IRAQ, 1999, Mahmoud sits in the dormitory of Al-Rahma Rehabilitation Centre for street children in the Rashad section of Baghdad.

VIOLENCE AGAINST CHILDREN
IN CARE AND JUSTICE INSTITUTIONS

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VIOLENCE AGAINST CHILDREN IN CARE AND JUSTICE INSTITUTIONS

*"Sometimes one day in prison felt like a year.
But after ten days you get used to it and you don't cry as much."*

Boy in juvenile detention, Middle East, 2003[1]

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INTRODUCTION

Around the world, millions of girls and boys grow up for substantial periods not in their own or alternative families, but under the control and supervision of care authorities or justice systems. The institutions they live in have many names, including orphanages, children's homes, care homes, prisons, juvenile detention facilities, reform schools, etc. They may be open or closed (i.e. where children are locked in), and may be run by Governments, private companies or individuals, or by non-governmental or faith-based organisations. Many are large-scale, and children who enter them can live prolonged periods of their lives inside. Whatever their name, these institutions govern the day-to-day lives, personal development and future life chances of a very large number of children.

Although these institutions are established to provide care, guidance, support and protection to children, the boys and girls who live in them may be at heightened risk of violence compared to children whose care and protection is governed by parents and teachers, at home and at school. Reports from many countries in all regions show that institutionalised children are often subjected to violence from staff and officials responsible for their well-being. This can include torture, beatings, isolation, restraints, rape, harassment, and humiliation. In addition, the stigmatisation, isolation and often de-socialisation that results from these institutionalised responses place boys and girls at much greater risk of being exposed to further violence and in some cases becoming perpetrators of it.

Children are institutionalised for a variety of reasons. Some are placed in orphanages (as well as in more home-like arrangements such as foster care or kinship care), because they have lost their parents and have no extended or surrogate family to go to – a problem that is expanding due to AIDS, especially in sub-Saharan Africa. Others are there because of physical or mental disability, psychiatric or other severe illness. Many have been given up by parents who, lacking money or support services to cope with their child's disabilities, feel they have no alternative. As a result, many children with disabilities are institutionalised in hospitals. Some have run away, or have been removed by the authorities, from violent and abusive homes.

The majority of children in the custody of police, or in detention because of actual or perceived offences should not be there. In many countries, this group typically includes children simply in need of care and protection but who have been placed in correctional facilities under charges such as vagrancy, and have thereby been criminalised for nothing more than homelessness and poverty. The vast majority of children in detention are charged with minor or petty crimes, and are first-time offenders. Very few have committed violent offences.[1] The 'institutionalised' umbrella also includes migrant and refugee children, including those seeking asylum and who are placed in detention centres while their cases are being decided. Children in the custody of the State as members of peacetime armies are also included.

Ill-treatment – and outright negligence – stems not only from the typical overcrowding, squalid conditions and lack of resources invested in the care of these girls and boys. As importantly, there is often a profound degree of discrimination against children who end up in institutions. The lack of public concern about brutality towards children in correctional institutions may reflect societies' rejection of children who do not conform to conventional social behaviour. Such stigmatisation may also be expressed in the abusive attitudes and behaviour of poorly trained staff.

Stigma also contributes to violence against children with disabilities. Research has shown that they are frequently at higher risk of staff violence in institutions than other boys and girls.[2]

The violence suffered by children in institutions can be exacerbated when they are housed with adults or older children; this may lead to physical and sexual victimisation by other older children and adult inmates. The impact of institutionalisation goes beyond the immediate exposure of children to violence: long-term effects can include severe developmental delays, disability, irreversible psychological damage, and increased rates of suicide and criminal activity. A study from the USA found that children who had been in detention in the juvenile justice system were at great risk of early violent death. The main cause of death for young people who had been detained as children was homicide (90.1%). Being male, a member of a racial or ethnic minority, and from an urban area were the salient risk factors for violent death, as well as for being caught up in the juvenile justice system.[3]

Institutions housing children are often closed to public scrutiny. They lack a basic legal framework prohibiting all violence, and also lack adequate Government regulation and oversight, effective complaints mechanisms, and inspection systems. Perpetrators are rarely held accountable, allowing high rates of violence to continue unchecked, thereby perpetuating tolerance of violence against children.

TYPES OF CARE INSTITUTIONS

While there is no universally accepted definition of a children's care institution, the features most have in common are round-the-clock care of children who live apart from their families, and supervision by remunerated staff. The size, organisation and activities carried out within these institutions can vary widely. In the most closed and isolated institutions, the child's entire life – education, health services and work, leisure and sleep – takes place there, and the institution is very much cut off from the rest of the community.[4]

Some broad categories of institutional care include:

Long-term residential or institutional care: The number of children living in individual institutions may range from a few dozen to several hundred. Some residential institutions are specifically for children with disabilities. The terms 'residential care' and 'institutional care' are used interchangeably in this chapter.

Emergency shelter care: Facilities that provide services to meet children's basic needs for safety, food, shelter and education on a short-term basis.

HUMAN RIGHTS INSTRUMENTS

The Convention on the Rights of the Child (CRC) requires States to provide special protection to children who are deprived of a family environment (articles 19, 20). The increased risk of violence against children in institutions adds to the State obligations to take effective legislative and other measures to protect children in care or detention from violence, and reduce significantly the number of children who are institutionalised and detained. The CRC recognises that children should grow up in a family environment: the Convention's Preamble states that "… the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."

Other articles reiterate the centrality of the family in the upbringing of the child, except when the child's best interests dictate that alternative arrangements be made. Article 9 concerns family contact in cases where children are separated from their families; article 37(b) asserts that "the arrest, detention and imprisonment of a child shall be used only as a measure of last resort, and for the shortest appropriate period of time." Article 40 concerning children in conflict with the law asserts that children should be treated "in a manner consistent with the child's sense of dignity and worth… and which takes into account the child's age and the desirability of promoting the child's reintegration." These provisions make clear that alternatives to institutional care which support the children's development and allow them to remain at home and at school are far preferable to judicial procedures and institutionalisation[5].

The CRC specifically addresses the rights of boys and girls with disabilities, recognising "that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community" (article 23). Segregation and institutionalisation can never be justified by disability. Children with disabilities are frequently institutionalised and dangers of such placements are well known, thus the CRC requires child care which does not involve social isolation or exclusion. In addition, article 25 entitles all children who have been placed in care to have a periodic review of all aspects of their placement.

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Psychiatric facilities: Residential care, staffed by personnel including medical professionals, for children with psycho-social disabilities.

Group homes or home shelter: Personalised residential care, provided by one or more staff in a house that is not their own, looking after a group of children (typically 10–15) in a less formal, more home-like environment.

Two other categories of care which aim to provide a non-institutional environment for children living apart from their families are:

Foster care: The placement of a child with another family for a variable period of time. The foster child is accepted into the home of the foster family, which often includes the parents' biological children.

Informal foster care/kinship care: Placement of a child with another family, which may have kinship ties to the child, usually without the involvement of Government authorities. (See the chapter on violence against children in the home and family.)

BACKGROUND AND CONTEXT

THE RISE OF THE INSTITUTION

From their earliest inception, institutions created to take in children were essentially set up as repositories for the unwanted. Historians suggest that the earliest institution specifically for the care of neglected children was created in Constantinople in the 3rd century AD as a means of reducing infanticide. Later on, in the Middle Ages, foundling homes for abandoned children were set up by the Church in Italy, and the practice spread across Europe.[9] As well as being a charitable work, the foundling home was a means of removing neglected and abandoned children from the streets and making the problem invisible to society – an increasingly important task as the rate of

UN STANDARDS ON JUVENILE JUSTICE

In addition to the CRC, specific UN standards have been adopted for handling cases of children in conflict with the law. These include the Standard Minimum Rules for the Administration of Juvenile Justice, known as 'the Beijing Rules', adopted in 1985, which offer guidance on the administration of justice in such a way as to provide for the protection of children's rights and respect for their developmental needs.[6] Two other standards adopted in 1990 – the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules) – complete the framework of prevention, case management, and social rehabilitation of children.[7,8]

Many children who have been abandoned or placed in residential care, including children with disabilities, could live with their families if provided with adequate social, financial or medical support. By ratifying the CRC, States have committed themselves to providing such support to the maximum extent of their resources (article 18.2). When living with the biological family is not in the child's best interests, a range of family-based alternatives should be put in place to provide safer and more beneficial care than large-scale institutions (article 20). Similarly, stronger care and protection systems, including support for families, could reduce the number of children who come into conflict with the law. The vast majority of offences committed by children are petty and non-violent. Community-based alternatives to detention provide not only a safer environment for children, but much more effective means of rehabilitation.

When institutionalisation or detention is absolutely necessary, a safe environment for children must be provided, with adequate trained staff, programmes and services. Children should have clear, accessible and safe opportunities to complain about the way they are treated, and Governments must ensure effective monitoring, investigation, and accountability mechanisms to address violence when it occurs and to hold the perpetrators responsible.

abandonment of infants reached one in four in some European cities in later centuries. Until the 20th century, the mortality rate among children in such institutions was invariably high.[10] This reflected not only the swift spread of infection in any crowded residential setting before the advent of public health systems, but also the lack of effective and individual care given to the children.

Institutions for children grew with industrialisation and colonialism. As slums, unemployment and crime proliferated in the early industrialised world, the idea developed of 'rescuing'

"There were teachers [at the 'orphanage'] who exceeded their authority and could beat us for no reason. They know that children have nowhere to turn. And they could do anything they wanted."

Child, Europe and Central Asia, 2003 [II]

poor children from their families – often judged to be delinquent or depraved – and protecting them in residential institutions. Meanwhile, in colonial and post-colonial settings, indigenous or aboriginal children were also seen as needing to be 'saved' from what were judged to be 'inferior' cultures. In Australia and Canada, for example, entire generations of such children were removed from their families, placed in residential schools, and denied their own culture, clothing and language.[11] Systems of 'juvenile justice' in Europe and the Americas began to introduce residential detention institutions that were separate from adult prisons in the late 19th and early 20th century.

In some places, the development of large-scale institutions for children came later, either to deal with profound social distress after such events as the two World Wars; or as part of an ideological commitment to 'socialised' child care. This was the pattern in many communist countries, notably those in the post-1945 USSR sphere of influence.

SECOND THOUGHTS ABOUT INSTITUTIONAL CARE

As understanding about child development grew, some countries began to cut back on the use of residential care institutions, and to consider options other than detention for children in conflict with the law. Beginning in the second half of the 20th century, it became recognised that large, closed institutions could not support physical, social, emotional and cognitive development in any way comparable to that in a family setting.[12]

Today, social policy 'best practice,' reflecting the CRC and other human rights obligations, aims to provide as many children as possible with an upbringing in a family, and access to a mainstream school and community life. However, the process of de-institutionalisation, and recognition of the damaging effects of institutionalisation on children, is at different stages around the world. In countries where institutionalisation of children was never taken up on any major scale, the care institutions that did develop have mostly been small and run by private or religious institutions.

In some countries the level of youth crime has become a high-profile political concern, and there has also been some regression towards institutional detention, even when actual child offender rates have fallen. In many countries, children in conflict with the law have typically been detained within the same institutions as those for adult offenders, and few countries have invested in real alternatives to detention.

Unfortunately, the numbers of children who lose the protection of their families and require alternative forms of care are growing for a variety of reasons. These include the changing social patterns accompanying rapid urbanisation, natural disasters, armed conflict, widespread population displacement, and the HIV/AIDS pandemic.

FACTORS CONTRIBUTING TO VIOLENCE IN INSTITUTIONS

Violence against children in care and justice systems is legitimised by long-held attitudes and behaviours, and failures in both law and

its implementation. At the time when the establishment of care institutions for children in disadvantaged and marginal groups was a preferred social policy, corporal punishment was almost universally endorsed for the discipline and control of unruly children. This effectively meant that institutionalised children were exposed to a brutal regime and to frequent violence. In all regions, by omission or commission, this situation still prevails.

Low priority

Despite changes in child care practice and the evolution of children's rights, including juvenile justice standards, reform has been slow to take place in institutions. Few Governments have set about de-institutionalising as many children as possible in keeping with their human rights obligations. This is mainly because of the low level of importance accorded to the most disadvantaged children in society – those who have been orphaned, abandoned, those living with disabilities, or in conflict with the law.

Far too often, children needing care and protection outside the family become the focus of policy attention only when some notorious care system failure or rampant abuse occurs. This lack of priority in policy terms means that conditions in residential care and juvenile detention centres are frequently poor, with inadequate (sometimes life-threateningly meagre) nutrition, hygiene and health care.

Low levels of funding result in a lack of properly qualified professionals. In Azerbaijan, for example, a 2005 report indicated that not one of the country's 69 residential care institutions had a child psychologist on staff, despite the identified need for such expertise.[13] There may in addition be no specialised facilities for children. In Northern Ireland, for example, only 15 beds are available for adolescents with severe mental health problems.[14]

Inadequate staffing

Unqualified and poorly remunerated staff are widely recognised as a key factor linked to violence within institutions. Low pay and status frequently result in poorly motivated employees and rapid staff turnover, and under-staffing is a serious problem. For example, in a number of countries it has been documented that staffing ratios in institutions for children with disabilities may be as high as one hundred children for each staff member. Under such conditions, children are often left unattended for long periods, and overnight entire wards are unattended or padlocked, with only a skeleton night shift. Physical and sexual abuse in such instances is rife.[15]

Relatively few staff in care institutions receive any special training in child development or rights, or information about issues of violence. In institutions for children with disabilities, inadequately trained staff can be quick to lash out at the children.[16] Overwhelmed staff may resort to violent measures to maintain discipline, particularly when supervision is lacking. Staff 'burnout' results in increasingly negative attitudes towards children and in patterns of physical and impulsive responses to confrontation.[17]

Individuals with histories of violence against children, including sexual abuse and exploi-

tation, may seek out jobs that allow them easy access to children. Rigorous background checks on personnel are still rare, allowing an employee who has been dismissed from one institution to be hired by another and to continue a pattern of abuse.[18]

Failure to supervise staff properly is also a serious problem. A study of abuse in residential care in the UK identified ineffective management and minimal contact by managers with staff as significant features common to abuse cases.[19,20]

Lack of Monitoring and Oversight

Residential care and detention facilities are often unregulated and closed to outside scrutiny, especially those run by private agencies, faith-based organisations, and NGOs, or that are situated in isolated areas. In such circumstances, violence may continue for years until an extreme incident brings it to light. Moreover, individuals responsible for violence against children in care and justice systems are rarely held accountable for their actions. If cases are reported, they often are only investigated superficially and prosecutions are extremely rare. Those in a position to take action may be complicit in the abuse, reluctant to discipline or prosecute a colleague, or fearful of negative publicity or loss of financial support. They may respond by blocking access to the institutions; punishing or threatening to dismiss workers if they speak out. The failure to hold perpetrators accountable only ensures that violence continues. Perpetrators go on to abuse other children, and their violent acts create a climate where violence against children becomes 'acceptable' and commonplace.[21,22]

Mixing different levels of vulnerability

Many facilities fail to segregate vulnerable children from dangerous peers. Children who are vulnerable to violence because of age, size, sex or other characteristics are often housed together with older children with a history of violent behaviour.[23] For example, in former Serbia and Montenegro, NGOs report that children under the age of seven may be placed in the same institution as child offenders over the age of 14.[24] In Jamaica, where children in need of care and protection are often housed with children charged with offences, a 2003 Government investigation found that 'bullies' or gangs of older children sexually preyed upon more vulnerable children.[25] In many countries, children in detention are held with adult offenders, greatly increasing their risk of violence.

UNICEF/HQ98-0891. Giacomo Pirozzi

RWANDA, 1998, Rose, 4, helps set tables for lunch at the Gitarama Orphanage, where she and her sister have lived since losing their parents in the 1994 genocide.

"Some of us are abused at home. We move into the child welfare system that is meant to protect us. The system abuses us. We try to make a complaint and nothing is done. We harbor all this anger and lash out at our peers, family, friends, social workers, foster parents, group home staff, teachers etc., and the cycle continues. Somewhere this needs to stop."

Young person, North America, 2004 [III]

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CHILDREN IN INSTITUTIONAL CARE

By some accounts, as many as eight million boys and girls around the world live in institutional care.[26] Some studies have found that violence in residential institutions is six times higher than violence in foster care, and that children in group care are almost four times more likely to experience sexual abuse than children in family-based care.[27] In Kazakhstan, for example, a 2002 study found that over 63% of children in children's homes reported that they had been subjected to violence; 28% indicated that such violence occurred regularly.[28] A survey of 3,164 children in residential institutions in Romania found that physical abuse included beatings, suppression of meals, physical isolation, and submission to various humiliating jobs. Almost half of the children surveyed confirmed beating as a punitive practice. More than a third of the institutionalised children were aware of cases when children were obliged to have sexual relations. Abusers included members of the staff and mainly older children in the institution.[29]

NATURE AND EXTENT OF THE PROBLEM

Numerous studies have consistently established the negative impact of institutionalisation and the existence of high rates of violence in large-scale residential care. Yet in some parts of the world, and for some groups of children, rates of institutionalisation are increasing. For example, between 1989 and 2002, the proportion of children in institutional care was estimated by one researcher to have increased by 3% in Central and Eastern Europe and the former Soviet Union, even though the actual numbers had declined due to a falling population. (The total number of children in institutional care declined during that period, however, because the total population of children in the region declined, the proportion of children in institutions actually increased.)[30]

Some countries in which large-scale institutional care was previously approved have deliberately moved away from this kind of care for children without families. For example, the number of children living in children's homes has dropped significantly over the last 20 years in England,[31] Italy and Spain.[32] In the USA and Canada, where the number of children in out-of-home care has increased significantly in recent years, the majority of children are placed in foster care or group homes.[33]

The pattern of de-institutionalisation is not uniform among industrialised countries, however. In Japan, 30,000 children remain in institutions established in the post-War era. These children still live in large dormitories in hospital-like buildings, run by a small, non-specialist and overworked staff, and there is virtually no therapeutic case work. Funds are from private charitable sources, and boards of directors have ill-defined functions and are rarely monitored.[34]

High rates of institutionalisation can also be found in other regions. In the Middle East, over 25,000 children were in residential care in 1999–2000 in Lebanon, while in Morocco, there were an estimated 25,300 children in residential care in 1999–2000.[35] In Latin America, certain countries still report significant num-

bers of children in care institutions, the highest being Colombia (24,300), Brazil (24,000), Bolivia (15,600), and Chile (11,600) according to figures published in 2004.[36]

In Africa, the extended family has normally absorbed orphaned children and other victims of family casualty, and rates of institutionalisation have traditionally been low. In many African countries, the only orphanages that existed until recently were set up by missionaries before independence. However, today in many African countries private orphanages are now mushrooming, as faith-based organisations, NGOs and private donors seek to respond to the growing numbers of children orphaned by HIV/AIDS and armed conflict.[37] Evidence from Liberia,[38] Uganda,[39] and Zimbabwe[40] all points to an increased use of institutional care in recent years. Children's rights advocates point out that the majority of children entering these institutions often have at least one living parent or contactable relative. They argue that these new institutions simply draw children out of communities, and represent funds which could have been better used to provide improved support services at local level. Institutional care is also expensive, costing between six and 100 times more than community-based foster care, the policy response preferred both by Governments and aid donors.[41]

Institutionalisation in Eastern Europe and former Soviet countries

Institutions for children are more prevalent in Central and Eastern Europe (CEE) and in the Commonwealth of Independent States (CIS) than any other region. During the 1960s and 1970s, large numbers of institutions opened throughout the region. Following the collapse of communist Governments, lack of alternative support systems for families meant that the widespread use of institutions continued. In 2002, an estimated 1,120,800 children were in public care in 27 of the CEE, CIS and Baltic States, 54% of whom – around 605,000 – were in residential facilities.[42]

Many of these facilities are for children with disabilities. In 2002, an estimated 317,000 children with disabilities in the region lived in residential institutions.[43] In some countries, children labelled as 'disabled' make up the majority of those in residential care. In Uzbekistan, for example, children with disabilities in care number almost 20,000, compared to only 4,300 without disabilities.[44]

Ethnic minorities targeted

Historically, children from racial and ethnic minorities tend to be over-represented in care (for example in Australia, Brazil, and Canada, as mentioned above), and in many cases this trend persists. In Romania, for example, the Roma people account for less than 10% of the country's population, yet as many as 40% of institutionalised children are Roma. This pattern is repeated in several other countries of Eastern Europe, including Bulgaria, the Czech Republic and Hungary. In Central and Eastern Europe and ex-USSR countries generally, prejudice against ethnic minorities is reported to have led staff in residential institutions to discourage contact between parents and their institutionalised children, and reduced foster care and adoptive placements.[45,46]

WHY CHILDREN ARE PLACED IN RESIDENTIAL CARE

In contrast to earlier times, today relatively few children are placed in residential care because they have no parents. In the CEE and the CIS, for example, the proportion of children living in residential institutions who have no living parent is between 2% and 5%,[47,48] while in Brazil it is about 5%.[49] Most commonly, children are placed in care because of disability, family disintegration, violence in the home, lack of social support systems, and poor social and economic conditions, including poverty. In some countries, natural disasters, armed conflict or the effects of the HIV/AIDS pandemic may leave parents unable to care for their children. Illness, accidents, and incarceration may also separate children from their parents.

Poverty: This is a significant factor in the decision of many parents to place children in residential care. When parents feel unable to provide for their children, and believe that children can receive better access to education, health care and adequate nutrition in residential facilities, they may choose to place their child in care, believing he or she will be better off than at home.

Violence within families: Many children end up in care because of violence in their family, including neglect, and psychological, physical and sexual violence. Domestic violence in Latin America is also a leading cause for the loss of parental care.[50] SOS Children's Villages found that 73% of children in their Villages in Venezuela had prior experiences of physical or psychological violence, including sexual

violence. The organisation found that 88% of children in SOS Children's Villages in Croatia, 75% of children in Belarus, and 55% of children in Lithuania, had suffered physical or sexual violence within the biological family.[51] Also, many children are removed from families because of substance abuse by their parents and caregivers.

Disability: Because of the widespread stigmatisation of children with disabilities as well as the lack of support provided to parents, these children are institutionalised at significantly higher rates than other children. In Jamaica, for example, 65% of children with developmental or physical disabilities live in homes run exclusively for children with disabilities.[52] Country reports prepared by the CEE/CIS for the 2002 UN Special Session on Children found that the overriding reason why families placed their children with disabilities in institutions was due to a lack of care-giving capacity. Misdiagnosis, over-diagnosis and an exclusive focus on the medical model of disability are also problems leading to the overuse of institutionalisation in these countries. In some cases, the lack of stimulation or the lack of access to high-quality health and education can delay development, therefore adding to the children's disability.[53]

Family catastrophes including HIV/AIDS: Armed conflicts, natural disasters on a massive scale, the HIV/AIDS pandemic, or other disease naturally incline some humanitarian organisations to propose the establishment of care institutions and orphanages as a suitable response to the large numbers of children in need of care. In Russia, for example,

babies born with HIV who have been abandoned are placed in special orphanages just for HIV – positive children, or isolated indefinitely in hospital wards, where they are deprived of any opportunities for social, physical and mental development.[54] In some conflict-torn countries where a high proportion of children have lost one or both parents, levels of institutionalisation may be unusually high. In Somalia, for example, although it is contrary to Islamic standards and traditional norms, use of children's homes or orphanages is strongly advocated by parents and carers, especially in urban areas. Children's homes, all of which subsist on external, mostly charitable support, provide children with food, shelter and education, which are often not available elsewhere. Among the approximately 8,000 Somali children resident in children's homes, a high proportion of them have relatives.[55]

Lack of alternatives: In many environments, alternatives to institutionalisation, including support for vulnerable families and family-based care, have not been developed. This can lead to unnecessary overuse of residential placements. For example, the director of a psychiatric hospital in Turkey estimated that of 500 patients (including adults and children) at his facility, only 10% would need to be confined as in-patients if community-based services were available.[56] In Romania, the population of children in orphanages has been reduced, but many children with disabilities have simply been moved from larger institutions to smaller ones. The extensive funding needed for these new institutions has drained scarce resources from developing foster care

and services that would support community integration.[57]

Patterns of institutionalisation

There is great variation in patterns of institutionalisation between countries, even within regions. A recent study carried out in European countries found significant differences in the reasons why children under the age of three are being taken into care. In Western European countries (Belgium, France, Norway, Portugal, Sweden and the UK), which provided information on reasons for placing children under three in residential care institutions, the main reasons were abuse and neglect within the family (69%), social reasons such as parents in prison (23%), abandonment (4%), and disability (4%).

There were no orphans (defined in this context as children with no living parents) living in institutions in these countries. In contrast, a little over one in 20 of the institutionalised children in central and south-eastern Europe (Croatia, Czech Republic, Estonia, Hungary, Latvia, Romania and Slovakia), Cyprus and Malta were orphans. The main reasons for the children being placed in residential care in these countries were abandonment (32%), social reasons such as family ill-health and incapacity (25%), disability (23%), abuse or neglect (14%), and orphaned (6%).[58]

The study concluded that less wealthy countries with lower levels of spending on public health and social services tended to have higher numbers of institutionalised children. It speculated that this might be due to a lack

of counselling services to prevent abandonment, and that are unable to provide social services to parents who are at risk of being violent towards their child. As well, in countries with fewer health and social services to offer parents such as mental health and alcohol or drug addiction services, children are likely to remain in institutional care for longer periods of time.

In Brazil, a national survey of 589 institutions receiving federal funding used somewhat different categories to collect data on institutionalisation of children of all ages. The main reasons children were institutionalised included the following: family's lack of material resources (i.e. poverty) (24%), abandonment by parents or guardians (18%), domestic violence (11%), parents' or guardians' addiction to chemical substances (11%), parents living on the streets (7%), orphaned: 5%, imprisonment of parents or guardians (4%), and sexual abuse by either parents or guardians (3%).[59]

Most children living in institutions could be reintegrated into their families with the assistance of social workers, or other services and support. When family reintegration is not possible, other family-based alternatives provide a far safer and more beneficial environment for children. The lack of arrangements for alternative systems of care in countries with the means to provide such systems is another demonstration of the obscurity and prejudice surrounding the care of children who have been deprived of their families, or had the misfortune to be born into dysfunctional, violent, or fragmented home situations.

SOURCES OF VIOLENCE WITHIN CARE INSTITUTIONS

The heightened risk of violence to children in care institutions comes from a variety of sources. The greatest amount of evidence concerns violence of various kinds by staff, including neglect, and violence by children against other children. In addition, some forms of treatment practiced in many institutions themselves constitute violence.

Violence by staff

Children in residential facilities may be subjected to physical, sexual and psychological violence by staff. Such violence can include verbal abuse, beatings, excessive or prolonged restraints, rape, sexual assault or harassment. Some of it comes in the form of State-authorised and still lawful violent disciplinary measures. In 145 States, corporal punishment and other forms of degrading punishment or treatment have not been explicitly prohibited in all residential institutions and other forms of alternative care; only 31 States have consistently prohibited all corporal punishment in all forms of alternative care.[60] In some States, there are detailed regulations specifying how punishment is to be administered, including the implement to be used, and what parts of the body may be struck.

Although the State is responsible for protecting children from violence irrespective of who is providing their care, staff violence has been documented in institutions around the world, including those run by the State, by faith-based organisations, and by private entrepre-

neurs or enterprises. The forms of violence can be horrific. In care institutions in Jordan, children have been reportedly subjected to beatings with hands, sticks and hoses, and having their heads hit against the wall.[61] In care institutions in Qatar, a study found that children were often beaten with sticks by institution staff, including teachers, supervisors, guards and social workers.[62]

Violence in the guise of treatment

In residential institutions for children with disabilities (including brain injuries, developmental disabilities, and psychiatric disabilities), children may be subjected to violence as part of their purported 'treatment.' For example, in Turkey, a two-year investigation found that in psychiatric institutions, children as young as nine were subjected to electroconvulsive or 'shock' treatment (ECT) without the use of muscle relaxants or anaesthesia. Such treatment is extremely painful, frightening and dangerous.[63]

Electric shocks are also used as an 'aversive treatment' to control children's behaviour in some institutions. For example, the SIBIS (Self Injurious Behaviour-Inhibiting System) device is a commercially available remote-controlled electric shock device marketed almost exclusively for administering shocks to children with disabilities. One facility in the United States devised its own 'substantially stronger' device when it found that electrical shocks from the SIBIS device "lost much of (their) effectiveness" over a period of a few months.[64]

Drugs may also be used, not for medical treatment, but to control children's behaviour and make them more 'compliant.' This may have other implications; for example when children with disabilities are heavily medicated by staff in institutions and hospitals (often as a way of coping with staff shortages), they are unable to defend themselves from physical violence or sexual assault.[65]

A further example of State-authorised violence is the practice of performing medical interventions to limit reproductive functions – for example, giving hysterectomies to young girls with intellectual impairments or mental health concerns. There have been reports of this violation of human rights on girls as young as seven or eight.[66] There is no medical justification for such operations. However, several reasons have been given, including that the operation will prevent the girls from menstruating, thus avoiding demands that would otherwise be placed on caregivers; and that it will ensure that the young girl will not become pregnant. Such concerns reflect the problems of understaffed institutions and the lack of sexual and reproductive health education and services for girls with disabilities, as well as the lack of adequate protection against the assumed risk of rape for young women both in institutions and the community.

Lack of care as a form of violence

Wherever children are living, including when they are in the custody of the State, Governments are required to ensure that basic needs are met. However, conditions in many residential institutions are often so poor that they put the health and lives of children at risk. Institutions are often overcrowded, unsanitary, and lacking

in both staff and resources, leading to increased mortality rates among these children compared to their peers in family environments.

In Mexico, children in psychiatric facilities have been found lying on mats on the floor, some covered with urine and faeces. Lacking adequate staff supervision, some children were seen eating their own faeces and physically abusing themselves.[67] In rehabilitation centres for children with mental disabilities bedridden children emaciated from starvation and dehydration have been found. Bottles of food were provided by staff, but children who were unable to pick up the bottles due to their disability got no nourishment.[68]

In many facilities for children with disabilities, the children have no access to education, recreation, rehabilitation or other programmes. They are often left in their beds or cribs for long periods without human contact or stimulation. Such deprivation often leads to severe negative physical, mental and psychological damage, and in many instances to death.

Violence by other children

Children in residential care are vulnerable to violence from their peers, particularly when conditions and staff supervision are poor. Lack of privacy and respect for cultural identity, frustration, overcrowding, and a failure to separate particularly vulnerable children from older, more aggressive children often lead to peer-on-peer violence. Staff may sanction or encourage peer abuse amongst children – either to maintain control or simply for amusement.

While recent studies are not common on this issue, studies from the 1990s in the UK, Russia, and elsewhere indicated that bullying and sexual abuse by peers while children were in care widespread.[69] 'High-impact' physical violence was also reported widely, ranging from knife attacks to kicks and punches, primarily from peers.[70] In some cases, children reported that orphanage staff pitted them against each other for their own entertainment.[71]

IMPACT OF INSTITUTIONALISATION ON CHILDREN'S HEALTH AND DEVELOPMENT

The overuse of institutions for children exacts enormous costs on children, their families, and society. Extensive research in child development has shown that the effects of institutionalisation can include poor physical health, severe developmental delays, disability, and potentially irreversible psychological damage. The negative effects are more severe the longer a child remains in an institution, and in instances where the conditions of the institution are poor.

The risk of developmental and psychological damage is particularly acute for young children under the age of four, which is a critical period for children to bond to their parents or caregivers.[72] Even in a well-staffed institution, it is unlikely that the attention they might receive from their own parents would be replaced by staff. One study on institutions in Europe found that young children (0–3 years) placed in residential care institutions without parents were at risk of harm in terms of attachment disorder, developmental delay and neural atro-

phy in the developing brain. The study concluded that "The neglect and damage caused by early privation of parenting is equivalent to violence to a young child."[73]

Inactivity, social isolation, and degrading conditions of living in institutions can lead to a decline in a child's social and psychological functioning.[74,75] After spending time in an institution, children can lose basic skills that they had upon entry, such as the ability to look after themselves and to develop caring relationships.

The physical condition of children in institutions may also deteriorate. Lacking rehabilitation, physical therapy or other programmes, children are often left to languish for years in a state of total inactivity. Without stimulation and opportunities for mobility, children's arms, legs, and spines become contorted and atrophied from lack of use. Lacking adequate human contact, some children resort to self-harm. Their situation is exacerbated when staff respond by using physical restraints.

Institutionalisation also fuels the cycle of violence: institutionalised children are more likely to engage in self-harm, aggression towards others, or become involved in crime, prostitution, or substance abuse. One study in Russia suggests that one in three young people who leave residential institutions becomes homeless, one in five ends up with a criminal record, and one in ten commits suicide.[76] Some studies indicate that many institutionalised children are emotionally vulnerable and crave adult attention, making them ready targets for traffickers.[77] A study in the Republic of Moldova found that young people who had spent part of their childhood in institutions were over-represented by a factor of 10 among returned trafficking victims.[78]

Research also shows that children placed in residential care are more likely to come into conflict with the law. In Northern Ireland, for example, a large proportion of young people who end up in the criminal justice system have come from a care background. Twenty-five percent of those in custody are admitted directly from residential care, and an estimated 70% of 10–13-year-olds in detention are from the care system. One study on the state of mental health services regarding children in secure care and custody in Northern Ireland found that 48% of young people questioned had been in care for over five years, and that 22% had experienced four or more placements within the previous two years – with one person having been moved 13 times.[79]

CHILDREN IN CUSTODY AND DETENTION

Violence against children while in justice institutions or in the custody of the police – police lock-ups, prisons including adult prisons, reformatory schools, and other places where children in conflict with the law may be held – is more common than violence against children placed in institutions solely for provision of care. Even though there are many overlaps and similarities (poor conditions, low quality of staffing, etc.), the institutional treatment of children regarded as being anti-social or criminal is likely to be more physically and psychologically punitive than that of other groups or in other environments. All the prejudices

and discriminations attached to unwanted or family-less children are reinforced where the child is seen as a social nuisance, or worse.

NATURE AND EXTENT OF THE PROBLEM

Although information is hard to find and data on children in care and justice systems are not generally disaggregated, some sources estimate that, at any one time, one million children worldwide are deprived of their liberty. This is certainly an underestimate, and better data collection is urgently needed globally. For example, in the USA alone, more than 600,000 children and teenagers spend some period of time in secure detention facilities every year.[80]

The vast majority of boys and girls in detention are charged with minor or petty crimes, and are first-time offenders. Very few have committed violent offences. Many have committed no offence at all, but have been rounded up for vagrancy, homelessness, or simply being in need of care and protection.[81]

In many countries, the majority of children in detention have not been convicted of a crime, but are simply awaiting trial. In Pakistan, as of March 2003, out of around 2,340 children detained in prisons alone (i.e. not taking into account detention in police cells and other institutions), in just four regions of Pakistan, 83% were under trial, or waiting for their trial to start.[82] In six jails in Cebu, the Philippines, 75% of children held in jail between 1999 and 2001 were detained pending trial.[83]

Building on the International Covenant on Civil and Political Rights, the CRC requires that every child deprived of their liberty has the right to prompt access to legal and other appropriate assistance and the right to challenge its legality, and to receive a prompt decision (article 37d). However, pre-trial detention may last for months or even years. In Burundi, for example, the pre-trial period for children is sometimes longer than the maximum sentence for the offence that was allegedly committed.[84] Pre-trial detention of children in Lagos State, Nigeria, has been found to last for as much as one year.[85] Disturbingly, many of the children detained for long periods are never convicted of a crime. In Pakistan, only 13–17% of detained children were eventually convicted of any offence.[86] In the interim, they are detained for months or even years in overcrowded, dismal conditions, at risk of violence from staff, peers and adult inmates.[87]

Studies in South Asia indicate that the majority of children detained are eligible for bail and pose no danger to the public.[88] However, judges routinely set bail well beyond the reach of detainees' families, resulting in needless incarceration.[89] Bail is rarely, if ever, considered as an option for street children.

After trial, large numbers of children are sentenced to correctional facilities or prisons. Although, as noted earlier, CRC article 40 encourages a variety of alternatives, including supervision orders, probation, and foster care, imprisonment is often the norm. For example, in Indonesia in the late 1990s, up to 99% of juvenile offenders brought before the courts were sentenced to prison.[90] In Bangladesh, children are frequently sent into 'safe custody'

by the police and the courts, even if this is unnecessary. Bangladesh passed a Children's Act in 1974 which called for a separate system of juvenile justice, probation, and the removal of children from adult prisons. However, more than 30 years later, the provisions of this Act are breached and abused at every stage of a child's contact with the law, and children in custody may experience appalling conditions, abuse of rights, and violence.[91]

Similar situations have been reported in Africa. Most countries in Eastern and Southern Africa have legislation on juvenile justice systems designed to respect the rights of the child. However, many are not functioning or do not exist due to financial constraints and lack of capacity. Separate facilities for children in conflict with the law are scarce, and children under 18 are imprisoned with adult offenders, putting them at even greater risk of violence and sexual abuse. This situation has been reported to the Study from Kenya, Madagascar, Eritrea, and Mozambique, and occurs in many other countries.[92]

HISTORICAL CONTEXT

Policies to deal with children in conflict with the law have evolved as societies themselves have changed over time, and as ways of administering law and order have been redesigned to match contemporary socio-political ideas and realities.

Children living on the streets of towns and cities, some of them involved in petty crime, became a fixture of the urban scene from the 19th century onwards, sparking calls for remedy and social reform. The first separate system of criminal justice for young people was introduced in the US State of Illinois in 1899, and other States and countries swiftly followed suit. Since then, most (but not all) countries have introduced special ways of handling the cases of young people, including lighter and alternative types of sentence. Many children accused of an offence today will – without losing the right to a fair trial – be diverted from judicial processes into the welfare system, come before special 'child hearings', or be provided with treatment that takes full account of their age, circumstances and needs.[93] However, while many countries have introduced child-friendly legislation in line with the CRC and other international standards, application and enforcement of these norms lag behind.

Although the majority of offences committed by children are non-violent, pressure on politicians to 'get tough on crime' has driven increasingly tougher responses to children in conflict with the law. This pressure has resulted in harsher sentences and increased rates of detention. These policies are often fuelled by disproportionate media attention to juvenile crime that reinforce public misconceptions about the nature and extent of crimes committed by children. For example, in the USA, between 1993 and 1999, the number of children confined in juvenile detention facilities increased by 48%, even though violent crime committed by children decreased by 33% during the same period.[94] Between 1994 and 2004, the number of children sentenced to penal custody in England and Wales increased by 90%.[95]

On the plus side, more progressive attitudes are beginning to make an impression in pockets of the developing world. Some of these efforts to change attitudes towards marginalised and discriminated children, and to keep them from the descent into criminality which can be expected to follow exposure to incarceration and police brutality, are examined more closely later.

UNICEF/HQ05-1984. Roger Lemoyne

HAITI, 2005, Boys reach through bars at a jail for juveniles in the Delmas neighbourhood of Port-au-Prince.

CHILDREN IN CONFLICT WITH THE LAW

The discourse about children and criminality goes to the heart of strongly held views about child development, upbringing methods, the purpose of justice systems, political pressures, and the human potential for transformation after a 'bad start' in life. Institutionalisation is opposed as anything except as a last resort by most modern child development experts, but the crime- and safety-conscious society may insist upon it.

The CRC and other human rights treaties set out guidelines for the use of detention, and provides that it should always be used as a last resort and for the shortest possible time (article 37). However, custodial regimes for the under-18s vary enormously, and few live up to these provisions.

Why children come into conflict with the law

Violence in the home and the pressures of chronic poverty, coupled with a lack of adequate care and protection systems, result in many children coming into conflict with the law. Research conducted in Peru found that family violence and child mistreatment were the precipitating factors in 73% of cases of children migrating to the streets.[96] Once there, many children engage in risky survival behaviours that bring them into contact with the law, including begging, loitering, scavenging, petty thieving or prostitution. Hence the frequent association between petty crime and the desperate need of care. In a study of young offenders in three districts of Uganda, 70% of children said that meeting their own needs, including those for food, was their main motivation for stealing.[97]

Up to 95% of children in detention are charged with minor and petty offences.[98,99] Theft and other property crimes are most common. In the Philippines, a study in Davao City found that more than 80% of offences were for theft

(35%), substance abuse (28%) and curfew violations (19%). Violent offences accounted for only 7% of crimes committed by children.[100] In Malawi, a 1999 study found that 68% of registered offences were theft, burglary and robbery. The word 'vagabond' was used to describe a further 8% of young offenders, which the study noted was "a term… representing obvious cases of street children."[101]

In addition to being petty offenders, most children in detention have not been previously arrested. For example, in the Lao People's Democratic Republic and the Philippines, it was found that over 90% of children in detention were there for a first offence.[102]

Many children are arrested and detained for offences that are only a crime when committed by children. These 'status offences' include truancy, running away from home, or being 'beyond parental control'. In March–April 2003, 60% of children detained in a Boys' Remand Home in Lagos, Nigeria were non-criminal cases, of which 55% were boys 'beyond parental control', and 30% were care and protection cases ('found' children). A further 15% were children who had been rounded up in police street raids. Likewise, 80% of girls detained in the Girls' Remand Home were non-criminal cases, i.e. 'beyond parental control', or 'care and protection' and civil dispute cases.[103]

Although almost no data are available about young offenders with disabilities, it is widely accepted that children with intellectual impairments and mental health problems are at increased risk of conflict with the law – often at the behest of others who see them as pawns. Once in trouble, these children are less likely to be able to talk their way out of trouble, or make a compelling case on their own behalf. Once in prison, they are also more likely to be victimised. Neither the juvenile justice nor the child welfare system is well equipped to address children's mental

INFANTS AND YOUNG CHILDREN IN PRISON

A unique group of children at risk of violence in detention facilities are infants and young children who are in prison with their mothers. This practice exists in many countries, in all regions. However, institutions seldom provide the necessary conditions to protect children. There are undeniable benefits in keeping children with their mothers; some countries allow only infants to stay with their mothers, while others allow mothers to keep children up to the age of six. However, improvements are urgently needed in the conditions under which these institutions function in order to cater for the specific needs of children living with their mothers in detention. For example, a study on children in prisons with their mothers in Cambodia found that children were beaten by other prisoners when they cried, or as a result of a dispute with the child's mother.[104]

health needs, yet increasing numbers of children with mental or emotional disorders end up there. Such placements are devastating to families. Children with mental health needs face the added stress of being displaced and feeling abandoned. Meanwhile, parents have to give up their say about key aspects of their children's lives, sometimes even losing track of where their children are living.

Detention as a substitute for care

In too many countries, the criminal justice system is used as a substitute for adequate care and protection systems. The police are often the first and only agency to respond to children in need, and lacking appropriate alternatives, place vulnerable children in police lock-ups or in detention.[105] For example, in Kenya, a study found that 80–85% of children in police custody or correctional facilities were children in need of care and protection, and who had actually committed no criminal offence.[106]

Many children working or living on the streets are simply assumed to be anti-social elements, and are taken into detention by police without proof of misdeed. In Rwanda, as in many other countries, street children are rounded up and placed in 're-education centres' where they are deprived of their liberty, whether or not they have committed an offence.[107] In many settings, they are sent by courts to detention in remand institutions or adult prisons, where they may be kept indefinitely.[108]

Children who are victims of sexual or economic exploitation are frequently detained as if they were criminals, including girls fleeing forced marriages, trafficked children and children in the commercial sex industry (see box). For example, under 'safe custody' laws in Bangladesh, boys and girls can be detained in jails or homes for vagrants in cases where they have been the victims of rape or sexual assaults, rescued from brothels or from traffickers, or, in the case of girls and women, where they have

GIRLS IN DETENTION

The use of so-called 'protective custody' disproportionately affects girls who are most often the victims of sexual abuse and exploitation. Detention for the protection of girls who have been sexually abused is particularly acute in countries where 'honour crimes' are practised. For example, in Syria, girls who have been sexually assaulted are often put into an institution for juvenile delinquents rather than handed over to their parents, due to fears that the girls may be killed to preserve the family honour, or forced to marry their rapist.[114]

Since girls are usually detained in much smaller numbers than boys, Governments may have even fewer facilities to ensure their segregation from adults. A 2002 paper on juveniles and the law commented that "The numbers of juvenile girls within the system

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GIRLS IN DETENTION

are small, and as a result they are simply tacked onto the rest of the system with little recognition that their needs are different and separate from older women. It also means that they attract fewer resources…"[115]

Girls in detention facilities are at particular risk of physical and sexual abuse, particularly when detained in mixed-sex facilities, or where a general lack of facilities for girls results in placement in adult facilities. An additional concern is the lack of female staff in facilities detaining girls. Male staff often engage in 'sanctioned sexual harassment,' including improper touching during searches, or watching girls while they dress, shower, or use the toilet.[116] Male staff also use their positions of authority to demand sexual favours, and are responsible for sexual assault and rape.

married someone from another religion or without the consent of their guardians.[109] Similarly, in India and Nepal, trafficking survivors and girls found in brothels are often forced by the police and NGOs into 'protective custody' in secure institutions.[110]

Mental health is also an issue of concern in the incarceration of children. Studies in the UK indicate that between 46% and 81% of young prisoners (aged between 15–21 years) have mental health problems.[111] Other research claims that about 80% of children in custody suffer from at least two mental disorders.[112] Quite apart from the fact that such children should be receiving treatment and not punishment, staff in correctional institutions are often not trained to deal with children who are mentally ill or who have emotional problems. In detention centres, for example, it has been reported that staff have responded to suicidal children by stripping them naked and tying their wrists and ankles to bare beds.[113]

SOURCES OF VIOLENCE IN DETENTION AND POLICE CUSTODY

Children deprived of their liberty and placed in detention are at extreme risk of violence. As in residential care, violence against children in detention often comes from staff or peers. In addition, children may be subject to violence from adult detainees, from police or security forces while in their custody, or may receive violent sentences as a judgment from the courts.

Violence by staff in detention institutions

Children in detention are frequently subjected to violence by the staff, as a form of control or punishment, and often for minor infractions. Although 124 countries have fully prohibited corporal punishment in penal institutions, in at least 78 countries it remains legal as a disciplinary measure in these institutions.[117] In the Lao People's Democratic Republic, 30% of detained children reported physical or mental

"Cops are really aggressive with kids. They slam kids on the ground and when they strip search you they are rough."

Girl, 16, North America [VI]

5

punishment, ranging from beatings, being forced to crawl, sitting in the sun, and having meals withheld.[118] In Yemen, more than one-third of detained children reported beatings and other cruel treatment; more than half of a study sample said that they had been sexually abused, usually by guards and teachers.[119] In some juvenile detention centres in Brazil, beatings are a daily occurrence; children reported that guards verbally abused them, punched them with their fists, kicked them, and hit them with wooden sticks.[120]

Violent practices are found in both industrialized and developing countries. Children may be confined to cramped cells for weeks or even months, subjected to painful restraints as a "disciplinary" measure, or forced to hold uncomfortable physical positions for hours at a time. In the UK, information obtained in November 2005 revealed frequent use of painful restraints in four privately-run 'secure training centres', in which children aged between 12 and 17 were detained. Painful restraining holds involving pressure to noses, thumbs and ribs were used 768 times in the year, causing injuries in 51 cases.[121]

Violence while in custody of police and security forces

Police and other security forces are often responsible for violence against children. Children living or working on the street are particularly vulnerable to violence by police, including harassment, beatings, sexual assault, and killings. This is discussed at greater length in the chapter on violence against children in the community. However, it is important to note that a significant part of this violence occurs to children formally in the custody of police and security forces, for example, during arrest, interrogation, or in police lock-ups. In Egypt, for example, children detained in police lock-ups reported beatings with batons, whips, rubber hoses, and belts, and sexual abuse.[122] In Nepal, 85% of children and young people interviewed in prisons reported abusive treatment while in the custody of police or security forces, and 58.6% reported torture with methods such as electric shocks, beatings with hard objects, beatings with their hands tied, and beatings while blindfolded.[123]

It is well documented that some police forces routinely use violence, including torture, to extract information and confessions from children. In Pakistan, the National Commission for Child Welfare and Development found that of juvenile detainees, 68% of respondents reported having been forced to admit their guilt.[124] In Papua New Guinea, children have been burned, cut with scissors, whipped while naked, and humiliated during interrogations by police in order to get them to confess to a crime.[125] In some states, children have died as a result of police torture.[126]

In many countries, laws require children to be transferred quickly from police custody to an appropriate children's facility or brought before a judge within 24 to 48 hours or less. However, in practice, children may remain in police lock-ups for long periods of time, often without notification to their parents or guardians. For example, in the Philippines, laws requiring police to inform the Department of

Social Welfare and Development within eight hours of a child's arrest are frequently not observed, and children may remain detained in police cells for up to a month.[127] In Jamaica, an investigation in the late 1990s found that many children who were abused, neglected or accused of only petty offences remained in filthy and overcrowded police lock-ups for periods of eight months or more.[128]

Similarly, violence may be used against children in the custody of security and military forces in occupied or disputed territories. In Israel and the Occupied Palestinian Territory, over 1,400 Palestinian children were arrested by Israeli military authorities between 2000 and 2004. Affidavits by Palestinian child detainees indicated that most were subjected to one or more forms of mistreatment during their period of arrest and interrogation including sexual harassment, and physical and psychological threats.[129]

Violence as a sentence

Corporal punishment as a sentence for children convicted of offences has been prohibited in 177 States and territories, and a series of human rights judgments have condemned the practice. However, some 31 States and territories still permit corporal punishment as a court sentence against children.[130] For example, Malaysia's Child Act allows the whipping of children found guilty of an offence.[131] In Tonga, the Criminal Offences Act stipulates that boys under the age of 16 can be whipped up to 20 times.

In certain countries, children who are judged to have reached puberty may be sentenced to punishments of extreme violence, including flogging, stoning, and amputation. For example, the CRC has expressed concern about such sentencing of children to States including Brunei Darrussalam, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen, and has recommended that these countries amend existing laws to make these practices unlawful.[132]

Although universally condemned and prohibited by international law (ICCPR, article 6, CRC, article 37a), some States still demand capital punishment for crimes committed by children. Since 1990, Amnesty International has recorded 39 reported executions of child offenders in eight countries – China, the Democratic Republic of the Congo, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the USA, and Yemen.[133] In March 2005, however, the US Supreme Court ruled that the death penalty could no longer be imposed on individuals for crimes committed before the age of 18, and the remaining 72 persons who had been sentenced to death for crimes committed as juveniles were then removed from death row.[134]

A life sentence without the possibility of release for offences committed by children is also proscribed by international law (CRC, article 37a). However, at least 15 countries have laws allowing this, although only a handful impose the sentence in practice. Outside the USA, there are only about a dozen child offenders known to be serving life sentences. In the USA, however, by 2005 some 2,225 individuals had been sentenced to serve the rest of their lives

in prison for crimes they had committed as children. An estimated 59% were sentenced to life imprisonment without parole for their first-ever criminal conviction; an estimated 26% were convicted of 'felony murder,' in which the child had participated in a robbery or burglary during which a co-participant had committed murder, often without the knowledge or intent of the child. Racial disparities are marked, with African-Americans receiving the sentence 10 times more often than white children.[135]

Violence by adult detainees

National legislation in most countries requires separate facilities for children in conflict with the law in order to prevent abuse and exploitation by adults. Yet in many countries, detention with adults still occurs. Since 2001, the Council of Europe's Committee for the Prevention of Torture has recorded its concern about young people being kept in the same cells as adults in at least three Council of Europe countries. In Germany, for example, in 1988 UNICEF reported that young people under 18 were not systematically separated from adults, putting them at risk of threatening behaviour, blackmail, or even rape by older prisoners.[136]

In police lock-ups, where space is limited, children are often held together with adults who may perpetrate violence, including sexual violence, against them. Adequate supervision, particularly at night, is often lacking, resulting in further abuses by police, including rape. In some parts of the world, separate facilities for short-term custody or longer-term detention may not even exist. In States where separate juvenile justice systems have not been installed, children are routinely detained with adult offenders under appalling conditions, increasing their risk of violence from older inmates.[137]

In addition, where countries allow children to be detained, tried, and sentenced as adults, they may also incarcerate them with adults. In the USA, nearly every state has recently changed its laws to make it easier to try children as adults; in 2000, an estimated 55,000 children were tried in adult courts.[138] Children who are convicted in these courts are then typically detained in adult prisons.

Violence by other children

As in care institutions, children in detention facilities are vulnerable to violence from their peers, particularly when conditions and staff supervision are poor. Lack of privacy, frustration, overcrowding, and a failure to separate particularly vulnerable children from older, more aggressive children often lead to peer-on-peer violence.

In Rio de Janiero, gang-related rivalries have led to serious episodes of violence among children held in juvenile detention centers, including beatings, stabbings, rape, and murder.[139] In the UK, a 2005 report from the Chief Inspector of Prisons and Youth Justice Board (England and Wales) found that 21% of both boys and girls had been hit, kicked or assaulted by another young person.[140]

Self-harm

Children in detention are at heightened risk of self-mutilation and suicidal behaviour due

to violence, neglect, or poor living conditions. Prolonged or indefinite detention and isolation also contribute to poor mental health (discussed above) and the risk of self-harm.

In the USA, 110 youth suicides are reported to have occurred nationwide in juvenile facilities from 1995 to 1999.[141] In 2002, a total of 122 juvenile detention facilities reported transporting at least one child to a hospital emergency room because of a suicide attempt.[142] In the UK, 29 children died in detention between 1990 and September 2005. Twenty-seven hanged themselves, the youngest aged 14, and one died while being restrained.[143]

For children detained in adult facilities, the risks of self-harm are particularly great; some studies in the USA indicate that children detained in adult jails or prisons are up to eight times more likely to commit suicide than those detained in juvenile facilities.[144]

DOES CHILD DETENTION 'WORK'?

Children subjected to detention are more likely to commit offences in the future than children placed in diversion programmes. In the USA, virtually every study examining recidivism among children sentenced to juvenile detention facilities has found that at least 50–70% of offenders are re-arrested within one or two years after their release.[145] In contrast, recidivism rates for children placed in some community-based alternative programmes are as low as 10%.[146] Recidivism is particularly acute for children detained with adults. In Cambodia, an estimated six out of 10 children detained in adult prisons are re-arrested for more serious crimes after their release.[147]

According to one juvenile justice expert: "Evaluation research indicates that incarcerating young offenders in large, congregate-care juvenile institutions does not effectively rehabilitate and may actually harm them. A century of experience with training schools and youth prisons demonstrates that they constitute the one extensively evaluated and clearly ineffective method to treat delinquents."[148]

OTHER CHILDREN IN STATE CUSTODY

REFUGEES, ASYLUM SEEKERS AND MIGRANTS

Children may flee their home countries for a variety of reasons including armed conflict, ethnic insurgency, persecution of their families, death or disappearance of their parents, or forced military recruitment. Others may move across borders in search of better economic and social opportunities, often without the necessary documents or in contravention of immigration rules. Whether legal or illegal in status, many of these children find themselves in institutions where they are isolated from the community.

Unaccompanied children

While many refugee children are with their parents or in the care of family members, a significant number of asylum-seeking and refugee children are either separated from close family, or entirely unaccompanied. In 2004, countries such as Austria, Belgium, France, Italy and the UK each recorded between 1,000 and 5,000 arrivals of asylum-seeking separated children.[149] In 2005, concern about the vulnerabilities and losses of rights faced by unaccompanied and separated asylum-seeking children led the Committee on the Rights of the Child to adopt a General Comment providing guidance on the protection, care and proper treatment of such children based on the CRC.[150]

Currently, only around one-third of European countries have legal and practical provisions for the care and protection of unaccompanied children. Such arrangements should ideally include separate reception facilities, a prohibition on child detention, and officially appointed trained guardians. But the reality is that many centres are not equipped to meet children's needs, and staff are not trained to deal with children, especially those who may be suffering from trauma. This increases their potential exposure to violence. Significant numbers of unaccompanied and separated children disappear from reception facilities or during the asylum procedure.[151] Some of these disappearances are reported as being related to trafficking.

Groups working with asylum-seeking detainees have expressed concern that the level of uncertainty about how long they are to be detained, combined with fears about the consequences of return, may exacerbate these children's risk of self-harm.[152] This is a particular anxiety in the case of those who have survived torture or serious trauma in their country of origin. Depression can lead to desperate outcomes. According to the Separated Children in Europe Programme, the placement of some children in residential centres "has gone on to last years and has been described as 'mental torture', leading some children to feel that the only way they can end this suffering, to take some control of their life, is to commit suicide."[153]

Jail-like facilities

Although children should never be detained in relation to their immigration status, many are held in secure facilities for long periods.

For example, in Australia, hundreds of girls and boys seeking asylum have been held in detention centres for an average of 20 months. The prolonged detention had a significantly detrimental impact on the mental and physical health of some of these children. Some of the children held in detention suffered from depression, post-traumatic stress disorder, and anxiety disorders. Other children experienced bed wetting, sleep walking and night terrors.[154] Children were also exposed to unrest, protests and violence that took place in some of the detention centres. Some children in detention also sewed their lips together and committed other acts of self-harm.[155]

Asylum-seeking children were detained in immigration centres or confined in international airports in several countries in 2004 and 2005, including the Bahamas, Botswana, Libyan Arab Jamahiriya, Malaysia, Thailand, the USA and Europe.[156] Children may be detained with their family members for immigration-related offences, without it being assessed if this is in their best interests, and without examining alternatives to detention. Release is often only secured when confirmation of resettlement to a third country of the minor or the family has been obtained. Stateless children are at a particular risk of facing long-term detention for lack of residence requirements. These circumstances do not necessarily entail violence, but may leave children in especially vulnerable and exposed situations.

Detention of migrant children

Statistics on illegal migration are few and not reliable in view of the clandestine nature of migration channels, but major flows invariably include children, including some who become unaccompanied or separated from close family during the migratory process. In Spain, almost 1,400 unaccompanied and separated migrant children were taken in by the Andalucian Administration in Southern Spain between January and October 2005.[157] In Mexico, over 4,000 unaccompanied children were returned to their countries of origin in 2005 alone, most of them to Guatemala. The return procedures do not include the necessary safeguards to guarantee the security and well-being of these children.

Concern over the treatment and care migrant children receive in the country of destination – as well as in their country of origin in those cases where they are subsequently repatriated – has been growing. The 'care' of these children too often involves unwarranted deprivation of liberty, or placement in open facilities where conditions are inappropriate. These children frequently lack the guarantees and legal representation available to other children in the country concerned.[158] Detained children are frequently housed in the same facilities as non-related adults; they may be exposed to traumatising experiences and have inadequate access to proper nutrition, health support and education. Some children detained for breaches of immigration regulations are held together with individuals charged with criminal offences.

Peer violence is also a risk. A study of migrant children from Northern Africa detained in Spanish centres found that many reported extortion, theft, and physical abuse by larger,

older children. Many children reported that the staff often failed to intervene, even when abuses occurred in front of them. Some children ran away from the centres in the belief that they would be safer on the streets.[159]

CHILDREN IN PEACETIME ARMIES

This study does not cover the subject of child soldiers during wartime, which was explored in the 1996 UN study *Impact of Armed Conflict on Children* (known as the Machel Study) and its follow-up. However, children who are members of Government military forces may be subjected to violence in peacetime. The mode of life, work, and residence of these children is essentially institutional, taking place in army barracks or training camps.

In at least 65 countries around the world, boys and girls are recruited into Government military forces, either legally as volunteers, or illegally through force or deception.[160] Considerable evidence indicates that such underage soldiers may be subjected to bullying, rape, sexual violence, and harassment to the point of self-harm and/or suicide, depression and mental illness. For example, in Paraguay, children as young as 12 have been forcibly recruited into the armed forces, often with birth certificates falsified by civilian or military authorities. Since 1989, over 100 young conscripts have died while serving compulsory military service, and many others have been victims of serious accidents. The deaths and injuries were believed to be the result of punishment by officers and the lack of safety measures for dangerous activities such as handling weapons. Some conscripts suffered permanent psychiatric damage after systematic ill-treatment.[161,162,163]

In the UK, the suspicious deaths of two 17 year old soldiers at Deepcut Army Barracks led to revelations of other suicides, as well as dozens of incidents of self-harm and systematic bullying at the barracks. A 2004 parliamentary committee later conducted an inquiry and recommended an external complaints procedure to investigate allegations of bullying and abuse in the British military.[164]

Although not members of the armed forces, thousands of children live permanently on military bases in army barracks. In Kazakhstan, Russia and the Ukraine, homeless and orphaned children may be 'adopted' by military units from the age of 10 or 11. They also receive military training, raising concerns about their exposure to harsh conditions, bullying and other forms of abuse, and hazardous activities such as weapons training.[165]

RESPONSES TO VIOLENCE AGAINST CHILDREN IN CARE AND JUSTICE INSTITUTIONS

A variety of responses is required to prevent and respond to violence against children in care and justice systems. As with other settings in which violence against children occurs, primary prevention to avoid violence before it takes place in institutions is highly important. This has two major thrusts: reducing the main factors that lead to children being placed in institutions, and providing alterna-

tives to the institutions themselves. The first of these can only be dealt with briefly in this section, and is also addressed in the chapter on violence against children in the home and family. Alternatives to institutionalisation are described in more detail.

The section also deals with secondary prevention measures focused on responding immediately to violence in institutions. These take into account that however fast primary prevention advances and institutionalisation is reduced, existing institutions and all alternative care placements must be made safe places for children. These include better training and appropriate remuneration for staff, more and better services to meet a wide range of children's needs (including those related to sex and disability), improved supervision and administrative transparency, and more openness to the voices and involvement of children and their families.

Also essential is action to address the impunity of those who are responsible for violence against children, by establishing effective and transparent monitoring, investigation and accountability mechanisms.

LEGISLATIVE ACTION

A clear legislative basis to deal with children in care and detention is an essential part of eliminating violence against children in institutions and other forms of alternative care. In some countries, this may best be contained within a comprehensive children's act or similar broad-based piece of legislation; in others, existing legislation may need to be modified. In all cases, legislation should be consistent with the CRC and other human rights instruments. Some important features of such legislation include the following.

The State must not itself be a perpetrator of violence against individuals in its care. Therefore all forms of violent sentencing must be eliminated, including capital punishment and life imprisonment without the possibility of release. The use of corporal punishment and other cruel or degrading forms of punishment or control must be prohibited explicitly within all institutional and alternative care settings where children reside or are detained.

In the interests of reducing the numbers of children taken into custody, criminal codes and other legislation related to crime and policing need to decriminalise status offences and survival behaviours (such as begging, loitering, vagrancy) to remove the legal basis under which many children are taken into custody. Sexually exploited or trafficked children should be treated as victims to be helped rather than perpetrators to be arrested, and must be provided with community-based care and protection. In the case of trafficking and illegal entry of migrant children, there should be a non-punishment clause for immigration offences such as possession of fraudulent documents.

Legislation must reflect States' obligations to protect children, wherever they are placed and whoever is providing or managing the institution or form of care. All potential staff should be screened. All institutions and alternative forms of care must be registered and the care of children within them regulated in detail. All

care and justice institutions should be required to report on all incidents of violence.

Legislation should also ensure that institutions can no longer operate as closed settings, without accountability. Public scrutiny must be guaranteed in a number of ways, including ensuring access for children's families (except when not in the best interests of the child), NGOs, human rights institutions and ombudspersons, lawyers, media, and other elements of civil society, while respecting individual privacy and dignity for girls and boys. Effective monitoring and reporting systems by competent bodies should be established in law, with the power to demand ongoing information on conditions, and to investigate and redress allegations of violence.

Guarantees that the voices of children and their families will be heard should have a basis in law, rather than just guidance or institutional procedure manuals. Legislation must ensure that simple, accessible, independent and safe complaint mechanisms should be provided to children in institutions. Children and their representatives should also have access to an appeals process if they are not satisfied with the response to their complaint.

POLICIES TO PREVENT INSTITUTIONALISATION

Policies governing care and justice systems should aim both to prevent violence against children in care or custody, and to reduce the numbers of children entering the full range of institutions, from both public and private care facilities to police custody, juvenile detention centres, and adult prisons. Detention and institutional care should be regarded as options of last resort, taking into account the best interests of the child and his or her long-term special needs.

Most of the following are primary prevention approaches, aimed specifically at reducing institutionalisation. It should, of course, be borne in mind that a range of broad-brush measures (such as improved basic service provision, including for families of children with disabilities or other risk factors, livelihood improvement, gender and social equality, prevention of substance abuse, reduction of domestic violence, inclusive education and educational retention, and general anti-poverty development goals) would by definition help improve families' capacity to raise or manage vulnerable and at-risk children, and contribute greatly to keeping children out of care and detention institutions.

The principle of 'last resort'

Institutional care should be reserved for children whose needs cannot be met in their own family or an alternative family setting. For children who are in conflict with the law, detention should be used only for children who are assessed as posing a real danger to others, and then only for the shortest necessary time.

In practical terms, this principle of 'last resort' means that whenever a child is considered for or taken into care, an evaluation should be conducted to identify the type of placement most appropriate to that child's needs. An important objective of such evaluations is to ensure that children are not admitted into residential care unless it is in their best interests.

There is nothing particularly new about the 'last resort' principle either for care or justice issues. The problem has been that in many parts of the world, the 'last resort' is frequently the *only* resort considered or available. Although there have been local successes, in only a few regions have entire care and justice systems shifted towards making alternatives the norm. In the words of one expert who contributed to this Study, "It is not enough to repeat the same mantra, it must mean a radical change in the way the systems operate."

Prioritise alternatives

Family and community-based alternatives and diversion mechanisms must be developed and resources allocated, to reduce the reliance on institutional care. Clear strategies for reintegrating children into the communities must be in place. In many countries, this will entail a fundamental shift in policies.

Professionals who work with children, policy makers, and officials including police and judges should be educated about the desirability and availability of alternatives to institutionalisation or detention. For example, police services should have specifically trained police to focus on children's care and protection issues. Doctors and other health professionals should be able to provide families with a disabled child or other at-risk children with the referrals and information they need to care for and support their children.

THE HIGH FINANCIAL COSTS OF INSTITUTIONALISATION

Institutionalisation of children is expensive, and can be up to 12 times the per capita cost of community-based care options, creating an unnecessary financial drain on budgets.[168,169] The World Bank reported that the annual cost for one child in residential care in the Kagera region of the United Republic of Tanzania was over six times that of supporting a child in a foster home.[170] Research in Ukraine, the Republic of Moldova and Russia during 2001 and 2002 showed that community residential and small group home care cost approximately half that of State institutional care; foster care cost approximately one-fifth to one-third that of State institutional care; and family support and social service provision cost approximately one-eighth that of State institutional care.[171]

Although less expensive over the long term, the creation of such alternatives initially requires additional resources. A study of institutionalisation in the CEE/CIS countries cautions that "the resultant savings will not be realised immediately. This is because to enable a smooth transition it is necessary to set up alternatives before an institutional system has been closed down or reduced in size…(However) as institutions are gradually closed, the costs are reduced as the new system takes over. These extra transitional costs must be regarded as an investment to the introduction of a new and better system."[172]

All donors, whether multi-lateral, intergovernmental or NGO, should actively support alternatives, through advocacy with Government and partners, and support for re-training and sensitisation activity. Where Governments have already made clear a non-institutional policy for children orphaned by HIV/AIDS and others needing care, as in South Africa, charities and NGOs should respect the policy and avoid building the kind of facilities which reinforce stigma, social exclusion, discrimination and a poor life start for children who might otherwise have stayed with family members.[166,167] Donors that support juvenile justice reform should also ensure that they support alternatives to detention and prevention programmes, rather than allow aid to be used for the construction of secure facilities.

More generally, public education is necessary to change societal attitudes to child care and

YEMEN, 1998, Nine-year-old Abdullah Ahmed lies in bed reading in the dormitory at the Centre for Rehabilitation for Minors, in the old part of Sana'a.

criminalisation, as well as to institutionalisation itself. This is essential to ensure both that decision-makers actually take action, and to inform families about non-institutional solutions for the care of their children.

ALTERNATIVES TO INSTITUTIONAL CARE

Support for disadvantaged and at-risk families

With adequate support services, many parents who might otherwise abandon a child or resort to institutionalisation can be helped to care for him or her. Family support can address violence in the home and other factors that are linked with children coming into conflict with the law. Such services include accessible and quality basic health and social services; home visits by social workers, visiting nurses or community-based support groups (mutual support groups, local faith-based groups, etc.); programmes that teach effective parenting skills; livelihood assistance to relieve the pressures of poverty; and respite care to enable parents with serious burdens of care to take a break from time to time. The benefits of keeping children with their families are inarguable in terms of their health and happiness, and the best interests of the child. Furthermore, the cost of supporting families to maintain their children at home is substantially lower than institutionalising them.

Access to free education (or in some settings, help with school fees) is a means of reducing institutionalisation in places where poverty is entrenched, and parents may deposit children in institutions in order to obtain an education

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for them. In Zimbabwe, the Child Protection Society reports that the biggest single reason why families in Zimbabwe do not want to care for their children is that they are worried about the cost of education.[173] Governments are required to invest in education for all children, and donors and NGOs should favour helping families or foster families with school fees rather than encouraging the use of orphanages or building institutions. Where necessary, normal schooling should be supplemented with targeted assistance and outreach to specific at-risk children and their families (see the chapter on violence against children in the community).

Support for families of children with disabilities

Where children have disabilities, family support programmes which enable children with intensive needs to stay in their natural families represent an economically viable alternative to institutionalisation. They provide families with various combinations of training, financial subsidies, and services. In the two decades following the introduction of family support programmes in the USA and Canada, the number of children with developmental disabilities living in institutions decreased by about 70%.[174] For this to work, parents with children who have disabilities need to be provided with accurate information about how they can care for their child and what services are available in their community. The same is true of parents with disabilities or with chronic illnesses like HIV/AIDS.

Boys and girls with disabilities have an equal right to education. In 1999, it was estimated that only about 3% of children with disabilities

CASE STUDY: HELPING FAMILIES TO CARE FOR CHILDREN AT HOME

A family in Lebanon had four children between the ages of two and 12. The father was severely disabled and required extensive care. The mother was active and healthy, but jobless and overburdened with her family's daily needs. Although her three older children were doing well in school, the mother was unable to pay their education fees. She approached an SOS Children's Village, asking them to accept her children.

Rather than taking the children into care, SOS made an agreement with the mother that SOS would cover the children's educational fees for one year, and approached the school to reduce the school fees. The mother was also asked to prepare a business plan for an income-generating activity that she could carry out. SOS agreed to help with start-up costs and provide a loan for her business. Within 15 days, the mother drew up a plan for a mini-bakery in a shop next to her house. As soon as she went into business, she began to generate income and to repay the loan to SOS. The family soon became entirely self-reliant, with the children remaining at home with their parents.[176]

"We don't know why you are here and how long you will have to stay. You are ten years old, scared and confused. Your journey through life has been grim – family despair and violent arguments, no money for clothes or games, sometimes no money for food. But nothing has prepared you for this. Yesterday you were home. This morning a social worker came and took you away. You joined the more than one million children living in residential institutions across Europe and Central Asia. We must try to see the world through the eyes of children we serve."

Maria Calivis, Regional Director for CEE/CIS and Baltic States, UNICEF, 2005 [XI]

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in developing countries had access to school.[175] Children with disabilities have a right to inclusive education alongside their peers.

Direct support for orphans and vulnerable children

When children lose their family or it is not possible for them to stay with their parents, alternatives to institutionalisation may include fostering, adoption, support for extended family members who serve as carers, and small group homes. In regions with a high HIV prevalence in rural Africa, where older children are acting as heads of household, it is often possible to provide support so as to keep siblings together and avoid institutional care.

Accommodating different needs and preferences

Governments and those involved in placement decisions, including courts, should recognise that different children need different types of care and aim to offer as wide a range of different care options as possible and ensure the quality of each. The CRC (article 20.3) also emphasises the need to take into account the child's ethnic, religious, cultural and linguistic background when considering options for the child.

Children have a right to participate in all stages of the placement process (CRC article 12).[177] When it is not possible or desirable for children to stay with their biological families, both children and their parents should participate in decision-making about care options, with children having the full opportunity to express their views.

ALTERNATIVES TO INSTITUTIONAL DETENTION

As a guiding principle, children in need of care and protection should not be apprehended by the police but should instead be immediately referred to child welfare agencies. Some of this can be accomplished by decriminalising status offences (such as truancy), survival behaviours (such as begging, selling sex, scavenging, loitering or vagrancy), victimisation through trafficking or criminal exploitation, and antisocial or unruly behaviour by children, thus avoiding a criminal justice response to what is a social or developmental/behavioural problem. Of those children who remain – i.e. those in actual conflict with the law – it is essential that they are 'diverted' as quickly as possible from police custody and the formal justice system into alternative programmes.

Children should only be detained as a last resort, and for the shortest possible length of time. Screening systems should be put in place to ensure that children are only detained if they are assessed as posing a real danger to others and following a judicial hearing at which they are represented. Police, judges, and appropriate Government agencies should develop mechanisms to identify the least restrictive environment for each child, taking into account each child's individual situation. Any child whose liberty is restricted has a right to speedy legal and other assistance to challenge the legality of their deprivation of liberty (CRC article 37d).

CASE STUDY: DIVERSION PILOT PROJECTS IN KENYA

In 1997 and 1998, the Kenyan Department of Children's Services estimated that 80% of children in the juvenile justice system were cases of children requiring care and protection. Only 20% of children had committed actual offences, and few of these were serious. In 2001, the Department of Children's Services and Save the Children UK started a pilot project to divert children away from the courts in Nairobi, Nakuru and Kisumu.

The aim of the programme is to divert children, especially those in need of care and protection, away from the justice system at the earliest possible point. A focus is to ensure that police officers are trained to refer children to other agencies rather than placing them in detention. As part of the project, specialised Child Protection Units were set up in major police stations in the three pilot project areas, and police officers and other stakeholders received training in child rights and the diversion process. At the community level, member groups offer skills training, counselling for parents and children, non-formal education, community centres and temporary shelters.

In its first four years, 2,800 children were diverted from the courts, and district officials reported a 90% drop in the number of children referred to Children's Courts in the project areas. Decisions by police and district teams on how to assist children are made much more quickly, with some children being resettled straight from the police station. Many now stay in police custody for less than 24 hours, reducing congestion in police stations. Around 70% of children diverted from the courts have been reintegrated with their families. The number of children in the Nairobi Children's Remand Home has been reduced by half. In general, children are spending only days in remand homes rather than weeks or months.[182]

Community-based diversion programmes

A wide variety of alternatives to detention exist, both in industrialised and developing countries. Many provide effective rehabilitation and community reintegration for young offenders without unnecessarily depriving them of their liberty.[178] These include the establishment of community-based mechanisms to handle minor offences before the children responsible enter the formal justice system, the use of Local Councils as 'courts of first instance' for children; and restorative justice initiatives. When successful, such programmes reduce the risk of exposing the child to a brutalising environment in which anger and resentment grows, violent behaviour is regarded as a norm, and recidivism almost guaranteed.

In some countries, traditional practices offer models for children who come in conflict with the law without resorting to detention. For example, in Somalia, under customary law, traditional elders oversee the resolution of conflicts and compensation for crimes or disputes. If a child has committed an offence, the parents of the child and the victims will go together to see an elder who will decide on the compensation to be paid by the child's parents.[179] However, attempts to extend or adapt such models should beware of practices that may contravene the CRC and other human rights instruments, in terms of punishments available and in some cases in terms of gender relations. In Somalian traditional justice, for example, women are generally unable to speak for themselves, and compensation is always less for crimes against women than for those against men.[180]

In recent years, a number of NGO initiatives have been taken in countries where police routinely detain children for petty offences. For example, in the Philippines, as many as 94% of children detained in custody are first-time offenders, and the level of violence they experience in custody is high. In the country's Visayas island group, local Children's Justice Committees have been formed to handle the cases of children arrested for minor offences, using mediation between the parties. This project, run by FREELAVA, a Filipino NGO, is now operational in 10 *barangays* (villages or municipal wards) with a population of between 10,000 and 100,000. Community volunteers and peer counsellors, who were themselves previously children in conflict with the law, assist children removed from custody and help them reinte-

grate in the community. Even though more serious cases – murder, rape, drug trafficking, extreme violence – do not get handled by the Committees, the reintegration service can help them upon their release from prison.[181]

A number of 'good practice' lessons have emerged from community-based diversion efforts. Such programmes should be appropriate to the age and maturity of the child, and can include the creation of cautioning or warning systems, in-home supervision, victim/offender mediation, community service as a sentence, and family and community counselling. Many other options are available and should be explored to fit local conditions.

PROTECTION FROM VIOLENCE WITHIN INSTITUTIONS

It is of utmost importance that *all* children who are placed in care systems or detention facilities should be protected from *all* forms of violence. To do so, a clear legal framework and a range of policies, regulations and programmes must be in place.

Staff selection, training and remuneration

Given the documented levels of violence perpetrated by staff against children in institutions, staff who work in both care and justice systems – including foster carers – should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages. Levels of staffing should ensure effective care and oversight.

"We feel our juvenile justice systems have the responsibility to rehabilitate youth and integrate them back into society rather than subject them to more violence."

Children, North America, 2005 [XI]

Staff must be trained in child rights and non-violent disciplinary measures. Care should be taken not to train staff in such a way as to create a gulf between them and children and young people. The overwhelming need of children is for nurture, and few react well to being treated like 'clients' and 'caseloads'.

Efforts should be made to improve the status of individuals working with children in care and justice systems, to ensure high-calibre employees. Health-care and educational staff should be institutionally independent from the agency that runs the institution. All staff should be required to report all instances of violence.

Conforming to international standards

Where children are held in custody, international standards of due process should be strictly followed (see the Introductory section of this chapter on the relevant UN standards). These include the right to be informed promptly of charges against the young detainee, the right to legal assistance, and a swift determination of the child's case.

Notification of a child's parents or legal guardians, including NGOs accredited to work with children, should be mandatory whenever a child is arrested or taken into custody. From the earliest stage of apprehension, children should receive free medical and legal assistance from independent professionals. A parent, guardian or 'appropriate adult' should be present during any interview or interrogation of children. Guidelines for transfers should be adopted and strictly observed to limit the length of time that children are in police custody, and

ensure their transfer to more appropriate care. Police stations and lock-ups should be subject to regular, independent monitoring.

Conditions in all institutions should conform to international standards, including the provision of health and mental health care, adequate nutrition, and sanitation. Children's dignity and need for personal space should be respected. Children should be separated from adults, and younger, more vulnerable children should be separated from those that are older or known to be violent. Facilities should not be overcrowded, and children should have opportunities for recreation and mobility. Children should not lose their right to education, vocational training, and other programmes to facilitate their full development.

Monitoring and investigation

All facilities should be independently inspected and monitored by qualified bodies with full access to the facilities and freedom to interview children and staff in private. These bodies should have the power and capacity to monitor conditions and investigate any allegations of violence in a timely manner. Such bodies could include ombudspersons, independent commissions, citizens or police review boards.

Complaints mechanisms

Children in both care and justice systems should have simple, accessible and safe opportunities to complain about the way they are treated without risk of reprisal. Children should also have opportunities to express themselves freely and verbalise their concerns, particularly for those

reluctant to access formal complaints mechanisms. Children and their families should also have an appeals process if they are not satisfied with the response to their complaint.

REDRESS AND RESPONSE MECHANISMS

When violence against children takes place, whether in care or detention institutions, perpetrators must be held accountable and the children affected must receive appropriate care, support and compensation. Children who have been subjected to violence (either previous to or subsequent to their placement) should receive appropriate medical and mental health care. Appropriate interventions can include educational and psycho-social individual or group work with the child, or psychotherapy. Special attention should be given to restoring their confidence in human relationships as an important part of the healing process. In the case of ethnic and other minorities that have systematically been institutionalised at higher rates than the rest of the population, particularly when this has been the result of Government policy, collective forms of redress may need to be considered.

Violence against children will never be fully eliminated as long as perpetrators believe that they can get away with it. To ensure there is no impunity for perpetrators of violence against children, States should therefore ensure a continuum of appropriate sanctions against individuals who are responsible for violence against children in institutions, and against the way in which institutions (public or private) are man-

aged where such violence takes place. This continuum should include:

- criminal prosecution
- civil actions, including those for damages or injunctive relief (such as ordering changes in the institution)
- administrative proceedings (such as revoking licenses, imposing fines, or closing facilities)
- professional sanctions related to employment (e.g. a note in an employee's personnel file, dismissal, being barred from working with children).

Finally, policy is improved if it is based on reliable data, and if this data is open to the public. All placements should be registered and centrally reported, and disaggregated statistics should be made publicly available for all children in all forms of care and detention. States should analyse and publish data on all instances of violence, the response to complaints, and enforcement practices, including actions taken against perpetrators of violence towards children, or against institutions in which such acts of violence take place.

DE-INSTITUTIONALISING CHILDREN ALREADY IN CARE

As alternatives are developed and implemented, concerted efforts should be made to shut down large institutions (see box). Where de-institutionalisation is introduced, this needs to be done with great care and in a monitored and appropriate manner.

CASE STUDY: DE-INSTITUTIONALISATION IN SUDAN

In 2003, approximately 110 infants were abandoned on the streets of Khartoum every month, with 50% dying within hours. Those who survived were admitted to Maygoma, Khartoum's only institution for infants, where mortality rates reached 75%. Between 1998 and 2003, of 2,500 infants admitted, only 400 survived. Those that lived suffered severe developmental delays and some suffered from chronic illnesses due to poor nutrition and to lack of stimulation and individual care.

To address the problems at Maygoma, the Sudanese Government, UN organisations, community groups and key NGOs including Médecins Sans Frontières and Hope and Homes for Children formed a task force. This task force identified three main needs in the community: services to prevent the separation of children from their families, and services to reunite families; alternative family care for children who could not live with their families; and specialist services for children with disabilities. Its goal was the eventual closure of Maygoma.

The programme developed by the task force included communications strategies to address the stigma attached to children born outside marriage; the training and activation of social workers; the development of alternative family care programmes (for both emergency and permanent placements), and prevention programmes to identify mothers at risk and to reunify infants with their birth mothers.

The programme has been enormously successful. The mortality rate at Maygoma dropped to 33% by 2004, and to 10% by 2005. Admissions from the streets have decreased from 75% to 30%, and 51 infants have been reunited with their mothers. More than 500 infants have been placed in alternative family care in less than two years. All of these infants recovered their developmental delays. The programme is also cost-effective. The expense for each child in alternative family care is only one-tenth the cost for care in Maygoma.

Maygoma is scheduled to close in 2006.[184]

In order to ensure that children are not unnecessarily retained in residential or other care, placements should be reviewed regularly to assess whether the child's continued institutionalisation is necessary, or whether alternative placements or a return to the child's family is possible (CRC article 25). This assessment should be carried out with the full involvement of the child and, where appropriate, with the child's family, together with a multi-disciplin-

ary group including educators, social workers, representatives of the facility, and others.

Children who go out into the world at the end of a long period of institutional care or detention should not simply be left to fend for themselves, without follow-up and support. Many children feel as if they have 'been pushed off a cliff' when they leave care and have to manage their lives independently; they may have no experience of making the simplest decision on their own behalf. They may lose their friends and what they regard as 'home', and have great difficulty adjusting to any new regime, whether independent or in another form of care. For example, children formerly in care in the USA who became homeless after leaving the system identified the need for instruction in everyday life skills, transitional living programmes, and help from social workers in locating homes and available services. They also explained how highly regimented settings in group homes limited their ability to practice independent decision-making and learn other skills that would prepare them for adulthood before leaving the system. "Don't over-shelter us and then expect us to be independent," said one young woman.[183]

PUBLIC EDUCATION: GETTING THE MESSAGE OUT

Societal attitudes play an important part in how institutions treat – or mistreat – children in their charge. Efforts should therefore be made to conduct public campaigns to promote children's rights and counter negative stereotypes of certain groups of children, such as children living or working on the streets, children from racial and ethnic minorities, parentless children, children with disabilities, and children affected by HIV/AIDS, since exclusion and discrimination exacerbate the risk of violence. Individuals and families should be encouraged to demand more support in caring for their children themselves, and to resist pressures to give children up to institutional care.

WHERE RESOURCES ARE SCARCE

Many of the responses described in this chapter depend on the capacity of care systems and the availability of qualified social workers. In many countries, that capacity is at a very low level, or non-existent, particularly in rural areas. For example, the lack of social workers is acute in many countries. Government officials in Namibia reported in 2002 that there were only 118 registered social workers in the entire country, and that in the Caprivi region, there was only one social worker to serve a population of 79,000. In Zimbabwe, the Child Protection Society reported that the loss of social workers through emigration led to significant delays in the review of child welfare cases, children becoming 'stuck' in institutions, and to delays in foster family placements.

However, much can be achieved by community-based organisations and resources. These include faith-based groups, neighbourhood associations, women's groups, and committees of village elders or other community leaders. While some may be formed or take on such responsibilities spontaneously, or in reaction to specific events, building the capacity of local communities and para-professionals is crucial.

In response to rising numbers of children's cases of petty crime being dealt with by the formal legal system, local councils in Uganda have received training to strengthen their roles for the protection of children in conflict with the law. Specific capacity-building initiatives and support for the local council committees have included: training on roles and jurisdiction in handling child-related cases, training on diversion measures, and capacity building on children's rights, growth and development, rehabilitation and reintegration. The local councils handle child-related cases, but also refer some cases to police and probation social welfare offices. The local councils also use alternative forms of punishment such as compensation, apology and restitution, and have organised sensitisation campaigns designed to teach surrounding communities about the value of non-custodial sanctions. This project has helped to divert child-related cases from the formal justice system.[185]

In Malawi, Community Crime Prevention Committees are combining traditional ways of handling children's issues with current law. The committees aim to divert children in conflict with the law from the court system, by counselling the family and the child, and supporting the child's reintegration. To support the work of the committees, UNICEF also supports sensitisation to increase the awareness of parents, teachers and especially traditional leaders about crime prevention and diversion possibilities. UNICEF Malawi reports that most petty crimes are now addressed within the community without police and judiciary involvement, and that both the number of court cases and levels of recidivism have decreased.[186]

RECOMMENDATIONS

All States have the obligation to protect all children from all forms of violence, wherever they are placed and irrespective of who is providing their care. To effectively prevent and address violence against children in care and justice systems, a range of actions must be taken, and a variety of organisations and constituencies need to be engaged. It is essential that action plans be formulated, costed and fully discussed in order to bring societies 'on board' with their objectives. In doing so, the voices of children and their families must be listened to and heeded.

For all care and justice settings

1. **Prohibit all violence in care and justice systems.** Governments should ensure that sectoral laws applying to care and justice systems reflect the State-wide legislative prohibition on all forms of violence. Legal prohibition should be backed by detailed guidance for all involved.

2. **Ensure institutionalisation is a last resort, and prioritise alternatives.** Governments should ensure that placement in an institutional setting is avoided wherever possible, and a full range of alternatives should be available for both care and justice systems.

3. **Ensure quality staffing and training.** Governments should ensure that staff recruitment, training and employment policies, and rights-based codes of conduct ensure that all those who work with children in care and justice systems are both

qualified and fit to work with children and young people, that their professional status is recognised, and that their wages are adequate. Levels of staffing should ensure adequate supervision and oversight.

4. **Sensitise police, referral agencies, lawyers, judges, institution managers and staff.** Governments should ensure that all those who come into contact with children during the process of their assimilation into care and justice systems should be familiarised with children's rights; this applies equally to the children concerned and to their parents.

5. **Ensure court systems are sensitive to the needs of children and their families.** Governments should ensure that child victims, including those who have witnessed family violence, are not re-victimised during the justice process nor subjected to extended or drawn out cross-examination or other legal processes. In line with the Guidelines on Justice for Child Victims and Witnesses of Crime (ECOSOC Resolution 2005/20), all investigations, law enforcement, prosecution and judicial processes should take into account the needs of these children in terms of their age, sex, disability and level of maturity, and fully respect their physical, mental and moral integrity. If it is in their best interests, children should be accompanied by a trusted adult throughout their involvement in the justice process. Moreover, the child's privacy should be protected, his or her identity and confidentiality respected, and he or she should not

be subjected to excessive interviews, statements, hearings and unnecessary contact with the justice process.

Consideration should be given to the use of video-taping and other testimonial aids such as the use of screens or closed-circuit televisions. Unnecessary contacts with the alleged perpetrator, or their defence counsel, should be eliminated. Speedy trials should also be ensured, unless delays are in the child's best interests.

6. **Regularly reassess placements.** Governments should ensure that authorities regularly review the reasons for a child's placement in care, residential or detention facilities, and assess whether continued institutionalisation is necessary; children (and their parents when appropriate) should be involved in reviews at all stages to determine appropriate care options.

7. **Ensure effective complaints, investigation and enforcement mechanisms.** Governments should ensure that children have simple, accessible and safe opportunities to raise concerns and complain about the way they are treated without the risk of reprisals, and have access to the courts when necessary. All allegations of violence must be investigated thoroughly and promptly, safeguarding 'whistleblowers' from reprisals.

8. **Effective sanctions against perpetrators.** Governments should adopt and apply a continuum of appropriate criminal, civil, administrative and professional proceedings and sanctions against individuals who are

responsible for violence against children as well as against those who are responsible for institutions where such violence takes place.

9. **Ensure effective monitoring and access.** Governments should ensure that institutions are inspected regularly by appropriately empowered independent bodies with the authority to enter without warning, interview children and staff in private and investigate any alleged violence; access to institutions by NGOs, lawyers, judges, ombudspersons, national human rights institutions, parliamentarians, the media, and others as appropriate should be assured, while respecting children's privacy rights.

10. **Registration and collection of data.** Governments should ensure that all placements and movements of children between placements, including detention, are registered and centrally reported. Data on children in detention and residential care should be systematically collected and published. At a minimum, such data should be disaggregated by sex, age, disability and reasons for placement. All incidents of violence should be recorded and centrally reported. Information on violence against children should also be collected through confidential exit interviews with all children leaving such institutions, in order to measure progress in ending violence against children.

For care and social welfare systems

11. **Support parents' capacity to care for their children.** Governments should fulfil their obligations to reduce rates of abandonment and institutionalisation by ensuring parents' access to adequate support, including services and livelihood programmes. Priority should be given to supporting families of children with disabilities, and other children at high risk of abandonment or institutionalisation.

12. **Ensure that alternatives to institutionalisation cover all children in need of care.** This includes all children in need of care, especially orphaned children, those with disabilities, and minority or marginalised groups. Government should ensure that family-based care options are favoured in all cases, and are the only option for babies and small children.

For justice systems

13. **Reduce detention.** Governments should ensure that detention is only used for child offenders who are assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time, and following judicial hearing, with greater resources invested in alternative family- and community-based rehabilitation and reintegration programmes.

14. **Legal reform.** Governments should ensure that all forms of violent sentencing are prohibited for offences committed before the age of eighteen, including the death penalty, and all indeterminate and disproportionate sentences, including life imprisonment without parole and corporal punishment. Status offences (such as truancy), survival

behaviours (such as begging, selling sex, scavenging, loitering or vagrancy), victimisation connected with trafficking or criminal exploitation, and anti-social or unruly behaviour should be decriminalised.

15. **Establish child-focused juvenile justice systems.** Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused, and have rehabilitation and social reintegration as their paramount aims. Such systems should adhere to international standards, ensuring children's right to due process, legal counsel, access to family, and the resolution of cases as quickly as possible.

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