

Editorial of special focus: Selected developments in the area of children deprived of liberty

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The UN Global Study on Children Deprived of Liberty (2019) unequivocally regards the detention of children as a form of structural violence. It not only leaves children stigmatised and marginalised for life, but also entirely forgotten by those adults who, in fact, should be protecting them. Despite irrefutable evidence of the harm detention inflicts on the physical and mental well-being of children, they continue to be detained in conditions that often leave them vulnerable to abuse and other severe human rights violations. This in turn has a severely negative impact on their development, stability and future prospects. Childhood encompasses the formative years of a human being and constitutes a period during which the personality of children is moulded and their ability to form emotional relationships defined. Depriving children of liberty during these crucially important years constitutes an enormous injustice. Yet, it remains one of the most overlooked violations of children's rights.

Headed by the independent expert Manfred Nowak (Secretary-General of the Global Campus of Human Rights), the *Global Study* reveals that more than 7 million children are deprived of liberty per year in different places of detention (including in the administration of justice, immigration detention and institutions). The UN Convention on the Rights of the Child (CRC) clearly states that depriving children of liberty should occur only in exceptional circumstances 'as a measure of last resort and for the shortest appropriate period of time' (article 37(b) CRC). In practice, however, state authorities in many countries around the world still widely place children behind bars as a means to control 'undesirable behaviour' (including for status offences, immigration or involuntary membership in non-state armed groups). Additionally, the research revealed numerous gaps in child justice systems globally, thereby underscoring the need for systemic change, further research and ongoing data collection on the topic.

This volume of the *Global Campus Human Rights Journal* continues to add to the Global Study findings by supporting students with the development of their own independent research. This is made possible under the auspices of one of the flagship activities of the Global Campus of Human Rights, notably the Global Classroom. The contributions in this volume developed directly out of the work students delivered as part of the Global Classroom 2020, which focused on the UN Global Study on Children Deprived of Liberty. The intention of this focus in addition was to offer students the opportunity to contribute to the dissemination and follow-up activities of the Study. The articles presented here thus hone in on regional trends identified by students of our seven regional Master's programmes in human rights and democratisation. Moreover, beyond the Global Study findings, the students' research is also heavily informed by empirical engagement with regional experts and stakeholders.

In the first contribution of this issue, students from the Asia Pacific programme investigate the number of children deprived of liberty for migration-related reasons in three transit countries. The article considers the reasons why Indonesia, Malaysia and Thailand routinely detain large numbers of children in so-called immigration detention centres. The authors do so by critically analysing existing legal and administrative practices prevalent in the three countries chosen for the study. Significantly, the article provides insight into a persisting attitude in these countries that sees the migration-related detention of children not as a matter of national concern, but rather as an issue to be resolved by the international community.

In an article entitled 'Armed conflict and national security deprivation of liberty in the MENA region', students from the Arab World Master's programme shine a light on common problems as well as common good practices in the MENA region. As the title suggests, their focus falls on the deprivation of liberty in the contexts of armed conflict and national security – the two areas of the Global Study identified by the authors as primary reasons for the detention of children in the region. By way of a comparative study of Iraq and Syria (ISIS regions), Libya and the Occupied Palestinian Territories (OPT), the article highlights issues related to radicalisation, repatriation, the changing nature of armed conflict and the application of military law to children and its implications for children. Ultimately, the article calls for solutions that promote the rehabilitation and reintegration of detained children by applying international standards of justice.

In Latin America and the Caribbean, the focus falls on the situation facing migrant children who move from North Central America towards Mexico. Although the article isolates El Salvador, Guatemala and Honduras as the main countries from where children migrate, the central focus of the

analysis falls on Mexico as a receiving, issuing, transiting and returning country. Recognising that Mexico's response to migration is both restrictive and punitive, the article highlights the vulnerability of children (as well as adolescents) in such a context. Furthermore, the article reveals that immigration detention and repatriation are the main strategies by which Mexico seeks to contain migration flows. The authors substantiate these observations with information gathered from existing conventions, judgments, laws, theoretical documents, thematic reports, surveys and available statistical data.

Turning the focus on issues related to children with disabilities detained in institutions, the contribution from South-East Europe highlights the progress made in countries with a Socialist/Communist past. While the article indeed reveals positive developments in the selected case study countries (Albania, Bosnia and Herzegovina, Bulgaria and Serbia), it also argues strongly that lingering failings continue to violate the rights of children with disabilities. Emphasising the overrepresentation of children with disabilities in institutions, the authors explore the root causes of this fact – which includes, for example, reasons related to poverty, social stigmatisation and the lack of community-based support for families.

Developments in migration-related detention in Angola, Malawi and South Africa form the focus of the contribution from Africa. The overarching perspective of the article emphasises the responsibility of these countries to honour their international obligations – something all three countries fail to do adequately. The article further highlights that most African countries adopt punitive measures in order to prevent displaced populations from making asylum claims – a fact that has a severe impact on displaced children as well. By way of desk-based qualitative research, the authors find children to be placed in prison for long periods of time (often with adults) while the poor living conditions in which children are routinely kept remain an area of serious concern in the region.

The European-focused article considers the detention of children during immigration proceedings as well as on national security grounds, highlighting the importance of the intrinsic link between these two narratives in the region. The article argues that, due to perceived threats brought on by various terrorist attacks in recent years, migration in Europe has become a 'security problem' that places children in helpless positions. The authors further associate these elements with the importance of non-custodial solutions and child-centred strategies designed to limit the deprivation of liberty. This argument is specifically exemplified by a number of case studies in The Netherlands, France and Greece, while the article also points towards positive practices in Ireland and Cyprus.

The final article brings the special issue to a close by also considering non-custodial measures – this time in the context of the administration of

justice. An intention of the article is to provide the reader with a thorough overview of diversion practices across twelve post-Soviet states in Eastern Europe and Central Asia. By virtue of the desk research conducted, the authors were able to identify that only two of these countries actually implement diversion programmes in practice, notably Georgia and Kyrgyzstan. These two countries are subsequently analysed in greater detail according to a set of principles and criteria delineated earlier in the article. Finally, the authors point towards the need to strengthen diversion programmes across the region so as to more effectively protect as well as rehabilitate children who come in contact with the law.

While the articles cover a wide range of aspects involving the deprivation of children's liberty, migration-related detention is shown to be the *Global Study* focus area most relevant across the regions covered by the Global Campus programmes. Four of the seven regions highlight immigration detention as the most pressing issue in relation to children deprived of liberty (Asia Pacific, Latin America and the Caribbean, Europe and Africa). It is, therefore, not surprising that eliminating the immigration-related detention of children is one of the strongest recommendations of the Study. The Arab World and Europe further highlight the impact of armed conflict and national security concerns on a state's willingness to deprive children of their liberty on those grounds. Additionally, the Global Study underscores the importance of investing meaningful resources to reduce inequalities and support families – an issue shown to be especially relevant in the context of children with disabilities in South-East Europe. Finally, although the Global Study calls upon all states to establish effective child justice systems and to apply diversion at all stages of the criminal procedure, many countries still have to improve significantly in this regard. The Caucasus article clearly demonstrates this fact by the overview and analysis provided of the post-Soviet space. Overall, these seven research papers illustrate the value of students' academic engagement to further our regional understanding of the situation children face in detention. Indeed, the articles show a shared commitment to help end violence against children and to leave no one behind and, especially, to leave no child behind bars.