



General Assembly

Distr.
GENERAL

A/HRC/11/8
2 April 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 3

**PROMOTION AND PROTECTION OF HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

The right to education of persons in detention

**Report of the Special Rapporteur on the right to education,
Vernor Muñoz***

* Late submission.

Summary

The present report is submitted in accordance with Human Rights Council resolution 8/4. The Special Rapporteur decided to devote the report to the question of the right to education of persons in detention, a group subject to discrimination generally and to discrimination in the provision of education specifically.

Learning in prison through educational programmes is generally considered to have an impact on recidivism, reintegration and, more specifically, employment outcomes upon release. Education is however much more than a tool for change; it is an imperative in its own right. However, prisoners face significant educational challenges owing to a range of environmental, social, organizational and individual factors. The Special Rapporteur aims to inform and assist Governments and interested parties in their efforts to address these factors and develop best practices so as to ensure the currently unfulfilled right to education for persons in detention.

The report greatly benefitted from the active and constructive engagement of many relevant actors, including Governments, international organizations, academics, non-governmental organizations and prisoners. Combined, they offered a wealth of different perspectives of education in detention from which all can learn and which form the basis of a number of recommendations at the end of the report. To those who have so engaged, the Special Rapporteur extends his warm thanks.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 4	4
II. BACKGROUND	5 - 15	4
A. Resources do not explain policy	12 - 13	6
B. International learning	14 - 15	6
III. CONFLICTING PHILOSOPHIES AND ASSUMPTIONS	16 - 20	7
A. Role of prisons v. “correctional” education v. the right to education	16 - 18	7
B. Participation	19 - 20	8
IV. INTERNATIONAL LEGAL AND POLITICAL DEVELOPMENTS	21 - 27	8
V. THE REALITY OF PRISON EDUCATION	28 - 52	10
A. Global detention: levels and trends	28 - 29	10
B. General barriers to education in detention	30 - 34	11
C. Learning disabilities and learning difficulties in prisons	35 - 36	12
D. Children in detention	37 - 42	13
E. Education programmes for children living in prison with their mothers	43 - 46	14
F. Women in prisons	47 - 52	16
VI. REPLIES RECEIVED TO THE QUESTIONNAIRE	53 - 88	18
A. State responses	56 - 69	18
B. Replies by intergovernmental organizations, non-governmental organizations and civil society	70 - 88	21
VII. CONCLUSION AND RECOMMENDATIONS	89 - 102	24

I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution 8/4. Since presenting his previous report to the Council, the Special Rapporteur has undertaken a mission to Guatemala (A/HRC/11/8/Add.3). He has also had working meetings with Governments, United Nations and other multilateral agencies, teachers' unions, non-governmental organizations, universities, students, children and adolescents and national human rights institutions in nearly every region of the world. The Special Rapporteur also presented a report to the General Assembly at its sixty-third session (A/63/292) and, among others, participated in a day of general discussion organized by the Committee on the Rights of the Child on the theme "Education in emergencies" and was invited to address the International Conference on Education on the theme of "Inclusive education".

2. Upon his appointment, the Special Rapporteur decided to focus his attention on groups traditionally marginalized and vulnerable to discrimination in education. He has sought to establish the causes and circumstances surrounding such discrimination and the challenges that must be faced in order to promote the realization of their right to education.

3. People in detention constitute one such highly marginalized group that faces endemic violations of its right to education. In the present report, the Special Rapporteur demonstrates clearly an urgent need to redouble efforts to respect, protect and fulfil that right.¹ For the purposes of the report, the Special Rapporteur will focus on persons serving a sentence and/or on pretrial, in prisons and other forms of correctional facilities and in closed facilities for asylum-seekers.

4. Learning in prison through educational programmes is generally considered a tool of change, its value judged by its impact on recidivism, reintegration and, more specifically, employment outcomes upon release. Education is, however, much more than a tool for change.² It is an imperative in its own right. Prisoners face significant and complex educational challenges owing to a range of environmental, social, organizational and individual factors. These factors and the challenges they present are not insurmountable.

II. BACKGROUND

5. Profound global, social, political and economic changes have had an impact on all penal systems. Although these systems vary, reflecting for instance specific State characteristics, languages, cultures, peoples, philosophies and political institutions, they demonstrate similar yet unique traits. Although the Special Rapporteur does not claim to offer a theoretical analysis of

¹ The Special Rapporteur would like to thank Sarah Green and Maria-Angelica Sepulveda as well as the staff of the Office of the United Nations High Commissioner for Human Rights supporting his mandate for their assistance in the preparation of the present report.

² E/CN.4/2005/50, paras. 43-46.

the relationship between human rights, incarceration and punishment, he nonetheless wishes to recall that human rights are not relinquished upon imprisonment. One such inviolable right, the right to education while in detention, is the focus of the present report.

6. Despite variations between penal systems, it is clear that, for all, the provision of education for persons in detention is inherently complex and, where it does take place, it does so in an environment inherently hostile to its liberating potential.³ Frequently, inadequate attention and resources, both human and financial, dedicated to adequate education, combined with the damaging impact of detention, exacerbate often low levels of self-esteem and motivation of learners and create major challenges for prison administrators, staff and learners alike.

7. Nonetheless, there is growing recognition of the benefits of education as a vital element in addressing the ability of prisoners to develop and maintain skill sets that will enable them to take advantage of social, economic and cultural opportunities. While this recognition is welcome and necessary, it should be noted that the nature, provision, quality and participation rates of education in detention vary significantly between and within regions, States and even individual institutions. Such striking disparities may constitute discrimination and must be addressed.

8. While such a variation in education too often tends to oscillate between the “poor” and “very poor”, the number of educational programmes of exceptional quality which, from the prisoners’ own observations, are the result of individual initiative and extraordinary commitment, rather than necessarily the product of State or individual institutional policy, should be fully acknowledged.⁴

9. Although for most of the persons concerned detention will be temporary, it is too frequently forgotten that the consequences of what does or does not happen to those who experience it will also be felt by the community into which the majority of prisoners are released.⁵ The reality of the carceral world shows that the prison population reflects a disproportionate number of persons coming from poor, discriminated and marginalized groups and communities. As one prisoner notes: “We cannot imprison a person for many years without providing an avenue for change and expect that when he or she returns among us, she or he will have changed. Indeed, change will have occurred but certainly not how it was envisioned. For we will have created an envious, frustrated, delusional, pent-up, angry and de-humanized individual who will certainly seek revenge.”

³ Scarfó, Francisco, *Indicadores sobre las condiciones de realización del derecho a la educación en las cárceles*, Facultad de Ciencias Jurídicas y Sociales. Universidad Nacional de La Plata, Argentina, 2008.

⁴ Contributions from detainees. Letters on file with the Special Rapporteur.

⁵ Muntingh L., “Prisons in South Africa’s Constitutional Democracy”, *CSVR*, October 2007.

10. While recognizing that detention itself is often questionable as a means of social control, the challenge before us is to create an environment for those who are detained that enables positive change and human capacity. The provision of accessible, available, adaptable and acceptable education is one vital element in this environment.

11. As one observer noted, “to clarify the content of the right to education in places of detention we need to make clear what it is we are trying to accomplish. I believe the obvious goal is to empower struggling people in a way that allows them to become major contributors to the health, growth and development of our global community”.³

A. Resources do not explain policy

12. In view of the sheer bulk of incarceration rates, it is no surprise to learn that many prison systems are in crisis, generally overcrowded and consequently inadequately resourced, and that there is pessimism with regard to overcoming the practical reality of the numerous challenges within prison management. The Special Rapporteur deems that it is important not to lose sight of the fact that prison systems are, although modified by real and challenging practical realities, the result of State and institutional policy. The availability or otherwise of resources may affect the implementation of policy: they do not dictate that policy.⁶

13. Penal policy is influenced by many factors, of which international human rights law and the resulting State obligations should be paramount. There remains, however, a troubling and increasing gap between international normative standards, their implementation and the opinion of many of those without experience of detention.

B. International learning

14. In recent years, there has been a considerable but usually State-specific increase in research on penal systems.⁷ Nonetheless, there remains a paucity of research and debate concerning education within prisons and more notably the manner in which educational programmes are designed, funded and made available to the prison population.⁸ Given the universality of human rights norms, international and comparative prison research has become imperative and penal systems must cooperate and learn from each other.

⁶ See Neale, K., “Policy and practice: international and comparative approaches to education and prison regimes”, *The Yearbook of Correctional Education* (1989).

⁷ Most notably in North America, Canada, Europe and more recently South America and South Africa. Other continents remain acutely under-researched. See for example, “Human rights in African prisons” (2008), *HSRC*, edited by Jeremy Sarkin, Ohio University Research in International Studies.

⁸ Susan Nagelsen, “Writing as a tool for constructive rehabilitation”, *Journal of Prisoners on Prisons*, vol. 17, No. 1. 2008.

15. While the transfer of proven practices from one State to another is neither always feasible nor always appropriate, the transmission of ideas and experiences across international borders should permeate, inform and enrich previously entrenched practices.³ It is in this spirit that the present report should be read.

III. CONFLICTING PHILOSOPHIES AND ASSUMPTIONS

A. Role of prisons v. “correctional” education v. the right to education

16. Education is deeply embedded in its location and context, and cannot be isolated from it. The role of education in places of detention must therefore be examined against the broader objectives of penal systems, which are inherently institutions of coercion, serving a set of complex and mutually conflicting objectives. They reflect, to differing degrees, prevailing societal calls for punishment, deterrence, retribution and/or rehabilitation - all carrying ambiguous connotations - and a managerial focus on resource management and security. Frequently aimed at the “criminality” of those detained, they demonstrate a concomitant reluctance to recognize their humanity, their potential and their human rights.

17. Where education is provided, this reluctance has been reflected in considerable confusion surrounding its nature and objectives, and in an oscillation between one and/or a combination of a number of, influential target driven educational models and practices. For the purposes of the present report, these are called the “medical”, “cognitive deficient” or “opportunistic” models. Briefly, the medical model tends to focus on and treat the perceived psychological deficiencies of the criminal; the cognitive deficiency model on promoting moral development; and the opportunistic model on linking learning with training for employment.⁹

18. Such models and resultant educational practice certainly contain some positive features. Estranged from them all, however, is the concept of the human dignity of all persons, a concept unambiguously and frequently referred to in various international, regional and domestic instruments. Human dignity, core to human rights, implies respect for the individual, in his actuality and also in his potential. As education is uniquely and pre-eminently concerned with learning, fulfilling potential and development, it should be a fundamental concern of education in detention,¹⁰ not simply a utilitarian add-on should resources allow it. It should be aimed at the full development of the whole person requiring, among other things, prisoner access to formal and informal education, literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sport, social education, higher education and library facilities.¹¹

⁹ See also Collins M., “Shades of the prison house: adult literacy and the correctional ethos”, in *Schooling in a Total Institution*, (1995).

¹⁰ See also Morin, L., “Prison education: the need for a declaration of basic principles for the treatment of prisoners”, *Yearbook of Correctional Education* (1989), and Muntingh L., “Prisons in South Africa’s constitutional democracy”, *CSV*, October 2007.

¹¹ Economic and Social Council resolution E/1990/69, art. 3 (b).

B. Participation

19. Respect for the human dignity of all within the community - whether in detention or not - assumes genuine and effective participation in decisions that affect our lives, including those relating to the provision of education. The Special Rapporteur should not have to - but does - reiterate that those in detention do not forfeit this right of participation. It is for this reason that the views of people in detention were sought for the present report and it is for this reason that their views should be sought in deciding on penal policy with regard to education. Add to this the dictates of common sense, nicely noted by one prisoner in the United States participating in the preparation of the present report: “Who can better come up with solutions that can potentially solve problems within the communities at large, than the incarcerated? Aren’t they already accustomed and familiar with the criminal elements of our society? Who better has the solution to the problems than those individuals who were instrumental in creating the problems?”

20. Education is not a panacea for the social, psychological and physical damage caused by detention. It has the potential, however, to offer previously unmet realistic opportunities and assistance, which contribute to meeting the rights and needs of the incarcerated and those of our entire community.

IV. INTERNATIONAL LEGAL AND POLITICAL DEVELOPMENTS

21. Criminal justice issues are principally the concern of domestic policy and legislation and reflect their historical and cultural context. Nonetheless, the international community has a long-standing concern about the humanization of criminal justice, the protection of human rights and the importance of education in the development of the individual and the community.¹² This, combined with the acknowledged particular vulnerability of those in detention to State action and its consequences, has led to the development of international standards that aim to confront the challenges of the stigma, indifference and marginalization that so often characterize education in detention.

22. Unlike many other groups that endure discrimination, people in detention do not benefit from a dedicated legally binding text, although there have been recent plans to present a charter on prisoners’ rights to the United Nations.¹³ In 1990, however, the General Assembly, in its resolution 45/111, adopted the Basic Principles for the Treatment of Prisoners, in which it noted that:

(a) All prisoners should be treated with the respect due to their inherent dignity and value as human beings (art. 1);

¹² Ibid.

¹³ Adopted at the fifth Central, Eastern and South African Heads of Correctional Services Conference in September 2001. See also “Reintegration and reintegration in African prisons”, Amanda Dissel, in *Human Rights in African Prisons* (2008), ed. Sarkin, J.

(b) Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners should retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants (art. 5);

(c) All prisoners should have the right to take part in cultural activities and education aimed at the full development of the human personality (art. 6).

23. The right to education is now accepted as encompassing the provision of an education that is available, accessible, adaptable and acceptable.¹⁴ No text allows for forfeiture of this right and, more essentially, forfeiture is not necessitated by the fact of incarceration.

24. A number of international instruments deal specifically with prisons and conditions of detention and offer guidance for good prison management.¹⁵ There are many of these, but other than the Basic Principles adopted by the General Assembly in 1990 (see para. 22 above), perhaps the most prominent for the purposes of the present report are the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolution 663 c (XXIV) of 31 July 1957, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of (1985).¹⁶ According to rules 77 (1) and (2) of the former, “Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.” Rule 26.2 of the latter states that, “juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development”.

¹⁴ See E/CN.4/1999/49 and general comment No. 13 of the Committee on Economic, Social and Cultural Rights on the right to education (E/C.12/1999/10).

¹⁵ Such as “Human Rights and Prisons”, a training package for prison officials available on the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

¹⁶ Also relevant are the Body of Principles for Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988 and the Hamburg Declaration on Adult Learning, adopted at the fifth International Conference on Adult Education.

25. In recognition of the significant social changes affecting these universally agreed standards and the management of places of detention, and the need to translate them into practical and relevant guidance for differing criminal justice systems, regional frameworks¹⁷ have been put in place and continue to develop.

26. In this respect, the Special Rapporteur calls attention to resolution 1997/36 of the Economic and Social Council on international cooperation for the improvement of prison conditions, in which the Council requested the Secretary-General to assist countries, at their request, in the improvement of their prison conditions in the form of advisory services, needs assessment, capacity-building and training. It also invited other entities of the United Nations system, including the United Nations Development Programme and the United Nations Crime Prevention and Criminal Justice Programme network, as well as intergovernmental organizations, to assist the Secretary-General in implementing such requests.

27. International legal and political standards will have limited impact until the international community that they aim to regulate fully endorses their underlying principles. Such an endorsement in relation to those held in detention is slow in coming. The development of binding international law and guidance pertaining to education in detention is of course welcome and helps inform the international debate about the treatment of prisoners, especially in their access to education. Even though States have had a pre-eminent role in setting these standards, however, full compliance remains rare.

V. THE REALITY OF PRISON EDUCATION

A. Global detention: levels and trends

28. Precise and consistent data on the demographics and characteristics of people in detention are not available. Nonetheless, data that do exist suggest that over 9.25 million people are detained globally, either as pretrial detainees or as sentenced prisoners. Almost half of these are in the United States of America (2.19 million), China (1.55 million) or the Russian Federation (870,000).¹⁸ Prison populations are increasing in an estimated 73 per cent

¹⁷ For example, in Africa, the Kampala Declaration on Prison Conditions in Africa (1996), the Arusha Declaration on Good Prison Practice (1999) and the Ouagadougou Declaration on Accelerating Penal and Prison Reform (2002); in Europe, recommendation (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules; and in the Americas, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of 2008.

¹⁸ The United States also leads the tables in the proportion of its population it detains: 738 per 100,000, followed closely by the Russian Federation at 611 per 100,000. See Walmsley, R., *World Prison Population List* (seventh edition), International Centre for Prison Studies, Kings College London.

of States,¹⁸ a figure mirrored in overcrowding which has reached, by way of example, 374.5 per cent of capacity in Grenada, 330 per cent in Zambia and about 108 per cent in the United States.¹⁹

29. The reasons for imprisonment are varied and prisoner profiles complex. They generally reflect, however, backgrounds of social disadvantage and often concomitant vulnerability rather than, as popularly assumed, individual and random acts of violence. As imprisonment by its very nature increases social disadvantage and vulnerability to rights violations, steps taken by States to fulfil and protect the rights of those it detains are of immense significance.

B. General barriers to education in detention

30. Public opinion, often indifferent to and ignorant of detention, can sometimes be perceived as the main barrier in fulfilling the potential of education in detention, although the main responsibility rests on the State through its public policies of education. These attitudes are fuelled by an often equally ill-informed and ill-advised media which, when reporting on cases of criminal justice, focus almost exclusively on unrepresentative individual violent events. The all too ready willingness of politicians to reflect these fears in penal policy has led to a reluctance to embed prisoners' right to education in legislation and to develop models of education and delivery consistent with the full development of the human personality. Within this context and while recognizing that each person is unique in their learning needs and experiences, barriers to education in relevant literature are often broken down into three categories: dispositional, institutional and situational.²⁰

31. Dispositional barriers, internal to the learner, are closely linked to experiences prior to and during incarceration. These include the effects of a disadvantaged childhood, previous educational failure and low self-esteem, of drug and alcohol abuse, and communication, learning and mental-health disabilities.

32. Institutional and situational barriers external to the learner in detention are perhaps best detailed by the learners themselves. Their list is long, globally relevant and includes troubling examples of education interrupted or terminated on the personal whims of prison administrators and officers and by frequent lockdowns and abrupt transfers between institutions; the absence of libraries; the absence and confiscation of written and educational material generally; waiting lists of up to three years for courses; limited, and often complete absence of, access to and training in Information Technology and related skills necessary in today's computer-driven community. Specifically linked to this is a perceived focus on education linked to prison management rather than the specific needs and rights of prisoners.

33. The Special Rapporteur also heard of staff shortages leading to cancelled or untenable mixed ability classes and even of cases of inability to sit exams in the absence of staff to

¹⁹ *World Prison Brief*, International Centre for Prison Studies, Kings College London.

²⁰ Scurrah, M., "Learning on the Inside in Risdon Prison", unpublished report on file with author.

invigilate; of poor timetabling; cases of inconsistent and poor quality tuition; of too basic, irrelevant and/or inappropriate curriculums; of vocational courses that are dated paths to nowhere; of teaching skills that are no longer in demand; of absence of safe and stable spaces in which to learn; indifference to needs associated with specific disabilities; of the withdrawal of educational “privileges” as a punitive measure; of the absence and/or withdrawal of public funding for, particularly, higher education together with the prohibitive costs of self-funding; of financial “penalties” incurred if education is pursued in place of prison employment; of discriminatory access to education based on place of detention, sentence length, and/or security category; and, as will be detailed below, discriminatory, inappropriate and inadequate education for women, minorities and those with learning difficulties.³

34. Individual States should recognize which of these practices pervade their prison estates. Some efforts to this end have already been made. For example, prison educational staff in Latin America are already questioning the relevance of much of the current curricula and its teaching to the specific educational needs of those in detention.²¹ In Colombia, a new educative model for the penal system has been introduced with the express purpose of encouraging transformation in the learner, with respect for human dignity, rights and obligations.²²

C. Learning disabilities and learning difficulties in prisons

35. People with learning disabilities and difficulties face stigma and discrimination generally, and in education specifically.²³ They are made even more vulnerable by penal systems that invariably fail to recognize, understand or support their specific needs. This is not surprising: research into learning disabilities and difficulties in prisons is limited to a handful of States, is often inconclusive and, on occasion, contradictory, and rarely touches upon education.

36. What is clear is that many prison systems are not aware that they hold people with learning disabilities and learning difficulties,²⁴ currently estimated at between 20 to 30 per cent, or even 52 per cent.²⁵ Consequently, no special provision is made for them, despite their complex

²¹ See Rangel, Hugo, “Mapa regional Latinoamericano sobre educación en prisiones: notas para el análisis de la situación y la problemática regionales”, Eurosocial-Centro internacional de estudios pedagógicos (CIEP), 2008.

²² For example, see Pieck Gochicoa, Enrique, *El Caso de México: Actores, Escenarios y Estrategias*, OCDE-FCE, Mexico, 2005.

²³ See A/HRC/4/29.

²⁴ Hayes, S. (University of Sydney), paper presented at the fourth International Conference on the Care and Treatment of Offenders with a Learning Disability, 2005.

²⁵ See Hayes, S., Shackell, P., Mottram, P. and Lancaster, R. (2007). “Prevalence of intellectual disability in a major UK prison”, *British Journal of Learning Disabilities*, 35 (3), and Millán Contreras, A.L. y Medina Baez, S. (2008), Causales de Deserción Escolar en el Sistema Intrapenitenciario, *Revista de Estudios Criminológicos y Penitenciarios*, No. 13, Diciembre 2008, Santiago, Chile.

and multifaceted needs which require inter-service cooperation, both within and outside prisons, and a long-term commitment.²⁶ Finally, there remains uncertainty as to the effectiveness/outcomes of prison-based programmes, specific or mainstream, for people with learning disabilities or difficulties, and an ongoing debate on the desirability of the few special services or units that do exist.²⁷

D. Children in detention

37. Children, including juveniles, constitute a particularly vulnerable group, also as perpetrators of crimes.²⁸ In many States, they have been pushed onto the streets and into crime by poverty, inequality and social exclusion (lack of education, work and recreational opportunities), broken homes, violence, drug abuse and exploitation. As such, they are in need of care and protection rather than detention.²⁹

38. Statistics dedicated to monitoring detention rates of children are rare; nonetheless, current global statistics suggest at least 1 million children are detained,³⁰ with boys significantly outnumbering girls.³¹ Many have a history of school failure,³² but all have significant educational needs. Nonetheless, in contrast to a comprehensive set of international juvenile justice standards that promote education and rehabilitation over punishment, States globally maintain a punitive response to young “offenders”, a response dominated by institutionalization.²⁹

39. Rates of participation in education in detention are not frequently monitored, but, where evidence does exist, they appear to vary widely between States. For example, in Chile, just 61 per cent of children in detention receive basic education and 35 per cent secondary

²⁶ Louks, N., “No one knows: offenders with learning difficulties and learning disabilities. The prevalence and associated needs of offenders with learning difficulties and learning disabilities”, Prison Reform Trust 2007.

²⁷ Hayes, S., op. cit.

²⁸ Carranza, E. (2004) *Criminalidad, Políticas Públicas y Edad de Ingreso a la Responsabilidad penal*; read at the Congreso de Salamanca (available at www.oijj.org).

²⁹ See www.juvenilejusticepanel.org/en/needforprotection.html.

³⁰ See UNICEF and the United Nations (2006), Manual for the Measurement of Juvenile Justice Indicators at www.ungift.org/docs/ungift/pdf/knowledge/juvenile_justice.pdf.

³¹ See Sistema Nacional de Atención Socioeducativa para Adolescentes Infractores de Ley (2007), available at www.sename.cl and “Violence against girls in conflict with the law” (2007), available at www.humanrightswatch.org.

³² See Foley, M. (2001) “Academic characteristics of incarcerated youth and correctional educational programs” in *Journal of Emotional and Behavioral Disorders*, vol. 9.

education,³³ whereas in England 89 per cent of girls and 79 per cent of boys participate generally with attendance varying between 100 per cent and 53 per cent, depending on the institution in question.³⁴

40. If evidence of participation rates of detained children in education is rare, evidence of the quality of educational provision is even more scarce. However, there are welcome signs that some States are addressing the issue. Chile, for instance, has recently introduced reforms to its juvenile justice system with the aim of complying more fully with international and domestic legal standards relevant to children's education. Similarly, Colombia and Argentina are modernizing their juvenile systems with that aim.³⁵

41. Most children return to their community from detention. Disturbing figures suggest, however, that over two thirds do not return to school upon release. The reasons vary: schools simply would prefer their continued exclusion; they may be released from detention in the middle of the academic year; custodial records and records of credits earned are not transferred to the school and/or schools refuse to accept custodial credit.³⁶ Also, it has been reported that children detained present a much higher rate of learning disabilities than other children.³³

42. There is no guarantee of access to education for all children in detention, and even fewer possibilities of an adaptable and pertinent child-oriented education. The juvenile justice system has been unable to provide sufficient quantity and quality of training and education to the children detained. Even though there have been improvements in some countries, for the most part they received inadequate education, ill-suited to their needs.

E. Education programmes for children living in prison with their mothers

43. Many women in detention are mothers of children below 18 years of age. Estimates range for example from 61 per cent in England,³⁷ 75 per cent in the United States of America,³⁸

³³ See "Sistema Nacional de Atención Socioeducativa para Adolescentes Infractores de Ley" (2007), at www.sename.cl.

³⁴ Home Office, "Young people in custody: 2004-2006: an analysis of children's experiences of prison", available at www.homeoffice.gov.uk.

³⁵ See Red Latinoamericana de Educación en Contextos de Encierro at www.redlece.org.

³⁶ Daniel P. Mears and Laudan Y. Aron, *Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge*, Urban Institute, 2003, available at www.urban.org. Cited by Dignity in Schools Campaign (www.dignityinschools.org).

³⁷ Social Exclusion Unit Report (2002), London.

³⁸ United States Department of Justice: Bureau of Justice Statistics, 2001.

82 per cent in Venezuela (Bolivarian Republic of)³⁹ and 85 per cent in Australia.⁴⁰ They are more frequently than men the heads of single-parent families. Only limited statistics exist globally about the number of children living in prison with their mother, despite the fact that many States (but by no means all) permit children to stay with their mothers until a maximum age. This varies widely between nine months and six years.⁴¹

44. There is a lack of information on availability, quality, adaptability, attendance and supervision of education for such children.⁴² The very few evaluations of the educational quality of nurseries within prisons that do exist have shown that there are considerable differences between them in the provision of learning materials and toys. They show also that, in some cases, the level of personal care (toileting and diapering) is poor, although social interaction and language activities are often of good quality.⁴³ Welcome and innovative programmes are increasingly being implemented. For example, the inclusion of early stimulation programmes that have proved to have long-term positive effects on children living in poverty generally involving children, parents and the community are being transferred to the prison complex where children are detained alongside their mothers,⁴⁴ and very recently to young couples sentenced to community alternatives to imprisonment.⁴⁵

45. In most countries, there is a legal mandate for the provision of preschool education for children living in prison, but in practice there is no implementation owing to a shortage of economic and human resources (lack of trained teachers and transport, no coordination between responsible bodies and limited awareness of children's rights).⁴⁶

³⁹ Sepulveda, M.A., López, G., Guaimaro, Y. (2003), "Mujeres en prisión: una revisión necesaria", in *Visiones sobre el Crimen y Castigo en América Latina*, *Revista el Otro Derecho* No. 29, ILSA, Bogota.

⁴⁰ Kilroy, D., "Understanding the Queensland women in prison report: a detailed analysis" (2006), available at www.sistersinside.com.au.

⁴¹ Robertson, O., "Children imprisoned by circumstance" (2008), Quaker United Nations Office.

⁴² Belsky, M. and Finoli, M., "El acceso a la educación de los niños que viven con sus madres en contextos de encierro" (2008), Asociación de Derechos Civiles: Programa Educación.

⁴³ See Jimenez, J. "The quality of educational attention received by children living with their mothers in Spanish prison" (2005), *Psychology in Spain*, vol. 9, No. 1.

⁴⁴ SENAME, "Residencias para protección para lactantes de madres internas en recintos penitenciarios" (2008). Available at www.sename.cl.

⁴⁵ Galera, L., "Niños con sus madres en prisión: retos educativos". Available at www.redlece.org/biblioteca.

⁴⁶ Sepulveda, M.A., "Mothers and children living in prison" (2008). Document written for the Quaker United Nations Office.

46. In some countries, after a child's health, nutrition and developmental status has been assessed, a holistic programme for providing the best conditions of care, education and protection of children, including parental programmes for their mothers is designed. After leaving prison, children are monitored for some months, to help keep the mother and child in contact, and giving support for continuing education outside the prison.⁴⁶ However, in spite of such exceptions, it seems clear that the right to education of such children may often be at risk and require urgent attention.

F. Women in prisons

47. Women represent a small proportion of the global prison population worldwide; available figures suggest that the rate is between 2 and 9 per cent,⁴⁷ with the global average standing at roughly 4 per cent.⁴⁸ Nevertheless, the proportion and number of women detainees is increasing in many States, and at a greater rate than for men.⁴⁹ Much of the increase can be explained by a greater severity in sentences rather than an increased number of offences.⁵⁰

48. The profile of women in prison in many States is similar: most have grown up in multiple disadvantaged environments. They are often young, poor, unemployed, with low educational achievement and a lack of basic skills. In a number of States, their detention is closely related to drug trafficking and/or to the use of drugs.⁵¹ Many demonstrate mental health difficulties such as depression, anxiety and low self-confidence often related to childhood or physical and sexual abuse.⁵²

49. In many States where educational attainment is assessed upon entry, it is often not assessed by sex. Nonetheless, where figures exist, it is clear that women have lower levels of educational attainment than men. In Mexico, for example, 6.1 per cent of women detainees are illiterate compared to 2.4 per cent of men. More generally, in England, it has been found that 33 per cent of detained women had been excluded from school, 71 per cent had no qualifications and

⁴⁷ Walmsley, R., *World Female Imprisonment List 2006*, International Centre for Prison Studies, available at www.prisonstudies.org.

⁴⁸ Walklate, S. (2001), *Gender, Crime and Criminal Justice*. Cullompton, Willam.

⁴⁹ See Prison Reform Trust, *Bromley Briefings, Prison Factfile*, April 2006; Bastick, M., "Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners", discussion draft, Quaker United Nations Office, Geneva, July 2005; and "Women in the criminal justice system: an overview", The Sentencing Project (www.sentencingproject.org).

⁵⁰ *Bromley Briefings, Prison Factfile (2008)*, Prison Reform Trust.

⁵¹ Carlen, P. and Worrall, A., *Analyzing Women's Imprisonment*, Wilan Publishing, 2004.

⁵² Garside, R., "Time to make a difference: the abolition of prison for women", Howard League Conference, London, 27 June 2006.

48 per cent had reading and numeracy abilities well below those of the general population.⁵⁰ In the United States, 44 per cent of women in State prisons have neither graduated from high school nor received a general education diploma.⁵³

50. Little attention is paid to the number of women with learning difficulties in detention, the scarce research on the issue focusing to date principally on men.⁵⁴ The negative connotations for appropriate education provision are cause for concern.

51. Although education is an important means of helping women gain self-confidence and life skills,⁵⁵ one critical barrier to improving the relevance of their education provision is the lack of research and information on their particular educational needs. Since their educational necessities are different from those of men, equal treatment and equal opportunities would not necessarily lead to similar results. That does not explain, however, why, in many States, there are fewer programmes for women and why those that are available are less varied and of poorer quality than those offered to male detainees.⁵⁶ For example, in Latin America, recent research showed quite clearly that, in many States in the region, courses that are offered to women in detention are mostly related to issues traditionally linked to women, such as sewing, kitchen duties, beauty and handicrafts. Nonetheless, there are welcome examples in some States of programmes turning away from such stereotyping and offering, in turn, a greater diversification of courses, with greater relevance and overall perceived value.²¹ Generally however, it is unsurprising that research involving female detainees has uncovered deep expressions of frustration with the extent and quality of education and training they received.⁵⁷

52. In 2010, the Special Rapporteur plans to focus his annual report on the right to education for migrants, refugees and asylum-seekers. In the present report, he simply points to the troubling practice of numerous States of detaining - often for prolonged periods - entire migrant

⁵³ Caroline Wolf Harlow, *Education and Correctional Populations*, Bureau of Justice Statistics, January 2003, rev. 4/15/03.

⁵⁴ Hayes, S.C., Women with learning disabilities who offend: what do we know? *British Journal of Learning Disabilities*, 35:3 September 2007.

⁵⁵ Afghanistan: female prisoners and their social reintegration. United Nations Office on Drugs and Crime, March 2007.

⁵⁶ Fundación Somos Familia (2008) *Aula de Derechos Humanos*. Cuenca Ecuador. See also Farrell, A., Danby, S., Skoien, P., Quadrelli, C., Women inmates' accounts of education in Queensland corrections, 2000.

⁵⁷ See for example Danby, Farrel, Skoien, and Quadrelli, "Inmate women as participants in education in Queensland correctional centers", paper presented at Women in Corrections: Staff and Clients Conference, 2000; and Rose, C. "Women's participation in prison education: what we know and what we don't know", *Journal of Correctional Education*, 55 (1) March.

families of varying legal status. All such family members, and most crucially the children, are a particularly vulnerable group whose needs, for education and other services, should receive particular attention.

VI. REPLIES RECEIVED TO THE QUESTIONNAIRE

53. In early October 2008, the Special Rapporteur sent a comprehensive questionnaire to all Member States and a number of intergovernmental and non-governmental organizations working on issues related to the right to education and education in the context of detention. The questionnaire sought information in seven areas: policy and legislative frameworks; allocation of resources; curriculum of education programmes; statistics and monitoring; participation of different actors; non-nationals; and children in detention.

54. First, the Special Rapporteur wished to learn about policy and legislation frameworks, in particular how access to education was guaranteed by law, if it was a part of the management strategy and the incentives detainees were offered to take part in education programmes. The questionnaire then covered the allocation of resources, and whether education for persons in detention was publicly funded and offered without charge or not to the participants. The Special Rapporteur then asked about the curriculum of education programmes, particularly if these were relevant to the diverse background of the inmate population and their specific needs, the delivery model, the availability of higher education, the qualifications of teachers, libraries and so on. The questions then focused on statistical data and the monitoring and evaluation of education programmes, the participation of different relevant actors in the education programmes offered and the opportunities for non-nationals (including those awaiting deportation) regarding access to education. Finally, the last section focused on the particular situation of children in detention, on the situation of newborn infants accompanying their mother in detention and on young offenders detained and their right to education and completion of compulsory education at the primary and secondary levels.

55. The Special Rapporteur requested that the questionnaires be completed and returned by 31 December 2008. In order to accommodate the reporting requirements of the Council, only those responses received at the time of finalizing the report could be considered in the report itself. Nonetheless, beyond the deadline for the preparation of his reports, the Special Rapporteur, as always, welcomes the replies that he continues to receive.

A. State responses

56. At the time of writing, the Governments of the following States had responded: Albania, Algeria, Argentina, Brazil, Bulgaria, Burkina Faso, Chile, Costa Rica, Cuba, Cyprus, the Czech Republic, the Dominican Republic, Ecuador, Egypt, Germany, Greece, Guatemala, Guyana, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Lebanon, Lithuania, Mauritius, Mexico (Comisión Nacional de Derechos Humanos), Norway, Oman, Peru, Poland, the Republic of Moldova, Romania, Singapore, the Slovak Republic, Suriname, Switzerland, Swaziland, the Syrian Arab Republic, Trinidad and Tobago, Tunisia, the United Kingdom of Great Britain and Northern Ireland, Ukraine and Uzbekistan. Owing to limited capacity for prompt translation, the content of some replies could also not be reflected in the report.

57. As State responses to the questionnaire differ markedly in the amount of information provided, comparisons and similarities are difficult to assess with confidence. Nonetheless, a number of notable themes are apparent, the first of which is a general acknowledgement that the right to education enshrined in the Constitution or national legislation applies equally to persons in detention. Not all States, however, explicitly guarantee such a provision in legislation. Of particular concern is the reply of one State that “the implementation of the right to education is a matter of policy of rights, which largely depends on the resources of the State”. The Special Rapporteur reiterates that, while resources may have an impact on the implementation of policy, conditions in detention that may impinge fundamental human rights are not justified by lack of resources.

58. While most States indicate that education is one of the main components of their criminal justice management strategy, almost all emphasized its role in employment and in rehabilitation and reintegration upon release. Raising legal awareness is a welcome stated aim, as is the reference to educational and training activities being primarily aimed at mitigating negative effects resulting from the social isolation of persons remanded in custody and custody-related restrictions. These are of course vital objectives, but the frequent focus on employment prospects remains somewhat narrower than that required by the right to education.

59. The maintenance of good order and safe and secure custody is the principal reason given for restricting access to education, for example, in the case of prisoners for whom it is deemed too great a risk, where there is risk of hindering rehabilitation or “on punishment”. No further details have been provided as to how often this may occur, for how long, and the extent and form of alternative arrangements. The withdrawal of education while “on punishment”, without more information, is a matter of particular concern.

60. The imperative of security is also a reason for limited opportunities for access to the Internet (some States allow no access at all) and its stringent monitoring of use, although computers are often provided (for example in the Czech Republic, Guyana, Ireland, Latvia, Norway, Poland, the Slovak Republic, Switzerland and Tunisia). This affects not only the relevance of educational provision in this technological age, but also the increased significance of well-stocked, easily accessible and relevant libraries. Most, but not all, prisons have libraries. The general assertion is that they are appropriately stocked at the expense of the State and accessible. Nonetheless, it is clear that some rely to differing extents on the efforts of non-governmental organizations in their sourcing financing and maintenance.

61. In the vast majority of States, education is offered free of charge to the detainee, at least with regard to primary and secondary (where provided) schooling and vocational training. The cost of higher education where offered (for example in Algeria, Argentina, Costa Rica, Cuba, Cyprus, Ecuador, Germany, Guatemala, Hungary, Ireland, Italy, Japan, Latvia, Mauritius, Mexico, Norway, Poland, Romania, Tunisia and the United Kingdom) whether by distance learning or personal attendance, is more usually borne by the detainee (as in Costa Rica, the Czech Republic, Ecuador, Greece, Guatemala, Italy, Japan, Latvia, Mauritius, Poland, Romania, Singapore, the Slovak Republic and the United Kingdom). In Costa Rica, Ecuador, Guatemala, Italy, Poland, Singapore and the United Kingdom, it may also be financed by private grants. In Germany, Hungary and Ireland, higher education is offered free of charge.

62. Despite being free (at least for many courses), a disincentive to participate in education relates to its potential impact on opportunities for financial remuneration, although minimal, for employment, usually inside the place of detention. Although most States indicate there is no financial penalty in undertaking learning, it is the case that, for some learners, their inability to participate in employment affects their finances. This is not the case across the board, however, as demonstrated by Ireland, which referred to receipt of the “same daily payment as other prisoners”. Ireland also offers, as do other States, such as Hungary and Lithuania, monthly grants to compensate the potential loss of income. As an incentive to participate in education, some States, such as Algeria, the Dominican Republic, Guatemala, Mauritius, Peru, Poland and Tunisia, also take into account the time spent in education programmes for parole or conditional release; in Peru and Tunisia, this time is considered for sentence reduction.

63. In the majority of States, education in detention is publicly funded. This can take a number of forms and, in some cases, may involve differing Government ministries, principally those concerned with criminal justice and/or education. This implies the need for active coordination between ministries to avoid waste, gaps and inconsistency in resourcing and provision. In decentralized States where regional and local entities are competent in the education sphere (for example in Argentina, Germany, Mexico, Norway and Switzerland), such risks may be inherently increased, although none were reported by States.

64. Education is also funded through grant schemes, initiated and/or assisted by various entities including, in some instances, the European Union (Slovak Republic) and other international bodies (Latvia, for instance, organized its library stock with the assistance of international project funds). Outsourcing through various processes is therefore not unusual, again taking a number of forms. Public entities are the principal providers, but the private sector may be involved in some States (for example, the United Kingdom), and provision is not uncommonly subcontracted to the voluntary and community sectors. Indeed, implementation of education provision in cooperation with the voluntary and community sectors is relatively common and seen in States including Burkina Faso, Cuba, the Dominican Republic, Greece, Guatemala, Guyana, Ireland, Japan, Latvia, Mauritius, the Republic of Moldova, Peru, Singapore, Suriname and the United Kingdom. Confidence in sufficient and long-term funding within such partnerships, alongside rigorous monitoring and evaluation, will do much to ensure the quality of such an approach.

65. One related issue is participation in the design, delivery and monitoring of education programmes. Participation of diverse actors, such as detainees, prison officers, the outside community, non-governmental organizations and families, is known to have a positive impact on their relevance and outcome.⁵⁸ The Special Rapporteur was surprised therefore to learn that a number of States make no formal provision for participation of detainees. In failing to do so, they obviate a richness of experience, knowledge and informed opinion.

⁵⁸ One related example concerns the participation of detainees as teachers or trainers, a practice encouraged in, for example, Argentina, Costa Rica, Ecuador, Guatemala, Guyana, Romania and the Slovak Republic. Without appropriate resourcing and support, this practice may have some limitations.

66. Although most States acknowledge the diverse background and needs of persons in detention, they offer little indication of how this diversity is reflected in programmes and curriculum offered, other than, for instance, referring to the provision of special language classes for non-nationals (in Ireland, Lithuania, Switzerland and the United Kingdom).

67. The Special Rapporteur is concerned that some States, in which the number of foreign citizens detained is low, note that there has been no need to elaborate separate programmes for them. Concerning foreign nationals awaiting deportation, some States asserted that it served no purpose to include such people in training courses. Such views contradict the very notion of an equal right to education. Other States indicated that non-nationals awaiting deportation would not be offered education programmes because of the short period spent in detention.

68. The age of penal responsibility and placement in detention facilities clearly has a significant impact on educational opportunity and achievement. Fourteen to 15 years is the most common age referred to by States as the age at which detention is permitted. In addition, most States suggested that facilities for juveniles be distinct from those for adults, even in remand. Furthermore, the common assertion was that such juveniles must follow compulsory education at the primary level and, where offered, at the secondary level, and that the curriculum offered and diplomas awarded are equivalent to the ones in public schools. For some juveniles, schooling takes place in places of detention in a number of States, including Albania, Chile, Cyprus, Guatemala, Guyana, Japan, Latvia, Lithuania, Mauritius, the Republic of Moldova, Singapore, Trinidad and Tobago and the United Kingdom. For others in, for example, Algeria, Burkina Faso, Guyana, Japan, Singapore, Switzerland, Trinidad and Tobago and Tunisia, schooling may also be offered out of detention and in mainstream schools.

69. On a final and related note, it is clear that a number of States are at the early stage of developing a coherent policy for education in detention, others are midway through, and others yet are building on past efforts. All such efforts, however, should be underpinned by rigorous research and the sharing of best practices. The Special Rapporteur believes that the replies received to date do not generally leave the impression that this is currently the case despite, with regard to best practice in particular, receipt of information concerning a number of very interesting and innovative programmes from States, individuals and organizations alike.

B. Replies by intergovernmental organizations, non-governmental organizations and civil society

70. Without the active involvement of dedicated individuals, academic institutions, non-governmental organizations and intergovernmental organizations, education in detention would be far poorer than is currently the case, or even non-existent in some institutions. For this reason, the questionnaire was also distributed to a number of potentially interested parties accompanied by a request for its further dissemination. The Special Rapporteur is immensely grateful for the often very detailed replies received, including those from the United Nations Educational, Scientific and Cultural Organization (Ecuador and Swaziland), the United Nations Children's Fund (UNICEF) (Malaysia), the Office of the United Nations High Commissioner for Refugees, Defence for Children International, Human Rights Watch, Bureau international catholique de l'enfance, the Quaker United Nations Office, World Vision International, Justice Action, Dignity in Schools (and partners), the NSW Teachers Federation, the Intellectual

Disability Rights Service, the Centre for Study of Violence and Reconciliation, Advoc Aid, Addameer Prisoner Support and Human Rights Organization, the Centre pour la promotion de la photographie, Fundación Somos Familia, World Vision International (and partners), Sisters Inside Inc. and the African Prisons Project.⁵⁹

71. The responses had a wide geographical spread and provided independent comment on the provision of education for those in detention in specific States, filling some of the gaps in information provided by the States themselves. Increased communication and the sharing of experiences between such organizations and the States within which they work is strongly encouraged.

72. While it is not possible to comment individually on all contributions, they were all considered in the report. Only a summary of the responses is given below, together with a small selection of specific experiences and initiatives.

73. Civil society, domestic and international non-governmental and intergovernmental organizations are well placed to contribute to the quality and relevance of the global debate on education. Even where they do not actively provide educational services themselves, they see and/or specifically experience the practical day-to-day realities of life in detention and of legislative and policy implications, together with their long-term consequences. The submissions received in answer to the questionnaire offered a very different perspective to that of States, a perspective that clearly suggests the need for States to involve such organizations closely in legislative and policy developments and in their practical implementation.

74. Each submission offers a “snapshot” of the situation of a particular area covered in the questionnaire, concerning specific groups of detained persons (children, women or non-nationals) in a particular State or geographic region, some of which are mentioned briefly below. Most submissions related to States that had not responded to the questionnaire and therefore were not confirmed by the Government concerned.

75. Regarding access to education for non-nationals in detention, UNICEF drew attention to the exclusion of non-citizens in certain States to education programmes offered free of charge and to non-nationals awaiting deportation, and UNHCR to the sometimes prolonged detention of juveniles in immigration facilities without access to education.

76. Concerning policy and legislation frameworks, non-governmental organizations reported on the situation in a number of African States. Among examples of efforts being made, they mentioned that Côte d’Ivoire and Mali make specific legislative provision for education in detention. In Mali, education was available in one school for detained persons in the capital city and followed the mainstream curriculum. Where education is not provided within the school, juveniles are permitted to attend schools outside the detention facility, which is also the case in Togo.

⁵⁹ Additional inputs were received from individuals not named.

77. Non-governmental organizations also noted, however, that many States in the region offered no formal education to inmates, although there are some informal educational activities. In one example, the failure of the Government to implement any standardized education programme encompassing all its prisons was mentioned, with the result that neither formal primary nor secondary education is available to the majority of prisoners, particularly for those outside the capital city, and that heavy reliance is placed upon civil society organizations.

78. In other examples, access to basic education, although enshrined in national laws, is not effectively accessible to all juveniles in detention owing to a lack of resources and infrastructure. In some instances, the delivery and funding of education programmes are through initiatives of non-governmental organizations.

79. Regarding the curriculum of educational programmes and opportunities for prisoners to participate, non-governmental organizations commented that access to education depended in some cases to a large extent on the attitude of the managers of each prison. Furthermore, education was negatively affected by inadequate libraries and the lack of computer and Internet access.

80. Non-governmental organizations also mentioned countries where education for juveniles was legislatively guaranteed and funded by State resources and followed the mainstream curriculum, such as in Belgium, Netherlands and Pakistan.

81. A number of non-governmental organizations also provided information on countries where they had concerns about the limited availability, quality and gender discrimination in education for detained children.

82. Other non-governmental organizations commented on juvenile detention centres in a particular country where, although the right to free and compulsory education was guaranteed in the State Constitution and legislation, education services were in a number of instances unavailable. When available, they were limited to literacy and basic primary education, and access to secondary education was rare. They mentioned specific examples of juvenile detention units in remote areas where many juveniles receive no educational services at all and others where access to education is inconsistent. Even in bigger cities, only a few of the detention facilities for juveniles provide adequate schooling and vocational training in accordance with national laws.

83. Non-governmental organizations also raised concerns about the limited availability, quality and gender discrimination in education for children detained in a foreign country, in one example mentioning the lack of an institutionalized learning framework for adult prisoners and even disincentives for those seeking to undertake self-directed and self-funded education.

84. Other responses received commented on weaknesses in correctional educational provision, even in prosperous countries, and in barriers to its access. In one case, in 2000, adult basic education and secondary education programmes were found in 90 per cent and 84 per cent of detention facilities. However, tertiary education decreased from 31 per cent to 27 per cent between 1995 and 2000 following the withdrawal of financial grants.

85. Organizations also highlighted the lack of comprehensive and accurate data at the national and local levels on the accessibility and quality of education programmes in prisons or juvenile facilities. They noted gender discrimination in respect to quality and breadth of education for girls, to discrimination for persons with disabilities and within immigration detention. In detention facilities, in one example of a Western country, it was found that educational opportunities offered to girls did not correspond to those for children outside. Vocational training for girls was found to be based on gender stereotypes and differing to the training for boys; where offered, it was subject to prohibitive administrative prerequisites. In another example, young students were placed in classrooms based on correctional rather than educational needs, and disciplinary policies often had a negative impact on the quality of education available to students.

86. Some positive examples were also mentioned, however, such as in North Carolina (United States of America), where a high rate of participation is indicated in junior college programmes, enabling detainees to pursue higher education, with an extended coursework offer and fiscal support through a partnership between the correctional authorities and the college system.

87. Consistent educational support for groups with particular needs was also lacking, such as for indigenous persons and women, those from cultural and linguistically diverse backgrounds and those with mental health issues who comprise a large percentage of the prison population. Often, education and rehabilitation programmes in prison were not adapted to accommodate the needs of persons with mental or intellectual disabilities, which would in effect exclude them from the full benefits such programmes might offer.

88. Finally, it was reported by non-governmental organizations that, in some countries where women were found to be the fastest growing prison population group, prison systems that were typically designed in response to men's profiles and needs now had to change to reflect appropriately also those of women.

VII. CONCLUSION AND RECOMMENDATIONS

89. **The Special Rapporteur thanks all States that responded. As noted above, international and comparative prison research, learning and cooperation have become even more imperative. By contributing to the present global report, those States have responded in part to this need. For those who have not been able to contribute, the Special Rapporteur makes a further and specific request that they do so for future reports. If the "snapshots" provided by the responses to the questionnaire are a reflection of the actual state of education in detention, States individually, in regions and globally must come together with the shared aim of fulfilling the right to education for persons in detention to a greater extent than now seems to be the case.**

90. **To this end, the Special Rapporteur addresses the following recommendations to States:**

(a) **Education for people in detention should be guaranteed and entrenched in Constitutional and/or other legislative instruments;**

(b) The provision of education for persons in detention should be adequately resourced from public funds;

(c) Compliance with the standards set forth in international law and guidance pertaining to education in detention should be ensured.

91. The Special Rapporteur recommends that authorities in charge of public education:

(a) Make available to all detainees, whether sentenced or in remand, education programmes that would cover at least the curriculum of compulsory education at the primary and, if possible, at the secondary level also;

(b) Together with the institutions of detention, arrange comprehensive education programmes aimed at the development of the full potential of each detainee. These should aim also to minimize the negative impact of incarceration, improve prospects of reintegration, rehabilitation, self-esteem and morale.

92. Systematic and appropriate screening of all prisoners upon entry to places of detention becomes the norm. Individual education plans with full participation of the detainee should result from this screening, and be monitored, evaluated and updated from entry to release.

93. States should identify the dispositional barriers to education and subsequently ensure adequate assistance and resources to meet their challenge.

94. Education programmes should be integrated with the public system so as to allow for continuation of education upon release.

95. Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees.

96. Teachers in places of detention should be offered approved training and ongoing professional development, a safe working environment and appropriate recognition in terms of working conditions and remuneration.

97. Evaluation and monitoring of all education programmes in detention should become the norm and a responsibility of the ministry of education. The Special Rapporteur encourages States to investigate which practices pervade their prison estates, recognize them and take prompt steps to address them.

98. Education programmes in detention should be based on current, multidisciplinary and detailed research. To this end, the international community should establish cooperation and exchange mechanisms between States to facilitate the sharing of such research and examples of best practice and their implementation.

99. **The diverse background and needs of persons in detention and how that diversity is reflected in programmes and curriculum offered is also an area where the sharing of research, best practice and experience would generate particular dividends and is therefore specifically and strongly encouraged.**

100. **The production and delivery of adequate pedagogical material with the necessary and active participation of all persons in detention, and more specifically those from marginalized groups, should also be encouraged.**

101. **Furthermore, the Special Rapporteur makes the following recommendations specifically regarding children and women in detention and other marginalized groups:**

(a) Special attention must be given to ensuring that all children subject to compulsory education have access to, and participate in, such education;

(b) Curricula and educational practices in places of detention must be gender sensitive, in order to fulfil the right to education of women and girls;

(c) Attention should be also given to persons from traditionally marginalized groups, including women, minority and indigenous groups, those of foreign origin and persons with physical, learning and psychosocial disabilities. Education programmes for such groups should pay close attention to accessibility and relevance to individual needs; the barriers to continued education upon release should also be addressed and taken care of properly.

102. **Finally, the Special Rapporteur considers that deprivation of liberty should be a measure of last resort. Given the considerable negative long-term economic, social and psychological consequences of detention for detainees, their families and the community alike, the Special Rapporteur urges considerably greater attention be paid to identifying and implementing alternatives to detention for children and adults alike, and reiterates that people sentenced to prison are still entitled to their inherent human rights, including their right to education.**
