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# STREET CHILDREN'S EXPERIENCES IN THE INJUSTICE SYSTEM

## *Chapter overview*

Describes in more detail, based on the project findings and other sources, the **children's experiences at the following stages of justice systems**. It is divided into sections according to how the children themselves related their experiences:

- **On the street: police and private security guards:** includes positive experiences, an insight into the police perspective and the potential for positive collaboration with the police. However, it focuses mainly on experiences of violence, death squads, sexual abuse, harassment, bribery, extortion and corruption, arrest, 'round-ups' / 'street cleaning operations' interrogation, and lack of accountability and complaint mechanisms.
- **Detention in police cells, remand homes and other institutions:** focuses on remand / pre / under-trial detention, detention with adults, conditions and treatment in detention but once again includes examples of positive experiences as well.
- **Trial / hearing and sentencing - judges and lawyers:** outlines positive and negative experiences.
- **Reintegration:** outlines positive and negative experiences.

## 1) ON THE STREET: POLICE AND PRIVATE SECURITY GUARDS

Amongst the children's recollections of the justice system as part of this project, their experiences of the police (and in some countries private security guards that are hired either by local business people or the state to carry out a similar policing role) featured very prominently in comparison with other aspects of the system such as trial which were only recollected more vaguely. This indicates the extent to which street children's relationships with the police and security guards feature in their experiences with the justice system. Harassment, threats, insults, exploitation and physical and sexual abuse may be carried out directly by the police, or by other members of the public with either active or tacit encouragement of the police. The police are therefore doubly responsible for human rights violations - as perpetrators themselves, and for failing to protect children from abuse by others. The police may also be guilty of using their power to extort sexual favours, money or free child labour from street children.

*Most children reported that policemen are the huge troublemakers in their lives"; "While staying on the streets I have known a lot of hardship, but the worst was when I had to go to sleep on an empty stomach and got beaten up by the 'dadas' (bullies) and policemen. (NEPAL)<sup>1</sup>*

*The most common and pervasive form of abuse street children experience is by the police. They force them to clean the stations, they beat them, they take money from them, and they torture them into confessing to crimes or to name who committed them. (INDIA)<sup>2</sup>*

*They think every child who lives or makes a living in the streets is a bad child. (PHILIPPINES)<sup>3</sup>*

*There are some good police, but most of them are bad. They get a kick out of hurting us. (GUATEMALA)<sup>4</sup>*

*I came to Jeevanjee Gardens where I was arrested and taken to Kirigiti Girls' Approved School where I was taught good manners. May God bless the police. (KENYA)<sup>5</sup>*

1 Rai, A., Ghimire, K.P., Shrestha, P. and Tuladhar, S., Glue Sniffing Among Street Children in the Kathmandu Valley, Child Workers in Nepal Concerned Centre, 2002, p.14 and testimony of a 12-year-old boy in Kathmandu, quoted on p.39.

2 An NGO representative in Madras and Human Rights Watch, Police Abuse and Killings of Street Children in India, November 1996, p.10. Likewise, another NGO representative with more than twenty-five years of experience with street children in Bombay told Human Rights Watch that the police were "the number one problem" street children face.

3 UP CIDS PST / CSC End of Project Report, 2003.

4 Interview with Dolores, Guatemala City, 6 September 1996, quoted in Human Rights Watch, Guatemala's Forgotten Children: Police Violence and Abuses in Detention, July 1997, p.24.

5 SNV Kenya and GTZ (2002) The Story of Children Living and Working on the Streets of Nairobi. <http://www.snvworld.org/kenya/PublicMain.htm>

Despite the overwhelmingly negative experiences, as part of the project, the children were also encouraged to relate their positive experiences with the police and these comments are included at the end of this section with a commentary on, and examples of, the importance of relationship building with the police.

### 1. a) VIOLENCE

By far the most common experiences of street children with the police are overwhelmingly negative, characterized by psychological, physical and sexual violence and arbitrary abuse of power, whether on the streets in the context of harassment, or in police stations following arrest.



**NIGERIA:** drama depicting police violence against street children, presented as part of the National Workshop on Street Children and Juvenile Justice organised by Human Development Initiatives and Consortium for Street Children, 2-4 June 2003.

*When a girl is almost grown-up, she gets molested or raped in exchange for her freedom. (PHILIPPINES)<sup>6</sup>*

*I want to be a policeman so I can beat others just as they beat us. (ROMANIA)<sup>7</sup>*

*Some police use beatings in a 'well-meaning' manner – especially with street children high on glue – to try and teach them the harm of such behaviour. (NICARAGUA)<sup>8</sup>*

Factors contributing to this treatment by the police and security guards may include:

- Lack of education and training;
- Violence and abuse as part of their own upbringing;
- Lack of non-violent conflict resolution and communication skills;
- Lack of awareness of their own rights, let alone those of other people –least of all children;
- Recruitment procedures that have no screening in place to deter violent applicants or those looking to abuse their power;
- Lack of resources;
- Frustration with the perceived failure of the judicial system to appropriately punish or otherwise 'straighten out' street children;
- Impunity due to lack of developed monitoring, accountability and complaints procedures;
- A 'threat' mentality / perceived or actual personal danger to the police themselves in some cases of hostile societies;
- Links with the military – either institutionally, historically, or in terms of attitude. For example: in **Albania**, the police are described as "in general very offensive and behave as members of a militia";<sup>9</sup> in **Guatemala**, the abuses of power and impunity with which private security forces operate is explained in part by the fact "many of the private agencies are owned by powerful former military officers, who maintain their ties to government security forces and can be dangerous to cross." These firms have their own weapons, are described as 'notoriously unsupervised', and are subject to inadequate training, slack recruitment screening, corruption.<sup>10</sup>

<sup>6</sup> Ryan, aged 16, cited in UP CIDS PST / CSC End of Project Report, 2003.

<sup>7</sup> Street boy quoted in Alexandrescu, G., *Romania – Working Street Children in Bucharest: A Rapid Assessment*, ILO/IPEC: Geneva, 2002.

<sup>8</sup> Casa Alianza Nicaragua and Consortium for Street Children, *Street Children and Juvenile Justice in Nicaragua*, February 2004.

<sup>9</sup> Hazizaj, A. and Barkley, S.T., *Awaiting Trial: A Report on the Situation of Children in Albanian Police Stations and Pre-Trial Detention Centres*, Children's Human Rights Centre of Albania (CRCA), May 2000, p.71.

<sup>10</sup> Human Rights Watch, *Guatemala's Forgotten Children*, 1997, pp.34-35.

## 1.b) DEATH SQUADS

**99.9% of policemen think that the street child is an unsolvable problem. He cannot be helped, and so he must die. It is a way of resolving the problem. (BRAZIL)<sup>11</sup>**

**According to a government official “the Guatemalan society rejects these kids... they would even like to see them dead..” (GUATEMALA)<sup>12</sup>**

As outlined in Chapter 2, we saw how criminalisation, stereotyping and dehumanisation at collective and individual levels can result in an array of human rights violations. Death squads are at the extreme end of that spectrum. It is important to point out that the state bears responsibility for these actions whether or not they are committed by representatives of the state. Where the perpetrators are state representatives (i.e. uniformed police) –the government’s responsibility is direct. Where the perpetrators are non-state actors (i.e. vigilantes, private security firms, off-duty police or street gangs), the government is still responsible on the grounds that it has ‘failed to protect’ its citizens.

### Case study

#### **THE CANDELÁRIA MASSACRE, 25 JULY 1993, RIO DE JANEIRO, BRAZIL**

*Perhaps the most famous case of a death squad killing of street children, the events at Candelária at 1am on 25 July 1993, put Brazil’s street children well and truly on the international map. Fifty homeless children and young people were sleeping on the grounds of the Candelária cathedral in downtown Rio de Janeiro, when a group of gunmen drove past, shooting. Four died instantly, another was killed whilst running away, two more were abducted, beaten and shot and an eighth died several days later. Eight others were shot but survived. The shootings were allegedly provoked by an incident earlier that day where some children had reportedly thrown stones at a military police vehicle after one youth had been detained for drug use. On 30 April 1996, one of the police officers was sentenced to 309 years in prison (six counts of murder, five counts of attempted murder, and several counts of grievous bodily harm).<sup>13</sup>*

*Although the Candelária case has become a landmark in the fight against impunity in Brazil, resulting so far in the rare conviction of two military policemen, Amnesty International is concerned that they also expose serious flaws in the manner of investigating and prosecuting human rights violations. The organization is also alarmed that, despite the public outcry over the massacres, politicians in Rio de Janeiro have repeatedly made public statements in 2003 either in explicit support of police killings, or citing high levels of police killings as a necessary and unavoidable product of crime control. Such public statements seem to have been taken by police in Rio as a green light to kill in 2003, as the first four months of the year saw record numbers of deaths at police hands.<sup>14</sup>*

*The interplay of fear, public opinion and lack of understanding on the criminalisation process is clear. It has been stated that there is considerable public support for the death squads as the result of perceptions that street children are dangerous criminals.<sup>15</sup>*

11 Interview with military policeman ‘M’, in *The Silent War: Killings of street children by organised groups in Rio de Janeiro and the Baixada Fluminense - a report by Jubilee Campaign*, August 1998, p.17.

12 Interview with Victoria Monzón, Director of the Guatemalan government agency charged with administering juvenile detention and protection services (*Tratamiento y Orientación de Menores*), 4 September 1996, quoted in Human Rights Watch, *Guatemala’s Forgotten Children*, 1997, p.39.

13 Inciardi, J.A. and Surratt, H.L., ‘Children in the Streets of Brazil: Drug Use, Crime, Violence, and HIV Risks’, *Substance Use and Misuse*, 1997, pp.10-11.

14 Amnesty International, ‘Rio de Janeiro 2003: Candelária and Vigário Geral 10 Years On’, August 2003.

15 Inciardi, J.A. and Surratt, H.L., p.10.

### THE STORY OF SANDRO DO NASCIMENTO: 'BUS 174'

*The consequences of this criminalisation process, not only for street children themselves but also for society, are made very clear through subsequent events that took place in Rio de Janeiro on 12 June 2000 when Sandro do Nascimento, one of the street children survivors of the Candelária massacre, hijacked a public bus at gunpoint. The event was broadcast live on Brazilian television for four and a half hours and the news footage has since been supplemented with interviews and turned into a powerful documentary film entitled 'Bus 174'.*

*The film outlines events leading up to the hijacking – how Sandro left home at the age of nine, having witnessed his mother being stabbed to death in front of him; his life on the streets, including the Candelária massacre; Sandro's horrific experiences in the criminal justice system which left him with nothing to lose - "He will not turn himself in because he doesn't want to go back to prison. What causes violence is to toss a kid that stole a wallet next to the drug dealer that kills."<sup>16</sup> The bus hijacking ended with a female hostage being shot (by the poorly trained police, not by Sandro), and with Sandro being bundled into a police van from which he does not come out alive. Sandro's story, as uncovered through the immense media coverage of the event, and the resulting film, along with his connection to the Candelária massacre, have come to symbolize levels of violence in Rio as well as Brazil's mishandling of street children and the appalling treatment meted out to young people in the criminal justice system.*

### Case study

#### THE JAVED IQBAL MURDERS - PAKISTAN<sup>17</sup>

*“ I am Javed Iqbal, killer of 100 children... I hate this world, I am not ashamed of my action and I am ready to die. I have no regrets. I killed 100 children. ”*

*These are the last words of the man who, on 16 March 2000, was found guilty of brutally murdering 100 boys living on the streets of Lahore. By first drugging and abusing them, Iqbal then strangled each boy, cut them into pieces and dissolved them in a vat of acid, keeping only their shoes, clothes and sometimes a photo he had taken of them before they died.*

*At his trial, Iqbal made a point of claiming that as no-one ever notices when a street child disappears: he could have gone on to kill 500 before anyone took action instead of turning himself in in December 1999 once his target of 100 boys had been reached. It took two weeks before police investigated Iqbal's house after receiving information about the crimes committed there: "The police never took it seriously. Police thought it was a joke and that he was a mental patient. He told the police 'I have killed these children,' and the police said, 'Come back in the morning.' " In late December, after the extent of Iqbal's crimes was known, the Punjab police chief distributed a memo to officers throughout the province saying "reports of missing children should not now be taken lightly."*

*The revelation of Iqbal's horrific crimes, committed with two teen accomplices, woke up human rights groups in Pakistan to the plight of street children in Pakistan. It "brought home with a bang how limited society's safeguards for the children were and with what gruesome consequences," the Human Rights Commission of Pakistan wrote in its annual report. One 9-year-old street boy who used to live in the same alley as Iqbal confirmed how the terrible incident had affected him: "In the dark, I worry about bad spirits from there," he said. "I am afraid they will come and eat me."*

<sup>16</sup> José Padilha, Director of Bus 174, in 'Ônibus 174 dissertates against Brazilian destitution and the omission of the State', Friday, December 6th, 2002, InvestNews - Gazeta Mercantil, at <http://www.bus174.com/articles.htm>.

<sup>17</sup> Adapted from Gannon, K. 'Few Look out for Street Children', Associated Press, 20 April 2000.



*Iqbal's murders also exposed a number of unpleasant truths about the frailty of the family and its crumbling support system in the face of extreme poverty. All the victims had come from poor families, and had left home either to look for work or to escape the harshness of their existence at home. Although it was suggested that parents of 17 of the victims had reported their missing children to the police, only one report had been registered. A possible reason for this is the desire to make the crime rate look low, and police performance better. However, in this case, the police reported that they had not any complaints regarding these missing children.*

## Case study

### **ONGOING MURDERS OF STREET CHILDREN AND YOUNG PEOPLE IN CENTRAL AMERICA**

*According to the NGO Casa Alianza, in March 2004 a total of 55 children and young people under the age of 23 were murdered in Guatemala in the space of 31 days. In 2003, Casa Alianza documented a total of 747 extra-judicial executions in Guatemala - an average of 60 murders each month. Meanwhile, the agency's Legal Aid Programme in Honduras registered 557 murders of children and youth under the age of 23 throughout the country. According to Casa Alianza, in spite of lack of evidence, the Presidents of Guatemala, Honduras and El Salvador all blame the murders on juvenile gangs, an argument which has been used to justify violent police repression against young people.*

#### **1.c) SEXUAL ABUSE**

Sexual abuse of street boys and girls – both on the streets and in detention - features strongly in the repertoire of abuse of police power, ranging from use of derogatory language to rape. Sexual activities are often forced through violence or coerced through threats and exploitation - for example in exchange for freedom from arrest or detention, or for police 'protection' from others. Once again this represents the limited or non-choices which street children face on a daily basis.

*Girls are often asked for sexual favours on the pretext that they would be released. In most instances, release does not take place even after giving in to the officer's demand<sup>20</sup>; "The police are always calling us names, threatening us, saying we're whores, trash, homeless, and beating us. Sexual abuse happens too. It happened to me once, here in Jeevanji [public park]. Four policemen came and arrested me near City Market. They started taking me to the Central Police Station, and brought me here to the park. One of them hit me and I fell down, and he came down on top of me. Another held me down while the policeman raped me. After he raped me, they walked me over to Central Police Station, and just let me go.*

**(KENYA)<sup>21</sup>**

18 Adapted from Casa Alianza, cited in CRINMAIL 571 (Child Rights Information Network), 4 May 2004. See also [www.casa-alianza.org](http://www.casa-alianza.org).

20 Street boy's testimony as part of the National Workshop on Street Children and Juvenile Justice, Nairobi, March 2003.

21 Human Rights Watch interview with Pamela, aged 18, Nairobi, September 24, 1996, quoted in Human Rights Watch, *Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya*, June 1997, p.27.



**KENYA:** Group discussion amongst young people as part of the Consultative Street Children Workshop on Juvenile Justice, Nairobi, 22 February 2003, organised by the Undugu Society of Kenya as part of the CSC Street Children and Juvenile Justice Project.

*The barangay [local government] policeman Donato, also the barangay captain, arrested me. They brought us near the Day Care Centre. There, they hit us with the butt of their guns. They hit me with a dustpan. We got caught again in the Sandawa area. A policeman named Lamping hit me with a piece of wood. When they were going to set us free, they hit us again. We were in jail for a night. They told us that we could have our freedom if we let them place their fingers inside our vaginas or let them fondle our breasts. (PHILIPPINES)<sup>19</sup>*

Sexual abuse affects both boys and girls. For example, 'most' of the girls who took part in the project in the **Philippines** complained of being sexually abused by policemen and the boys also reported being sodomized or forced to perform sexual acts with other children.<sup>22</sup> However, despite the much larger number of boys in the criminal justice system, the plight of girls tends to attract more attention due to their minority status and perceived additional vulnerability. For example, in **Egypt**, Human Rights Watch reports that "both girls and boys are at risk for sexual abuse and violence in police custody, but girls and women living on the street face additional pressures to enter into sexual relationships with police even when not in custody. Several girls and women we interviewed reported that they had entered into relationships with police guarding parks and other public places, because they depended on the police to protect them from sexual violence by other men and boys."<sup>23</sup> Further examples of sexual abuse are included in the section below on street children's experiences in detention.

#### 1.d) HARASSMENT

Harassment – with or without physical violence - interferes with children's survival strategies, resulting in loss of earnings and peace of mind. It may also result in other indirect effects such as causing them to be chased from areas of safety, making them more vulnerable to abuse at the hands of others. For example, in **Bulgaria**:

*[t]he police chase us away from the underpass and from the station, the areas where the police stay, and make us stay outside where the skinheads can get us. (BULGARIA)<sup>24</sup>*

<sup>19</sup> 16-year-old girl, cited in UP CIDS PST, *Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines*, Quezon City, UP CIDS PST and CSC, 2003, p.25.

<sup>22</sup> UP CIDS PST / CSC, End of Project Report, 2003.

<sup>23</sup> Human Rights Watch, *Charged with Being Children: Egyptian Police Abuse of Children in Need of Protection*, February 2003, p.19. Physical and sexual harassment of street children by the police in Bulgaria, both on the street and in police lock-ups was also cited by Human Rights Watch in their 1996 report, *Children of Bulgaria: Police Violence and Arbitrary Confinement*, September 1996, p.3.

<sup>24</sup> Human Rights Watch, *Children of Bulgaria*, 1996, p.33. See also p.15.

<sup>25</sup> Human Rights Watch interview with Wycliffe, Kisumu, September 22, 1996, quoted in Human Rights Watch, *Juvenile Injustice*, 1997, p.21.

*We usually carry sacks (for garbage picking). The [Kisumu] police beat us up and put us in our sacks. Even if we're just walking around, doing nothing. If you don't give them money, they take you to the station. Usually they ask us questions about thefts that have happened. They search us. If we have money, they take it. If we don't have money, we have to talk to them really nicely, or else they'll take you to the police station. (KENYA)<sup>25</sup>*

*The private guards from the bank also come and harass us all the time. They pull their pistols out and make us come out of the women's restroom [at the park]. They push us around. They just do it to give us a hard time, to be powerful over us; we're not bothering them at all.*  
(GUATEMALA)<sup>26</sup>

### 1.e) BRIBERY, EXTORTION AND CORRUPTION

In addition to extortion of sexual favours, as indicated previously, low levels of pay for the police, combined with lack of accountability mechanisms, foster an environment where financial extortion, bribery and corruption are widespread. Powerless street children are especially vulnerable to this kind of abuse, either on the streets or in police cells as the following examples show.

*They accuse us of earning our money through illegal sex activities, and demand their share"; "They take our personal things and call us drug addicts and thieves.*  
(PAKISTAN)<sup>27</sup>

*Police officers have a tendency of taking any valuables they find with the children;*<sup>28</sup>  
*I've never bribed the police. That's why I've been to jail ten times.* (KENYA)<sup>29</sup>

*It happens all the time, police stealing jewellery and money from us. You practically can't wear a chain or anything – they'll come up and hit you and take it away. They don't like to see us wearing jewellery. It makes them jealous.*<sup>30</sup>  
*"How can this be, that the agents of justice ask us for money? When we're not doing anything to them? And to think, some poor kids are hauled away and beaten up, just because they don't have any money to give the police.* (GUATEMALA)<sup>31</sup>

Street children as part of the project in **Pakistan** reported that policemen regularly harass them for 'protection' money – i.e. a bribe that would allow the child in question to continue their survival strategies without interference. Some demand a share of the profits made by child vendors or extort an illegal 'fee' before allowing them to tout for business in their areas of patrol; others simply wait until the child has made a sale, and then snatch the money on the grounds that the child is 'a drug addict' and 'involved in crime'. Many children are arrested on false charges and then offered release on payment of a fine. Street children also report that police use false arrests to get children to do odd jobs for them. This usually involves the child being detained for a



**NIGERIA:** *drama depicting police harassment of street children, presented as part of the National Workshop on Street Children and Juvenile Justice organised by Human Development Initiatives and Consortium for Street Children, 2-4 June 2003."*

<sup>26</sup> Interview with 19-year-old Maritza, Guatemala City, 2 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.34. See also interview with Dr. René Zamora, Guatemala City, 20 September 1996, p.14, according to whom, at the time of the interview, beatings were coming at least as often at the hands of private police as from the National Police: "Those guys, yes, they are very aggressive with the kids."

<sup>27</sup> Child participants quoted in AMAL Human Development Network and Consortium for Street Children, *Street Children and Juvenile Justice in Pakistan*, February 2004.

<sup>28</sup> Child participant at the National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, March 2003.

<sup>29</sup> Human Rights Watch interview with Victoria, Nairobi, October 2, 1996, quoted in Human Rights Watch, *Juvenile Injustice*, 1997, p.26.

<sup>30</sup> Interview with Mauricio, Guatemala City, 2 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, pp.20-21.

<sup>31</sup> Interview with 16-year-old Juan Alexander, Guatemala City, 2 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, pp.21-22.



few hours at the police station, during which time they are forced to clean cells and toilets before being thrown back onto the streets without charge. Unsurprisingly, parents of these children are rarely informed of the detention and no 'First Information Report' is written.<sup>32</sup>

When discussing their dislikes of the police, street children in **Nigeria** particularly cited that they feel the police are corrupt, collect bribes, and "cooperate with armed robbers". As with the children in Pakistan, who were detained to perform tasks for the police, those in Lagos also depicted being detained behind police counters and sent on errands to buy things such as cigarettes.

These types of experience are also common in other countries, for example girls involved in street prostitution in **Mexico** reportedly pay the police extortion and protection money.<sup>33</sup> In **Bulgaria**:

*The police put me in a cell by myself. I stayed there for one night. They didn't give me any food, but they gave me water. They didn't let me out of the cell so I went to the bathroom on the mattress that I slept on. The next morning, a policeman came and asked me if I had any money. He told me if I didn't give him my money, he would put me in a cell with adults. I was afraid so I gave him my money.*  
(BULGARIA)<sup>34</sup>

The same report also gives examples of clothes of detainees reportedly being returned the following day with the pockets emptied of anything valuable. In **Egypt**, both girls and boys told Human Rights Watch that police frequently extorted money in exchange for avoiding arrest, securing early release from detention, or gaining access to food during detention. Police officers told Human Rights Watch that they believed street children earned significant sums of money through begging or selling small items, a factor that may have contributed to police targeting such children for extortion during arrest and detention.<sup>35</sup>

## 1.f) ARREST

As part of the project in the Philippines, some of the children indicated that good practice guidelines had been followed and that, for example, their parents were called during interview, they were given food and advice by the police, they were referred to social workers and centres and they were allowed to go home while their cases were in progress.<sup>36</sup> Likewise in Nigeria, children reported that some police helped to settle disputes and care for children.<sup>37</sup>

However, examples of negative experiences of the police during arrest unfortunately far outweigh the positive ones, as seen in the following examples.

*I don't like living in the streets anymore, the police take you, they won't even let you work at the intersections or in the buses.* (ROMANIA)<sup>38</sup>

<sup>32</sup> AMAL / CSC, *Street Children and Juvenile Justice* in Pakistan, 2004.

<sup>33</sup> Local merchant quoted in Human Rights Commission of the Federal District and UNICEF (eds), *On the Other Side of the Street: Juvenile Prostitution in La Merced Neighbourhood*, Mexico City, August 1996, p.68.

<sup>34</sup> 9-year-old girl from Sofia, Human Rights Watch, *Children of Bulgaria*, 1996, p.29-30.

<sup>35</sup> Human Rights Watch, *Charged With Being Children*, 2003, p.18.

<sup>36</sup> UP CIDS PST / CSC End of Project Report, 2003.

<sup>37</sup> Human Development Initiatives and Consortium for Street Children, *Street Children and Juvenile Justice in Nigeria*, February 2004.

<sup>38</sup> Street boy quoted in Alexandrescu, G., 2002.

*Policemen often arrest us for sleeping under a bridge; “They threatened us that we can never sell our wares in the streets again, and in so doing we can not earn money that we need for our education, so we should not protest or escape from being arrested;” “Nobody explained our rights as children and they did not even bother to call the social workers;” “They did not allow me to talk, or ask about my situation nor explain my side [when they arrested me];” “They said that if I tried to escape, they will shoot me. (PHILIPPINES)<sup>39</sup>*

*We arrest kids in parks who look like they are homeless. We arrest kids selling tissues in the street. These kids become known to us, so it isn’t hard.” ; “We conduct arrest campaigns to demonstrate the government’s presence. Because if we didn’t have arrest campaigns then quickly the streets would fill up with kids selling tissues and wiping cars and begging. (EGYPT)<sup>41</sup>*

*The first time [I was sent back to my home governorate] there were fifty or sixty people in the transport vehicle. Adults and kids. One adult told me I was a ‘bastard.’ I had handcuffs on and the adults did too. I couldn’t breathe. I thought I was going to die. I was screaming, but no one did anything. They didn’t open the door until we arrived. There were small kids crying, but no one did anything for them. (EGYPT)<sup>42</sup>*

**Reasons for arrest:** In **Nicaragua**, over 20% of the children interviewed for the Street Children and Juvenile Justice Project country report testified that their arresting officers had failed to produce a warrant, court order or give any reason for their action at the time. Of the 44 files reviewed for this project, only 11 were found to have legal orders (warrants), suggesting the remaining 33 were all crimes where the child exhibited ‘flagrant guilt’. Most appear to be picked up on charges of ‘habitual vagrancy’, ‘disrespect to authorities’ and ‘alteration of public order’ such as incidents involving drugs and fighting.<sup>43</sup>

Contrary to international human rights standards, legislation criminalizing ‘truancy’, ‘running away’ and ‘vagrancy’ may also be in place – to which street children are especially vulnerable. In these cases there is an obvious case for legislative reform, accompanied by sensitization of the police, to combat the attitudes such as those exhibited by this police officer in **Egypt**: “[Sometimes] we arrest kids walking down the street during school hours with their school books, but I don’t have enough officers to make as many of these arrests as I would like. I am asking for more officers, because in the future we want to conduct campaigns to search for and arrest truants.”<sup>44</sup>

39 Children from Manila, Luzon and Visayas, Philippines, quoted in UP CIDS PST / CSC End of Project Report, 2003.

40 Brigadier Yasir Abu Shahdi, director of the Cairo Governorate Police Directorate’s al Azbekiya juvenile lockup, quoted in Human Rights Watch, *Charged With Being Children*, 2003, p.1.

41 Police Officer, Bulaq al Dakrur Police Station, July 24, 2002, quoted in *ibid*, p.38.

42 Yahiya H., aged 11, Cairo, Egypt, July 27, 2002, quoted in *ibid*, p.19.

43 CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, February 2004.

44 Brigadier Yasir Abu Shahdi, director of the Cairo Governorate Police Directorate’s al Azbekiya juvenile lockup, quoted in Human Rights Watch, *Charged With Being Children*, 2003, p.1.

Preventive arrest is subject to misuse which particularly discriminates against street children.<sup>45</sup> A report from **Bangladesh** likewise reveals the injustice and abuse of so-called 'protective' or 'safe custody' provisions which have the effect of criminalizing children in need of care and protection: *"Hungry children were picked up by the police with the temptation of food (which was not at all forthcoming in the detention cells). There has been at least one case where the rape victim herself was detained while the assailant (incidentally a policeman himself) was left untouched."*<sup>46</sup>

According to street children workshop participants in **Kenya**, reasons why street children are arrested by the police include loitering, carrying illegal weapons e.g. a knife, being caught smoking *bhang* (marijuana), refusing to give in to the sexual demands of officers, being (or being perceived to be) rude to or disrespecting police officers on duty, and to promote tourism, *"since street children are seen as a nuisance to visitors."*<sup>47</sup>

The following statements from street children at the national workshop in Kenya reveal the potential consequences of arbitrary arrest not only for the children involved but also for society as a whole – i.e. the likelihood of encouraging criminality among street children if there is high chance of them being arrested whether innocent or not.

*I have a scar from when I was hit by a police rungu [wooden club] when I was trying to escape from arrest. They give me chase and I went under a car so from there they were unable to get me because I was so small. Then they went away to call the others to surround the car so I escaped." "Next time you might as well do something in that case... so [you] become a criminal when you weren't before. (KENYA)<sup>48</sup>*

**The manner of arrest** may also violate human rights standards, for example use of force, unnecessary use of handcuffs or restraints, degrading treatment etc. In **Nicaragua**, just under half of those being detained reported being beaten by police at the moment of being captured, usually with a combination of fists, truncheons and being threatened with guns.<sup>49</sup>

According to the findings of a 1996 research conducted on the rights of the child in **Nigeria**, 40% of children in criminal custody said that their arrest involved the use or threat of physical force, 34% of a relevant sample size of 147 respondents stated that they had done nothing to warrant the use of force by the police, and 35.4% felt that they had been assaulted because they questioned their arrest or refused to make a statement. One-quarter of the respondents, however, admitted to resisting arrest. In further violation of legislative provisions, 35.8% of the respondents were handcuffed or otherwise restrained at the time of arrest.<sup>50</sup> The use of handcuffs was also highlighted by children themselves who took part in the Street Children and Juvenile Justice Project in Lagos.<sup>51</sup>

In **Kenya**, the children described being falsely accused and being transported to the police cell either in a lorry or car-boot. Also, "once they have arrested the children, police officers have a tendency of walking around with the children for long hours before reaching [the] police station".<sup>52</sup> In **Egypt**, children arrested for being "vulnerable to delinquency" are commonly bound with ropes and forced to walk as a group to the station.

*Five girls were arrested with me. They tied us with rope and made us walk to the station. There were four police. They didn't say anything, just 'Begging. (EGYPT)<sup>53</sup>*

45 For example, in Egypt, the Code of Criminal Procedures [articles 134, 142] allows for preventive custody in a number of circumstances, including cases where the suspect is accused of a misdemeanour punishable by imprisonment and "does not have a known regular place of residence in Egypt," which would apply to many cases involving children living on the street. *Ibid*, footnote, p.16.

46 Zaman Khan, S., *Herds and Shepherds: The Issue of Safe Custody of Children in Bangladesh*, Bangladesh Legal Aid and Services Trust (BLAST) and Save the Children UK, June 2000, p.18.

47 Undugu Society of Kenya, *Report on Street Children Conference on Juvenile Justice – Haki Kwa Watoto Wote*, Kenya, 2003.

48 Child participants in the National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, 6-7 March 2003.

49 CAN /CSC, *Street Children and Juvenile Justice in Nicaragua*, 2004.

50 I.E. Okagbue, *The Treatment of Juvenile Offenders and the Rights of the Child in I.A. Ayua and I.E. Okagbue, The Rights of the Child in Nigeria (NIALS, Lagos 1996)*, p.254.

51 HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.

52 USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

53 Widad T.'s description of her tenth arrest, in early July 2002, quoted in Human Rights Watch, *Charged With Being Children*, 2003, pp.21-22.

**Failure to inform families / guardians:** Once arrested, family members or guardians are rarely contacted by the police. For example in **Nicaragua**, 47% of children interviewed suggested that their families had found out about their arrest from sources other than the police (e.g. friends, onlookers) and 18% had no idea whether their family knew about their arrest or not. The children also said that the police never contacted NGOs for assistance in detaining children, despite this being a potentially valuable diversionary measure to reduce the child's contact with the more advanced stages of the justice system.<sup>54</sup>

**Humiliation:** In **Nicaragua**, one boy described how he was stripped naked by police, taunted and left in a cell. This humiliation continued when his girlfriend came to the station to visit him, whereupon four officers ridiculed and made fun of him.<sup>55</sup> Children in the **Philippines** also report being humiliated, for example by being forced to eat their solvent or glue, or having it poured on their hair. Amongst the list of practices that street children in **Nigeria** complained of in relation to the police was the "enforced stripping of clothes even for female children."<sup>56</sup>

Street children in **Kenya** complained of the use of abusive language by the police – for example calling the children prostitutes or children of prostitutes.<sup>57</sup> Likewise, in **Egypt**, Human Rights Watch reports that the police routinely use obscene and degrading language to humiliate and intimidate children during arrests, especially using terms such as "bastards," "whores," children of "whores" or dogs, or making references to children's mothers' sexual organs – all of which are pointed out as being extremely offensive attacks on family and personal honour in Egyptian society. According to one 17-year-old, "*The government curses us. They curse us badly - curses of religion, of mothers, of fathers*".<sup>58</sup> The impact of such humiliation and degradation should not be underestimated or in any way seen as less important than the physical abuse experienced. It emphasizes once again the pervasive culture of criminalisation, stereotyping and dehumanization that prevails in the criminal justice system in relation to street children.

## 1.g) 'ROUNDUPS' / 'STREET CLEANING' OPERATIONS

*One day we went to the Shishu Park (Children's Park) along with others. Suddenly the police picked us up without explaining anything. When we asked them about the reason, they beat us up. We were afraid to ask again as the police had batons in their hand. (BANGLADESH)<sup>59</sup>*

In addition to the 'regular' arrest and detention of street children on an ad hoc basis, police departments often conduct more extensive and systematic roundups. Common reasons behind the timing of such operations include:

- 'Cleaning' the streets prior to the arrival of visiting dignitaries to the city, international conferences or similar events;<sup>60</sup>
- To coincide with the tourist season or the promotion of campaigns to encourage tourism;
- Preceding, or immediately following, local or general elections so that politicians are 'seen to be doing something' about the street children 'problem', revealing once again the influence of public opinion (see for example the Kenya case study below);
- As periodic 'new' initiatives, often prompted by the arrival of new personnel trying to 'make their mark' in relevant government departments;
- In order to use the children as scapegoats following high profile crimes in relation to which the public – and media – demand action;<sup>61</sup>
- In response to residents' complaints of an increase in crime in a particular area.<sup>62</sup>

54 CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, 2004.

55 Notes from CSC mission to Nicaragua, 26 April 2002.

56 HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.

57 USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

58 Human Rights Watch, *Charged With Being Children*, 2003, pp.17-18.

59 Girl, aged 14, quoted in Zaman Khan, S., *Herds and Shepherds*, 2000, p.18.

60 E.g. in Bangladesh "the police almost religiously pick up all street urchins who they can lay their hands on prior to every general strike or 'hartals'. Although the children are released soon after the strikes end (generally after sunset) in the last two decades, this country has seen the evolution of general strikes which continue for two days or more. Police tend to point out that many petty violences during the strike hours are undertaken by these urchins and they are prone to join political agitators more for the exchange of a small amount of money. But the fact remains that once picked up for such reasons, the children have to remain in police cells for forty-eight hours and at times more." *Ibid*, pp.17-18.

61 E.g. in Bulgaria, police also conduct roundups of street children when a crime has been committed. The roundups are conducted with apparently little regard as to whether the children are likely to have actually committed the offence. In addition, children are rounded up from the streets for identification checks. "Sometimes there are preventive roundups of street kids. New kids are coming all the time, and there is no way for us to keep track of them. The purpose is preventive, so we can identify the kids and inform their parents of their whereabouts and also find out who these kids are." Human Rights Watch, *Children of Bulgaria*, 1996, p.24.

62 "With pressure on the police to act, street children become immediate easy targets of a non-performing law enforcement system." HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, February 2004.



Street children in **Kenya** who took part in the Street Children and Juvenile Justice Project pointed to the city askaris (Kiswahili term for 'guard' or 'soldier'; general name used by street children to refer to police) as the group that most frequently harass them, but they were also able to recall numerous incidences where personnel from the other forces had worked together on 'street sweeps'. These apparently arbitrary and often spontaneous operations are reported to take place under cover of darkness, when there is less risk of public censure from passers-by or onlookers. Other sweeps are more carefully timed to coincide with the visit of a dignitary, an international conference or a holiday season in an effort to conceal the problem. According to the Assistant Commissioner of Police in 1996, these sweeps are conducted in the children's best interests – *"to sort out the children, and feed them, and send them back to their families"*.<sup>63</sup> Yet from the testimonies of children at the national workshops, street sweeps usually involve beatings, requests for bribes and frequent detentions at police stations for those who refuse.

Despite public and media protestations that round-ups are for the benefit of the children involved, especially in the case of systematic, as opposed to random, campaigns, roundups are usually undertaken in the context of the criminal justice system, rather than the social welfare system: the children are picked up by the police and held either in police cells or remand homes, or in separate facilities designated for particular 'street cleaning' campaigns.

Roundups are not only in violation of street children's fundamental rights, but that they are also ineffective, costly, short-term, unsustainable, often poorly thought out, and ultimately counterproductive. Without the provision of a comprehensive and holistic range of child-friendly services to genuinely expand the life choices available to street children, based on their specific needs and circumstances as identified by the children themselves, removing them from the streets – especially against their will – will achieve nothing. Experience shows that they will merely return to the streets at the first possible opportunity, most likely bearing an even greater grudge against a society which refuses to listen to their views and treat them with the dignity and respect they deserve as individual human beings.

This is borne out by the following case studies.

## Case study

### **MULTIPLE HUMAN RIGHTS VIOLATIONS, NEPAL** <sup>64</sup>

***On 27 June 1997, the local police arrested 20 children, aged between 10 and 15, who were all living and working on the street in Kathmandu, Nepal. They were arrested while working at the airport as freelance porters, where they reported being frequently harassed and abused by the police unless they paid bribes to the police. The children were not aware of the reasons leading to this arrest, nor did they know the crime they had committed. According to both the police and district administration, all these children were arrested because they were considered to be a 'public nuisance' under the Public Nuisance Act of 1990 (not taking into account the 1992 Children's Act), an 'offence' warranting a minimum of 4,000 rupees as bail or six months in prison. According to the District Police office, the children were arrested under the 'Clean the Street Operation' - linked to the 'Visit Nepal 1998' initiative of the Ministry of Tourism (denied by the Ministry).***

***All the children were kept in police custody for a total of six days before being transferred to the Central Jail. The police did not deny that the children were used to clean the toilet while they were detained in their custody. The children also reported that during this time they were threatened and tortured, were not given enough food, had to sleep on the floor in a small room and the police forced them to claim they were older than they actually were so that they would not be treated as children but adults. They also complained of being taken out twice with handcuffs / iron chains around their hands to visit the office of the Chief District Officer, Kathmandu. All of the children had migrated from rural areas and the majority did not have contact with their parents. Only three children who had their parents / guardians in Kathmandu***

<sup>63</sup> Interview with Assistant Commissioner of Police conducted by Human Rights Watch and quoted in Human Rights Watch, *Juvenile Injustice*, 1997, p.38.

<sup>64</sup> Adapted from Singh, I. L., *Street Children and Juvenile Justice in Nepal: A Case Study*, presented to 'Children Involved in Juvenile Justice Systems', Eighth Innocenti Global Seminar, 12-22 October 1997, Florence, Italy.



were able to pay the penalty and were therefore released before the others were transferred to prison along with adult criminals.

*The Chief District Officer, also the Chairperson of the district Child Welfare Board mandated to protect children in the district, did not review the case when it was presented to him by the police and later admitted that he had no knowledge of the Children's Act. He took the decision to keep the children behind bars without referring the case to court. Following lobbying by NGOs and child rights activists, nine of the children were released from the Central Jail on 12 August 1997 after approximately two months, without having to pay the fine, and went into the care of one of the NGOs concerned. The remaining 8 children were not released on the grounds that they were alleged to be over the age of 16 and therefore no longer 'juveniles'. In the Central Jail, the children had to work for the older inmates, including cleaning the toilets, although they also claimed to prefer the jail to the police custody because at least they were given food on time, sleeping arrangements were more comfortable, and they were allowed to watch TV and play with fellow prisoners (although they were mixed with adult prisoners). There is no provision to compensate the children, nor could they take any action against the government. "The arrested children were not criminals but just happened to be street children."*

## Case study

### RECRUITMENT INTO THE NATIONAL YOUTH SERVICE, KENYA <sup>65</sup>

*The National Youth Service (NYS) was created by an Act of Parliament in 1964 at the insistence of the youth wings of the political parties which had been engaged in the struggle for independence. It is officially a voluntary and non-remunerated programme, designed to reorient and assimilate militant youth, relieve youth unemployment, create a pool of trained and disciplined young people to support the army and police force, undertake national development projects and create national cohesion.<sup>66</sup> Service opportunities are usually advertised in the daily newspapers where college and university students often apply, but since April 2003, approximately 800 street children from Nairobi and Mombasa have been actively recruited into the NYS to become "useful citizens, like other Kenyans."<sup>67</sup>*

*It is not yet clear whether this massive induction – drawn predominantly from rehabilitation centres – was entirely voluntary or not, and little is known about the procedure itself other than that the children are 'recommended by the heads of rehabilitation institutions'. Once recruited, these children then undergo 6 months of paramilitary training at various NYS training schools, of which there are 18 across the country. Although the NYS officially recruits unmarried men and women between the ages of 18 and 22, the age and gender of this new batch was still unavailable at the time of writing. However, the government has been quick to assert their intentions of extending the recruitment from urban centres to grass-roots level countrywide.<sup>68</sup> This is despite news reports claiming that the first batch of street children graduates from the NYC have simply returned to the streets 'more ruthless and hardened.'<sup>69</sup>*

*As party to the Optional Protocol to the CRC on the involvement of children in armed conflicts, Kenya is legally bound not to recruit children under the age of eighteen into its armed forces, either by force, or voluntarily. The protocol also prohibits all recruitment of children under the age of eighteen by non-governmental armed groups. The prohibitions of the protocol do not apply to schools operated by the government where students are not members of the armed forces. However, the link between the YLS and the Kenyan army and the reported active recruitment of children into the programme raises concerns about Kenya's compliance with both its own laws and the provisions of the protocol.*

<sup>65</sup> Consortium for Street Children, *Street Children and Juvenile Justice in Kenya*, February 2004.

<sup>66</sup> Taken from Khasiani, S.A., Kenya Country Report prepared for the Worldwide Workshop on Youth Involvement as a Strategy for Social, Economic and Democratic Development, organized by the Ford Foundation and held in Costa Rica, 2000.

<sup>67</sup> Muigai, S. (2003) 'National Youth Service (NYS) will recruit Street Children at District Level', *The East African Standard*, 20 October 2003. '500 Street Children Join National Youth Service', *The East African Standard*, 31 October 2003.

<sup>68</sup> *Ibid.*

<sup>69</sup> 'Street Kids back in Full Force', Capital Group News Service, 25 November 2003.

## Case study

### **ROUTINE ROUNDUPS OF STREET CHILDREN IN UGANDA<sup>70</sup>**

*In Uganda, the routine round up of street children has continued since the launch of the government initiative to remove all children from the streets in city areas. They are taken first to Kampala Central Police Station and then relocated to Kampiringisa National Rehabilitation Centre - a gazetted institution for the custody of young capital offenders. The Solicitor General authorised its use for street children with conditions attached such as separating offenders from street children and limiting length of stay to 6 months. According to the Inter NGO Forum for Street Children in Kampala, neither of these conditions are being adhered to due to lack of resources. However, the government hopes to extend the programme to all parts of the country. The Inter NGO Forum for Street Children has recently launched the Kampiringisa Support Team - a group of 14 NGOs going into the centre three times a week to minimize the damage to the children and with the eventual aim of encouraging the government to find the most appropriate intervention for each child – which will most likely mean referring children to specific NGOs with a good track record for effective reintegration through foster care / resettlement / independent living programmes.*

### **1. h) INTERROGATION**

Treatment by the police following arrest is often characterised by the same lack of respect for human rights shown on the streets and during arrest. For example, in addition to the examples above, as part of the Street Children and Juvenile Justice project, children in **Kenya** highlighted the following injustices: rampant beating and torture by police officers; being forced or tortured to admit a crime or offence that they have not committed; changes being made to statements recorded by the police from the time the statement is taken to the time it is presented in court; and police officers not taking time and interest to investigate cases.<sup>71</sup>

*I was held in the second regional police department of Sofia for five days. They kept me in handcuffs the first two days. Every day they questioned me, and every time I was beaten. Sometimes they used clubs, sometimes chains. I confessed to the crime, even though I didn't do it. (BULGARIA)<sup>72</sup>*

*A policeman caught me. He was wearing a uniform and he had a warrant for my arrest. First, they brought me to the [local government] hall. There, they forced me to admit the crime. They pulled my hair, pinched my belly hard, and they placed bullets between my fingers and squeezed them tight. I was shaking and scared because I might get beaten up in jail. Afterwards they brought me to Kub-Kub. The cell was small, with so many mosquitoes and it stank. They only fed me noodles and a handful of rice. I spent three months in jail." (PHILIPPINES)<sup>73</sup>*

<sup>70</sup> Based on information provided by the Inter NGO Forum for Street Children, Kampala, May 2004.

<sup>71</sup> USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

<sup>72</sup> Ivan, aged 16, quoted in Human Rights Watch, *Children of Bulgaria*, 1996, p.25.

<sup>73</sup> Romeo, aged 17, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.108.

## 1. i) ACCOUNTABILITY AND COMPLAINT MECHANISMS

*Fear normally keeps the children from highlighting the abuse. (PAKISTAN)<sup>74</sup>*

The human rights violations described above - and experienced by street children on a daily basis in many countries around the world - are compounded by the general lack of monitoring, accountability and complaints mechanisms in place for the police and private security guards. Reasons for this may include<sup>75</sup>:

- Children are unlikely to complain directly to police about police abuse, due to the **threat of repercussions** and the **knowledge that their word will not be taken seriously** against that of a police officer;
- Abuses committed by police or security guards whilst in plain clothes can lead to **problems in identifying and holding individuals responsible**;<sup>76</sup>
- There is often no **special disciplinary unit within the police for the registering of complaints** against officers, with no guarantee that complaints will be followed up or answered even if they are made;<sup>77</sup>
- **Children may not have physical access to the officials responsible for taking complaints**, for example when the building has guards who refuse to allow street children to enter, or who require all visitors to show identity documents;<sup>78</sup>
- The police **themselves are the ones who make the determination whether or not to level a criminal charge** against an officer who is accused of violating the law;
- It is **extremely expensive and time consuming for an individual to bring a private criminal action** against the police or another individual – often well beyond the means of street children and the NGOs that assist them<sup>79</sup> – a process further hampered by **corruption and inefficiency** within many domestic court systems;
- Some countries, like Egypt, have **no mechanism for private criminal action**;<sup>80</sup>
- **NGOs are wary of antagonizing the police and jeopardizing their ability to work with street children** – there have been cases where NGO involvement in cases has led to them being denied registration to work in the country.<sup>81</sup>

All of these obstacles conspire to make it very difficult to successfully lodge and follow through a complaint against the police force.

## 1. j POSITIVE EXPERIENCES WITH THE POLICE

It is important to end this section with some of the positive experiences of street children in relation to the police in order to examine ways in which to transform and strengthen what is currently the most damaging link in the 'network' of street children's relationships in the criminal justice system. For example, children in the Philippines were able to offer the following examples of assistance from the police:

*We were given the privacy and opportunity to talk to our parents.*

*A policeman gave me food when I got arrested.*

*I was brought to the hospital when I was sick.*

*A policeman advised us to apologize so the complainant would not file a case against us.*

*A policeman advised us to stop sniffing solvent. (PHILIPPINES)<sup>82</sup>*

74 Amnesty International, 'Pakistan: Denial of Basic Rights for Child Prisoners', Document ASA 33/011/2003.

75 Adapted from the experience of Kenya as reported in CSC, *Street Children and Juvenile Justice in Kenya*, 2004.

76 In relation to Brazil, the NGO Jubilee Campaign states: "The increasing trend over recent years which has made almost indistinguishable the difference between policeman and security guard, death squad and security firm, has only served to augment the numbers of children assassinated in Greater Rio de Janeiro", *The Silent War*, Jubilee Campaign, 1998, p.23.

77 ANPPCAN Kenya's written response to Human Rights Watch questionnaire, March 11, 1997.

78 This was documented by Human Rights Watch when researching the treatment of unaccompanied migrant children in Spain, many of whom lived on the street. Email communication between Clarisa Bencomo, Human Rights Watch, and CSC, May 2004.

79 A notable exception here is the work of Casa Alianza in Central America which specialises in legal aid for street children and in pioneering cases at fora such as the regional Inter-American Court on Human Rights. For example, in 1999 in a landmark decision on the first case ever involving children to have come before the Court, Casa Alianza and CEJIL (Centre for Justice and International Law) managed to win compensation for the families of five street children in Guatemala murdered by the police in 1990. However, this victory was secured only after expensive and exhausting legal battles lasting for up to 10 years. See [www.casa-alianza.org](http://www.casa-alianza.org) for more details on the case of *Villagran Morales et al. vs Guatemala*, 1999.

80 A victim can take a complaint to a prosecutor, but unless the prosecutor decides to investigate and refer the case for trial the only other opportunity for legal action is a civil compensation case, and such cases may be very difficult to win in the absence of a criminal ruling or documented forensic evidence of severe abuse (e.g. death or permanent disability sustained in custody). Street children are less likely to be properly recorded as being in police custody, and also less likely to have access to medical and forensic facilities that could document abuse in a timely manner.

81 Human Rights Watch, *Juvenile Injustice*, 1997, p.32.

82 UP CIDS PST / CSC End of Project Report 2003.

The following 'positive' experiences of the police cited by street children in **Kenya** are very revealing: some children admitted walking into police stations simply because it offered shelter when they had nowhere else to go:



*Nigeria: what the children like and dislike about the police – feedback from street children during the National Workshop on Street Children and Juvenile Justice organised by Human Development Initiatives and Consortium for Street Children, 2-4 June 2003. Text reads: Likes: 'settling dispute' and 'they took good care of me.' Dislikes: 'bribery and corruption', 'torture', 'hand-cuff', 'joining hands with army [armed] robbers'*

*Some police officers are child friendly and treat children well (but they are not many).*

*At the police cells, food is almost guaranteed .*

*There is a possibility of accessing medical attention while at police station, particularly for those who are hurt during 'mob justice' or through an accident.*

*Children with criminal tendencies have the opportunity to change.*

*At police cells, children have no access to drugs so there is therefore a possibility of easing or destroying drug habits if the time inside is long.*

*There are some agencies which provide legal service to children who are found at police cells; one can find help from a Good Samaritan or probation officer who can sometimes facilitate training for the children.<sup>83</sup>*

*The police are good because they arrested me and took me to the children's cell after which I was taken to an approved school where I was trained to knit sweaters. (KENYA)<sup>84</sup>*

A closer examination of these comments, however, reveals the following points, which also apply to other countries:

- Some of these experiences identified by the children tend to represent the 'least bad' option available in difficult circumstances rather than a proactively 'positive' experience. This reinforces once again the concept of **street children's restricted decision making in the face of 'limited choices' and 'non-choices'**, e.g. the choice between risking 'mob justice' or risking bad treatment at the hands of the police; the choice between going hungry or risking the police cells with an 'almost' guaranteed chance of food.
- These comments also demonstrate **street children's resilience** by showing how they are able to 'look on the bright side' of situations and turn negatives into positives as a coping strategy, e.g. by turning the lack of drugs available into an opportunity to break an addiction or by capitalizing on detention as chance for 'children with criminal tendencies' to 'change'.
- **The police currently represent one of the children's main points of contact for services** such as medical attention, food and legal services, and a possible gateway to 'training' of some sort. The implication here is that there is a **great lack of such services available by other means**: it is unlikely that, given the evidence of a much greater likelihood of encountering negative rather than positive experiences, street children would choose contact with the police for social welfare support.

On the other hand, there are also genuinely 'positive' experiences reported by the countries that took part in the project.

<sup>83</sup> USK, Report on Street Children Conference on Juvenile Justice, 2003  
<sup>84</sup> SNV Kenya and GTZ, *The Story of Children Living and Working on the Streets of Nairobi*, 2002.



## DETERMINING CHILDREN'S AGES AND PROVISION OF LEGAL ASSISTANCE - NATIONAL POLICE, JUIGALPA, NICARAGUA

### PROJECT EXAMPLE

*In Nicaragua, Casa Alianza reports that, in spite of the poor material conditions and budgetary difficulties which are behind many of the problems currently experienced by the police, there are nevertheless some commendable efforts being made to improve the system. For example, in Juigalpa, when the National Police does not know the age of an arrested child, they transfer him/her to the forensic doctor with the purpose of determining the biological age more accurately. This avoids sending the child to an ordinary jurisdiction, and safeguards their right to be judged by a specially trained judge for children in conflict with the law. Also in Juigalpa, where there are few public counsels for the defense, police have established coordination with the local dioceses and with the Popular University of Nicaragua, in order to get legal assistance for arrested children.*

In the majority of cases, however, experiences of kindness or efforts of more systematic police reform are often limited. This is supported by the following comments which are typical:

*Some are very good and they say don't sleep in the road, be careful. Some are very bad and they beat us brutally and take the money from our pockets. (INDIA)<sup>85</sup>*

*Some [children] told us that at times they had been assisted by police and referred to certain 'good' policemen whom they knew and could rely on for help, but a greater number said they had never been helped by the police. (BULGARIA)<sup>86</sup>*

*"There are some good police, but most of them are bad. They get a kick out of hurting us. (GUATEMALA)<sup>87</sup>*

Although positive experiences tend to be the exception rather than the norm, the fact that some individual police officers offer a supportive rather than punitive point of contact for street children, in spite of similar conditioning and circumstances to their more abusive colleagues, has interesting implications for police training programmes. In the same way that characteristics of this 'positive deviance' behaviour have been explored in the context of why some male gang members are more gender-equitable / less violent towards girls and women than others, so too can the concept of this research be extended to the police.<sup>88</sup>

As initiatives in some countries are showing, capitalising on the fact that the police are those with whom street children have most contact, there are possibilities to turn this contact into a more proactively positive rather than negative experience: in other words, if this contact cannot be avoided (as would be preferable in an ideal world), the possibility exists to transform one of the most fundamental relationships shown in the 'net' diagram in Chapter 5. Many NGOs already work at intervening on behalf of street children when they are arrested, either on an ad hoc basis or as part of formalized legal aid programmes and the value of this work in providing a supportive relationship for the child is immense, as described by an NGO in Delhi, **India**:

<sup>85</sup> Human Rights Watch, *Police Abuse and Killings of Street Children in India*, 1996, p.25.

<sup>86</sup> Human Rights Watch, *Children of Bulgaria*, 1996, p.33.

<sup>87</sup> Interview with Dolores, Guatemala City, 6 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.24.

<sup>88</sup> Gary Barker of the NGO Instituto Promundo, Rio de Janeiro, Brazil, has conducted research examining why some boys and young men in gangs behave as the exception rather than the rule in their more positive behaviour and treatment towards girls and women. He identifies the following factors of 'positive deviance' in these individuals: 1. Self-reflective abilities / ability to see the cost of traditional masculinities; 2. Vocational and cultural competencies that buffer traditional masculinities (in other words, boys who have a skill such as music, dancing, telling jokes etc. were 'excused' from 'traditional' behaviour by other gang members); 3. Availability of adult members offering alternative gender roles; 4. Family intervention or rejection of men's violence against women in the home; 5. Alternative, more gender-equitable male peer group. [Adapted from the notes of a presentation by Gary Barker, on 'Gender Socialisation and Marginalised Children' for the Consortium for Street Children, London, 19 February 2001].



*As soon as we get to know that a particular child is apprehended a representative of our organisation makes it a point to be present at the police station. Our presence most of the time ensures child's right to be heard, we often play the role of an advocate for the child even before the Juvenile Welfare Board magistrate. Our sheer presence makes the child feel secure and he/she is able to express him/herself in an otherwise un-child-friendly atmosphere.<sup>89</sup>*

Beyond NGO intervention in police stations and involvement in police sensitization, however, it is important at this stage to point out that there is a broad range of NGO opinion on the value and feasibility of working even more proactively with the police, especially when it comes to the idea of 'strengthening' the role of the police in street children's experience of the justice system. Whereas some NGOs believe in the value of making use of street children's 'unavoidable' contact with the police by developing the role of the police as referral agents to transfer the children to more suitable services, other NGOs strongly believe that street children's contact with the police should be minimised and avoided altogether to the greatest extent possible. This lack of NGO consensus is the result of different experiences of the police in specific local contexts which can vary not only from country to country, but also from city to city and even from neighbourhood to neighbourhood within the same city.



**INDIA:** *The situation of police treatment as it is (right) compared with the situation as the children feel it should be (left): feedback from street and working children's workshop as part of the Indian National Seminar on Juvenile Justice, 8-9 April 1999, New Delhi, reproduced in Juvenile Justice: Report on the National Seminar 8-9 April 1999, New Delhi by Butterflies (edited by Rita Panicker). © Butterflies*

### DIFFERENT NGO APPROACHES TO WORKING WITH THE POLICE IN INDIA

PROJECT EXAMPLE

*An example of these contrasting NGO approaches can be seen in India. In Hyderabad, Andhra Pradesh, the 'Children and Police Programme' (CAP) was established with support from Dr Reddy's Foundation for Human and Social Development to establish Hyderabad City Police posts at railway stations and other strategic points to intercept street children and channel them towards NGO care rather than detention in police cells. In contrast, based on local experiences of high levels of violence and the organisation's history of dealing with the police, Butterflies in Delhi believes that NGO collaboration with the police leads to an erosion of trust in the NGO on the part of the child. Likewise, in contrast to other Indian NGOs that believe in the value of direct contact between street children and the police as part of police sensitization projects, this organisation never brings children directly into contact with the police, using instead case studies as part of the police training work they undertake.<sup>90</sup>*

One thing which is very clear, however, is that street children themselves have very clear insights into how they would like the police to behave, as opposed to how they currently are in practice.

Regardless of the variations in local contexts in the way in which police sensitization and training projects are delivered, based on the evidence of widespread human rights violations by the police and security guards outlined in this section, it is nevertheless important to highlight how essential such projects are in the reform of justice for street children. See Chapter 7 for examination of reform of the role of the police in more detail, especially in the context of diversion.

<sup>89</sup> Rita Panicker, Director, *Butterflies*, Delhi, India in response to a Consortium for Street Children questionnaire, January 2001.

<sup>90</sup> Consortium for Street Children, mission report, India 6-21 June 2000.

## 2) DETENTION: POLICE CELLS / REMAND HOMES / OTHER INSTITUTIONS

Detention of children should be avoided whenever possible. In most cases the benefits for the child and society are limited, whilst the damage can be overwhelming: in addition to blatant human rights violations that occur in institutions, detention contravenes the principles of restorative justice and contributes to the isolation of the child from their communities and support networks. However, despite extensive knowledge, theory, experience and guidelines that detention should be used only as a last resort and even then only for the shortest possible time (CRC Article 37(b); Beijing Rules 13(1); JDLs I(2)), as can be seen from the overwhelming prevalence of 'bars' through the diagram in Chapter 5, detention is most often used as a first and only resort, often for the longest rather than the shortest possible time. Detention starts at the police cell and continues into remand (before and during trial / hearing), and then usually as a preferred sentencing option. During this time, the child can be subject to multiple forms of abuse, as these testimonies from Pakistan show:

*They take "white and beautiful" children with them, keep them inside jail, have group sex with them and leave them in the morning. The child is beaten badly in case of refusal and kept in locks...*

*They torture us physically - kicking, beating with leather shoes and sticks, slapping and shouting abuse*

*They use different cruel styles of punishment like being beaten, hung upside down, whipped with a rubber strap or leather slipper...*

*We are sometimes made to wear iron shackling; They torture us physically, mentally and emotionally to force us to confess or give information about a case; They force us to accept the crimes which we did not commit... (PAKISTAN)<sup>91</sup>*

As discussed earlier, many street children involved in the juvenile justice system are locked up due to a lack of alternative facilities, their inability to post bail – even if it is offered, and lack of contact with responsible adults to whom they may be released.

### 2. a) ISSUES AFFECTING GIRLS IN DETENTION

As highlighted previously, due to their minority status in criminal justice systems, girls in detention face specific problems such as access to reproductive health care and sanitary supplies. These issues become even more complex in the case of girls who are pregnant or who have babies with them in detention. In some countries, the lack of appropriate facilities for girls or the small numbers of girls in a given facility may also mean that they are deprived access to services that boy detainees may receive, such as education, time outside of cells for recreation, etc. Where both girls and boys are detained at a facility, assumptions about girls' social roles may mean that they are more likely to be required to work as cleaners, cooks, or perform other 'domestic' work in the facility. A 2003 Human Rights Watch report on Brazil found that several facilities for detained girls were markedly older and more dilapidated than most of the boys' detention centres, and offered girls fewer recreational opportunities than boys, especially opportunities for outdoor recreation and large muscle exercise.<sup>92</sup>

91 AMAL / CSC, Street Children and Juvenile Justice in Pakistan, 2004.

92 Clarisa Bencomo, Human Rights Watch, email communication with Consortium for Street Children, May 2004, citing Human Rights Watch, *Cruel Confinement: Abuses Against Detained Children in Northern Brazil*, 2003, <http://www.hrw.org/reports/2003/brazil>

In the children's recollections, experiences in detention often merged into each other, regardless of the location or stage at which they were detained. This is indicative that all detention is perceived by children as punitive and that the system fails to distinguish between the innocent and the guilty, between those already convicted and those unfortunate enough to have been picked up regardless of involvement in a crime. For this reason, the experiences related throughout this section from the children's perspectives are considered under the heading of 'detention' in general and are not separated by location or stage of the system unless specifically stated.

## 2. b) REMAND / PRE- / UNDER-TRIAL DETENTION:

Pre- / under trial remand is particularly abusive and excessive and accounts for the majority of children held in institutions in many countries. According to international law, detention before trial "shall be avoided to the extent possible and limited to exceptional circumstances..."<sup>93</sup> However, in **Pakistan**, as of March 2003, out of a total of 2339 children detained in prisons alone (i.e. not taking into account detention in police cells and other institutions) in just four regions of Pakistan, 1942 (83%) were under trial, or waiting for their trial to start.<sup>94</sup>

*If I had a guardian to come claim me, I could leave today! (GUATEMALA)<sup>95</sup>*

*Pre-trial detention of children has been found to last as much as one year. Some criminal cases are just left unattended to while children languish away on remand. Children in the homes feel the police have forgotten them there. (NIGERIA)<sup>96</sup>*

In **Kenya**, the period of detention, although supposedly 24 hours or less, can actually extend to weeks and even months. Delays in processing and constant postponements are common due to lack of transport between the institutions and the court, delays in contacting parents or guardians, unavailability of judicial personnel at weekends, lack of coordination between departments responsible for investigating and writing reports, excessive workloads of probation and social services staff, bureaucracy and general inertia.<sup>97</sup> In some cases, the combination of poor conditions and insecurity as to how long they will remain in the remand home pushes many children into pleading guilty for their crime whether or not this is actually true, simply because to do so usually resolves their case more quickly:

*Some children just plead guilty because they think things will happen faster. They don't want to stay in remand. The conditions there are bad – not enough food and many kids get scabies. In adult remand prison it's even worse... (KENYA)<sup>98</sup>*

Detention in general can have severe negative impacts on the young person's own perception of themselves, their confidence and self-esteem. In the case of pre-trial detention, many children and young people feel as if they have already been labelled as an offender. This is particularly unfair in the case of street children who, as seen in the previous section, are subject to arbitrary and illegal arrest regardless of whether or

<sup>93</sup> UN Rules for the Protection of Juveniles, Rule 17; see also Beijing Rules, Rule 13; CRC Article 37(b).

<sup>94</sup> Source: National Commission for Child Welfare and Development Records (March 2003), cited in AMAL / CSC, *Street Children and Juvenile Justice in Pakistan*, 2004.

<sup>95</sup> Girl quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.55: "Children with families able to 'push' to get them out may be released pending their definitive hearing. Several untried children we interviewed told us they were only being detained because their parents had not come to get them out."

<sup>96</sup> Ariyo Okunsanya, HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004, p.73.

<sup>97</sup> See e.g. Skelton, A. (1999) 'African Focus: Juvenile Justice in Kenya', Article 40, Vol.1 Issue 2, August 1999 and U.S. Department of State (2002) *Kenya Country Report on Human Rights Practices for 2001*, Section 2(d).

<sup>98</sup> Human Rights Watch, interview with probation officers of the Juvenile Law Court, in Human Rights Watch, *Juvenile Injustice*, 1997.

not they have committed any crime. Whilst considering the experiences of street children in detention outlined below, it should therefore be remembered that by far the greatest majority of them have not been convicted of a crime, and in many cases, due to the use of the criminal justice system to process social welfare cases, they have not even been detained for being in conflict with the law in the first place.

## 2. c) DETENTION WITH ADULTS

The right of every child to be separated from adults (unless it is considered in the best interests of the child not to be) is one of the key principles of juvenile justice administration (CRC Article 37(c); Beijing Rules 13(4); JDLs 29). However, contrary to all of these international standards, it remains a common problem at both pre-/ under-trial and post-trial stages. For example, in **Nicaragua**, although arrested girls are usually separated by gender, they still often find themselves co-habiting with adult women prisoners due to space restrictions. Similarly, boys are frequently detained in the same cells as adult offenders, particularly in the Department of Managua, which suffers from considerable overcrowding. On average, it was found that just under 25% of the children visited in detention as part of the Street Children and Juvenile Justice Project were confined in the same cells as adults.

*Children are put together with adults in the police cells, some of whom have committed capital offences. Anti-social behaviours such as sodomy take place in the cells. (KENYA)<sup>99</sup>*

*I spent two weeks in jail. All we had to eat was the rice that stuck to the bottom of the pots. The toilet at the jail is clean. Children and adults are together in jail. Inside the jail, adult inmates do shameful things, such as masturbation. (PHILIPPINES)<sup>100</sup>*

*I was in a big cell [in the adult section of the al Azbekiya police station], the size of three rooms, with my friend. There were bigger and smaller kids with us. The smallest was ten. There were adults with us. The adults hit us. I was hit a lot. We were there for about five days, and then they sent me home. (EGYPT)<sup>101</sup>*

*We put the children or the young people in the same place with the adults, while there is no court to judge the offences committed by children. The trials just go so long and when the child comes out of the detention center he is a well-trained offender, ready to commit other offences. (ALBANIA)<sup>102</sup>*

<sup>99</sup> Child participants at the National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, March 2003.

<sup>100</sup> Romel, 15-year-old boy, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.104.

<sup>101</sup> Tariq A., aged 16, Cairo, Egypt, July 9, 2002 Human Rights Watch, quoted in *Charged With Being Children*, 2003, p.4.

<sup>102</sup> Lawyer for a 16-year-old boy accused of theft who – at the time of the report - had been in detention awaiting conclusion of his trial for five months (and who allegedly attended his first hearing with blood still on his tee-shirt from abuse suffered in the police station), quoted in Hazizaj, A. and Barkley, S.T., 2000, p.75.

Similarly, in **Nigeria** and the **Philippines** boys reported that they were detained in the same cell with adult criminals, complaining in the case of the Philippines that they were sexually abused by other inmates and treated as slaves – e.g. they were forced to wash clothes and give massages.<sup>103</sup> In **Pakistan** the practice of detaining children with adults is so well entrenched that an attempt by some of the jail authorities at Sukkur Jail to separate boys from the adult prisoners reportedly led to riots inside the prison in the mid-1990s. It was painfully obvious that the rioting adult prisoners had a stake in keeping the children with them. In 1994, a medical examination was conducted of juvenile inmates of the Lahore Camp Jail revealing that 80% of the children had been sexually abused, most of them repeatedly. The jail authorities defended themselves by saying that the police had abused the boys while they were in custody at police stations before being sent to jails.<sup>104</sup> Allegations of this type of abuse are also made of other countries: out of a 1998 survey of 170 boys in the four main prisons in **Malawi**, 40% cite being abused (including physical, sexual, mental and economic abuse): “There were serious allegations made by some juveniles that sometimes they are deliberately taken to adult cells to provide sexual services. Unfortunately, there was no way of verifying this claim.”<sup>105</sup>

## 2. d) PHYSICAL CONDITIONS IN DETENTION

The following quotations and the case study from India illustrate common complaints about conditions in detention regarding food, healthcare, sanitation, sleeping arrangements, overcrowding and clothing as experienced by street children in detention facilities:

*They take a bucket – everyone comes in there and it's full. You go to sleep near the waste. (KENYA)<sup>106</sup>*

*There's this issue of people fighting in the cells. You're a child and there are big people fighting in the cell. You are not fighting but you are going to be affected. (KENYA)<sup>107</sup>*

*“You have to wear the same clothes for one month – only one set, often infested with lice which feed on your blood. You have to wash the clothes on a stone and put it on when it's still wet. The clothes are worn through with maybe only one button at the top and even this may be broken. Even your buttocks are like that where the cloth is work through from sitting. You don't have any flesh on you because everything you have eaten has nourished the lice and bed bugs. You have one blanket that's aged until the edges are frayed – between 6 people. It gets torn because you are all pulling it, but there is no replacement. You are sleeping on wood – not smooth, but rough – 6 planks of rough wood. Nobody cares if you wake up in the night.”(Kenya)<sup>108</sup>*

*The toilet stunk. The walls were full of graffiti and reeking of urine odor... You could not use the toilet bowl when you defecate, you could only use a can. You couldn't even eat properly. (PHILIPPINES)<sup>109</sup>*

103 UP CIDS PST, *Painted Gray Faces*, 2003.

104 AMAL / CSC, *Street Children and Juvenile Justice in Pakistan*, 2004, citing Zahir Shah, *We Need New Legislation*, *The Nation Friday Review*, Feb. 3, 1995, p. 8.

105 Centre for Youth and Children Affairs (CEYCA), *A Survey Study Report on the Juvenile Offenders in Malawi Prisons and Approved Reform Centres, Malawi*, January 1999, p.25.

106 Participants in the National Street Children Workshop, Nairobi, Kenya, 22 February 2003.

107 *Ibid.*

108 *Ibid.*, describing conditions in Approved Schools in Kenya.

109 Children from Mindanao, quoted in UP CIDS PST / CSC End of Project Report, p.13.



*They have no proper place for us... Most of the time I slept in standing position and there were 8 individuals in a small lock up room." "The food provided inside the jails is low standard and unhygienic. (PAKISTAN)<sup>110</sup>*

*The police station is bad, very bad. It stinks. It is dark and very congested. You cannot see the sky. (BANGLADESH)<sup>111</sup>*

### Conditions in detention – India

Prior to government reforms in Andhra Pradesh in 2003<sup>112</sup>, referring to one home in Visakhapatnam to which children 'raided' from their workplaces were taken, an NGO source in 2001 described it as "disgraceful. The amount provided per month for food is inadequate. The children have no winter clothing or blankets, and almost no medical care. They are, in our opinion, better off working in 70% of the cases. The so-called 'education' given in these 'homes' is close to useless. If you ask the State Government what the budget is per child per month, and what it covers, then the children are fed at below the poverty line, have inadequate medical services and medicines, have insufficient clothing and bedding, and have almost no organised non-formal education. The basic living conditions caused by the budget limitations are in themselves cruel. There appears to be no machinery to review the cost of food provision on a yearly or even 3-yearly inflation actual cost basis. Many NGOs and social organisations like ours give additional food to these homes and supply clothing and bedding plus medicines."<sup>113</sup>

Further examples of such problems include **Kenya** where, as part of this project, children complained of poorly ventilated and overcrowded police cells and overcrowded remand homes (where, for example, according to a 2002 report by the governmental Standing Committee on Human Rights (SCHR), the Nairobi Juvenile Remand Home held more than 4 times its capacity of 100 detainees).<sup>114</sup> In addition to complaints regarding lack / poor quality of food, lack of medical treatment and clothes, and *"having to shave your head as if you had already been sentenced as guilty,"* the children also highlighted the corruption within Kenyan remand homes. For example, they spoke of *"staff diverting to their own pockets donations brought for the children by well-wishers;"* staff colluding with outsiders to illegally engage girls as house-helpers; staff portraying a positive image of the institutions whenever there are visitors coming to the home; and teachers at the remand homes taking away valuables that belong to the children.<sup>115</sup>

## 2. e) TREATMENT IN DETENTION

In many countries places of detention are little more than warehouses 'completely inadequate for any sort of child rehabilitation or development to take place,'<sup>116</sup> with limited or no education or training facilities. At the worse end of the scale, the boredom of being locked up for most of the day is interspersed with "heavy and punitive labour"<sup>117</sup> labour, beatings and humiliation; at the better end, dedicated staff struggle to provide basic education or vocational skills in difficult conditions with limited equipment and materials.

110 AI Amnesty International, 'Pakistan: Denial of Basic Rights for Child Prisoners', Document ASA 33/011/2003.

111 Eight-year-old boy quoted in Zaman Khan, S., *Herds and Shepherds*, 2000, p.19.

112 The Indian government has recognised the problems highlighted here and in August 2003 the Juvenile Welfare, Correctional Services & Welfare of Street Children Department in Andhra Pradesh put into practice a scheme of co-management of the state's children's institutions with selected NGOs with a view to improving conditions for children in line with the CRC. This scheme is discussed in more detail as an example of collaboration in Chapter 2.

113 NGO that wishes to remain anonymous, India, in response to a Consortium for Street Children questionnaire, January 2001.

114 Quoted in U.S. Department of State, *Kenya Country Human Rights Report 2002*, 31 March 2003.

115 USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

116 International Childcare Trust Kenya (2003) *Street Lives – Juvenile Justice Issue*, June 2003. <http://www.sollernet.com/ictk/news603.pdf>

117 Street children's comments on remand homes in Kenya, USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

*In the room, if we play, we get beaten if we make a noise. (INDIA)<sup>118</sup>*

*I've been taken to the police station many times. Once I stayed there for five days. Sometimes they gave me some bread to eat. There was a jar in the cell in which we could go to the bathroom. There were three other girls in the cell with me. There was only one big bed in the cell, so we all shared it. There were no blankets. While I was there, the police handcuffed me and put a hat over my head so I couldn't see anything, and started beating me with a chain. I begged them not to beat me, but they told me I had stolen. (BULGARIA)<sup>119</sup>*

*I got beaten up and they electrocuted my ass. The cell smelled so badly. I don't know, if it smelled like shit or pee. You can't eat with that smell. I was in jail only for two days. A policeman friend set me free. When I got arrested for vagrancy, I got beaten up. They beat me up as soon as they arrested me. They hit me with the butt of their guns and I was electrocuted. They placed bullets between my fingers and squeezed it tight. The toilet was unbearable. The walls were dirty with graffiti. A trash dump's better than prison. When you have to go, you use a tin can. You could step on the urine-filled floor while eating. They always served Lucky brand sardines. They asked me to clean the toilet. My policeman friend gave me cigarettes. He wanted me to become an informer. Life in jail won't bring anyone good, only hardship. I'll get even. I am so frustrated and I feel sorry. I realize that there are policemen who could make things worse for me. The police are devious. They'd accuse you of having taken drugs. One move, you get beaten! (PHILIPPINES)<sup>120</sup>*

118 Ravi, aged 8, in Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001.

119 Antonia, an eight-year-old girl who begs in the open air market in downtown Varna, describing her detention for five days in a police station, Human Rights Watch, *Children of Bulgaria*, 1996, p.27.

120 David, aged 15, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, pp. 99-100.

121 12-year-old girl and an 11-year-old boy, respectively, quoted in Zaman Khan, S., *Herd and Shepherds*, 2000, pp.21-22.

*The other girls in jail tried to do bad things to us by force. When we complained to the guard women, they in turn complained against us and told the offenders to beat us up. (BANGLADESH)<sup>121</sup>*

*Newcomers are pestered and searched by the prisoners and drug addicts for money. We are beaten if we don't have money. Sometimes the police take all our money. At times we are detained for four days ... without being taken to court. These are never recorded in the books (police records). (BANGLADESH)<sup>122</sup>*

*The children come in from the police stations beaten up, and tied together with ropes. They smell horrible—even the detention room downstairs smells bad and is filthy. [In the police stations] the police beat them and hang them from their feet and use electricity on them. I've seen a seven-year-old come in with his face swollen from the blows. When you ask the mukhbirin [low ranking police] who brought them about the children's condition they tell you, 'Those [children] deserve worse than that treatment. They run away and they lie.' If you ask the child, the child is afraid to talk about ill-treatment by the police because he knows he will be hit when he leaves [the social welfare experts' interview room]. (EGYPT)<sup>123</sup>*

Sexual abuse, as examined earlier in the context of both girls' and boys' experiences on the street at the hands of the police and private security guards and when held in detention with adults, is also rampant in detention. As part of the Street Children and Juvenile Justice Project, children in **Kenya**, **Pakistan** and the **Philippines** highlighted this as a key complaint. One child at the workshop in Pakistan described being abused by a group of 8 policemen whilst in detention, while another suggested that abuse had become almost a standard practice among some officials.<sup>124</sup>

*The girls go into the police cell and have to do sexual intercourse with the police to get released, but she is not released. The policeman is even 42 and the girl is 16. It's really bad.*

*Boys are not really [sodomised] by the policemen, but they are done this by the big street children in the cells. When a big person is brought to the cells they are done this. (KENYA)<sup>125</sup>*

Examples of “severe police brutality” in Bulgaria are given by Human Rights Watch in a 1996 report and include children being beaten with electric shock batons, clubs,

122 15-year-old boy quoted in *ibid*, p.21.

123 Social Welfare Expert, Cairo Juvenile Court, Cairo, Egypt, July 3, 2002, in Human Rights Watch, *Charged With Being Children*, 2003, p.4.

124 AMAL / CSC, *Street Children and Juvenile Justice in Pakistan*, 2004, p.41.

125 Participants in the National Street Children Workshop, Nairobi, Kenya, 22 February 2003.

126 Human Rights Watch, *Children of Bulgaria*, 1996, p.4.

chains, rubber hosing, boxing gloves, and a metal rod with a ball at the end of it: “One boy was stripped of his clothing, doused with water, and beaten on the soles of his feet with an electric shock baton.”<sup>126</sup> Contrary to international guidelines, (JDLs 67, BJ 17.3, VG 18) corporal punishment is frequently used as a form of discipline in remand homes and approved schools where staff lack understanding and training with regard to non-violent alternatives. In **Egypt**, a mid-level police officer told Human Rights Watch that he beat children brought to the police station to discourage them from staying on the streets, although he doubted that beatings were an effective deterrent:

*I hit them and still they come back. I choke them and still they come back. These children are a lost cause.*  
(EGYPT)<sup>127</sup>

In addition to physical violence, the children also complained of degrading treatment and humiliation. For example, in **Kenyan** remand homes a degrading search is usually conducted on children on arrival at remand homes without due respect to gender e.g. a male teacher searching female children, and they have their heads shaved by broken sharp objects such as broken bulbs.<sup>128</sup> Complaints regarding use of abusive language are also common, such as police and other staff calling children prostitutes or children of prostitutes, and indicate yet again the extent to which children are degraded within the system. For example:

*They pointed their fingers at us insultingly. They gave me harsh words, that I was a good for nothing girl, a prostitute. They only apprehended us, the girls... While in the pick-up, he [the policeman] said that he would bring me to the Annex, a motel here in Davao. He told me to massage him. He said that he would feed me and give me amphetamines. In jail cell, we slept on the floor. There was no food, and I cleaned the toilets.* (PHILIPPINES)<sup>129</sup>

In Pakistan, degrading and humiliating experiences in juvenile cells in prison include brutal beatings, orders to sweep the floors with cloth strung in sewerage water, sitting crouched with bowed head and gaze locked downwards, use of fetters and solitary confinement.<sup>130</sup>

<sup>126</sup> Human Rights Watch, *Children of Bulgaria*, 1996, p.4.

<sup>127</sup> Human Rights Watch, *Charged With Being Children*, 2003, p.25.

<sup>128</sup> USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

<sup>129</sup> Cynthia, aged 15, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p. 101.

<sup>130</sup> AMAL / CSC, *Street Children and Juvenile Justice in Pakistan*, 2004.



## Case study

### **'A WASTE OF LIVES': CYCLES OF VIOLENCE IN BRAZILIAN DETENTION** <sup>131</sup>

*'A Waste of Lives' is the title given to the report written by Amnesty International in July 2000 on conditions in Brazil's juvenile detention centres which are managed by government institutions called FEBEM (Foundation for the Well-Being of Minors). In theory, the law in Brazil in relation to children centres on the progressive and comprehensive 1990 Statute of the Child and Adolescent (ECA) which incorporates many aspects of international human rights guidelines on juvenile justice. In states in the Brazilian federation where the ECA is actually being applied, and where the FEBEM system (which dates back to the 1960s) is being reformed, the results are very positive.*

*However, horrific conditions have been revealed in some states.<sup>132</sup> According to an international expert on prison conditions who visited Brazil in October 1999 with Amnesty International: "I should say as clearly as possible that I have never seen children kept in such appalling conditions...In my view the place should be closed down." The report describes the following conditions: 25 boys having to share a 2 x 3 metre dormitory - with some boys sleeping sitting up or in the bathroom; only one bar of soap per month to share between ten, leading to epidemics of skin diseases; regular beatings with iron bars and wooden soled shoes, and then being made to stand under a cold shower for half an hour to reduce signs of bruising; boys being made to face the wall with their hands on the back of their neck for periods of up to a whole day; having their toothbrush - their only personal possession - confiscated; and being verbally, as well as physically, humiliated on a daily basis, with no educational activities to occupy them.*

*With only 10 - 15 untrained staff to oversee 350 boys, and with no clear rules about how to administer discipline, wardens resort to violence as the only way to 'control' conditions described by the president of their union as 'hell'. However, the situation is not 'controlled': from 1998-2000, São Paulo's detention centres saw more than 15 rebellions, with many deaths and hundreds of wounded. A vicious cycle is repeated again and again: riots, fires, hostage-taking, negotiation, promises, intervention of military police troops, violent end to rebellion, broken promises, increased violence against the boys as punishment, leading in turn to new protests once again.*

*More recent reports from Amnesty International reveal that, although Franco da Rocha, one of the most notorious FEBEM units was finally closed down in December 2003, torture and ill-treatment is still taking place in other FEBEM units: as of January 2004, at least 60 boys had reportedly complained of being tortured (including reports of children having teeth pulled and of being threatened with death if they reported the abuses) in the Tatuapé centre, and in April 2004 a report was received from Raposo Tavares detailing horrific conditions and torture. In January 2004 two boys were shot (one dead) during an alleged escape attempt from the Vila Maria centre and at least 10 other adolescents died in the FEBEM system in 2003. The new president of the FEBEM system recently wrote to Amnesty International assuring them that since taking over (in early 2004) there have been no further reports of violence against the boys and that they are dismissing many guards for reports of corruption and violence. Although the prosecution service is slowly beginning to prosecute guards under the Brazilian torture law, this process is slow.<sup>133</sup>*

*In the words of Julio, aged 14, a street-living child taking crack and sentenced for two months for robbery: "If you don't walk with your hands behind your back, they beat you; if you don't call them 'Sir', they beat you; anything you do, they beat you up. Anything the guards don't like, they beat you. If you talk when you're not supposed to, they beat you. Anything you do, they beat you. I came out really angry, worse than when I went in. I learned nothing there." [On being sentenced to 2 months]: "It's very bad, sir. But I won't stay that long. I'll do something. I don't think I'll be able to take 2 months. I'll just stay till I put on some weight, then I'll get out."<sup>134</sup>*

<sup>131</sup> Based on information from: Amnesty International, 'A Waste of Lives', 2000 at [www.amnesty.org/ailib/aipub/2000/AMR/21901400.ht](http://www.amnesty.org/ailib/aipub/2000/AMR/21901400.ht); Stumpf González, R., (National Coordinator of National Movement of Street Boys and Girls, Brazil), *Why Perpetuate an Old and Sad History? The Case of FEBEM, Sao Paulo*, November 2000; Consortium for Street Children material for Methodist Association of Youth Clubs 'Street Apart' campaign, January 2001; and CSC communication with Tim Cahill, Amnesty International Brazil Desk, 8 August 2002.

<sup>132</sup> E.g. through the campaigning work of local organisations such as the MNMMR network (National Movement of Street Boys and Girls). See also the report of the UN Special Rapporteur's mission to São Paulo from August to September 2000; Amnesty International, *A Waste of Lives*, 2000; and Human Rights Watch, *Cruel Confinement*, 2003.

<sup>133</sup> Information compiled from Amnesty International, 'Adolescents held in the FEBEM juvenile detention system, São Paulo', 22 January 2004 (AI Index: AMR 19/002/2004) and correspondence between Amnesty International and Consortium for Street Children April 2004.

<sup>134</sup> Interview with Julio, São Paulo FEBEM detention centre, in Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001.

## 2. f) POSITIVE EXPERIENCES IN DETENTION

In spite of the majority of negative experiences recounted by the children, as with the police, they were also encouraged to report on their more positive experiences in detention. However, in Kenya, although on the positive side street children participating in the workshop suggested that in remand homes they were at least assured of food, shelter and (if they were lucky) limited education, they nevertheless felt that such benefits were often outweighed by the negative aspects.<sup>135</sup> 'Positive experiences' in other countries appear to range from merely guaranteeing children basic rights to which they should be entitled anyway, to much more proactive and imaginative efforts by caring staff and authorities to improve services for children even in spite of resource constraints.

### **SMALL ACTS OF KINDNESS AND 'OPERATION SECOND CHANCE' IN THE PHILIPPINES**

PROJECT EXAMPLE

*In the Philippines, some of the children as part of this project reported that they were taken care of by the police (e.g. given sensible advice, food, clothing, medicine, and a good place to sleep – sometimes using their own money). They explained that sometimes their parents were called during the investigations, that social workers also talked and discussed the case with their parents and they were allowed visits by their parents, friends, NGOs and church groups in jail. In the rehabilitation centres they were given the opportunity to continue studies, taught good manners and given light punishment for misdemeanours. Mass and Bible studies were also conducted and the rules were lax so that in some cases children were allowed to use their cellular phones in the homes. Some children in the centres said that they were treated like family members and not like criminals ("the houseparent did not just do her job responsibly but really cared for us") and that they were provided with various skills that would be useful once they were released from the centre. One child even said that social workers had taught him to read and write. Meanwhile, another participant said that he was given an educational scholarship after his release.*

*In Cebu, meanwhile, a separate facility has been established for children who await trial under a programme known as Operation Second Chance, the result of a broad-based and multi-sector effort begun by the Cebu City Taskforce on Street Children (CCTFSC). CCTFSC is a network of 22 organisations divided into several committees: legal, advocacy, finance and programmes, which handle special projects including the training of judges.<sup>136</sup>*

### **COMMUNITY COOPERATION TO IMPROVE CONDITIONS AND TREATMENT IN POLICE DETENTION – NATIONAL POLICE, NICARAGUA**

PROJECT EXAMPLE

*In Nicaragua, in relation to the National Police, Casa Alianza Nicaragua noted the following good practices. For example, in spite of personnel constraints, the Juigalpa police permit children to receive visits from their families on a daily basis if desired. In District 2 of Managua, San Rafael del Sur and Juigalpa, the police have established coordination with final year medical students at the American University (UAM), private doctors and local dispensaries to provide check-ups and assistance for the children. Further examples of cooperation with the local community include: authorities in Managua, District 4, developed contacts with business people in the Oriental Market to help finance remodeled walls in deteriorating cells and to fund regular fumigation in the cells; the Popular Law Office in the Central American University (UCA), promotes a project for legal defence of inmates in Police Delegations One and Four in Managua, whereby one or two senior law school students stay during certain hours of the day to help safeguard the inmates' human rights within that Delegation; in the Mateare Police Section, Managua, inmates receive three meals a day, comprising the same food that police officers themselves consume due to the close relationship established between the police and the community; civil society organizations in San Rafael del Sur guarantee lunchtime food, medication and weekly disinfectant for inmates to supplement the police budget which has not increased since 1990.<sup>137</sup>*

<sup>135</sup> CSC, *Street Children and Juvenile Justice in Kenya*, 2004, p.25.

<sup>136</sup> UP CIDS PST, *Painted Gray Faces*, 2003, pp. 158-161.

<sup>137</sup> CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, 2004, p.33.

## COMMUNITY COOPERATION TO IMPROVE CONDITIONS AND TREATMENT IN THE NATIONAL PENITENTIARY SYSTEM – NICARAGUA

PROJECT EXAMPLE

Although indicating that there is still much room for improvement, Casa Alianza Nicaragua has also documented efforts to improve conditions in the national penitentiary system with initiatives around culture, recreation, sports, family visits and education. For example, in Chinandega Penitentiary, monthly visits from the Criminal District Judge for Adolescents contribute to strengthening working relations between the sectors, and help to ensure follow-up on specific children. One official is required to remain all day in the adolescents' gallery to attend to their concerns and needs and a doctor and psychologist are permanently on the premises. Furthermore, links have been established with local organizations and education centres that regularly carry out recreational activities and friendship building with the children. In La Modelo prison at Tipitapa, Managua, authorities likewise coordinate with the Ministry for Education, Culture and Sports and other state and civil society organizations in carrying out educational courses and training sessions for children in the center (including on human rights). With the approval of the MECD, penitentiary officials organized an English course for children in the center, imparted by one of the adult inmates, and other artistic and cultural activities have been promoted. Film-making has also been authorized: the 2002 film "La Isla de los Niños Perdidos" [The Island of the Lost Children] was well-received by the Nicaraguan public and won two awards in Europe.<sup>138</sup>



NICARAGUA: some staff and young people from the NGO Casa Alianza Nicaragua, April 2002.

## Case study

### REDUCING NUMBERS OF CHILDREN IN DETENTION IN ROMANIA

In Romania, prompted in part by pressure from international organisations, there has been considerable improvement in reducing the numbers of children in detention: "Statistics from the General Directorate of Penitentiaries show that in 1996 there were over 10,000 juveniles held in custodial establishments in Romania (both in prisons and Centres of Reeducation). By 2003 this figure had been reduced to under 1,000. These reductions are evidenced both in a decline in the number of juveniles held in custody on preventative detention (remand) and those definitively sentenced."<sup>139</sup> This is born out by specific statistics in relation to remand as follows: as of 1 June 1997, almost 60% of the 2,662 children in penitentiary detention centres across Romania were without conviction and awaiting trial.<sup>140</sup> However, this percentage had been reduced in 2002 to 25.79% (342 boys and 15 girls) out of a total of 1,384 children.<sup>141</sup> The reduction in numbers of children definitely sentenced to detention is directly related to the development of the probation system, with the support of the UK Department for International Development, across the entire country.

In **Nigeria** the children spoke positively of Social Welfare Officers in some of the homes, explaining that "they are caring; they take us to hospital; they help by going to our homes and talking to our parents; they stay with us and ensure that we are not alone; they take us to their houses." They also pointed out that, although conditions varied, in some schools, the children are "free to go to work for money, go to school, and feed themselves. Girls are spoken to nicely, advised, and treated as if they are the officers' own children."

<sup>138</sup> See [http://www.filmfestival.gr/docfestival/2002/proc\\_ess\\_en.php?movieid=223&eventid=63](http://www.filmfestival.gr/docfestival/2002/proc_ess_en.php?movieid=223&eventid=63).

<sup>139</sup> Haines, K., Mansell, C., Shaw, R. & Goatly, R., Probation in Romania, Report 2003

<sup>140</sup> Source: The Ministry of Justice/General Directorate of Penitentiaries, reprinted in Government of Romania's Second Periodic Report to the CRC Committee, 2002.

<sup>141</sup> Ministry of Justice – Penitentiary General Division, *The Statistic Annuary 2002*.

## REFORM OF CONDITIONS AND TREATMENT IN DETENTION IS POSSIBLE

### Practical tips

Two themes seem to emerge from these positive experiences:

- There are individual staff and particular departments that do not conform to the pattern of criminalising and stereotyping street children within the justice system, but who show understanding and compassion for their situation;
- The most effective interventions to reform conditions in detention involve active collaboration with the community.

As with the children's positive experiences with some police officers, these examples show once again that reform in favour of children's rights is possible if stereotyping and discrimination is challenged at the level of individual and group sensitization, and if inter-sectoral and community relationships are strengthened.

## 3) TRIAL / HEARING AND SENTENCING: JUDGES AND LAWYERS

### 3.a) GENERAL EXPERIENCES

Experiences of the children at this stage were mixed, ranging from worst to best case scenarios.

*They tell fake accusations and you have to accept what you've been accused of. You're never given a chance to say anything in court. The whole process is too fast. They just make up things for you. They accuse on what they think is good [appropriate] for you. Accusations should be investigated. Nobody was there to investigate. If you continue denying the case they tell you go back to the remand centre and come back after 14 days. You have to accept the crime that they're accusing you of so that you are set free. (KENYA)<sup>143</sup>*

*Children are not given the chance to speak or defend themselves; Children are held in handcuffs; Sometimes children become hopeless and feel like they want to die; Children do not reply to the police statement. (NIGERIA)<sup>144</sup>*

<sup>143</sup> Street girl participant in the National Workshop on Street Children and Juvenile Justice, 6-7 March 2003, Nairobi, Kenya.

<sup>144</sup> 14-year-old girl at the National Workshop on Street Children and Juvenile Justice, Lagos, Nigeria, June 2003, quoted in HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.



“There is not much we can tell about our experience in court. We couldn’t forget that the hearings always get postponed. We have always waited for the judge to appear. Meanwhile, we get stuck inside the jail. (PHILIPPINES)<sup>145</sup>”

“The case against me was filed when I was still a minor, but when the sentence was handed out, I was already over 18 years old. (PHILIPPINES)<sup>145</sup>”

“[The children] also, at times, don’t see and feel any support from the judges and lawyers. The former are at times biased and don’t give the child the chance to explain himself. The latter, meanwhile, persuade the child to admit to the crime even if innocent. (PHILIPPINES)<sup>145</sup>”

“We heard that in court we have to say that we were guilty in presence of the magistrate. It is a custom. If we don’t do so, the police will torture us and we will be sent back into police custody. (BANGLADESH)<sup>146</sup>”

“The prosecutor took the police investigative report but didn’t ask any questions. They didn’t say what I was charged with. They just wanted to send me back to the countryside. I didn’t see a judge. Only criminals see a judge. (EGYPT)<sup>147</sup>”

Child’s rights researchers in the Philippines as part of this project note that this trial period is often “a blur to the children, with the experiences not as vividly remembered compared to those during arrest or detention.” In terms of the worst case scenario, testimonies from children in the **Philippines** include the following: the progress of cases was very slow due to frequent postponement; those who filed the case against the children do not often appear in court; children were persuaded by judges, lawyers

<sup>145</sup> UP CIDS PST, *Painted Gray Faces*, 2003, pp.111-113 and 122.

<sup>146</sup> 13-year-old boy, quoted in Zaman Khan, S., *Herds and Shepherds*, 2000, p.25.

<sup>147</sup> Anwar R., aged 15, Cairo, Egypt, July 9, 2002, quoted in Human Rights Watch, *Charged With Being Children*, 2003, p.4.

and social workers to admit the charges “in order to speed up trial and enjoy suspended sentence”; they have difficulty in understanding court processes/hearings since the judge usually uses English - a language which these children could not understand.

*What was significant for us is that the hearing of our cases keeps getting postponed. We had to keep on waiting for the judge. This lengthens our stay in jail. We liked it though when our lawyer accompanied us to court. Still, we would have preferred it if a social worker and our parents accompanied us. Having somebody with us will make things less scary and threatening. Some judges also advised us to plead guilty to the charges that were filed against us. They say this will hasten our transfer to the rehabilitation centre.*

(PHILIPPINES)<sup>148</sup>

Many children said that they were handcuffed on the way to and during the hearing, with the restraints removed only when the judge called on them and asked them to stand. Some of them even said that they were afraid of the judge who looked like a vampire to them in his black cape. During the hearings, they were fearful and nervous because they already believe that they have already been convicted. Many of them also felt ashamed for having to wear prisoners' uniforms.<sup>149</sup>

In **Nicaragua**, although there are slow improvements being made to ensure that children are remitted to a judge by the police within 24 hours, in places far away from the headquarters of the Criminal District Court for Adolescents in Managua, it is still not possible to comply with the term established by law.<sup>150</sup> In **Kenya** the children complained of: lack of legal representation; no witnesses or evidence presented during trial; use of false accusations and false evidence; children are often given 14 days in remand homes between hearings; they are not given sufficient time to explain their cases; no one seems to understand their problems; children are often forced to admit to an offence they have not committed; they are called bad names e.g. prostitutes.<sup>151</sup> In Lagos, **Nigeria** the children complained of: not being given the chance to speak or defend themselves; being held in handcuffs; not being allowed to reply to the police statement; not being allowed to cross examine during proceedings in court and often being compelled to confess to crimes under duress; often not being represented in court by their parents as they had not been notified of their arrest.<sup>152</sup>

Legal representation for children in detention, especially those such as street children who cannot afford to pay for such services, is often lacking in practice, even if available in theory. For example, according to a recent Human Rights Watch report on Northern **Brazil**, although all of the young people they interviewed were aware that they had legal representation, provided for under Brazilian law and usually provided by the public defender, few had actually spoken with their legal counsel about their cases. Typical comments included: *"He never talked with me. He came to [the detention center] once, but he just walked by. He didn't come to see me"; "I haven't seen him. He wasn't at the court when I went"*. Sir Nigel Rodley, in 2001 in his capacity as UN Special Rapporteur on Torture, observed that "in many states public defenders . . . are paid so poorly in comparison with prosecutors that their level of motivation, commitment and influence are severely wanting, as is their training and experience."<sup>153</sup>

148 Children at a workshop in Mindanao, Philippines, July 2002, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.110.

149 Ibid, pp. 111-113 and 121.

150 CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, February 2004, p40.

151 USK / CRADLE / CSC End of Project Report, 2003.

152 HDI / CDC, *Street Children and the Juvenile Justice System in Lagos State*, p. 93.

153 Human Rights Watch, *Cruel Confinement*, 2003.

## Case study

### **LEGAL ASSISTANCE FOR CHILDREN IN THAILAND: HUMAN DEVELOPMENT FOUNDATION, BANGKOK**

*In addition to outreach, homes and shelters, Human Development Foundation set up Thailand's first legal aid clinic for poor children who are victims, witnesses, or who are accused of a crime. HDF represents and counsels them during interrogations, testimonies, and trials – over 1,600 cases in 2002. Approximately 80% of the cases involving children in conflict with the law are drug-related due to the children's involvement in the high volume of local trade in amphetamines.*

*The following extract describes the experiences of six street boys, aged 8-14, testifying in court as victims / survivors of a paedophilia and internet pornography case: "Court was in a huge building. Try to imagine yourself eight or nine or ten and being taken into one of the rooms to be questioned by five adults, most of them strangers. The adults were all on their side, but that didn't seem to offer much comfort. It was still a strange place with strange people asking questions you don't want to hear. Over and over and over again, the social worker, the lawyer, and the others ask their questions, while two television cameras record it all. The questions get very specific. "Did the man put his wee-wee inside your bottom? Did he do it more than once?" The answers are often non-verbal. Always there is a painful pause, followed by the fractional movement of head or chin. The eyes are always dimmed by dishonour, the lips pursed or pressed into a thin line that reveals the loss of face.*

*And so it goes, hour after hour, with occasional breaks while the other children wait their turn outside, bored out of their skulls, finally falling asleep on the floor. At midnight, we called it quits and the boys were led outside. Coincidentally, the bad guy was being taken away by the cops at the same time. The boys looked at him. I have no idea what they thought. The judge said he wanted to clear this case as quickly as possible, so he scheduled another session the following week, when maybe in another 12 hours of questioning, two more boys will finish the same grim experience.*

*Back in the safe house, sometimes the younger boys cry. They try not to, because there are 40 other boys there, too. And sometimes they fight and try to run away. Sure, they're being treated fairly, probably for the first time in their lives, but it takes a while to get used to that as well. We know that being with other surviving kids, usually they help each other and, sometimes, they actually begin to heal themselves.*

*This, by the way, is as good as it gets for the kids when you're dealing with paedophiles. This is a case where the system is on the kids' side, a hundred and ten per cent. The judge is one of the best and the social workers have been trained and they've through this countless times. They represent 200 children in court and in police stations in Bangkok every month. It's a lot of work, and painful for the kids, and usually the paedophiles get off, pay a huge "bail" and disappear, so it's easy to wonder why so much time and effort and pain is expended.*

*There is an alternative, of course: we can ignore the problem, just walk away. There are, after all, other fights to be fought and the kids can always go back to whatever shacks they call home and to whatever abusing adults they call mom and dad or grandma. Or back to [their Thai 'friend' in the slum who pimps them out], or someone just like him, a type that always seems to skate free. Or right back onto the street."<sup>154</sup>*

In various countries there are legal provisions requiring the preparation of 'social enquiry reports' by the probation or social services departments. These reports are intended to examine the child's background in order to assist the judge in choice of sentencing options. However, due mainly to resource constraints, as well as the difficulty of obtaining family information in relation to many street children who may have severed such relationships, these reports are often not completed.

154 Father Joe Maier, Human Development Foundation, Bangkok, Thailand, March 2003.

## Case study

### **BIO-PSYCHOSOCIAL STUDIES IN NICARAGUA<sup>155</sup>**

*According to the Nicaraguan Code of the Child and Adolescent, in cases where deprivation of liberty is a possible sentence, the judge is required to order a 'bio-psycho-social study' of the child, and for that he/she must rely on a specialized interdisciplinary team. This study is critical in ensuring that the final sentencing takes into account the child's particular health, social and psychological situation. However, at the time of writing, only the District Criminal Judge of Managua has the required team established by law to carry out bio-psycho-social studies. In some departments of the country the district attorney gets assistance from government health institutions or non-governmental organizations that provide studies in this sense.*

*Of 44 children's case files from different regions reviewed by the Special Attorney General's Office for Children and Adolescents and Casa Alianza Nicaragua for this project, the judge ordered the realization of the bio-psycho-social studies for only 10 cases - only 7 of which were actually carried out. It had not been ordered for 19 cases (44%). Of the remaining 15 cases, 9 had not yet started the process, one had just begun, in one case the accusation was dismissed, 2 had an order for release, and 2 were passed to a different jurisdiction. Failing to systematize the gathering of bio-psycho-social reports in this way leaves children within the justice system at greatly increased risk of inappropriate treatment and sentencing.*

*Of the 44 cases, 13.6% of the cases had been under trial for more than three months without having issued a sentence. According to some of the judicial officials interviewed, this delay was usually due to the time it takes to carry out bio-psycho-social studies and the heavy caseload of the personnel involved (including judges).*

### 3.b) POSITIVE EXPERIENCES IN COURT

*The questions asked by the judge were clear and non-threatening. (PHILIPPINES)<sup>156</sup>*

*Lawyers are allowed to defend and represent children. (NIGERIA)<sup>157</sup>*

In terms of the best case scenario in the **Philippines**, some child participants described the atmosphere in the courtroom and the attitude of the lawyers as non-threatening and that children were recognized as competent to testify; they were given the chance to speak in court; they were judged based on evidence; they were allowed bail; the judges did not even wear black robes; questions were stated properly during the proceedings; in the cases where the judges did not speak the local dialect, the children had been given interpreters; they were provided with good, intelligent, and child-sensitive lawyers. Some of the participants said the "hearings were not slow." In Cebu, multi-disciplinary teams, composed of policemen, prosecutors and judges were employed to minimize the trauma of multiple interviews with the children. The adult participants meanwhile reported that judges who had received training on the rights of children were already child-sensitive.<sup>158</sup>

<sup>155</sup> CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, 2004.

<sup>156</sup> UP CIDS PST, *Painted Gray Faces*, 2003, pp.111-112.

<sup>157</sup> 14-year-old girl at the National Workshop on Street Children and Juvenile Justice, Lagos, Nigeria, June 2003, quoted in HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.



Street children in Lagos, **Nigeria**, stated amongst their positive experiences of court that “lawyers are allowed to defend and represent children,” whilst one of the juvenile magistrates highlighted that children are allowed to speak in some juvenile courts and the Office of the Public Defender has expressed a willingness to provide legal representation for the children.<sup>159</sup>

Similarly, in **Nicaragua**, although the office of the public defender at present only functions in the jurisdiction of Managua and in the north of the country, the following examples of good practice cover both of these areas and apply especially to the capital: in most cases, children beginning their trials make statements with the assistance of a lawyer when appearing before the judge; public counsels for the defense are almost always physically present in the court; the Public Counsel for the Defence (Managua) signed an agreement with the National Police in order to interview detained adolescents without major procedures or formalities, excepting the rigorous ones referring to identification (although this does not allay the fact that the police still need to allow more privacy during interviews and grant more time than the usual five to ten minutes currently taken); the Criminal District Judge for Adolescents in Managua respects the right to a private interview between the child and his/her counsel for the defence before rendering his/her Interrogatory Statement.<sup>160</sup>

Casa Alianza Nicaragua also reports the following good practices of public defenders and the Specialized Unit on Crimes Committed by Children and Adolescents of the Public Ministry (specifically in Managua): the District Attorney’s Office has developed high levels of coordination with the National Police, which – although some issues remain unresolved – has helped to speed up processing; in Managua, there are two district attorneys on shift, 24 hours a day, 365 days per year to whom the National Police report any detentions of children; when a crime is not serious and the child does not have a criminal record, the Public Ministry usually requests the Criminal District Judge for Adolescents to apply a substitute measure instead of deprivation of liberty.

### **INITIATIVES TO IMPROVE IMPLEMENTATION OF THE CODE FOR CHILDREN AND ADOLESCENTS - JUDGES FOR ADOLESCENTS IN NICARAGUA**

*At the end of 1998, eight criminal district Judges for Adolescents (JFAs) were appointed and have since accumulated substantial experience in the sphere of specialized criminal procedures. Together with others, they have introduced a number of initiatives with the intention of making the Code for Children and Adolescents more efficient. These include the following examples:*

- *Some verbal hearings (e.g. in the North and Las Segovias regions) take place outside the designated courtroom which speeds up the process and reduces unnecessary delays;*
- *Some JFAs have negotiated with the police to ensure that children being tried are transported in separate vehicles to adults;*
- *For less serious crimes, JFAs tend to release children on bail, and this has helped reduce the number of children in detention, but only for those with family contact and who can afford to stand bail (thus excluding a large number of street children);*
- *JFAs are explaining the process more systematically to the child and other stakeholders and are enforcing journalistic restrictions to protect children’s privacy and identity;*
- *Some JFAs more than others are open to civil society assistance, particularly in hearing concerns and petitions, and have attended seminars and workshops on children’s rights;*
- *Training workshops on the Code for Children and Adolescents have been provided to different social sectors such as the police and local authorities;*
- *The Specialized Inter-Disciplinary Teams responsible for bio-psychosocial studies were given training to promote awareness, accessibility, patience, sense of humour, and the ability to listen to what children have to say without judgment.*

PROJECT EXAMPLE

6

<sup>159</sup> HDI / CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.

<sup>160</sup> CAN / CSC, *Street Children and Juvenile Justice in Nicaragua*, 2004.

## ASSISTING CHILDREN IN THE IAȘI JUVENILE COURTHOUSE, ROMANIA

(Project initiated in March 2001 and coordinated by the Social Alternatives Foundation and the Magistrates Association)

**Problem:** *Insufficient adherence to, and respect for, national and international standards regarding criminal trials involving children as both offenders and victims.*

**Solution:** *Creating the Juvenile Courthouse Iași, a project which aims at:*

1. *Ensuring an optimal climate for hearing and judging cases involving children;*
2. *Building a team of specialists for processing and judging their cases;*
3. *Reducing the negative consequences suffered by children and their families during the process.*

*Currently all cases involving children in the region have been diverted to the Juvenile Courthouse, thus complying with Article 485 of the Criminal Procedure Code.*

**Description of the project:** *In order to achieve its goals, the project undertook the following activities:*

- *Refurbishing the Juvenile Court with adequate furniture, so that children can feel more comfortable, and providing audio-video systems to allow for the contribution of evidence without being in the actual court;*
- *Creating an information leaflet outlining the proper investigation and judging mechanisms for cases involving children, with details of social assistance services offered by partner NGOs. These leaflets were given to children under trial, their families and the public;*
- *The training (through a series of seminars) of 33 specialists to carry out penal cases with children (10 police workers, 8 prosecutors, 7 judges, 2 attorney, 4 social workers, and 2 psychologists). The objectives of this training were: informing participants about the functioning mechanism of the Courthouse, providing them with knowledge about emotional, physical and sexual abuse on children, ways of identifying abuses, counselling services for victims and their families, investigation techniques and rehabilitation methodology;*
- *To ensure correct functioning of the Juvenile Courthouse, a Coordination Committee was created, consisting of 2 representatives from each institution involved in the project in order to establish a common strategy based on the strategies of each institution and to find optimal solutions to implement the project;*
- *A second seminar was held focusing on child development psychology, and was attended by police workers, prosecutors, judges and members of NGO partners in the project. The objectives of this second seminar were: gaining knowledge in the monitoring of child's rights within the family and government institutions; gaining knowledge regarding the negative consequences arising from abuse and neglect.*

### Lessons learned:

- **Legislative difficulties:** *Lack of legal framework to promote diversion in cases with children; lack of procedures to avoid multiple interviewing of child victims; not accepting video-audio evidence.*
- **Professional difficulties:** *Need to develop university and post-university preparation in the field of juvenile justice and criminology; need to write some practical manuals for police officers, prosecutors, judges and social workers involved in the juvenile justice system.*

## 4) REINTEGRATION

### 4.a) GENERAL EXPERIENCES

As with the experience of trial, in general the children's recollections of reintegration following detention were remembered less clearly than their experiences on the street and in detention. This may be explained by the fact that relatively few of them feel that they have undergone any 'reintegration' at all as in most cases the revolving door of the justice system has simply chewed them up and spat them back out onto the streets again without any preparation and with even more resentment and alienation from society than before. As seen above, detention – used so excessively throughout the system, and often so unjustly as a knee-jerk reaction to 'deal with' street children, regardless of whether or not they have committed a crime – only serves to reinforce separation of the child from protective societal networks and in many cases increases rather than decreases rates of recidivism. It is therefore not surprising that, given the general lack of 'restorative justice' options available at earlier stages of the system, and the lack of resources allocated to reintegration, that interventions at this 'final' stage have so much ground to make up.

*Theoretically there are provisions for aftercare, initiated by the government, but practically it is very weak. The whole aftercare system is very weak and therefore it does not equip children to enter into mainstream life. (INDIA)<sup>161</sup>*

*In their present appearance [Labour Education Schools] are no place for re-education. We isolate children in them, society gets rid of them. But, in fact, we place them in conditions in which their rights are violated in a drastic way. They become embittered. And I declare quite responsibly that a person cannot possibly be reeducated if his intellectual and physical development is stunted and his dignity degraded. (BULGARIA)<sup>162</sup>*

*The largest proportion of Gypsy juvenile delinquents in prison and reeducation centres face a high risk of reconviction based on their illiteracy, poor job prospects and discrimination in socio-economic choices. (ROMANIA)<sup>163</sup>*

<sup>161</sup> Rita Panicker, Director, *Butterflies*, Delhi, India in response to a Consortium for Street Children questionnaire, January 2001.

<sup>162</sup> Malena Filipova, of the Bulgarian Chief Prosecutor's Office, published interview, quoted in Human Rights Watch, *Children of Bulgaria*, 1996, pp.68-69.

<sup>163</sup> Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.204.

<sup>164</sup> HDI / CSC, *Street Children and the Juvenile Justice System in Lagos State*, 2004, p.94.

*There is a need to enlighten the public, including voluntary and other organisations; also, there is a need to encourage their involvement in rehabilitating children and helping them to settle down in society. (NIGERIA)<sup>164</sup>*

*We try to leave our experiences behind, but how can we stop the discrimination that keeps hounding us? People condemned us and we had to endure it. There were also children who were not given the chance to begin a new life. They were killed by vigilantes after serving their sentences in jail; My parents really took care of me after being released; The way they look at me didn't change. They still love me. (PHILIPPINES)<sup>165</sup>*

*In school, if you are introduced as a street child, the stigma will never leave you. The teachers will never see you in any other light. Anything that goes wrong in school you are the one who is suspected. Even the teachers will test you by leaving money in the house and sending you there. For example, there was a time when I was ill, and weaker than the rest, but the teacher still made me go running. She said 'you're not the type to get sick' just because I'm a street child. If you go calling me 'street child' it will stigmatise me for the rest of my life. (KENYA)<sup>166</sup>*

Unfortunately, in many instances, children are simply not given the opportunity for reintegration. For example, in Davao City in the **Philippines**, there have been serious allegations that vigilante groups and informers (closely working with policemen and reportedly with the local government) have actually murdered former children in conflict with the law and that for this reason many children consulted as part of this project in that area preferred to stay in jail. At the less extreme end of the scale, children reported that they are the first to be apprehended if found near a crime scene, even if they are innocent.<sup>167</sup>

Children in Lagos, **Nigeria** indicated how detention had failed to prepare them for mainstream society, indicating that: the vocational and educational preparation in the institutions are inadequate; government and private sponsors should do more for detained street children; foster parents should be provided for children who cannot trace their parents, rather than detaining them in homes; many children prefer reintegration into their own families where possible and that financial support should be provided to parents.<sup>168</sup>

<sup>164</sup> HDI / CSC, *Street Children and the Juvenile Justice System in Lagos State*, 2004, p.94.

<sup>165</sup> UP CIDS PST, *Painted Gray Faces*, 2003, p. 113.

<sup>166</sup> CSC, *Street Children and Juvenile Justice in Kenya*, 2004, p.15.

<sup>167</sup> UP CIDS PST / CSC, *End of Project Report*, p.14.

<sup>168</sup> HDI / CSC, *Street Children and the Juvenile Justice System in Lagos State*, 2004, pp. 93-4.



Likewise, street children in **Kenya** highlighted the stigma they face which is fuelled by public discussion forums in the national press that reflect and promote harmful discrimination against street children such as reflected in this negative press report: '[street] children must first undergo social rehabilitation before being integrated into public schools. They are hard-core youngsters used to all manner of crime, and they can poison the minds of other children.'<sup>169</sup>

#### 4.b) POSITIVE EXPERIENCES WITH REINTEGRATION

The country which examined the issue of reintegration in the most detail was the **Philippines**. Consultations with children throughout the country revealed a wide range of individual experiences, both positive and negative, but the positive experiences include: a social worker visited them in their homes to know their situation; the police implemented community programmes for children like sports festivals; their families received assistance from local officials; they were accepted by family, friends and neighbours. Civil society organisations play a huge role in reintegration.

As with the other stages of the system, the key to reform lies in sensitization to overcome discrimination at individual and societal level, combined with proactive efforts to re-build and strengthen social and community relationships. This in turn benefits not only the individual children concerned, but also the community as a whole:

**“The medium and long-term benefits of successful reintegration and restoration are the strengthening of civil society and the enabling of young citizens to accept their full part in community rather than becoming a drain on it.”**<sup>170</sup>

<sup>169</sup> Opinion voiced in 'The Cutting Edge' column, Daily Nation, 10 January 2003.

<sup>170</sup> Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.277.

## Chapter summary

The overwhelmingly negative experiences of girls and boys in the injustice system illustrate how, apart from relatively isolated examples of reform, the justice system is in general:

**Operating in direct contravention of the umbrella rights of the CRC** – i.e. it is *not* acting in the **best interests** of the child; it is actively **discriminating** against poor children; it is failing to provide spaces and opportunities for children to **participate** in decisions affecting them; it is woefully lacking in desperately needed political will and **allocation of resources** to ensure its effective and child-friendly functioning; and it is in many cases **violating the most fundamental of all child rights – the right to survival and development**. In other words, it has dramatically failed the ‘table leg test’ introduced in Chapter 2: the ‘table’ is far from ‘stable’.

Furthermore, the current system is:

- Failing to take into account the **individual needs**, circumstances and opinions of girls and boys;
- Failing to work with children to develop more sustainable interventions based on expanding the **limited choices and non-choices** currently available to them as a way to break the ‘revolving door’ cycle of life on the streets or in detention;
- Failing to capitalise on the potential of **children’s resiliency and their peer relationships** to contribute positively to their development.

It is interesting to note, however, that – in line with the approach to reform outlined in this book - the limited examples of more positive experiences illustrate the positive power of **relationship building** and the importance of the **role of the community**.

These findings relate to the first two aspects of the three-part framework for reform outlined in Chapter 2 (the rights-based approach and the five key themes). The following chapter examines part three in more detail: the need to break the revolving door cycle of negative experience through interventions in the **four priority areas of prevention, separation of criminal justice and social welfare systems, diversion and alternatives to detention**.

# PRIORITIES FOR INTERVENTION

## *Chapter summary*

Explains the **four key priority areas for reform, illustrated by case studies and project examples:**

- **Prevention**
- **Separation of criminal justice and social welfare systems**
- **Diversion**
- **Alternatives to detention**

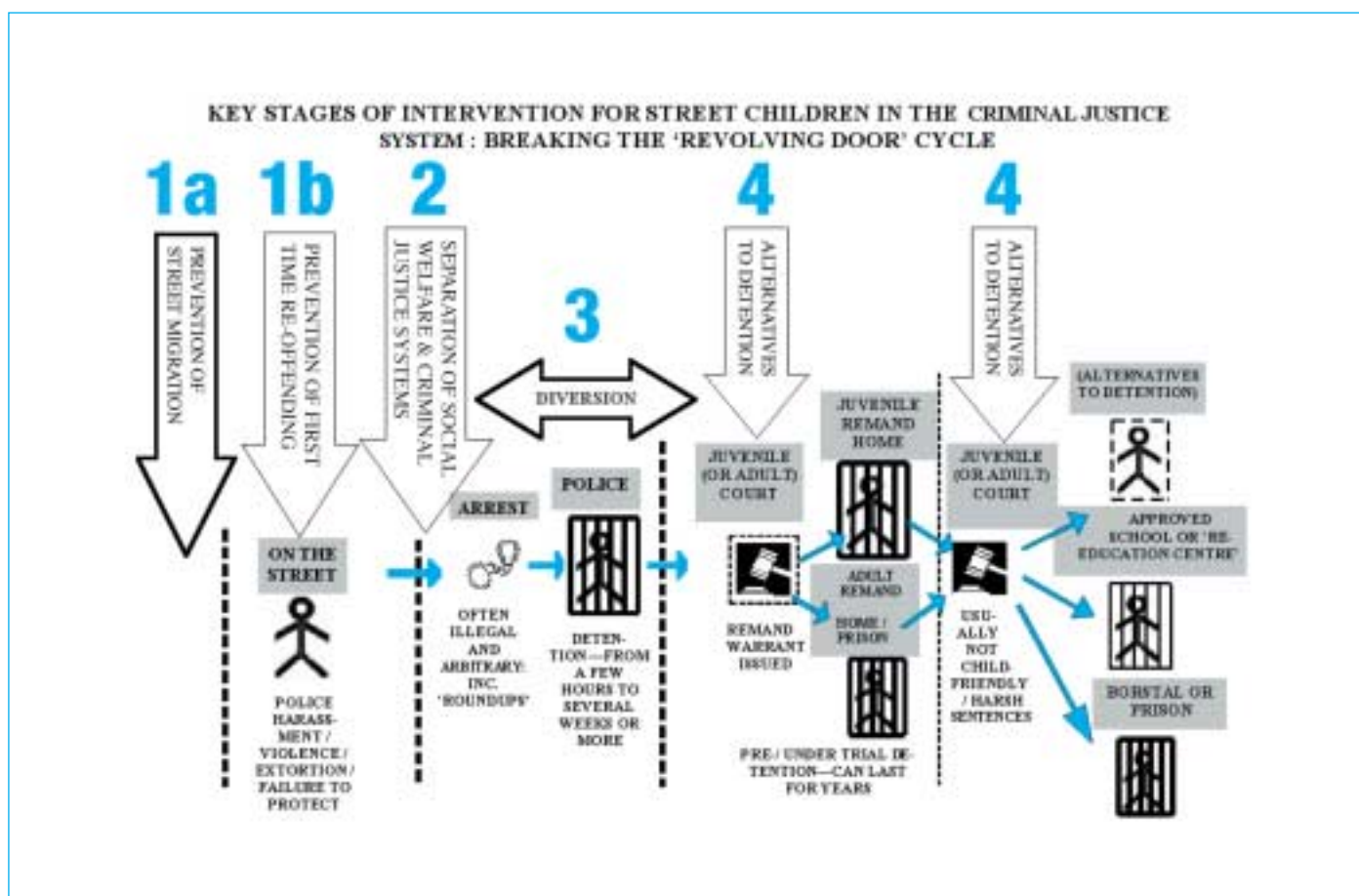
## **BREAKING THE 'REVOLVING DOOR' CYCLE: ENTRY POINTS FOR INTERVENTIONS**

Based on the testimonies of girls and boys in the previous chapter, it is evident that urgent reforms are needed to end human rights violations in the existing system - on the streets, in detention, and in court.

Some project examples and achievements in these areas have already been detailed in the sections of the previous chapter on positive experiences. This chapter, however, for reasons of policy emphasis, will concentrate more on the four longer term priority areas outlined below, rather than specific interventions to improve conditions in the courtroom and in detention. The ideal entry points for each of these interventions are illustrated in the following diagram.

- **Priority 1: Prevention**
- **Priority 2: Separation of criminal justice and social welfare systems**
- **Priority 3: Diversion**
- **Priority 4: Alternatives to detention**

This chapter considers each of these priority interventions in turn. Appendix 5 uses the example of Uganda to give an overview of what a comprehensive reform programme, inclusive of these priorities, might look like in practice.



## PRIORITY 1: PREVENTION

### WHAT IS IT?

Prevention attempts to “anticipate risk and put in place actions considered likely to reduce the likelihood of the onset of difficulties, rather than respond to needs only when such difficulties have clearly arisen.”<sup>1</sup> In the context of street children in the criminal justice system, prevention can be considered in two stages:

**1a) Prevention of street migration** (i.e. preventing children from leaving their homes and communities of origin in the first place);

**1b) Prevention of first time and re-offending** (i.e. prevention of street children becoming involved in the criminal justice system once they are already on the streets).

The causes of girls and boys offending are wide ranging and complex, and include poverty, broken homes, lack of education and employment opportunities, peer pressure, exploitation by criminals and lack of parental guidance. These causes need to be tackled with a range of gender-sensitive social and economic interventions, including programmes for education, poverty reduction, skills development, psychosocial interventions, parental counselling and job creation.<sup>2</sup> In addition to this background ‘developmental’ prevention work, there can also be programmes that are aimed towards more specific ‘risk’ situations, i.e. that are ‘responsive’ and aim to prevent events taking place that are particularly likely to happen, or to prevent re-occurrence of those which have already happened.

As previously outlined in the section on child rights, it is important to adopt a holistic approach in relation to prevention work: “Respect for all children’s rights [is] the best prevention of juvenile delinquency. [...] The international framework has been an inspiration in some countries in attempts to introduce human rights in crime prevention policies. In these countries, prevention of juvenile delinquency is part of overall development policies rather than a very specialized and isolated activity.”<sup>3</sup>

1 Consortium for Street Children and University College Cork, *Prevention of Street Migration: Resource Pack*, 1999, p 7.

2 Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents prepared for Save the Children UK*, 2002-3.

3 Cappelaere, G., ‘Juvenile Justice 10 years after the Convention on the Rights of the Child (CRC): Some Reflections for Hopeful Perspectives’, in *Butterflies, My Name is Today*, Vol. X., No. 2, Special Issue: ‘Children in Conflict with the Law’, 2003, pp.20 and 21.



## PREVENTION OF STREET MIGRATION AND PREVENTION OF FIRST TIME AND RE-OFFENDING:

### 1) DEVELOPMENTAL PREVENTION

#### Examples of national and international developmental protection

Broad development prevention at national and international level attempts to address the large scale, deep-seated reasons for the creation of social problems. Very little work has been done on monitoring and evaluating the impact of macro-economic and socio-economic policies on marginalised groups such as street children, or the specific links between improved macro socio-economic conditions and reduction in youth offending. Furthermore, this broad based form of prevention is difficult to implement and most often needs to be broken down into more manageable programmes such as national education policies and initiatives to reduce the harmful effects of rural to urban migration. An example of international level developmental prevention would be reform of unfair international trade rules to promote developing country economic growth.

#### Examples of community level developmental prevention

Based on the same concept as national and international prevention, but implemented at a local level, community level developmental prevention focuses on the factors that contribute to community poverty and breakdown and, in turn, high rates of street migration and / or youth offending. Obviously these are complex issues involving long term investment. However, the benefits of such programmes - which aim to strengthen protective factors and to minimise risk factors - can be seen in the following examples from Brazil and Ethiopia. Many street children projects are increasingly incorporating prevention into their scope of work. However, difficult decisions often need to be made in order to balance longer term prevention work with urgent and short-term survival and protection programmes for children already on the street and/or in the criminal justice system. In these situations, although there are no easy answers, collaboration is especially important at the local level between organisations with different specialisations.

### Case study

#### **BRAZIL: EXPERIENCES OF PREVENTION: ASSOCIAÇÃO DE APOIO À CRIANÇA EM RISCO (ACER), CHILDREN AT RISK FOUNDATION <sup>4</sup>**

One NGO in Brazil, ACER, describes the shift in its work with children from direct street work in São Paulo in 1993, to responsive and developmental models of preventative work in the impoverished community of Eldorado (on the outskirts of São Paulo) in order to prevent children migrating to the streets in the first place. By 2000 ACER was no longer working directly with children living on the streets.

**Current goals, aims, objectives and philosophy:** *To prevent children within the community of Eldorado from migrating to the street; to break the cycle of intergenerational family dysfunction which is a significant factor in precipitating this migration; to reduce the prevalence of violence within the community and particularly its effects on young people; to strengthen the ability of children and young people to form and maintain meaningful social relationships; and to increase their positive participation in the community. It does this through an educational methodology that develops children's cognitive, emotional and social communication skills. ACER's approach is child-centred – it prioritises the needs and rights of the child within the family, rather than the needs of the family as a whole, and works to advocate these needs and rights within the family and the community.*

**Prevention work:** *What is it and how do you evaluate it? The question of who is at the highest risk of moving to a life on the streets is critical to effective prevention work and ACER believes the key to success lies in accurately identifying, targeting and accessing*

<sup>4</sup> Based on Kortschak, A., ACER's Work in Brazil, Diadema – Brazil, 22 September 2003.

*high-risk children within the community. This is achieved through ACER's strong, active and respected presence in the community and the ability of ACER educators to come into contact with children in a range of circumstances and situations.*

**Challenges and successes:** *Acknowledging the challenges they face in this work, ACER is in the process of consolidating their existing work, looking at ways to reduce the case load of educators from a ratio of 1:50 to 1:20, and strengthening their methods for assessing the needs and progress of each child they assist (based on dialogue with another NGO with extensive experience in the field of prevention of street migration - JUCONI Ecuador <sup>5</sup>).*

*One of ACER's major successes has been in reducing levels of violence within the family and home, between the police and young people, between rival drug dealers and generally on the street. ACER is seen as a safe place that young people from the community as a whole can access - family members of rival drug gangs use ACER without problems and there have never been any violent incidents at the fortnightly Sabadão, an event regularly attended by over 200 young people. By teaching and modelling a philosophy where children and young people are valued and respected and problems are resolved through dialogue and negotiation rather than violence ACER offers a real alternative to entrenched dysfunctional patterns of relating within the community.*

### **PREVENTION PROGRAMME FOR STREET CHILDREN IN ADDIS ABABA, ETHIOPIA**

#### **PROJECT EXAMPLE**

*The prevention programme focused on the community and socio-economic factors that result in families living on the streets. In order to address these causes Save the Children and Forum for Street Children, Ethiopia established a credit and savings scheme for mothers to establish income generation activities. They also provided school fees for specifically identified young people and supplied a tutorial support programme to help children with schoolwork. All of these activities were designed to prevent families from having to live on the street and to support community growth and empowerment. <sup>6</sup>*

## **2) Responsive prevention**

Responsive prevention determines when children are most at risk and seeks to support them and provide them with alternatives, thus implementing the 'choice' strategy outlined in Chapter 2 (understanding and expanding choices and then empowering children to make those choices). In a subtle difference to 'developmental prevention', responsive programmes do not necessarily seek to address the root causes of the high-risk situation but rather to deal with that situation in a way that prevents the undesired outcome from coming to fruition. The most successful prevention programmes will therefore have some element of both developmental and responsive prevention in order to address both root as well as 'branch' causes.

The UN Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines) cover both of these types of prevention and encourage a positive emphasis on socio-economic support and upgrading quality of life rather than a 'negative' crime prevention approach. As outlined in Chapter 3, they cover virtually all social areas such as family, school, community, media, social policy, legislation and juvenile justice administration.

<sup>5</sup> *Junto con los Niños (JUCONI) operates in Mexico and Ecuador. For further details of their prevention work, see [www.juconi.org](http://www.juconi.org) and CSC / UCC, *Prevention of Street Migration*, 1999.*

<sup>6</sup> *Ibid.*

Examples of responsive prevention programmes are given below and include:

- A residential street children project (**Romania**);
- An under-5 early childhood development and family support programme which demonstrates the importance of early intervention with high-risk children (**USA**);
- A creative project to encourage school attendance and to prevent motor-related crime in relation to first time offending and re-offending (**UK**).

### **REDUCING NUMBERS OF CHILDREN IN CONFLICT WITH THE LAW – CLUJ-NAPOCA RESIDENTIAL CENTRE, ROMANIA**

**Problem:** *The efforts made by local authorities in Cluj district to reform the child rights protection system and assist street children have proved to be insufficient due to a lack of funding, coherent policy and the absence of any real collaboration between the actors involved. This has led to large numbers of children on the street, whose poverty and lack of identity documentation brings them into constant conflict with the local law enforcement agents.*

**Solution:** *To try to solve the ballooning street children problem in Cluj-Napoca, the Prison Fellowship Romania Foundation initiated a project called “the Residential Centre for Street Children.” The centre itself is a building given to the Foundation rent free for 20 years by the local council, and now operates as a busy hostel for street-working and street-living children to use.*

**Specific objectives of the centre:** *The centre offers shelter to up to 50 children permanently living on the street, and prepares them for social and familial reintegration through building their self-identity and confidence. It provides material support and assistance to potential foster families, and works to change the attitude of the community of Cluj towards homeless children.*

**Lessons learned:** *A year and a half after the centre opened, the fluctuating movement of children in and out of the centre had noticeably reduced, with most of the initial beneficiaries successfully integrating into the programme rather than returning to the street. However, there were naturally difficulties in reintegrating those children who had never attended school into the formal educational system. Restoring relationships with family members where desired has also been difficult, but there are some positive and encouraging results, with many of the identified families declaring themselves available to assume responsibility for raising their children after they finish the programme (2 years of residence in the centre). The range of activities in the residential centre (shows, community work, sports contests, painting etc.) have also all helped to sensitize the local community to become more sympathetic to street children and to their difficulties.*

PROJECT EXAMPLE

### **EARLY INTERVENTION: THE PERRY PROGRAMME – DETROIT, USA <sup>7</sup>**

*This longitudinal study proves that prevention of offending can be achieved through intensive investment in vulnerable children at a very early age (preferably under 5). The Perry Programme offers highly structured pre-school activities for children in a deprived community near Detroit. In addition to the centre-based educational programme, family support visits are also made. Children in this programme were monitored from the 1970s to the 1990s up until the age of twenty-seven and were found to be a fifth less likely to have suffered repeat arrests (five times or more) than a carefully matched control group. Although this type of support is expensive, it is expected to pay back \$7 for every \$1 invested.*

PROJECT EXAMPLE

<sup>7</sup> NACRO 1996, cited in Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*, Save the Children, June 1998, pp.16-17.

Example of a responsive prevention programme specific to the prevention of first time offending and re-offending:

### **ILDERTON MOTOR PROJECT (IMP), SCHOOL OUTREACH PROGRAMME, LONDON, UK <sup>8</sup>**

**Aims:** *To reduce the incidence of motor vehicle crime such as joy riding, vehicle theft, and vandalism (which account for a high number of offences involving street-involved youth in the UK) by creatively capitalising on the enthusiasm young people have for motor vehicles in a programme that enables young people to be exposed to mechanics and responsibilities that go along with motor vehicles while also providing a reason to stay in school.*

**Project description:** *The IMP School Outreach Programme is targeted at young people who have an interest in motor vehicles and have difficulty succeeding in school. Once a week, young people attend a motor vehicle training course that is incorporated into their school curriculum. Participation in the programme is contingent on attendance in regular classes and as a result children stay in school largely because they want to and are interested in the motor vehicle course. In addition to preventing first-time offending, participation in IMP programmes can also be stipulated as a sentencing option for children referred by Youth Offending Teams (YOTs) as part of the formal justice system, with a view to reducing re-offending. In addition to the School Outreach Programme, IMP also runs the following programmes: Basic Motorbike Training; Schools Crime Awareness Programme – targets younger children ages 8-12 with a focus on crime prevention and dealing with transitional issues between primary and secondary schools (to prevent drop-out / truancy); Creative Arts Programme – a ‘short burst programme’ lasting an average of 8 hours e.g. recycling old car tyres into plant holders for donation to the community (e.g. retirement homes); Intensive Supervision and Surveillance Programme – Saturday programme targeted at persistent offenders who are not in a custodial setting.*

#### **Strengths:**

- *The project targets specific, high-incidence offences (related to motor vehicles) through creative programmes that pro-actively engage, rather than prohibit, individual young people in their area of interest. It confronts the specific context of negative, anti-social behaviour (car crime) and turns it into a vehicle for teaching responsibility, decision-making and other life skills.*
- *The young people themselves are involved in deciding and imposing sanctions for misdemeanours committed by peers in the programme.*

#### **Challenges:**

- *The completion rate for those who start the programme is only 44%. The main reasons identified for drop out are: transfer of pending court cases to another jurisdiction; participants go back to school or move away from the area; lack of commitment.*
- *90% of the young people referred by YOTs work with a minimum of 2 organizations intended to give as much holistic support as possible e.g. different groups for mediation, drugs and sentencing programme. However, it has been queried as to whether this is really effective or whether the separation of services results in a duplication of efforts and a non-holistic approach which fails to address the specific needs of the child as a whole.*
- *Parents are invited to attend but there is no direct outreach programme to parents nor incorporation of them into the services.*
- *Stigma against those with a criminal record hinders job placement and reintegration into the community necessitating community sensitisation and local involvement in the project.*

PROJECT EXAMPLE

<sup>8</sup> As part of the CSC International Workshop on Street Children and Juvenile Justice (14-18 July 2003), a group of 12 overseas visitors from CSC's juvenile justice project partner countries - Romania, Nicaragua, Nigeria, Kenya, Pakistan and the Philippines - conducted a field visit to IMP. All participants found the visit useful and many said that they had picked up ideas to take back to their own countries and projects. For example, based on the IMP experience: one participant from the Philippines will be introducing a safety briefing and quiz into his own NGO's mechanics project; and one of the participants from Pakistan indicated an interest in exploring the possibilities of working with local mechanics to establish a mentoring / vocational training / apprenticeship scheme for the street children he works with.



## CHALLENGES OF PREVENTION WORK

**Evaluation statistics:** One of the main challenges in any prevention programme is the difficulty in producing tangible evaluation statistics – i.e. the difficulty in proving that a programme prevented something from happening. This, combined with the need for a longer term perspective in which to see visible results, impacts on political will and funding to support such programmes. In a context of limited resources and multiple problems, there is a natural tendency to throw money and effort at the most visible and immediate challenges, often at the expense of prevention work.

**Extensive inter-agency cooperation and collaboration:** This is illustrated by the Ilderton Motor Project example above which expressed concern about the fragmentation of services for vulnerable children, as well as the following observation from Romania that “The lack of coordination of services provided by non-governmental organisations made their interventions overlap or, by granting supplies in the streets, even favoured the phenomenon.”<sup>9</sup>

**Shifting urban communities:** In relation to developing effective crime prevention strategies in Africa, for example, “The challenge [...] will be to develop a crime prevention strategy that draws on the limited funds available but capitalises on the strengths of urban communities. Strategies will need to be multi-faceted and to take into account the role of all key agencies in society including the state, NGOs [...], churches, community associations and the media. They will also need to aim for a closer and more detailed understanding of the problem in each community and identify agencies that are best placed to offer improved opportunities to the young. [...] Although academics, lawyers and other interested parties are making some headway in theoretical discussions about crime prevention in urban Africa, practical policies are still a long way from being implemented.”<sup>10</sup>

**Need for much greater involvement of children and young people** themselves in the design and implementation of prevention programmes to ensure that they are appropriate, effective, stakeholder-owed and sustainable.

## PRIORITY 2: SEPARATION OF CRIMINAL JUSTICE AND SOCIAL WELFARE SYSTEMS

*‘Juvenile justice’ in Guatemala suffers from multiple and severe defects, rendering it less than justice and little more than warehousing. Street children are arrested and locked up arbitrarily, sometimes merely for being homeless, other times for such vague offences as ‘creating a public scandal,’ or ‘loitering.’ (GUATEMALA)<sup>11</sup>*

‘Separation’ of the criminal justice system and the social welfare system does not mean that social welfare departments should not be involved in the handling of children in conflict with the law. It means rather that children who are not in conflict with the law (i.e. children in need of care and protection) should not be being processed through the criminal justice system. It means putting an end to the ‘warehousing’ of girls and boys simply because they are poor. There are five factors which combine to cause immense confusion in many countries between criminal justice and social welfare systems:

1. **Criminalisation, stereotyping and discrimination against street children:** prejudiced and mistaken assumptions that all street children are criminals can result

<sup>9</sup> ASIS and Consortium for Street Children, *Street Children and Juvenile Justice in Romania*, February 2004, p50.

<sup>10</sup> Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p. 45.

<sup>11</sup> Human Rights Watch, *Guatemala’s Forgotten Children: Police Violence and Abuses in Detention*, July 1997, p.1.

*The system of sending our children into a process which is misleadingly being termed as 'safe custody' may be analogous to the situation where one is being asked to plunge them into a shark-infested ocean to keep them out of reach of those very predators. This may seem to be a very harsh judgement on the system, but the stark fact is our legal canopy is too thin, the government machinery too oblivious, and the non-government apparatus too inadequate to deal with this acute, if not massive, human predicament.*  
(BANGLADESH)<sup>12</sup>

in them automatically being processed through the criminal justice rather than the social welfare system. This is based on a failure to distinguish between the individual circumstances of particular children.

- 2 **Outdated legislation which criminalizes poverty:** criminalisation of survival activities such as 'vagrancy', begging and being the victim of commercial sexual exploitation puts children in need of care and protection into the clutches of the criminal justice rather than the social welfare system.
- 3 **Lack of social welfare infrastructures and resources,** both human and financial, results in children in need of care and protection being warehoused in the criminal justice system in the face of lack of more appropriate social welfare alternatives.
- 4 **The inherent complexity of the 'juvenile justice non-system' itself:** the overlapping systems, often with conflicting political agendas, lack the coordination and resources necessary to deliver an effective, efficient and holistic service in the best interests of the child. In this non-system, poor coordination between (e.g.) social service departments and the police can result in children languishing unnecessarily in detention due to lack of monitoring.
- 5 **The complex interplay between the causal factors of street migration, survival strategies whilst on the streets and street children's subsequent involvement with the criminal justice system** as examined in Chapter 4 means that street children may well fall into more than one category:
  - **Children in actual conflict with the law**
  - **Children in perceived conflict with the law**
  - **Children in need of care and protection**

**Guatemala:** *"Children in protective custody are incarcerated together with juvenile offenders. Thus, children who were raped or beaten by their parents, children who were found in a malnourished state, runaways, even some children with physical disabilities, are thrown into the same dreary facilities as are drug addicts, pickpockets, prostitutes and violent offenders."*<sup>13</sup> The directors of facilities in Guatemala are not even told by the courts the reason for any particular child's incarceration, so in truth there is no differential treatment for offenders and dependent children.<sup>14</sup>

**India:** the Juvenile Justice (Care and Protection) Act, 2000 applies to both children in conflict with the law as well as children in need of care and protection. *"Often, a very thin line separates such children from juvenile violators of the law"*<sup>15</sup>

**Kenya:** *"Whereas most of the children who end up in remand homes are welfare cases, the way they are treated by the staff at these institutions depict them as criminals. According to the children, the assignments that they are given are more punitive than corrective. Children reported that they were being kept under very strict rules and are in some cases locked in hostels for the whole night. For some, they are locked in as early as 6.00 p.m. in the evening till 6.00 a.m. Corporal punishment is a common occurrence in these institutions."*<sup>16</sup>

The following statistics in relation to 'charges' taken directly from the Juvenile Court Register in Nairobi, Kenya<sup>17</sup> speak for themselves:

<sup>12</sup> Zaman Khan, S., *Herds and Shepherds: The Issue of Safe Custody of Children in Bangladesh*, Bangladesh Legal Aid and Services Trust (BLAST) and Save the Children UK, June 2000, p.46.

<sup>13</sup> Human Rights Watch, *Guatemala's Forgotten Children*, 1997, pp.1-2.

<sup>14</sup> *Ibid*, pp.61-62.

<sup>15</sup> Tandon, S.L., 'Fettered Young: Children in Conflict with the Law and Children in Prisons' in *My Name is Today*, Vol. X., No. 2, Special Issue: 'Children in Conflict with the Law', 2003, p.11.

<sup>16</sup> CRADLE / CSC, End of Project Report, 2003, p. 21.

**FEBRUARY 1998**

	'CARE AND PROTECTION'	THEFT	HOUSE BREAKING	POSSESSION OF DRUGS	OTHER	TOTAL
Boys	110	12	2	2	19 <sup>18</sup>	145
Girls	18	2			1 <sup>19</sup>	21
Total	128 (77% of total)	14	2	2	20	166

**NOVEMBER 2001**

	'CARE AND PROTECTION'	THEFT	HOUSE BREAKING	POSSESSION OF DRUGS	OTHER	TOTAL
Total	52 (85% of total)	7		1	1 (GBH)	61

**JANUARY 2002**

	'CARE AND PROTECTION'	THEFT	HOUSE BREAKING	POSSESSION OF DRUGS	OTHER	TOTAL
Boys	51	5	3	2	7 <sup>20</sup>	68
Girls	5	1				6
Total	56 (76% of total)	6	3	2	7	74

It would therefore appear that for most street children, arrest comes simply as the result of being poor and being in the wrong place at the wrong time. A 2002 report by the governmental Standing Committee on Human Rights (SCHR) in Kenya expressed concern at the huge numbers of street children who were being kept in juvenile remand homes as 'victims of neglect' or 'in need of care and discipline' – as many as 797 out of the 1016 in detention were street children in this category being forced to cohabit with others charged with more serious crimes.<sup>21</sup>

The following two cases studies from Nigeria and Egypt illustrate the confusion between the criminal justice and social welfare systems.

17 Examples taken by CSC from the Juvenile Court Register, Nairobi, Kenya, for the period Feb 1998 – Jan 2002.

18 Dumping and creating litter x 16; Drunk and disorderly x 1; Conveying stolen property x 1; Grievous harm x 2; Possession of an offensive weapon x 1; (NB some individuals were charged with more than one offence).

19 'Being unlawfully present in Kenya'.

20 Possession of an offensive weapon x 1; 'Defilement' (sex with someone under the age of 14) x 2; 'Creating a disturbance' x 1; 'Preparing to commit a felony' x 2; Conveying stolen property x 1.

21 Quoted in U.S. Department of State, *Kenya Country Human Rights Report 2002*, 31 March 2003.

## Case study

### CHILDREN 'BEYOND PARENTAL CONTROL' AND 'IN NEED OF CARE AND PROTECTION' - NIGERIA <sup>22</sup>

*According to research by the NGO Human Development Initiatives as part of the HDI / CSC Street Children and Juvenile Justice Project, in March-April 2003, 60% of children detained in the Boys' Remand Home, Oregun, Lagos were non-criminal cases (of which 55% were boys 'beyond parental control', 30% were care and protection cases ('found' children) and 15% were children who had been rounded up in Task Force street raids). Likewise, 80% of girls detained in the Girls' Remand Home, Idi-Araba were non-criminal cases, i.e. 'beyond parental control', and 'care and protection' and civil dispute cases.*

#### 'Beyond parental control'

*Under Section 29 of the Children and Young People's Act of Nigeria, children deemed to be 'beyond parental control' may be detained in an approved school for up to three years, or in a borstal for up to five years. It is observed that some parents or guardians arrange for their children to be institutionalized in remand homes in order to abandon them and abdicate their responsibility towards them. Criminalizing and detaining children for being 'beyond parental control' is not in the best interests of the child. It is also a gross abuse of the justice system and should be immediately stopped.*

#### 'In need of care and protection'

*Children 'in need of care and protection' in Lagos are referred by juvenile court remand warrant to remand homes and approved schools via police stations, Task Force raids, or the two police 'Juvenile Welfare Centres' at Alakara and Adeniji Adele for 'lost and found' children. Conditions in these centres are described as being so bad that they are unfit for human habitation. Staff are untrained and lack the resources with which to work. For example, 'lost' / street children are currently held in unacceptable conditions for up to 2 months at Alakara Juvenile Welfare Centre whilst awaiting family tracing and/or judicial processing. Children as young as 2 years old (occasionally even younger) spend a significant portion of the day in a dark and crowded cell (approximately 10 feet square). There is no running water and toilet facilities consist of relieving oneself in the small wasteland that surrounds the cell. Up until now, the Juvenile Welfare Centre has depended mainly on donations from the local community (especially churches) for its general running expenses and equipment. Attempts are made to trace their families. If this also fails they are taken to a juvenile court for referral to a remand home where they may stay for several years until the child's parents, guardian, or relations are located.*

*It is very important to note that in this category are children who have spent up to two years wasting away in the homes while efforts are made to locate parents or guardians, dependent on the information extracted from the children. Some children are too young to remember such information correctly. Others are very reluctant or fearful to talk to the authorities and some deliberately refuse to disclose any fact that could help in tracing their parents because they do not want to return home. It is also worth noting that many children run away from home due to physical, psychological and/or sexual violence and abuse. As such family reunification may well not be in the best interests of the child. However, under the current system, there are very limited options available for such children.*



**NIGERIA: 'Lost and found' children at Alakara 'Juvenile Welfare Centre', Lagos, Nigeria, June 2003. (Faces have been obscured to protect identities).**

<sup>22</sup> Compiled from Human Development Initiatives and Consortium for Street Children, *Street Children and Juvenile Justice in Lagos State*, February 2004 and the author's notes, Lagos, October 2002 and June 2003.



## Case study

### **'VULNERABLE TO DELINQUENCY' OR 'VULNERABLE TO DANGER': AN EXCUSE FOR POLICE ROUNDUPS - EGYPT**<sup>23</sup>

*Human Rights Watch reports that Egyptian police routinely arrest and detain children they consider 'vulnerable to delinquency' or 'vulnerable to danger,' categories ostensibly to protect vulnerable children, but which have become a pretext for mass arrest campaigns to clear the streets of children, to obtain information from children about crimes, to force children to move on to different neighbourhoods, and to bring children in for questioning in the absence of evidence of criminal wrongdoing.*

*The number of such arrests has sharply increased since 2000. There were more than 11,000 arrests of children on these charges in 2001 alone, accounting for one quarter of all arrests of children in Egypt that year.*<sup>24</sup>

*Egyptian law does not effectively distinguish between children who have committed criminal offences and children who are in need of protection. Chapter Eight of Egypt's Child Law 12 of 1996, entitled "The Criminal Treatment of Children," allows police to arrest any child under eighteen for a wide variety of activities. Some of these activities, including being habitually absent from school or suffering from mental illness or diminished mental capacity, are "status offences" that would not constitute crimes if committed by adults. Others, like being homeless, begging, or practicing or working for those involved in prostitution, gambling, or drugs, are clear evidence that a child is in need of special protection and assistance from the state.*<sup>25</sup>

### Prostituted children

A particular category of children - of particularly relevance to street children - is worth mentioning in relation to the current confusion between criminal justice and social welfare systems: that of prostituted boys and girls. Reaffirming the need to protect and promote the interests and rights of the child to be protected from all forms of sexual exploitation, the Yokohama Global Commitment 2001 stressed the reinforcement of "efforts against the commercial exploitation of children, in particular by addressing root causes that put children at risk of exploitation, such as poverty, inequality, discrimination, persecution, violence, armed conflicts" etc. It furthermore called for the reinforcement of **"action to criminalize the commercial exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing child victims"** [emphasis added]. However, it is unfortunately the case that in many countries victims of commercial sexual exploitation are the ones arrested while their abusers go free. In the **Philippines**, for example, "while substantial gains have been made in Philippine laws, particularly the passing of RA 7610, children in the commercial sex industry are still viewed as criminals. The government needs to concretely address the root causes that bring children into difficult circumstances, denying them their economic, social, cultural, civil and political rights."<sup>26</sup> The children's experiences of sexual abuse on the streets and in detention are detailed in Chapter 6.

<sup>23</sup> Human Rights Watch, *Charged With Being Children: Egyptian Police Abuse of Children in Need of Protection*, February 2003

<sup>24</sup> *Ibid*, p.3.

<sup>25</sup> *Ibid*, p.8.

<sup>26</sup> UP CIDS PST, *Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines*, Quezon City, UP CIDS PST and CSC, 2003, p.93.

## **POLICE HANDBOOK ON THE MANAGEMENT OF CASES OF CHILDREN IN ESPECIALLY DIFFICULT CIRCUMSTANCES – PHILIPPINES** <sup>27</sup>

### PROJECT EXAMPLE

*A police handbook and educational posters were developed as part of a project on the orientation and training of police officers on dealing with children in especially difficult circumstances - conducted jointly by the Department of Social Welfare and Development, the National Police Commission (NAPOLCOM) and the Philippine National Police (PNP). The 1993 police handbook, based on the principles of the UNCRC, Beijing Rules and domestic legislation and guidelines in place in the Philippines, is intended for use by police officers who are designated to deal specifically with children - as envisaged under the guidelines circulated by the government in October 1992 directing all police stations in 'highly urbanised areas' to establish a Children and Youth Relations Section and all other police stations to designate a Children and Youth Relations Officer.* <sup>28</sup>

*The handbook (and posters) clearly separate the guidelines and procedures that apply to:*

- Protection of children;
- Management of a child as the accused;
- Management of the child as victim or complainant and as witness (which includes the category of street children amongst others).

*Under this last category, it sets out general and detailed guidelines on how to handle abused / exploited children, neglected children (including street children), and abandoned / foundling children.*

## **STEPS NEEDED TO FACILITATE SEPARATION OF CRIMINAL JUSTICE AND SOCIAL WELFARE SYSTEMS**

### Practical tips

Case studies, testimonies and statistics taken from court records illustrate the extent to which the majority of children in some countries should not even be in the criminal justice system in the first place. The gross abuses which occur as a result of the failure to separate social welfare from criminal justice systems justify why the separation of such systems has been listed in this publication as one of the four main priorities for reform (along with prevention, diversion and alternatives to detention). Such separation entails:

#### **1. Strengthening social welfare departments** through:

- adequate resourcing of traditionally under-funded social welfare departments, including: investment in personnel, training, infrastructure, transport;
- government acknowledgment of the importance of social welfare and political will to invest at national and local government levels;
- NGO lobbying for implementation of the above.

**2. Improving cooperation and collaboration between the two systems** to ensure that vulnerable children in need of care and protection do not mistakenly get caught up in the wrong system, and to improve provision of social services to children who are in conflict with the law within the criminal justice system.

**3. Ensuring that justice system personnel such as the police are sensitised and trained to distinguish between different categories of children** (in actual conflict with the law, in perceived conflict with the law and in need of care and protection) and are able to correctly channel children into the appropriate system, as illustrated by the example of the police handbook and posters in the Philippines.

<sup>27</sup> *Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances*, Department of Social Welfare and Development, National Police Commission and Philippines National Police in cooperation with UNICEF, Quezon City, Philippines, 1993.

<sup>28</sup> Memorandum Circular No. 92-010, issued by Department of the Interior and Local Government, National Police Commission, Makati, Metro Manila, 22 October 1992.

## PRIORITY 3: DIVERSION

### WHAT IS IT?

Diversion means ‘diverting’ children in conflict with the law away from the formal criminal justice system, and in particular away from formal court processes (through pre-trial diversion and informal / alternative sentencing processes) and detention (through alternatives to detention – examined in more detail in the following section of this chapter). Diversion is an important component of restorative justice. It is based on the understanding that the formal criminal justice system is:

- \* **Essentially punitive rather than restorative;**
- \* **Often subject to gross human rights violations as seen in Chapter 6;**
- \* **That not every criminal violation warrants a formal courtroom prosecution, particularly in the case of non-violent, first-time offences.**

The following table demonstrates the benefits of restorative justice in comparison with approaches used in the formal justice system.<sup>29</sup>

	RETRIBUTIVE	REHABILITATIVE	RESTORATIVE
Focus	Offence	Offender	Relationships
Reaction	Punishment	Treatment	Reparation
Objective	Deterrence	Conformism	Restoration
Victim’s position	Secondary	Secondary	Central
Social context	Authoritarian	Welfare	Democratic
Child’s reaction	Anger	Dependency	Responsibility

### THE BENEFITS OF DIVERSION

#### Benefits for the individual child

- Evidence shows that diversion is likely to have a positive impact in reducing rates of offending.<sup>30</sup>
- Diversion aims to break the revolving door cycle of stigmatisation, violence, humiliation, and rupturing of social relationships.
- It avoids labelling children and reinforcing their criminal experience.
- It avoids limiting their options for reintegration and future development: “Offenders sentenced to forms of disposal that introduce them to more criminals (in particular in custodial sentences) learn criminal skills, language and culture that is very likely to reinforce offending behaviour. Once defined as a criminal in their own eyes and those of wider society, they find it much more difficult to change and adjust to the world of school work and family life. It is therefore argued that children should be diverted from court processes and from custody whenever possible.”<sup>31</sup>

#### Benefits for society

Diversion has benefits not only for the individual, but also for society as a whole. By sparing appropriately selected first time offenders the expense of trial and the stigmatising consequences of a criminal conviction, successful divertees are given the opportunity to make reparations to their communities through integration rather than isolation from social networks: “Activities such as the building of bus shelters or school-rooms, or the planting of gardens in public places have in general proved highly successful in maintaining the principle that the key objective of penal policy should be whenever possible to reintegrate the offender into the community and not distance him or her from it.”<sup>33</sup>

*[B]y locking them up we confirm all their worst beliefs about themselves and society, and make it more likely that they will offend again and again.<sup>32</sup>*

<sup>29</sup> Table taken from Mukonda, R., Juvenile Justice Project in Namibia, Legal Assistance Centre, Namibia, paper presented at a seminar on *Juvenile Justice held in Lilongwe, Malawi*, 23 - 25 November 1999.

<sup>30</sup> Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p.13.

<sup>31</sup> *Ibid*, p.12.

<sup>32</sup> Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001 and their supporting feature article in *Just Right: Kids Behind Bars* (special issue), Jubilee Action, Autumn 2001, p.8.

<sup>33</sup> FRELIMO, *Mozambique Briefing: Building a New Legal System*, Information Department, Frelimo Party Central Committee (no date), quoted in Stevens, J., *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems*, Penal Reform International, November 2000, p.57.

## ECONOMIC BENEFITS

Furthermore, not only is it socially and psychologically preferable, but many non-formal justice options are also much cheaper than court procedures and detention.<sup>34</sup> Research by Penal Reform International (PRI) has shown that criminal justice systems all over the world use up scarce resources that could have been deployed towards more beneficial social programmes. Imprisonment prevents people from contributing to their local economies and their families. Imprisonment is also very costly. For example, according to a former Brazilian prison administrator, "The annual cost of a prisoner in Brazil is US\$4,440, but in some states this number is much higher... If the money that is being spent to maintain the 45,000 prisoners that did not commit violent or serious crimes could be used in some different ways, one could, for example, build 18,163 units of houses for the poor; or 4,995 health care units; or 391 schools."<sup>35</sup>

There therefore needs to be accelerated investment into research and advocacy efforts to influence policy reform in this direction.

It is important to note that diversion applies only to children in conflict with the law. Street and other children who are need of care and protection should not be being processed through the criminal justice system in the first place, as outlined in the previous section on separating social welfare and criminal justice systems.

## TYPES OF DIVERSION

### Pre-trial diversion options can include:

- police warnings
- mediation
- family group counselling
- community service
- conditional or unconditional release
- behaviour contracts
- probation
- referral to other services such as NGO programmes and substance abuse centres

### Alternatives to detention can include the following, as specified in the Beijing Rules:

- care, guidance and supervision orders
- probation
- community service orders
- financial penalties, compensations and restitution
- intermediate treatment and other treatment orders
- orders to participate in group counselling and other similar activities
- orders concerning foster care, living communities or other educational settings<sup>36</sup>

**Categorisation of crimes / offences is needed** in order to determine the most suitable option in individual cases (ranging from very minimal to intensive, residential or long-term intervention). Such categorisation might look like this:

- temporary anti-social behaviour
- children manifesting disturbing behaviour / psychosocial problems / mental illness
- first-time, non-serious offenders
- persistent, non-serious offenders
- one-off grave offenders
- persistent grave offenders<sup>37</sup>

<sup>34</sup> See e.g. Uchena, T.P., 'Community Service in Zimbabwe' in Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, pp.55-57. "In Zimbabwe, community service has been proved cheaper than custody and has helped some young people into employment. It may be possible to replicate the model in other African countries."

<sup>35</sup> Julita Lemgruber addressing the PRI/UPR Conference on alternatives to imprisonment, quoted in Singh, W., *Alternatives to Custody in the Caribbean: The Handling of Children who Come into Conflict with the Law*, paper presented at the Innocenti Global Seminar on Children Involved with the System of Juvenile Justice, Florence, 12-22 October 1997, [http://www.penalreform.org/english/frset\\_public.htm](http://www.penalreform.org/english/frset_public.htm)

<sup>36</sup> Roy, N., *Juvenile Justice Presentation*, December 2001.

<sup>37</sup> Adapted from Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.286.



## SCREENING AS PART OF THE PRE-TRIAL DIVERSION PROCESS IN NAMIBIA <sup>38</sup>

Screening is the administration of standard questionnaires to arrested children by trained screeners who are usually social workers. There are two questionnaires administered: a) the case information questionnaire and b) the monitoring questionnaire. The purpose of screening is:

- To identify the circumstances of the child
- To determine the nature of the crime
- To ensure that children are placed in the custody of their parent/guardian
- To monitor the treatment of arrested children
- To make recommendations to the prosecution regarding diversion

These possible recommendations are either to prosecute or to divert the child to:

- Life-skills programme
- Prosecutor's warning or unconditional withdrawal
- Supervision (probation)
- Counselling
- Consensus decision making
- Pre-trial community service
- Children's court enquiry

In conducting screening, the best interests of the child is the guiding principle.

PROJECT EXAMPLE

## CONDITIONS OF DIVERSION

### CRITERIA FOR PARTICIPATION IN PRE-TRIAL DIVERSION PROGRAMMES

## Practical tips

Not all children in conflict with the law qualify for participation in a diversion programme. There is usually a set of criteria similar to that used in [Namibia](#):

- The child freely admits his/her guilt;
- The child's willingness to comply with the conditions of diversion;
- The child is a first-time offender;
- The offence comes within the category of 'less serious';
- All the role players are satisfied with the recommendations of the screener.<sup>39</sup>

The criteria for participation in Pre-Trial Community Service in [South Africa](#) are similar, with the following additions:

- The accused not only accepts his/her guilt, but also shows remorse and responsibility;
- The accused is 14 years or older;
- The accused has special skills which can be put to good use in the community;
- The accused has a fairly stable lifestyle, for example a contactable address (work or home);
- The community service can serve some purpose of reparation and victim healing.<sup>40</sup>

Furthermore, in the case of [South Africa](#), children are considered unsuitable for community service if they are:

- Dependent on alcohol or drugs;
- Violent;
- Exhibiting mental / behavioural challenges.<sup>41</sup>

<sup>38</sup> Mukonda, R., *Juvenile Justice Project in Namibia*, 1999. A Juvenile Justice Forum (JJF) comprised of government line ministries, NGO's and individuals was set up in 1994 and is currently in place in almost every region in Namibia. In 1995, the Windhoek JJF mandated the Legal Assistance Centre (LAC) to start a pilot pre-trial diversion programme - the Juvenile Justice Project (JJP), now in operation all over Namibia. The aims are: advocating for the separation of detained children from adult detainees/prisoners in police cells and prisons; speeding up the process of removing children from pre-trial detention to the custody of a parent/guardian; giving priority attention to children held under pre-trial detention who are awaiting trial; educating all the stakeholders about the need for pre-trial diversion; providing pre-trial diversion options for the Namibian criminal justice system in cases involving children (during arrest, court proceedings, and sentencing stages); ultimately to create a comprehensive juvenile justice system in Namibia. The process also includes weekly cell visits and reporting and family tracing. Successful implementation in Windhoek and Mariental is credited to the employment of staff specifically as juvenile justice workers unlike in other regions where implementation is very slow and hampered by lack of juvenile justice policy and legislation that would bind the government ministries to employ regional juvenile justice workers.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Diversions - An Introduction to Diversion from the Criminal Justice System*, National Institute for Crime Prevention and the Rehabilitation of Offenders, 1994, cited in The Partnership for Global Good Practice (PGGP), *International Standards for the Administration of Juvenile Justice And Examples of Good Practice*, February 2002, pp.11-14. Nearly 95% of offenders comply with their contract (usually between 30-50 hours of community service with any non-profit organisation, agency or institution that delivers a service to the community) due to the fairly low number of hours required, the personalised attention given to offenders, and attempts to accommodate the server's preferences and skills as far as possible when matching up placements.

<sup>41</sup> *Ibid.*

## CHALLENGES TO IMPLEMENTING DIVERSION PROGRAMMES FOR STREET CHILDREN

Despite the huge potential benefits of diversion for street children, there are unfortunately significant obstacles to implementing such programmes with homeless / street-living children:

- Conditional or unconditional release, care, guidance and supervision orders, probation, community service orders and orders to participate in group counselling and other similar activities are all **dependent on the child having a fairly stable contact address and being supported by responsible adults** into whose care the child can be released.
- **Financial penalties**, compensations and restitution may prove difficult for some street children to comply with due to their extreme poverty.
- Intermediate treatment and other treatment orders, orders concerning foster care, living communities or other educational settings - which may be more appropriate options in the case of homeless children - **all depend on the existence and functioning of adequately resourced infrastructures and labour-intensive services**. Unfortunately, in many countries, even if such options exist in theory, they may not do so in practice. For example, in Albania, the Criminal Code (Art. 52) allows for placement in educational institutions, but as of May 2000, these had not yet been established;<sup>42</sup> similarly, the Code for Children and Adolescents in **Nicaragua** provides for similar facilities which are not in place and which has led to a public backlash against children apparently being released scot-free;<sup>43</sup> furthermore, in Lagos, **Nigeria**, with only one NGO offering residential care facilities for homeless children outside the criminal justice system (and even then with a capacity for only 8 boys), there is simply nowhere else for the vast majority of children to go.
- Additional problems experienced by some street children, such as **substance abuse and aggression may also exclude them from admission to such programmes**, as would be the case in the South African example above.

**Diversion therefore becomes an even more complex challenge in the case of street children, a challenge which requires even more innovative approaches that re-examine and strengthen street children's support systems and webs of relationships. However, this is not to say that it cannot be done, or that it shouldn't be tried. Diversion is essential to all children in conflict with the law, and proactive efforts must be made to overcome the obstacles that currently discriminate against street children in this context. According to the implementers of the diversion project featured below in the Philippines, "this is where social workers come in. It is necessary to find the nearest 'kin' to the child, even if this is not a family member (e.g. it could be someone from church or a social worker)."**<sup>44</sup>

## EXAMPLES OF DIVERSION

Examples of diversion: Comprehensive diversion programmes

### COMMUNITY-BASED DIVERSION PROGRAMME FOR CHILDREN IN CONFLICT WITH THE LAW - PHILIPPINES

**PROJECT EXAMPLE**  
A pilot project in Cebu City, Philippines implemented by Free Rehabilitation, Education, Economic and Legal Assistance Volunteers Association, Inc. (FREELAVA) and Save the Children UK, Philippines.

**Issue:** *Thousands of Filipino children are at present confined in various prison facilities all over the Philippines, either serving sentence or awaiting trial in courts.*

*In Cebu City for example, the city jail now houses more than 200 children charged with various offences, ranging from petty offences such as solvent use, theft to more serious crimes like robbery, murder, rape and others. The number of children placed in jail centres increases year after year. As their population increases, more and more children suffer deprivation and abuse inside detention cells. There are no separate detention facilities for children and they are incarcerated with convicted adult criminals. It is also a fact that the country in general lacks a comprehensive justice programme for children that includes in particular a standardised “community-based diversion approach” so that children upon commission of an offence will no longer enter the formal criminal justice system. Moreover, there are inadequate recovery and reintegration services and strategies for children in conflict with the law. Most of these children who return to their communities are left on their own without adequate counselling and psychosocial services and corresponding community or family support.*

**Project:** *Based on the principles of restorative justice, the project introduces a holistic community-based diversion programme for children in conflict with the law (CICL) at the barangay level (smallest level of government). The project encourages and supports the participation of the parents of the CICL, government and school officials and social workers by organizing a functional community level committee that implements a diversion programme in the community. As a community-based programme, it embarked on securing the active and ongoing participation of Community Volunteers (CVs) to provide support to the CICL. The CVs develop a relationship with the child, who at the same time is gaining the confidence to become an effective Peer Facilitator within the community. The project likewise introduces various psychosocial interventions to children, monitoring and follow-up mechanisms as well as crime prevention activities.*

**Results:** *The project was able to select, train and organize CVs from the selected areas in Cebu City. At present, almost a hundred CVs are actively backstopping (following-up and monitoring) children whose cases have successfully passed the diversion process. The Children’s Justice Committee (CJC) has been formed to conduct mediation in the community. Children committing petty offences are no longer referred to the formal justice system. The strategy/approach used by the CJC is mediation and conflict resolution. So far, almost 100 cases involving children have passed through the programme. Instead of confining the children in jail or to residential care, they are either returned to their families or placed under the custody of responsible persons, with the agreement of undergoing a rehabilitation programme that is being supervised by the CVs. To further facilitate monitoring and follow-up, the CVs, as part of their volunteer service, assist in the training of children as Peer Facilitators, and conduct regular one-on-one visits with them, either at home or in school. At the moment, each CV is backstopping an average of two CICL, including those former CICL in the communities whom the trained Peer Facilitators have so far contacted and who later became members of their network.*

**Lesson learned:** *A community-based approach which addresses the support needs of CICL is an effective alternative to residential care. However, the participation of CVs is a critical and important component in this programme as they provide the day-to-day support that is essential for CICL from the first moment they are reintegrated into the community and until they are fully rehabilitated.*

**Useful advice:** *“We thought of using diversion programmes in our localities in order to promote forgiveness. Diversion really has to be localised if it is to be used successfully. 200 children have passed through our diversion programme and are now in formal schools. Focus on your responsibility to the community – community should be the number one interest in a diversion program. Post-diversion approaches must also be considered and implemented in order to uphold and maintain the system. Train volunteers to be child-sensitive because they become peer educators after the diversion programme. Only 10% re-offended in our programme which is largely because of the post-diversion initiatives.”<sup>45</sup>*

42 Hazizaj, A. and Barkley, S.T., *Awaiting Trial: A Report on the Situation of Children in Albanian Police Stations and Pre-Trial Detention Centres*, Children’s Human Rights Centre of Albania (CRCA), May 2000, p.65.

43 Casa Alianza Nicaragua and Consortium for Street Children, *Street Children and Juvenile Justice in Nicaragua*, February 2004, p.24.

44 Antonio Auditor, FREELAVA, speaking at the CSC International Workshop on Street Children and Juvenile Justice, 14-18 July 2003, London.

45 *Ibid.*



This programme example from the Philippines shows once again how **relationship-building at community level is key to working with street children**. The following example from **Kenya** highlights the need for residential diversion options for street children and the challenges faced when such facilities and services are insufficient to cope with the demand for them.

### **SAVE THE CHILDREN UK PILOT DIVERSION PROJECT FOR CHILDREN IN CONFLICT WITH THE LAW IN KENYA**

**The problem:** *Most of the children in the juvenile justice system in Kenya have been arrested by the police for being on the streets, even though they have committed no crime. Instead, they are charged with being in need of care and protection. They spend long periods of detention in police cells before they are taken to court, where they are treated the same as offenders, and are usually referred to approved schools. Most children in conflict with the law have no access to legal representation. Save the Children carried out studies and consultation with stakeholders, culminating in a workshop at which the framework was developed for a project to divert children away from the juvenile justice system.*

**The solution:** *It was agreed to set up teams in three pilot districts to carry out diversionary measures for children in conflict with the law, including special children's desks at police stations for filtering child welfare cases. The District Diversion Core Teams (DDCTs) are made up of staff from children's services, Save the Children, the police, probation and after-care services and NGOs active in the field of juvenile justice. A National Diversion Core Team oversees the work of the district teams and makes recommendations on policy changes.*

**Successes:** *Child-friendly rooms have been set up at the pilot project police stations, where police officers are usually not in uniform. Children's cases are being handled appropriately, and there are attempts to base decisions on each child's individual circumstances.*

- *Between April 2001 and August 2002, the DDCTs teams handled a total of 592 children who had come through the pilot police stations. Of these, about 65 per cent had been successfully reintegrated into their communities.*
- *There have been some improvements in data management in the selected police stations, including the introduction of diversion registers.*
- *There is more collaboration and networking, with attempts to create links with the local councils, legal networks and the business community. There is also greater participation in the diversion process by government departments, NGOs, legal networks, community-based organisations, and community and local authority leaders.*
- *There has been an increase in child participation, with 500 children having been involved in diversion meetings where some had an opportunity to express their views.*
- *The principle of using custody only as a last resort is being implemented in the pilot areas.*

**Challenges:** *There have been a number of challenges to the project, including: lack of trust between government and NGOs; lack of an effective, centralised information management system in the juvenile justice system; the absence of policy on the administration of juvenile justice and the lack of any clear policy or legislation on diversion; a heavy reliance on institutional care for children who cannot immediately be returned to their families; scant resources available for the development of community-based care such as temporary care homes and fostering networks; ongoing need to address the root causes for children coming into contact with the law in the first place (poverty, family separation, lack of education etc.).*

**Lessons learned:** *The DDCTs, in their efforts to involve the wider community, significantly increased the number of NGOs involved in the process. This was done without ensuring that these organisations fully understood the principles of diversion and the objectives of the project. As a result, some misconceptions arose,*

*one of them being that the project was concerned only with returning children to their families or communities and that no intervention would be undertaken where the home environment was not conducive to reunification. Efforts are now being made to ensure strictly defined and managed partnership arrangements.*

*It became clear at an early stage that NGOs would be willing to co-operate only if they felt they were equal partners in the process. This led to the formation of interagency diversion core teams at both district and national level, comprising representatives of both government agencies and NGOs, to oversee the development and management of project activities and have equal control of finances.*

Although the project has been very successful to date, one of the major problems still to be addressed is the fact that temporary care homes are full, and there is a scarcity of alternative places where children can be held while investigations are under way.

### Examples of diversion: Specific forms of pre-trial diversion: mediation and family group conferencing

Various models of **family group conferencing (FGC)** and **mediation** are increasingly playing an important part in restorative diversion programmes internationally,<sup>46</sup> based on:

- **Their success in addressing both the victim's and offender's needs;**
- **Engendering responsibility on the part of the offender;**
- **Reducing rates of recidivism;**
- **Increasing awareness on both sides of the causes and consequences of the offence;**
- **Breaking down of social barriers and attempting to restore the damage done to social and community relationships.**

As with the example of community-based diversion from the Philippines, in the absence of 'traditional' family support, the potential for success with these models in the specific context of street children will depend on identifying and engaging 'alternative / substitute' 'family' contacts in the process. It is at this stage once again that interventions need to consider the important role of peer friendships, gangs and other support systems identified by the children themselves.

A further question regarding mediation in the street children context is whether or not mediation programmes are feasible in complex urban settings. For example, as part of a more comprehensive programme on juvenile justice in **Lao**, Save the Children UK is undertaking a project to adapt Village Mediation Units for use with children and young people (VMUs were established by the Ministry of Justice in 1997, formalising previously informal, traditional use of mediation in civil and criminal cases). However, concern has been expressed as to whether or not this programme could be effective in more urban, dislocated communities.<sup>47</sup> Likewise, despite interest in the concept of mediation and appreciation of its potential benefits, this issue was also raised by participants at the Consortium for Street Children International Workshop on Street Children and Juvenile Justice, July 2003, who cited lack of resources and infrastructure along with mobile / shifting communities as severe obstacles in implementing such programmes in many cities.<sup>48</sup>

However, in spite of these difficulties the following example from **Pakistan** illustrates how mediation and conferencing can work, even in urban settings and in the context of disrupted support structures for street children.

46 See e.g. Skelton, A., 'International trends in the re-emergence of traditional systems', in Stevens, J., *Access to Justice in Sub-Saharan Africa*, 2000, pp. 99-101.

47 Based on Parry-Williams, J., *Village Mediation Units in Lao PDR and their Adaptation for Children and Young People*, presentation to CSC International Workshop on Street Children and Juvenile Justice, 14-18 July 2003. The aim of the overall Save the Children UK project is to establish a juvenile justice system in line with the CRC that prioritises diversion, mediation, juvenile courts and non-custodial sentences. This will be achieved through: training members of justice system on child rights and juvenile justice principles; developing action-plans at provincial and district level to adapt justice system to meet child rights; using existing community systems to promote diversion; and establishing systems of data collection. Participants in juvenile mediation would include the Convenor and village elders, victim, victim's supporter or representative, young offender, young offender's parents and teacher/employer. Restitution outcomes available to Juvenile Mediation Units would include apology, cautions/warnings, compensation, community service and reparation to the victim.

48 Comments from Prof. Bolaji Owasanoye, Human Development Initiatives, Nigeria, amongst others at the CSC International Workshop on Street Children and Juvenile Justice, 14-18 July 2003.



## Case study

### **STREET CHILDREN AND MEDIATION – AZAD FOUNDATION, KARACHI, PAKISTAN**

*Azad Foundation, a street children NGO based in Karachi, regularly uses mediation in the context of disputes between children and in relation to family reconciliation of street children. However, in 2002, they extended this approach to a particular criminal justice case. In November 2002, Jahangir, a 12-year-old street boy was murdered. Immediately prior to his murder, Jahangir had been involved in a robbery with some friends but after this, according to one of his friends who witnessed the events, he was in turn robbed of the money and then sexually abused and eventually killed by a 24-year-old homeless adult. However, as the witness was afraid to come forward, one of the other street boys involved in the initial robbery was arrested for the murder instead. It was only through the intervention of Azad Foundation that the witness was persuaded to tell the truth and the real culprit was identified.*

*Within 30 days, Azad Foundation had instigated and arranged a mediation session involving the parents of Jahangir, the parents of the wrongly accused street boy, and the murderer and his father and uncle, all of whom were identified and contacted through Azad's database of street children and contacts on the streets. The aims of the mediation session were to convince the murderer to accept responsibility and hand himself into the police, to secure the release of the falsely accused street child in custody, to raise awareness amongst all parties of the consequences of living on the street and to obtain compensation for the murdered boy's family. The session was mediated by a senior field officer, social motivator, counsellor and lawyer from Azad Foundation.*

*The session was held in private in order to respect confidentiality and to minimise interference and resistance from the community, media and police (there were concerns that the police and media would misinterpret the mediation session as offering leniency and support for the murderer at the expense of justice). Problems encountered during the actual session included an initial 45 minute period of abusive language and accusations, and unwillingness to cooperate on the part of some of the participants. These problems were overcome through a combination of 'carrot and stick' approaches offering financial support and health services to the parties involved and threatening recourse to the police should the mediation fail.*

*Despite the difficulties, however, at the end of the emotional three hour session all the parties agreed on the settlement which was then taken up with the authorities: the murderer went to trial and was sentenced to 6 years imprisonment; the child who was wrongly accused was released and reconciled with his family, assisted by some financial aid; and the murderer's family was encouraged to support him in his rehabilitation process.*

Informal mediation and restorative justice may also be inherent within peer groups of street children as illustrated by this example from **Angola**.

## Case study

### **RESTORATIVE JUSTICE IN STREET CHILDREN'S PEER RELATIONSHIPS - ANGOLA**<sup>49</sup>

*In the context of peer relationships amongst street children in Luanda, Angola, the NGO CIES (Centro di Informazione e Educazione allo Sviluppo), describes how theft is often not tolerated within a particular group and that punishment is usually considered reasonable for theft and other crimes. Although disagreements are often resolved through physical punishment and violence, there is also a strong sense that*

<sup>49</sup> Sérgio de Assis Calundungo, Street children in Angola: CEIS (Centro di Informazione e Educazione allo Sviluppo), in Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p.75.

*an appropriate level of compensation is the best way to maintain equilibrium in the group. "If a child steals from another member and the compensation is money, relationships return to normal." In this way, the children are already naturally exercising forms of restorative justice.*

**It is therefore reasonable to assume that the peer group can be engaged as a support system in mediation and other diversion measures that are externally, as well as internally, imposed.**

Family group conferencing (FGC) is a specific type of mediation and for reference, some of the 'standard' models of FGC are outlined here, although - as indicated above - they would need to be adapted for use with street children through the identification and engagement of 'alternative family' support persons.

### MODELS OF FAMILY GROUP CONFERENCING (FGC)

## Practical tips

**FGC - New Zealand model:** A meeting at a time and place chosen by the family is attended by a young offender, their family, the victim, the police, a youth advocate when appointed, and any other people whom the family wish to invite. The conference is organized by the Youth Justice Coordinator who acts as facilitator and mediator between family and police, although the Coordinator can invite others to act as facilitator (especially if this is considered culturally important). Usually, after introductions and greetings, the police describe the offence and the young person admits or denies involvement. If there is no denial the conference proceeds with the victim describing the impact on him or her of the offence. Views are then shared about how the matter could be resolved. The family deliberates privately, after which the meeting reconvenes with the professionals and the victim to see if all are agreed on the recommendations and plans advanced by the family.<sup>50</sup>

**FGC - Australia, Wagga model:** A meeting held as an alternative to traditional justice procedures is facilitated by a police officer. Those involved are: the perpetrator(s) and victim(s) of an offence, together with the families and friends of both the victims and offenders and others directly affected by the offence. Conferences are convened in cases in which the preliminary investigation has been conducted, where guilt is accepted and where the voluntary participation of both victim and offender is secured. Each conference is coordinated by a police officer (or other official or trained volunteer), whose role is to encourage participants to express their feelings about the offence and to reach some collective agreement about how best to minimize the harm resulting from the offending behaviour. Agreements usually involve some arrangements for appropriate restitution and reparation. These arrangements are formally agreed to but are not legally binding.<sup>51</sup>

**FGC - Australia, Canberra model:** Following the pattern of the Wagga model of conferencing with or without the presence of victims or using community volunteers as stand-in victims where there has been no actual harm to a specific victim (as in drunk-driving or drug abuse offences).<sup>52</sup>

**FGC - REAL Justice model:** A scripted version of the Wagga conferencing model held, either as an alternative to, or in combination with, traditional criminal justice proceedings. It is facilitated by a police officer/justice official, school representative or community volunteer acting on behalf of such an official.<sup>53</sup>

50 Maxwell, G. and Morris, A., *The New Zealand model of family group conferences in Family conferencing and juvenile justice: the way forward or misplaced optimism?*, Alder & Wundersitz eds., Australian Institute of Criminology, Canberra ACT, Australia 1994, cited in Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.352.

51 Moore, D.B., *A New Approach to Juvenile Justice: An Evaluation of Family Conferencing in Wagga Wagga. A report to the Criminology Research Council, Wagga Wagga*, New South Wales: Centre for Rural Social Research, Charles Sturt University, Riverina, Australia, 1995, cited in *ibid*, p.352.

52 Reintegrative Shaming Experiment, Research School of Social Sciences, Australian National University, Canberra ACT, Australia, cited in *ibid*, pp.352-353.

53 [www.realjustice.org](http://www.realjustice.org), cited in *ibid*, p.353.

**Parties are less likely to be willing and able to reach a compromise in larger urban communities unless their relationship ranges beyond the transitoriness of the court or a particular dispute; or unless social pressures from family, friends, colleagues or other peers can be brought to bear in encouraging a compromise.**<sup>56</sup>

### examples of diversion: The role of traditional and informal justice systems in relation to street children and diversion<sup>54</sup>

Some of the diversion options introduced above, such as mediation and family group conferencing, are based on traditional and informal justice systems. *Taking into consideration international human rights standards*, increasing attention is being paid to reviving such systems, capitalizing on the benefits of by-passing expensive, punitive and isolating 'formal' (and essentially colonial) justice systems. Traditional and informal justice systems therefore have a key role to play in the pre-trial diversion process. **However, this is on the clear understanding that they must be very carefully monitored to ensure that they do not reinforce exploitive or discriminatory community norms that may discriminate especially against street children in general, and girls in particular.**

#### Core principles when utilizing traditional and informal justice systems for diversion

- No one should be subjected to discrimination on the basis of sex or any other status by either formal courts or informal justice forums.
- Physical punishments – whether imposed by formal courts or informal justice forums – amount to inhuman or degrading treatment which is absolutely prohibited. States have an obligation to protect all those under their jurisdiction from such treatment.
- States should make it an offence for traditional or informal adjudicators to order physically coercive punishments, or to try a person under duress or in *absentia*, or to try a person for serious offences such as murder or rape.
- These laws should be actively enforced and forums in which such offences are repeatedly committed should be outlawed.<sup>55</sup>

#### Are traditional and informal justice systems suited to the street children context?

As with some of the diversion options already discussed, there is one main potential obstacle to such systems being appropriate or feasible for street children: traditional and informal systems, which work at the level of restoring relationships, depend on the existence of stable relationships in the first place. The majority of these systems to date tend to operate more effectively in close-knit, rural communities as opposed to the more fragmented urban communities in which street children live and work: "Traditional and informal justice systems are best suited to conflicts between people living in the same community who seek reconciliation based on restoration. *Parties are less likely to be willing and able to reach a compromise in larger urban communities unless their relationship ranges beyond the transitoriness of the court or a particular dispute; or unless social pressures from family, friends, colleagues or other peers can be brought to bear in encouraging a compromise*" [emphasis added].<sup>56</sup>

A Save the Children (UK and Sweden) conference held in October 1996 in Swaziland on the extent to which traditional justice systems promoted or undermined children's rights as set out in the CRC determined that: "The overall finding is that there was insufficient primary research on informal mechanisms, particularly those existing in urban and peri-urban areas, to draw generalized conclusions."<sup>57</sup> An example of work that is beginning to address this area is the Community Conflict Management and Resolution programme, **South Africa**. A workshop was organised in Durban in 1997 to bring together traditional leaders and youth mediators from Kwa-Zulu Natal. "The aim of the conference was to inform youth mediators, who are based mainly in urban areas, of indigenous methods of resolving disputes still being practiced in the rural areas....As a result, the Association of Youth Mediators has resolved to involve community elders and to continue to learn more about indigenous methods and to incorporate them in their work."<sup>58</sup>

<sup>54</sup> 'Traditional justice systems' refers to non-state justice systems which have existed since pre-colonial times. 'Informal justice systems' refers to any non-state justice system. Stevens, J., *Access to Justice in Sub-Saharan Africa*, 2000, p.1.

<sup>55</sup> *Ibid*, p.2.

<sup>56</sup> *Ibid*, p.167, quoting van Velsion, J., 'Procedural Informality, Reconciliation, and False Comparisons', 1969.

<sup>57</sup> The conference brought together national and international NGOs and government representatives from 11 African countries. Stevens, J., *Access to Justice in Sub-Saharan Africa*, p.96. See also, 'The Potential of Traditional Institutions in Ethiopia', Yitayew Alemayehu, in *Justice for Children*, p. 98: "Systems based on blood relationships would be impractical in urban communities, where the extended family does not live in one place – although other urban networks have to some extent taken their place".

<sup>58</sup> *Ibid*, p.116.

In relation to street children, alternative support systems in the community need to be examined and brought into play on behalf of the children. Possibilities for individual and community support are illustrated in the following example of street children in Luanda, **Angola**.

## Case study

### **PEER AND COMMUNITY SUPPORT SYSTEMS FOR STREET CHILDREN IN ANGOLA**<sup>59</sup>

*CIES (Centro di Informazione e Educazione allo Sviluppo), an NGO in Angola, describes the relationships between street children and community members in Luanda, and outlines different groups of street children and their relative levels of involvement in crime.*

*CIES states that many street children develop a relationship with a trusted adult ('braga') who looks after their money until they need it and who sometimes develops a 'closer, more parental relationship with the child' letting them play with their children, eat and watch TV with the family. "Most children would describe it as a relationship of mutual respect rather than dependency."*

*The first group of street children identified by CIES is relatively stable and has developed a relationship with local residents. This type often expressly prohibits theft, burglary or any other offence within the boundaries of its own 'patch'. The children are dependent on receiving a regular income from local residents and on being allowed to continue sleeping in a stable and relatively secure place. Criminal behaviour would jeopardise this group's lifestyle. For these children there is often a system of mutual protection: the group will protect the residents' homes and the residents will react if the children are threatened. This group tends to have a better relationship with the police and may benefit from police protection – although sometimes this is paid for. The social relationships between this type of group and the local community – monitored and protected by the peer group to preserve the mutually beneficial equilibrium – help to prevent the children getting involved in crime and help to maintain stable relationships with the police. However, if the need arose, this type of relationship could also presumably be drawn on to support children in diversion measures and alternatives to detention that require such community links.*

*The second group of street children is described as less united, with a higher turnover of members and a greater tendency towards criminal behaviour. There are often more fights between members of these groups and they are more vulnerable to attacks by outsiders stealing the money they have earned. They are more likely to be arrested and to experience violence with the police than the first group. This group is obviously more challenging: they are more likely to come into conflict with the police and the law, but – unlike the first group - also have weaker ties to the community. These factors are clearly linked as the lack of social safety nets fails to prevent conflict with the law. Weaker community relations would also mean that it would be less likely that community members would be willing to support individual children in diversion programmes.*

*However, it is possible that – given the evidence that the community is generally open to supporting vulnerable children (as demonstrated with the first group), ways could be identified to work with children so that they have the choice of making the 'transition' from the second to the first type of group. This same principle could be applied to the third type of street children group: street girls, the majority of whom sell sexual services for survival, usually out of choice (or limited choice / non-choice).*

59 Sérgio de Assis Calundungo, Street children in Angola: CEIS (Centro di Informazione e Educazione allo Sviluppo), in Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, pp. 72-76.



## Case study

### **EXAMPLE OF INFORMAL DIVERSION STRATEGIES WITH STREET CHILDREN - CHILDSHOPE ASIA PHILIPPINES – STREET EDUCATION PROGRAMME**

*Late one afternoon, five street children (three girls aged 11, 12 and 13 and two boys aged 10 and 11) were caught by community officials sniffing glue beside one of the houses in their neighborhood. The head community official immediately called the office of Childhope Asia Philippines' Street Education Programme to inform the street educators of the apprehension.*

*The cooperation and partnership demonstrated here between the street educators and community officials is the result of extensive community education and advocacy work carried out over a period of time by the organization in the neighborhood where the street children were caught. Primarily, the collaboration focuses on how both parties may maximize their roles and utilize their resources to better help street children. Another aspect of the partnership is to immediately inform the street educators of incidents involving street children (especially those involved in abuse and apprehension cases, whether the child is a victim or an offender), as in the current case.*

*The street educators and their supervisor gathered all the necessary information from the community official over the phone. All the street children who were apprehended were out-of-school. It was found out that the two boys and one of the girls still had parents to go to and that this was the second occasion that these children had been caught sniffing glue. On the other hand, the other two girls had no homes to go to and this was the first time they had been caught for glue-sniffing. One of these girls was very new to the streets, having recently run away from home. The other girl was the sister of a street girl who had already been referred by the street educators to a temporary shelter where she was still staying at the time of the incident.*

*A short case assessment and planning meeting was held among the street educators and their supervisor to determine the best course of action. Before proceeding to the area/neighborhood, the street educators coordinated first with the community official, informing him of the proposed plan of action, with which he agreed.*

*The following courses of action were taken: group counselling/conferencing among the parents and the street children, together with the community official; releasing the 3 children to their parents' custody with the parents having signed a memorandum of agreement with the community official/office, taking on the full responsibility in ensuring that the child will not be involved in glue-sniffing again; individual counselling among the 2 girls and their referral to temporary shelters, with one of them referred to where her sister was also staying; coordination with the Department of Social Welfare and Development about the case; and close monitoring of the 3 children who were released to their parents but who were still in the area (conduct of family counselling, involvement of the children and parents in the project's activities whenever possible etc.).*

## THE ROLE OF THE POLICE IN DIVERSION PROGRAMMES

As can be seen by the diagram illustrating stages of intervention, the police are key in the pre-trial diversion process: they are the first point of contact between children and the criminal justice system and, as such, are the key actors in diverting children away from that system at the earliest possible stage. Some examples of how the police can be engaged as positive actors in the 'network of support' have already been referred to earlier in this book. This section includes some additional examples relating specifically to the role of the police in diversion programmes.



## BANGLADESH: IMPROVED INSTITUTIONAL RESPONSES TO CHILDREN IN CONFLICT WITH THE LAW – MODEL OF POLICE GOOD PRACTICE

*Aparajeyo Bangladesh (AB), in association with ChildHope UK, are undertaking a 3-year project (April 2002 – March 2005) with 5 Police Stations in Dhaka to develop a replicable model of best practice to protect the rights of children in contact with the law.*

*The project has built on informal contacts already established between AB and 4 police stations in Dhaka, where children were brought before the police on the grounds of vagrancy and petty theft and were being handed over to AB. This arrangement was ad hoc, subject to personal discretion and entirely dependent on continuing good relations between individuals, rather than being formalised through institutional agreements. Furthermore, the absence of written guidelines, agreed procedures and training for the police means that this system does not guarantee that all children are referred, or that all children are able to access their rights.*

*The project is seeking to formalise this arrangement through an agreement with the Ministry of Justice and Parliamentary Affairs. It is working with 24 police stations in Dhaka which regularly refer children to AB's social workers. It has developed Memorandums of Understanding to formalise its work with the 5 target police stations and is providing training to police officers and members of other NGOs in order to increase mutual understanding of relevant issues and to replicate similar institutional arrangements between AB and 6 more police stations in Dhaka and Chittagong. The project has established a Panel of Lawyers, some of whom as individuals are providing legal support to children referred by the police in the court system, but the panel also works as a powerful collective body, pushing for juvenile justice reform.*

*The project will be guided by a Task Force which will be formalised in the second year made up of a range of professionals including government representatives, joint secretaries or directors of 4 Ministries, 6 national NGOs, including AB, and juvenile justice professionals and academics. The Task Force will monitor and advise the progress of the project as well as providing informed and direct links to decision-makers in the government.*

PROJECT EXAMPLE

## WORKING WITH THE POLICE IN VIETNAM <sup>60</sup> 60

*The age of criminal responsibility in Vietnam is 14. The Vietnamese police have applied diversionary measures for children, mostly aged 16 and below who have committed less serious offences and/or are first-time offenders. Such diversion measures include:*

- **Mediation:** involving police and the families of the offender and the victim;
- **Formal caution:** for children who are first-time offenders;
- **Fine:** in the case of children who re-offend a second time, parents or guardians are fined, but not more than the equivalent of US\$3.50.

*Save the Children (Sweden) has had a working partnership with the Police Academy since 1997 and with the General Police Department since 1999. A project developing the capacity of police officers at the national and provincial levels resulted in the following outcomes:*

- 1,500 police officers were trained in CRC and juvenile justice standards;
- The Police Academy has developed a specialised training manual. Twenty lecturers at the Academy were trained in participatory methods for teaching the subjects;

PROJECT EXAMPLE

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<sup>60</sup> Roy, N. and Wong, M., Juvenile Justice Review and Training Documents prepared for Save the Children UK, 2002-3.

- *The juvenile justice training has been institutionalised into the existing curriculum for all police students, as well as tailored for working police officers in their in-service training;*
- *A partnership has been established between the police and Save the Children (Sweden), based on frequent discussion and co-operation;*
- *Save the Children (Sweden) and the police agreed to come together to strengthen the capacity development of police officers and to develop a pilot community-based project in Hanoi.*

### **WORKING WITH THE POLICE: FORUM ON STREET CHILDREN, ETHIOPIA (FSCE) <sup>61</sup>**

*FSCE, an indigenous NGO, has been targeting police station commanders and heads of crime investigation departments in Addis Ababa and other major towns, as well as recruits and cadets attending training courses in the police college and the country's 15 police training centres. Advocacy activities have included: participatory action research / situation analysis; orientation programmes for police recruits and cadets at police training centres and the police college (for 4,000 police recruits, 300 cadets and 192 senior officers as of 1998); orientation programme for journalists and public relations officers; preparing leaflets, brochures and posters that depict the circumstances of street children for distribution to police stations in major towns, police training centres and the police training college; preparing educational programmes on the problems of street children on police radio and in newspapers.*

**Impact of the programme:** *positive changes include increased awareness; some police commanders who have participated in the programme have initiated activities to assist street children under arrest at their police stations; staff at various street children projects have been offered cooperation by the police; greatly increased coverage of the issue on police radio and in the newspaper; issue of street children has been incorporated into the police training curriculum; training manual has been prepared by FSCE and is already in use; regional Police Commission has assigned a chief for the coordination of the child protection programme with full-time support staff as well as an interagency committee – including the Prosecutor's Office, hospitals and social welfare organizations - to support the programme; child protection programme offices established at 5 police station in Addis Ababa, with financial support from Save the Children and with working guidelines jointly determined by FSCE and the regional police commissioner; police staff assigned to the child protection programme were trained in crisis intervention, child psychology, communicating with children, basic counselling, CRC and Ethiopian law regarding children.*

**Important changes as a result:** *increase in number of children quickly reunited with families after arrest and have been referred to the community-based child offence prevention programme where they receive recreational, tutorial and counselling services. One psychologist, one lawyer and five para-social workers were employed to assist police staff involved in child protection.*

**Challenges:** *courts are slow in processing both criminal or social welfare cases and children are remanded in custody on a warrant, which forces the police to detain children even if they would prefer to release them on bail; problems identifying children's ages.*

<sup>61</sup> Gebremarian, T., 'Working with the Police in Ethiopia', in Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, pp.77-79.

## PRIORITY 4: ALTERNATIVES TO DETENTION

The final priority area for reform, the need for alternatives to detention, is very closely linked to that of diversion and much of the material is relevant to both areas. As seen above, pre-trial diversion measures such as mediation, family group conferencing, NGO referrals, community service etc. automatically provide alternatives to detention and should ideally be implemented at the earliest possible stage of contact with the system – especially given the shocking length of time children in many countries spend in pre-trial detention / on remand.

As with diversion, it is important to note that alternatives to detention in the context of the criminal justice system apply only to children in conflict with the law. Street and other children who are need of care and protection should not be being processed through the criminal justice system in the first place, as outlined in the previous section on separating social welfare and criminal justice systems.

However, in some cases it may not be possible to divert a child from the formal system prior to the trial stage, e.g. in cases of serious crimes where release into the community would not be appropriate, or where the child has not admitted guilt (a pre-requisite for most diversion options). In this case, even at the stage of disposal / sentencing, there are still possibilities to avoid the damaging effects of detention by promoting the use of alternatives to detention.

### A REMINDER OF THE PROBLEM

According to all international standards, detention of children should only be used as a last resort, for the most serious crimes, and even then for the shortest time possible (CRC Article 37(b); Beijing Rules 13(1); JDLs I(2)). Unfortunately, as seen from the examples of children's horrific experiences in detention outlined in Chapter 6, alternatives to detention are rarely implemented. The negative effects of detention for both the individual and society as a whole have already been explored, i.e. failure to address the root causes of crime and recidivism, and reinforcing social dislocation and discrimination. However, they can be summarised briefly once again in the words of some of the children involved:

*I don't want to remember anything that happened here. Because if you put a child in prison his mind changes. His mind becomes hardened, so he doesn't mind being imprisoned again. He's not scared to go to jail anymore, so he will do bad things.*

**(12-YEAR-OLD EUGENE, ACCUSED OF RAPING A 21-YEAR-OLD WOMAN, HAD BEEN IN JAIL FOR 7 MONTHS, DESPITE THE FACT THAT THE COMPLAINANT HAD ALREADY WITHDRAWN THE CHARGES, PHILIPPINES)<sup>63</sup>**

*Any system of juvenile justice that places less pressure on magistrates, less dependence on prisons and more emphasis on solving the causes of crime will also cost much less and produce better outcomes for young offenders and their victims.<sup>62</sup>*

<sup>62</sup> Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.14.

<sup>63</sup> Footage from Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001.

Poor children, street children, and orphaned or abandoned children are more likely to be detained than all other categories of children.<sup>67</sup>

What I'm praying for now is to get out so I can enjoy what youth I have left. I'm only a teenager, but I haven't had a chance to enjoy life, just suffering and hunger. This is a junior school for crime, then the prisons are a university for crime. You can learn all the worst things there, but I don't want that kind of life. I didn't have a real childhood, just prison, prison, prison. (BRAZIL)<sup>64</sup>

Street children are even less likely to benefit from alternatives to detention due to factors already explored such as discrimination, criminalisation, public fear and lack of responsible adult support structures necessary for many non-custodial options. This results in children reported being given heavy custodial sentences for minor offences such as three years' imprisonment in the **Philippines** for sniffing solvent.<sup>65</sup>

The magistrates tend to release those children with some sort of jobs, but were merciless to the tokais (scavengers). (BANGLADESH)<sup>66</sup>

The current situation in many countries is typical of that described by Human Rights Watch in **Guatemala**: "In contrast to street and other poor children, who may be interned simply for lacking a responsible parent or guardian, children with 'family resources' usually avoid detention even when they are found guilty of the alleged offense," e.g. through a warning and the payment of a fine, bail or 'conciliation' with the victim [...]. "These methods for avoiding detention, all of which require the child to have not only a parent, but economic resources as well, are not available to the vast majority of children incarcerated in Guatemalan juvenile detention facilities. This means that poor children, street children, and orphaned or abandoned children are more likely to be detained than all other categories of children. The answer to such discrimination, of course, is not to incarcerate more children, but to appoint guardians or otherwise ensure equal treatment for disadvantaged children."<sup>67</sup>

Reliance on detention for street children therefore remains widespread, even where alternatives to detention exist in theory within the law.

## EXAMPLES OF ALTERNATIVES TO DETENTION

The Beijing Rules specify the following non-custodial sentencing options:

- care, guidance and supervision orders
- probation
- community service orders
- financial penalties, compensations and restitution
- intermediate treatment and other treatment orders
- orders to participate in group counselling and other similar activities
- orders concerning foster care, living communities or other educational settings<sup>68</sup>

In addition to the examples cited in the previous section on diversion, the following case studies illustrate a variety of non-custodial measures. Their adaptation for effective use with street children would once again depend on relationship-building within local communities and identifying alternative support persons.

<sup>64</sup> Julio, aged 14. Footage from *ibid.*

<sup>65</sup> UP CIDS PST / CSC, End of Project Report, 2003.

<sup>66</sup> Zaman Khan, S., *Herds and Shepherds*, 2000, p.25.

<sup>67</sup> Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.56.

<sup>68</sup> Roy, N., *Juvenile Justice Presentation*, December 2001.



## EXAMPLES OF DISPOSAL / SENTENCING ALTERNATIVES

In order for magistrates to accurately determine the most appropriate option for the children before them, it is essential that adequate information is made available about the child's circumstances, presented in a child-friendly environment that provides an opportunity for the child to speak for themselves. For example, in **France**, most proceedings involve an informal audience in the office of the Children's Judge, and only in more serious cases or for severe educational impact on a juvenile offender does the judge hold a formal trial in robes at the Tribunal Pour Enfants.<sup>69</sup> In **Scotland**, Children's Hearings have operated in Scotland since 1971 bringing together the work of several agencies; in particular the reporter (magistrate), an advisory committee, the children's panel and the social work department.<sup>70</sup>

### THE SENTENCING CIRCLE - CANADA

#### What is it?

*A sentencing circle is conducted after the individual has been found guilty through a formal court process, or if the accused has accepted guilt and is willing to assume responsibility for the harm they have done to society and to the victim(s). The aim of a sentencing circle is to shift the process of sentencing from punishment to restoration of social relationships and responsibility. It provides a new alternative for courts to incarceration. The sentencing circle proves an opportunity to start the healing process for both the offender and the victim.*

#### How does it work?

*The offender is presented with the impact of their actions in front of respected community members, elders, peers, family and the victim and their family, stimulating an opportunity for real communication, increased mutual understanding and sustainable change.<sup>71</sup> Officials such as a judge, lawyers for the prosecution and defence, and arresting police officer may also be present, but although the judge may intervene to guide the discussion and elicit responses from specific individuals present, the emphasis is very much on the participants to lead the discussions. The process can last all day and each person present (up to 20 or more) is given equal opportunity to give their opinion in turn, going around the circle as many times as necessary in order to come to a mutually agreed settlement, usually involving apology and reparation. Cases have been reported where, at the end of a sentencing circle, as a result of the background circumstances becoming known, the initially hostile family of the victim have actually been moved to offer help to the offender.*

#### Is it suitable for street children?

*The suitability of this process to street children in complex and socially fragmented urban settings was discussed during the Consortium for Street Children International Workshop on Street Children and Juvenile Justice, 14-18 July 2003, London, in response to watching a video of a 'mock' sentencing circle based on the Canadian model. Workshop participants indicated that alternative supportive individuals would need to be identified in the case of street children who may not have the requisite family members or supportive adults to attend the sentencing circle. The suitability of the process would therefore depend once again on relationship-building and tapping into street children's self-defined support structures – for example, including their friends and peers. Questions were also raised about how well particularly vulnerable, troubled or less articulate children would perform in the sentencing circle process which relies heavily on verbal communication (although there is no reason why this couldn't be adapted to incorporate more child-friendly processes such as the use of drawings etc.) Participants from Pakistan and the Philippines highlighted additional factors (differences in gender and social status) which might potentially complicate this process in certain communities. Participants from Nigeria highlighted the difficulties of implementing systems such as this and mediation in cities like Lagos that lack basic infrastructure and support systems. However, the potential restorative and relationship-building benefits make this an option worth considering.*

<sup>69</sup> Ely, P. and Stanley, C., *The French Alternative: Delinquency, Prevention and Child Protection in France*, an occasional paper published by NACRO, cited in Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.305.

<sup>70</sup> Martin, F.M. and Murray, K., *The Scottish Juvenile Justice System*, SA Press, Edinburgh, cited in *ibid*, p.305.

<sup>71</sup> <http://www.usask.ca/nativelaw/publications/jah/circle.html>



## EXAMPLES OF SHORT AND LONG TERM NON-CUSTODIAL MEASURES

### SHORT-TERM AND LONGER-TERM DIVERSION INTERVENTIONS - THE NATIONAL INSTITUTE FOR CRIME PREVENTION AND REHABILITATION OF OFFENDERS (NICRO), SOUTH AFRICA <sup>72</sup>

Along with lobbying and training, the NGO NICRO has set up a range of diversionary alternatives including short term interventions and longer term intensive interventions:

#### Short term

- Youth Empowerment Scheme (YES) programmes: a 6-session life-skills training programme focusing on issues important to young people, and encouraging young people to be accountable for their actions. Parents or guardians are present where possible at the first and last of the weekly sessions, and young people explore ways of reducing the possibility of recommitting offences. An estimated 17,670 young people took part in the programme from 1996-1998. NICRO also runs Family Group Conferencing (see below for more details on FGC).

#### Longer term

- 'The Journey': a high impact programme for young people who need intensive and long-term intervention. It includes at least one residential workshop and a wilderness experience. Young people receive support from mentors in their communities. The programme runs over a period of 6 months to a year and 200 young people participated during 1996.

PROJECT EXAMPLE

### COMMUNITY REMAND PROJECTS IN THE UK - NACRO

These programmes offer courts an alternative to remanding a young offender in prison or placing them in care by offering to support them in the community. Support can range from setting-up training to arranging treatment for drug abuse or helping resolve family conflicts. The projects also run a mentoring scheme pairing young people with volunteer adult mentors who are recruited from the local community.<sup>73</sup>

PROJECT EXAMPLE

## EXAMPLE OF COMPREHENSIVE REFORM IN RELATION TO ALTERNATIVES TO DETENTION

### JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) - FLORIDA, USA

Launched in December 1992 by the Annie E. Casey Foundation, JDAI was a multi-year, multi-site project "to demonstrate that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention". The project was intended to replicate successful work in Broward County, Florida, that had transformed an extremely crowded, dangerous and costly detention operation. This was achieved through inter-agency collaboration and data-driven policies and programmes that proved that it is possible to reduce the numbers of children behind bars without sacrificing public safety or court appearance rates.

The findings of the JDAI project have been compiled into a series of twelve publications under the title **Pathways to Juvenile Detention Reform**. Each publication examines, in detail, a different aspect of the project, drawing out a series of underlying principles, lessons learned and tips on 'getting started' for others interested in developing alternatives to detention. Although based on the

PROJECT EXAMPLE

<sup>72</sup> 'Diversion from courts or prison: The National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO), South Africa', Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, pp. 58-59. "Although the diversionary measures being developed by NICRO are highly relevant in the South African context, it is unlikely that public service budgets would stretch to these types of measures in other African countries".

<sup>73</sup> <http://www.nacro.org.uk/services/youthcrime.htm>

experience of a Northern country, the lessons learned, helpful advice and practical suggestions included in the documentation are nevertheless of great interest to all in this field and may spark ideas for adaptation more suitable to different country contexts.

For example, the series reproduces copies of various 'risk assessment instruments' used at the admissions / 'gate-keeping' stage of the justice system: these tools help to channel individual children through the most suitable processing option available (such as community service, intensive supervision, residential or non-residential detention) based on a 'points' system that takes into consideration the seriousness of the offence, the child's individual circumstances and any mitigating factors through a simple, often one-page, questionnaire. It also discusses – amongst other things - issues such as the challenges of changing political environments, the impact of public opinion on justice reform and different levels of community supervision.

Titles in the Pathways to Juvenile Detention Reform series are:

- *Overview: The JDAI Story: Building a Better Juvenile Detention System*
- *Planning for Juvenile Detention Reforms: A Structured Approach*
- *Collaboration and Leadership in Juvenile Detention Reform*
- *Controlling the Front Gates: Effective Admissions Policies and Practices*
- *Consider the Alternatives: Planning and Implementing Detention Alternatives*
- *Reducing Unnecessary Delay: Innovations in Case Processing*
- *Improving Conditions of Confinement in Secure Juvenile Detention Centres*
- *By the Numbers: The Role of Data and Information in Detention Reform*
- *Ideas and Ideals to Reduce Disproportionate Detention of Minority Youth*
- *Special Detention Cases: Strategies for Handling Difficult Populations*
- *Changing Roles and Relationships in Detention Reform*
- *Promoting and Sustaining Detention Reforms*
- *Replicating Detention Reforms: Lessons from the Florida Detention Initiative*

Copies and further information are available from: The Annie E. Casey Foundation, 701 St. Paul Street, Baltimore, MD 21202. [www.aecf.org](http://www.aecf.org)

### 'OPEN PRISONS'- ANKARA REFORMATORY, TURKEY <sup>74</sup>

**“** *In the closed prison I felt very withdrawn and anti-social, but here it's much easier to talk to people. This place has changed me, the people here really care. They show us understanding, and in return we show them....respect.* **”**

(14-YEAR-OLD BOY).

On the understanding that detention is still required as a sentencing option in a minority of serious cases, the Ankara Reformatory has been described as the *“most effective child prison the [documentary film Kids Behind Bars] found anywhere in the world.”* Based on a philosophy of integration rather than isolation, as of 2001, only 3% of those released from the Ankara Reformatory had been reconvicted of an offence within four years (compared to 84% of children in the UK released from Young Offenders Institutions within two years). More than half of the children leave prison every day, unaccompanied, to attend local schools and go to jobs in local businesses. There is nothing to stop the children escaping, should they choose to do so: there are no perimeter fences or guards. Yet very few run away as the conditions and opportunities available in the open prison are so preferable to those in closed prisons (where they would immediately be sent if re-captured) and, in many cases, to life outside. Conditions are described as *“simple*

<sup>74</sup> Based on footage from Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001 and their supporting feature article in *Just Right: Kids Behind Bars* (special issue), Jubilee Action, Autumn 2001, pp.8-10.

*but very pleasant". Primary level classes are held on site, whilst secondary standard children attend regular school.*

*According to a Turkish law passed in 1971, any business with over 50 employees is required to ensure that 3% of the workforce are ex-offenders and so boys over the age of 15 (official school leaving age) are found placements in local factories, depending on their skills, or trained in a craft at the reformatory. Anything they make during their classes (such as clocks, ceramics and stained glass) is sold to the community through regular craft fairs with the profits returned directly to the boy who made the item in the first place. Those with jobs get to continue their employment on release and to move into shared group accommodation. The Reformatory also arranges regular trips to football matches, the theatre, TV studios, the cinema and to museums.*

*Despite the serious nature of most of the offences of the boys in the Reformatory (more than half serving sentences of over five years for murder or serious sex offences), the local community not only does not object to the institution, but instead actively supports it through voluntary teaching and offering sports and crafts skills. "The overall effect is that these boys are not isolated from society, instead they are probably far more integrated into society than they were when they were living at home."*

*According to Birhan, a 14-year-old in Ankara Reformatory: "In the closed prison it's easy to get bad habits. They teach you to smoke, take heroin, steal, stuff like that. If you stay there long enough you'll learn all these habits and then continue them outside. But here I've learnt to be a man. I've learnt to respect myself, and respect other people."*

## Chapter summary

In spite of the particular difficulties involved in working with street children, reform is possible through appreciating and enhancing children's resiliency and through building relationships – particularly in the community - which strengthen networks of support for them. Children's participation is essential to the reform process, working with them to understand and expand choices, and empower them to make those choices.

**Prevention** as a whole is crucial to being able to systematically address the socio-economic and psychosocial problems faced by children and young people which contribute to street migration and actual or perceived conflict with the law. The examples in this chapter indicate the importance of education, structured activities, individual and family support, coordination and a combination of macro-level strategies as well as targeted interventions. It is particularly important to ensure that such interventions genuinely reach those most at-risk, especially street children who are already marginalized in relation to the social structures within which traditional prevention programmes are oriented.

**Separation of criminal justice and social welfare systems:** The majority of children in some countries should not even be in the criminal justice system in the first place and the following steps are needed: strengthen social welfare departments; improve cooperation and collaboration between the two systems; ensure that justice system personnel such as the police are sensitised and trained to distinguish between, and correctly deal with, different categories of children (in actual conflict with the law, in perceived conflict with the law and in need of care and protection).

**Diversion and alternatives to detention:** Street children may well not qualify for many diversion options in the first place given their lack of ties to responsible adults / guardians and stable residential environments which are pre-requisites for the majority of pre-trial diversion options. It is obvious that more creative approaches will be necessary to implement pre-trial diversion programmes and alternatives to detention that meet the needs of street children to ensure that they are able to benefit from restorative justice options along with other children, and that they are not simply locked up for lack of innovative approaches. Success in this area depends on relationship-building with the community. Despite the obstacles faced, the examples in this chapter go some way to demonstrating that such programmes are feasible, even for street children in complex urban settings, although much work remains to be done in this area.

## 8

## RECOMMENDATIONS

*Chapter overview*

- Starts with a **brief summary of the key messages of the book** and emphasises how each of us has an important role to play in the implementation of the changes needed for reform.
- Gives **general and detailed recommendations** for **all actors** and **all stages** of the juvenile justice system.



## CONCLUSION

*I wish that our community and government would love us and guide us and not be ashamed of us.<sup>1</sup>*

*I hope they would listen to our views and concerns<sup>2</sup>*

As has been demonstrated throughout this book, and in particular based on the experiences of the children related in Chapter 6, urgent reform of social welfare and criminal justice systems is needed in order to promote and protect the human rights of street children.

It has been proposed in Chapter 2 that reform should be based on the three part strategy of:

- 1 a holistic, **child rights-based approach**
- 2 with a **focus on the five concepts** of: an individualised approach, choices, relationship-building, the role of the community, and children's resiliency and their peer relationships
- 3 in the **four priority areas** of prevention (of street migration and of first-time and re-offending), separation of the criminal justice and social welfare systems, diversion and alternatives to detention.

The particular problems faced by children in the criminal justice system who lack stable accommodation and traditional social support structures have been highlighted: "When children break the law in the current environment, without family and neighbourhood support structures, the child is disempowered, minorities are disempowered, communities and parents are disempowered. [...] Denied a child-centred justice infrastructure with qualified gate-keepers and mediators, abused, exploited or neglected children have an easy road to acquiring a criminal record."<sup>3</sup> As outlined in Chapter 2, the role of the community – with all of the diverse actors that entails – is therefore essential in reform. However, in spite of the challenges faced, successful projects have nevertheless been illustrated which rely on the key issues of relationship building with the police and in the community in order to develop alternative support structures for street children.

As part of the community, reform is therefore the responsibility of everyone: "The issue of street children goes beyond our common perception of them as homeless, hungry, and troublesome children living in the streets. Beyond societal variables and factors, their world, like ours, is a complex combination of issues. In understanding the plight of street children and in realizing that it is a public issue, we have to remember that they are children. Why is their plight a public issue? All children have the right to be given all the opportunities that will help develop their potentials and grow into well-rounded and secure individuals. A child's situation in the street and / or commission of crimes does not mean an exemption from this right or any of their fundamental rights."<sup>4</sup>

**"Realising that we are part of the problem and the solution:** An understanding of the psychosocial needs of children is not supposed to be limited to the realm of academia, law enforcers, judges, lawyers, and social workers. It is for everyone. We are all part of the last, largest and most important pillar, and without us, even the most earnest efforts for a better future for all our children will be unsuccessful."<sup>5</sup>

1 Child participants quoted in UP CIDS PST, *Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines*, Quezon City, UP CIDS PST and CSC, 2003, p.142.

2 *Ibid*, p.17.

3 Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.25.

4 UP CIDS PST, *Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines*, Quezon City, UP CIDS PST and CSC, 2003, pp. 28-29.

5 *Ibid*, p.36.

<sup>6</sup> See also specific recommendations for different stages of the system.

## GENERAL RECOMMENDATIONS<sup>6</sup>

The following general recommendations apply mainly to governments, but usually in partnership with the other actors in the justice system, including police, social services, probation, lawyers, judiciary, staff in institutions, community – including NGOs, media and academics. They are relevant / of interest to all actors in the system. The specific recommendations for different stages of the system are shown in a following table, indicating specific actors' responsibilities.

Because these general recommendations apply to many actors it is important that they do not 'get lost' through people 'passing the buck'. Governments are legally bound to take a lead in reform in line with their international obligations under the UN Convention on the Rights of the Child and other instruments. However, it is everyone's responsibility to ensure that they do so, working collaboratively and constructively together to 'put the justice back into the justice system'.

### LEGISLATION AND POLICY

- **Legislation:** Urgently amend national legislation in line with the UN Convention on the Rights of the Child and other UN guidelines on juvenile justice (including the Riyadh Guidelines, Beijing Rules, and JDLs), including:
  - o ensure that children below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults;
  - o de-criminalise 'vagrancy', 'loitering', victims of commercial sexual exploitation and status offences such as truancy and 'running away';
  - o set the minimum age of criminal responsibility (not to be confused with the minimum age of imprisonment) at a suitable level, with due regard for the protection of *all* children, above and below that age, according to comprehensive implementation of international human rights standards, and with special regard for children who may end up in the custodial system through welfare or administrative rather than criminal provisions;
  - o outlaw the death penalty for crimes committed by children under the age of 18 at the time of the offence and commute any existing death sentences passed on children.
  - o ensure the protection of *all* children, regardless of gender, race, ethnicity, sexuality, disability and social, economic or any other status from discriminatory laws and practices (e.g. laws that discriminate against girls in relation to sexual behaviour).

In addition to amending legislation, urgently develop, implement and monitor child-centred and child rights-based policies and procedures in the following key areas:

- **Prevention:** Orient political will and allocate resources to the structured development of child rights-based comprehensive prevention policies as outlined in UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990.
- **Separation of social welfare and criminal justice systems:** Separate the systems to avoid processing children who are *not* in conflict with the law through the criminal justice system.
- **Diversion:** Amend legislation and practices and allocate resources to ensure that arrest and detention are only used as a last resort. Promote diversion programmes as an additional procedural mechanism to allow / propose exit points at each stage of traditional criminal proceedings, with an emphasis on restorative justice and child rights-friendly traditional and non-formal justice systems. Immediately end the practice of lengthy pre-trial detention / remand.
- **Alternatives to detention:** Prioritise the use of non-custodial sentencing options as measures at the disposal of the judiciary (to constitute diversion from imprisonment, but not necessarily diversion from criminal proceedings) and implement immediate review of children currently in detention with a view to withdrawing them from detention for placement in alternative programmes.

## GENERAL RECOMMENDATIONS

- Immediately stop the abuse and maltreatment of children by law enforcement and other justice system personnel and safeguard their human rights. Protect children on the street and in custody from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees.
- Guarantee immediate investigations into any alleged abuse and ill-treatment, identify those responsible, bring them before a civil competent and impartial tribunal and apply the penal, civil and/or administrative sanctions provided by law and according to international human rights standards.
- Ensure adequate budget allocation to social services, probation and programmes focusing on prevention, diversion and alternatives to detention.
- Develop and implement screening procedures (including psychological profiling) in the recruitment of all juvenile justice system personnel, including *all* police and military law enforcement personnel (not just those specialised in juvenile justice).
- Establish and enforce stricter time limits for all actors in the justice process in order to speed up the processing of cases involving children in conflict with the law.
- Ensure proper remuneration for justice system personnel to increase professional motivation to work with children and combat bribery and corruption.
- Conduct a mass sensitisation campaign amongst all personnel in the social welfare and criminal justice systems (police, social services, probation, lawyers, judiciary, staff in institutions), as well as civil society and children themselves, regarding child rights legislation and practices.
- Make children's participation central to reform processes. Create spaces for children's voices to be heard at all levels.
- Facilitate closer and stronger communication and coordination between *all* actors and sectors in the criminal justice and social welfare systems, including among central and local government agencies, and between government agencies and civil society.

## TRAINING

- All juvenile justice system personnel (police, social services, probation, lawyers, judiciary, staff in prisons and institutions), should receive rigorous initial training school and periodic in-service training in human rights, children's rights, and relations with street children. Such training should include:
  - o Awareness and understanding of the principles of human rights and child rights (especially the best interests of the child, non-discrimination, right to life, survival and development, children's participation and resourcing for economic, social and cultural rights);
  - o Awareness and understanding of international and local legal frameworks and guidelines in observing the rights of children and the protection they require from local enforcement;
  - o Explicit definitions of what constitutes abusive behaviour and how to avoid and report it (e.g. stealing, extortion, soliciting bribes, soliciting sex, sexual assault, physical beatings, verbal abuse, degrading / humiliating treatment and illegal detention);
  - o Non-violent dispute resolution / mediation and communication skills;
  - o Diversion options and the use of detention as a last resort only for the shortest possible period of time;
  - o Referral systems to social welfare and civil society organizations;
  - o Importance of speedy processing of children's cases;
  - o Compliance with due process and importance of informing children and their families / guardians;
  - o The importance and value of child participation (soliciting and taking into account children's views).

## MONITORING AND EVALUATION

- Establish appropriate monitoring systems of both the government and independent, non-governmental organisations. Monitors should be permitted to conduct confidential interviews with detained children of their choosing, with the consent of the children involved. Such monitoring should include making unannounced inspections of all detention facilities, including police cells, and should be given the authority and means to intervene whenever there are reasonable grounds to believe that abuses have been committed.
- Establish regular evaluation mechanisms for both the component parts of the system and how they function as a whole, identifying and addressing – through a child rights-based approach, priority areas for reform.

## COMPLAINT PROCEDURES

- Complaints regarding mistreatment of children by the police or other authorities should be investigated promptly, thoroughly and independently and violators must be disciplined and/or prosecuted to the fullest extent of the law in order to challenge cultures of impunity that perpetuate violence and human rights violations of street children and children in the criminal justice system. Complaint mechanisms must be consistent with international standards (e.g. Paris Principles, CRC General Comment on National Human Rights Institutions).
- Establish a complaint system that allows street children and children in the criminal justice system to make confidential complaints – without fear of redress - to facility directors, to nominated national child rights representatives / ombudsmen, and/or to other appropriate national or international agencies. The system should ensure that all complaints are investigated and responded to promptly.
- During investigations (which often last for years or are open-ended), either suspend alleged perpetrators or move them to posts where they have no contact with children.
- Establish, publicise and support toll-free child helpline numbers which are adequately staffed by trained personnel and which are available 24 hours a day. Any child or interested party, including police officers, should be able to call the number to report an incident of abuse or obtain information regarding services available to street children and children in the criminal justice system.

## RESEARCH AND DOCUMENTATION

- Collect and disseminate / make widely available (within government, civil society and the UN Committee on the Rights of the Child) statistical data regarding children in the criminal justice system. Such information should be disaggregated by gender, age and geographical location and should include: number of children in detention; the reason for detention; the length of time in detention; the disposition of the case (i.e. measures imposed by judge); the frequency of review of these measures; family history; medical condition, including any substance addiction or abuse; previous detentions; and any complaints or concerns noted by the child.
- Ensure that comprehensive official statistics are properly maintained. These should be used to monitor and evaluate implementation of policy.
- Promote and/or undertake, in association with academic and civil society institutions: longitudinal research on effective crime prevention and diversion strategies; participatory research involving the community and children and young people into crime prevention and rehabilitation in the community, focusing on existing structures (local associations, youth and church groups); research on public perceptions of juvenile offending in order to identify appropriate 'entry points' for influencing public opinion.



- Promote and/or undertake, in association with academic and civil society institutions, cost / benefit analyses of investing in comprehensive child protection systems at local and national levels in order to develop a more accurate picture of the economic and social costs of failure to invest in prevention and protection programmes.

## MEDIA

- Develop partnerships with the media to promote advocacy messages regarding child rights, restorative justice and the importance of prevention, diversion and alternatives to detention; to publicise positive outcomes with young offenders; to encourage community-level support for vulnerable children and young people.
- Undertake media training on the effects of criminalising and discriminatory references and stories regarding street children, children in conflict with the law and other marginalized groups of children such as ethnic minorities. Promote responsible, gender-sensitive and unbiased reporting that involves the voices and stories of children in their own words (subject to child protection guidelines).

## RECOMMENDATIONS ACCORDING TO STAGES OF THE SYSTEM

(Recommendations from the street children involved in the CSC Street Children and Juvenile Justice Project are shown in *italics*).

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>PREVENTION</b>										
Advocate awareness and implementation of the UN Convention on the Rights of the Child	X					X	X	X	X	X
Rigorously examine states' progress towards respecting the rights of children in conflict with the law and encourage a single-minded focus on rehabilitation and re-integration, not criminalisation, for all children up to the age of 18						X	X	X	X	X
Devise a methodology to analyze the child protection system at local levels in order to assess risk and protective factors and build better prevention strategies and programmes	X	X	X	X		X		X		
Organize / institutionalize community-based Councils for the Protection of Children in each city / town / village	X					X				
Train residents / leaders as community child support advocates against child abuse	X					X				
Programmes should be regularly monitored to ensure that prevention strategies reflect the changing situations of street children and crime	X	X		X		X	X	X		X
Children should be sensitised on their rights and how to redress abuse, and encouraged to speak up when they are abused	X			X		X	X			
Child helpline telephone numbers should be developed and made accessible to children in distress	X	X		X		X	X			X
Poverty reduction to be addressed through employment generation for families and family-friendly small-funds management training and micro-lending programmes. / Increased government and donor support for poverty alleviation programmes that incorporate investment in community social capital (including psychosocial support) as well as economic capital	X			X		X				X

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>PREVENTION (continued)</b>										
<i>Government should provide free and compulsory quality education or vocational skills training to children who have no family and help poor parents with financial support</i>	X			X		X				X
<i>Government should make the provision of welfare and social or vocational skills training to children who have no family and security support top priority in the communities</i>	X			X						
Political and financial support for the widespread implementation at community level of participatory parenting and teaching skills programmes that address the emotional consequences of violence and non-communication	X			X		X	X	X		X
Domesticate and enforce international law and policies in the local legal system outlawing archaic and harmful child-rearing practices in order to stem child abuse which drives children into the streets. <i>Hold parents, teachers and other caregivers responsible for cruelty to children in the home, school, etc. Protect children from cruelty and torture by parents and teacher</i>	X	X	X	X		X	X		X	
Children at risk should be identified as early as possible and receive special attention	X			X		X				
Provision of adequate counselling to families as a preventive measure to curtail inflow of children into the street / Employ more child guidance-counsellors at all levels of education to provide first hand counselling services to children in schools	X			X		X		X		X
Encourage child-friendly alternatives such as fostering and adoption in appropriate cases for children who have no family. <i>Provide children who lack accommodation with shelter, and particularly if they do not wish to live with step-parents</i>	X			X		X				
Recreation facilities and support centers should be provided in communities for prevention of youth crime	X			X		X	X			X
The police need to build stronger relationships with local communities	X	X				X	X			
Incorporation into primary school curricula of life skills education which includes non-violent conflict resolution techniques such as peer mediation	X					X		X		
State welfare departments and local governments should establish street outreaches through which they can monitor and prevent the entry of children into the streets	X			X		X				
<i>NGOs, civil society organisation and voluntary bodies should build the capacity of children through training to reach other street children through peer influence and counselling. Children should participate in peer counselling programmes designed particularly for children already on the street.</i>	X					X				
<i>Protect children from harmful employment, prostitution, neglect and abuses of all kinds.</i>	X	X	X	X		X				

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>ARREST / PRE-TRIAL DETENTION / REMAND</b>										
Arrests must be made lawfully and not as the result of discrimination or for the purposes of harassment, extortion, 'street clearing', for status offences, 'vagrancy' or of victims of commercial sexual exploitation etc. <i>Children should not be accused falsely; prove the case first</i>	X	X	X							
Children in need of care and protection must not be processed through the criminal justice system but dealt with by the social welfare department. This requires good communication between the services and adequate resourcing of social welfare departments	X	X	X	X		X				
Wherever possible, children in conflict with the law should be diverted from the formal criminal justice system thus avoiding arrest and detention in favour of child-friendly restorative alternatives (mediation, warnings, community service, diversion to a civil society organisation etc.)	X	X	X	X	X	X			X	X
If arrest is unavoidable, there must be an absolute prohibition on bribery, extortion and the use of physical, psychological and sexual violence, including verbal abuse and humiliation; use of restraints only as a last resort; humane transportation to police station etc. <i>Avoid transporting children in car boot; Train police to become child friendly; Do not use torture, threats or instilling fear to extract false evidence from the children- such evidence should not be acceptable in court of law; Do not take valuables from children when they are being arrested or once they are arrested. During arrest and interrogation, pictures should not be taken, particularly those wherein the children are made to pose in humiliating and degrading manner depicting their alleged crimes; Police officers found to have violated children's rights should be dismissed and punished.</i>	X	X	X		X				X	
If arrest is not avoidable, due process must be followed at all times including: children should be informed of their rights; parents / guardians and the social welfare department should be promptly informed of the arrest; no evidence should be taken from a child in the absence of a parent, guardian or social worker; ensure proper documentation and record-keeping – especially with regard to the child's age; emphasis on speedy processing (child should be brought before a juvenile magistrate within 48 hours of arrest – within 24 hours if possible); access to free legal assistance; the right for the child to be heard etc. <i>Police should investigate the case of the alleged crime properly; Investigations should be done in the presence of a guardian or, in their absence, a service provider should be present. Authorities must follow the right process in arresting children and the proper procedures in investigation. This naturally includes the non-maltreatment or abuse of children and the safeguarding of their fundamental rights</i>	X	X	X	X	X	X				
Establish children's desks at police stations staffed by specially trained and sensitive personnel to facilitate diversion or process children in a child-friendly way	X	X	X	X	X	X				

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>ARREST / PRE-TRIAL DETENTION / REMAND (continued)</b>										
Children should not be detained in police cells prior to appearance before a juvenile magistrate except as a last resort. If this is unavoidable, human rights standards must be met, e.g. <i>There should be separate cells for children - children should not share cells with adults; Provide good and enough food to the children at the police cell; Ensure that the cells are clean and ventilated and not overcrowded; Separate those who are ill from the rest and provide them with medical attention; Police officers who seek sexual favours from girls for whatever reasons should be charged in a court of law; Use of buckets should end - construct toilets at police cells; Prisoners should be allowed and enabled to take a bath.</i>	X	X	X	X	X	X				
<b>Remand:</b> Before remanding a juvenile, the court should satisfy itself that satisfactory screening has taken place and that all diversion options have been exhausted. A pre-trial inquiry should be incorporated in the procedure of dealing with juveniles. Where possible, children should await trial with their parents, guardians or other supporters. Prison / remand home authorities should check the validity of remand warrants and authenticity of signatures on them. There must be clear time limits (as short as possible) set on the period that a child can be kept on remand ( <i>reduce the number of days for remanding children</i> ). Courts should ensure that these limitations are adhered to and followed. Conditions on remand must be in keeping with human rights standards	X	X	X	X	X	X				
<b>DIVERSION</b>										
Diversion programmes should be offered by social welfare, NGOs, retired teachers, nurses or other suitable community players and should take into account the needs of the victim, the offender and the community and should be restorative in approach	X	X	X	X	X	X	X			X
An assessment of every case should be aimed at diverting all cases where possible to community-based pre-trial diversion programmes; The assessment should include the prosecutor, a probation office or social worker, and parents, guardians or community members. <i>Detaining children particularly for minor offences is cruel, and should be removed as an option. Foster homes rather than institutional homes are beneficial, and should be made available to street children in conflict with the law</i>	X	X	X	X	X	X	X	X	X	X
Efforts must be made through targeted programmes on mentoring and relationship building to ensure that street children in particular have access to the range of diversion options available, even in the absence of stable 'family' ties	X			X		X	X			X
Establish whether community-based informal and traditional justice mechanisms exist and if so, whether they are in conformity with international human rights standards and might therefore have a role in diversion	X	X	X	X	X	X		X		
Undertake research on the extent to which children's rights are protected in both the formal and any informal systems; Examine the potential for interaction between formal and non-formal systems in order to develop policy recommendations that capitalise on opportunities for incorporating the principles of reconciliation and restitution into the formal justice system.	X					X		X		X
Provide stakeholders (police, parents, community, social welfare officers, courts, judicial officers, etc) with training in new skills required for diversion and also to standard procedural safeguards for child protection	X	X	X	X	X	X				X



	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>TRIAL / HEARING</b>										
<i>All children should be provided with legal representation when they appear in court</i>	X	X	X	X	X	X				
Separate courts for children should be established staffed by specially trained personnel. Where the establishment of a separate building is not possible, hearings involving children should take place in a separate room on a separate day, but still with specially trained personnel	X		X	X						
Court procedures should be child-friendly. <i>(The creation of a child-sensitive environment in the courtroom, questions should be asked slowly and clearly in a language understood by the child, no black robes, hearings held in camera, magistrates should be friendly and patient to the children etc.)</i>	X		X							
<i>Magistrates should ensure the children's right to participate in their own defence. Prosecutors should follow the processes during hearings, with the children given the chance to speak or be heard.</i>	X		X							
Juvenile magistrates, lawyers and other court officials should receive special training on child rights and restorative justice (especially on the importance of diversion and alternatives to detention). <i>Judges in particular are asked to order lighter sentences for children. In the handing down of the sentence, the age of the child at the time of the commission should be considered and not the present age of the accused.</i>	X		X			X				
<i>Prosecutors and judges should facilitate a speedy trial.</i>	X		X							
Ensure adequate remuneration of juvenile judges and lawyers to provide incentive to work in this field / reduce motivation for corruption	X		X							
Children should be supported throughout the court process by social workers or counsellors	X		X	X		X				
Magistrates should explore options to reduce time spent by children on remand / in pre-trial detention – e.g. through using 'mobile courts' / convening court in prisons / remand homes where this would result in cases being dealt with more speedily	X		X			X				
<i>Magistrates should ensure that cases are conclusively investigated before passing judgment</i>	X		X							

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>DETENTION</b> (In cases only where all diversion options and alternatives to detention have been exhausted)										
Immediately end torture and violence in police cells, detention centres, remand homes, approved schools, prisons etc. This is paramount, but cannot be addressed without examining the levels of staffing, training of staff, and employee conditions. Staff found guilty of torture or mistreatment should be brought to justice. <i>Punish staff who seek sexual favours from the children</i>	X	X	X	X	X	X	X		X	
Strict regulations concerning non-violent and non-humiliating discipline must be drawn up and monitored. <i>Teachers to stop administering heavy punishment on children. Discipline of children generally should be consistent with child's rights and dignity.</i> Under no circumstances should isolation be used as a punitive measure. Children should be informed of the internal rules of the facilities to which they are committed and their rights and obligations immediately upon entry. The rules of the institution should be made available to children upon request and posted in highly visible places	X				X					
Ensure that conditions in detention comply with international standards with regards to separation on the grounds of age and convicted status, hygiene, sanitation, space, ventilation, food, clothing, adequate sleeping materials etc <i>Provides remand homes with basic facilities e.g. mattresses, blankets, sanitary facilities, and other social amenities. Make the compound clean. Ensure proper diet; Repair toilets and construct new ones where they are not adequate or do not exist at all; Provide the homes with enough utensils. Provide children with at least two pairs of uniform; Provide mattresses, blankets, sheets, shoes and clothes to the children. Provide good and sufficient food at the remand home. Improve the facilities at the remand homes and make them child friendly</i>	X	X		X	X	X	X	X	X	
Resources must be immediately allocated to the recruitment and training of an adequate number of teachers, trainers, health and social workers, and psychologists for individualised rehabilitation of children / Provide adequate professional in-centre counselling and other therapy, tailored towards long-term positive development in institutionalised children	X			X	X	X				X
Government must allocate adequate budgetary funds for the welfare of children who are institutionalised	X			X	X					
<i>Children's opinions should be incorporated in the running of the homes</i>	X				X	X				
Where detention is unavoidable, encourage greater contact between the child and their family and friends when it is in the child's best interest, and wherever possible locate children in facilities closest to their homes. <i>(Give children permission to visit their relatives/guardians)</i>	X				X	X				
Increase access for child detainees to education, rehabilitation, skills development (including life skills), drug rehabilitation, and sporting and recreational activities	X			X	X					
Vocational skills taught to children in rehabilitation should be relevant, of good quality, competitive and linked to market needs, to ensure that children are well adjusted and have a chance to find employment in the future	X			X	X					

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
<b>DETENTION (continued)</b>										
Ensure safe, adequate transport between detention facilities and court to avoid delay in processing of cases. <i>(Government should provide transport buses for homes)</i>	X				X					
Ensure specialist comprehensive initial and in-service training on child rights, including non-violent communication and discipline skills for all staff in institutions. <i>Personnel for children's services should be people who are trained and love children and not just people who are looking for a job to do</i>	X			X	X	X			X	X
Maintain a transparent policy throughout the system with regard to official records for communication, monitoring and evaluation purposes	X	X	X	X	X		X	X		
Consider establishing a 'Board of Visitors' system made up of independent members of the community, civil society organizations and professionals to routinely carry out unannounced inspection visits to children's detention centres, police cells and prisons	X				X	X	X			
A child detained in any state or private facility should be interviewed at regular pre-determined intervals by trained and qualified government staff; their rehabilitative progress should be assessed, and their prospects for release should be discussed fully with them	X			X	X	X				
<b>REINTEGRATION</b>										
Sensitise the public on the human rights of street children in order to combat dehumanisation and discrimination and to promote reintegration into the community	X					X	X	X	X	X
NGOs and civil society (including the family, community and religious bodies) should actively partner with government to take an active role in the reintegration process	X					X	X			
Government should prohibit through legislation, and enforce, the prohibition of all discrimination against ex-child detainees whether or not in regard to employment or admission of any kind	X					X				
<i>Teach children their rights and how to fight for them</i>	X					X	X		X	X