

UN Global Study on Children Deprived of Liberty

Consultation on Children in Institutions (Pretoria, July 2018)

Concept Note

I. Background

Personal liberty is a fundamental human right, which is guaranteed to every human being. When it comes to children, Article 37 of the UN Convention on the Rights of the Child (CRC) requires that detention of children must be a measure of last resort. Nevertheless, deprivation of liberty of children¹ remains a complex and widespread phenomenon across the globe. It affects children in a variety of settings, ranging from detention to placement in institutions, where they are not permitted to leave at will, based on decisions taken by authorities, which follow diverse and distinct objectives and procedures. Regardless of its type, it constitutes a severe form of interference with the child's right to personal liberty, with implications for all other children's rights. Therefore, any deprivation of liberty of children requires clear, legal justification, while preserving the principle that in all action concerning children, their best interests should be a primary consideration (Art 3/1 CRC). This is complemented by other general child rights principles, such as the right to non-discrimination (Art 2), the right to life, survival and development (Art 6), as well as the child's right to participation (Art 12). Nevertheless, understanding on prevalence and dimensions of deprivation of liberty as well as on the applicable prevention and protection framework for children is limited so far, ranging from a lack of coherent statistical information to missing systematic assessment of alternatives to deprivation of liberty.

UN General Assembly Resolution 69/157 of 18 December 2014 requested the Secretary-General to commission an in-depth global study on children deprived of liberty. In October 2016, Manfred Nowak (Austria) was appointed by the United Nations Inter-Agency Task Force as Independent UN Expert leading the Global Study on Children Deprived of Liberty.²

Based on the over-all mandate from General Assembly, the following core objectives of the Global Study have been identified:

- Assess the magnitude of this phenomenon, including the number of children deprived of liberty (broken down, in particular, by age, gender and nationality), as well as the reasons invoked, the root-causes, type and length of deprivation of liberty and places of detention;
- Document good practices and capture the views and experiences of children to inform the Global Study's recommendations;
- Promote a change in stigmatizing attitudes and behaviour towards children at risk or who are deprived of liberty; and
- Provide recommendations for law, policy and practice to safeguard the rights of children concerned and prevent and significantly reduce the number of children deprived of liberty through effective non-custodial alternatives, guided by the best interests of the child.

¹ For the purposes of the Global Study, children are defined as all persons below the age of 18, in line with Art 1 of the UN Convention on the Rights of the Child.

² Cf OHCHR Website, <http://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>.

Consequently, as stated in the Resolution, the Study recommendations will be grounded on a child rights-based approach, which provides a comprehensive, universal framework for assessment of legislation, policies and practice in relation to children deprived of their liberty. Article 37 lit b of the UN Convention on the Rights of the Child (1989) 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.” Lit c and d of the same provision require any child deprived of liberty to be treated with dignity and respect, containing further safeguards in relation to conditions of deprivation of liberty, contact with the family, legal review and other procedural rights.

II. Regional and Thematic consultations

Besides engaging in desk research and data collection on the dimensions of the phenomenon, the UN Global Study will engage in further in-depth analysis on certain issues through **thematic and regional consultations** with a broad range of stakeholders, including state authorities, UN agencies, academia and civil society.

The purpose of the proposed thematic consultation in Pretoria is as follows:

- Raising awareness of the Global Study process, enhancing the prospects of properly completed questionnaires by 1 September 2018;
- Collecting information about progress and challenges in relation to the chapter on Institutions
- Sharing an outline draft of the Institutions chapter with a group of experts on care and protection, alternative care, deinstitutionalisation – to receive their feedback and ideas;
- Receiving input and feedback on the Global Study research process, and discussing methodology and verification processes
- Identifying good practice examples (with a particular, but not exclusive, focus on the region)
- Soliciting recommendations and suggestions from participants and identifying possible next steps.

III. Thematic Consultation in Pretoria, South Africa

The methodology for Study, which was approved in April 2018, divides the Study into six thematic chapters. One chapter will be dedicated to ‘Children in Institutions’, and a Research Group has been established to work on this thematic area. The University of Pretoria (Centre for Child Law) supports this chapter of the Study, as lead academic institution in the Research Group, and the University of the Western Cape is also involved. UNICEF is the participating UN Agency, Office of the Special Rapporteur on persons with disabilities, and the lead civil society organisations are Lumos, SOS Children’s villages, among others. UNICEF is providing financial support for the thematic area, including for consultative processes.

A training course on children’s rights, which will be attended by participants from a range of African countries, will be taking place at the University of Pretoria for the week 23 to 27 July 2018. This creates a platform for sharing information, and the Independent Expert for the Global Study, Professor Manfred Nowak, will be involved as speaker in this training course.

It is envisaged that the thematic consultation on institutions will sit in with the broader group to hear Professor Nowak’s overview of the Study so far, and to participate in a Q & A session that will follow. The

plan is that the expert groups of NGOs, UN Agencies and International actors will then move into a parallel thematic consultation for the remainder of the day and the morning of the following day.

IV. Proposed Agenda

Day One (09:00-20:00):

09:00 – 09:15	Opening Session of the conference by host/organizers and intro of Independent Expert
09:15 – 10:30	Aims and objectives, Global Study Update, Guideline to Questionnaire
10:30 – 11:00	Questions and discussion
11:00 – 11h30	Coffee break
11:30 – 11.50	Introduction to the Institutions chapter of the Global Study, study outline etc
11:50 – 13:00	Towards a definition of “institution” – open discussion with UN agencies, NGOs, et al
13:00 – 13:45	Lunch break
13:45 – 15.00	Identification of good practice – where should the focus be?
15:00 – 15h45	Methodology & verification – open discussion with UN agencies, NGOs, et al.
15:45 – 16:00	Coffee break
16:00 – 17:00	Expected/hoped for outcomes of the study, in particular for the Institutions chapter
17h00 – 17h15	Closing remarks by Independent Expert
17:15 – 20:00	Reception

Day Two (09:00-12:00):

08:00 – 09:30	Breakfast, informal networking for NGOs, UN Agencies, experts
09:45 – 12:00	Working group: ‘Institutions’ Chapter of the Global Study – discussion of draft chapter, next steps

V. Participants

Key experts from civil society organizations, academia and UN Agencies, inter alia, will be identified and handpicked to participate in an interactive dialogue. The aim is to ensure participation from both the international level, and also from relevant stakeholders from the region, and possibly from other regions, to allow for an open, inclusive and transparent consultation process.



VI. Outcome

- ✓ **Raise awareness** on the issue of Children in Institutions, not just in the sub-continent, but also regionally and internationally (as key experts from across the globe will be invited to participate in the forum).
- ✓ **Explore the approach towards this issue** within the Study and beyond, holding an forum with key stakeholders from different sectors (UN, NGO, academic), and geographic areas.
- ✓ **Development of definitions and methodology for the chapter on Institutions**
- ✓ **Encourage States to reply to the questionnaire**, together with other relevant actors, by 01 September 2018.