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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system

Summary

The present report, submitted pursuant to Human Rights Council resolution 18/12, builds upon the 2006 United Nations Study on Violence against Children, which remains a foundational document for the prevention and elimination of all forms of violence against children in all settings, including within the juvenile justice system. This report describes the current situation of violence against children in the juvenile justice system, identifies the risks of violence to which children are exposed and analyses the systemic factors which contribute to violence. It provides a number of recommended strategies to prevent and respond to violence against children in the juvenile justice system.

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I. Introduction

1. In its resolution 18/12 of 24 September 2011 on human rights in the administration of justice, in particular juvenile justice, the Human Rights Council invited the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children to collaborate in the organization of an expert consultation on prevention of and responses to violence against children within the juvenile justice system and to submit a report thereon.
2. The Expert Consultation took place in Vienna on 23-24 January 2012. It was hosted by the United Nations Office on Drugs and Crime (UNODC) and co-organized with the Office of the High Commissioner for Human Rights (OHCHR) and the Special Representative of the Secretary-General on Violence against Children, in cooperation with the Government of Austria. Participants included representatives from international and regional human rights bodies, governmental and State institutions, academia and civil society.
3. The Expert Consultation focused on the risks and systemic factors contributing to violence against children within the juvenile justice system, and strategies and practical recommendations to prevent and respond to violence against children within the juvenile justice system.
4. This report is informed by the results of the consultation and a research paper conducted by an independent consultant, Ann Skelton, of the University of Pretoria, South Africa.

II. Background

5. The report builds upon the 2006 United Nations Study on Violence against Children which remains a foundational document for the prevention and elimination of all forms of violence against children in all settings, including within juvenile justice systems. The Study recognized that children in the custody of the police or in criminal justice institutions are at a high risk of violence, including as a result of the public perception of them as being antisocial or criminals and the prevalence of physical and psychological punitive approaches. The Study urged States to prohibit, prevent and respond to all forms of violence against children, in all settings, including in the justice system.
6. The responses proposed by the Study included legislative action and policies to prevent institutionalization – in particular the proper application of the principle of “last resort” and the prioritization of alternative measures to deprivation of liberty. Such alternatives begin with primary prevention measures such as support for disadvantaged and at-risk families and early childhood initiatives.
7. States were urged to reduce detention and use it only for child offenders who are assessed as posing a real danger to others, as a last resort and for the shortest appropriate period of time. States were further urged to undertake legal reforms to abolish violent forms of sentencing and to decriminalize status offences. The Study also proposed alternatives to detention such as community-based diversion programmes. Further responses were proposed to ensure protection from violence within institutions, with emphasis on staff selection; training and remuneration; conforming to international standards; registration, monitoring and investigation; and complaint mechanisms.

III. Current situation

8. It is estimated that at least 1 million children are deprived of their liberty worldwide,¹ a figure that is probably underestimated. Research shows that the majorities of detained children are awaiting trial, that a large proportion of these children are held for minor offences and are first-time offenders. Violence at home, poverty, structural violence and risky survival activities propel children into the juvenile justice system, and detention in the criminal justice system is often used as a substitute for referral to child care and protection institutions. There is a worrying trend for children to be placed in institutions, rather than minimizing the risk of violence against children by ensuring effective prevention. Incidents of violence occur while in custody of police and security forces, in both pretrial and post-sentence detention, as well as a form of sentencing. Violence can be perpetrated by staff, adult detainees and other children, or be the result of self-harm.

A. Perceptions of children in the juvenile justice system

9. The United Nations Study observed that although the majority of offences committed by children are non-violent, pressure on politicians to “get tough on crime” has driven increasingly harsh responses to children in conflict with the law. There is a popular perception that a large proportion of crimes are committed by children, although in fact children are not dominant in crimes statistics.² The United Nations High Commissioner for Human Rights has expressed concern at the growing public perception that juvenile delinquency is increasing. Such a perception, not grounded upon evidence but based on media reports of a few serious cases, influences the political discourse and too often leads to the adoption of legislation on the treatment of young offenders that weakens children’s rights.

10. It is a further concern that increasing numbers of children have been drawn into the criminal justice system through “anti-social behaviour measures”, which has led to more children being deprived of liberty – at younger ages.

11. It is apparent that many policy and lawmakers have subscribed to a disproportionately punitive approach. Personnel working with children in the juvenile justice system are not immune to these societal attitudes. The lack of public concern about brutality towards children in detention facilities may reflect societies’ rejection of children who do not conform to conventional social behaviour. Such stigmatization may also be expressed in the abusive attitudes and behaviour of poorly trained staff.

12. A positive development is that, alongside an apparent rise in punitiveness, there has also been a trend towards increased use of restorative justice mechanisms, especially in the juvenile justice sphere. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters³, as well as the United Nations Handbook on Restorative Justice Programmes⁴ have provided an international framework for work in this field. In different regions, there are significant developments in the process of law reform and restorative justice programmes for child offenders. In many cases, restorative justice

¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, (A/HRC/13/39/Add.5), p. 63, para. 236.

² T. Hammarberg, “A juvenile justice approach built on human rights principles”, *Youth Justice* December 2008, vol. 8, No. 3, pp. 103-196.

³ Economic and Social Council resolution 2002/12.

⁴ UNODC Handbook on restorative justice programmes, available from: http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf

practices have a long tradition in communities. The current work in some States is focused on evaluating, codifying and regulating restorative practices to ensure full compliance with the Convention on the Rights of the Child. In South Sudan and East Timor, for example, legislation has been drafted to incorporate traditional restorative practices and give effect to the Convention.⁵

13. In Norway, where the minimum age of criminal responsibility is 15 years, a legislative amendment on the Juvenile System was enacted in December 2011.⁶ It applies to children between 15 and 18 years who have committed serious or repeated offences. In the new system, the sanction will be imposed locally, where the convicted young person lives. Imprisonment sentences will be replaced by social control and close follow-up, including full involvement of the offender, the offender's "private network", the various elements of the justice system and other public bodies, all of which will contribute to an individualized follow-up process. Victims may also be involved at their own request. The objective is to give the convicted child an enhanced understanding of the consequences of his/her act for everyone affected, while guaranteeing him/her the necessary aid and support. The key factor is to strengthen the young person's resources to deal with his or her own criminal act. The legislative changes also introduced extensive community service orders for offenders between 15 and 18 years as an alternative to unsuspended prison sentences.

B. The urgent need to reduce the number of children in detention

14. The international normative framework, including the United Nations Guidelines for the Prevention of Juvenile Delinquency,⁷ promotes a comprehensive approach to prevention to avoid the criminalization and penalization of children. However many States still lack crime prevention strategies or plans. There is an increasing body of knowledge about effective crime prevention strategies,⁸ and the demonstrated cost-saving benefits of prevention,⁹ but in contrast with this principle, many countries invest in building detention facilities for children, rather than prioritizing investment in prevention measures.

15. In a number of countries, there is concern that too many children are brought into the criminal justice system through "status offences", leading to the placement of children in detention rather than providing them with the needed care and protection. As noted by the Special Representative of the Secretary-General on Violence against Children there is a worrying trend to criminalize children living and/or working in the streets. Children living and/or working in the streets are perceived as a social threat, stigmatized by the media and blamed for an alleged increase in juvenile delinquency. Truancy, vagrancy or begging by children are still often punished by the criminal justice system rather than prevented and addressed through child protection measures. Deprivation of liberty tends to become a preferred solution, rather than a measure of last resort, and is often accompanied by extortion, ill treatment and sexual abuse.

⁵ Cyndi Banks, *Protecting the Rights of the Child: Regulating restorative Justice and Indigenous Practices in Southern Sudan and East Timor*, International Journal of Children's Rights, vol. 19 (2), (2011).

⁶ White Paper Prop. 135 L (2010-2011).

⁷ General Assembly resolution 45/112.

⁸ European Crime Prevention Network, *A Review of Good Practices in Preventing Juvenile Crime in the European Union* (2006); I. Palmarty and C. Moat, *Preventing Criminality Among Young People* (Centre for the Study of Violence and Reconciliation, 2001).

⁹ Welsh et al. *Costs and Benefits of Preventing Crime*, (Westview Press, Boulder, 2000); Jones et al, *The Economic Return on PCCD's Investment in Research-based Programs: A Cost-benefit analysis of delinquency prevention in Pennsylvania* (Pennsylvania State University 2008).

16. There are additional groups of children, often overrepresented in the criminal justice system, who should not be there, and for whom appropriate care and protection services should be provided. These include children with mental health problems, children with substance abuse problems, children in need of care and protection and unaccompanied children. By removing such children from the criminal justice system the potential to reduce violence against them is clearly increased.

17. Many States still have low minimum ages of criminal responsibility (MACR). The Committee on the Rights of the Child has encouraged States parties to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. This is the absolute minimum that must be progressively increased. States setting a higher MACR must also have a clear policy on non-custodial measures for the vast majority of children who are below that age, to avoid them being transferred from one form of custody to another. Age thresholds for detention are also a good mechanism for keeping children out of detention, particularly prison, and this can be set higher than the MACR.¹⁰

18. A key principle of a rights-based juvenile justice system is non-discrimination. Children from ethnic and minority groups are overrepresented in the criminal justice system. Similar situations occur with migrant children and asylum seekers who are placed in detention on the basis of their migratory status. The reasons for this may include discrimination by law enforcement officials, but also social exclusion experienced more generally by those groups in the countries where they live. Social exclusion tends to result in patterns of poverty, domestic violence, gang activity, substance abuse, barriers to education, and poor prospects for meaningful employment.

19. An important and highly effective way of reducing the number of children in the criminal justice system is through diversion mechanisms, such as restorative justice programmes and alternative non-custodial measures. Although these children may still be at risk during the police station phase, pretrial diversion avoids pretrial detention. Alternative sentencing that prevents children from being deprived of their liberty is invaluable in the reduction of violence against children.

IV. Identification of risks of violence within the juvenile justice system

A. Law enforcement activities

20. Although contact with the juvenile justice system usually begins with arrest or apprehension, children can be victims of violence through law enforcement activities that never result in arrests or charges. Concern is expressed that anti-social behaviour reduction methods such as dispersal powers may lead to the use of violence, especially as a certain amount of force is permissible by law.

B. Apprehension and arrest

21. Police and other security forces are often responsible for violence against children, and arrests are one of the situations in which this occurs. The *Five years on* follow-up

¹⁰ T. Liefwaard, *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards* (Intersentia, 2008).

report found that children are at high risk of violence from their first point of contact with the law.¹¹ This appears to occur in developed and developing countries. The use of tasers during the arrest of children is a situation of particular concern.

22. As prescribed by international standards on juvenile justice, it is important to notify parents or caregivers following the arrest of a child, and secure their attendance at the police station. However, failure to notify the parents, or to do so in a timely manner, happens in both developing and developed countries.

C. Police interrogation

23. As stated in the Convention on the Rights of the Child, every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. It is observed in the UNODC Criminal Justice Assessment Toolkit 3 that: “Good practice and respect for human rights, as well as the professionalism of the interviewer, should prevent suspect interviews from becoming violent, but there may be places in which severe interrogation techniques are tolerated, or even encouraged, and may involve the use of torture”.¹²

24. Many juvenile justice laws fail to include a clause that a child shall not be questioned by a police officer or a prosecutor without a parent, guardian or responsible adult being present. The presence of a parent, guardian or responsible adult is important in that it provides a high level of protection against ill-treatment of child suspects by police.¹³

25. Similarly, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide specifically that States should establish child-friendly legal aid systems that enable children to contact their parents or guardians at once and to prohibit any interview in the absence of a parent or guardian, and lawyer or other legal aid provider.

26. A recent study of juvenile justice systems in Eastern Europe and Central Asia recognizes that some countries have legislated to provide for the presence of lawyers during interrogation.¹⁴ At the same time, in some other regions legal representatives rarely assist any suspect at the police detention stage of the criminal justice process.¹⁵

D. Searches and the taking of samples

27. International instruments pertaining to juvenile justice do not provide specific protection in relation to searches or the taking of samples. Similarly, many laws at the domestic level fail to incorporate protective rules in this area. Some countries do have laws relating to the taking of intimate and non-intimate samples, but not all differentiate between child suspects and adult suspects.

¹¹ NGO Advisory Council, *Five years on: A global update on violence against children* (2011).

¹² P. 17, available from: http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Crime_Investigation.pdf

¹³ Rule 15, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, deals with “legal counsel, parents and guardians” but this comes under part 3 of the rules pertaining to “Adjudication and Disposition”.

¹⁴ UNICEF, *The development of juvenile justice systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine* (2009).

¹⁵ UNODC, *Access to legal aid in criminal justice systems in Africa: Survey Report* (2011).

E. The right to appear before a court or tribunal to challenge detention

28. Building upon children's right to challenge the legality of deprivation of liberty before a court and to have a prompt decision on such action, the Committee on the Rights of the Child in its general comment No. 10 (2007) on children's rights in juvenile justice provides that no child should be detained for more than 24 hours without a judicial order. However, even countries where there is a shorter specified time period do not always manage to abide by the law. A study conducted in Tanzania by the Commission for Human Rights and Good Governance supported by Penal Reform International indicated that 70 per cent of children sent to police stations are detained for more than 24 hours before being sent to the courts.¹⁶

29. Detaining a child in a police cell for even a few hours presents a risk of violence. Where there is no law requiring him or her to be brought before a court or other body within a limited period of time, or if such law is flouted, children are at grave risk as the courts are unaware of the child's detention. Children who do not have parents or families who will raise concerns can get "lost" in the system under these circumstances.¹⁷

F. Risks at court and during trial

30. Appearance before a court or tribunal is considered a protective factor and presiding officers and prosecutors can do much to prevent delay and ongoing detention of children. Too often, however, they are neglectful or indifferent to the plight of children, and thereby contribute indirectly to the harm children suffer. In some instances, they directly contribute to psychological and verbal violence against children in the manner that they interrogate or cross-examine them in court. The court process itself may be experienced as psychologically violent by children, and this will be greatly alleviated if the child is assisted by a parent/guardian/responsible adult, and by a legal representative or assistant.

31. Court admission of evidence obtained through torture or threats is a common occurrence in many justice systems, and this contributes to the rising problem of impunity.

G. Risks associated with pretrial detention

32. The majority of children deprived of their liberty are in pretrial detention, and it is disturbing that many of these children are subsequently found not guilty.¹⁸

33. There is a lack of oversight and monitoring in pretrial detention, particularly in police cells. Lack of contact with the outside world is less frequent than for sentenced children, which means that children who are ill-treated have fewer possibilities to report incidents. There are also risks of violence related to court appearance, with children often transported to court and held in court holding cells together with adults.

¹⁶ Commission for Human Rights and Good Governance, *Inspection Report for Children in Detention Facilities in Tanzania* (June 2011).

¹⁷ Human Rights Watch, *Children of the Dust: Abuse of Hanoi Street Children in Detention* (2009).

¹⁸ UNICEF, *The Development of Juvenile Justice Systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine* (2009).

H. Risks in administrative detention

34. Some countries have administrative processes to deal with children who are alleged as having infringed the penal law – usually these are seen as preventive of crime, or ways of “re-socializing” or “re-educating” young people at risk. The major risk of detention measures in such systems is that decisions to detain are often made by officials or committees, with no due process, no opportunity for the child to defend him or herself, no legal representative and sometimes no parental support. The decision, once taken, is difficult to challenge. In many such systems, the decision to detain is not subject to review by a court or other independent judicial body.

I. Risk of violence in detention facilities

35. Whether in pretrial detention, administrative detention or detention as a sentence, there is a significant risk of violence that arises simply from being deprived of one’s liberty. The more overcrowded the facility, and the lower the staff-to-child ratio, the greater the risk becomes. The possible sources of violence in institutional settings are numerous. Violence occurs at the hands of staff working in the institutions, adult detainees where children are not separated, other child detainees, and also in the form of self-harm.

1. Legally sanctioned violence committed by staff working in institutions

36. Children in detention are frequently subjected to violence as a punishment for minor offences. Although 116 countries have abolished corporal punishment in penal institutions as a disciplinary measure (a positive increase of 10 countries since the United Nations Study was finalized), it remains lawful in at least 78 countries.¹⁹ Violent practices are found in both developed and developing countries. Apart from the use of caning and whipping, children may be punished by being confined to cells for lengthy periods, being subjected to solitary confinement, having food rationed, or being subjected to chemical and physical restraints.²⁰

37. Legally sanctioned violence by staff members is a problem in developed as well as developing countries. The use of physical restraints is particularly concerning. Although many countries have laws which permit the use of restraints, their use is generally limited to precisely defined circumstances.²¹

2. Violence by staff working in institutions

38. The dividing line between illegal and legally sanctioned punishment is a fine one, as many legal measures such as restraints are used incorrectly and in inappropriate circumstances. However, there are some reported incidents that are clearly illegal.

39. In many countries personnel do not have a duty to record incidents or punishments, and no monitoring mechanisms exist. The *Five years on* report (see para. 21 above) found that in some countries child detainees were subject to degrading and painful punishments,

¹⁹ Global Initiative to End All Corporal Punishment of Children. See: <http://www.endcorporalpunishment.org>

²⁰ The *Five years on* report (see note 11 above) cites situations where children were detained in their cells for more than 20 hours a day and drugs were used to control behaviour, see NGO Advisory Council citing the World Organisation Against Torture (OMCT) and the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), *Report on the visits in the juvenile justice centres in Uruguay* (2011).

²¹ United Nations Rules for the Protection of Children Deprived of their Liberty, Rule 64.

including being stripped naked and made to stand in water for days at a time, with limited food and no access to toilets.²²

40. Sexual abuse by staff members is also a significant risk. A survey of American youth in juvenile detention facilities found that an estimated 12 per cent of youth in 195 juvenile facilities reported experiencing one or more incidents of sexual abuse by another youth or facility staff during the 12-month period covered by the study.²³

3. Violence by adult detainees

41. Building upon article 37 (c) of the Convention on the Rights of the Child, general comment No. 10 of the Committee on the Rights of the Child reiterated the well-established rule that children must be detained separately from adults, adding that there is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being and their future ability to remain free of crime and to reintegrate.

42. In some States children are detained with adults in adult prisons, and many children are subjected to forced or coerced sexual activity with adult male inmates, as well as to physical violence. The *Five years on* report (see para. 21 above) records situations where children as young as 13 were detained in adult prisons, and dozens of children described forced or coerced sexual activity with adult male prisoners.²⁴ This was also reported by children interviewed in a number of African countries for the film *10*, presented at the Global Conference on Child Justice in Africa, hosted in Kampala by the African Child Policy Forum and Defence for Children International in November 2011.

4. Violence by other children or young people

43. Children in detention facilities are also vulnerable to violence from their peers. Overcrowding, lack of supervision and a failure to separate more vulnerable children from others all contribute to this phenomenon. Children involved in youth gangs might also be motivated to violence, or violence may stem from incidents of racism.

5. Self harm

44. Children in detention are prone to self-harm. This ranges from cutting themselves to strangling or hanging themselves. This occurs as a result of violence, neglect, poor detention conditions, prolonged periods of deprivation of liberty, isolation and mental health problems that may or may not have existed prior to detention.²⁵

²² K. Todrys, J. Amon, G. Malembeka and M. Clayton, "Imprisoned and imperilled: Access to HIV and TB prevention and treatment, and denial of human rights in Zambian prisons", *Journal of the International Aids Society* 2011 14:8.

²³ US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report: Sexual Victimization in Juvenile Facilities Reported by Youth 2008-2009, January 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf>

²⁴ NGO Advisory Council *Five years on: A global update on violence against children* (2011), citing Human Rights Watch, *Paying the price: Violations of the rights of children in detention in Burundi* (2007).

²⁵ D. Medicott, (2009) "Preventing Torture and Casual Cruelty in Prisons through Independent Monitoring" in *The Violence of Incarceration*, P. Scraton and J. McCullough (eds.), (Routledge, 2008), p. 252.

6. Girls and the risks of violence

45. Girls are a minority in the juvenile justice system, but, in line with international standards and norms,²⁶ they require special protection because of their particular vulnerability. Due to their low numbers in the system, many countries do not make special arrangements or create special facilities for girls; and thus they are often held together with adult women. Alternatively, they are at high risk of being held in isolation or far away from home, due to the need to keep them separate from males.

46. In 2008, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reported that custodial violence against women, including girls, “very often includes rape and other forms of sexual violence such as threats of rape, touching, ‘virginity testing’, being stripped naked, invasive body searches, insults and humiliations of a sexual nature.” The Special Rapporteur recalled that it is widely recognized that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.²⁷

47. Other reports have documented abuses against girls in a number of countries, recognizing that girls are vulnerable to violence, particularly rape and sexual abuse by police as well as staff in detention facilities.²⁸

48. In this regard it is important to take into account the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, which address the specific vulnerabilities and needs of women and girls throughout the process. They are aimed at providing de jure and de facto equality between women and men (girls and boys) and at ensuring that any inequalities or forms of discrimination that women and girls face in achieving access to justice, particularly in respect of acts of violence, are redressed.

49. The Model Strategies and Practical Measures urge States to periodically review, evaluate and revise their laws, codes and procedures, especially their criminal laws, to ensure their value and effectiveness in eliminating violence against women and girls and remove provisions that allow for or condone violence against women and girls.²⁹

V. Systemic factors that contribute to violence against children

A. Low priority and lack of a strong child protection system

50. Despite the growing attention being paid to juvenile justice internationally, the issue does not appear to figure as a priority concern on national policy agendas. Few governments have set about deinstitutionalizing as many children as possible in keeping with their human rights obligations.³⁰ This has been attributed to the low level of importance accorded by many societies to children involved with the criminal justice system.

²⁶ Rule 26.4, United Nations Standard Minimum Rules for the Administration of Juvenile Justice; Rules 36-39, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

²⁷ A/HRC/7/3.

²⁸ <http://hrw.org/english/docs/2007/02/20/g;obal15345.htm>.

²⁹ General Assembly resolution 52/86.

³⁰ United Nations Secretary-General, World Report on Violence against Children (2006).

B. Inadequate staffing

51. Unqualified and poorly trained and remunerated staff are widely recognized as a key factor linked to violence within institutions.³¹ Low pay and low status of personnel who work directly with children was identified as one of the reasons for this. Overworked and overwhelmed staff may resort to violent measures to maintain discipline, especially when there is a lack of supervision. Many of the personnel working with children in institutions lack knowledge of child and youth care practice, and there is little reward or prospect for advancement for those who do a good job. The selection and appointment of staff members is also haphazard, with few countries undertaking rigorous background checks of potential employees.

C. Lack of monitoring, oversight and complaints mechanisms

52. There is a lack of monitoring and oversight in detention facilities, which are often unregulated and closed to outside scrutiny. As a result, violence may continue unchecked for many years. If cases are reported, they are often investigated superficially and by bodies lacking independence, and prosecutions or other sanctions are rare. Those in a position to take action may be complicit. This results in a sense of impunity, and allows violence against children to continue.

53. As highlighted by the joint report conducted by the Special Representative of the Secretary-General on violence against children and the Special Rapporteur on the sale of children, child prostitution and child pornography³², and indicated by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, *inter alia*, children in closed facilities of any kind “should have the opportunity of making requests or complaints to the director”³³, the right to make complaints to administrative and judicial authorities, and to be informed of the response without delay. The Rules call for the establishment of an independent office, such as an ombudsman, to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of settlements.

54. Some countries have established specialized administrative procedures for children in specific contexts. In Slovenia, for example, there is a procedure for investigating complaints regarding treatment of children by the police.³⁴

55. There are few countries with a duly constituted authority independent from the institution that undertakes inspections on a regular basis, with unannounced inspections on its own initiative. The United Nations Convention against Torture and its Optional Protocol are important in promoting safety for children in detention; however these treaties are not yet in force in a large number of countries.

D. Mixing different levels of vulnerability

56. Many countries fail to provide a sufficient array of facilities to accommodate and adequately protect children with differing needs. Moreover, there is a growing problem of inadequate assessment of risk and vulnerability within each facility.

³¹ *Ibid.*, p. 32.

³² A/HRC/16/56.

³³ General Assembly resolution 45/113.

³⁴ CRC/C/70/Add.19, para. 23.

E. Violence as a sentence

57. Violence as a sentence is included under the heading “risks” of violence, but in reality it is more than a risk, as this is violence legitimized by national legislation and is a harsh reality for the children who must endure it.

1. Inhuman sentencing including corporal punishment

58. Corporal punishment as a sentence for convicted children has been prohibited in 155 States (an increase of 22 countries since the United Nations Study). However, at least 42 States still permit corporal punishment as a court-ordered sentence against children.³⁵ The Committee on the Rights of the Child has, in two general comments,³⁶ stressed that corporal punishment as a sentence amounts to cruel and degrading treatment, which is impermissible under article 37 of the Convention on the Rights of the Child. Some countries still subject children who have reached puberty to punishments of extreme violence, including flogging, stoning and amputation.³⁷

2. Death penalty

59. The Convention on the Rights of the Child prohibits capital punishment for crimes committed by persons below 18 years of age. However, the death penalty for children is still a lawful sentence in seven States. According to Amnesty International reports monitoring the number of children executed, between 2006 and 2011, 37 offenders were executed for crimes committed before reaching the age of 18. The number of juvenile executions has increased over the past decade, with 21 juvenile offenders having been executed during the previous five-year period.³⁸

3. Life imprisonment without parole

60. Article 37 of the Convention on the Rights of the Child bans life sentences without the possibility of release. This is an area where there have been positive developments. In American jurisprudence on cases *Graham v. Florida*³⁹ and *Sullivan v. Florida*⁴⁰, a sentence of life without parole for non-homicide crimes committed by a person below 18 years is a constitutional violation; furthermore, some American states have abolished the sentence of life imprisonment without parole for children regardless of the offence committed.

4. Indeterminate sentences

61. Some countries retain indeterminate sentences, whereby a child may be sentenced “at his/her majesty’s/the president’s pleasure”. This leaves uncertainty for the child and makes it difficult to promote an effective rehabilitation process and set reintegration goals.

³⁵ Global initiative to end all corporal punishment of children. See <http://www.endcorporalpunishment.org>

³⁶ General comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 10 (2007) on children’s rights in juvenile justice.

³⁷ The Committee on the Rights of the Child has expressed its concern about such sentencing to States including Brunei Darrussalam, Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen, and has recommended that these countries change their laws to make these sentences unlawful.

³⁸ Amnesty International, “Executions of Juveniles since 1990”, available from: <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990>

³⁹ *Graham v. Florida*, 130 S. Ct. 2011, 2018, 2030 (2011), handed down in May 2011.

⁴⁰ *Sullivan v. Florida*, 130 S. Ct. 2059 (2010)

Sentences for child offenders should be determinate and periodically reviewed in order to allow for early release.

5. Mandatory minimum sentences

62. Some countries set mandatory sentences for offenders, including children (especially those tried as adults or before adult courts). These establish extended sentences as the mandatory punishment for certain crime categories. This prevents courts from considering the individual circumstances of the child, proportionality and rehabilitative goals, and is contrary to the principle recognized by the Convention on the Rights of the Child of deprivation of liberty as a measure of last resort and for the shortest appropriate period of time.⁴¹

63. Children must always have the right to appeal their sentences, and must be assisted by the State in the provision of legal assistance where it is required.

F. Other systemic issues

64. Other systemic problems or challenges include the fact that juvenile justice is an intersectoral process involving many role players from different government departments and State institutions, and there is often a lack of co-operation between these.

65. Furthermore, there is a lack of data collection and analysis in relation to the situation of children in the juvenile justice system, and there is a lack of accountability for violence against children or for failure to protect them from violence, including with regard to compensation.

VI. Recommended strategies to prevent and respond to violence against children in the juvenile justice system

1. Preventing children from becoming involved with the juvenile justice system

66. **The fewer children there are in the criminal justice system, the lower the risk of their exposure to violence in that system. It is important for States embarking on measures to prevent and respond to violence in the juvenile justice system to ensure that an appropriate environment exists for the primary prevention of children coming into the criminal justice process.**

67. **There is an urgent need to strengthen national child protection systems that can effectively ensure that children's rights are safeguarded instead of perpetuating the criminalization of children. States should act to prevent the criminalization and penalization of children and reduce the number of children deprived of liberty, including through: (a) decriminalizing "status offences", such as begging or loitering; preventing the detention of unaccompanied migrant children and asylum seekers; (b) ensuring that children with mental health problems are appropriately cared for and not dealt with by the criminal justice system if possible; and (c) avoiding the criminal justice system for treating children with substance abuse problems. There is also a**

⁴¹ In South Africa, such sentences were found to be unconstitutional for offenders below 18 years at the time of the offence. See *Centre for Child Law v. Minister of Justice and Constitutional Development*, 2009 (2) SACR 477(CC).

need to ensure birth registration, age and gender assessment procedures to secure children's rights and safeguards to prevent and protect children from violence within the juvenile justice system.

68. Similarly, States must raise the age of criminal responsibility to a minimum of at least 12 years, continue to increase it, and ensure non-custodial options for children below that age.

2. Protecting children from all forms of violence within the juvenile justice system and integrating this dimension into the national agenda

69. States are urged to revise their laws, policies and procedures to ensure compliance with international standards and ensure that the process of juvenile justice reform is framed by a child- and gender-sensitive approach, promoting a juvenile justice system that is fair, effective, efficient, and established as a core dimension of the national child protection system.

70. In this light, States are urged, through their national legal frameworks, to ensure that the Constitution, or its equivalent, contains key child rights principles and safeguards including the consideration of children's deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time, the separation of children from adults, and of girls from boys; the effective protection of children from torture or cruel, inhuman or degrading treatment or any other form of violence, including as a form of punishment, treatment or sentencing.

71. Legislation should contain specific measures to prohibit all forms of violence and effectively protect children. Justice, governance, security and human rights institutions should publicly expose and effectively respond to violence against children in the juvenile justice system in a manner that enhances public accountability. Civil society has a key role to play in this regard and conditions should be created for them to contribute to strengthening the rule of law and holding public officials accountable for acts of violence against children.

3. Ensuring the use of diversion and alternative non-custodial measures as priorities within the juvenile justice system

72. States are urged to develop and use effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, such as restorative justice, mediation, and community-based programmes, including treatment programmes for children with substance abuse problems.

73. States should guarantee that all officials in the juvenile justice system, including law enforcement officials, prosecutors and judges, as well as community-based justice providers, including religious and traditional leaders, are trained on children's rights and supported in the implementation of these rights and standards related to juvenile justice.

74. It is urgent to ensure effective coordination between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors in order to promote the use of diversion and alternative non-custodial measures. Pretrial diversion and alternative, community-based sentences in conformity with children's rights should be introduced where they do not exist, and where they do, their scope and application expanded.

4. Ensuring that the deprivation of liberty is a measure of last resort

75. Every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of this deprivation of liberty within 24 hours. Pretrial detention should be reviewed regularly, preferably every two weeks. States should introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

76. States should ensure that, upon the apprehension of a child, his or her parents or guardian are immediately notified, and, where immediate notification is not possible, the parents or guardian must be notified within the shortest possible time thereafter. Moreover, States need to guarantee that children deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance.

77. All the guarantees of due process of law should be observed at all stages of a judicial process, including multidisciplinary support by social workers, probation officers or other suitable persons who can liaise with family and community and identify community-based alternatives to detention.

78. In addition, States must prohibit all forms of inhuman sentencing against children, including the death penalty, life imprisonment without the possibility of parole, and the use of corporal punishment, such as stoning, flogging, whipping or caning.

5. Ensuring that, when deprivation of liberty is absolutely necessary, conditions of detention and the treatment of children respect the dignity and special needs of the child, and minimize the risk of violence

79. With the objective of promoting effective rehabilitation and reintegration of children into society, States should ensure through legislation, policy and procedures that children deprived of liberty have access to quality services such as health care, medical treatment, education, vocational training, and recreational activities. States should also ensure that children have the right to maintain contact with their family through correspondence and visits from the moment they are arrested. Detention facilities authorities should institute measures to meet the protection needs of special categories of children, including girls. To achieve such purpose, States should develop policies related to minimum standards for the treatment of children in detention based on the international legal framework concerning juvenile justice.

80. States should ensure that when deprived of their liberty, children are separated from adults, and girls separated from boys.

81. States should provide for a lawful disciplinary system, in compliance with the principles of positive discipline and restorative justice approaches, which prohibits the use of torture or other cruel, inhuman or degrading treatment or punishment, including the use of isolation or solitary confinement, and the use of restraints or force, except in specified exceptional circumstances.

82. States should establish clear procedures for responding to self-harm and clear rules for supervision and other necessary measures where a child is considered a suicide risk. There should be individualized treatment plans for each child, taking into consideration their effective and long-lasting rehabilitation and reintegration.

6. Establishing safe and effective child-sensitive complaints and counselling mechanisms

83. States are urged to review relevant legislation and policies to establish safe, effective, child-sensitive counselling, reporting and complaints mechanisms to address incidents of violence. These mechanisms should integrate a gender, cultural and disability dimension and be provided in child-friendly language. Most importantly, these mechanisms need to provide opportunities for appeal from decisions made about complaints, and sanctions for grievous breaches of the law or policy, including criminal, civil and employment law sanctions; as well as measures to protect children from possible reprisals arising from the submission of complaints. Ombudspersons or human rights or children's rights commissions play a critical role in the consideration of violence-related complaints.

7. Establishing child and gender-sensitive institutions and procedures

84. States are urged to review law, policy and procedures relating to law enforcement activities, police investigation and trial procedures in order to ensure a legal framework that effectively prevents and addresses violence. Law enforcement officials in particular have a vital role to play in preventing child delinquency and children coming into contact with the criminal justice system.

85. Contact between law enforcement agencies and children must be managed in such a way as to respect the legal status of the child, promote his or her well-being and avoid causing physical and mental harm to him or her. To achieve such purpose, States should establish specialization within the police and provide for specialized training for all officials involved in the administration of juvenile justice.

86. Police interviews with children must be conducted in the presence of a parent or guardian, or responsible adult, and with a legal representative. Furthermore there should be procedural rules for the searching of children with respect to their privacy and dignity. In particular, special attention must be given to the vulnerability of girls in this context.

87. States should establish child-friendly courts and procedures which should include the prohibition of referral to adult courts, use of hostile cross-examination techniques, and the publication of any information that may identify the child.

8. Safeguarding the right of all children within the juvenile justice system to have access to legal assistance throughout the process

88. States are urged to review law, policy and practical measures to ensure children's right to legal representation and access to State-funded legal aid in accordance with pre-determined rules. Legal aid providers representing children should be specially trained and their performance regularly appraised to ensure their suitability to work with children. Likewise, legal aid representatives working with children should work in close cooperation with other professionals such as social workers and diversion service providers.

9. Establishing independent oversight, inspection and monitoring mechanisms

89. States should review their laws, policies and procedures to ensure that institutions in which children are deprived of their liberty are regularly inspected by a team of persons appointed by government or other authorized bodies, such as national human rights institutions, ombudspersons or inspecting judges. Visits must be carried out in accordance with the principle of confidentiality to protect children from harassment or reprisals, and also include an option for unannounced visits.

90. Particular attention should be paid to the use of violence, force and restraints, disciplinary measures and other forms of restriction. All forms of violence, especially serious injury or death, should be reported and investigated promptly by an independent monitoring body. National monitoring mechanisms shall cooperate with international agencies that are legally entitled to visit institutions in which children are deprived of liberty.

10. Providing for qualified and trained personnel

91. In order to establish an effective juvenile justice system, States should develop a sound system of selection, recruitment and development of personnel, ensure the appointment and retention of competent and well-trained professionals, and provide adequate remuneration. It is also crucial to carry out background checks on all personnel working in direct contact with children in the juvenile justice system.

92. States should ensure that police, prosecutors, judges and magistrates, prison and probation officers, social workers and other relevant professionals involved in the juvenile justice system receive adequate training and continued education on national laws, policies and programmes, as well as on international standards necessary to respond to the specific needs of children within the juvenile justice system.

93. States should encourage professional associations to develop enforceable standards of conduct that promote justice and prevent violence against children in the juvenile justice system.

11. Promoting data collection, analysis and dissemination, and developing research and reporting schemes to assess, prevent and respond to incidents of violence against children within the juvenile justice system

94. States should develop data gathering, analysis and reporting schemes to monitor youth crime prevention and measure the performance of the juvenile justice system. To this aim, juvenile justice indicators should be developed and applied regularly to measure the performance of the juvenile justice system. A system for establishing juvenile justice statistics, comprised of disaggregated data, should be developed and implemented in order to assess, prevent and respond to incidents of violence against children.

95. Data collection should include children's views and experiences, as well as information on incidents of violence against children in the juvenile justice system. It should also include information on regular independent inspection of places of detention, access to complaints mechanisms by children in detention, specialized standards and norms concerning recourse by personnel to physical restraint and use

of force with respect to children deprived of liberty, and the existence of standards and norms concerning disciplinary measures and procedures with respect to children deprived of their liberty.

12. Enhancing effective co-ordination mechanisms and cooperation between different services in charge of law enforcement, justice and social welfare

96. States are urged to review law, policy and practical measures to ensure effective coordination and cooperation between child justice sectors, different services in charge of law enforcement and the social welfare and education sectors. To this aim, it is important to clearly delineate the responsibilities of different actors and institutions, to develop mechanisms for formal cooperation between stakeholders, and properly allocate resources.

13. Establishing and strengthening accountability mechanisms

97. States are urged to revise their laws, policies and procedures to promote accountability for incidents of violence against children within the juvenile justice system. States should undertake public investigations into all serious reports of violence against children at any stage of the juvenile justice system, carried out by persons of integrity and adequately funded and completed without undue delay.

98. States must ensure accountability of public officials who are found to be responsible for violence against children, through termination of employment, workplace disciplinary measures and criminal justice investigations where appropriate.

99. States should provide for redress and compensation for child victims and witnesses of violence within the juvenile justice system. This may include developing mechanisms to allow for claims of damage against the State, ensuring that victim compensation schemes are adequately funded, and strengthening effective support services for child victims of violence within the juvenile justice system.

100. States should create mechanisms to involve the media in the process aimed at ensuring that the community at large supports Government efforts to prevent and respond to violence against children within the juvenile justice system.
