which have led to the effective diversion of children from the criminal justice system. These developments seem to have contributed to a decrease in the number of children detained in remand centres and prisons. While UNICEF in 2007 estimated that over 1 million children were detained in the context of the administration of justice, data collected for the study indicate that the number is currently less than half that.

81. With respect to children living in prisons with their primary caregivers, questionnaire responses reveal that many Governments accord much more attention to the issue than before. They apply an individualized, informed and qualitative approach, which aims at striking a fair balance between the interests of the primary caregivers, usually mothers, to keep their young children with them in prison, and the best interests of the affected children. Research for the study also indicated a trend in both State practice and high court jurisprudence to ensure, as far as possible, that caregivers with children are not sentenced to prison terms and that non-custodial solutions are prioritized.

82. With respect to migration-related detention of children, research for the study and questionnaire responses reveal that at least 21 States do not, or claim not to, deprive children of their liberty for migration-related purposes.

83. The Guidelines for the Alternative Care of Children of 2009 seem to have had an impact on the deinstitutionalization practices of States. While in the global study on violence against children of 2006, the total number of children in institutions was given as 8 million, research conducted for the current study estimate the number to be between 3.5 and 5.5 million. Deinstitutionalization measures have been adopted, for example, in Central and Eastern Europe, as well as in Central Asia. Many of those children, including those with disabilities, have now been reunited with their families or placed in family-type settings in the community.

84. In the context of armed conflict, the Security Council, in resolution [2427 \(2018\)](#), called on all parties to such conflicts to cease unlawful or arbitrary detention and encouraged States to establish “standard operating procedures for the rapid handover of the children concerned to relevant civilian child protection actors”. This has already had a positive impact on State practice, as some African States have signed such handover protocols with the United Nations, transferring children associated with armed forces and armed groups to child welfare centres, with the aim of ensuring their rehabilitation and reintegration into society.

85. With respect to national security, several States have opted for children associated with non-State armed groups designated as terrorist to be tried in special courts for children. While many States have been reluctant to bring home child nationals associated with such groups from conflict-affected areas, some States have adopted return plans with clear responsibilities for State authorities concerning the necessary steps for the safety, reintegration and rehabilitation of such children.

VII. Conclusions

A. Magnitude of the phenomenon

86. Data collected for the study and well-grounded scientific approximations indicate that, altogether, a minimum of between 1.3 and 1.5 million children are deprived of liberty per year. Of those, the largest number are in institutions (430,000–680,000), followed by those in the administration of justice (410,000), migration-related detention (330,000), in armed conflict situations (35,000) and for national security reasons (1,500). An additional 19,000 children are living with their primary caregivers in prisons. The Independent Expert wishes to stress that those figures are arrived at on the basis of scientifically sound methodologies, yet remain highly conservative owing to the scarcity of official and reliable disaggregated data. In particular, the figures do not include the approximately 1 million children in police custody and an even higher number of children deprived of liberty de facto in institutions.

87. The majority of States which responded to the questionnaire had difficulties in providing comprehensive, up-to-date and disaggregated data on the number of children in various situations of detention. Administrative records are particularly limited in the context of migration, institutions, national security and armed conflict.

B. Legal framework

88. Article 37 (b) of the Convention on the Rights of the Child provides that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. This establishes a high standard, applicable to all situations in which children are deprived of liberty. Together with the guiding principles of the Convention on the Rights of the Child, above all the best interests of the child, the prohibition of discrimination and the right of children to development and participation, this high standard requires States to reduce the detention of children to an absolute minimum by developing and applying appropriate non-custodial solutions. The precise extent to which the principle of measure of last resort allows deprivation of liberty depends on the type of detention.

89. States are required to develop specific child justice systems with the aim of diversion. If diversion measures are not possible, the principle of the shortest appropriate period of time needs to be applied, and so life imprisonment without possibility of release and other excessively long prison sentences should not be applicable. The Committee on the Rights of the Child, in its general comment No. 24 (2019) on children’s rights in child justice systems, states that, in the case of police custody, every child arrested should be brought before a competent authority to examine the legality of the deprivation of liberty or its continuation within 24 hours. In the case of pretrial detention it states that no child should be held longer than 30 days without formal charges being laid, and a final decision on the charges should be made within six months from the initial date of detention, failing which the child should be released.

90. In most States, primary caregivers, usually the mothers, who are sentenced to a prison term, are permitted to keep their young children with them in prison, if no other solution can be found, which satisfies the principle of the best interests of the child. In most States, children can stay with their caregivers until the age of three, but regulations differ considerably. It was found in the study that rigid State regulations are not effective, because they jeopardize a careful balancing of different interests on a case-by-case basis, and that the problem of children growing up in prisons can most easily be avoided if primary caregivers with young children are not sentenced to a prison term.

91. Detention for purely migration-related reasons is never in conformity with the Convention on the Rights of the Child. Whether children are on the move unaccompanied, separated or with their families, migration-related detention never meets the high standards of a measure of last resort in article 37 (b) of the Convention or of the best interests of the child in article 3 of the Convention, as there are always non-custodial solutions available, which need to be applied.

92. Similar considerations apply to children deprived of liberty in institutions. In principle, the United Nations, in its Guidelines for the Alternative Care of Children (General Assembly resolution 64/142) envisages that States should refrain from institutionalizing children who are in need of care, protection, education, rehabilitation or treatment. Where the immediate family is unable to care for a child with disabilities, article 23 (5) of the Convention on the Rights of Persons with Disabilities requires States to “undertake every effort to provide alternative care within the wider family, and, failing that, within the community in a family setting”.

93. States arrest and detain children associated with armed groups, be it because they have allegedly participated in hostilities during armed conflicts or

are perceived as a threat to national security. Many children are detained not because of actual association with non-State armed groups designated as terrorist, but on the assumption that they are sympathetic to those groups or on the suspicion of their family members being involved with such groups. In such cases, children are often tried before military courts without the presence of their parents or caregivers, without a clear understanding of the charges brought against them and without legal assistance or any respect for their procedural rights. Such situations violate the Convention on the Rights of the Child, as well as the protocols mandating the handover of children associated with armed forces or groups to civilian authorities for rehabilitation.

C. Reasons for deprivation of liberty

94. The most important reason for the large number of children in detention is the lack of adequate support for families, caregivers and communities to provide appropriate care to children and encourage their development. Such support and effective cooperation between parents, child welfare, social protection, education, health, law enforcement and the justice system would prevent children from being placed in institutions and coming into conflict with the law.

95. “Tough-on-crime” policies, including the criminalization of status offences, drug offences, petty crimes and low minimum ages of criminal responsibility, as well as widespread discrimination and corruption, contribute to a large number of children being deprived of liberty. Similar reasons are behind restrictive migration and asylum policies and extensive counter-terrorism practices.

D. Conditions of detention

96. Research conducted for the study, the views of children interviewed and the Independent Expert’s own experiences from many fact-finding missions show that, in most States, conditions of detention, in all contexts, are deplorable and do not meet international standards. Children are often not separated from adults. Many detention facilities are characterized by overcrowding and high degrees of abuse, neglect and violence as well as a lack of hygiene standards, air and sunlight, privacy, adequate health care, recreational and educational opportunities and gender-sensitive facilities.

97. The absence of independent monitoring bodies with the mandate of carrying out unannounced visits to all places of detention contributes to the continuation of such conditions, which can amount to inhuman and degrading treatment.

VIII. Recommendations

A. General recommendations

98. The Independent Expert strongly recommends that States make all efforts to significantly reduce the number of children held in places of detention and prevent deprivation of liberty before it occurs, including addressing the root causes and pathways leading to deprivation of liberty in a systemic and holistic manner.

99. To address the root causes of deprivation of liberty of children, States should invest significant resources to reduce inequalities and support families to

empower them to foster the physical, mental, spiritual, moral and social development of their children, including children with disabilities.

100. In all decisions that may lead to the detention of children, the Independent Expert calls upon States to most rigorously apply the requirement of article 37 (b) of the Convention on the Rights of the Child that deprivation of liberty shall be applied only as a measure of last resort in exceptional cases, and that the views of children shall be heard and taken duly into account.

101. The Independent Expert calls upon States to repeal all laws and policies that permit the deprivation of liberty of children on the basis of an actual, or perceived, impairment.

102. If detention is unavoidable under the particular circumstances of a case, it shall be applied only for the shortest appropriate period of time. States have an obligation to apply child-friendly conditions, without any discrimination. Children shall not be exposed to neglect, violence, sexual abuse or exploitation, ill-treatment, torture and inhuman conditions of detention. States should ensure that children have access to essential services aimed at their rehabilitation and reintegration into society, including education, vocational training, family contacts, sports and recreation, adequate nutrition, housing and health care. Health services in detention shall be of a standard equivalent to that available in the community at large.

103. Since children have the right under article 12 of the Convention on the Rights of the Child to actively participate in all matters directly affecting their lives, they shall be empowered to influence decisions relating to their treatment and enjoyment of such essential services and have the right to effective remedies, as well as to lodge complaints to an independent and impartial authority on any grievances and human rights violations during detention. Furthermore, States are strongly encouraged to ratify the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure, enabling children to further seek redress for violations of their rights.

104. States are strongly encouraged to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to establish independent and effective national preventive mechanisms with a particular expertise, to conduct visits to places where children are, or may be, deprived of liberty.

105. States should enhance the capacity, by means of investing in human resources, awareness-raising and systematic education and training, of all professionals who work with and for children in decisions leading to their deprivation of liberty, and those who are responsible for their well-being while in detention. This applies to the police, judges, prosecutors, prison guards, psychiatrists, medical personnel, psychologists, educators, probation officers, social workers, child protection and welfare officers, asylum and migration personnel and any other individuals in contact with children at risk of deprivation, or deprived, of liberty.

106. States are strongly encouraged to establish an appropriate system of data collection at the national level, involving all relevant ministries and other State agencies, coordinated by a focal point. Whenever possible, data on children should be obtained directly from them in accordance with the principle of informed consent and self-identification. When necessary, such information should be supplemented by data concerning their parents or primary caregivers.

B. Situation-specific recommendations

1. Administration of justice

107. **The Independent Expert recommends that States establish child justice systems with specialized structures and mechanisms offering free legal aid to all children regardless of age and family income, effective procedural safeguards, adequate, accessible and high-quality diversion and non-custodial solutions at all stages of the proceedings.**

108. **States are urged to eliminate status offences, and to decriminalize child-specific and “immoral” offences, including on grounds of sexual orientations and gender identities.**

109. **States should establish a minimum age of criminal responsibility, which shall not be below 14 years of age.**

110. **States should not automatically transfer children deprived of liberty who reach 18 years of age to the adult criminal justice system.**

111. **Police custody for children should not exceed 24 hours. Pretrial detention should be avoided as far as possible and should in no case last longer than 30 days until the child is formally charged, or 6 months until a judgment is rendered.**

112. **Capital and corporal punishment and life sentences should never be imposed on a child. States should set a maximum penalty for children accused of crimes, which reflects the principle of “shortest appropriate period of time”. Children should never be subjected to solitary confinement.**

113. **States should prioritize restorative justice, diversion from judicial proceedings and non-custodial solutions.**

2. Children living in prisons with their primary caregivers

114. **In all matters related to criminal proceedings involving primary caregivers of young children, usually mothers, it is essential to ensure recognition of the affected children as rights holders. When the detention in the criminal justice system of a primary caregiver could result in the de facto deprivation of liberty of a child, States should incorporate the best interests of the child principle into all relevant decisions.**

115. **When a primary caregiver of a young child is convicted of a criminal offence, judges should prioritize non-custodial solutions.**

116. **If imprisonment is unavoidable, individualized assessments of the child’s best interests should inform any decision about whether and when a child should accompany a caregiver in prison or be separated from her or him. This applies to children born prior to the criminal justice proceedings, as well as to those born to an imprisoned mother.**

117. **Adequate provisions shall be made for the care of the children entering prison with their caregiver, and age-appropriate facilities and services shall be supplied to safeguard and promote their rights to survival, protection, development and participation while in prison.**

118. **Children living with a caregiver in prison shall be scrupulously protected from violence, trauma and harmful situations.**

119. **Caregivers and their children should ideally be released together.**

120. Preparation for eventual separation should begin at the outset of the sentence. Children and their caregivers should be provided with psychological, emotional and practical support before, during and after separation.

3. *Migration-related detention*

121. The Independent Expert urges States to prohibit and end all forms of migration-related detention of children and their families.

122. States should: prohibit child and family immigration detention in law; decriminalize irregular entry, stay and exit; adopt child-sensitive identification and referral procedures in the context of migration; and dedicate sufficient resources to appropriate non-custodial solutions for children and their families.

123. Unaccompanied children should be provided with alternative care and accommodation, in line with the United Nations Guidelines for the Alternative Care of Children. States should provide refugee children with access to asylum procedures and other appropriate protection and humanitarian assistance, including family reunification, education and health care.

124. Children with family members should be allowed to remain with their families in non-custodial, community-based contexts while their immigration status is resolved and the children's best interests are assessed. Children should not be separated from their families. The need to keep the family together is not a valid basis for deprivation of liberty of the child; instead, the State should provide non-custodial solutions for the entire family.

4. *Institutions*

125. The Independent Expert recommends that a universal vision, based on the principle in the preamble to the Convention on the Rights of the Child that every child "should grow up in a family environment, in an atmosphere of happiness, love and understanding", be developed and pursued globally.

126. States should target the causes of the separation of children from their families and provide the necessary preventive measures through support for families and strengthened child protection and social support systems. States should invest in a well-planned, trained and supported social service workforce, as well as integrated case management systems.

127. States should develop and implement a strategy for progressive deinstitutionalization which includes significant investments in family and community-based support and services. States should prioritize the closure of large-scale institutions and avoid the creation of new institutions.

128. States should undertake a process to assess children presently in institutions and make all efforts to return them safely to their immediate family, extended family, or, failing that, in a family-type setting integrated into the community, on the basis of the best interests of the child, and taking into account the child's will and preferences.

129. While prevention and deinstitutionalization are being carried out, States should ensure that all alternative care options respect the rights of all children and implement measures that guarantee the full participation of all children. States should provide effective support for safe and well-prepared transitioning out of care into independent living, after-care services and the reintegration of children back into their families and communities.

130. States are also urged to map all institutions within the country, whether private or public, whether presently registered or not, and regardless of how

children arrived there, and conduct an independent review of each institution. States should operationalize a system of registration, licensing, regulation and inspection which ensures that providers of alternative care meet internationally recognized standards.

131. States shall ensure that children being placed in hospitals, psychiatric facilities and rehabilitation centres, including for substance abuse, be properly counted and included in systemic transformation and deinstitutionalization efforts.

5. *Armed conflict*

132. The Independent Expert recommends that children detained for association with armed groups be first and foremost recognized by States as victims of grave human rights abuses, and that their recovery and reintegration shall have absolute priority.

133. In line with the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups of 2007, States should not detain, prosecute, or punish children who have been associated with armed forces or armed groups solely for their membership in such forces or groups.

134. States should adopt and implement standard operating procedures for the immediate and direct handover of children from military custody to appropriate child protection agencies.

135. States should ensure that children formerly associated with armed forces and armed groups receive appropriate rehabilitation and reintegration assistance and, where possible and in the best interests of the child, family reunification. Such assistance should take into account the specific situation and needs of girls associated with armed forces and armed groups in order to guarantee equal access to rehabilitation and reintegration assistance, as well as tailored measures.

136. States and parties to armed conflict should not detain children arbitrarily, including for alleged offences by family members, intelligence gathering, ransom, prisoner swaps or for sexual exploitation.

6. *National security*

137. The Independent Expert recommends that States facilitate the recovery and reintegration of children recruited by non-State armed groups designated as terrorist, recognizing such children as victims, and hold those who recruit and use them to account.

138. States should explicitly exclude children from national counter-terrorism and security legislation and ensure that children suspected of national security offences are treated exclusively within child justice systems.

139. States should ensure that counter-terrorism legislation with penal sanctions is never used against children peacefully exercising their rights to freedom of expression, freedom of religion or belief, or freedom of association and assembly.

140. States should end all administrative or preventive detention of children and extended pretrial detention for counter-terrorism purposes.

141. States should never use the gravity of an offence, even when linked to national security, as a justification for lowering the minimum age of criminal responsibility.

142. States should develop and apply a tailored and individual case management approach to children associated with non-State armed groups designated as terrorist.

143. The Independent Expert further recommends that States take responsibility for child nationals who may be detained for security-related offences or association with armed groups, including children born to their nationals. States should take measures to prevent children from becoming stateless and, on the basis of the child's best interests, facilitate the child's return to their country of origin for rehabilitation, reintegration and/or prosecution, as appropriate, in full compliance with international law.

C. Follow-up

144. The Independent Expert calls upon the General Assembly to ensure the development and maintenance of an international database containing all relevant data on children's deprivation of liberty. In developing such a database, a common methodology, based on the study, needs to be applied in order to enhance comparative research.

145. States are encouraged to establish focal points who regularly collect reliable data on all situations of children deprived of liberty per year and on a "snapshot" date.

146. States are urged to develop national action plans aimed at an overall reduction in the numbers of children in detention and/or the elimination of detention for children.

147. As deprivation of liberty constitutes a form of structural violence against children, the Independent Expert recommends that the detention rate of children in all situations covered by the study be considered in the implementation of target 16.2 of the Sustainable Development Goals.

148. The phenomenon of the deprivation of liberty of children must remain on the agenda of the General Assembly, the Security Council and the Human Rights Council. All United Nations agencies, mandates and special mechanisms are called upon to play an active role in the implementation of the recommendations provided by the global study. The Independent Expert calls upon the General Assembly to consider appropriate and effective follow-up mechanisms aimed at disseminating the study findings and promoting its recommendations at the international, regional and national levels.