Violence against children

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1. Introduction: The children’s rights turn – an interdisciplinary challenge

In 1991 the new interdisciplinary field of Children’s Studies (Lenzer, 2001) was founded at The City University of New York. The field rested on the connected philosophical, methodological and empirical premises that children must be understood, represented and heard in their wholeness as human beings. It was not sufficient to have a conglomeration of disciplines focusing on different and often disparate aspects of children, ranging from child psychology, children’s literature, pedagogy and education, the sociology of children, the history of children to child protection or juvenile justice, medical science and the law. An aggregation of the findings from these disciplines, while perhaps multidisciplinary, does not offer the fullness of understanding we owe to children and young people. In light of the fragmentation of knowledge, a novel and interdisciplinary approach was seen as a new challenge and mandate for the world of scholars, reformers and policy makers.

From its inception, the field of children’s studies adopted the human rights of children, as articulated in the holistic UN Convention on the Rights of the Child (CRC), as its overarching framework. The adoption of the CRC in 1989, based on the conception of the civil, political, economic, social and cultural rights of children, represented a turning point in the study of, for and with children. Even though advocacy for the rights of children has a long history, the Convention ushered in what, for want of a better term, must be called a holistic “children’s rights turn” – historically as well as locally, regionally and globally. For when viewed in its articulation of the civil, political, economic, social and cultural rights of children as their human rights, the Convention represents the best interests of the child in the totality of her/his abilities, propensities and needs for provision, protection and participation. This human rights
instrument was thus itself a call to interdisciplinary attention and action on the part of scholars, advocates and policy makers (Lenzer, 1996, 1998, 1999, 2009). The universality and interdependence of human rights represent a challenge to all involved in comprehensively promoting the human rights of children and of human justice. This chapter offers a history of this turn, and its impact and implications for both the theory and practice of the field of children’s rights.

2. Violence against children: An expansion of the CRC

Close to a decade ago, in October 2006, Paulo Sérgio Pinheiro's World Report on Violence against Children (hereafter, World Report) was published under the imprimatur of United Nations Secretary-General Kofi Annan. “In 2001, on the recommendation of the Committee on the Rights of the Child, the General Assembly in its resolution 56/138 requested the Secretary General to conduct an in-depth study on the question of violence against children and put forward recommendations for consideration by Member States for appropriate action.” Launched on November 20, 2003, the World Report represents the comprehensive outcome of international, regional, sub-regional and national consultations, as well as surveys of expert thematic meetings on this topic. From the outset, the investigation involved children and young people and youth facilitators at all levels, making their active involvement a priority. The Study’s major foci, according to Pinheiro, “combined the perspectives of human rights, public health and child protection” and called for the establishment of the office of the Special Representative of the Secretary General (SRSG) on Violence against Children. The World Report and its recommendations provided the foundational framework for the mandate of the Special Representative. The office was established in September 2009 with the appointment of the first UN Special Representative, Marta Santos Pais. Most importantly, the campaign to end Violence against Children foregrounds one pillar of the CRC – the protection of children worldwide from maltreatment in any form by way of policy, legal efforts and public educational measures. This emphasis on protection represents an historic shift in the approach to children’s rights.

3 Although there are numerous debates in the literature about the definition of a child, for the purpose of this essay, the author is using Article 1 of the CRC according to which “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” If legal and policy measures are required to eliminate violence against children or their maltreatment, the binding legal definitions of what constitutes a child in a society are of importance. For example, in the United States all laws, regulations and national statistics define a child as being under the age of 18. There are of course exceptions such as in the case of adult criminal responsibility which in the states of North Carolina and New York starts at age 16.


5 “The participatory processes that led to this report brought together the experience of governments, international organizations, civil society organizations, research institutions and children.” (World Report, 2006: xiii). Independent Expert for the United Nations Secretary General’s Study on Violence against Children.
2.1. The history of the emergence of the new paradigm within the children rights arena

It should be noted at the outset that the introduction of the term “violence” is not simply a terminological change. In fact, the term was used for the first time in the entire CRC in Article 19; before that the preferred terminology in most legal, social science and policy discussions was “child abuse and neglect.” In other words, the introduction of the domain of “violence against children,” was a significant expansion in the perception of a real world problem, and thematic, and one that must not be overlooked or seen as a simple shift in usage. In fact, it was this broadened conceptualization of a global phenomenon that is responsible for the expanded treatment of “violence against children” both in the global study and the World Report. In other words, the children’s rights movement and its literature underwent a paradigm shift: the recognition that the phenomenon of violence in its numerous manifestations represents a global and comprehensive assault on the human dignity of children and young people – a violation of their human rights.

Just as child poverty represents a global phenomenon, so violence against children represents a present and mostly invisible global reality sustained by a variety of cultural, social and religious practices, beliefs and norm systems that may support and even legitimate it. Moreover, violence against children opens up the inequitable structures of Western and non-Western societies to full view, making them visible as infrastructures of the world of children and young people who suffer the deleterious effects of the violence they are exposed to – either as direct victims or as witnesses.

Although the Committee on the Rights of the Child initiated its in-depth study on violence against children in 2003, the background of the CRC’s recommendations begins with the Committee’s general discussion days in September 2000 and September 2001. In its deliberations in 2000, the CRC focused on “State Violence against Children.” In 2001, the focus was on “Violence against Children, within the Family and in Schools.” And since that time, the conceptualization of violence against children as an assault on the rights and human integrity of the child has led to a continuing expansion of the CRC and the work of the Committee in order to make visible an “underworld,” as it were, in which children worldwide live with little recourse and few remedies. Thus the addition of violence against children and the call for their protection from it must be seen as a radical shift and step forward in the interpretation and implementation of the CRC in the best interests of the child.

2.2. World Report on Violence Against Children

In the three-year study that resulted in the World Report on Violence against Children, Article 19 of the CRC is of signal importance. Article 19(1), reads:

8 Other relevant Articles are 37, 40, and the general principles of Articles 2, 3, 9 and 12.
9 As Pinheiro put it in the “Summary”: “The definition of violence is that of Article 19 of the CRC: ‘all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.’” (World Report, 2006: 4).
States Parties shall take all appropriate legislative, administrative, social and educational 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.

According to Pinheiro, moreover, “Each child has the right to his or her physical and personal integrity and protection from all forms of violence. Children, as human beings, are entitled to enjoy all the rights guaranteed by the various international human rights treaties that have developed from the Universal Declaration of Human Rights.” (World Report, 2006: 31). The World Report discusses violence against children in the context of international human rights law and standards. In addition to the protections contained in the CRC, children are also entitled to the protections contained in international legal instruments relating to international criminal, humanitarian, refugee and labor law; regional human rights systems; and in any non-binding instruments. Moreover, children are “entitled to the rights and procedures set out in the International Bill of Rights, consisting of the International Covenants on Economic, Social and Cultural Rights, and that on Civil and Political Rights” (World Report, 2006: 31).

As we shall see, the World Report and the three-year global study on which it is based mark a milestone in the children’s rights movement. Its historical significance cannot be underestimated, for it “discovered” and made visible an invisible reality that from then on could no longer be ignored. It helped to expand and radically transform the interpretation of the CRC and with it the responsibilities of all state parties to the Convention to take all measures to protect children from all forms of physical and emotional violence and maltreatment.

2.3. Principles and recommendations of the World Report

The Report emphasizes as the guiding principle of the Study the ideas that “no violence against children is justifiable”; that violence can be prevented and that states have the “primary responsibility to uphold children’s rights to protection and access to services.” (Kofi Annan, 2006: xi). It is important to note as well Kofi Annan’s emphasis on prevention, “protection” and “access to services” – as the major mission of the campaign to end Violence against Children. In addition, the Study includes the affirmation that “Children have the right to express their views, and to have these views taken into account in the implementation of policies and programs.” (World Report, 2006: 17).

The twelve overarching recommendations of the Study (World Report, 2006: 18–24) are:

1. Strengthen national commitment and action.
2. Prohibit all violence against children.
4. Promote non-violent values and awareness-raising.
5. Enhance the capacity of all who work with children.

10 Italicics added.
11 Article 19, however, represents only one human rights instrument effective in the Report, since according to Pinheiro “the notion of child protection in the CRC goes well beyond non-exploitation. Within its holistic framework for the upbringing, well-being and development of the child. … numerous other articles are of importance to the Study.”
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6. Provide recovery and social reintegration services.
7. Ensure participation of children.
8. Create accessible and child-friendly reporting systems and services.
9. Ensure accountability and end impunity.
10. Address the gender dimension of violence against children.
11. Develop and implement systematic national data collection and research.
12. Strengthen international commitment.

2.4. Scope of the World Report

As far as the central socio-cultural and economic violence domains in the World Report are concerned, Pinheiro summarizes:

Violence against children cuts across boundaries of geography, race, class, religion and culture. It occurs in homes, schools and streets; in places of work and entertainment, and in care and detention centers.

Perpetrators include parents, family members, teachers, caretakers, law enforcement authorities and other children. Some children are particularly vulnerable because of gender, race, ethnic origin, disability or social status.

The consequences of violence can be devastating. Above all, it can result in early death. But even children who survive must cope with terrible physical and emotional scars. Indeed, violence places at risk not only their health, but also their ability to learn and grow into adults who can create sound families and communities.

Violence against children is thus a major threat to global development and our work to reach the Millennium Development Goals.

(World Report, 2006: xi)

The World Report examines in detail violence against children in their five major settings: “home and family, schools, care and justice systems, workplaces and the community” (World Report, 2006: 7). The Report provides estimates of violence against children for all five settings, ranging from homicides to non-fatal physical violence, with special emphasis on corporal punishment, neglect, sexual exploitation, psychological violence, and harmful traditional practices among others, differentiating them according to age groups. The account also discusses short-term and long-term disorders resulting from violence. One of the most significant findings relates to the risk factors of age and sex. As far as violence against children in the home and family is concerned, Pinheiro reports: “In general, children under 10 are at significant greater risk than children aged 10 to 19 of severe violence perpetrated by family members and people closely associated with the family.” (World Report, 2006: 50). While approximately 50% to 75% of murders of children aged under 10 are by family members, this proportion drops to about 20% of murders of children aged 10 to 14, and 5% of murders of children aged 15 to 19.” (World Report, 2006: 50). And when it comes to the sex of a child, a “US study found that female victims were twice as likely as male victims to have been killed by a family member.” (World Report, 2006: 50).

Despite the often invisible nature of violence against children, its international range and extent was a major concern for the Report, largely because such violence had, in the judgment of experts, reached epidemic proportions. It is telling that the Report’s first table presented the (very limited) extent to which children are legally protected from corporal punishment, revealing that only 2 percent of children are protected from corporal punishment in the home, 4

280
percent in alternative care, 42 percent in schools and between 42 and 81 percent in penal institutions either as form of a sentence or as disciplinary measures. In other words, the phenomenon of corporal punishment was from the outset a major concern in the *World Report*, and it will be further discussed below in more detail as a central component of violence against children. It is worth noting here that historically physical and emotional punishment by parents or family members has been widely considered a matter of “disciplining” children for their improvement – and has been seen as a private parental prerogative, particularly when it occurs in the home.

In order to demonstrate the “range and scale of violence against children,” Pinheiro also referred to data provided by the WHO and the ILO for 2002: according to their estimates 53,000 child fatalities were homicides (*World Report, 2006: 11*). Of particular importance here are risk factors according to age:

In countries where homicide statistics are analyzed according to age of the victim, 15–17-year-olds are the age group that is most at risk. The second high-risk group are infants. Data from OECD countries suggests that the risk of death is about three times greater for children under one year old than for those aged 1 to 4, who in turn face double the risk of those aged 5 to 14. The younger the child, the more likely their death will be caused by a close family member.

(*World Report, 2006: 51*)

In addition, 218 million children were involved in child labor in 2004, 126 million of whom were engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced and bonded labor, 1.8 million in prostitution and pornography, and 1.2 million were victims of trafficking (*World Report, 2006: 12*). When it comes to the number of children who witness violence in the home, the estimates for all MDG (Millennium Development Goals) Regions range from 133 to 275 million children (*World Report, 2006: 71*).

In his transmittal of the *World Report* to the UN General Assembly (United Nations, General Assembly, 2006: 9), then Secretary General Kofi Annan highlighted the following statistics: “up to 80 to 98 per cent of children suffer physical punishment in their homes, with a third or more experiencing severe physical punishment resulting from the use of implements.”13 “WHO estimates that 150 million girls and 73 million boys under 18 experienced forced sexual intercourse or other forms of sexual violence during 2002.” (United Nations, General Assembly, 2006: 10).

### 2.5. The institution of the Special Representative of the Secretary General on Violence Against Children

The issuance of the *World Report* led in May of 2009 to the appointment of Marta Santos Pais, Esq. as the “Special Representative of the Secretary General on Violence Against Children” (SRSG). Ms. Santos Pais’s mandate was renewed for three years in 2013. Over the last five years, Santos Pais has pursued numerous missions across the globe and organized many meetings with

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13 The circumstance of physical punishment in the home assumed a major role in the *World Report*, and we shall come back to this below, in the section on Corporal Punishment. For reasons of space, discussion of such other forms of violence against children as sexual exploitation, child soldiers, and children in legal systems had to be omitted.
governments, legislators, policy makers, children and youth organizations, NGOs and other
civil society bodies.

Since 2006, the *World Report* has been a guiding document for all subsequent developments
in the field of children’s human rights, developments that have been chronicled in annual
reports by the SRSG to the General Assembly since 2010. There are also numerous docu-
mentations of the missions of the SRSG and her accomplishments. In addition, the Office
of the SRSG has published numerous documents and thematic reports including *Prevention of and
Responses to Violence against Children within the Juvenile Justice System* (Office of the SRSG,
2012a); *Safe and Child-sensitive Counseling, Complaint and Reporting Mechanisms to Address Violence
Against Children* (Office of the SRSG, 2012b); *Political Commitments by Regional Organizations
and Institutions to Prevent and Address Violence against Children* (Office of the SRSG, 2012c);
*Protecting Children from Harmful Practices in Plural Legal Systems* (Office of the SRSG, 2012d);
*Tackling Violence in Schools: A Global Perspective Bridging the Gap Between Standards and Practice
(Office of the SRSG, 2012e), Promoting Restorative Justice for Children* (Office of the SRSG,
2013a) and most recently *Toward a World Free from Violence: Global Survey on Violence Against
Children* (Office of the SRSG, 2013b). These reports represent major and detailed commentary
and offer recommendations on topics from violence against children in such different settings
as schools and juvenile justice institutions to the promotion of restorative justice mechanisms.

In one instructive report, *Political Commitments by Regional Organizations and Institutions to
Prevent and Address Violence against Children* (SRSG, 2012c), the SRSG chronicled the results
of her work with governments, policy makers, NGOs and children. This report provided a
detailed account of Marta Santos Pais’s international missions and policy accomplishments from
2009 through 2012. They ranged from the “Council of Europe Policy Guidelines on integrated
national strategies for the protection of children from violence (2009),” reports from Africa,
Asia, South Asia, Latin America, the Caribbean and declarations of Kingston, Santa Domingo,
Cairo, Marrakesh, Doha, Beijing, to the declaration of young persons of the Caribbean and the

Wherever and whenever possible, the SRSG involves children and young people in her
global mission and makes sure that even younger children have their voices heard, understand
what maltreatment of children is all about and know how to engage in its abolition.

3. Corporal punishment as a central component of violence against
children

Although corporal punishment was not explicitly mentioned in the CRC, it emerged as a
major theme in the Committee from its fourth Session in 1993 forward. According to CRC
documents, the committee members noticed the widespread existence of corporal punishment
in the reports from individual state parties. The Committee documented their observations
carefully. Writing its own history, as it were, the Committee pointed out that

> Already by 1993, the Committee noted in the report of its fourth session that it “recog-
nized the importance of the question of corporal punishment in improving the system of
promotion and protection of the rights of the child and decided to continue to devote
attention to it in the process of examining States parties’ reports.”

(Bitensky, 1996)

14 Committee on the Rights of the Child, Report on the fourth session, 25 October 1993,
CRC/C/20, para. 176.
Later, the Committee explained the relationship between its concerns about corporal punish-
ment and its later inclusion under the enlarged conception of violence against children in its
General Comment 8 as follows:

1. Following its two days of general discussion on violence against children, held in 2000
and 2001, the Committee on the Rights of the Child resolved to issue a series of general
comments concerning eliminating violence against children, of which this [General
Comment No.8] is the first. The Committee aims to guide States parties in understanding
the provisions of the Convention concerning the protection of children against all
forms of violence. This comment focuses on corporal punishment and other cruel or
degrading forms of punishment, which are currently very widely accepted and practiced
forms of violence against children. (CRC/C/GC/8, page 3).

2. The Convention on the Rights of the Child and other international human rights
instruments recognize the right of the child to respect for the child’s human dignity and
physical integrity and equal protection under the law. The Committee is issuing this
general comment to highlight the obligation of all States parties to move quickly to
prohibit and eliminate all corporal punishment and all other cruel or degrading forms of
punishment of children and to outline the legislative and other awareness-raising and
educational measures that States must take. (CRC/C/GC/8, page 3).

The wording of General Comment 8 is as follows:

**General Comment No. 8 (2006)** “The right of the child to protection from corporal
punishment and other cruel or degrading forms of punishment (arts.19; 28, para. 2; and
37, inter alia)” was the first planned general comment to focus on the elimination of
violence against children.15

The wide-reaching definitions provided by the Committee on physical and degrading punish-
ment are worth noting. The Committee defines

“corporal” or “physical” punishment as any punishment in which physical force is used
and intended to cause some degree of pain or discomfort, however light. Most involves
hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an imple-
ment – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example,
kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing
ears, forcing children to stay in uncomfortable positions, burning, scalding or forced inges-
tion (for example, washing children’s mouths out with soap or forcing them to swallow
hot spices). In the view of the Committee, corporal punishment is invariably degrading. In
addition, there are other non-physical forms of punishment that are also cruel and degrad-
ing and thus incompatible with the Convention. These include, for example, punishment that
belittles, humiliates, demigrates, scapegoats, threatens, scorns or ridicules the child.16

It was released during the Forty-second session, 15 May – 2 June 2006.
16 Emphases added.
The CRC’s decision to enumerate, in detail, acts that it considered physical and emotional maltreatment clearly demonstrates both its commitment to increasing awareness of the numerous ways in which the human rights and the dignity of a child are violated and its resolve to convince the global community that these were societal issues rather than private ones. Moreover, the Committee’s General Comment 8 is clearly descended from the groundbreaking World Report, the document that, it can be said, “discovered” the extent and range of violence against children and asserted that there was a state responsibility to protect children from violence. For these reasons, Comment 8 must be seen as a significant new chapter in the history of this work.

Both before and subsequent to General Comment 8, a literature on the elimination of corporal punishment has emerged (Bitensky, 1998, 2009, 2010, 2013; Gershoff, 2002; Kemme et al., 2014; Straus and Donnelly, 2005) and organizations have been created internationally to advocate its abolition. One of the most important, the “Global Initiative to End all Corporal Punishment of Children (hereafter, Global Report),” was launched as early as 2001 in Geneva and has been active ever since under the leadership of Peter Newell. Similar organizations have sprung up elsewhere such as the Every Child Matters Education Fund and The National Coalition to End Child Abuse Deaths in the United States, along with conferences and symposia addressing the topic of corporal punishment.17

As of the Global Report 2013 and the latest documents received, “44 states have prohibited corporal punishment in all settings, including the home.”18 In addition, global child populations are protected by law from corporal punishment in the following settings: in 41 countries in alternative care, in 41 in day care, 122 in schools, 124 in penal institutions and in 159 as sentences for a crime. These statistics, however, may be deceptive since the Report indicates that, for example, 94.6 percent of children globally can still be lawfully hit and hurt in their own homes (Global Report, 2013: 6).

4. The United States of America: A case study in the violence against children

While the data and estimates across the world may be problematic, the statistics from the United States alone are sobering. We include these data here both to highlight violence against children in a Westernized, industrial country, and to offer more recent information than is included in the World Report. The case study also serves as a model for the kind of data that is needed – and that is typically missing in the discussion of violence against children – for other countries.

Perhaps the most compelling data come from research and national surveys undertaken by David Finkelhor, Professor of Sociology, Director of the Crimes Against Children Research Center, and Co-Director of the Family Research Laboratory of the University of New Hampshire (Finkelhor, 2008). Known for his work on child victimization and maltreatment, Finkelhor coined the term “poly-victimization” to address the fact that most children and

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18 June 5, 2014: Brazil will become the 38th country to ban corporal punishment of children awaiting signature from the President. Brazil (child population 59,000,000) will be the first very large state to achieve prohibition.
juveniles “experience multiple victimizations.” (Finkelhor, Ormrod, et al., 2009a). Correctly, he has highlighted the problem of fragmenting types of victimization, given the “considerable overlap” (Finkelhor, 2008) between individual forms of victimization.

Finkelhor was commissioned by the US Office of Juvenile Justice and Delinquency Prevention (OJJDP) and supported by the Centers of Disease Control and Prevention (CDC) to conduct a national survey of “Children’s Exposure to Violence,” between January and May 2008.

[The survey] measured the past-year and life-time exposure to violence for children age 17 and younger across several major categories: conventional crime, child maltreatment, victimization by peers and siblings, sexual victimization, witnessing and indirect victimization (including exposure to community violence and family violence), school violence and threats, and Internet victimization. … This survey is the first comprehensive attempt to measure children’s exposure to violence in the home, schools, community across all age groups from birth to age 17, and the first attempt to measure the cumulative exposure to violence over the child’s lifetime.

(Finkelhor, Turner, et al., 2009b: 1)

The extraordinary results of this survey reveal the extent of violence against children in the United States.

The survey confirms that most of our society’s children are exposed to violence in their daily lives. More than 60 percent …were exposed to violence within the past year, either directly or indirectly. … Nearly one-half of the children and adolescents surveyed (46.3 percent) were assaulted at least once in the past year, and more than 1 in 10 were injured in an assault; 1 in 4 (24.7 percent) were victims of robbery, vandalism, or theft; 1 in 10 suffered from child maltreatment (including physical and emotional abuse, neglect, or a family abduction); and 1 in 16 (6.1 percent) were victimized sexually. More than 1 in 4 (25.3 percent) witnessed a violent act and nearly 1 in 10 (9.8 percent) saw one family member assault another. Multiple victimizations were common: more than one-third (38.7 percent) experienced 2 or more direct victimizations in the previous year, more than 1 in 10 (10.9 percent) experiences 5 or more direct victimizations in the previous year, and more than 1 in 75 (1.4 percent) experiences 10 or more direct victimizations in the previous year.

(Finkelhor, Turner, et al., 2009b: 1f)

The figures and number of incidents must be reported in detail to convey the overall picture of violence against children in America. One of Finkelhor’s latest surveys (Lincoff, 2013: 1) informs us that “two out of five children surveyed, or more than 40 percent, were physically assaulted in 2011. One in 10 children sustained an injury, and experienced sexual assault or sexual abuse, though the rate was nearly 11 percent for girls ages 14 to 17. The results also show that more than 13 percent of children and teens repeatedly experienced abuse by a caregiver, including 3.7 percent who suffered physical harm.” It was data like these that led US Attorney General Eric Holder to characterize the situation as one of “epidemic” proportions, when in September 2010 he initiated his “Defending Childhood Initiative” and established a National Task Force on “Children Exposed to Violence.” (US Department of Justice, 2012).
4.1. Child fatalities

When it comes to the number of child fatalities due to abuse and neglect, the US has the onerous distinction of being the leading country in the industrialized world. In fact, “federal data show that 10,440 children in the US died from abuse and neglect between 2001 and 2007, but experts say the real number may be as many as 5,000 higher.” (National Coalition to End Child Abuse Deaths). It was these realities that led to the Protect our Kids Act, passed by Congress in January 2013. This Act established a bi-partisan Federal Advisory Commission to Eliminate Child Abuse and Neglect Fatalities, CECANF) whose 12 members were appointed jointly by the President and congressional leaders. Its mandate is to develop a “comprehensive national strategy to reduce and prevent child abuse and neglect fatalities.” (National Coalition to End Child Abuse Deaths). The first public meeting of the Commission took place on February 24, 2014.

4.2. Other national data on child abuse and neglect, schools, foster care, and child poverty in the United States

Some of the most reliable data on child abuse and neglect are collected by the Child Welfare Information Gateway of the US Department of Health and Human Services, (USHHS) Administration of Children, Youth and Families (www.childwelfare.gov) via the National Child Abuse and Neglect Data System (NCANDS). The NCANDS reports that, in all, 6.3 million children were reported to Child Protective Services (CPS) during the period of October 2011–September 2012, 62% were screened in, and 3.2 million children received a CPS response in the form of an investigation or alternative response. Of these 686,000 unique victims, 1,640 were fatalities.

Moreover, Maltreatment (US Department of Health and Human Services, 2012, xi) reports “nearly three-quarters (70.3%) of all child fatalities were younger than 3 years old.” These data confirm that one of the largest age cohorts suffering from and experiencing abuse and adversity consists of very young children. According to Pinheiro’s World Report they were the second largest age group after 14–17-year-old children. The statistics and research on child victimization with non-fatal consequences document that in 2011 two in five children suffered maltreatment at the hands of adults. Relatedly, the incidence of children experiencing and witnessing violence in the home, in institutions and in the community is also at “epidemic” proportions.

As far as beating in schools is concerned, according to US Congresswoman Carolyn McCarthy (D-NY4), “19 states still allow school personnel to beat students.” She joined other Representatives to introduce H.R.3027 “Ending Corporal Punishment in Schools Act, of 2011” (www.opencongress.org/bill/hr3027-112/text). The bill cited US Department of Education statistics to the effect that “each year in the United States, hundreds of thousands of school children are subjected to corporal punishment in public schools. School corporal punishment is usually executed in the form of “paddling”, or striking students with a wooden paddle on their buttocks or legs, which can result in abrasions, bruising, severe muscle injury, hematomas, whiplash damage, life-threatening hemorrhages, and other medical complications that may require hospitalization.” With significant racial and ethnic disparities among the affected students, corporal punishment is “used in many instances for minor disciplinary infractions, such as being tardy or violating the dress code.” Also “children with disabilities are subjected to corporal punishment at disproportionally high rates, approximately twice the rate of the general student population in some States.” (Text of H.R. 3027). The bill was never enacted and died in Committee.
The number of children in child protective institutions such as foster care and group homes is very large. According to the children’s Bureau of the US Administration of Children, Youth and Families as of September 30, 2012, “there were an estimated 399,546 children in foster care.”

Child poverty in the United States in addition represents another form of maltreatment. To provide only a brief overview, we turn to the Children’s Defense Fund (2014: 22) *The State of America’s Children 2014.*

Children are the poorest group in the nation. … Over 16 million children were poor in 2012 – more than 1 in 5 children. More than 40 percent of them lived in extreme poverty, at less than half the poverty level of $11,746 a year for a family of four. The youngest children are the poorest: over 1 in 4 children under age 5 were poor – nearly 5 million. Almost half of them – 2.4 million – were extremely poor.

This brief case study of a leading industrialized and rich society is intended to demonstrate the extent and depth of violence against children in American society. Although we have focused on the United States, similar case studies for other societies would reveal the extent and number of children experiencing violence in them. As we know from the World Report, violence against children and the related infringement of their human rights is ubiquitous, and in the absence of reliable data it is difficult to gain a more comprehensive picture. This collection of data from a country that has made some efforts to collect it is thus important as a snapshot of the larger problem across the globe.

5. Schools of children’s rights: Critical reflections

Since among the aims of this *Handbook* is to present a “bottom-up” approach in line with recent developments in the conceptualization of children’s rights and general human rights scholarship, this essay must speak to that approach. Broadly speaking, this approach promotes the idea that children, as subjective right holders, should themselves organize and be assisted with this organization. This more recently advanced notion about children’s rights – so the argument goes – is considered to be in contradistinction to the CRC and related regional and national children’s rights instruments. Manfred Liebel and his co-authors’ recent work, *Human Rights from Below* (2012), can be seen as foundational and representative for this approach, which has “aimed at identifying the weaknesses and growing fragility of a children’s rights project primarily focused on the state and the existing mechanisms of the international children’s rights system.” As Liebel states in his introduction:

“One key question we want to discuss in this book … is … ways children’s rights can be understood as subjective or agency rights of children and

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20 Child poverty is defined at an annual income for a family of four of $23,492. Extreme poverty at half the dollar amount.
21 Manfred Liebel. *Children’s Rights from Below: Cross-Cultural Perspectives.* Other authors of chapters.
22 In this connection, an important and relevant article by Didier Reynaert, Maria Bouverne-de-Bie and Stijn Vandevelde provides “A review of children’s rights literature since the adoption of the United Nations Convention on the Rights of the Child,” (*Childhood*, 2009). In this critical exploration of scholarly work on the UN CRC, the authors identify three themes that “predominate” in it: “(1) autonomy and participation rights as the new norm in children’s rights practice and policy, (2) children’s rights vs. parental rights and (3) the global children’s rights industry.” Karl Hanson, Ivan Saadi, and Wouter Vandenhole.
whether they can be enforced by children themselves.” (Liebel, 2012: 2, italics added). And as he puts it elsewhere: “One key question is how rights could be understood as subjective rights, and how they could possibly be enforced by children themselves, particularly those in experiencing specifically severe situations of social disadvantage and exclusion.” (Liebel, 2012: 4, italics added).

In line with the author and his collaborators’ focus on participatory rights of children rather than the state or other entities’ duty to protect them, “protection” and “provision” are viewed as “welfare rights” of children rather than what the authors refer to as “agency rights.”

In this literature – the triad of protection, provision and participation has clearly shifted to liberation, with a major emphasis on competence, autonomy, participation and equal rights of children, and away from what Karl Hanson (2012) in his four ideal types of schools of thought classifies as an earlier emphasis on paternalism, welfare, and emancipation. This new emphasis stands in contrast to the CRC in which, according to Liebel,

\[(B)\text{esides rights to secure the basic needs of children, rights that serve to ensure the development of children are emphasized. Therefore children’s rights can be understood as “welfare rights” which are enforced by adults on behalf of, and in the interest of, children or as “agency rights” which are used and enforced by children themselves.}\]

\[(Liebel, 2012: 29: italics added)\]

What then is the role of adults and advocates in a “bottom up” approach? Here is a formulation from the book’s conclusion:

Adults who want to act as advocates for children in this way, will not only insist on their independence … but must also understand themselves – as in the case of the children’s movement in Latin America – as “co-protagonists” of the children.

\[(Liebel, 2012: 239, italics added)\]

As appealing as that formulation can sound, the scope of violence against children worldwide, whether in homes, schools, institutional settings, or elsewhere, as shown in this essay, indicates how many children and young people need protection by the state, and by laws and regulations as a central first remedy. While the arguments advanced in the “bottom-up” approach put this author and chapter squarely in Hanson’s paternalistic and welfare school of thought, the data documented earlier make it impossible for children – especially since, as we have shown, infants and very young children are among the largest cohorts of victims – to organize on their own behalf to achieve any diminution in or remedies for the violence they encounter or are forced to endure.

The cases provided, for example, by Liebel and Hanson, including street children in Nicaragua, the African Movement of Working Children and Youth (141 ff) and movements in other regions, are situations in which indeed young people manage to organize to pursue the realization of their own rights. But these examples are in no way applicable to children who are physically and emotionally disciplined to the point of murder. For the hundreds of thousands of children, especially those who also suffer from disabilities, for those disciplined in school systems, for the children and young people encountering brutality in jails and prisons, for those locked up in solitary confinement, or the children, who by actions of the state are separated from their parents or family caregivers and put in foster care systems – to name only a few examples – such “self-organization” is impossible.

In other words, in light of the child maltreatment and human violence perpetrated against so many children, Liebel’s desideratum and description of how they should be able to organize
to realize their rights of participation read like a search for a children’s rights El Dorado. Indeed the merest possibility of participation, autonomy, emancipation and social justice are denied to these children and young people. No matter how desirable it would be for children to participate in their own liberation, the hard social, economic and legal realities are an iron cage that makes such participation impossible.

In the context of the discussion about human rights from below (Liebel, Hanson, and others), the question arises as to how indeed children could make human rights claims against the violence they experience worldwide. Even though children and young people’s voices were prominently represented in the study that led to the World Report, the major responsibility for ensuring their safety must rest in convincing societies and their national governments, policy and legislative bodies to prohibit violence against all children in the first place. Additionally a further focus must be on the caregivers in the home, the schools, in foster care, jails and prisons, at work, and in the community.

If indeed, as Liebel and others postulate, a new era in which children are expected to organize as human rights subjective right holders on their own is coming or can be built – this era would be one in which they are thus called upon to protect themselves with adults as “co-protagonists” on their side. What such an era would entail, is a down- or out-sourcing of adult responsibilities to the children themselves. Such a devolution, however well-intended, would make children an independent and isolated social class, and thus de facto an unprotected one.

6. Findings from neuroscience, epigenetic research and behavioral sciences

Recent findings from the neurosciences, epigenetic research and the behavioral sciences deliver some of the most powerful arguments in support of the global violence against children campaign. What this literature demonstrates are the generational and trans-generational effects of early childhood adversity, distress, maltreatment, abuse, neglect and violence (Finkelhor, 2008; Finkelhor et al., 2009a, 2009b; Karr-Morse and Wiley, 2013; McEwen, 2011; Meaney, 2010; Shonkoff and Phillips, 2000; Shonkoff et al., 2009).

There is an entire recent literature that emphasizes the seriousness of the problem of the behavioral and medical effects of early child maltreatment. According to Bruce S. McEwen, since “the brain is a very plastic and changeable organ,” “stressors or stressful experiences, especially during early life, can change brain architecture. It can cause some brain structures to become underdeveloped and underactive, which causes an imbalance in how the brain functions and how the person behaves.” (Lenzer and Grochowalski, 2012: 97). Or as the epigenetic researcher Frances A. Champagne of Columbia University puts it:

I think that some of the key findings that have come out in recent years really describe the biological impact of early childhood adversity, both the meaning and the timing of that impact. … We know a lot more now about how the experience of abuse and neglect may become

23 A major panel discussion on this topic took place at the National Consultation. Social Justice for Children: To End Child Abuse and Violence against Children (Lenzer and Grochowalski, 2012).
24 The Alfred E. Mirsky Professor and Head, Harold and Margaret Millikin Hatch Laboratory of Neuroendocrinology, The Rockefeller University, New York.
25 This and the following quotations are from interviews with and presentation by these scholars for the Children’s Studies Center National Consultation. Social Justice for Children: To End Child Abuse and Violence against Children (Lenzer and Grochowalski, 2012).
embedded at a biological level in the neurons within the brain, in the cells and in the genes within those cells, and how that can have a lasting effect on function.

(Lenzer and Grochowalski, 2012: 103, italics added)

And she stresses the trans-generational effects of child maltreatment:

I think the lifelong and trans-generational consequences of early adversity are something that we do know a lot more about. The question is what to do about them and certainly the basic clinical work and basic animal research now suggests that these effects of early life adversity do become incorporated into our biology, that they can have implications for the next generation of offspring, and for their functioning as parents as it relates to the care of their offspring.

(Lenzer and Grochowalski, 2012: 103, italics added)

Given these findings, it makes sense to consider violence against children as a kind of socio-cultural affliction of extraordinary magnitude – with a multitude of different symptoms and causes. Although theoretically curable, this disorder can be found in epidemic proportions. This is how James A. Mercy, from the Division of Violence Prevention in the US Centers for Disease Control and Prevention, put it at the opening of his presentation at the National Consultation on Social Justice for Children: To End Child Abuse and Violence against Children, catching the audience by surprise (Lenzer and Grochowalski, 2012: 44):

I want you to imagine something with me for a second. Imagine that you woke up this morning and in the headlines of the New York Times … the headline was that scientists discovered a new Disease. This was a disease that affected children and about 60 per cent of children every year were exposed to this disease. Scientists also reported that those exposed were at greater risk for mental health problems. … for physical health problems … such as diabetes, heart disease and cancer. In addition, they were at greater risk for social problems, like crime and drug abuse, during their lives. Scientists also noted that they even could pass this on in the future to their own children in some way. If we had a disease that was in the headlines, framed like that, what you think we would do about it…. The truth is … we do have such a disease: it’s called violence against children.

Given these recent findings, the question that arises is how infants, younger and even older children can organize a movement to establish their agency and human rights from below, when in fact their “participation” is that they are the victims of violence? And given the new biological information about the ways that violence injures children above and beyond the actual physical injuries they may sustain, it seems particularly problematic to insist that victimized children can or should be their own protectors and clinicians.

7. Coda

All this is not to deny the desideratum that children and young people as social subjects should be afforded whenever possible participation rights in all affairs that are of direct concern to them, that infringe upon their human rights as well as constitute forms of violence against them in any setting. In fact, despite the critiques advanced against both the CRC and the Committee, a careful analysis of the CRC since its inception demonstrates the Committee’s commitment to enlarging children’s participatory sphere of autonomy. Rather than
characterize the Committee as a part of the “global children’s rights industry” (Reynaert et al., 2009, based on a review of the literature since 1989), what should be emphasized is a dual evolution, not only that of international jurisprudence with regard to children’s rights, but also the linked and proactive evolution of the Committee’s work and its interpretation of the CRC. In addition, both UNICEF and numerous NGOs have made active “participation” not just in the form of “tokenism” into a central part of their programs and initiatives for some years. The same is true of the missions by the Special Representative of the Secretary General on Violence against Children.

Moreover since its inception, the 18–member Committee has issued 17 General Comments that are binding on state parties to the CRC. These topics include such as General Comment 8, “The Right of the Child to Protection from Corporal Punishment and Other Cruel and Degrading Forms of Punishment,” General Comment 9, “The Rights of Children with Disabilities,” General Comment 10, “Children’s Rights in Juvenile Justice,” General Comment 12, “The Right of the Child to be Heard,” General Comment 17, “Right to Play” – to name only a few. In addition, the Committee is responsible for three Optional Protocols to the UNCR all of which address Violence Against Children. They are the Optional Protocol to the CRC on Sale of Children, Child Prostitution and Child Pornography (OPSC) and on Children in Armed Conflict (OPAC) as well as the third Optional Protocol (OP3 CRC on a Communications Procedure, which entered into force on April 14, 2014. All three Protocols represent signal contributions by the Committee on the Rights of the Child in the domain of Violence against Children.26

By way of conclusion, and unfortunately so, both provision and protection remain central imperatives that enable children and young people to realize their human rights and development. And that means that adults will – and should – continue to be held accountable for providing provision, protection and participation to help children realize their autonomy, respect and agency. Given the epidemic of violence against children, the multiplicity of its forms, its cross-border nature, and the fact that children are not safe even in their own homes, the campaign to abolish it is still in its early stages. Although achievements have been made, as SRSG Santos Pais stated as recently as May 2014, it is important to “recognize that progress has been too slow, too uneven, and too fragmented to make a genuine breakthrough.”27 The elimination of all violence against children and freedom from violence in all its forms will, therefore, remain the human rights imperative of the next decades to come, if not of the twenty-first century.

8. Post scriptum

In September 2014, UNICEF released a new report, Hidden in Plain Sight: A Statistical Analysis of Violence Against Children. This report represents the first major worldwide documentation of violence against children with data mostly from middle- and low-income countries. UNICEF describes it as

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26 It goes without saying that the enforcement capacities of the Committee of the CRC and of both their general comments and optional protocols are indeed limited. Its Concluding Observations to State party reports take the form of recommendations of changes to be instituted.

the largest compilation to date of statistics on violence against children, drawing on data from 190 countries. By examining global patterns of violence against children as well attitudes and social norms, it sheds light on an issue that has remained largely undocumented. Its objective is to use data to make violence against children more visible, bringing about a fuller understanding of its magnitude and nature and offering clues to its prevention. (UNICEF, 2014a: 165)

Especially based on Article 19 of the CRC, the report states that “[E]nsuring that all forms of violence are recognized as a fundamental violation of children’s human rights is a first step in moving towards their elimination.” (UNICEF, 2014a: 165). The major categories of interpersonal violence in the report are physical, sexual and emotional, and the key findings include data about homicide, violent discipline, violence among peers and by intimate partners and sexual violence. For example, the “data show that far more children experience violence in the form of discipline – usually in their own homes and from a very young age. On average, about 6 in 10 children worldwide (almost 1 billion) between the ages of 2 and 14 are subjected to physical (corporal) punishment by their caregivers on a regular basis. For the most part, children are exposed to a combination of physical punishment and psychological aggression.” (UNICEF, 2014a: 165f). In addition to the 200-page report, UNICEF also published in September 2014, Ending Violence Against Children: Six Strategies for Action #ENDviolence – a 63-page report (UNICEF, 2014b).

Questions for debate and discussion

• How important is a multi- or interdisciplinary approach to violence against children?
• Does context (poverty; cultural attitudes) matter when discussing violence against children?
• Is there any possibility to apply a “bottom-up” human rights approach to solve the apparently intractable human realities of children and young people and the power relations between adults and children, especially very young children?
• Is the emphasis on children’s agency detrimental to the protection of children against violence?
• How can children and young people themselves contribute to the abolition of violence in the home, schools, state institutions and in the community? Or is this primarily the responsibility of adults to protect children and young people from maltreatment and violence?

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References


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