

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

Chapter overview

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

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

1) On the street: police and private security guards

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

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

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

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

“They think every child who lives or makes a living in the streets is a bad child.” (Philippines)³

“There are some good police, but most of them are bad. They get a kick out of hurting us.” (Guatemala)⁴

“I came to Jeevanjee Gardens where I was arrested and taken to Kirigiti Girls’ Approved School where I was taught good manners. May God bless the police.” (Kenya)⁵

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

1.a) Violence

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

“When a girl is almost grown-up, she gets molested or raped in exchange for her freedom.” (Philippines)⁶

“I want to be a policeman so I can beat others just as they beat us.” (Romania)⁷

“Some police use beatings in a ‘well-meaning’ manner – especially with street children high on glue – to try and teach them the harm of such behaviour.” (Nicaragua)⁸

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

- Lack of education and training;
- Violence and abuse as part of their own upbringing;
- Lack of non-violent conflict resolution and communication skills;
- Lack of awareness of their own rights, let alone those of other people –least of all children;
- Recruitment procedures that have no screening in place to deter violent applicants or those looking to abuse their power;

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

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

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

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

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

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

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

- Lack of resources;
- Frustration with the perceived failure of the judicial system to appropriately punish or otherwise ‘straighten out’ street children;
- Impunity due to lack of developed monitoring, accountability and complaints procedures;
- A ‘threat’ mentality / perceived or actual personal danger to the police themselves in some cases of hostile societies;
- Links with the military – either institutionally, historically, or in terms of attitude. For example: in **Albania**, the police are described as “in general very offensive and behave as members of a militia”⁹; in **Guatemala**, the abuses of power and impunity with which private security forces operate is explained in part by the fact “many of the private agencies are owned by powerful former military officers, who maintain their ties to government security forces and can be dangerous to cross.” These firms have their own weapons, are described as ‘notoriously unsupervised’, and are subject to inadequate training, slack recruitment screening, corruption.¹⁰

1.b) Death squads

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

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

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

[Case study]

The Candelária Massacre, 25 July 1993, Rio de Janeiro, Brazil

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

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

¹⁰ Human Rights Watch, *Guatemala’s Forgotten Children*, 1997, pp.34-35.

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

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

309 years in prison (six counts of murder, five counts of attempted murder, and several counts of grievous bodily harm).¹³

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

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

The Story of Sandro do Nascimento: 'Bus 174'

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

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

[Case study]

The Javed Iqbal murders - Pakistan¹⁷

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

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

At his trial, Iqbal made a point of claiming that as no-one ever notices when a street child disappears: he could have gone on to kill 500 before anyone took action instead of turning himself in in December

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

¹⁴ Amnesty International, 'Rio de Janeiro 2003: Candelária and Vigário Geral 10 Years On,' August 2003, <http://web.amnesty.org/library/Index/ENGAMR190152003?open&of=ENG-BRA>

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

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

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

1999 once his target of 100 boys had been reached. It took two weeks before police investigated Iqbal's house after receiving information about the crimes committed there: "The police never took it seriously. Police thought it was a joke and that he was a mental patient. He told the police 'I have killed these children,' and the police said, 'Come back in the morning.' "

In late December, after the extent of Iqbal's crimes was known, the Punjab police chief distributed a memo to officers throughout the province saying "reports of missing children should not now be taken lightly."

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

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

[Case study]

Ongoing murders of street children and young people in Central America

According to the NGO Casa Alianza, in March 2004 a total of 55 children and young people under the age of 23 were murdered in Guatemala in the space of 31 days. In 2003, Casa Alianza documented a total of 747 extra-judicial executions in Guatemala - an average of 60 murders each month.

Meanwhile, the agency's Legal Aid Programme in Honduras registered 557 murders of children and youth under the age of 23 throughout the country. According to Casa Alianza, in spite of lack of evidence, the Presidents of Guatemala, Honduras and El Salvador all blame the murders on juvenile gangs, an argument which has been used to justify violent police repression against young people.¹⁸

1.c) Sexual abuse

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

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

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

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

“Girls are often asked for sexual favours on the pretext that they would be released. In most instances, release does not take place even after giving in to the officer’s demand”²⁰; “The police are always calling us names, threatening us, saying we’re whores, trash, homeless, and beating us. Sexual abuse happens too. It happened to me once, here in Jeevanji [public park]. Four policemen came and arrested me near City Market. They started taking me to the Central Police Station, and brought me here to the park. One of them hit me and I fell down, and he came down on top of me. Another held me down while the policeman raped me. After he raped me, they walked me over to Central Police Station, and just let me go.” (Kenya)²¹

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

1.d) Harassment

Harassment – with or without physical violence - interferes with children’s survival strategies, resulting in loss of earnings and peace of mind. It may also result in other indirect effects such as causing them to be chased from areas of safety, making them more vulnerable to abuse at the hands of others. For example, in **Bulgaria**: “[t]he police chase us away from the underpass and from the station, the areas where the police stay, and make us stay outside where the skinheads can get us.”²⁴

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

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

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

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

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

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

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

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

²⁶ Interview with 19-year-old Maritza, Guatemala City, 2 September 1996, quoted in Human Rights Watch, *Guatemala’s Forgotten Children*, 1997, p.34. See also interview with Dr. René Zamora, Guatemala City, 20

1.e) Bribery, extortion and corruption

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

“They accuse us of earning our money through illegal sex activities, and demand their share”; “They take our personal things and call us drug addicts and thieves.” (Pakistan)²⁷

“Police officers have a tendency of taking any valuables they find with the children”²⁸; “I’ve never bribed the police. That’s why I’ve been to jail ten times.” (Kenya)²⁹

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

Street children as part of the project in **Pakistan** reported that policemen regularly harass them for ‘protection’ money – i.e. a bribe that would allow the child in question to continue their survival strategies without interference. Some demand a share of the profits made by child vendors or extort an illegal ‘fee’ before allowing them to tout for business in their areas of patrol; others simply wait until the child has made a sale, and then snatch the money on the grounds that the child is ‘a drug addict’ and ‘involved in crime’. Many children are arrested on false charges and then offered release on payment of a fine. Street children also report that police use false arrests to get children to do odd jobs for them. This usually involves the child being detained for a few hours at the police station, during which time they are forced to clean cells and toilets before being thrown back onto the streets without charge. Unsurprisingly, parents of these children are rarely informed of the detention and no ‘First Information Report’ is written.³²

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

September 1996, p.14, according to whom, at the time of the interview, beatings were coming at least as often at the hands of private police as from the National Police: “Those guys, yes, they are very aggressive with the kids.”

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

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

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

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

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

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

These types of experience are also common in other countries, for example girls involved in street prostitution in **Mexico** reportedly pay the police extortion and protection money³³. In **Bulgaria**:

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

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

1.f) Arrest

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

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

“I don’t like living in the streets anymore, the police take you, they won’t even let you work at the intersections or in the buses.” (Romania)³⁸

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

*“We arrest kids in parks who look like they are homeless. We arrest kids selling tissues in the street. These kids become known to us, so it isn’t hard.”*⁴⁰; *“We conduct arrest campaigns to demonstrate the government’s presence. Because if we didn’t have arrest campaigns then*

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

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

³⁵ Human Rights Watch, *Charged With Being Children*, 2003, p.18.

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

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

³⁸ Street boy quoted in Alexandrescu, G., 2002.

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

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

quickly the streets would fill up with kids selling tissues and wiping cars and begging.” (Egypt)⁴¹

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

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

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

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

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

The following statements from street children at the national workshop in Kenya reveal the potential consequences of arbitrary arrest not only for the children involved but also for society as a whole – i.e.

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

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

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

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

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

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

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

the likelihood of encouraging criminality among street children if there is high chance of them being arrested whether innocent or not.

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

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

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

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

*“Five girls were arrested with me. They tied us with rope and made us walk to the station. There were four police. They didn’t say anything, just ‘Begging.’” (Egypt)*⁵³

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

Humiliation: In **Nicaragua**, one boy described how he was stripped naked by police, taunted and left in a cell. This humiliation continued when his girlfriend came to the station to visit him, whereupon four officers ridiculed and made fun of him.⁵⁵ Children in the **Philippines** also report being humiliated, for example by being forced to eat their solvent or glue, or having it poured on their hair.

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

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

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

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

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

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

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

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

Amongst the list of practices that street children in **Nigeria** complained of in relation to the police was the “enforced stripping of clothes even for female children.”⁵⁶

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

1.g) ‘Roundups’ / ‘Street Cleaning’ Operations

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

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

- ‘Cleaning’ the streets prior to the arrival of visiting dignitaries to the city, international conferences or similar events⁶⁰;
- To coincide with the tourist season or the promotion of campaigns to encourage tourism;
- Preceding, or immediately following, local or general elections so that politicians are ‘seen to be doing something’ about the street children ‘problem’, revealing once again the influence of public opinion (see for example the Kenya case study below);
- As periodic ‘new’ initiatives, often prompted by the arrival of new personnel trying to ‘make their mark’ in relevant government departments;
- In order to use the children as scapegoats following high profile crimes in relation to which the public – and media – demand action;⁶¹
- In response to residents’ complaints of an increase in crime in a particular area.⁶²

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

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

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

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

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

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

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

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

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

This is borne out by the following case studies.

[case study]

Multiple Human Rights Violations, Nepal⁶⁴

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

All the children were kept in police custody for a total of six days before being transferred to the Central Jail. The police did not deny that the children were used to clean the toilet while they were

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

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

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

detained in their custody. The children also reported that during this time they were threatened and tortured, were not given enough food, had to sleep on the floor in a small room and the police forced them to claim they were older than they actually were so that they would not be treated as children but adults. They also complained of being taken out twice with handcuffs / iron chains around their hands to visit the office of the Chief District Officer, Kathmandu. All of the children had migrated from rural areas and the majority did not have contact with their parents. Only three children who had their parents / guardians in Kathmandu were able to pay the penalty and were therefore released before the others were transferred to prison along with adult criminals.

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

[case study]

Recruitment into the National Youth Service, Kenya⁶⁵

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

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

⁶⁵ Consortium for Street Children, *Street Children and Juvenile Justice in Kenya*, February 2004.

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

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

⁶⁸ *Ibid.*

batch of street children graduates from the NYC have simply returned to the streets ‘more ruthless and hardened’.⁶⁹

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

[case study]

Routine roundups of street children in Uganda⁷⁰

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

1.h) Interrogation

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

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

“A policeman caught me. He was wearing a uniform and he had a warrant for my arrest. First, they brought me to the [local government] hall. There, they forced me to admit the crime. They pulled my hair, pinched my belly hard, and they placed bullets between my fingers and squeezed them tight. I was shaking and scared because I might get beaten up in jail.

⁶⁹ ‘Street Kids back in Full Force’, Capital Group News Service, 25 November 2003.

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

⁷¹ USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

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

Afterwards they brought me to Kub-Kub. The cell was small, with so many mosquitoes and it stank. They only fed me noodles and a handful of rice. I spent three months in jail.” (Philippines)⁷³

1.i) Accountability and complaint mechanisms

‘Fear normally keeps the children from highlighting the abuse.’ (Pakistan)⁷⁴

The human rights violations described above - and experienced by street children on a daily basis in many countries around the world - are compounded by the general lack of monitoring, accountability and complaints mechanisms in place for the police and private security guards. Reasons for this may include⁷⁵:

- Children are unlikely to complain directly to police about police abuse, due to the **threat of repercussions** and the **knowledge that their word will not be taken seriously** against that of a police officer;
- Abuses committed by police or security guards whilst in plain clothes can lead to **problems in identifying and holding individuals responsible**;⁷⁶
- There is often no **special disciplinary unit within the police for the registering of complaints** against officers, with no guarantee that complaints will be followed up or answered even if they are made;⁷⁷
- **Children may not have physical access to the officials responsible for taking complaints**, for example when the building has guards who refuse to allow street children to enter, or who require all visitors to show identity documents;⁷⁸
- The police **themselves are the ones who make the determination whether or not to level a criminal charge** against an officer who is accused of violating the law;
- It is **extremely expensive and time consuming for an individual to bring a private criminal action** against the police or another individual – often well beyond the means of street children and the NGOs that assist them⁷⁹ – a process further hampered by **corruption and inefficiency** within many domestic court systems;
- Some countries, like Egypt, have **no mechanism for private criminal action**;⁸⁰

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

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

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

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

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

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

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

⁸⁰ A victim can take a complaint to a prosecutor, but unless the prosecutor decides to investigate and refer the case for trial the only other opportunity for legal action is a civil compensation case, and such cases may be very difficult to win in the absence of a criminal ruling or documented forensic evidence of severe abuse (e.g. death or

- **NGOs are wary of antagonizing the police and jeopardizing their ability to work with street children** – there have been cases where NGO involvement in cases has led to them being denied registration to work in the country.⁸¹

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

1.j) Positive experiences with the police

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

“We were given the privacy and opportunity to talk to our parents”

“A policeman gave me food when I got arrested”

“I was brought to the hospital when I was sick”

“A policeman advised us to apologize so the complainant would not file a case against us”

“A policeman advised us to stop sniffing solvent.” (Philippines)⁸²

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

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

“At the police cells, food is almost guaranteed”

“There is a possibility of accessing medical attention while at police station, particularly for those who are hurt during ‘mob justice’ or through an accident”

“Children with criminal tendencies have the opportunity to change”

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

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

“The police are good because they arrested me and took me to the children’s cell after which I was taken to an approved school where I was trained to knit sweaters.” (Kenya)⁸⁴

permanent disability sustained in custody). Street children are less likely to be properly recorded as being in police custody, and also less likely to have access to medical and forensic facilities that could document abuse in a timely manner.

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

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

⁸³ USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

⁸⁴ SNV Kenya and GTZ, *The Story of Children Living and Working on the Streets of Nairobi*, 2002.

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

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

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

[Project example]

Determining children’s ages and provision of legal assistance - National Police, Juigalpa, Nicaragua

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

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

“Some are very good and they say don’t sleep in the road, be careful. Some are very bad and they beat us brutally and take the money from our pockets.” (India)⁸⁵

“Some [children] told us that at times they had been assisted by police and referred to certain ‘good’ policemen whom they knew and could rely on for help, but a greater number said they had never been helped by the police.” (Bulgaria)⁸⁶

“There are some good police, but most of them are bad. They get a kick out of hurting us.” (Guatemala)⁸⁷

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

⁸⁶ Human Rights Watch, *Children of Bulgaria*, 1996, p.33.

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

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

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

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

[Project example]

Different NGO approaches to working with the police in India

An example of these contrasting NGO approaches can be seen in **India**. In Hyderabad, Andhra Pradesh, the ‘Children and Police Programme’ (CAP) was established with support from Dr Reddy’s

⁸⁷ Interview with Dolores, Guatemala City, 6 September 1996, quoted in Human Rights Watch, *Guatemala’s Forgotten Children*, 1997, p.24.

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

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

Foundation for Human and Social Development to establish Hyderabad City Police posts at railway stations and other strategic points to intercept street children and channel them towards NGO care rather than detention in police cells. In contrast, based on local experiences of high levels of violence and the organisation's history of dealing with the police, Butterflies in Delhi believes that NGO collaboration with the police leads to an erosion of trust in the NGO on the part of the child. Likewise, in contrast to other Indian NGOs that believe in the value of direct contact between street children and the police as part of police sensitization projects, this organisation never brings children directly into contact with the police, using instead case studies as part of the police training work they undertake.⁹⁰

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

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

⁹⁰ Consortium for Street Children, mission report, India 6-21 June 2000.

2) Detention: police cells / remand homes / other institutions

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

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

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

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

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

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

2.a) Issues affecting girls in detention

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

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

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

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

2.b) Remand / Pre- / Under-Trial Detention:

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

"If I had a guardian to come claim me, I could leave today!" (Guatemala)⁹⁵

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

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

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

Detention in general can have severe negative impacts on the young person's own perception of themselves, their confidence and self-esteem. In the case of pre-trial detention, many children and young people feel as if they have already been labelled as an offender. This is particularly unfair in the case of street children who, as seen in the previous section, are subject to arbitrary and illegal arrest regardless of whether or not they have committed any crime. Whilst considering the experiences of

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

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

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

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

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

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

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

2.c) Detention with adults

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

“Children are put together with adults in the police cells, some of whom have committed capital offences. Anti-social behaviours such as sodomy take place in the cells.” (Kenya)⁹⁹

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

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

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

Similarly, in **Nigeria** and the **Philippines** boys reported that they were detained in the same cell with adult criminals, complaining in the case of the Philippines that they were sexually abused by other inmates and treated as slaves – e.g. they were forced to wash clothes and give massages.¹⁰³ In **Pakistan** the practice of detaining children with adults is so well entrenched that an attempt by some of the jail authorities at Sukkur Jail to separate boys from the adult prisoners reportedly led to riots inside the prison in the mid-1990s. It was painfully obvious that the rioting adult prisoners had a stake in keeping the children with them. In 1994, a medical examination was conducted of juvenile inmates of the Lahore Camp Jail revealing that 80% of the children had been sexually abused, most of them repeatedly. The jail authorities defended themselves by saying that the police had abused the boys

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

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

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

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

¹⁰³ UP CIDS PST, Painted Gray Faces, 2003.

while they were in custody at police stations before being sent to jails.¹⁰⁴ Allegations of this type of abuse are also made of other countries: out of a 1998 survey of 170 boys in the four main prisons in **Malawi**, 40% cite being abused (including physical, sexual, mental and economic abuse): “There were serious allegations made by some juveniles that sometimes they are deliberately taken to adult cells to provide sexual services. Unfortunately, there was no way of verifying this claim.”¹⁰⁵

2.d) Physical conditions in detention

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

“They take a bucket – everyone comes in there and it’s full. You go to sleep near the waste.” **(Kenya)**¹⁰⁶

“There’s this issue of people fighting in the cells. You’re a child and there are big people fighting in the cell. You are not fighting but you are going to be affected.” **(Kenya)**¹⁰⁷

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

“The toilet stunk. The walls were full of graffiti and reeking of urine odor...You could not use the toilet bowl when you defecate, you could only use a can. You couldn’t even eat properly.” **(Philippines)**¹⁰⁹

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

“The police station is bad, very bad. It stinks. It is dark and very congested. You cannot see the sky.” **(Bangladesh)**¹¹¹

Conditions in detention – India

Prior to government reforms in Andhra Pradesh in 2003¹¹², referring to one home in Visakhapatnam to which children ‘raided’ from their workplaces were taken, an NGO source in 2001 described it as

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

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

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

¹⁰⁷ *Ibid.*

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

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

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

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

“disgraceful. The amount provided per month for food is inadequate. The children have no winter clothing or blankets, and almost no medical care. They are, in our opinion, better off working in 70% of the cases. The so-called ‘education’ given in these ‘homes’ is close to useless. If you ask the State Government what the budget is per child per month, and what it covers, then the children are fed at below the poverty line, have inadequate medical services and medicines, have insufficient clothing and bedding, and have almost no organised non-formal education. The basic living conditions caused by the budget limitations are in themselves cruel. There appears to be no machinery to review the cost of food provision on a yearly or even 3-yearly inflation actual cost basis. Many NGOs and social organisations like ours give additional food to these homes and supply clothing and bedding plus medicines.”¹¹³

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

2.e) Treatment in detention

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

‘In the room, if we play, we get beaten if we make a noise.’ (India)¹¹⁸

‘I’ve been taken to the police station many times. Once I stayed there for five days. Sometimes they gave me some bread to eat. There was a jar in the cell in which we could go to the bathroom. There were three other girls in the cell with me. There was only one big bed in the cell, so we all shared it. There were no blankets. While I was there, the police handcuffed me

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

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

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

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

¹¹⁶ International Childcare Trust Kenya (2003) *Street Lives – Juvenile Justice Issue*, June 2003.

<http://www.sollernet.com/ictk/news603.pdf>

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

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

and put a hat over my head so I couldn't see anything, and started beating me with a chain. I begged them not to beat me, but they told me I had stolen". (Bulgaria)¹¹⁹

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

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

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

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

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

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

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

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

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

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

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

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

“Boys are not really [sodomised] by the policemen, but they are done this by the big street children in the cells. When a big person is brought to the cells they are done this.” (Kenya)¹²⁵

Examples of “severe police brutality” in **Bulgaria** are given by Human Rights Watch in a 1996 report and include children being beaten with electric shock batons, clubs, chains, rubber hosing, boxing gloves, and a metal rod with a ball at the end of it: “One boy was stripped of his clothing, doused with water, and beaten on the soles of his feet with an electric shock baton.”¹²⁶ Contrary to international guidelines, corporal punishment is frequently used as a form of discipline in remand homes and approved schools where staff lack understanding and training with regard to non-violent alternatives. In **Egypt**, a mid-level police officer told Human Rights Watch that he beat children brought to the police station to discourage them from staying on the streets, although he doubted that beatings were an effective deterrent:

“I hit them and still they come back. I choke them and still they come back. These children are a lost cause.” (Egypt)¹²⁷

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

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

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

[case study]

‘A Waste of Lives’: Cycles of violence in Brazilian detention¹³¹

‘A Waste of Lives’ is the title given to the report written by Amnesty International in July 2000 on conditions in Brazil’s juvenile detention centres which are managed by government institutions called FEBEM (Foundation for the Well-Being of Minors). In theory, the law in Brazil in relation to children centres on the progressive and comprehensive 1990 Statute of the Child and Adolescent (ECA) which incorporates many aspects of international human rights guidelines on juvenile justice. It states in the

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

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

¹²⁷ Human Rights Watch, *Charged With Being Children*, 2003, p.25.

¹²⁸ USK, *Report on Street Children Conference on Juvenile Justice*, 2003.

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

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

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

Brazilian federation where the ECA is actually being applied, and where the FEBEM system (which dates back to the 1960s) is being reformed, the results are very positive.

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

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

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

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

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

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

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

2.f) Positive experiences in detention

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

[project example]

Small acts of kindness and ‘Operation Second Chance’ in the Philippines

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

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

[project example]

Community cooperation to improve conditions and treatment in police detention – National Police, Nicaragua

In **Nicaragua**, in relation to the National Police, Casa Alianza Nicaragua noted the following good practices. For example, in spite of personnel constraints, the Juigalpa police permit children to receive visits from their families on a daily basis if desired. In District 2 of Managua, San Rafael del Sur and Juigalpa, the police have established coordination with final year medical students at the American University (UAM), private doctors and local dispensaries to provide check-ups and assistance for the children. Further examples of cooperation with the local community include: authorities in Managua, District 4, developed contacts with business people in the Oriental Market to help finance remodeled walls in deteriorating cells and to fund regular fumigation in the cells; the Popular Law Office in the Central American University (UCA), promotes a project for legal defence of inmates in Police Delegations One and Four in Managua, whereby one or two senior law school students stay during certain hours of the day to help safeguard the inmates’ human rights within that Delegation; in the

¹³⁵ CSC, *Street Children and Juvenile Justice in Kenya*, 2004, p25.

¹³⁶ UP CIDS PST, *Painted Gray Faces*, 2003, pp. 158-161.

Mateare Police Section, Managua, inmates receive three meals a day, comprising the same food that police officers themselves consume due to the close relationship established between the police and the community; civil society organizations in San Rafael del Sur guarantee lunchtime food, medication and weekly disinfectant for inmates to supplement the police budget which has not increased since 1990.¹³⁷

[project example]

Community cooperation to improve conditions and treatment in the national penitentiary system – Nicaragua

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

[case study]

Reducing numbers of children in detention in Romania

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

In **Nigeria** the children spoke positively of Social Welfare Officers in some of the homes, explaining that "*they are caring; they take us to hospital; they help by going to our homes and talking to our parents; they stay with us and ensure that we are not alone; they take us to their houses.*" They also pointed out that, although conditions varied, in some schools, the children are "*free to go to work for*

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

¹³⁸ See http://www.filmfestival.gr/docfestival/2002/process_en.php?movieid=223&eventid=63.

¹³⁹ Haines, K., Mansell, C., Shaw, R. & Goatly, R., *Probation in Romania*, Report 2003

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

¹⁴¹ Ministry of Justice – Penitentiary General Division, *The Statistic Annuary 2002*.

money, go to school, and feed themselves. Girls are spoken to nicely, advised, and treated as if they are the officers' own children.”¹⁴²

[Practical tips]

Reform of conditions and treatment in detention is possible

Two themes seem to emerge from these positive experiences:

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

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

3) Trial / hearing and sentencing: judges and lawyers

3.a) General experiences

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

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

“Children are not given the chance to speak or defend themselves; Children are held in handcuffs; Sometimes children become hopeless and feel like they want to die; Children do not reply to the police statement.” (Nigeria)¹⁴⁴

“There is not much we can tell about our experience in court. We couldn't forget that the hearings always get postponed. We have always waited for the judge to appear. Meanwhile, we get stuck inside the jail.”

“The case against me was filed when I was still a minor, but when the sentence was handed out, I was already over 18 years old.”

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

¹⁴² HDI / CSC, *Street Children and the Juvenile Justice System in Lagos State*, 2004, pp. 92-3.

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

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

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

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

Child’s rights researchers in the Philippines as part of this project note that this trial period is often “a blur to the children, with the experiences not as vividly remembered compared to those during arrest or detention.” In terms of the worst case scenario, testimonies from children in the **Philippines** include the following: the progress of cases was very slow due to frequent postponement; those who filed the case against the children do not often appear in court; children were persuaded by judges, lawyers and social workers to admit the charges “in order to speed up trial and enjoy suspended sentence”; they have difficulty in understanding court processes/hearings since the judge usually uses English - a language which these children could not understand.

“What was significant for us is that the hearing of our cases keeps getting postponed. We had to keep on waiting for the judge. This lengthens our stay in jail. We liked it though when our lawyer accompanied us to court. Still, we would have preferred it if a social worker and our parents accompanied us. Having somebody with us will make things less scary and threatening. Some judges also advised us to plead guilty to the charges that were filed against us. They say this will hasten our transfer to the rehabilitation centre.” (Philippines)¹⁴⁸

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

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

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

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

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

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

¹⁴⁹ *Ibid*, pp. 111-113 and 121.

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

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

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

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

[Case study]

Legal assistance for children in Thailand: Human Development Foundation, Bangkok

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

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

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

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

This, by the way, is as good as it gets for the kids when you're dealing with paedophiles. This is a case where the system is on the kids' side, a hundred and ten per cent. The judge is one of the best and the social workers have been trained and they've through this countless times. They represent 200 children in court and in police stations in Bangkok every month. It's a lot of work, and painful for the kids, and

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

usually the paedophiles get off, pay a huge "bail" and disappear, so it's easy to wonder why so much time and effort and pain is expended.

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

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

[case study]

Bio-Psychosocial Studies in Nicaragua¹⁵⁵

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

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

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

3.b) Positive experiences in court

"The questions asked by the judge were clear and non-threatening." (Philippines)¹⁵⁶

"Lawyers are allowed to defend and represent children." (Nigeria)¹⁵⁷

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

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

¹⁵⁶ UP CIDS PST, *Painted Gray Faces*, 2003, pp.111-112.

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

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

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

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

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

[project example]

Initiatives to improve implementation of the Code for Children and Adolescents - Judges for Adolescents in Nicaragua

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

- Some verbal hearings (e.g. in the North and Las Segovias regions) take place outside the designated courtroom which speeds up the process and reduces unnecessary delays;
- Some JFAs have negotiated with the police to ensure that children being tried are transported in separate vehicles to adults;

¹⁵⁸ UP CIDS PST, *Painted Gray Faces*, 2003, pp. 158-162.

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

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

- For less serious crimes, JFAs tend to release children on bail, and this has helped reduce the number of children in detention, but only for those with family contact and who can afford to stand bail (thus excluding a large number of street children);
- JFAs are explaining the process more systematically to the child and other stakeholders and are enforcing journalistic restrictions to protect children's privacy and identity;
- Some JFAs more than others are open to civil society assistance, particularly in hearing concerns and petitions, and have attended seminars and workshops on children's rights;
- Training workshops on the Code for Children and Adolescents have been provided to different social sectors such as the police and local authorities;
- The Specialized Inter-Disciplinary Teams responsible for bio-psychosocial studies were given training to promote awareness, accessibility, patience, sense of humor, and the ability to listen to what children have to say without judgment.

[project example]

Assisting Children in the Iași Juvenile Courthouse, Romania

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

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

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

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

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

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

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

family and government institutions; gaining knowledge regarding the negative consequences arising from abuse and neglect.

Lessons learned:

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

4) Reintegration

4.a) General experiences

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

“Theoretically there are provisions for aftercare, initiated by the government, but practically it is very weak. The whole aftercare system is very weak and therefore it does not equip children to enter into mainstream life.” (India)¹⁶¹

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

“The largest proportion of Gypsy juvenile delinquents in prison and reeducation centres face a high risk of reconviction based on their illiteracy, poor job prospects and discrimination in socio-economic choices.” (Romania)¹⁶³

“There is a need to enlighten the public, including voluntary and other organisations; also, there is a need to encourage their involvement in rehabilitating children and helping them to settle down in society.” (Nigeria)¹⁶⁴

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

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

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

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

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

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

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

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

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

4.b) Positive experiences with reintegration

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

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

¹⁶⁵ UP CIDS PST, *Painted Gray Faces*, 2003, p. 113.

¹⁶⁶ CSC, *Street Children and Juvenile Justice in Kenya*, 2004, p.15.

¹⁶⁷ UP CIDS PST / CSC, End of Project Report, p.14.

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

¹⁶⁹ Opinion voiced in ‘The Cutting Edge’ column, *Daily Nation*, 10 January 2003.

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

Chapter summary

The overwhelmingly negative experiences of girls and boys in the *in*justice 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.

¹⁷⁰ Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.277.