

## *An Outside Chance*

# **Street Children and Juvenile Justice – an International Perspective**

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In many countries around the world children who live and work on the streets are particularly vulnerable to human rights violations in juvenile justice systems: they are highly likely to come into contact with the criminal justice system in the first place, and they are less able to defend themselves from abuse once within the system. These children are discriminated against and have their rights violated because they are poor.

This publication aims to provide a comprehensive overview of the causes and consequences of street children's involvement in criminal justice systems in a wide range of countries.

It is aimed at anyone with an interest in these issues and in particular: policy-makers in relevant government departments; personnel working in the various branches of the justice system; NGOs working with street children and/or on juvenile justice issues; academics; human rights lobbyists; public and private donors; and actors in the UN and regional human rights systems.

It includes:

- Descriptions - in the children's own words - of the treatment they receive at different stages of the criminal justice system;
- A framework of overarching concepts and recommended approaches to reform;
- An introduction to international human rights standards and guidelines on how to use them;
- Practical examples of projects and approaches from around the world;
- Specific recommendations for improvement, including recommendations from children themselves, targeted at different actors in the system.

These children are seen as outsiders by society, often with only an outside chance of survival and development to their fullest potential. We owe it to their incredible resiliency, courage and imagination in the face of exceptionally difficult circumstances to work together to turn this 'outside chance' of survival and development into the guaranteed fundamental human right to which they are entitled.

## COMPILATION OF CHAPTER SUMMARIES

### Chapter 1: Introduction

#### Chapter summary

This book aims to fulfil the need for comprehensive, consolidated information on theory and practice in relation to street children and juvenile justice in order to contribute towards urgently needed reform.

This reform is based on a three-part framework which includes:

- a **child rights-based approach**;
- an understanding of the **five key concepts** of: an individualised approach, choices, relationship-building, the role of the community and better understanding of, and respect for, children's resiliency and their peer relationships;
- **priority attention to the four areas** of prevention, separation of criminal justice and social welfare systems, diversion and alternatives to detention.

Terminology used to refer to girls and boys in these situations needs to be gender-sensitive, child-friendly and accurate.

Boys are massively over-represented in the criminal justice system and this has implications for the treatment experienced by both girls and boys in the system as well as for interventions aimed at reform.

### Chapter 2 –Guiding Principles for the Way Forward

#### Chapter summary

A **child rights-based approach to reform** means a focus not only on specific juvenile justice guidelines, but one that is underpinned by a constant holistic re-evaluation of programmes (through the 'Table Leg Test') based on the **five umbrella rights of the CRC**: best interests of the child; non-discrimination; participation; implementation (including of economic, social and cultural rights to the maximum extent of available resources); right to life, survival and development. In combination, these rights add up to an approach that views each child as an individual human being, deserving of rights and capable of participating in the process of achieving them in a supportive and adequately resourced environment. The realization of human rights is especially important for those such as street children who – through the process of criminalisation, stereotyping and dehumanization – have been denied those rights.

**Five key concepts: Relationship-building** is the natural outcome of a child rights-based - and therefore child-centred - approach to reform: it acknowledges that the child is at the centre of a whole network of psychosocial, economic and other relationships; it realises that these relationships may need to be transformed in order to support children with safety nets, rather than having them 'fall through the nets'; it understands and respects the **individuality of each child** and is a key weapon in combating criminalisation, stereotyping and dehumanisation. Relationship-building and transformation can happen at both an individual level through sensitisation, and by engaging multiple stakeholders through collaboration. It is essential to juvenile justice reform. In the case of street children, relationships – especially **peer relationships** and relationships with the **community** - take on a particular significance. This is because it is a lack of positive adult relationships that have brought

them onto the streets and into the system in the first place, and that same lack of positive adult relationships that limits their opportunities to take part in diversion programmes and more lenient sentencing options such as alternatives to detention. Capitalising on street children's natural **resiliency** (through **understanding and expanding their choices, and empowering them to make such choices**) strengthens the children's own ability participate in the relationship-building and transformation necessary to make reform of the justice system succeed.

Four priority areas for reform: **in the context of a holistic, child rights-based approach to reform and limited resources available, priority needs to be given to the areas of** prevention, separation of criminal justice and social welfare systems, diversion and alternatives to detention.

## **CHAPTER 3 – International human rights instruments**

### **Chapter summary**

- There are many human rights instruments available to draw on in order to support lobbying for reform and to assist in the design and implementation of policies and programmes.
- Of these, the Convention on the Rights of the Child is the most powerful as it has the widest jurisdiction, is legally binding, and is specific to children. The African Charter on the Rights and Welfare of the Child provides a similar function in the African context. However, the CRC and/or ACRWC should be supported by reference to other instruments which can provide more detailed guidance.
- The use of any of these instruments should be grounded in a holistic approach that caters for the overall development of children by underscoring the importance of socio-economic prevention and protection programmes.

## **CHAPTER 4 – Circle of experience: links between the causes of street migration, behaviour on the street and treatment in the justice system**

### **Chapter summary**

The 'circle of experience' shows how the same issues that cause children to move to the streets in the first place impact on the type of behaviour in which they engage whilst on the street as well the treatment they subsequently experience within the criminal justice system.

This is regulated by the context of choices, limited choices and non-choices specific to each individual child. Choices can become increasingly limited as children progress around the 'circle' and there is therefore a need for early intervention in the cycle in order to maximise the opportunities available to children.

It is for this reason that the overall approach to reform adopted in this book prioritises prevention, diversion and alternatives to detention as areas at which to target interventions. Improved opportunities for girls and boys are best explored through the 3-stage 'choice process' of understanding, and expanding the choices available to children and then empowering them to make those choices.

## CHAPTER 5: How does it all work? Process and actors

### Chapter summary

- The majority of street children's experiences in the system are negative – marked particularly by extensive (and often unjust) periods of detention where conditions are poor and abuse rampant. Detention isolates children from their communities and support networks. Furthermore, as can be seen by the 'revolving door' analogy, it also does little to break the cycle of street life and institutionalisation into which street children are trapped.
- One of the key themes of this book is the centrality of relationship building to challenging the underlying criminalisation and stereotyping of street children that characterises their current negative treatment on the streets and in criminal justice systems. This relationship building needs to take place at the levels of both individuals and institutions. Reform is only possible if it is based on a holistic overview of the system which engages *all* of the five pillars.

## Chapter 6: Street children's experiences in the *injustice* system

### Chapter summary

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

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

Furthermore, the current system is:

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

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

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

## Chapter 7: Priorities for Intervention

### 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.

## Chapter 8: Recommendations

### Chapter overview

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

# APPENDICES

1. Consortium for Street Children project: 'Promoting and Protecting the Human Rights of Street Children in Juvenile Justice Systems', Jan 2002 – Dec 2003
2. Street Children and the Convention on the Rights of the Child (CRC): full text of CRC Articles 37 and 40
3. Juvenile Justice Checklist (from UNICEF CRC implementation handbook)
4. Penal Reform International: ten point plan for juvenile justice
5. Example of overall juvenile justice reform: Uganda
6. The Role of the police: example of good practice from Uganda
7. The European Network of Ombudspersons for Children (ENOC) – 'Juvenile Justice: Europe's Children's Champions Challenge Governments to Respect Young Offenders' Rights'
  
8. Street children and juvenile justice: children's participation – activity examples (Philippines)
9. Racism in criminal justice systems
10. [Draft] Screening tool for children with emotional, behavioural and developmental challenges
11. Understanding mental disability: table of some developmental disorders / difficulties, definition, description, physical manifestations and causes
12. Guidelines for recognizing and responding to traumatized children
13. Guide to the Consortium for Street Children's urgent action procedure
14. The UN Study on Violence against Children
15. International resources for juvenile justice