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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**

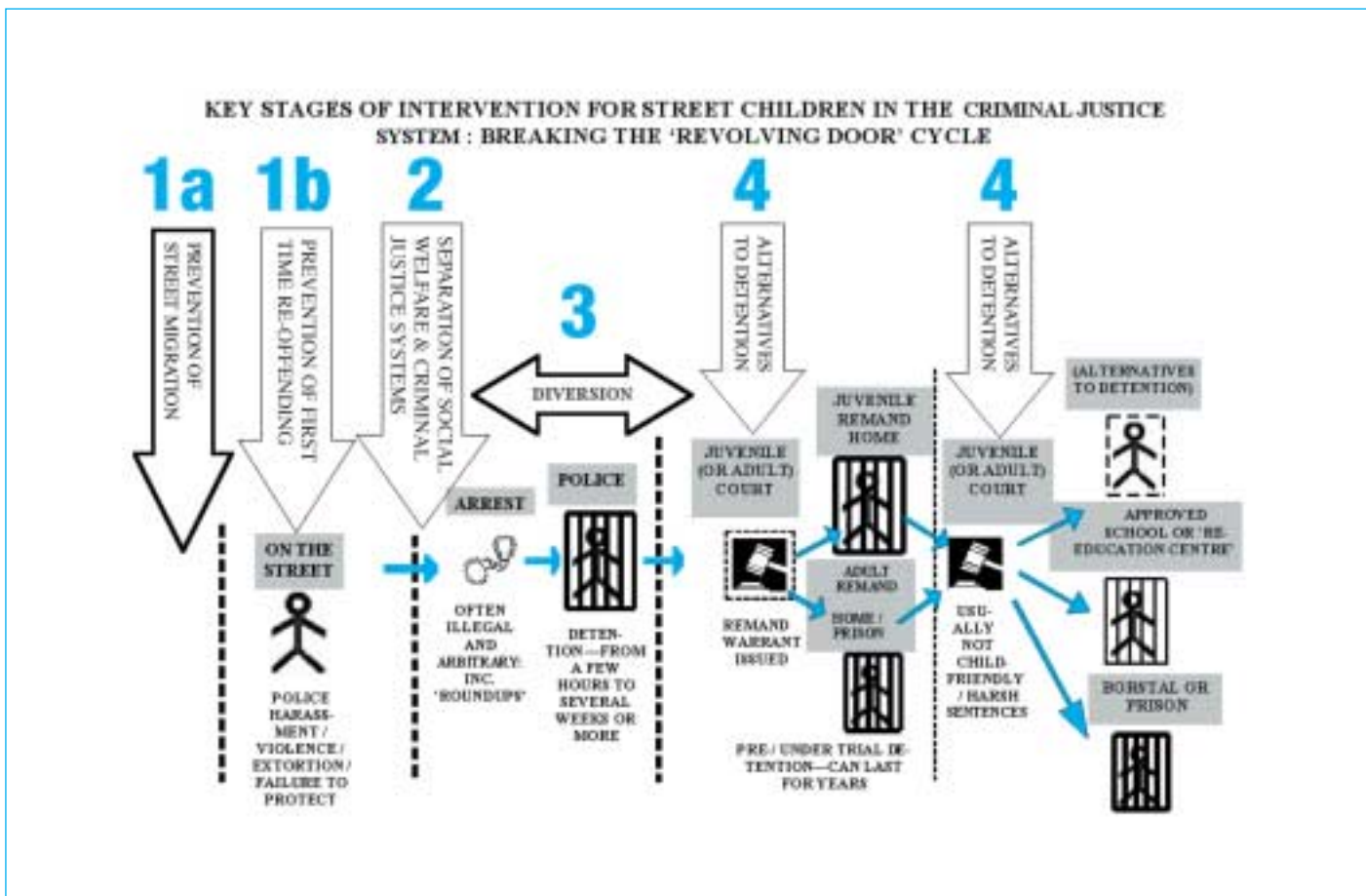
BREAKING THE 'REVOLVING DOOR' CYCLE: ENTRY POINTS FOR INTERVENTIONS

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.”¹ 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.² 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.”³

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 ⁴

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*

⁴ 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 ⁵).*

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. ⁶

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.

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

⁶ *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 ⁷

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

⁷ 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 ⁸

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.*

⁸ 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.”⁹

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.”¹⁰

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)¹¹

‘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

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

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

¹¹ 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) ¹²

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."* ¹³ 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. ¹⁴

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"* ¹⁵

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."* ¹⁶

The following statistics in relation to 'charges' taken directly from the Juvenile Court Register in Nairobi, Kenya¹⁷ speak for themselves:

¹² 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.

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

¹⁴ *Ibid*, pp.61-62.

¹⁵ 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.

¹⁶ 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 ¹⁸	145
Girls	18	2			1 ¹⁹	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 ²⁰	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.²¹

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 ²²

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).

²² 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 - EGYPT²³

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.*²⁴

*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.*²⁵

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."²⁶ The children's experiences of sexual abuse on the streets and in detention are detailed in Chapter 6.

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

²⁴ *Ibid*, p.3.

²⁵ *Ibid*, p.8.

²⁶ 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 ²⁷

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. ²⁸

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.

²⁷ *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.

²⁸ 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.²⁹

	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.³⁰
- 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.”³¹

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.”³³

[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.³²

²⁹ 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.

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

³¹ *Ibid*, p.12.

³² 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.

³³ 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.³⁴ 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."³⁵

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 settings³⁶

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 offenders³⁷

³⁴ 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."

³⁵ 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

³⁶ Roy, N., *Juvenile Justice Presentation*, December 2001.

³⁷ 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 ³⁸

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.³⁹

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.⁴⁰

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.⁴¹

³⁸ 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.

³⁹ *Ibid.*

⁴⁰ *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.

⁴¹ *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;⁴² 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;⁴³ 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)."⁴⁴

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.”⁴⁵*

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,⁴⁶ 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.⁴⁷ 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.⁴⁸

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 - ANGOLA⁴⁹

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

⁴⁹ 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.⁵⁰

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.⁵¹

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).⁵²

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.⁵³

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, 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.⁵⁶

examples of diversion: The role of traditional and informal justice systems in relation to street children and diversion⁵⁴

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.⁵⁵

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].⁵⁶

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."⁵⁷ 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."⁵⁸

⁵⁴ '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.

⁵⁵ *Ibid*, p.2.

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

⁵⁷ 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".

⁵⁸ *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 ANGOLA⁵⁹

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 ⁶⁰ 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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⁶⁰ 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) ⁶¹

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.*

⁶¹ 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)⁶³

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.⁶²

⁶² Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.14.

⁶³ 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.⁶⁷

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)⁶⁴

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.⁶⁵

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

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."⁶⁷

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 settings⁶⁸

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.

⁶⁴ Julio, aged 14. Footage from *ibid.*

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

⁶⁶ Zaman Khan, S., *Herds and Shepherds*, 2000, p.25.

⁶⁷ Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.56.

⁶⁸ 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.⁶⁹ 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.⁷⁰

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.⁷¹ 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.

⁶⁹ 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.

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

⁷¹ <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 ⁷²

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.⁷³

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

⁷² '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".

⁷³ <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

'OPEN PRISONS'- ANKARA REFORMATORY, TURKEY ⁷⁴

“ *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*

⁷⁴ 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.