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

Written statement* submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Violence against children deprived of liberty

1. Human Rights Advocates submits this statement to address the global issue of violence against children, particularly the most vulnerable, those deprived of their liberty, residing in care and justice systems.
2. Millions of children, “in every State, across boundaries, culture, class, education, income, ethnic origin, and age,”¹ are victims of violence in the family, in schools, at work, and in the community. Children in alternative care institutions and the justice system are particularly vulnerable, because they are separated from society, in a closed environment, with little monitoring.
3. It is estimated that around the world, more than 2 million children are in institutional care, and more than 1 million children are detained through justice systems. These numbers are likely to be underestimated due to under-reporting and a lack of reliable data.² This includes children in group homes, residential treatment, training schools, orphanages, mental health institutions, drug treatment facilities, institutions for sexual offenders, centers for the confinement of unaccompanied immigrant children in deportation proceedings, refugees seeking asylum, street children, detention centers, and prisons.
4. Under international law, children are rights holders that should be treated with dignity. Article 37 of the CRC demands that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person. Furthermore, the General Assembly adopted resolution 40/33 creating the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), the Secretary-General issued a Guidance Note on the UN Approach to Justice for Children, and the General Assembly adopted resolution 64/142, Guidelines for the Alternative Care of Children, all of which call not only for protection from abuse, but for institutionalization as a last resort and for the shortest possible amount of time.
5. Despite the international laws and guidelines, children in institutional and justice systems are constantly subject to sometimes legal and often socially accepted violence. In many cases, overcrowded and squalid conditions of the institution itself constitute forms of violence. Staff, guards, and others responsible for the well being of children use violence both as punishment and as a form of control. Children with disabilities may be subject to violence under the guise of treatment. Often children experience violence by older or more aggressive children, or adults if they are housed together.³ The violence comes in all forms of torture, beatings, isolation, restraints, rape, harassment, humiliation, neglect, and self-harm as a result of the unbearable circumstances.⁴ With the exception of a few scandals that reach public scrutiny, these abuses remain unnoticed and unpunished.
6. Children in alternative care institutions are already vulnerable, entering the system because of poverty, disability, mental illness, violence within the family, a family catastrophe, or a lack of alternatives.⁵ The majority of children in justice systems are there

¹ Paulo Sérgio Pinheiro, World Report on Violence Against Children 5 (United Nations Secretary-General’s Study on Violence against Children, 2006).

² UNICEF, NO. 8, PROGRESS FOR CHILDREN: A REPORT CARD ON CHILD PROTECTION 23-24 (2009).

³ Independent Expert for the U.N. Study on Violence Against Children, *Report of the Independent Expert for the United Nations Study on Violence against Children, transmitted by Note of the Secretary-General*, U.N. Doc. A/61/299 (Aug. 29, 2006) (by Paulo Sérgio Pinheiro) [hereinafter *Report*].

⁴ PINHEIRO, *supra* note 1, at 175.

⁵ *Id.* at 185-186.

for minor offenses or petty crimes.⁶ Many who end up in detention are in need of care and protection but are instead criminalized for being poor and homeless.⁷ In some cases, children are in detention for protective custody after being victims of violence, rape, or sexual assault, yet despite their differing legal status they are housed and regarded in the same abusive manner as offenders.⁸

7. Research documents the negative consequences of institutionalization on the development of the child and his subsequent reintegration into society.⁹ Long-term effects include severe developmental delays, disability, irreversible psychological damage, and increased rates of suicide and recidivism.¹⁰ The high level of violence that often accompanies institutionalization of children has extremely negative effects on brain development and results in a child's increased susceptibility to physical and mental health problems.¹¹ Efforts should not only focus on preventing all violence, but also addressing the needs of those child victims of violence.

8. Juvenile care and justice systems do not have the basic framework prohibiting all violence. They lack government regulation and oversight, effective complaints mechanisms, and inspection systems.¹² Accessing legal aid and legal services proves extremely difficult for these children.¹³ Furthermore, staff members and other perpetrators often enjoy impunity because they retaliate against children who file grievances.¹⁴ As a result, cases of abuse frequently go unreported.

9. HRA commends the Secretary-General's Special Representative on Violence Against Children, for her efforts to create awareness and promote the end to violence against all children. As she properly notes, one of the most important first steps is to enact national legislation explicitly banning all forms of violence against children. In this respect, HRA praises the states with full prohibition of violence against children in all settings, and those who have made explicit commitments to pursuing such legislation, specifically noting the recent "Marrakesh Declaration" adopted unanimously by the League of Arab States.¹⁵ HRA calls on all other states to promptly enact such legislation.

10. In order to fully understand and properly address the issue of violence against children deprived of liberty, States need to create research programs and data collection. One such study in Ethiopia called "Improving Care Options for Children in Ethiopia through Understanding Institutional Child Care and Factors Driving Institutionalization,"

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

⁷ PINHEIRO, *supra* note 1, at 175.

⁸ *Id.* at 194.

⁹ Bernardine Dohrn, "I'll Try Anything Once": Using the Conceptual Framework of Children's Human Rights Norms in the United States, 41 U. Mich. J.L. Reform 29, 40 (2007).

¹⁰ *Report, supra* note 3, at ¶ 54.

¹¹ PINHEIRO, *supra* note 1, at 5.

¹² *Id.* at 176.

¹³ Statement by Manfred Nowak, Special Rapporteur on Torture, and other cruel, inhuman or degrading treatment or punishment, Sexual Violence in Institutions, Including in Detention Facilities, Thirteenth Session of the Human Rights Council, (Mar. 10, 2010), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9919&LangID=E>.

¹⁴ Christina Okereke, *The Abuse of Girls in U.S. Juvenile Detention Facilities: Why the United States Should Ratify the Convention on the Rights of the Child and Establish a National Ombudsman for Children's Rights*, 30 Fordham Int'l L.J. 1709, 1739 (2007).

¹⁵ UNICEF, *Marrakesh Declaration, a New Milestone for Children's Rights*, UNICEF PRESS CENTRE, Dec. 21, 2010, available at http://www.unicef.org/media/media_57288.html.

resulted in the revised National Guidelines for Alternative Care of Children, and other efforts toward policy reforms, reform with the care institutions, and encouragement of non-institutional alternative care options.¹⁶

11. The European Commission's Daphne II Programme financed a study in Belgium, England and Wales, France, and the Netherlands, which developed 12 indicators on violence against children deprived of liberty in an effort to support registration and collection of data.¹⁷ HRA urges other States to make similar studies and subsequent changes.

12. Most importantly is ending impunity of perpetrators, by creating an independent, child-sensitive body to monitor institutions, and receive, investigate, and address complaints from children. The ombudspersons in the 29 European nations in the European Network of Ombudspersons for Children are effective in raising awareness, advocating for explicit legislation, and developing independent offices to address children's issues.¹⁸

13. In Iraq, several Governors vowed their commitment to establish Child Rights Committees to review the situation of children's rights and develop plans of action on how to meet the most urgent needs of children.¹⁹ HRA commends these positive steps and encourages other States to do the same.

Recommendations

14. Human Rights Advocates commends the progress of the Secretary-General's Special Representative and calls upon the Council to:

- (a) Affirm the importance of institutionalization as a last resort and for the shortest possible time.
- (b) Consider means for preventing violence against children in official settings.

15. HRA further asks Member states to:

- (a) End impunity and ensure transparency through the creation of an independent, well funded, and child-friendly monitoring, complaint, and investigation mechanism such as an ombudsman or human rights institution at regional, national, and local levels.
- (b) Engage in better training, awareness, and sensitization programs to staff, guards, and child-care professionals working in juvenile care and justice institutions.
- (c) Ensure appropriate facilities for children who are institutionalized. Separate children from adults, and those children going through judicial processes from those in need of protection.

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

¹⁷ VOLZ, *supra* note 6, at 37.

¹⁸ INTER-PARLIAMENTARY UNION & UNICEF, HANDBOOK FOR PARLIAMENTARIANS NO. 13, ELIMINATING VIOLENCE AGAINST CHILDREN 22 (2007).

¹⁹ UNICEF, *Children's Rights Events Across Iraq Conclude; Several Governorates Agree to Establish Child Rights Committees*, UNICEF NEWS NOTE, Dec. 10, 2010, available at http://www.unicef.org/media/media_57177.html.