

## Recommendations

1. Human Rights Advocates commends the progress of the Secretary-General's Special Representative and calls upon the Council to:
  - a. Recognize the importance of institutionalization as a last resort and for the shortest possible time in preventing violence against children in institutions.
  - b. Support the Secretary-General's Special Representative's approach to eliminating violence against children in official settings.
2. HRA further asks Member states to:
  - a. End impunity for perpetrators of violence against children in alternative care and juvenile justice institutions.
  - b. Ensure transparency through the creation of an independent, well funded, and child-friendly monitoring, complaint, and investigation mechanism such as an ombudsman or human rights institution at regional, national, and local levels.
  - c. Engage in better training, awareness, and sensitization programs to staff, guards, and child-care professionals working in juvenile care and justice institutions.
  - d. Ensure appropriate facilities for children who are institutionalized: separate children from adults, and separate those children going through judicial processes from those in need of protection.

juvenile justice professionals.<sup>76</sup> Police, referral agencies, lawyers, judges, institution managers, and staff can all stand to benefit from adequate training on violence against children.<sup>77</sup> To change societal attitudes at a greater level, States must engage all key stakeholders such as government, civil society, inter-religious organizations, media, and children in raising awareness, sensitization, and mobilizing change.<sup>78</sup>

### **3. Appropriate Facilities**

The final step in eradicating violence when children must be institutionalized is to ensure that they are placed in appropriate facilities. When children are sent to institutions as a last resort, the conditions must promote and facilitate rehabilitation and reintegration into society.<sup>79</sup> The institutionalization process should consistently be child-focused, attending to the specific needs of the various children who pass through.<sup>80</sup> This means not only separating children from adults or from older children, but separating those in need of care and protection from those that are juvenile offenders or considered dangerous. In the juvenile justice setting, violent offenders should be separate from non-violent offenders, understanding that the former is likely both to negatively interact and influence the latter. Overall, facilities should be adequately funded, fully equipped with well-trained and sensitized staff, and effectively monitored by authorities.

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<sup>76</sup> VOLZ, *supra* note 6, at 31.

<sup>77</sup> *Id.* at 16.

<sup>78</sup> UNICEF & RELIGIONS FOR PEACE, FROM COMMITMENT TO ACTION: WHAT RELIGIOUS COMMUNITIES CAN DO TO ELIMINATE VIOLENCE AGAINST CHILDREN 40 (2010).

<sup>79</sup> VOLZ, *supra* note 6, at 11.

<sup>80</sup> *Id.* at 17.

traumatized during the complaint process.<sup>72</sup> One form is to develop an independent national human rights institution (“NHRI”) sometimes called an ombudsmen, or some other specific body, such as a ministry, that is adequately resourced to fully implement its mandate. Such an independent body for children’s rights would be responsible for receiving and responding to children’s grievances while also investigating violations on its own initiatives.<sup>73</sup> The ombudsman (or other mechanism) would prepare and publicize reports and advance the public’s awareness and understanding of the importance of children’s rights, often disseminating information to both children and their families.<sup>74</sup> In addition, it would review the adequacy and effectiveness of children’s laws and monitor governmental performance and compliance with law affecting children’s rights, and finally, influence legislation, policy, and practices regarding children’s rights.”<sup>75</sup> Whatever the form of the independent monitoring, investigating, and reporting mechanism, it would be best implemented at not only the national, but also the regional and local level. Because these children are closed off from the public, there must be some complaint mechanism within the reach of their isolated worlds.

Finally, States must end impunity, ensuring that child victims of abuse are brought to justice and given adequate redress.

## **2. Training, Awareness, Sensitization**

Unfortunately, violence against children especially of those deprived of liberty is socially acceptable in most parts of the world. To address this issue, it is important to invest in sensitization and capacity building in an effort to change the mentalities of authorities and

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<sup>72</sup> Nowak, *supra* note 22.

<sup>73</sup> Okereke, *supra* note 51, at 1740-1741.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* Some countries that already have a Child’s Rights Ombudsmen are Belgium, Australia, Austria, and Spain.

children. Essentially, governments need to ensure that these facilities are held to a higher standard. They should be well monitored with efficient complaints mechanisms in place and legitimate avenues for redress. Those involved in the care and protection of children must be adequately trained, sensitized, and aware of the consequences violence has on children, the gravity of institutionalization, and the State's dedication to a no-tolerance policy for violence against children. Lastly, facilities must be reformed to be appropriate for the children being held in them: juveniles and adults must be separated; those in need of care and protection must not be commingled with juvenile offenders; and children seeking protective custody must be given special care so as not to be re-traumatized by the circumstances of their detention.

### **1. Transparency**

The most important way to eliminate violence against children in institutional settings is to expose the institutions to public scrutiny. First, there should be an independent monitoring system involving a process of regular and unannounced visits to juvenile justice and alternative care institutions. The procedure should include an independent body and be used as a method of analyzing treatment, conditions, and administration, strengthening the prevention of torture and ill treatment.<sup>68</sup> It should further be an opportunity with constructive dialogue with the authorities and other stakeholders.<sup>69</sup>

Second, States should establish an independent mechanism for receiving and investigating complaints in a child friendly manner.<sup>70</sup> The mechanism must ensure that filing a complaint will not result in retaliation by the perpetrator,<sup>71</sup> and that victims are not re-

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<sup>68</sup> *Id.* at 34.

<sup>69</sup> *Id.*

<sup>70</sup> Doek, *supra* note 63, at 206.

<sup>71</sup> *Id.* at 207.

children deprived of liberty. Because of the negative consequences of institutionalization and the violence that almost always ensues, the best way to end violence against children deprived of liberty is to use institutionalization only as a last resort and for the shortest amount of time possible, as dictated by international law. States should develop non-custodial measures for responding to children in need and in conflict with the law.<sup>62</sup> Governments should support families with children in need of extra attention, and promote alternatives to institutionalization such as foster care.<sup>63</sup>

With respect to juvenile justice systems, children should only be *arrested* as a last resort. The common practice of arresting juveniles for minor offences is fairly new. For example one study notes that, “until the current wave of harsh laws and policies across the United States began in 1986, approximately 2/3 of police contacts with children resulted in a warning.”<sup>64</sup> Since then, the number of police encounters resulting in arrests has greatly increased.<sup>65</sup>

This last resort standard “creates a barrier at the core point of entry into the system of justice for children.”<sup>66</sup> When children are already in the system, there must options for moving them out of the court system and away from custodial measures at every stage of the juvenile justice process.<sup>67</sup> Emphasis away from institutionalization is sure to result in less violence against children in these settings and elsewhere.

### **B. When Institutionalization is Necessary**

Understanding that there are circumstances in which institutionalization is unavoidable, there are certain measures States can take to reduce and remedy violence against institutionalized

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<sup>62</sup> VOLZ, *supra* note 6, at 10.

<sup>63</sup> Jaap E. Doek, *What Does the Children’s Convention Require?*, 20 Emory Int’l L. Rev. 199, 206 (2006).

<sup>64</sup> Dohrn, *supra* note 4, at 39.

<sup>65</sup> Dohrn, *supra* note 4.

<sup>66</sup> *Id.* at 39.

<sup>67</sup> VOLZ, *supra* note 6, at 10.

The third part to the Special Representative’s agenda is for States to create a research and a consolidated data system to inform violence prevention and response. This is an important component, as the lack of information about the functioning of these juvenile systems “or the children who are in contact with it, [means] abuse, violence, and exploitation can occur with impunity, and the experience of the child is unlikely to be in his or her best interests.”<sup>59</sup>

One initiative to advance the goal of better data collection is a study financially supported by the European Commission’s Daphne II Programme in Belgium, England and Wales, France, and The Netherlands. The aim of the program was to develop a set of violence indicators to improve data collection and analysis across Europe. The study came up with 12 indicators on violence against children deprived of liberty to support registration and the collection of data.<sup>60</sup>

Another example is a study in Ethiopia called “Improving Care Options for Children in Ethiopia through Understanding Institutional Child Care and Factors Driving Institutionalization,” which resulted in the revised National Guidelines for Alternative Care of Children, and other efforts toward policy reforms, reform with the care institutions, and encouragement of non-institutional alternative care options.<sup>61</sup> These types of studies aimed at data collection and analysis can be extremely useful not only in developing a national strategy and enacting legislation, but in implementing and executing actual reform in addressing child’s needs and ending impunity for perpetrators.

#### **A. De-institutionalization**

In addition to the agenda proposed by the Secretary-General’s Special Representative on Violence Against Children, there are other solutions for specifically ending violence against

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<sup>59</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME AND UNICEF, MANUAL FOR THE MEASUREMENT OF JUVENILE JUSTICE INDICATORS, 2 (2007).

<sup>60</sup> VOLZ, *supra* note 6, at 37.

<sup>61</sup> FAMILY HEALTH INTERNATIONAL, IMPROVING CARE OPTIONS FOR CHILDREN IN ETHIOPIA THROUGH UNDERSTANDING INSTITUTIONAL CHILD CARE AND FACTORS DRIVING INSTITUTIONALIZATION 16-18 (2010).

strategy to address the issue. The second step is enacting legislation explicitly banning violence against children in all settings, specifically in the alternative care and juvenile justice settings.

With regard to enacting legislation, the Parliamentary Assembly of the Council of Europe is a leading example, adopting a recommendation ensuring full protection of child victims of abuse in institutions, calling on the Committee of Ministers to report back to the Assembly on the measures implemented and results achieved during the campaign in each country in relation to the points raised in the recommendation.<sup>55</sup> Similarly, in December, 2010, the 22 members of the League of Arab States unanimously adopted the Marrakesh Declaration, calling for better data on issues related to the protection of children from violence, exploitation, and abuse, and the adoption of legislation to protect children from all forms of violence, among other points.<sup>56</sup> Other States have made commitments to establish legislation and national strategies, such as the several Governors in Iraq who have expressed their commitment “to establish Child Rights Committees to review the situation of children’s rights and develop plans of action on how to meet the most urgent needs of children in their respective governorates.”<sup>57</sup>

It is also noteworthy to recognize the 29 states with full prohibition in law of corporal punishment in all settings, the 109 states with prohibitions against corporal punishment as a disciplinary measure in penal institutions, and the 38 states with prohibitions against corporal punishment in alternative care settings.<sup>58</sup> Although corporal punishment is not the only type of violence that must be legally banned, these laws are nonetheless an important advancement.

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<sup>55</sup> EUR. PARL. ASS., *Child Abuse in Institutions: Ensure Full Protection of the Victims*, DOC. NO. 12358 ¶ 7 (2010).

<sup>56</sup> UNICEF, *Marrakesh Declaration, a New Milestone for Children’s Rights*, UNICEF PRESS CENTRE, Dec. 21, 2010, available at [http://www.unicef.org/media/media\\_57288.html](http://www.unicef.org/media/media_57288.html).

<sup>57</sup> UNICEF, *Children’s Rights Events Across Iraq Conclude; Several Governorates Agree to Establish Child Rights Committees*, UNICEF NEWS NOTE, Dec. 10, 2010, available at [http://www.unicef.org/media/media\\_57177.html](http://www.unicef.org/media/media_57177.html).

<sup>58</sup> GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, ENDING LEGALISED VIOLENCE AGAINST CHILDREN: GLOBAL REPORT 2007 6. The number of states with full prohibition in law includes states in Africa, Europe, Latin America, East Asia and the Pacific, and the Middle East

misconduct with the girls they are supposed to protect, “including inappropriately touching, flirting with, and making degrading comments to girls, such as vulgar references to girls' prior sexual experiences and commercial sexual exploitation. In some instances, detention facility staff engage in sexual intercourse with girls.”<sup>51</sup> With the shame and the fear of retaliation, most of these abuses go unreported and thus the perpetrators unpunished.

### **E. Negative Consequences**

In addition to the obvious physical results of violence, research in the neurobiological, behavioral, and social sciences has brought to light the extent of the negative consequences of institutionalization and the subsequent violence on children. “It demonstrates that when protective relationships do not exist, exposure to stress in the form of violence can disrupt the developing nervous and immune systems leading to greater susceptibility to physical and mental health problems.”<sup>52</sup> Detention and incarceration have long-lasting impacts on the right to life, survival, the development of the child, and the right to reintegration into society.<sup>53</sup> Irreversible psychological and emotional effects have a damaging impact on later social interactions, making them especially vulnerable to exploitation and abuse, further perpetuating the cycle of violence.<sup>54</sup>

## **II Solutions**

The Secretary-General's Special Representative on Violence Against Children, Marta Santos Pais has quite successfully developed a three-part agenda to eradicate violence against all children. The first step she suggests is for each State to develop a comprehensive national

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<sup>51</sup> Christina Okereke, *The Abuse of Girls in U.S. Juvenile Detention Facilities: Why the United States Should Ratify the Convention on the Rights of the Child and Establish a National Ombudsman for Children's Rights*, 30 *Fordham Int'l L.J.* 1709, 1716-1717 (2007).

<sup>52</sup> PINHEIRO, *supra* note 1, at 5.

<sup>53</sup> Dohrn, *supra* note 4, at 40.

<sup>54</sup> CORINNA CSÁKY, THE SAVE THE CHILDREN FUND, KEEPING CHILDREN OUT OF HARMFUL INSTITUTIONS 9 (2009).



from the Government Observation Home in an attempt to escape torture and abuse.<sup>41</sup> The next morning, the local police caught the boys, beat them mercilessly, and re-detained them in the same home they sought to flee.<sup>42</sup> Following the incident, the Asian Centre for Human Rights conducted a fact-finding mission into the observation home.<sup>43</sup> In addition to finding an overcrowded (40 beds for 88 juveniles)<sup>44</sup> and deplorable home (inadequate staffing, medical conditions, food and sanitation),<sup>45</sup> the fact-finding mission found “consistent, serious and credible evidence that both the staff and older adult inmates regularly sexually abused the junior inmates.”<sup>46</sup> It found that the younger children suffered treatment “that amounts to torture” and that “the adult/older inmates work for staff and abuse and intimidate the younger inmates.”<sup>47</sup> The mission resulted in 12 recommendations for the Orissa State Child Rights Protection Commission and the State government of Orissa, which will hopefully serve as a warning for other institutions in addition to the state and federal governments.<sup>48</sup>

Violence against girls is extremely high in the juvenile justice context. Human Rights Watch and the American Civil Liberties Union released a comprehensive report explaining the harsh reality for girls in New York State’s two juvenile prisons for girls.<sup>49</sup> The report documented that prison staff at these institutions applied excessive force when physically restraining girls, often resulting in injuries ranging from facial abrasions caused by being pinned to the ground, to broken bones.<sup>50</sup> In detention centers, staff members engage in sexual

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<sup>41</sup> ASIAN CENTRE FOR HUMAN RIGHTS, ORISSA: JUVENILES FLEEING FROM TORTURE AND ABUSE I (2010).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 5-7.

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8.

<sup>49</sup> HUMAN RIGHTS WATCH & ACLU, CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK’S JUVENILE PRISONS FOR GIRLS 63-72 (2006), available at <http://hrw.org/reports/2006/us0906/us0906webwcover.pdf>.

<sup>50</sup> *Id.* at 45-54.

Despite these disturbing findings, none of the information will be used for criminal prosecutions, “in part because the Christian Brothers successfully sued the commission in 2004 to keep the identities of all its members, dead or alive, unnamed in the report.”<sup>36</sup> Impunity such as this is all too common in the context of violence against children deprived of liberty, and must be addressed.

## **2. Violence in Juvenile Justice Systems**

Children involved in conflict with the law are victims of abuse while in custody by police and security forces, as punishment, and by other inmates. Staff and guards in detention centers use violence as punishment in the forms of physical restraint, mental or degrading and humiliating treatment, and sexual assault. Although 81% of children in juvenile justice systems are legally protected from corporal punishment,<sup>37</sup> flogging, whipping, and caning continue to be popular forms of discipline and sentencing for juveniles.<sup>38</sup>

Violence is particularly common when children are housed with adults. General Comment 10 of the CRC explains that children deprived of liberty should not be placed with adults because, “co-mingling with adults or being in an adult facility jeopardizes children’s safety, well-being, prospects for avoiding recidivism, and ability to reintegrate into society.”<sup>39</sup> Indeed, rape, physical assault, and abuse of children are well documented in cases involving children held with adults in a cell.<sup>40</sup>

One illustration of this can be seen in the case of a Government Observation Home for Boys in Orissa, a province of India. During the evening on September 21, 2010 ten boys fled

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<sup>36</sup> BBC, *Irish Church Knew Abuse ‘Endemic,’* May 20, 2009, available at <http://news.bbc.co.uk/2/hi/europe/8059826.stm>.

<sup>37</sup> Dohrn, *supra* note 4, at 70.

<sup>38</sup> PINHEIRO, *supra* note 1, at 195-200.

<sup>39</sup> Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, P 3, U.N. Doc. CRC/C/GC/10 (Feb. 9, 2007), available at <http://www.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment10-02feb07.pdf>.

<sup>40</sup> Dohrn, *supra* note 4, at 44.

period from 1940 or earlier to the present day.”<sup>30</sup> The Commission has the power to “inquire into abuse of children in institutions and to determine the causes, nature, circumstances, and extent of such abuse, and to publish reports on the results of the inquiry and on its recommendations in relation to dealing with the effects of such abuse.”<sup>31</sup> In its most recent report, the Commission found systematic cruelty in the form of neglect, physical, sexual, and emotional abuse perpetrated against children in numerous Catholic institutions in Ireland.<sup>32</sup> The report concluded that church officials encouraged ritual beatings and other forms of violence, generating a fear that authorities believed to be essential to maintain order.<sup>33</sup> It also found not only that church officials consistently shielded perpetrators, especially pedophiles from arrest, but that government inspectors were aware of and failed to stop the chronic beatings, rapes and humiliation.<sup>34</sup>

One example documented in the report discusses the “provoked or unprovoked” physical abuse as follows:

Witness reports of physical abuse included being punched, kicked, hit with knuckles, hair pulled and cut, being force fed, and lifted by the ears and hair. The Committee also heard reports of witnesses being forced to kneel for long periods, being beaten on the feet, backs of the hands, fingertips and legs. They also described their heads being hit off radiators, wedged in a door or submerged under water. The witnesses reported being beaten with various implements including leathers, sticks, strips of rubber, brushes, hurleys, badminton racquets, rulers, whips and bunches of keys. A small number of witnesses reported being forced to eat quantities of mustard, having their mouths and other body parts, including genitalia, scrubbed with nailbrushes, and being held under a cold tap.<sup>35</sup>

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<sup>30</sup> Commission to Inquire into Child Abuse Act 2000 (Act No. 7/2000) (Ir.) *available at* <http://www.irishstatutebook.ie/2000/en/act/pub/0007/print.html#sec1>; amended by the Commission to Inquire into Child Abuse (Amendment) Act 2005 (Act No. 17/2005) (Ir.) *available at* <http://www.irishstatutebook.ie/2005/en/act/pub/0017/index.html>.

<sup>31</sup> *Id.*

<sup>32</sup> COMMISSION TO INQUIRE INTO CHILD ABUSE, 3 THE CONFIDENTIAL COMMITTEE REPORT (2009).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at ¶ 14.53.

held accountable, high rates of violence continue to go unchecked, perpetuating a tolerance for violence against children.<sup>24</sup>

## **D. Experiencing Violence**

As Dr. Pinheiro notes, “for a child, the very fact of being deprived of [his] freedom of movement is a violence in itself.”<sup>25</sup> Children deprived of liberty are subject to torture, beatings, isolation, restraints, rape, harassment, exploitation, and humiliation by staff, guards, other children, or adults housed in the same complex.<sup>26</sup> Children are also exposed to violence as a result of overcrowded and squalid conditions, or as a form of discipline or punishment.<sup>27</sup> With the exception of a few scandals that reach public scrutiny, these abuses remain unnoticed and unpunished.

### **1. Violence in Alternative Care Settings**

In alternative care settings, children face violence by staff, in the guise of treatment, by neglect, or through violence by others.<sup>28</sup> Across the globe, only four percent of children in alternative care institutions are legally protected from corporal punishment.<sup>29</sup> It is not surprising then that corporal punishment and other forms of abuse are not only common in alternative care settings, but also often go completely unnoticed and unchecked.

One example of the widespread epidemic of violence against children deprived of liberty has recently been brought to light in Ireland. In 2000, the Government of Ireland established the Commission to Inquire Into Child Abuse (“the Commission”), mandated “to hear evidence of abuse from persons who allege they suffered abuse in childhood, in institutions, during the

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<sup>24</sup> PINHEIRO, *supra* note 1, at 176.

<sup>25</sup> VOLZ, *supra* note 6, at 8.

<sup>26</sup> PINHEIRO, *supra* note 1, at 175.

<sup>27</sup> Nowak, *supra* note 22.

<sup>28</sup> PINHEIRO, *supra* note 1, at 194.

<sup>29</sup> Dohrn, *supra* note 4, at 70.

housed together despite their differing status, and met with the same violence from those who are supposed to protect and care for them. The issue is even more exacerbated when children are housed with adults or older children.<sup>19</sup>

The second reason these children are so vulnerable is because of the lack of public concern and subsequently a lack of transparency. The lack of transparency and even public knowledge is illustrated when incidents of violence are brought to public attention. After a Swiss male social worker confessed to abusing 114 children and disabled adults in care homes over the years, the head of the local Swiss police special investigation unit was quoted as saying “one of the central questions of this investigation is how such levels of abuse could go undetected for so long.”<sup>20</sup> Indeed, this lack of detection, especially by the authorities, is one of the main concerns for children deprived of liberty, forgotten by the public, and subjected to unimaginable cruelties.

Closed to public scrutiny, institutions housing children are void of “basic legal framework prohibiting all violence, and also lack adequate Government regulation and oversight, effective complaints mechanisms, and inspection systems.”<sup>21</sup> Isolated from the outside world, children face particular difficulties in accessing legal aid and legal services, depriving them of access to the justice system.<sup>22</sup> Staff members enjoy impunity from punishment, as abuses frequently go unreported due to a fear of further abuse or reprisals, or due to shame.<sup>23</sup> With perpetrators rarely

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<sup>19</sup> *Id.* at 176.

<sup>20</sup> BBC, *Swiss Care Worker ‘Sexually Abused 114 People,’* Feb. 1, 2011, available at <http://www.bbc.co.uk/news/world-europe-12339534>.

<sup>21</sup> PINHEIRO, *supra* note 1, at 176.

<sup>22</sup> Statement by Manfred Nowak, Special Rapporteur on Torture, and other cruel, inhuman or degrading treatment or punishment, Sexual Violence in Institutions, Including in Detention Facilities, Annual full-day meeting on the rights of the child, Thirteenth Session of the Human Rights Council, (Mar. 10, 2010), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9919&LangID=E> [hereinafter *Nowak*].

<sup>23</sup> *Id.*

Assembly resolution 64/142 in 2009) are all examples of such guidelines, calling not only for protection from violence, but also for institutionalization as a last resort and for the shortest possible amount of time. Yet despite the clear international intent to abolish it, violence against children in juvenile justice and alternative care settings remains rampant and unchecked.

### **C. Particular Vulnerability of Children Deprived of Liberty**

While violence against any child is unjustifiable, those children deprived of liberty are particularly vulnerable. The main reason for this is due to the susceptible nature of the situation. Children in institutions often end up there because of poverty, disability, violence within the family, a family catastrophe (including HIV/AIDs), or simply because of a lack of alternatives.<sup>12</sup> It is often the last stop for children who have already led extremely difficult lives. Worldwide, the majority of children in the custody of police or in detention should not be there.<sup>13</sup> As Pinheiro notes, they are often “children simply in need of care and protection but who have been placed in correctional facilities under charges such as vagrancy, and have thereby been criminalized for nothing more than homelessness and poverty.”<sup>14</sup> Children in custody are frequently charged with minor offences or petty crimes and are first time offenders.<sup>15</sup> Too many minors in detention have not even been convicted of a crime, but are on remand and awaiting trial.<sup>16</sup>

In many countries, the criminal justice system is used as a substitute for adequate care and protection systems.<sup>17</sup> This may include refugee children seeking asylum, or girls in detention for “protective custody” after being raped or sexually assaulted.<sup>18</sup> Yet all of these children are

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<sup>12</sup> PINHEIRO, *supra* note 1, at 185-186.

<sup>13</sup> *Id.* at 175.

<sup>14</sup> *Id.*

<sup>15</sup> VOLZ, *supra* note 6, at 15.

<sup>16</sup> *Id.*

<sup>17</sup> PINHEIRO, *supra* note 1, at 194.

<sup>18</sup> *Id.*

Children in these settings are the lowest on the list of government priorities, allowing the violence committed against them to be normalized, ignored, or rationalized.<sup>6</sup>

It is estimated that more than 2 million children are currently in institutional care around the world, the majority of which are in Central and Eastern Europe and the Commonwealth of Independent States.<sup>7</sup> It is similarly estimated that more than 1 million children are detained through justice systems worldwide at any one time.<sup>8</sup> Both of these numbers are greatly underestimated due to under-reporting and data collection issues.<sup>9</sup>

## **B. International Law and Guidelines**

Under International law, children are rights holders that should be treated with dignity. States Parties to the Convention on the Rights of the Child (“CRC”) are obliged to “ensure to the maximum extent possible the survival and development of the child.”<sup>10</sup> Article 37(c) of the CRC demands that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person. Further, children are to be deprived of liberty only as a measure of last resort and for the shortest appropriate period of time.<sup>11</sup> As such, perpetrators of violence against children deprived of their liberty are in violation of international law.

There are also a number of guidelines in international law to set the standard for the treatment of juveniles deprived of liberty. The UN Standard Minimum Rules of the Administration of Juvenile Justice (“The Beijing Rules” adopted by General Assembly in resolution 40/33 in 1985), the Secretary-General issued a Guidance Note on the UN Approach to Justice for Children, and the Guidelines for the Alternative Care of Children (adopted by General

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<sup>6</sup> ANNA VOLZ, DEFENCE FOR CHILDREN INTERNATIONAL, ENDING VIOLENCE AGAINST CHILDREN IN JUSTICE SYSTEMS: STRATEGIES FOR CIVIL SOCIETY ENGAGEMENT IN THE FOLLOW-UP TO THE UN STUDY 15 (2009).

<sup>7</sup> UNICEF, PUB. NO. 8, PROGRESS FOR CHILDREN: A REPORT CARD ON CHILD PROTECTION 15 (2009).

<sup>8</sup> *Id.* at 24.

<sup>9</sup> *Id.*

<sup>10</sup> Convention on the Rights of the Child art. 6 (2), Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>11</sup> *Id.* at art. 37 (b).

## **I Violence Against Children Deprived of Liberty**

Millions of children around the world experience violence in the family, in schools, at work, in the community, and in alternative care and justice institutions.<sup>1</sup> In 2006, the Independent Expert for the U.N. Study on Violence Against Children, Dr. Paulo Sérgio Pinheiro, released a study that showed “violence against children exists in every State and cuts across boundaries, culture, class, education, ethnic origin, and age.”<sup>2</sup> The study further revealed that despite States’ obligations to human rights and child development, much violence against children remains not only socially approved, but legal, and even State-authorized.<sup>3</sup> Too often the violence is inflicted by those charged with the duty of caregiver or protector.

### **A. Children Deprived of Liberty**

The most vulnerable of all of these children are those “deprived of liberty.” The concept assumes that children, as all people, have a right to liberty, and that they have been deprived of that liberty, a situation which requires an extra level of protection, process, and assurances.<sup>4</sup> Deprivation of liberty for children refers to “all forms of child confinement, however benign the name and stated purpose.”<sup>5</sup> This group encompasses those children in group homes, residential treatment, training schools, orphanages, mental health institutions, drug treatment facilities, centers for the confinement of unaccompanied immigrant children in deportation proceedings, institutions for sexual offenders, training schools, custody, detention centers, and prisons.

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<sup>1</sup> PAULO SÉRGIO PINHEIRO, WORLD REPORT ON VIOLENCE AGAINST CHILDREN (United Nations Secretary-General’s Study on Violence against Children, 2006).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Bernardine Dohrn, “*I’ll Try Anything Once*”: *Using the Conceptual Framework of Children’s Human Rights Norms in the United States*, 41 U. Mich. J.L. Reform 29, 36 (2007).

<sup>5</sup> *Id.* at 38.





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**Violence Against Children Deprived of Liberty**

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