

SUMMARY REPORT

VIOLENCE AGAINST CHILDREN IN CONFLICT WITH THE LAW

A THEMATIC CONSULTATION FOR THE UNITED NATIONS
SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN

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*Convened by the NGO Advisory Panel
for the United Nations Secretary-General's Study on Violence Against Children*

CONTENTS

INTRODUCTION	3
KEY ISSUES	3
PREVENTION AND RESPONSE MECHANISMS AND RECOMMENDATIONS .	5
I. Community Prevention and Protection and Responding to Offenses by Children.....	5
II. Addressing Violence in the Juvenile Justice/Criminal Justice System.....	7
III. Ending Impunity and Ensuring Accountability.....	9
IV. Legislative Responses	11
STRATEGIES FOR IMPLEMENTATION OF RECOMMENDATIONS.....	15
ANNEX I:	17
ANNEX II	18
ANNEX III	20

INTRODUCTION

At the request of the secretariat for the United Nations Secretary-General's Study on Violence against Children, the NGO Advisory Panel for the Study convened a group of eighteen international experts on children in conflict with the law for a two-day meeting in Geneva, as one of several thematic meetings convened specifically for the Study.

The goals of the meeting were as follows:

- 1) To identify key issues and themes related to violence against children in conflict with the law for the Secretary-General's report;
- 2) To identify effective strategies and programs for prevention and response;
- 3) To develop appropriate recommendations for action by international, national and local actors for inclusion in the Secretary-General's study.

NGO participants in the consultation came from Australia, Costa Rica, India, Kenya, Kyrgyzstan, Morocco, the Philippines, Switzerland, the United Kingdom and the United States. Additional participants included Paulo Sérgio Pinheiro, the independent expert for the study; Jaap Doek, the chair of the Committee on the Rights of the Child; and representatives from UNICEF, the Office of the High Commissioner for Human Rights, the UN Office on Drugs and Crime, and the study secretariat. (See full list of participants in Annex I). The meeting was facilitated by Jo Becker (Human Rights Watch) and Melanie Gow (World Vision), the co-chairs of the NGO Advisory Panel for the UN Secretary-General's Study on Violence Against Children.

The scope of the consultation encompassed violence against children in conflict with the law (including in the juvenile justice system), including:

- 1) Children who are in *actual* conflict with the law, *perceived* conflict with the law, and/or children *in need of care and protection* who have become involved in the criminal/juvenile justice system;
- 2) Violence against children in both the *juvenile justice* system as well as the (adult) *criminal justice* (CJ) system. In this report, *justice system* is used to refer to both the juvenile justice and/or criminal justice system;
- 3) Violence taking place in at least two of the settings identified by the Secretary-General's study: in both the *community* (e.g. police violence against street children) and *institutions* (e.g. violence in detention facilities).

Note: Members of the consultation proposed that a preferable alternative to the Study's planned chapter on violence against children in "institutions" is violence against children "in care and justice systems."

KEY ISSUES

The group identified the following as some of the *key issues that bring children into conflict with the law*:

- 1) The use of the justice system for children in need of care and protection; the criminalization of normal, petty misbehavior, survival behaviors and status offenses; and the criminalization of children who are victims of abuse;

- 2) Violence in the home and dysfunctional families;
- 3) The failure of care and protection systems, including the lack of social support systems, appropriate social policies, and preventive programs;
- 4) Discrimination against vulnerable groups of children, including negative attitudes and stigmatization of children based on race, gender, ethnicity, etc.;
- 5) Social and economic conditions, particularly poverty and socio-economic inequalities.

The group identified the following as some of the ***key issues that facilitate violence against children in the justice system:***

- 1) Impunity and lack of accountability by law enforcement, agents, institutions and staff that are responsible for violence against children;
- 2) The over-use of detention, particularly pre-trial detention, including the detention of non-offenders;
- 3) Lack of community based alternatives to the formal justice system (including appropriate diversion mechanisms) and alternatives to detention, including care and protection systems;
- 4) The lack of appropriate juvenile justice systems, including appropriate facilities and separation from adults;
- 5) The lack of external controls on institutions including effective independent complaints and investigation procedures, independent monitoring and NGO access;
- 6) The “acceptability” of violence in society leading to tolerance of violence at all levels—family, school and community;
- 7) Lack of training and sensitization of law enforcement and juvenile justice personnel;
- 8) “Tough on crime” policies and negative media and public images of street children and other socio-economically disadvantaged children based on discrimination.

Violence against CICL identified as ***particularly widespread:***

- 1) Violence in detention (including both pre-trial and post-trial), including physical and sexual violence and harassment against children by adult detainees, by staff/guards, by peers (including staff allowing/encouraging youth to abuse other youth); violence as a result of detention conditions; disciplinary measures (including as part of sentencing), and arbitrary/prolonged detention;
- 2) Police violence, including violence/torture/brutality during arrest, apprehension, and interrogation;
- 3) Police violence against street children, including harassment/extortion, criminalization, arrest;
- 4) Poor detention conditions, including overcrowding, commingling with adults, poor sanitary facilities, etc.

Violence against CICL identified as ***particularly severe:***

- 1) Sexual abuse and exploitation of both girls and boys;
- 2) Police torture;
- 3) The use of the death penalty against juvenile offenders;
- 4) Indefinite/prolonged detention and/or isolation;
- 5) Death squad killings.

Violence against CICL identified as *under-reported or under-recognized*:

- 1) Sexual violence (against both boys and girls) in the juvenile justice system;
- 2) Psychological abuse and violence;
- 3) Violence against children with mental disabilities/learning difficulties;
- 4) Peer on peer violence;
- 5) Violence in the pre-trial stage, including police interrogation;
- 6) Violence against victims or witnesses of crime, considered as offenders;
- 7) Violence against children in need of care and protection;
- 8) Inhumane conditions in detention;
- 9) Violence against indigenous children;
- 10) Violence linked to anti-terrorism.

Notes on the background discussions related to these key issues appear at the end of this document as Annex III.

PREVENTION AND RESPONSE MECHANISMS AND RECOMMENDATIONS

Small groups identified positive interventions/model programs and developed key recommendations in several key areas. These were then presented to the plenary, where they were discussed and amended. The four areas of focus were:

- Community prevention and protection and responding to offences by children
- Addressing violence in the justice system
- Ending impunity and ensuring accountability
- Legislative responses

I. Community Prevention and Protection and Responding to Offenses by Children

The best interventions take place before children get onto the street/or become exposed to risky situations where they may come in conflict with the law; these interventions need to be both broad as well as targeted for specific groups.

Developmental Prevention includes:

- *Compliance with international standards* (CRC) and a child-rights approach to all policies and programs affecting children;
- *Parenting*: Developing parenting skills, especially for early childhood development and providing ongoing parental skills development and support. Examples include targeting of new parents by the social and health sector (e.g. visiting nurses); Save the Children's work on promoting good parenting skills and positive discipline; programs in El Salvador

- promoting links between parents and children and using games to promote interaction and understanding;
- *Social Spaces*: Drop-in centers where children can talk, play and identify their own solutions to their problems, where they can seek support and assistance; creating similar spaces within schools where children can develop their own solutions to conflict and learn to resolve conflict peacefully; arranging cultural and sporting events between children and police and others in positions of power;
 - *Mentoring*: for example, Big Brother/Big Sister programs;
 - *Alternative family-based care* for children deprived of a family/community-based environment: adoption, fostering, support for child-headed households, support for extended family, group homes;
 - *Non-violent conflict resolution*: including training in the schools;
 - *Education*: on child rights for both children and adults; provision of quality and appropriate education; access to free education, vocational skills training, life skills;
 - *Livelihood*: Income generation schemes, security of livelihood, land rights service provision, access to infrastructure;
 - *Health systems and services*;
 - *Community policing*: specifically trained police to focus on children's care and protection issues;
 - *Public opinion and media campaigns*: sensitization at local and national levels to promote positive images and counter negative stereotypes of certain groups of children;
 - *Decriminalization*: of status offenses, victims (e.g. of sexual exploitation and trafficking), and survival behaviors.

Responsive prevention includes:

- *Telephone helplines*;
- *Emergency shelters*;
- *Targeted assistance and outreach* to specific at-risk children—by schools, community groups, social services (coordinated responses by key agencies); also peer to peer and adults to children;
- *Development of community-based mechanisms* and systems;
- *Self-protection mechanisms* where children can learn to build on their own resiliency, identify risky situations and develop a sense of their own integrity and identity and what is appropriate or not.

Responsive Interventions include:

- *Training and sensitization* of those officials who come in contact with children in conflict with the law—especially police but also referral agencies, judges, etc. Specialized teams within the justice system to work with children;
- *Space, mandate and resources* for police and others (including communities) to identify and apply child rights-based approaches and diversion options;
- *Diversion*: emphasis on providing a range of appropriate and relevant community-based diversion mechanisms at various stages that will address the issues faced by the children in their own communities and without criminalising them unnecessarily; appropriate diversion reflecting the age and maturity of the child; creation of cautioning/warning systems, reprimand systems, victim/offender mediation, family/community counseling;
- *Resources and political will* to ensure follow-up to diversion—modeling, scaling-up.

Recommendations

Once children are in conflict with the law, they are significantly more vulnerable to violence at virtually every stage of the process; therefore, the best way to address violence against children in conflict with the law is to keep children out of the justice systems whenever possible and utilize alternatives to detention to hold child offenders accountable:

- 1) *Prevention: the most important and effective investment*
Invest in strengthening parenting skills and support; income generation and livelihoods; development of, and access for all to quality social services; empowering children as social actors; programs should reflect CRC's four principles of non-discrimination, the best interests of the child, survival and development, and participation.
- 2) *Decriminalisation in law and practice: making sure you have the right solution to the right problem*
Decriminalise: status offences (i.e running away from home, truancy, defilement), survival behaviours (i.e begging, loitering, vagrancy), victims of sexual abuse and exploitation (commercial and non), anti-social behaviour.
- 3) *Diversion: first resort for all non-serious/nonviolent offences*
Ensure a range of options appropriate to the individual child's age and maturity; community-level focus including child-offender mediation; options should be available at all stages and adequately resourced.
- 4) *Utilise the juvenile/criminal justice system only for children who have committed crimes*
Invest in strong care and protection systems instead of using the juvenile justice system; immediately release any child in detention system who has not committed a serious offence; presumption of liberty before trial. Train police to identify children appropriately; clarify legislation.
- 5) *Child oriented, developmentally-appropriate, and restorative juvenile justice systems that reflect international standards: detention is a last resort*
- 6) *Rehabilitation: primary aim of the juvenile justice system*
Focus on community-based, long-term follow-up; reducing stigma; and addressing the social role of the individual/citizen as full and active participants.

II. Addressing Violence in the Juvenile Justice/Criminal Justice System

General:

- *Interdisciplinary processes* for legal reform and programmes should include medical, psychological and educational professionals, police, institutional staff, social workers, trainers, and NGO representatives (models in Morocco, Lithuania, India);
- *Partnerships and accreditation of specialized civil society organizations* (e.g. France, Morocco);

- *High-level training, qualifications and appropriate wages* for all people working with children in conflict with the law (e.g. Switzerland);
- *Disaggregated/consolidated/nominative data* on all children within the justice system at any given moment;
- *Compulsory information and explanation* to be given to the child on his/her rights, and on procedures and rules, at each stage of the process.

At the arrest/interrogation stage:

- *Free and compulsory medico-legal assistance* from the very first stage of apprehension by independent professionals (e.g. Georgia was pressured through CRC reporting to change its law which used to leave a 2-hour vacuum during which torture could take place);
- *Compulsory notification of parents* or legal guardians, including NGOs accredited to work with the child (e.g. groups working with street children in Morocco);
- *Provision for “appropriate adult” to be present at all stages of interrogation*, where parents or guardian have been notified but cannot be present;
- *Specialized juvenile police units* with social work or educational background, e.g. in India, South Africa, former Soviet Union, Japan, units working with honorary policemen, policemen having child care or teaching backgrounds;
- *Legal reform* guaranteeing child-centered approaches, e.g. India prohibited custody of children in mainstream police stations and interrogation of children after sunset.

At the detention stage: both pre- and post-trial:

- *Systematic/mandatory visits* of detention facilities both by judiciary (judges) and by accredited external observers;
- *Access to detention facilities* by families and supported visitors, e.g. educated senior citizens in India, organized weekly buses to the detention facility for family members in Uruguay;
- *Humanize living conditions* and relationships in detention (separation of minors from adults; fewer children per cell; specialized, quality training for staff; change of staff status and uniforms, etc.). E.g. Morocco enlarging/opening up dormitories, building a simple wall inside prisons in W. Africa, compulsory training for guardians in France granting them a new status of “educator”, wearing sports outfits, etc.;
- *Create small/specialized facilities* based on individual needs, including protection and care, contacts with nature and animals, education and training, etc.;
- *Regular/ritual peer group discussions* (ownership of life and group projects, self-evaluation, conflict mediation, creative expression, programme impact assessment, taking children’s opinions into account);
- *Regular evaluation* of each individual case by a steering committee attached to each facility involving all partners following the child’s life project.

At the post-trial stage:

- *Follow-up the child’s life project* prepared during the disposition period (e.g. Morocco);
- *Free transit accommodation* in the absence of a family environment (e.g. Russia);
- *Job placement partnerships* with the private sector (e.g. US);
- *Disaggregated and consolidated data* on reintegration processes;
- *Mentoring youth-to-youth* programmes between successful former detainees and present ones with continued contacts after release (e.g. India, US, Israel);

- *Sensitizing communities* and addressing media and public opinion.

Recommendations

At the international level:

- Use detention only as a last resort; ban any use of deprivation of liberty for petty offenders and children with special needs (status offenses, administrative penalties, petty crimes, limited responsibility);
- Monitor the implementation of existing standards of juvenile justice.

At the national level:

- Establish special legal provisions on juvenile police custody, notably to guarantee free medico-legal assistance and full information to children on their rights and on due process;
- Guarantee high-level qualifications and status, adequate and appropriate wages for all people working with children in conflict with the law;
- Select and train career juvenile court judges informed and supported by interdisciplinary juvenile justice teams, including civil society partners and observers;
- Ensure adequate resources and training for all aspects of the juvenile justice system.

At the local level (within/regarding detention facilities):

- Create committees (e.g. a child case management committee, including educators, social workers, representatives of the facility, NGOs, other state agencies) attached to each detention facility (or a group of facilities), responsible for regularly reviewing each individual file, collecting data, evaluating all players, ensuring implementation of monitoring and complaint mechanisms;
- Encourage the development of small, tailored and child-centered facilities which provide specific services in the context of the child's "life project", including decent living conditions, education, contacts with families, focus group discussions, preparation for release, and follow-up.

III. Ending Impunity and Ensuring Accountability

Promising approaches to ensure accountability include:

Oversight mechanisms:

- Police accountability review boards/citizen review boards of police conduct;
- Ombudsman, commissions, etc.
- Regulatory oversight, i.e. state regulation and inspections of facilities;
- Visits to detention facilities by parliamentarians, citizens groups, judges;
- Access by children's lawyers to the facility itself;
- Public hearings by legislative bodies;
- Judicial review of practices by the courts.

Accountability mechanisms:

- Criminalization of violence against children by police or staff;

- Setting a tone at senior levels (within a police force, institution staff) that violence will not be tolerated and communicating expectations regarding appropriate behavior and consequences for violence against children;
- Background checks on staff to ensure no previous violence against children;
- Ensuring appropriate guidelines for prosecutors;
- Ensuring meaningful, appropriate measures against perpetrators, up to and including prosecuting/firing staff or police who are responsible for violence against children;
- Use of lawsuits to change conditions or for punitive damages;
- Mandatory reporting of abuse for all professionals working in the system.

Mechanisms for children and their families:

- Creating spaces for children in a safe environment to be able to talk freely;
- Effective grievance procedures guaranteeing an uncensored right to report abuses without reprisals;
- Providing children with maximum contact with the outside world, including family;
- Ensuring parents can get information on their child's case and conditions of confinement.

Role of medical/education staff:

- Providing a role for teachers and medical staff in both formal and informal complaints procedures;
- Ensuring that medical and educational staff are accountable to independent entities, not the staff of the detention facility.

Reporting:

- Collecting and reviewing data and obligations to report any injury to children in detention;
- Open hearings, disciplinary measures against staff/police made public;
- Appropriate access by the media to sensitively and responsibly report conditions and abuses.

Recommendations

1) Complaints:

- Ensure that children in conflict with the law have *simple, clear and safe opportunities to complain* about the way they are treated without risk of reprisal; such mechanisms might include:
 - Ombudsmen
 - Police accountability review boards (citizen, police);
- Ensure maximum access by children with the outside world, including access to lawyers, family, etc.;
- Ensure and encourage full access by specialized NGOs, parliamentarians, judges, lawyers and other members of civil society groups to institutions where children are held;
- Health care and educational staff should be institutionally independent from the agency that runs the institution, and required to report violence or maltreatment;
- Create spaces for children to express themselves freely and express concerns (particularly for those reluctant to access formal complaints mechanism);
- Ensure no reprisals against children who make complaints, or because someone has made complaint on their behalf;

- Create an appeals process for children (and their families) who are not satisfied with the response to their complaints;
- Governments should ensure that data and other information regarding complaints are collected, reviewed and made public.

2) *Monitoring and Investigation:*

- Ensure the existence of *independent monitoring and investigative bodies* with full access to children and the facilities where children are held. These bodies should have the power and capacity to investigate allegations in a timely manner, taking into account the right of the accused staff to due process. Such bodies could include:
 - Ombudspersons
 - Police accountability review boards (citizen, police)
 - Independent commissions;
- The judiciary, executive and legislative branches of government should establish mechanisms to investigate and redress allegations of violence against children in conflict with the law;
- Governments should ensure that data on substantiated complaints are collected, reviewed and made public;
- Ensure media access to detention facilities for investigation purposes, while protecting children's right to privacy;
- Support the creation of effective regional or international investigation/monitoring mechanisms to supplement national mechanisms and investigate failure of national mechanisms (e.g. excessive duration of investigations).

3) *Enforcement and sanctions*

- States should ensure *a continuum of appropriate criminal, civil, administrative and professional proceedings and sanctions* against individuals responsible for violence against children or institutions where such violence takes place, in particular:
 - Criminal prosecution;
 - Civil actions, including those for damages or injunctive relief (ordering changes in the institution etc.);
 - Administrative proceedings against the institution (e.g., revoking licenses, imposing fines, or closing facilities);
 - Professional sanctions related to employment (note in personnel file, dismissal, being barred from working with children, etc.);
- States should collect and make public data on enforcement practices, including actions against perpetrators of violence against children or institutions in which such violence take place.

IV. Legislative Responses

Prevention

- Domestication of Riyadh guidelines/CRC principles;
- Legislation targeting the situation of specific vulnerable groups or, preferably strengthening existing legislation to incorporate their concerns (mainstreaming) —e.g. children in worst forms of child labour, orphans, children of overseas migrants,

- indigenous, abandoned, sexually abused—including special protection within the justice system;
- Legislation clarifying that children exploited in prostitution are to be treated as victims rather than perpetrators or offenders;
- Legislation which takes into account the coercion or use by adults of children alleged to have offended in determining responsibility;
- Legislation which aggravates/increases penalties for adults using children in the commission of an offence;
- Legislation mandating the availability of effective reintegration programmes for child offenders.

Point of initial contact with the justice system/pre-arrest/arrest

Part of an effective, appropriate rights- based juvenile justice system (domestication of Beijing Rules), e.g.

- Mandatory legal aid/access to effective and free legal services;
- Specific regulations/standards regarding handling of child offenders – e.g. non-use of restraints, presence of guardian, notification of parents, psycho-social support, use of appropriate language that the child understands;
- Existence of independent oversight bodies to deal with violations at point of contact (including cases of violence/sexual abuse against children reporting crimes against them, or those referred by parents for disciplinary reasons or in need of care and protection);
- Requirement of training in child-friendly and gender sensitive procedures;
- Provision for diversion at police level.

Detention (both pre and post-trial)

- Make it a punishable offense for directors of detention facilities to detain children without a valid court order or formal charges with time-bound limits for detention;
- Legally mandated segregation of children and adults (including girls from women) – but only for offenses serious enough to warrant pre-trial detention, otherwise non-custodial options should be pursued;
- Laws which limit the use and duration of pre-trial detention in favour of non-custodial options;
- Legally-mandated complaints mechanisms and oversight bodies;
- Legal mandate for monitoring of conditions in detention (one model is Nigeria, where it is not legally mandated but done by an intersectoral body);
- Strengthen legal guarantees to the right to quality education and proper medical services.

Prosecution

- Requirement of competent bodies to be responsible for prosecution (as opposed to allowing police to serve as prosecuting authority).

Court processes including trial and sentencing

- All rights of accused should apply to children;
- Children should have the right to appear before a judge and have the right to challenge detention;
- Institute child-friendly procedures (e.g. exclusion of media, presence of parents, court breaks, non-identification of child to public including in court records, special assistance e.g. court-appointed special advocates e.g. Philippines CASA/GAL);

- Availability of non-custodial disposition measures; e.g. probation, caution, supervision orders, community service;
- Children should never be tried or sentenced as adults;
- Corporal punishment should not be a legal option;
- In customary law, alternatives to excessive fines/permanent debt.

Transitional sentences/welfare responses

- Mandated separation of offending and non-offending children

Cross cutting issues:

- Legislation should stipulate that customary law processes and penalties may not be more harsh or punitive than national law/must meet human rights standards;
- Legal requirement for monitoring and reporting at subnational, national, international levels, e.g. national (South Africa), international (UNICEF, Committee on the Rights of the Child);
 - Numbers of children in detention/disaggregated by age, sex, ethnic group, pre-trial status
 - Deaths in detention
 - Existence and use of complaints mechanism
- Ombudsperson authority;
- Legislation should ensure that regardless of the minimum age of criminal responsibility, systems dealing with children both above and below the age set should ensure children's rights;
- Ensure that not only juvenile justice legislation, but also the rules and regulations that implement such legislation are consistent with the CRC and juvenile justice standards.

Recommendations

National level:

Positive child rights and juvenile justice legislation must be backed up with funding and enforcement measures. A positive practice is planning for implementation of child justice bills – bringing together the different partners/agencies involved and identifying human and financial resource needs (e.g. South Africa's Child Justice Bill). At national level, this will require political will and may require pressure from national human rights institutions.

- Each national government should adopt legislation mandating the development of a separate juvenile justice system that complies with international standards;
- Supportive legislation for prevention of children coming into conflict with the law and of being exposed to violence within the system:
 - Special protection for vulnerable groups incorporated into existing legislation;
 - Stronger legislation ensuring appropriate penalties for those using children in the commission of crimes;
- Effective monitoring and reporting

International

- Mainstream attention to children in other international human rights mechanisms e.g. Special Rapporteurs, CEDAW Committee etc.;
- International agencies working in one country to coordinate development work using the CRC as a yardstick for purposes of recommending to the host government e.g. Philippines;
- Regular monitoring of country's progress towards meeting minimum standards in juvenile justice e.g. Beijing Rules.

KEY MESSAGES

The group identified the following priority messages for the Secretary-General's Study:

... regarding violence against children in conflict with the law

- 1) The overwhelming majority of children in the criminal justice system do not belong there;
- 2) Inadequate care and protection systems create multiple levels of violence against children and bring children into conflict with the law;
- 3) Children face a high risk of violence at virtually every stage of contact with the justice system;
- 4) Misuse and overuse of detention and lack of alternatives put large numbers of children at risk of violence;
- 5) Impunity and lack of accountability increases violence against children in conflict with the law.

... regarding the responses needed

- 1) Prevent children coming into conflict with the law in the first place by addressing the care and protection challenges they face;
- 2) Decriminalise status offences and survival behaviours (such as begging, loitering; vagrancy), victims of sexual abuse and exploitation, and anti-social behaviours;
- 3) Utilise diversion as the presumed response to offenses, and reserve the formal criminal/juvenile justice system only for serious/violent offenders;
- 4) Ensure comprehensive, child-focused restorative juvenile justice systems that implement international standards;
- 5) Hold perpetrators of violence against children accountable through effective and transparent complaints, monitoring, investigation and redress mechanisms.

STRATEGIES FOR IMPLEMENTATION OF RECOMMENDATIONS

Reporting:

- UNICEF or an inter-agency body should produce regular public global reports measuring government progress on key indicators related to juvenile justice/violence against children in conflict with the law;
- Urge national governments to collect, review and publish data reporting on the relevant issues, including complaints, investigations, sanctions against perpetrators, use of detention vs. diversion, etc.

International mechanisms and advocacy:

- Consistently lobby all relevant international bodies, including the special rapporteurs, CHR, CRC, regional bodies, WHO, etc, to mainstream juvenile justice issues;
- Campaign for a protocol on individual complaint mechanisms under the Convention on the Rights of the Child and for universal ratification of the OP to the Convention on Torture;
- Convince a few governments to take the lead in championing reform through advocacy and resource allocation;
- Use Poverty Reduction Strategy Papers and conditionality (bilateral aid, foundation support) to secure change.

Engaging with national governments:

- Advocate for a lead agency or multi-sectoral body to champion issues of children in conflict with the law and initiate an inter-disciplinary, consultative process to review juvenile justice/violence against children in conflict with the law;
- Find avenues for senior decision-makers to have first-hand contact with the system, e.g. through personal visits to detention centers and/or encounters with children who have experienced violence in the justice system.

Framing the Issues:

- Advocate for adequate resources, using cost-benefit analyses showing the benefits of investing in prevention vs. detention;
- Invest in better documentation to show the costs of current systems and the benefits of reallocating resources to prevention/diversion;
- Help politicians find a positive political “pay-off” for making changes;
- Engage former juvenile offenders in shaping responses and highlighting issues;
- Make the issues personal by profiling individual children through testimony and film.

Follow-up

The consultation participants agreed to remain available to the independent expert/study secretariat throughout the course of the study. Some members will participate in producing or reviewing chapters for the study. Marie Wernham will be a focal point for collecting feedback on the draft communities chapter; Florence Martin will be focal point for the chapter on institutions.

ANNEX I:

CONSULTATION PARTICIPANTS:

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ANNEX II

OPENING REMARKS FROM PAULO SÉRGIO PINHEIRO (excerpted)

Violence against children in conflict with the law is a most central topic for the Study. Children in conflict with the law—precisely the group that according to the international standards should be the object of special assistance and attention in order to promote their rehabilitation and reintegration to the society—are one of the most vulnerable groups to the worst forms of violence.

Growing concerns about increasing violence in some countries are also being used as an excuse to promote repressive strategies against children and young people that not only absolutely contradict the international human rights standards, but also can aggravate the current situation. Stigmatized and feared, youth and teenagers in conflict with the law have difficulty reintegrating in the society and may be subject to degrading treatment by state authorities and institutions.

This tension exposes the contradictions and challenges to the juvenile justice system. According to one expert, “Youth just in the twenty-first century has evolved in a particularly ambiguous and complex state of affairs. It is designed to punish the offender and to keep their welfare. It is at one and the same time about crime prevention and retribution. It targets those “at risk” as well as the convicted. . . It is clouded in layers of rhetoric on the best interest of the child while locking them up [condemning the young to possibly suffer abuse, torture and sexual assaults].”

Last year, between mid-November and December I did a joint field trip with the IACHR and UNICEF TACRO to El Salvador, Guatemala and Honduras. The visit was aimed at gathering information on the situation of the *maras* or *pandillas*, local gangs that by the past years have been object of extremely repressive policies. The stigma created around those youth groups due to the recurrent media coverage and the increasing level of violence in Central American impoverished urban areas led to broad popular support of those measures that involved the passage of laws establishing penal responsibility on the grounds of the mere suspicion of being a *pandilla* member due to a tattoo, for example. And also introducing exceptions that allowed teenagers to be tried as adults when they were considered *mara* members.

Apart from contradicting the existent national, regional and international standards and guidelines, the concrete result is appalling: the level of violence has apparently increased among the *pandillas* (I say apparently because there is almost no reliable data); arbitrary detentions have become almost routine; accusations of police violence are common; and the detention centres that already were in precarious situation are now in terrible conditions, resulting in several casualties in Honduras, for example.

This issue is evidently a priority concern of the study. Fifteen years after the entry into force of the Convention on the Rights of the Child the simultaneous increasing level of endemic violence against children in many regions of the globe is undermining some of the important achievements of the Convention.

Public opinion about the involvement of children in illegal activities and the search for immediate answers have led to the introduction of the insane repressive methods, I referred to earlier. On the other hand, there are several organizations and some governments trying to head in a different

direction. In several areas preventive policies, reliable and accurate data collection, and even programmes to improve the judicial and security systems are being developed to focus on what works.

I believe that one important role for this thematic meeting for the study itself will be to not only reflect on the context that surrounds the phenomenon of violence against children in conflict with the law. Clear recommendations must be formulated to address this issue bearing in mind the successful and unsuccessful experiences that we know of. Only by providing clear messages on how to deal with this situation beyond mere repression will we be able to influence the direction that is being taken by governments.

How can we avoid conventional youth and teens from becoming violent? How can we make violent communities to become safer and stable? How can we break the cycle of violence and reintegrate back into society those that decided to engage in illicit activities? What are the root causes that need to be urgently addressed to produce effects in this scenario?

These are not easy questions. As everyone is aware: there is no easy and fast solution. No “prêt-à-porter” plans that can be developed and replicated everywhere disregarding context specificities—we are working with problems that have deep connections with communities and their recent histories.

I am convinced that the Study can build on the international human rights standards, also considering public health and protection approaches emphasizing the importance of prevention and early intervention, considering strategies to minimize the chances and the seriousness of offending and re-offending.

We must repeat as a mantra that prevention is possible. I believe that we have already some knowledge about what may work and what generally doesn't work well. Easy access to small arms, and the recurrent and banalised use of institutionalization measures are surely extremely problematic. Well structured public culture and leisure facilities and schools integrated with their communities are essential. To consolidate and organize these ideas into recommendations and concrete proposals that could be useful for all actors that may be working around the world with the growing problem of children in conflict with the law is a challenge for this consultation as well for the study. I look forward to hear your reflections and the recommendations you adopt.

ANNEX III

DISCUSSION OF KEY ISSUES

The following are notes from the participants' discussions of key issues related to violence against children in conflict with the law. These reflect unedited brainstorming sessions that preceded more focused sessions to identify priority issues and recommendations.

Underlying Issues

This discussion focused on the underlying issues that both bring children into conflict with the law, as well as those that facilitate violence against children in the juvenile justice system. Key points included:

A fundamental issue is to look at why children come into contact with the system, not just violence in the system itself. In most countries, more than 95% of children in conflict with the law are petty offenders or have not committed an actual offense. The overwhelming majority are engaged in "survival" crimes, "status offences" and petty non-violent crimes, and are first time offenders. Many are not even in conflict with the law at all, but are in need of care and protection. Even for those who are in conflict with the law, care and protection failures are often at the root of the offense committed.

For many, coming into conflict with the law is actually the result of exposure to violence prior to contact with the law. Children may flee violence at home or in schools, and then find themselves exposed to violence in the street and at the hands of the police. School drop-out is a key risk factor for becoming in conflict with the law.

Children often enter the justice system because of a lack of alternatives for children in need of care and protection. For example, judges may enter charges against children in need of care and protection simply to get them into a detention facility when no other option is available. Or children facing acute care situations and living on the streets, will be referred to the police which often sees no other alternative than incarcerating them.

In some cases, there is a conflict between the police and the justice system, where the justice system attempts to focus on rehabilitation, but is perceived by the police to be too "lenient." The police therefore take matters into their own hands and treat children with violence to "teach them a lesson."

The form of justice system can encourage violence, e.g. an inquisitorial justice system that emphasizes convictions and closing cases can foster violence as a means of eliciting confessions or result in inappropriate charges.

Culture and concepts of discipline can encourage violence against children, as well as media messages and the stigmatization of children. In the minds of many officials, juvenile justice is about maintaining public order. As a result, children who are considered a "nuisance" to the public (e.g. street children) or engage in anti-social behavior are often brought into the system.

Disproportionate sentencing increases incidents of violence against children, as detention is far and away the place where children experience the greatest violence within the system.

Officials often lack an understanding of child and adolescent development. In the US, children are often simplistically categorized as “bad, mad, sad, or can’t add.”

Violence in the Community

This discussion focused on key issues and aspects related to violence against children that takes place in the community. Key points included:

Violence against children in conflict with the law in communities has two aspects: “active” violence, as well as passive violence through the failure to protect children from violence.

The context of violence that takes place in the street is critical. In many cases, it is a continuation and a result of violence in the home or a lack of child-rearing skills or positive discipline, creating push factors that cause children to leave home and live on the streets. The tolerance of violence in the home, school and society at large also leads to a perceived “acceptability” of violence against children.

Criminalization and dehumanization of street children is a key factor contributing to violence. Violence against street children takes place by peers, police, private security guards and members of the community. At the extreme end of the scale are death squads and vigilante groups.

Everyday violence includes physical, sexual and psychological abuse, harassment and extortion (for both money and sex) by the police. Street children are scapegoated and subject to arbitrary arrest and round-ups to boost arrest rates. Police under pressure to increase rates of arrest and the number of cases solved may falsely arrest children and use violence to coerce confessions.

Children involved in organized armed violence (COAV) are part of a particularly severe form of violence in the community linked to the availability of drugs and the small arms trade.

Gender is a cross-cutting issue – girls experience particular problems, but the majority of children in the system are boys. They are also sexually abused but because of cultural taboos, the abuse of boys is not as well-recognized.

Children who are released back into the community after involvement with the criminal justice system are easy targets for the police. They are often scapegoated and stigmatized by the police, families and the broader community.

Children may be criminalized for being victims of violence (e.g. girls fleeing forced marriages, trafficked children and children in the commercial sexual exploitation industry as well as girls being put in so called “protective custody” to escape honor crimes). Children deemed “beyond parental control” or girls who get pregnant out of wedlock may also be handed over by their parents to the juvenile justice system.

Particular groups of children may be under suspicion and singled out, e.g. Muslim children in the context of the armed conflict in the Philippines, asylum seekers, refugee, displaced and indigenous children, unaccompanied minors.

Some indigenous/traditional justice systems and conflict resolution systems in the community may also include the use of physical punishment

Violence in Institutions

This discussion focused on key issues and aspects related to violence against children that takes place in institutions. Key points included:

Violence against children during police interrogation includes threats, sexual harassment and violence, and physical violence up to and including torture. Causes of violence in interrogation: punitive ('teaching a child a lesson'); forcing a child to confess; group dynamics (both police custody and detention facilities) where individuals may act differently in groups and be influenced by those who are more violent; anti-terrorism measures including the labelling of children as terrorists (Nepal, Philippines, Russia, US, etc). Many cases of violence in police custody are never identified, as the children do not pass further through the system and their cases are lost.

Many children are subject to arbitrary detention without charge and/or prolonged and inappropriate use of pre-trial detention. Indeterminate sentences, when a child has no idea how long he/she will be detained, can result in serious psychological harm.

The use of solitary confinement and other cruel, inhumane and degrading punishment as disciplinary measures as well as in sentencing including through the application of the death penalty and other physical punishments.

Violence in institutions includes pre-trial and post-trial facilities, closed institutions (administrative detention) and others. Violence also occurs in institutions for children below the age of criminal responsibility including in the care system where there may be even fewer monitoring mechanisms. The majority of children are in pre-trial detention; these facilities need particular attention in comparison with post-trial detention.

Violence amongst peers includes both random and organised violence, including systems of hierarchy, slave-like practices, sexual slavery etc. Legal and illegal violence by staff includes disciplinary measures in institutions, e.g. solitary confinement, use of restraints. Staff may also sanction or encourage peer abuse amongst children—either for amusement or to maintain discipline.

Children detained with adults, including children in adult jails / facilities are particularly vulnerable to violence (including rape) by adults detainees/inmates. Girls detained with adult women are a particularly common problem because of smaller female populations. Children may be subject to violence when they pass from specialised 'juvenile' facilities to adult facilities (even if they are still children according to CRC definition). In some cases it may be in the best interests of the child to have access to adults (although usually not actually detained together), ie for mentoring purposes, where it is felt that adult prisoners can play a positive role in relation to the younger offenders.

Key problems leading to violence include a lack of human resources (both number and quality), lack of medical and legal assistance, parents / guardians not informed of child's arrest/detention,

lack of due process, lack of complaints mechanisms, mixing of children of different convicted status or members of rival gangs, mixing of children with adults (especially girls and women), lack of legal and psycho-social support, conditions that result in physical harm, excessive work.

Lack of NGO access to institutions / lack of oversight is another problem. Institutions are often in remote areas, creating difficulty in monitoring and limited (or no) access to children by family, NGOs and community. Isolation from home communities results in fewer visits, which can lead to more exposure to violence.

In some cases, children may be taken hostage to punish / extort money from parents, e.g. in Chechnya, where wives and children have been taken into custody / abused as punishment.

Children reporting crimes may be further abused in police stations (for example, reporting of sexual abuse in South Asia etc.). Children may also be subject to public humiliation and naming or parading even before conviction.

Children with mental health problems in institutions may experience active and passive violence against them. Lack of training of staff (and inappropriate placement of children in the first place) leads to disproportionate rate of suicides and victimisation by others. Drug addicts may be inappropriately placed in detention rather than rehabilitation.

Vulnerable Groups

The following children are particularly vulnerable to coming in conflict with the law: socio-economically disadvantaged children; ethnic, racial, religious and sexual minorities; indigenous children; children of single mothers/single parent households; asylum seekers/refugees; orphans (may be falsely accused of crimes so that others may take their property); street children; child domestic workers (falsely accused of crimes by employers to avoid paying salary); unaccompanied minors; children with mental illness/mental disability/learning challenges; children with drug addiction; migrants; children of overseas migrant workers; children from other institutions (e.g. orphanages); children affected by armed conflict; children with HIV; victims/survivors of sexual exploitation; out-of-school children; children exhibiting anti-social behavior; children profiled by police; children deprived of a family environment.