

## Demanding Dignity: The Call to End Family Detention



Bishop Mark Seitz of El Paso, Texas celebrates Mass with immigrant family detainees in Artesia, New Mexico.

### Background

In response to the influx of approximately 60,000 migrant families arriving at the Southwest Border during the summer and fall of 2014, the United States Department of Homeland Security (DHS) launched a policy of detaining immigrant families in prison-like detention facilities located throughout the US but primarily along the US-Mexico border. In so doing, the U.S. government rapidly expanded its family detention capacity by building new facilities or retrofitting existing facilities in Artesia, New Mexico; Karnes, Texas; and Dilley, Texas, with the goal of increasing family detention bed space up to possibly 6,350 beds.<sup>1</sup> With the closing of Artesia in November, 2014, family detention centers are currently located in Berks, Pennsylvania; Dilley, Texas; and Karnes, Texas, near San Antonio, comprising roughly 3,100 family detention beds.<sup>2</sup> This contrasts dramatically with family detention capacity in April 2014, when there were roughly 100 beds in the entire United States. The women and children being detained in these facilities

largely are from El Salvador, Guatemala and Honduras and are fleeing violence and persecution. Many have viable international protection claims.

Family detention is one aspect of the national immigrant detention network—a network that costs taxpayers \$2 billion/year.<sup>3</sup> Immigrant families (primarily young mothers and children) who are apprehended by the Customs and Border Patrol (CBP) are placed into Immigration and Customs Enforcement (ICE) custody. ICE then places these immigrant families into family detention facilities. Family immigrant detention facilities are described by ICE as “residential facilities,” with the families considered “residents.” In reality, however, the families have limited freedoms and are forced to live in a restrictive detention setting.<sup>4</sup>

Ending the practice of family detention was one of the detention standard reforms initiated in 2009, when the Obama Administration stopped detaining families in the T. Don Hutto Residential Facility, (“Hutto”) a 512-bed former state prison nearby Austin, Texas, operated by the Corrections Corporation of America. Opened in 2006, Hutto was harshly criticized for its conditions and level of care and was the subject of a lawsuit by the American Civil Liberties Union (ACLU) and the University of Texas. At the time, the Obama Administration’s decision to stop sending families to Hutto represented a positive and welcome change to the government’s use of family detention. The reversal of that policy and the return to using family detention as a deterrence to the flight of families from violence in Central America violates human dignity and severely harms children.

## The Catholic Church's Position

Family detention goes against the tenets of Catholic social teaching. Detaining young migrant women and their children as a response to their flight from persecution violates human dignity and human rights. To this end, Pope Francis recently stated: “No cell is so isolated as to exclude the Lord, none. He is there . . . His paternal and maternal love reaches everywhere.”<sup>5</sup>

Immigrant detention is an explicit concern of the U.S. Catholic bishops, as it was stated in *Responsibility Rehabilitation and Restoration, A Catholic Perspective on Crime and Criminal Justice*: “We bishops have a long history of supporting the rights of immigrants. The special circumstance of immigrants in detention centers is of particular concern. [The government] uses a variety of methods to detain immigrants some of them clearly inappropriate.”<sup>6</sup> Recently, Bishop Eusebio Elizondo, Chairman of the U.S. Conference of Catholic Bishops’ Committee on Migration, wrote to Secretary Jeh Johnson in opposition to family detention, declaring that “it is inhumane to house young mothers with children in restrictive detention facilities as if they are criminals.”<sup>7</sup>

In addition to being concerned about the idea of family detention generally, the Bishops have spoken explicitly about the need to protect vulnerable refugees and asylum seekers such as the women and children currently in immigrant detention facilities. *Strangers No Longer: Together on The Journey of Hope*, states: “those who flee wars and persecution should be

protected by the global community. This requires, at a minimum, that migrants have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority.”<sup>8</sup>

## The Case against Family Detention

The aggressive build-up of family detention facilities in such a short time demonstrates the U.S. government’s new policy and stated goal<sup>9</sup> of using detention as a means of deterrence, which is contrary to international law. Specifically, the use of detention for the purpose of deterrence is inconsistent with and internationally-accepted ideals of liberty.<sup>10</sup>

The detention of migrant women and their children in an arbitrary fashion, without individualized assessments of their threat to the community or flight risk, reflects a clear violation of their human rights. For example, the mothers and children detained in the current immigrant detention facilities have no ability to leave the facility and have restrictions placed on their movement within the facility based on space and child care constraints.<sup>11</sup> Also, the decisions over placement of families in detention facilities versus enrollment in other forms of supervision is made on an arbitrary basis, taking logistics and bed space into account rather than examining each individual migrant woman arrival on a case-by-case basis.<sup>12</sup>

Recently, the U.S. government’s use of family detention as a deterrent has been called into question

Letters and cards of support sent by Catholic families and women religious to detained immigrant children.



by a U.S. federal court. In February 2015, the U.S. District Court for the District of Columbia in *RILR v. Johnson* ordered a preliminary injunction that puts an immediate halt to the government’s policy of detaining families solely for deterrence purposes.<sup>13</sup> The case was brought on behalf of mothers and children who have fled extreme violence, death threats, rape, and persecution in Central America to the safety of the US. Each plaintiff had been found by an immigration officer or judge to have a “credible fear” of persecution, meaning there is a “significant possibility” they would be granted asylum. Yet, instead of releasing these families as they await their asylum hearings, which U.S. government has typically done with other asylum-seekers, the Department of Homeland Security (DHS), the responsible government agency, has been categorically detaining and denying<sup>14</sup> release on bond or other conditions. The almost universal no-release policy is a violation of federal immigration law and regulations,<sup>15</sup> which prohibits the blanket detention of asylum seekers for purposes of general and future deterrence.

In addition to being violative of liberty interests, the administration’s practice of family detention and expedited deportations of these families contradicts the 1951 United Nations Convention relating to the Status of Refugees, which the US is a signatory.<sup>16</sup> The 1951 Convention provides that states should not “expel or return” a refugee to territories “where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.”<sup>17</sup> The children and young mothers are primarily fleeing three countries in Central America that have among the highest levels of violence in the world<sup>18</sup>--El Salvador, Guatemala, and Honduras.

In 2011, El Salvador had the highest rate of gender-motivated killing of women in the world, followed by Guatemala (third highest) and Honduras (sixth highest).<sup>19</sup> As such, many of the women who head these families are indeed refugees fleeing persecution and targeted violence in their home country, have been recognized internationally as such and have been recently recognized by the U.S. immigration courts as well. For example, a recent Board of Immigration Appeals (BIA) decision, *Matter of A-R-C-G*, found that, depending on the facts and evidence in an individual case, “married women in Guatemala who are unable to leave their relationship” can constitute a cognizable particular social group that forms the basis of a claim

## Prisoners of Domestic Violence Detained in Artesia

The story of one woman comes to mind. Her husband had become increasingly verbally and physically aggressive over time. Restricted from leaving their home, the woman was only allowed to leave if accompanied by her husband or a member of his family. The woman called the authorities about his abuse, but no action was taken against him. Then he began to beat their young children. Realizing that her family faced the threat of escalating abuse and possible death if they remained, she fled to the United States with her children. Now, she and her children are detained in the Artesia. She is desperate to stay in the United States for their safety. Returning to their home country would put this vulnerable family back into hands of a vicious abuser.

An excerpt from Silvana Arista, an attorney with the Catholic Legal Immigration Network, on her time working in Artesia. Blog available at:

<https://cliniclegal.org/news/domestic-violence-detention-artesia-border-crisis/prisoners-domestic-violence-detained-artesia>

for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3) (2012).<sup>20</sup> (*Matter of A-R-C-G et al* 2014) The challenges these women and children confront accessing justice and seeking protection within the detention facilities is inconsistent with recognized grounds of protection emerging from both international and domestic asylum and refugee law.

Furthermore, the placement of children in detention facilities squarely undermines the best interest of the child principle. The best interest of the child standard requires that “in all actions concerning children, the best interest of the child shall be a primary consideration.”<sup>21</sup> The UN Committee on the Rights of the Child in 2013 declared that detaining migrant children based on their own or their parents’ migration status is “never in [children’s] best interests and is not justifiable”<sup>22</sup> and that any immigrant detention of a child contravenes the principle of the best interest of the child and constitutes a child rights violation.<sup>23</sup>

## A Visit to Artesia - Bishop Seitz

At the Mass around 220 of the 520 residents joined us. They sang with gusto and responded to the prayers in a way that showed me they have been active in their churches at home. It was the Feast of the Exultation of the Cross. I told them that I could see the cross that was so present in their lives and I could clearly see the face of Christ in them, Christ carrying his cross among us.

We blest and provided rosaries donated by the Knights of Columbus after Mass. Many requested individual blessings after Mass. I met some who had been there for two months, some who had been there as long as three months. Many were concerned about their sick children. One asked me to pray for her sister who was separated from her after they were detained. She had not heard from her since.

My guides were responsive to questions I posed. Questions which no one there could answer were those that had to do with why this center was opened before all of the detainee's basic needs could be provided? And why was this place, so far removed from services the community could provide such as legal support and pastoral care, chosen in the first place? Nor could I find the answer as to why we would spend all this money for a temporary facility when release to the custody of family members would have been much more humane and cost effective? Some questions just don't admit of easy answers I guess.

An excerpt from Bishop Seitz's visit to the Artesia detention center, <https://cliniclegal.org/news/artesia-border-crisis-board-directors/visit-artesia>

The existing conditions at the family detention centers related to child care may also be violative of other applicable US regulations, such as the *Flores* settlement agreement.<sup>24</sup> In 1997, a California federal court approved the *Flores* settlement agreement, which sets national policy regarding the detention, release, and treatment of children in former-INS, DHS, and HHS custody. Pertinent to children in detention, *Flores* requires that juveniles be held in the least restrictive setting appropriate to their age and special needs to ensure their protection and well-being. Since the *Flores*

agreement applies to all children apprehended by DHS, there are serious concerns that the treatment of children in family detention does not meet the *Flores* agreement standards. For example, the first day of school for children housed in the Artesia facility, was October 13, 2014, despite the facility being opened in June 2014.<sup>25</sup>

In addition to the extensive human rights violations that family detention poses, family detention raises serious child welfare and child mental and physical health concerns. Detaining children can cause the cognitive and psychiatric difficulties, with children and adolescents in detention reporting increased rates of deliberate self-harm and suicidal behavior, voluntary starvation, severe depression, sleep difficulties, anxiety, and post-traumatic stress reactions.<sup>26</sup> Reports are also common of poor nutritional access, regression in language development, bedwetting, and social withdrawal in children.<sup>27</sup> The mental and physical stress that affects children who are detained is even more jarring when the ages of the children currently detained are considered. For example, the average age of children at the Artesia, New Mexico facility was six and half years old.<sup>28</sup> Moreover, evidence of the long-term negative impacts of detention upon children is mounting: a 2014 statistical analysis by the UN Children's Fund (UNICEF) found that abuse in childhood, including mental violence inflicted by conditions of detention, can have adverse impacts on educational achievement and cause "damage at the societal level, including direct and indirect costs due to increased social spending and lost economic productivity".<sup>29</sup>

## The Catholic Community's Response

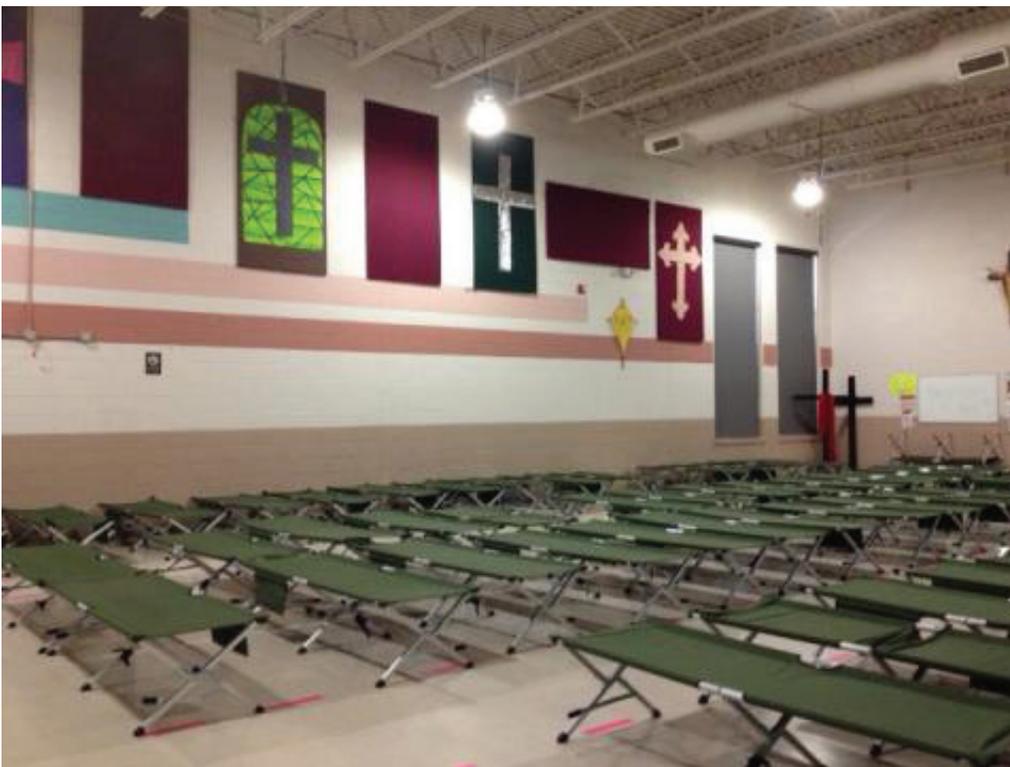
The Catholic community's response to the return of immigrant family detention has been multifaceted and a strong voice of opposition. The United States Bishops Conference, through their Migration and Refugee Services and the Justice for Immigrants (JFI) network has worked to provide advocacy and services for immigrant women and children. Migration and Refugee Services worked throughout summer 2014 through their networks to provide family hosting and humanitarian aid. The Justice for Immigrant network hosted several webinars on the issue of family detention, highlighting national advocacy strategies and local responses in the form of visitation, prayer vigils, bond

fundraising, and local advocacy. Through its partners, the JFI network sent approximately 25,000 e-postcards to Congress and the White House calling for the end of family detention. Additionally, CLINIC, the Catholic Legal Immigration Network, had several staff attorneys who were working in Artesia, New Mexico in August 2014 to assist with some of the detainees' asylum claims. Moving forward, CLINIC will fund an attorney to provide legal services in Dilley, Texas, starting in summer 2015. Local community Catholic service providers have been especially diligent. For example, the Benedictine sisters of San Antonio have been instrumental in creating infant, child, and adult backpacks for immigrants who are released from detention or placed on electronic monitoring. Regarding advocacy, Catholic partners have also raised the profile of family detention nationally, ranging from advocacy materials, such as those seen in the Intercommunity Peace and Justice Center's publication, *A Matter of Spirit*, to shareholder advocacy strategies, like those of a coalition of Jesuit advocates who recently toured Karnes City detention facility as part of their engagement strategy with GEO corporation, the private prison company who operates the Karnes facility.

## Conclusion

Family detention is counter to Catholic teaching, which weighs the morality of a society by how it treats the most vulnerable. Moreover, the detention of young mothers with children weakens the family unit, the building block of society.

It is clear that the detention of families—young mothers with children—violates human rights norms and causes psychological and emotional harm to vulnerable persons. To clarify, these families have already experienced trauma on their journeys to the United States, with x percent of mothers having experienced sexual assault or rape. Detaining them only exacerbates these traumas. Furthermore, these families are no threat to our communities—they themselves are fleeing violence and abuse. Instead of detaining them, they should be released to family or sponsors or to a community-based case management program, until such time they are able to appear in immigration court. Family detention must be ended.



A migrant family hospitality center operated by Project Oak Tree in the Diocese of Las Cruces, New Mexico.

It (Dilley Detention Center) is the largest facility of its kind and some have called it “history making.” That forces me to ask, “What kind of history do we want to make?” Will our history be defined by the detention of children and their mothers who do not threaten us either by either violence or security risks?

-Remarks of Archbishop Gustavo Garcia-Siller, December 18, 2014

## Endnotes

1 OMB Budget Request for Emergency Supplemental Request, Estimate No. 3, 113th Congress, 2nd Session, July 8th, 2004, available at [http://www.whitehouse.gov/sites/default/files/omb/assets/budget\\_amendments/emergency-supplemental-request-to-congress-07082014.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf).

2 ICE to open additional facility in South Texas to house adults with children, ICE Press Release, September 22, 2014 available at <http://www.ice.gov/news/releases/1409/140922dilley.htm> ; CCA Expands Existing Intergovernmental Service Agreement to Manage the South Texas Family Residential Center in Dilley, Texas, CCA Press Release, September 24, 2014 available at <http://www.cca.com/press-releases/cca-expands-existing-intergovernmental-service-agreement-to-manage-the-south-texas-family-residential-center-in-dilley-texas> ; South Texas ICE Detention Facility to House Adults With Children, DHS Press Release, July 31, 2014, available at <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>. From 2009 until June 2014, ICE utilized one family detention facility, the Berks Family Residential Facility. Near Reading, Pennsylvania, Berks is a small-scale facility that has the capacity to detain approximately 90-100 individuals. In June 2014, ICE built a family detention facility in Artesia, NM with roughly 640 beds. In July 2014, ICE announced the opening of a facility in Karnes, Texas that was retrofitted to accommodate families and roughly 530 beds. In September 2014, ICE announced building a 2,400 bed family detention facility in Dilley, Texas.

3 Department of Homeland Security, U.S. Immigration and Customs Enforcement, Salaries and Expenses, FY2014 Congressional Budget Justification p. 43-51, available at <https://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>. DHS requested \$1,844,802,000 for Custody Operations in FY 2014, however, in H.R. 2217, the House of Representatives increased the proposed amount for detention programs to \$2,038,239,000 in order to increase the number of detention beds to 34,000. See Department of Homeland Security Appropriations Bill Committee Report, p. 40, available at <http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2014-hsecurity.pdf>.

4 House Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2006: Report Together with Additional Views (to accompany H.R. 2360), 109<sup>th</sup> Cong., 1<sup>st</sup> Session, 2005, H. Rep. 109-79.

5 Pope Francis, *Evangelii Gaudium*, Joy of the Gospel.

6 Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice, A Statement of the Catholic Bishops of the United States, USCCB, 2000

7 USCCB Chairman Decries Opening of Family Detention Center in Dilley, Texas, Proposes More Humane Alternatives to Detention for Vulnerable Families,” USCCB Press Release, December 16, 2004, <http://www.usccb.org/news/2014/14-201.cfm>.

8 Strangers No Longer: Together on the Journey of Hope: A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States, at IV. § 37, USCCB, 2003 available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope.cfm>.

9 Johnson, Jeh. 2014. Written testimony to Senate Committee on Appropriations. Review of the President’s Emergency Supplemental Request. 113<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 10.

10 (ICCP, 1976 art 9).

11 When author toured the Artesia facility on July 23, 2014, we learned that the women detainees had to keep their children with them at all times, including during their Credible Fear interviews. ICE recently announced a change to this policy. Additionally, the dining hall area offered the only large indoor suitable area for meals as well as legal and religious activities and as such times for these activities were rigidly enforced due to space constraints. Author notes of Tour July 23, 2014. Copy on File with the author.

12 USCCB/CLINIC, July 23, 2014. Copy on File with the author.

13 *RILR, et al. v. Jeh Johnson*, Civil Action No.15-11 (JEB), February 20, 2015 available at [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2015cv0011-33](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2015cv0011-33)

14 According to the ICE Statistical Tracking Unit, from June 1, 2014 through December 6, 2014, ICE released 32 of the 2602 individuals booked into family residential centers via individualized custody determinations. Memorandum Opinion, *RILR v. Johnson*, Civil Action No. 15-11(JEB) at 8 (referencing Def. Reply Ex. A, Amended Declaration of Marla M. Jones, ICE Officer, Statistical Tracking Unit).

15 The court in *RILR v. Johnson* stated that DHS's actions it related to the particular population could not be shielded by discretion provided in 8 USC 1226 (e) and were subject to judicial review. Memorandum Opinion, *RILR v. Johnson*, Civil Action No. 15-11(JEB) at 12-14.

16 UN *Convention Relating to the Status of Refugees*, adopted 14 December 1950, 189 UNTS 137 (entered into force 22 April 1954) arts 3, 31 (hereafter 1951 UN Refugee Convention)

17 1951 UN Refugee Convention.

18 Chavez, S. & Avalos, J., "The Northern Triangle: The Countries That Don't Cry for Their Dead," InSight Crime – Organized Crime in the Americas, April 24, 2014, <http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cry-for-their-dead>.

19 Geneva Declaration on Armed Violence and Development, Global Burden of Armed Violence 2011, Oct. 2011, [http://www.geneva-declaration.org/fileadmin/docs/GBAV2/GBAV2011\\_CH4\\_rev.pdf](http://www.geneva-declaration.org/fileadmin/docs/GBAV2/GBAV2011_CH4_rev.pdf).

20 *Matter of A-R-C-G- et al.*,26 I&N Dec. 388 (BIA 2014) August 26, 2014 available at <http://www.justice.gov/eoir/vll/intdec/vol26/3811.pdf>.

21 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

22 *Committee on the Rights of the Child, Report of the 2012 Day of General Discussion the Rights of All Children in the Context of International Migration*, 2012, available at [http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC\\_DGD-Children\\_Rights\\_InternationalMigration.pdf](http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Children_Rights_InternationalMigration.pdf)

23 UNHCR, IDC, APT, Monitoring Immigrant Detention: Practical Manual at 182 Section 4.8.2 (2014) available at [http://reliefweb.int/sites/reliefweb.int/files/resources/monitoring\\_immigration\\_detention.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/monitoring_immigration_detention.pdf).

24 The Flores settlement agreement stems from a 1993 Supreme Court case, *Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). Many of the agreement's terms have been codified at 8 CFR §§236.3, 1236.3. *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).

25 School About to Start at Artesia Residential Facility, ICE News Release, October, 20, 2014, available at <https://www.ice.gov/news/releases/school-about-start-children-artesia-family-residential-center>

26 Fazel, Mina, Unni Karunakara, and Elizabeth A Newnham, "Detention, Denial, and Death: Migration Hazards for Refugee Children," *The Lancet Global Health*, Volume 2, Issue 6, Pages e313 - e314, June 2014.

27 Ibid.

28 USCCB/CLINIC July 23<sup>rd</sup>, 2014-Tour, Artesia Notes. Copy on file with author.

29 Migrant detention "abuse" can scar children for life October 21, 2014, <http://www.irinnews.org/report/100741/migrant-detention-abuse-can-scar-children-for-life>; HIDDEN IN PLAIN SIGHT: A statistical analysis of violence against children, UNICEF, 2014 available at [http://files.unicef.org/publications/files/Hidden\\_in\\_plain\\_sight\\_statistical\\_analysis\\_EN\\_3\\_Sept\\_2014.pdf](http://files.unicef.org/publications/files/Hidden_in_plain_sight_statistical_analysis_EN_3_Sept_2014.pdf).