



Paulo Sérgio Pinheiro



Children behind bars: Promoting restorative juvenile justice

by Paulo Sérgio Pinheiro

Institutional violence perpetrated against children in conflict with the law is a fundamental concern for child protection and adolescent rights. International standards of human rights, such as the Convention on the Rights of the Child, have identified these youth as being the very groups that need special assistance and protection for rehabilitation and reintegration into society. In reality, they are often the most vulnerable members of society, and are routinely submitted to the worst forms of violence.

Legal systems were designed to be the final protectors of societies and individuals, yet it is not uncommon for those in power to violate the rights of the state's own citizens. Authorities throughout history and in all regions of the world have exploited political unrest, economic hardship or natural disasters as an excuse to promote repressive and arbitrary strategies against children and youth. These actions often contradict international human rights laws and agreements. Stigmatized and vulnerable, children and youth in conflict with the law have difficulty in their communities, and are habitually subjected to degrading treatment by state authorities and institutions.

Violence against children

Twenty years after the introduction of the Convention on the Rights of the Child, increased levels of violence against children in many regions of the globe are undermining the important and decisive achievements of the Convention. With its specific references to a human rights-based approach to child survival and development, protection, and participation, the Convention has made an invaluable contribution to the rights of children behind bars. In my mind, this is the most important impact the treaty has for child victims of institutional violence. Yet despite this achievement, the role of security and justice systems in oppressing youth remains a major source of violence against them.

In 2003, I was appointed to work on a United Nations mission examining violence against children. For several years, I collaborated with experts across the globe to identify threats children face, and to analyze the vulnerabilities that plague them. Our work, published in the 2006 World Report on Violence Against Children, demonstrates that the overwhelming majority of children in the criminal justice system do not belong there.

Many of these children come from communities and homes without a stable social network or access to education and basic material needs. As a result, they are subjected to inadequate care and protection systems, leading them to fall through society's cracks. For these children, the likelihood of turning to drugs and petty crime, becoming a party to sexualized commerce and coming into conflict with the law is greatly enhanced.

Children face a high risk of violence at virtually every stage of contact with the justice system, and the misuse of detention puts large numbers of them at risk for violence. Perhaps of greatest concern is the impunity and lack of accountability that many state perpetrators of violence have. I believe this has created an entrenched culture of abuse towards youth in many legal systems throughout the world.

Juvenile justice

The Convention is the most important instrument concerning the promotion, respect and implementation of the human rights of children. For the past 20 years, it has embodied the core norms for the development of legal instruments, programmes and policies concerning children. The juvenile justice system is one of the sectors that has benefited the most from the near-universal ratification of the Convention.

Several articles assert the rights of children to physical and personal integrity, and establish high standards for the protection of children against violence. Article 19 is central in this context, providing that states must take all measures "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

Article 37 mirrors the Convention against Torture and Other Forms of Inhuman and Degrading Treatment or Punishment, declaring that every child has the right to protection from "torture or other cruel, inhuman or degrading treatment or punishment" from capital punishment and from life imprisonment without possibility of release.

These articles provide a basic foundation for policies to decrease the number of children coming into conflict with the law in the first place, by addressing the root challenges they face relating to

care and protection. But for these efforts to be successful, a more comprehensive application of the Convention – focusing on the decriminalization of such survival behaviours as begging, loitering and vagrancy – is urgently needed.

State sanctioned care

Likewise, youth who are victims of sexual abuse and exploitation must be treated with care and respect by state authorities, instead of being treated as criminals. There is an urgent need to reserve the formal criminal and juvenile justice systems for only the most serious and violent of offenders. Ensuring comprehensive, child-focused restorative juvenile justice systems is the best path for an effective implementation of the Convention and other international standards.

There are no quick or easy solutions to transforming formal and societal attitudes towards child rights. Nor are there universal plans that can be developed and replicated across countries without regard to local contexts, resources and behaviours towards child rights. Accountability for crimes of violence against children must be achieved, and I am convinced that by utilizing the Convention, governments and communities can make lasting changes to the way youth are treated.

It is imperative for all those who work for child rights to recognize that children are indeed people. As Maud de Boer Buquicchio, Deputy-Secretary-General of the Council of Europe, poignantly observed, children are not mini-human beings, with mini-human rights. Thanks to the Convention on the Rights of the Child, the world's governments no longer consider them so.

Paulo Sergio Pinheiro is the Commissioner and Rapporteur on Children for the Inter-American Commission on Human Rights. From 2003 to 2008, he served as the Independent Expert of the UN Secretary-General for the study on violence against children. Currently, he is a research associate at the [Center for the Study of Violence](#) in Sao Paulo, Brazil.