



2017 OSCE HUMAN DIMENSION SEMINAR

RIGHTS OF THE CHILD: CHILDREN IN SITUATIONS OF RISK

**11-12 October 2017
Warsaw, Poland**

ANNOTATED AGENDA

Introduction and Aims of the Seminar

Human Dimension Seminars are organized by the OSCE/ODIHR in accordance with the decisions of the Conference on Security and Co-operation in Europe (CSCE) Summits in Helsinki (1992) and Budapest (1994). The 2017 Human Dimension Seminar is devoted to "*Rights of the Child: Children in Situations of Risk*", in accordance with Permanent Council Decisions No. 1266 and 1267.

Already in 1990, the OSCE participating States decided to accord particular attention to the recognition of the rights of the child, his or her civil rights, individual freedoms, economic, social and cultural rights, and his or her right to special protection against all forms of violence and exploitation (Copenhagen 1990). Nine years later, participating States reaffirmed their commitment to actively promote children's rights and interests, especially in conflict and post-conflict situations and to regularly address the rights of children in the work of the OSCE, as well as to pay particular attention to the physical and psychological well-being of children involved in or affected by armed conflict (Istanbul 1999). By recognizing the importance of the UN Convention on the Rights of the Child (CRC) in their multiple documents, the OSCE participating States also recognized one of the core principles of the Convention: every child's right to be protected and cared for by their own family or in a family-like environment, and to grow up in the family, school and community settings that can guarantee their full protection so they can survive, grow, learn and develop to their fullest potential.

At the same time, despite international legal instruments and political commitments children's rights are not fully secured. Across the OSCE region many children spend their childhood in conditions that do not support their dignity, in segregated residential care facilities, which may effectively result in deprivation of liberty, immigration centres and juvenile detention facilities or in detention within the administration of justice system. Even with best intentions, these places do not necessarily protect children; instead they leave children more vulnerable to violence, abuse, neglect and exploitation.

States are responsible for ensuring children's rights in the best interest of the child in all decisions concerning care and protection. This includes the obligation to take effective legislative and other measures to protect children in care or detention and to "ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence" (Article 9 CRC).

This seminar aims to address particular situations of risk for children's human rights and to provide a platform for discussion on how to address and mitigate them, including in the context of deprivation of liberty, trafficking in children, in the school environment or online, as well as to discuss good practice examples of existing strategies for preventing situations of risks. To protect children's rights and effectively identify and prevent situations of risk for children requires a clear commitment and effective actions, political leadership and a willingness to be accountable as well as a strong civil society that can participate in decision-making, hold duty-bearers to account and monitor what is being done for children. It also requires taking children's views into account and, where possible, guaranteeing their meaningful involvement in decision-making processes affecting their lives.

OSCE participating States have taken important steps regarding a variety of situations of risk, including regarding sexual exploitation, trafficking in children, discrimination, abuse and manifestation of racism directed towards migrant children as well as the prevention of child labour. In 2006, the Ministerial Council put a specific focus on combating sexual exploitation of children (Decision No. 15/06), including by recognizing that sexual exploitation of children is a grave and large-scale problem throughout the OSCE region and beyond, with multiple, interlinked manifestations of all forms of sexual exploitation of children, including prostitution, child pornography, trafficking in children, sex tourism and forced marriages of children; that sexual exploitation of children violates human dignity and undermines the enjoyment of human rights and fundamental freedoms; and by underlining the need to address the broad range of factors that make children vulnerable to sexual exploitation, including economic disparities, lack of access to education, and discrimination, including gender-related discrimination. In 2007 the Ministerial Council underlined its determination to combat the growing phenomenon of the viewing and distribution of child pornography via the Internet and encouraged participating States who have not already done so to establish a national operational centre, or other structure as appropriate, to increase co-ordination and to involve to the extent possible public private partnerships in order to more effectively address issues related to sexual exploitation of children (Madrid 2007, Decision No. 9/07). The Ministerial Statement on Migration from 2006 includes a call to all relevant OSCE institutions and structures to address forced migration while respecting relevant international legal obligations, and combat illegal migration as well as trafficking in human beings and the exploitation, discrimination, abuse and manifestation of racism directed towards migrants, with special attention to women and children (Brussels 2006). OSCE participating States also committed to intensify efforts to prevent child labour (Madrid 2007, Decision No. 8/07).

It is clear that children deprived of liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development.¹ Irrespective of the terminology or how situations of deprivation of liberty are interpreted under domestic law, what is instructive for the purposes of this seminar is the fact that the child is prevented by whatever means (physical force, physical barriers, threats, sanctions, restraints, medication etc.) from leaving a particular facility, site or institution² at will. The seminar therefore aims to discuss and share information with regard to both *de facto* and *de jure* deprivation of a child's liberty.

In the context of trafficking in children, efforts to combat trafficking in human beings cannot be effective without addressing the trafficking of the most vulnerable groups, including children. Addressing child trafficking within anti-trafficking programming, training, research, policy and action cannot be overemphasized in the context of our commitment to combat this form of trafficking in human beings, applying a human rights-based and gender sensitive approach, and in the best interest of the victim. Ensuring that trafficked girls and boys are treated in a manner that respects their human rights and fundamental freedoms and safeguarding them against security, emotional, or social risks is absolutely critical. These principles are at the core of OSCE efforts to combat trafficking in human beings. They are reflected in the Action Plan to Combat Trafficking in Human Beings adopted in 2003, and in the Plan's two addenda – the Addendum focusing on child victims adopted in 2005, and the Addendum addressing the emerging trends and challenges adopted in 2013.

Risk mitigating strategies that can be taken by state authorities, caretakers, educators and children themselves, aim to protect children from emerging risks such as online/offline bullying and sexual harassment/grooming/exploitation and radicalization. Some threats have a systemic character, such as discrimination and segregation, and need to be constantly addressed through co-ordinated action by a variety of stakeholders. In this context the role of human rights education in preventing situations of risk is particularly important. The OSCE commitments affirm the fundamental character of human rights education and acknowledge that it is essential that young people are educated on human rights and fundamental freedoms (Moscow Document 1991, paras. 42.1 – 42.6). Human rights education contributes to the prevention of human rights violations and abuses by providing children with knowledge, skills and understanding, and by developing their attitudes and behaviours to empower them to contribute to the building and promotion of a universal culture of human rights (United Nations Declaration on Human Rights Education and Training" 2011). Human rights education can give agency to children to protect themselves and ensure a human rights based approach to literacy, including through digital tools and new media.

¹ See e.g. United Nations Special Rapporteur on Torture, A/HRC/28/68 (2015), para. 16

² For the purpose of this seminar the term "Institutions" (or "centres") means all public or private settings outside the justice system or the penitentiary administration, where children can be deprived of liberty. Such institutions, may include, but are not limited to, orphanages, reform schools, closed remand rooms or other correctional institutions, institutions for children with disabilities, for children with health problems (e.g. facilities dealing with behavioural disorders, psychiatric facilities), for children with drug, alcohol or other addictions, for the protection of victims of abuse including trafficking, for children without parental care, from where the children are not permitted to leave at will.

Participants are encouraged to make brief oral interventions during the seminar. While prepared interventions are welcomed during the plenary sessions, free-flowing discussion and exchanges are encouraged during the Working Group Sessions. All participants are encouraged to submit in advance written interventions outlining proposals regarding the topic of the seminar, which will be distributed to the delegates.

DAY 1

WEDNESDAY, 11 OCTOBER 2017

OPENING PLENARY SESSION

10:00–11:30

Opening remarks

Statements of participating States

Technical information

WORKING GROUP I:

11:30–13:00

Children deprived of Liberty

International human rights law, above all Article 37(b) of the Convention on the Rights of the Child (CRC), is very clear: the deprivation of liberty of children is intended to be an *ultima ratio* measure, to be used only for the shortest possible period of time, only if it is in the best interest of the child, and limited to exceptional cases. Therefore, States should, to the greatest extent possible, and always using the least restrictive means necessary, adopt alternatives to detention that fulfil the best interests of the child and the obligation to prevent torture or other ill-treatment of children, together with their rights to liberty and family life, through legislation, policies and practices that allow children to remain with family members or guardians in a non-custodial, community-based context and to have access to counselling, probation and community services, including mediation services and restorative justice. In addition to the international and regional human rights treaties, OSCE participating States assumed responsibility for treating all individuals, including children, in detention or incarceration with humanity and with respect for the inherent dignity of the human person, observing the internationally recognized standards that relate to the administration of justice and the human rights of detainees (e.g. Vienna 1989; Copenhagen 1990; Moscow 1991) and committed to pay particular attention to the question of alternatives to imprisonment.

When the United Nations Children's Fund (UNICEF) conducted research on children in detention in 2007 and 2008, it estimated that there were more than 1.1 million children behind bars around the world, although it cautioned that that number was

likely a significant underestimate.³ There is no reliable data available on other types of deprivation of liberty, including child placement in the name of treatment or care such as for drug rehabilitation, placement of children on the move in closed facilities, placement of children with disabilities in psychiatric or other closed institutions, or detention of children in armed conflicts.

The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment already found that children in detention are at a heightened risk of experiencing violence and abuse, and significantly more vulnerable than adults to being subjected to torture and other ill-treatment, due to their unique physiological and psychological needs. States therefore have a heightened due diligence obligation to take additional measures to ensure their children's human rights, when they are in situations of deprivation of liberty.⁴

In order to mitigate and prevent situations of risks for children in conflict with the law, it is important that States provide for a specialised system of juvenile justice. Specific safeguards should be respected with regard to arrest and detention of children, including the notification of a relative or another adult trusted by the child and the presence of a trusted adult during interrogations, interviews and any court appearances. Children should be appropriately separated in detention, including but not limited to children in need of care and those in conflict with the law, children awaiting trial and convicted children, boys and girls, younger children and older children, and children with physical and mental disabilities and those without. Children detained under criminal legislation should never be detained together with adult detainees. In the context of administrative immigration enforcement, international and regional human rights bodies such as the UN Special Rapporteur on Torture and the Inter-American Court for Human Rights found that it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child. The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order.⁵

The seminar aims to include the deprivation of liberty by non-State actors and discuss the obligation of participating States to prevent such types of deprivation of liberty. Therefore, the places of detention to be looked at during the seminar go beyond State-organized prisons and institutions and include also private custodial settings, such as privately run prisons, psychiatric hospitals and similar institutions as long as such private custodial settings are licensed or contracted by the State and/or the deprivation of liberty was ordered by a State authority. Article 25 of the Convention on the Rights of the Child provides for the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. Finally, the seminar will also focus on good practices and remaining challenges regarding article

³ United Nations, Twelfth U.N. Congress on Crime Prevention and Criminal Justice, *Children, Youth, and Crime: Working Paper Prepared by the Secretariat*, ¶ 23, U.N. Doc. A/CONF.213/4 (Feb. 15, 2010).

⁴ Juan E. Mendez, in "Protecting Children Against Torture in Detention: Global Solutions for a Global Problem", Center for Human Rights and Humanitarian Law, Washington College of Law (2017), p. xiii.

⁵ United Nations Special Rapporteur on Torture, A/HRC/28/68 (2015), para. 80

37 (d) of the CRC, which states that children, including migrant children, have the right to prompt access to legal aid and other appropriate assistance, as well as the right to challenge the legality of the deprivation of their liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

(Parallel) Regional Consultations:

13:15 -14:45

The United Nations Global Study on Children Deprived of Liberty

The United Nations General Assembly by Resolution 69/157 of 18 December 2014 invited the Secretary-General to commission an in-depth UN Global Study on Children Deprived of Liberty. In October 2016, former UN Special Rapporteur on Torture Manfred Nowak was designated to lead the development of the Global Study as Independent Expert. The core objectives of the UN Global study include to 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 interest of the child.

On a voluntary basis, OSCE participating States and other participants of the Human Dimension Seminar are invited to take part in the inter-active regional consultations of the UN Global Study and to provide information on the situation of children deprived of liberty in the OSCE region, with a focus on immigration detention, other administrative deprivation of liberty and detention in the criminal justice system of children. The consultations seek to assess the magnitude of this phenomenon, including the number of children deprived of liberty from the OSCE region, the reasons invoked, the root-causes, type and length of deprivation of liberty and places of detention. Participating States are encouraged to provide examples of best practices and innovative alternative approaches aimed at reducing the number of children deprived of liberty according to the child rights principles. The outcome of the three parallel regional consultations will feed in the UN Global Study and inform its final recommendations to be presented at the UN General Assembly's seventy-third session in September 2018.

Consultation 1: Children deprived of liberty for migration-related reasons

Questions that could be addressed:

- Information on legislation under which children are deprived of liberty on migration-related grounds.
- What is the maximum time period, provided for by law, for which children can be deprived of liberty for migration-related reasons?
- Which authorities make decisions to deprive children of liberty for reasons relating to migration status?
- Which criteria are taken into account in such decisions?
- What is the review process for such decision?

Consultation 2: Children deprived of liberty in institutions

Questions that could be addressed:

- Which institutional facilities, whether private (state-licensed) or public, exist in your country where children are placed and thereby can be deprived of liberty for reasons of their education, health or disability, drug or alcohol abuse, poverty, for being separated from their parents, for being orphans, for living in street situations, for having been trafficked or abused, or for similar reasons?
- What procedures are available to either children or their families to appeal or challenge their placement in such institutions?

Consultation 3: Children deprived of liberty within the administration of justice

Questions that could be addressed:

- What is the minimum age of criminal responsibility in your country?
- Are there separate juvenile justice processes and/or facilities for children in conflict with the law?
- From what age are children subject to detention in the juvenile justice system? From what age are they subject to detention in the adult criminal justice system?
- What is the longest period of custodial detention (imprisonment or other form of detention) to which a child can be sentenced?

Working Group I: continued

15:00-17:00

Questions that could be addressed:

- Have there been alternatives to the deprivation of liberty of children in the (1) administration of justice, in (2) institutions and (3) for migration-related reasons that are provided for by law, policy or practice, whether in police custody, pre-trial detention, or imprisonment?
- Have there been any major legislative or policy changes during the last ten years in relation to:
 - deprivation of liberty of children in the administration of justice;
 - deprivation of liberty of children in institutions;
 - deprivation of liberty of children for migration-related reasons.If so, which impact have these changes had on the number of children deprived of liberty?
- How do participating States ensure that deprivation of liberty is used only as a measure of last resort only in exceptional circumstances and only if it is in the best interest of the child?
- How do participating States promote preventive mechanisms, such as diversion and early identification and screening mechanisms and provide for a variety of non-custodial, community-based alternative measures to the deprivation of liberty?

- How is the right to prompt access to legal aid and other appropriate assistance for children deprived of liberty, as laid out in article 37 (d) of the Convention on the Rights of the Child, including migrant children, ensured in practice? Are there any independent, legal aid centres in place that provide children with the effective opportunity to have access to justice and subsequently to obtain remedies?
- How are places of deprivation of liberty monitored? Do independent monitoring mechanisms cover places run by private actors? Do child protection services exercise oversight over all places of deprivation of liberty of children?

Closing Session of Day 1

17:00-17:50

Rapporteurs' summaries from the regional consultations (UN Global Study)

Keynote closing address: **Prof. Manfred Nowak**, Children deprived of Liberty and the UN Global Study

Comments from the floor

DAY 2

THURSDAY, 12 OCTOBER 2017

Working group II:

10:00-13:00

Trafficking in Children

Combating trafficking in children remains a priority in compliance with the relevant OSCE's Commitments, including the 2005 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing special needs of child victims of trafficking for protection and assistance (PC.DEC/685) and the 2013 Addendum to the OSCE Action Plan on Combating Trafficking in Human Beings: One Decade later (PC.DEC/1107/Corr.1), as well as various international commitments and instruments. Participating States are concerned with the increased vulnerability of children in the OSCE region being trafficked for the purposes of sexual and labour exploitation, organ removal, child marriages, criminal activities, etc.

The 17th *Alliance Against Trafficking in Person* Conference on "Trafficking in Children and Best Interests of the Child" held in Vienna on 3-4 April 2017 demonstrated the need for the OSCE continued efforts by addressing topics such as threats facing children in crisis situations, factors heightening child vulnerability, the adequacy of existing child protection systems, as well as policies and measures which should foster the best interests of the child. A special emphasis was placed on children on the move, including unaccompanied minors, missing and internally displaced children and how to strengthen measures to prevent child trafficking while protecting children's rights. During the Conference, a set of concrete recommendations (SEC.GAL/65/17) were developed and their implementation was

further discussed at the meeting of National Anti-Trafficking Co-ordinators and Rapporteurs on 30 of June 2017. Both meetings concluded that it is critical to maintain equal focus across the “four pillars” of prevention, protection, prosecution and partnership as being crucial to the effective, co-ordinated and comprehensive response to child trafficking and to ensure that anti-trafficking actions in crisis situations are systematically integrated into humanitarian responses.

The OSCE Action Plan on Combating Trafficking in Human Beings recommends the establishment of National Referral Mechanisms (NRMs), defined as “co-operative frameworks within which participating States fulfil their obligations to protect and promote the human rights of the victims of trafficking, in co-ordination and strategic partnership with civil society and other actors working in this field”.⁶ In addition, several OSCE commitments (Porto 2002, Brussels 2006, Madrid 2007) reiterate the need to establish such frameworks for co-operation between state actors and civil society. Through the Porto Declaration on Trafficking in Human Beings (MC(10).JOUR/2), for instance, States committed themselves “To render assistance and protection to the victims of trafficking, especially women and children, and to this end, when appropriate, to establish effective and inclusive national referral mechanisms, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked”. Furthermore, the Brussels Decision on Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach (MC.DEC/14/06), recommends participating States “to establish NRMs, as well as to appoint national co-ordinators”. An NRM essentially concerns the process of identifying and referring victims of trafficking for assistance, whilst ensuring respect for the human rights of the person concerned and a gender-sensitive approach. The aim of NRMs, therefore, is to guarantee effective protection of the rights of the victims, while increasing the chances for the successful prosecution of the perpetrators.

In 2004 ODIHR developed the Practical Handbook “National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons” (NRM Handbook), which outlines basic principles and good practices in relation to NRMs, and provides guidance on how to design and implement sustainable mechanisms and structures to combat human trafficking and support all victims, trafficked either within or across national borders. Nevertheless, since 2004, there have been significant developments in the area of combating trafficking in human beings. For this reason, ODIHR is in the process of updating its 2004 Handbook on National Referral Mechanisms, which will reflect and analyse over a decade of application of NRMs in OSCE participating States, with the intent of identifying the gaps, the successes and the emerging good practices.

ODIHR is committed to the development of a section on addressing child trafficking in the updated practical NRM Handbook, with a particular focus on needs of child victims. This session will provide an overview of existing trends with regard to trafficking of children as well as challenges in addressing the situation. It will also produce examples of good practices on how to provide child victim protection and support, thereby ensuring a victim-centred and child-friendly human rights based approach. These examples will inform the revision of the Handbook.

⁶ MC.DEC/2/03, V. 3

Questions that could be addressed:

- Which institutional framework exists at the national and local level to effectively develop and implement anti-trafficking strategies and measures, particularly directed towards children victims of trafficking?
- What are the current trends in child trafficking and best practices in OSCE participating States addressing them? What are the biggest challenges in implementing effective NRMs with a focus on children and what measures should be taken to overcome these challenges?
- What are the best practice examples of multi-disciplinary and multi-agency approach in addressing the needs of child victims of trafficking?
- Where NRMs have been established, have they been helpful in ensuring specialized assistance to child victims of trafficking and enhancing effective prosecution of the perpetrators in child trafficking cases?
- Does the NRM adequately address the different needs/experiences of children, boys and girls, victims of trafficking?
- Are there trans-national mechanisms in place to ensure adequate protection of child victims of trafficking?
- How can participating States promote preventive mechanisms to better tackle the vulnerability of children at risk?

Working group III:

15:00-17:00

Strategies for preventing situations of risk

Situations of risk for children encompass a very broad set of threats that exploit intrinsic vulnerabilities associated with the young age of children. Threats to children in time of peace generally stem from socio-economic and family factors such as migration, economic status of the family, ethnic, religious and/or gender discrimination, etc.

In addition, the ever growing influence of digital online interaction has altered the ways society communicates, generally benefiting various groups including children thanks to the immediate availability of information or simply by providing new spaces for creativity, education, social interaction and playtime. At the same time the internet, and particularly social media, generated a new set of threats to children; such are the production and circulation of illegal child abuse images, sexual grooming for abuse/exploitation, “sexting”, cyber bullying and radicalization.

A risk can be generally defined as a confluence of threats multiplied by an intrinsic vulnerability that can be mitigated by one's increased capacities. The wholesale elimination of threats is not feasible while desirable; but children in situations of risk and those responsible for their well-being (parents, teachers, law enforcement, etc.) can increase their capacity to mitigate risk, and this is where education and particularly human rights education can make a significant difference.

Human rights education, including through the online medium, can re-enforce the positive values that derive from the fundamental principles of human dignity and equality including co-operation, respect, fairness, inclusion and diversity. It can

teach children their rights and the rights of others and equip them with the capacities to identify threats, such as online harassment or attempts at radicalization, thus decreasing risk.

Human rights education also presupposes a significant reform of school practices and approaches that is consistent with human rights values. Thus the threats that exist and put children at risk in the school environment such as racial and ethnic discrimination (including segregation of children), bullying, etc. can and should be eliminated by participating States.

Questions that could be addressed:

- What steps can States take in order to ensure a human rights based approach to (online and offline) literacy and interlink human rights education and digital literacy, including through innovative forms of human rights education through digital means and tools?
- What can participating States do to eliminate threats (particularly segregation and discrimination, sexual harassment, radicalization and cyber-bullying) through education reform and mainstreaming of human rights education in public education?
- How can human rights education for target groups working with and for children and young adults (teachers, social workers, community workers, staff in the juvenile justice system, etc.) be effective in fostering a culture on non-violence and non-discrimination?
- How can we give agency to children to protect themselves (online) while still maintaining the State's responsibility for their protection and the need to protect the right to access to information?

Closing plenary Session

17:00 – 18:00

Rapporteurs' summaries from the working group sessions

Practical suggestions and recommendations for addressing the issues discussed during the working group sessions

Comments from the floor

Closing Remarks