



CHILDREN AND DETENTION



ICRC

IN BRIEF



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CHILDREN IN DETENTION

Detention can be stressful and dangerous. It entails physical, emotional and intellectual deprivation, and even resilient adults find it hard to cope with. For children therefore, detention is likely to have a particularly severe and lasting effect. That is why they should be detained only as a last resort and for the shortest possible time.

"States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

Article 27, United Nations Convention on the Rights of the Child

HELPING CHILDREN IN DETENTION

During detention visits, the ICRC pays particular attention to the treatment and living conditions of children. We strive to ensure that detaining authorities protect children with measures that take account of their specific needs. These include:

- protecting children from all forms of ill-treatment, including sexual violence;
- providing legal advice and practical support;
- separating children from adult detainees (except when the child is detained with a family member);
- moving children to appropriate, non-custodial accommodation;
- maintaining direct, regular and frequent contact between children and their families;
- providing children with adequate food, washing facilities and access to health care;
- making sure children can take outdoor exercise every day for as long as possible;
- enabling children to take part in education, sport and recreational activities.



WHO IS A CHILD?

The answer to this question can determine who receives proper protection.

Of course, what it means to be a child physically and mentally varies between children at different stages of development and between children of the same age. To some extent, boys and girls have different needs. Attitudes to age also depend on culture and context: boys and girls may be valued differently and expected to fulfil different roles.

The 1949 Geneva Conventions and their Additional Protocols state that children under 15 may not be recruited or take part in hostilities. The same treaties prohibit the death sentence for anyone under 18 at the time the offence was committed if it was related to an armed conflict. The United Nations Convention on the Rights of the Child (CRC) provides for similar obligations, and its Optional Protocol on the involvement of children in armed conflict, which came into force

in 2002, raises the threshold for recruitment and participation in hostilities to 18, which would bring it into line with the CRC definition of a child.

While recognizing that children's characteristics and needs change as they grow up, and that customs differ from country to country, the ICRC considers that any individual under 18 years old should be deemed a child and protected accordingly. This would be in line with Article 1 of the CRC. The ICRC recognizes, however, that young people who have turned 18 may still have specific, age-related needs.

"... a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

Article 1, United Nations Convention on the Rights of the Child



Girls and boys in detention are vulnerable in different ways. They have different health and developmental needs – going through puberty and adolescence while in detention can be especially challenging. Girls, for example, can get pregnant while in detention, and need sanitary and gynaecological care. Both girls and boys that become parents while still children themselves often need help in creating and maintaining family bonds.

Age assessments

In some circumstances, for example where births are not registered, official documents or records may not exist to help check the age of individuals facing detention, execution or other legal measures, thereby reducing their chances of being treated properly. Recognizing that age cannot easily be established, even by medical methods, the ICRC believes that age should be assessed through an interdisciplinary approach. If there is any doubt, the individual should be considered a child and protected as such. Assessments, including forensic age assessments, must be conducted with the child's informed consent by independent and appropriately skilled practitioners (not law-enforcement or judicial officials). They must be carried out without discrimination, in an age-, culture- and gender-sensitive manner, and avoid any risk of violating the dignity and physical integrity of the child. The margin of error inherent in the methods used should be recognized and documented, and the benefit of the doubt always given to the individual.

MALE CELL



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WHY AND WHERE ARE CHILDREN DETAINED?

Hundreds of thousands of children are in places of detention around the world, held by different State authorities and armed groups. The reasons for their detention vary. Detained children may have been born to detained women or girls, or been held with a detained parent. An increasing number of children are held in immigration detention centres as the number of people seeking safety, a haven from persecution or a better life grows and States increasingly turn to detention in an attempt to control migration.

Children detained in their own right, under criminal law, are often first-time offenders charged with minor offences, such as theft. Some are arrested for association with armed groups. Administrative or “preventive” detention is used in some countries to hold children who are seen as a security threat. In some countries it is used under the pretext that it protects children who might otherwise be living on the streets, and for children seen as antisocial.

Children are not only held in juvenile detention centres but also police cells, prisons, military detention facilities, immigration detention centres, educational facilities and closed “welfare centres.” Some of the facilities are makeshift and temporary; many were never intended for children or do not meet their needs. Provision for children’s access to education or other essential gender- or age-specific services is often inadequate or non-existent. Worryingly, children are often detained with adults who are not family members, thereby putting girls and boys at greater risk of neglect and abuse, including sexual violence.

Even in facilities which hold only children, the risk of abuse remains, and not only from adults. Peer relationships can play a dominant, and not always positive, role when children have to navigate the world around them without family and friends to offer protection and guidance.



No matter what kind of detention facility it is and how well it separates adults from children, when children are detained there is always a risk to their health, well-being and security not only in the present, but also in the future. Children face an uphill struggle to become well-adjusted adults if they grow up in detention. They are at increased risk of violence, neglect or exploitation, which for many will be a further hardship to bear.

Even when not detained themselves, the lives of millions of children are significantly affected by the detention of a parent, guardian or other close relative. The absence of detained relatives has an economic, social and emotional impact on children's home life – and it is not unknown for several members of a family, even both parents, to be detained. Children are also affected by the arrest and trial of a relative, visits to places of detention and the execution of a parent sentenced to death, all of which can be very distressing.



BEST INTERESTS

Children's best interests should be the primary concern when considering actions that affect them. This includes when deciding to detain children or the adults on whom they depend. The term "best interests" broadly refers to the individual child's well-being, and is assessed in relation to a range of factors including a child's age, physical and mental health, level of maturity, current living arrangements, safety, culture and traditions, environment, experiences, and the presence or absence of parents. These factors have an impact on children's ability to cope with their situation and are important elements in assessing their specific needs.

All of the ICRC's actions to support children, including those deprived of liberty, are underpinned by consideration of their best interests. This idea is essential so that a detaining authority's other pressing interests and priorities do not take over, particularly in situations of armed conflict or violence.

Informed consent

Establishing children's best interests requires children's active involvement. Gathering information involves not only talking to adults in a position to shed light on a child's history and situation, but listening to children's own version of events. Obtaining children's informed consent can be a complex undertaking because of their age, psychological state, ability to understand, whether they are in a stressful or insecure environment, feel under peer pressure, etc. Our staff carefully explain the implications of any agreement that affects them, how our organization works and what support we can provide, in language that children can understand.

"Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity."

UN Committee on the Rights of the Child, General Comment 12 (2009)



JUSTICE FOR CHILDREN

The ICRC is concerned with how justice and administrative systems treat children from the very first moment they, or a family member, are apprehended. Procedures and laws are complex, and children may have great difficulty understanding what is going on around them. This makes situations, such as being questioned by police or appearing in court, potentially more confusing, frightening and stressful than it is for adults.

Criminal laws, procedures and institutions should therefore be adapted to reflect the specific needs and best interests of children. This could entail separate judicial and administrative arrangements for adults and children.

Criminal responsibility

The age at which a child can be charged and, if found guilty, punished for an offence is stipulated in a country's domestic law. But while international law compels States to define the age of criminal responsibility, it does not prescribe what it should be; in practice it varies from one country to another. The ICRC, along with many other organizations that seek to protect children, considers that States should never set the age of criminal responsibility below 12 years old; children under this age, therefore, should not be arrested or prosecuted for a criminal offence, as they would be deemed legally incapable of committing a criminal act.

Children that have been recruited by armed forces or armed groups and that are accused of having committed domestic or international crimes during armed conflicts should be treated first and foremost as victims.



DETENTION AS A LAST RESORT

International humanitarian law and human rights law and standards have been developed to protect children from the particular risks of detention. The Convention on the Rights of the Child stipulates that children must be detained only as a measure of last resort, in exceptional circumstances and for the shortest appropriate period of time.

Alternatives to detention should be given preference. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) set out a variety of non-custodial options for children facing criminal charges. They include “diversion” from prosecution and detention, which keeps children in, or channels them into, age-appropriate processes or programmes in the community instead.

This can mean keeping children in their family environment, counselling for children and their family, foster care, educational and training programmes, and other forms of social support. In all cases, alternatives to detention should involve the family and community in fair processes that respect children’s rights, needs and best interests.

Rehabilitation or reintegration programmes are very important for children who, because of their past actions, will need help fitting back into their community. Children recruited by armed forces or armed groups are just one group who may need support to ensure that they are not rejected or stigmatized by their community, and to help them lead a normal life again.



States have the primary responsibility for ensuring that children in detention are shielded from neglect, abuse, exploitation and violence. Where children are detained, the State has a protective duty to free them as soon as possible. It must also actively work to ensure that conditions in detention are conducive to children's physical, mental and intellectual development. As confinement is not a conducive environment for a child's development, this is an extremely challenging obligation for a detaining authority. Detention staff dealing with children should always be selected with care, and have proper training and supervision.

Children should benefit from the legal safeguards which apply to adult detainees, but they are also entitled to specific kinds of care, attention and protection. For example, children may not be sentenced to death or given sentences with no real possibility of release, and any treatment or punishment which is cruel, inhuman or degrading is also banned.



THE INTERNATIONAL LEGAL FRAMEWORK FOR CHILDREN IN DETENTION

International humanitarian law and human rights law and standards address a broad range of issues related to the specific needs of children. For example, their families should be notified when they are detained, they should be able to stay in contact with their family, they must be housed separately from adults (other than their own family members) and age-appropriate food, health care and time for physical exercise must be provided. Children should also have access to education and legal support, and oversight systems should be in place for children to lodge complaints. Children have a particular right to privacy, including at all stages of criminal proceedings, to protect them from the stigma of being associated with criminal activity or conflict. Their names, and any other information or images that could identify them should not appear in the public domain without their informed consent, and they should not be exposed to public curiosity.

In international armed conflicts, children with prisoner-of-war status are protected under the Third Geneva Convention and Additional Protocol I and cannot be prosecuted for taking part in hostilities, while child civilians are entitled to protection under the Fourth Geneva Convention and Additional Protocol I, including when they are detained.

In non-international armed conflicts, children are protected by Article 3 common to the four Geneva Conventions of 1949, and by Additional Protocol II. Human rights law continues to apply in such situations, in addition to domestic law, and usefully complements the protections afforded to children under humanitarian law. The Convention on the Rights of the Child has been ratified by almost every country in the world.



SELECTED INTERNATIONAL RULES AND STANDARDS REGARDING CHILDREN IN DETENTION

International humanitarian law

- Four Geneva Conventions (1949)
- Additional Protocol I and II to the Geneva Conventions of 1949 (1977)

International human rights law

- The Convention on the Rights of the Child (1989)
- The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000)
- The African Charter on the Rights and Welfare of the Child (1990)

International standards and guidelines

- UN Standard Minimum Rules for the Treatment of Prisoners (1955)
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles, 1988)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990)
- UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules, 1990)
- UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules, 2010)
- Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles, 2007)
- Minimum Standards for Child Protection in Humanitarian Action (Child Protection Working Group, 2012)



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TORTURE, ILL-TREATMENT AND SEXUAL VIOLENCE

Children are by nature more vulnerable to physical or psychological abuse than adults. While detention is likely to be a traumatic experience in itself for children, ill-treatment can compound the damage, having a lifelong impact.

Although children in detention should be protected from any treatment or punishment which is cruel, inhuman or degrading, all too often they suffer physical and humiliating punishment, bullying, sexual harassment and isolation, and see their parents or relatives abused. Dire conditions and harsh regimes are also physically and mentally damaging for children, and may also, in themselves, amount to ill-treatment.

In many countries, violence in detention carries on from violence in society at large. Children recruited by armed forces or armed groups are particularly likely to have suffered at the hands of armed men, and be psychologically affected

or traumatized by what they have done or witnessed. Migrant children may have been trafficked or forced into prostitution. All this can lead to mental health problems, including self-harm, depression, anxiety, suicidal behaviour, expressions of anger and violence, erratic behaviour and an inability to communicate.

International humanitarian law and human rights law strictly prohibit torture or other cruel, inhuman or degrading treatment against any individual. These legal frameworks also prohibit rape and other forms of sexual violence, along with other acts intentionally causing great suffering or serious injury to someone's mental or physical health. Given the devastating and prolonged physical and psychosocial damage such ill-treatment can cause, the ICRC works to put a stop to these crimes, prevent all forms of ill-treatment and alleviate the suffering of the victims.



A watchful presence

The ICRC's presence in places of detention may ensure that children come to no harm. Our staff help safeguard children against torture, ill-treatment, including sexual violence, and being killed or otherwise made to disappear by registering individual detainees and following up on their cases in bilateral and confidential dialogue with detaining authorities. Private, confidential talks with detained children can enable delegates to provide a safe space and some natural human kindness to those who are living in pain and fear. Medical and material assistance can be used to address immediate needs, but dialogue with the authorities is often the only means to ensure real, sustained change when children's physical and mental integrity are being undermined.



MIGRANT CHILDREN

Migrant children are often detained on grounds that do not meet the principle that children should only be detained as a last resort and for lengths of time that cannot be described as ‘the shortest appropriate’. Child migrants are even held in prisons, or in prison-like conditions.

Administrative detention of migrants often leaves children, whether detained with their family or held separately, in a linguistically and culturally alien environment, uncertain about their future and unable to understand why they have been detained.

Migrant children may have fled extremely difficult circumstances, including persecution, armed conflict, natural disaster and extreme poverty, but this is often unacknowledged or not taken into account for the provision of services. During their journey they may have suffered from violence, including sexual violence,

neglect or exploitation, including being trafficked. Unaccompanied migrant children are often in a particularly vulnerable situation, not least because they may be challenged to prove their age before they will be afforded protection as children.

The Committee on the Rights of the Child has stated that States should expeditiously and completely cease the detention of children and their parents on the basis of their immigration status.



ICRC VISITS FOR CHILDREN IN DETENTION

When we are granted access to places of detention, we inspect the premises and facilities, and talk in confidence to both the detainees and those responsible for their care. When children are detained, we gather essential information, find out what needs should be met as a priority and propose follow-up actions to improve their circumstances in the immediate and long term. We talk with the authorities about our concerns and make representations on behalf of those detained. These may include recommending that alternatives to detention be considered, adults and children separated, unmet needs fulfilled and budget or staff issues addressed.

WORKING WITH OTHERS

The ICRC collaborates with expert agencies when we believe this is in the best interests of the child. We also work with National Societies, and other organizations, to make sure children have regular contact with their families.



Boris Heger/ICRC

DETENTION AND FAMILY

Whenever a parent, guardian or close relative is detained, children are affected. They are often the hidden victims, affected by a relative's arrest, interrogation or detention.

Separation from family

Separation from loved ones is difficult for children. It disrupts family life and can have a significant impact on children's economic and psychosocial security, as well as their psychological development and well-being. Even very young children may be propelled into adult roles, having to take care of themselves and younger siblings. The loss of adult protection, and the prospect of destitution, forces some children to leave school and become child labourers, or pushes them into prostitution, early marriage, involvement in gang culture or recruitment into armed forces or armed groups.

Detained with parents

When a parent is detained, children sometimes stay with them, usually because there is no one outside to take care of them. This is especially the case for children who are born in detention or whose mothers are detained. Unless specific facilities are provided, these children then experience all the conditions adult detainees are subject to, from overcrowding and poor living conditions to lack of health care and educational opportunities. Detained parents can find it particularly hard to provide the emotional and physical support children need for healthy development.



Thierry Gassmann/CRC

Domestic legislation usually sets an age limit above which children cannot stay with their parents in detention, particularly in closed detention centres. When children reach this age, very difficult decisions have to be made; the authorities should fully bear in mind the child's best interests.

Children who are being held with their detained parents should also be registered by the authorities to ensure that their needs are not overlooked.

Improving the lives of children in detention

Based on our assessment of the living conditions of parents and children in detention, we work with the authorities to ensure that their needs regarding accommodation, physical safety, education and training are taken into account, and that there is enough light, access to fresh air and sufficient room for sport and recreation. Our activities include encouraging the authorities to send mothers to hospital when this is a safer place for childbirth, and registering births to detained mothers without referring to the prison in official records. We encourage the authorities to provide immunization, monitor child growth and provide appropriate food. Our activities may also cover maintenance, renovation or construction work to help authorities set up appropriate facilities for detained adults living with their children.



MAINTAINING FAMILY TIES

Whether children are themselves in detention or visiting relatives, maintaining family ties must be a fundamental priority. Family relationships are integral to children's development, well-being and sense of security. Families should also be contacted as soon as a child is arrested to ensure proper access to legal advice and due respect for judicial guarantees.

Contact between family members needs to be regular and meaningful with appropriate arrangements made that will support it, including the possibility of physically touching. The circumstances under which visits between children and their families take place can be a cause for concern: arduous journeys, intrusive body searches and unfriendly staff are not conducive to relaxed conversation.

While in most cases maintaining family ties is positive, in some circumstances it may not be in the best interests of the child. For instance, there may be a history of violence, exploitation or abuse within the family, or the child's experience of being trafficked or with armed forces or armed groups may complicate family relations. Children and families should be helped to prepare before contact or visits are made, or children return to their family. Contact should be facilitated, but not forced. In addition, the child's opinion in such matters should be listened to and given its proper weight.



Essential contact

Maintaining or restoring family links when a child or a member of its family is detained is one of the ICRC's core activities. Some of the ways in which this is done are:

- informing families that their child is in detention, when this has not been done by the authorities;
- providing transport or helping to pay for family visits;
- enabling detainees to call their families;
- carrying written Red Cross messages between detainees and their loved ones;
- persuading authorities to keep children near or, where appropriate, with their families;
- tracing relatives for detained children who have lost contact.

When children have no family, we can help put them in touch with other sources of support, such as social workers.



LEAVING DETENTION BEHIND

Experiencing detention at a young age affects children well into their adult lives. The ICRC endeavours to talk to and work with all relevant authorities and groups, including the parties to a conflict, to protect the physical and psychological well-being of the child in the short and long term. This includes thinking about the children's lives after detention and getting them ready for it. We help detaining authorities ensure children have education and vocational training, and access to health care (including mental health), as well as meaningful contact with family in the outside world.

Especially for children who were associated with armed groups, we take practical steps to prepare families and communities for children returning to live with them. Ensuring children are accepted and reintegrated requires real preparation.

For many host communities times may be hard enough already, and the perception can be that returning children will make things harder.

Reintegrating children into their families and communities is a delicate task and must be carried out with sensitivity. Our support is intended to facilitate reintegration of children into their communities. The scars may be deep, but creative solutions and approaches can still be found.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



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