

Abstract for International Symposium on Girls in Conflict with the Law

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The United Nations Global Study on Children Deprived of Liberty shows that significant gender disparities persist in the situation of children deprived of liberty, reflecting the penal system as arguably the most gendered space in society. Even though numbers show that girls are much less represented within detention facilities than boys, across all regions there is an increase of girls in detention facilities. However, altogether there are far more boys deprived of liberty than girls. In the administration of justice and the contexts of armed conflicts and national security, 94% of all detained children are boys. In migration detention, about two thirds of detained children are boys. Yet, the numbers of boys and girls deprived of liberty in institutions, or living with their primary caregiver in prison are equal.

There is little research as to why the overwhelming majority of detained children are boys. Compared with the overall crime rate for children, the Study shows that the child justice system tends 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, one fourth get in formal contact with the criminal justice system, and only 6% 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. In addition, girls in patriarchal societies are often prevented from committing criminal offences by strict societal norms and increased paternal control. Recent studies show that the imprisonment rate of girls, as compared to boys, increases with the share of female judges. A balance of gender in the jury thus may indicate that boys receive a fair and more equal judicial treatment.

While boys are overrepresented in detention, girls often suffer gender-based discrimination. Since girls interact less with the criminal justice system, their special needs tend to be overlooked during policy making processes.

- 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 often arrested for prostitution.
- If States criminalize abortion, girls risk incarceration for their decision to terminate a pregnancy, 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 physical, sexual and mental violence committed by prison guards. These include rape and other forms of sexual violence such as threats of rape, touching, 'virginity testing', being stripped naked, invasive body searches, insults and humiliations of a sexual nature. One of the interviewed girls recalls: "they asked me why I ran away from home. When I didn't answer, why did he slap me?". Also another girl reported that her physical integrity was violated: "I was searched in a way that violated my privacy as I was searched by a [male] police officer". Female officers and clear policies and regulations about the conduct of the staff can ensure girl's dignity and protection from violence through search methods. Girls also face a heightened vulnerability due to the lack of facility separation between men and women, and women and girls.

However, separate facilities for girls, in the rare cases where detention is demonstrably unavoidable, is also a measure that can be established.

Furthermore, girls face sexual abuse in the context of armed conflict and national security by government forces, when they want to force them for information extraction. Accounts from medical personnel indicate that girls who returned had been subjected to rape and other sexual abuse while in the custody of the security forces, such as this 14 year old girl from East Africa recalls: “They were about 20 men [...]. They stayed with us eight days. They mistreated me . . . they were sleeping with us [raping us]. They beat us if we refused to sleep with them. They beat me with a stick on the head and the back. All over the body”.

With regard to release and rehabilitation, especially in the context of armed conflict, the needs of former boy child soldiers are often prioritized. In this context, release rates from armed groups are often comparatively higher for boys than for girls. With regard to rehabilitation of girls in the context of armed conflict, community acceptance plays a major role for girls who were formerly associated with armed groups. It was found to be the single most critical factor for successful reintegration of former girl child soldiers into their communities in research conducted in Central Africa.

Gender stereotyping also influences detained primary caregivers. Most States allow convicted mothers to co-reside with their young children in prison, while fathers are rarely permitted so. Even when possible, there are (almost) no appropriate ‘father-child units’ in the prisons. In relation to children living with their primary caregivers, eight countries (Belgium, Bolivia, Denmark, Finland, Germany, Italy, Spain and Sweden) explicitly allow children to co-reside with their fathers in prison.

Recommendations:

- Repeal all laws criminalising girls-specific and ‘immoral’ behaviours on grounds of gendered societal norms and stereotypes. In no case shall children be deprived of liberty as a punishment for such offences, e.g. abortion or consensual and non-exploitative sexual activities amongst adolescents of similar ages, regardless of their sexual orientation. States also must decriminalise children in victimising situations, such as trafficked children or victims of sexual abuse.
- If detention or deprivation of liberty 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 and gender-sensitive conditions, e.g. have separate facilities for girls, guarantee the highest attainable standard of health, taking into account girls specific needs and ensure girl’s dignity and protection from violence (e.g. through search methods).
- Incorporate a gender dimension into service delivery of child justice systems and address disparities in accessing child justice services.
- Promote a gender-sensitive approach to management strategies of places of detention and other places of deprivation of liberty, e.g. ensuring the presence of female officers, staff having adequate trainings, and clear policies and regulations about the conduct of the staff.
- Promote family reunification and equal access to reintegration and rehabilitation assistance for girls formerly associated with armed forces and armed groups. Such assistance should take into account the specific situation and needs of girls in order to guarantee equal access to rehabilitation and reintegration assistance, as well as tailored measures.
- Systematically collect disaggregated data to better understand the pathways of boys and girls leading to detention in all situations of deprivation of liberty of children.