

Defence for Children International
Laetitia van Haren
Telephone number: +41 22 734 05 58
Email: info@dci-is.org

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HUMAN RIGHTS COUNCIL

11th Session: Report of the Special Rapporteur on Education

Written statement submitted by Defence for Children International (DCI), a non-governmental organisation in special consultative.

Title:

The Right to Education for Children in Detention¹

Text:

Education as a Right:

Children deprived of their liberty are low on the list of State priorities when it comes to the provision of education. Such children are invisible, forgotten, and neglected in national policies and action plans on education.

A number of States are failing to provide any education at all to children in detention. Others are providing some education; however, the quality and consistency is poor and education is seen as a privilege rather than a right.

Children have the right to education in all settings - including in places of detention. In order to ensure the provision of education to children in detention, it must be recognised as an inherent human right: one that cannot be denied when a child comes in conflict with the law.

The child's right to education is recognised in article 28 of the Convention on the Rights of the Child. In addition, specific standards on education for children in detention are included in article 94 of the Fourth Geneva Convention and articles 38-46 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules). Article 38 of the Havana Rules states:

“Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the

¹ This statement is presented for consideration with the report of the Special Rapporteur on Education. The information in this statement is drawn from DCI's national sections in Belgium, Colombia, Ecuador, Italy, Lebanon, the Netherlands, Niger, Nigeria, Pakistan, Palestine, Sierra Leone and Uganda and was submitted to the Special Rapporteur in response to a questionnaire distributed to various stakeholders in preparation for the report.

country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.”

Despite having these standards in place, serious breaches of the child’s right to education can be found in detention centres, remand homes and prisons in all regions of the world.

The following paragraphs address some of the greatest gaps in the provision of education.

Inconsistency in the quality and quantity of education:

In many countries, education in detention is characterised as ad hoc and provided when possible, rather than being part of a planned and consistent policy. It may be provided in a limited number of facilities, to a limited number of children or for a limited and uncertain amount of time.

For example, while Pakistan has legislation covering the provision of education in detention, it lacks the framework and resources to implement this policy. In Uganda, some education is provided at the country’s National Rehabilitation Centre; however, the six remand homes serving four regions of Uganda fail to provide any educational programmes for children.

Consistency is also an issue in deportation centres in the Netherlands, where the education programme given to children before they enter the centre does not match the programmes in the deportation centre itself. Moreover, the programmes are not suitable for youth facing deportation because they join the schooling program with juveniles who have to work on their re-integration in Dutch society.

The quality of education is also a concern in many countries, including Colombia, Uganda and Nigeria. In Italy, children deprived of their liberty have access to education and training, but the quality and types of courses vary considerably from one facility to another.

In Sierra Leone, Niger and Lebanon, DCI national sections stress that **no** education is provided by the State for children in detention. While most countries have a plan for the provision of compulsory primary education, these plans do not include children in detention. For example, the Education Act 2004 of Sierra Leone provides for free and compulsory primary education for all children in Sierra Leone, but there is no strategy to ensure that it includes children deprived of their liberty.

In many cases, the only education provided to children is through the initiatives of NGOs, and without them, children are left languishing in detention centres. In countries where education is provided, NGOs play a leading role in enhancing its quality and consistency. However, NGO initiatives tend to be short-term and unsustainable and cannot be a long-term solution.

Lack of education in pre-trial detention:

Some of the most serious breaches of the right to education occur during periods of remand and pre-trial detention. States’ rationale for failing to provide education in these settings is that the child should only remain there for a limited amount of time; however, in reality, children in

many parts of the world remain in detention without trial for weeks, months and years. In the approved school (prison) in Sierra Leone for example, there is a child who has been awaiting trial for over eight months, and has received no State supported education.

Even in countries where periods of pre-trial detention tend to be shorter, the quality of education is still lower than in regular schools or in detention centres for convicted children.

Education under certain conditions / withdrawal of education as punishment:

In a number of States, education can be withheld as punishment or denied due to external factors such as the “security situation”.

In Israel, the District Court in Tel Aviv ruled in 1997 that Palestinian children in Israeli detention are entitled to the same education as Israeli child prisoners, including an education programme based on the Palestinian curriculum; however, this right is *subject to the security situation*. As such, Israeli prison authorities allow only very limited education in 2 out of the 5 prisons and none of the 7 interrogation centres where Palestinian children may be detained for up to three months or more. Similarly, in Niger, the right to education can be denied due to “security reasons”.

In Italy, the Penitentiary Ordinance of 2000 (Ordinamento Penitenziario del 2000) states that “the detained person whom, in the courses of his education... engages in a behaviour which constitutes a substantial breach of his duties, can be excluded from school course”. The director of the prison may decide that the exclusion of a prisoner from education is required and must justify the measure.

Lack of measures to address different ages, education levels, and marginalised groups:

Despite the provisions of the Havana Rules, many States are struggling to cater education programmes to the diverse needs of children in detention. In Lebanon, Nigeria, Uganda, Colombia and Pakistan there are a lack of provisions to account for marginalised groups, different ages and levels of schooling. In the Occupied Palestinian Territory, varying needs and abilities are unaccounted for, and one teacher gives three hours of lessons every day to a group of children, regardless of their educational level. In the two military detention centres in Israel which do provide limited education, the children are not separated according to age or ability.

A continual challenge in the provision of education in some countries is that many children have never been to school, and thus have very different educational needs than those who have attended formal schooling. This was an issue noted in Lebanon, Sierra Leone, Uganda, Nigeria and Niger in particular.

There is also a consistent lack of attention to the specific needs of girls in detention, making them further invisible in the justice system. For example, Palestinian girls detained by Israel receive **no** education whatsoever.

In contrast, both the Netherlands and Italy have special education plans designed to meet the needs of each child.

Conclusions and Recommendations:

There is an urgent need for States to ensure that their education policies and commitments are extended to children in detention. Children in detention **do not** constitute a separate category of children with a negotiable set of rights. While the national legislation in some countries does provide for education, it is rarely referred to specifically as a right.

When children in detention are understood as rights-holders, education cannot be withheld as punishment, refused due to lack of resources or forgotten due to the absence of political will. States must provide education and opportunities to facilitate the child's eventual rehabilitation and reintegration to society; however, this is not to say that education should be provided only as a means to this end: it must be guaranteed to children as a right in and of itself.

DCI endorses the recommendations in the Special Rapporteur's report. In addition, DCI calls on States to:

- Use detention as a measure of last resort and for the shortest appropriate period of time; and, prioritise diversion and alternative methods to detention;
- Guarantee the provision of education for children in detention through national legislation and ensure that it is framed as an inalienable right;
- Provide education to children in detention and ensure that such programmes reflect the diverse needs of children according to age, gender, ability and other factors;
- Integrate the provision of education in detention into all national action plans, policies and strategies on child education;
- Ensure regular review of the use of pre-trial detention, by a competent body, to ensure that it is in conformity with the law;
- Facilitate the participation of children in the development of education programmes in detention;
- Systematically collect and publish data about the provision of education in detention;
- Monitor and review the quality and quantity of education in detention; and, set forth a plan to transfer responsibilities from non-governmental organisations to the State.